

John Adams

MEMORANDUM

TO: NRDC Staff and Board
FROM: David Edelson^{DE} and Johanna Wald
RE: Victory in Grazing Regulations Lawsuit
DATE: September 6, 1985

We are happy to report a resounding victory in our lawsuit challenging the Bureau of Land Management's grazing regulations and "cooperative management agreement" (CMA) program. Judge Raul Ramirez of the Eastern District of California ruled on September 3 that the CMA program constituted an "unlawful abdication" of the Bureau's regulatory authority to private ranchers. Under the CMA program, selected ranchers were allowed to determine where, when, and how many livestock to graze on public lands, free of meaningful constraints or supervision. The court held that the program violated the Bureau's substantive statutory mandate and was implemented in violation of the National Environmental Policy Act.

The court also overturned several important provisions of the Bureau's grazing regulations enacted in 1984. These provisions generally weakened the Bureau's land use planning process and lessened the Bureau's authority to prevent rangeland damage. The court ruled that the changes were adopted in violation of the Administrative Procedure Act in two ways. First, in a holding of potentially broad significance, the court held that the notice of proposed rulemaking was deficient because, while it contained the precise terms of the proposed changes, the preamble affirmatively mischaracterized and misled the public. The preamble stated that the changes simply "eliminated redundancy" and "clarified" the old rules, whereas, in fact, the changes involved a basic policy readjustment. Second, the court held that the final rule was faulty because it failed to explain or justify important

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policy changes or to respond adequately to public comments criticizing the changes.

Finally, the court rejected the defendants' challenge to our standing and cogently explained why NRDC had standing to sue. A copy of the opinion is circulating in each office. If you would like your own copy, please contact one of us.

WATT POLICY UPSET BY FEDERAL JUDGE

Court Rules Illegal a Program Allowing Private Ranchers to Manage Public Land

By PHILIP SHABECOFF

Special to The New York Times

WASHINGTON, Sept. 7 — A Federal district judge has ruled that an Interior Department program allowing private ranchers to manage public lands is illegal.

The decision, reached Tuesday by Judge Raul A. Ramirez in Sacramento, Calif., was the latest in a series of court rulings, legislative actions and administrative decisions reversing policies put in place by James G. Watt when he was Interior Secretary in the first three years of the Reagan Administration.

Many of those policies, involving wilderness protection, coal and oil leasing and the national park system, were aimed at turning over control of Federal lands and resources to private interests as a means of promoting economic growth and energy development.

However, environmentalists and Interior Department officials alike agreed that despite setbacks, many of the policies introduced by Mr. Watt continue to be carried out through the department's budget and planning process.

Mr. "Spirit and Letter of Law"

Judge Ramirez's decision voids the Interior Department's program of enjoining "cooperative management agreements" with ranchers. Such agreements delegate to selected ranchers the right to determine, with Federal approval, where and how many cattle may be grazed on public lands under the jurisdiction of the Interior Department's Bureau of Land Management. Ranchers in the program are also entrusted with managing water, wildlife, recreation and other resources of the public range.

The decision held that the program "unlawfully abdicates" the Interior Department's responsibilities for public lands and fails to prevent abuses such as overgrazing. Judge Ramirez found that the program violated "the spirit and letter of Federal laws, which are intended to preserve and improve the ravaged commons through intensive management and ongoing governmental supervision."

David B. Edelson, lawyer for the Natural Resources Defense Council, which sued on behalf of a coalition of conservation groups to block the program, praised the decision.

The court ruling, Mr. Edelson said, "is a reaffirmation that public lands are held in trust for all the public, not just the economic interests that use them."

Administration Studying Decision

Elizabeth Morris, a Bureau of Land Management spokesman, said the significance of the decision would be determined only after it was studied by department lawyers. "I don't have any idea if we are going to appeal," she said.

Ronald A. Michaeli, director of natural resources for the National Cattlemen's Association, many of whose members use public lands, said that the cooperative program was "a good attempt at the establishment of good relationships between landlord and his tenant, in this case the rancher."

"It is disappointing that this program ran into such an obstacle," Mr. Michaeli said.

Earlier this year the Administration abandoned a decision by Mr. Watt, who resigned in 1983, to drop 1.5 million acres from possible protection as wilderness areas.

Congress has enacted a series of moratoriums on offshore oil leasing and coal leasing programs introduced by Mr. Watt, reflecting its view that these programs paid inadequate attention to environmental concerns and did not obtain fair value for the sale of resources. Congress also blocked plans to increase oil and gas exploration in National Wildlife Refuges.

Intent to Expand Park System

Congress continued to finance additions to the national park system, despite Mr. Watt's contention that it had grown too rapidly and needed to be consolidated.

The new director of the National Park Service, William Penn Mott Jr., has announced his intention of expanding the park system.

On Thursday, the Interior Department's Office of Surface Management announced a reorganization that would enable it, among other things, to deal effectively against violators of the Surface Mining law, which requires strip miners to restore mined lands.

Under Mr. Watt, the mining office had been reorganized to remove impediments to strip mining operations and, environmentalists charged, to ease enforcement of the law requiring land to be protected.

David Prosseri, chief spokesman for Interior Secretary Donald P. Hodel, said that under the Reagan Administration "there really hasn't been any change in policy from one secretary to the next because the policies they all have been pursuing are those of the President."

A Change in Style

But he said that the style of management for the Interior department had changed, reflecting the movement from Mr. Watt to William P. Clark, who was named to the Interior post after Mr. Watt's resignation, to Mr. Hodel.

Charles M. Clusen, conservation director of the Wilderness Society, an environmental group, said that while many specific decisions have been reversed, "a great deal remains of the Watt-era policies," largely through the Department's budget and planning process, which concentrates on resource development at the expense of land and resource protection.

"The whole wave of reactionary policy is still in place," he asserted.

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