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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

K. JOHN and M. MARTHA CORRIGAN, *et al.*, *Plaintiffs*, v. DAVID BERNHARDT, Secretary of the United States Department of the Interior; *et al.*, *Defendants*, and WESTERN WATERSHEDS PROJECT, *Defendant-Intervenor*.	No. 1:18-cv-00512-BLW **OWYHEE CATTLEMEN'S ASSOCIATION AND IDAHO CATTLE ASSOCIATION'S *AMICI CURIAE* BRIEF IN SUPPORT OF PLAINTIFFS**

Amici curiae Owyhee Cattlemen's Association and Idaho Cattle Association (collectively, "the Associations"), hereby submit the following brief in support of the Plaintiffs' motion for judicial review/summary judgment (ECF No. 24-1). As detailed below and in Plaintiffs' opening brief, the Bureau of Land Management's ("BLM") November 13 and 22, 2013 decisions, and the Interior Board of Land Appeals' ("IBLA") August 10, 2017 Opinion (collectively, the "Decision"), finding that the Plaintiffs' grazing preference terminated had no basis in law, were contrary to BLM's long-standing practice, and were therefore unlawful and must be set aside.

INTRODUCTION

This case arises under the Taylor Grazing Act, the statute which acknowledged, authorized, and pledged to "safeguard" public lands grazing. Although Clinton-era grazing regulations were upheld by the U.S. Supreme Court against a facial challenge in *Public Lands Council v. Babbitt*, 529 U.S. 728, 744 (2000), the Court made clear that the regulations could be challenged in the future. *See id.*; *see also id.* at 751-752 (O'Connor, J., concurring) ("the Court's decision does not foreclose such an APA challenge generally by permit holders affected by the 1995 regulations"). Here, the BLM developed from whole cloth a theory that Plaintiffs' grazing preferences automatically terminated "by operation of law" when Plaintiffs' grazing permits were not renewed. This new interpretation turns a fundamental aspect of the Taylor Grazing Act on its head. In so doing, the BLM Decision threatens to subvert the entire system of public land livestock grazing that the Act enabled and guaranteed. This erroneous theory is contrary to law and must be rejected.

ARGUMENT

The Decision effectively destroys the concept of grazing preferences provided by the Taylor Grazing Act and therefore must be set aside. Relying on the agency's new definition of grazing preferences promulgated in its 1995 regulations, BLM here makes the new argument—an

argument that it apparently has never made in the nearly 20-years that the regulation has been in place—that a "grazing preference does not exist without a grazing permit." AR 1164 (subheading edited). This assertion is contrary to the BLM's longstanding interpretation and application of grazing preferences as well as federal and administrative case law. Moreover, the argument is simply false. At bottom, the BLM's interpretation of its 1995 grazing regulations violates the Taylor Grazing Act's basic structure of grazing privileges as well as the statute's historical context and implementing regulations.

I. GRAZING PREFERENCES ARE DURABLE PROPERTY RIGHTS THAT DO NOT DEPEND UPON THE PRESENCE OF A CURRENT GRAZING PERMIT.

Contrary to BLM's and IBLA's findings, Plaintiffs' grazing preferences were property rights that attached to Plaintiffs' private lands, and that were durable independent of the presence or absence of a current grazing permit. To be clear, the Associations do not argue that Plaintiffs possess an absolute right to a *permit*. Indeed, the Associations admit that BLM has discretion to grant, modify, or deny the issuance of a grazing permit, which reflects the established precedent that there is no absolute right to graze the public lands as such. *United States v. Grimaud*, 220 U.S. 506 (1911). But at the same time, U.S. Supreme Court precedent is clear that the Taylor Grazing Act was established to protect recognized "rights" related to livestock grazing. *See Hatahley v. United States*, 351 U.S. 173, 177 (1956) ("The Taylor Grazing Act seeks to provide the most beneficial use of the public range and to *protect grazing rights* in the districts it creates.") (emphasis added). Consequently, the preference holders' rights, as provided by the Taylor Grazing Act, must be respected and given priority. This interpretation of the Act accords with the statute, its regulations, and BLM's decades-long practice.

