

THE WESTERNER

DuBois column: A review of lawsuits on livestock grazing

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Hammond grazing permits

On December 20 of 2019, federal judge Michael H. Simon revoked the grazing permit for Hammond Ranches Inc., finding that former Interior Secretary Ryan Zinke's order renewing it earlier this year was an "abuse of discretion."

Background: The Hammonds had 4 different grazing permits on BLM lands. In June of 2012 Steve and Dwight Hammond were convicted of intentionally setting fires on BLM land. On Oct. 30, 2012 federal judge Michael. H. Hogan sentenced Steve Hammond to 12 months and one day of imprisonment and 3 years of supervised release, and Dwight Hammond to 3 months of imprisonment and 3 years of supervised release. The government appealed, saying the sentences didn't meet the 5 year minimum sentences mandated under a federal anti-terrorism law. The ninth circuit agreed with the feds, and on Oct 7, 2015 the district court resentenced the Hammonds. On February 14, 2011 the BLM denied the Hammond's request to renew their grazing permits and declared their preference was revoked because the federal criminal convictions rendered them no longer in compliance with BLM regulations or the terms and conditions of their permit. The Hammond's appealed the decision, but in April of 2014 the Office of Hearings and Appeals denied the request for a stay and on November 23, 2016 the Interior Board of Land Appeals affirmed the denial of a stay. On July 10, 2018, President Trump issued an Executive Order of Clemency pardoning Dwight and Steven Hammond for their crimes and commuting their sentences. On December 26, 2018 Interior Secretary Zinke exercised his authority to assume jurisdiction over the case and on January 2, 2020 issued his decision to remand the case back to the BLM with instructions to renew the permits under the same terms and conditions as had previously applied. Western Watersheds Project, Center for Biological Diversity and WildEarth Guardians then filed a suit alleging the Secretary's order and the issuing of the permit violated FLPMA and its underlying regulations, and NEPA and the Administrative Procedures Act (APA). A Temporary Restraining Order was issued allowing partial renewal of the permits until the court could make a final determination on the merits of the case. (Whew! And believe me folks, I left a bunch of stuff out.)

The Decision: The court found 1. Secretary Zinke's failure to analyze and make a required finding that the Hammond's had a satisfactory record of performance violates the APA and was "arbitrary and capricious, inconsistent with the governing statutes and regulations, not rationally connected to the facts before the agency, and an unexplained change in agency practice and procedure." 2. Secretary Zinke expressly stated that he found no fault with the BLM's 2014 Findings of Fact that the Hammond's had engaged in significant violative conduct and that "the pardons had no effect on the underlying conduct (both conduct that resulted in the underlying convictions, and conduct that did not result in any convictions)" and "even if Secretary Zinke had explained why relying on the post-permit conduct of the pardons was permissible in this case, he did not provide any reasoned analysis that had a rational basis in the facts in the record for granting the Permit" and thus a violation of the APA.

Basically, the court considered "the seriousness of the Secretary's errors" and granted just about everything the enviros wanted.

Why did Zinke wait for over five months after the pardons to assume jurisdiction over the case? That would have given ample time to prepare the appropriate legal and environmental documents. Why the rush to do this his last week in office?

Ranchers in northern and southern New Mexico have suffered as a result of Zinke's incompetence, and now that incompetence has created additional hardships on the Hammond family. Zinke managed to negate the great victory many felt when President Trump issued the pardons, and turn it into ashes as he walked out the door.

Horseshoe Grazing Permit

On June 19, 2019 the BLM issued a final decision renewing the grazing permit for this allotment and authorizing a number of new range improvement projects. This IBLA opinion overturns that decision by granting a stay of the decision.

Background: This allotment is located in Yavapai County, Arizona and is situated within the Agua Fria National Monument. The Allotment consists of just under 30,000 acres of BLM land, 200 acres of private land, and has been separated into eleven pastures. The Arizona Game Fish Dept. acquired the headquarters of the Horseshoe Allotment in 2011 and in 2012 leased the ranch to J.H. Cattle Company and grazing resumed on the allotment. An interdisciplinary team from the BLM prepared an EA, with the proposed action being to continue grazing at the previous levels and identifying eleven specific range improvement projects. The BLM also determined the action would not have a significant impact on the environment and that an EIS was not warranted. The final decision was issued on June 20, 2019. The Western Watershed Project filed an appeal and stay petition alleging violations of - guess what - FLPMA, NEPA and the APA.

IBLA Decision: 1. "While BLM may be able to provide additional evidence or argument in support of its decision to not analyze noxious weeds or the hydrological impacts of new wells on riparian areas in the EA, it has not done so as part of the pending stay petition." 2. "Given the significant questions surrounding the adequacy of the EA's analysis and the harms that will ensue from the immediate construction of such a large number of range projects, the public

interest favors a stay of the Final Decision so that BLM's decision-making process can be fairly and deliberately investigated to ensure compliance with the applicable statutes and regulations.”

Why walk you through all this? I can think of no better way to describe the labyrinth of rules and procedures required to graze livestock on federal lands. Labyrinth is defined as “a complicated irregular network of passages or paths in which it is difficult to find one's way; a maze”, and I believe accurately describes the current, sorry situation in which ranchers and agency personnel find themselves..

They are both playing with a deck of cards dealt by Congress, and until Congress reshuffles the deck by providing meaningful amendments to the statutes concerned, the game is rigged in favor of those who seek to curtail or eliminate livestock grazing.

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This column originally appeared in the January issues of [The New Mexico Stockman](#) and [The Livestock Market Digest](#).

Due to the publisher's deadline, this column was written on the same day the Hammond decision came down. Since then, Carrie Stedheim, writing for the Fence Post, has interviewed Steve Hammond and others, and presented a broader look at the decision. See [Judge to Hammonds: 'No more grazing'](#)