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Supreme Court Rules Against Ranchers, Upholds Grazing Regulation Amendments

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Supreme Court Rules Against Ranchers, Upholds Grazing Regulation Amendments

The Supreme Court's recent unanimous decision in *Public Land Council v. Babbitt*, 120 S. Ct. 1815 (2000) preserves the regulatory authority of the Department of the Interior (DOI) to maintain federal rangeland in the manner it feels will both protect the environment and safeguard grazing privileges for ranchers. In 1995, the Secretary of the Interior amended regulations governing grazing preferences, permit issuance, and ownership of range improvements. Believing the grass was greener before the amendments, several nonprofit ranching interest groups brought suit against the DOI, arguing that the Secretary exceeded his authority under the 1934 Taylor Grazing Act.[1] The Court held, however, that all three 1995 regulations were within DOI's regulatory authority and were consistent with Congressional objectives to safeguard grazing privileges and preserve the environment.

The ranchers first argued that changing the regulatory definition of "grazing preference" to tie ranchers' "permitted use" of forage to what is allowable "under the guidance of an applicable land use plan"[2] would undermine their ability to depend on consistent grazing rights and use their rights as collateral for loans on future ranching operations. In a recent Note, Julie Andersen argued that the Court erred because the amended regulations did not adequately safeguard grazing privileges or stabilize the livestock industry— two goals Congress clearly outlined when it passed the Taylor Grazing Act.[3] Yet it is difficult to see how tying rangeland permits to local land use plans will increase the uncertainty of the ranchers' rights at all. The Taylor Grazing Act always contemplated that DOI would have the ability to withdraw or reduce the reach of grazing permits. In addition, the Federal Land Policy and Management Act,[4] enacted in 1976, grants the DOI the ability to reexamine

1. 43 U.S.C. § 315 (2000).
2. *See* 43 C.F.R. § 4100.0-5 (1995).
3. *See* Julie Andersen, Note, Public Lands Council v. Babbitt*: Herding Ranchers Off Public Land?*, 2000 BYU L. REV. 1273 (2000).
4. *See* Pub. L. No. 94-579 (1976).

the condition of rangeland at any time and adjust the use of such rangeland to prevent undue damage. Uncertainty has thus been a part of rangeland permitting for the course of the Taylor Grazing Act.

Second, the ranchers challenged the removal of the phrase "engaged in the livestock business" from permit issuing standards, fearing a conspiracy aimed at severely limiting the available rangeland.[5] The ranchers alleged that this change would allow individuals or organizations interested in environmental protection to acquire small numbers of stock to obtain grazing permits, and then take those permits off the market. Yet the Supreme Court noted that the regulations governing permit issuance do not allow such mothballing of grazing permits. Permits are issued either for livestock grazing or suspended use,[6] and the Tenth Circuit has explicitly overturned the issuance of permits for conservation purposes.[7]

Finally, the ranchers objected to a rule change requiring that the United States have title to all "permanent" range improvements (that is, fences, wells, and pipelines) installed pursuant to cooperative agreements between the U.S. government and ranchers.[8] The ranchers argued that this change violated a Taylor Grazing Act provision that prevents a subsequent permittee from using improvements made by a previous permittee without first paying for their reasonable value.[9] The Court disagreed, however, and instead followed the Secretary's argument that his authority over permanent rangeland improvements includes the "greater" power to allow improvements to be made, as well as the "lesser" power to set the terms of ownership over such improvements. Nothing in the Act denies the Secretary the authority to decide when or whether to grant title to those who make improvements. In addition, any permittee remains free to negotiate the terms upon which such improvements will be made, and the United States is required to pay compensation to a permittee for his "interest" in range improvements if it cancels a permit.[10]

The unanimity of the Supreme Court's decision in *Public Lands Council* indicates that the Justices believed the ranchers

5. *See* 43 C.F.R. § 4110.1(a) (1995).
6. *See* 43 C.F.R. § 4130.2(a), (g) (1998).
7. *See* Public Lands Council v. Babbitt, 167 F.3d 1287, 1307-08 (10th Cir. 1999).
8. *See* 43 C.F.R. § 4120.3-2(b).
9. *See* 43 U.S.C. § 315c (2000).
10. *See* 43 U.S.C. § 1752(g) (2000).

overstated their worries about the 1995 regulatory amendments. In fact, the importance of the ranching industry to the American economy, the vast stretches of federal rangeland currently under grazing permit, and the history of interconnectedness between the federal government and the ranching industry make it unlikely that the regulations upheld in *Public Lands Council* will have dramatic consequences for either the environment or the ranching industry. *Public Lands Council* is nevertheless significant, however, because it affirms that the Secretary of the Interior has the discretion to act in what he or she considers the best interests of both.

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