Under BLM's newly pronounced interpretation, grazing preferences extinguish by operation of law immediately upon the termination or expiration of an associated grazing permit

under 43 C.F.R. § 4110.1(b)(1). However, there is a significant risk that this theory of automatic termination of preferences could be the new status quo in any situation involving a permit renewal. Frequently, permit renewals are issued only after the termination of one grazing season, but before the initiation of the next. So long as the permit is in place before livestock are released to the range, this routine administrative delay has been harmless. However, if BLM's new theory were correct, any delay in BLM's processing and approval of a grazing permit that resulted in the renewal of the permit after its expiration date would automatically result in the underlaying grazing preference being dissolved, even if the delay were for only one month, one week, or even one day.[1] This risk is absurd and contrary to the intent and text of the Taylor Grazing Act's protection of preference rights.

A. History of the Taylor Grazing Act.

In the late 19th Century the U.S. Supreme Court recognized that "there is an implied license, growing out of the custom of nearly a hundred years, that the public lands of the United States . . . shall be free to the people who seek to use them," provided that "no act of government forbids this use." *Buford v. Houtz*, 133 U.S. 320, 326 (1890). Regulations on grazing use soon appeared, particularly on those lands administrated by the Department of Agriculture. With the creation of the National Forest System and its associated grazing regulations, "the implied license under which the United States has suffered its public domain to be used as a pasture for sheep and cattle . . . was curtailed and qualified by Congress, to the extent that such privilege should not be

[1] More troubling, delays in permit reissuance that may result during the administration of a deceased preference-holder's estate could operate to extinguish the preference under BLM's theory. The termination of multi-generational grazing preferences in such a circumstance clearly cannot accord with the intent of Congress in enacting the Taylor Grazing Act. *Compare K. John and M. Martha Corrigan. v. Bureau of Land Management*, 190 IBLA 371 (2017) *with* 43 C.F.R. 4110.2-3(e) (describing the endurance of a grazing preference (even without a permit) in the event of testamentary transfers).

exercised in contravention of the rules and regulations." *United States v. Grimaud*, 220 U.S. at 521 (citations omitted). Still, the problem of overgrazing resulting from a lack of regulation continued to impact lands administered by the Department of Interior. Ultimately, this prompted Congress to pass the Taylor Grazing Act in 1934.

While acknowledging and supporting historical use, the Taylor Grazing Act created a system of statutory entitlements that relied on both government regulation and private property interests to achieve proper rangeland management on the public lands. This most obviously manifested in the issuance of grazing permits, yet permits were only one piece of a larger regulatory framework. In particular, a fundamental principle of the Act was the allocation of forage on a priority basis in the form of grazing preferences attached to privately-held "base property" defined in terms of "dependency by use." 43 U.S.C. § 315b. The balance created between government-issued grazing permits and privately-owned property with attached grazing preferences enabled the Department of Interior to "stabilize the livestock industry and to permit the use of the public range according to the needs and the qualifications of the livestock operators with base holdings." *Chournos v. United States*, 193 F.2d 321, 323 (10th Cir. 1951); *see also* 73 Cong. Rec. 11162 (1934), 48 Stat. 1269.

Unfortunately, that stabilizing force has been placed in jeopardy by the Decision in this case – a decision that runs contrary to the promise the Department of Interior made to the U.S. Supreme Court twenty years ago in *PLC v. Babbitt*. The *PLC* plaintiffs took issue with the results of the Rangeland Reform '94 rulemaking process that overhauled various BLM's grazing regulations.[2] The *PLC* plaintiffs claimed that many of the new regulations were facially invalid.

[2] *See* 58 Fed.Reg. 43208 (1993) (Proposed Rule) *and* 60 Fed.Reg. 9894 (1995) (Final Rule). An attempt was made in 2006 to revise these grazing regulations during the second Bush

Although a federal district court initially enjoined four of the new regulations from being implemented, *see* 929 F.Supp. 1436, the regulations were ultimately upheld on appeal to the U.S. Supreme Court.

Of specific relevance here was PLC's contention that the new definition of "grazing preference" in 43 C.F.R. § 4100.0-5 violated the Taylor Grazing Act. 529 U.S. at 740. Prior to 1995, grazing preference was defined both as a priority position for permit renewal *and* a specific AUM[3] amount that was "attached" to privately-held base property. However, the 1995 regulations removed any reference to a specific AUM amount attached to base property, couching preference solely in terms of priority for permit renewal. *Id.* The plaintiffs in *PLC v. Babbitt* claimed that the omission of forage amounts in the new definition of grazing preference violated the Taylor Grazing Act's requirement that BLM "adequately safeguard" grazing privileges because forage levels were now tied to land use plans rather than base property. *Id.*; *see also* 43 U.S.C. § 315b, 43 U.S.C. § 1712.

The Supreme Court disagreed that the elimination of forage levels from the definition of grazing preference was facially invalid because there was no indication that allocating AUMs based on land use plan definitions would not "adequately safeguard" grazing privileges as required by the Taylor Grazing Act. However, the Court's holding was specifically premised on the condition that Department of Interior was sincere in its statements that "the new definitions *do 'not cancel preference,'* and that any change is 'merely a clarification of terminology'" to better reflect

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administration, but these new regulations were enjoined from implementation by this Court in all respects. *See Western Watersheds Project v. Kraayenbrink, et al*., 538 F. Supp. 2d 1302 (D. Idaho 2008), *aff'd in relevant part*, 632 F.3d 472 (9th Cir. 2011), *cert. denied*, 132 S.Ct. 366 (2011).

[3] "Animal unit month (AUM) means the amount of forage necessary for the sustenance of one cow or its equivalent for a period of 1 month." 43 C.F.R. § 4100.0-5.

the BLM's reliance on land use planning as its primary tool for management of the public lands. 529 U.S. at 743 (citing 60 Fed.Reg. 9922 (1995) and 43 U.S.C. § 1712) (emphasis added). Citing the government's brief, the Court noted that "[the government] now assures us through the Solicitor General that the definitional changes 'preserve all elements of preference' and 'merely clarify the regulations within the statutory framework.'" *Id.* Moreover, the Court stressed that it was only assessing the facial validity of the new rules; an as-applied challenge could still be brought. *Id.* at 744.

Justice O'Connor made this particularly explicit in her concurring opinion: should the new grazing regulations disrupt or diminish the unique system of grazing permits and grazing preferences established by the Taylor Grazing Act, plaintiffs would be entitled to bring an as-applied challenge to the BLM regulations.

> Should a permit holder find, however, that the Secretary's specific application of the new regulations deviates from the above assurances and in the process deprives the permit holder of grazing privileges to such an extent that the Secretary's conduct can be termed a failure to adequately safeguard such privileges, *the permit holder may bring an as-applied challenge* to the Secretary's action at that time. The Court's holding today in no way forecloses such a challenge.

529 U.S. at 751, (O'CONNOR, J., concurring) (emphasis added). Thus, an as-applied challenge to the 1995 regulations has always remained justiciable.

Here, such an as-applied challenge is present. As made explicitly clear in the case of the Hanleys and Corrigans, the BLM has nearly destroyed the concept of grazing preference by making its survival dependent on an accompanying permit. The BLM's position that a determination to not renew a grazing permit under 43 C.F.R. Subpart 4110 "essentially *expired* the concepts of preference and permitted use [by] operation of law" requires an assumption that the issuance of a permit merges an underlying preference out of existence and completely reneges on the promises that were made by the agency to the U.S. Supreme Court that the 1995 regulations

"do not cancel" preference. 190 IBLA 371, 375 (2017). A.R. 1149-1173 (emphasis added). As such, the alleged "expiration" of the concept of a grazing preference announced in the Corrigans' case completely unravels the Supreme Court's basis for upholding the 1995 grazing regulations. Because the Decision would render grazing preferences – statutory entitlements – nugatory, the Decision is invalid and must be set aside. *See United States v. Tohono O'Odham Nation*, 563 U.S. 307, 315 (2011) ("Courts should not render statutes nugatory through construction").

B. Grazing preferences are property rights related to, but independent of, any grazing permit.

BLM and the IBLA support their interpretation on the erroneous view that grazing preferences are not property rights, and therefore can be extinguished without regard or notice, subject only to the discretion of the agency. This is in error. The right at issue here is not a right in the *permit* but, instead, is a right in the *preference*. Admittedly grazing preferences do not directly grant rights to federal property;[4] however, grazing preferences do provide a right to receive priority to grazing permits in the event that the BLM determines that range conditions support the issuance of a permit. 43 C.F.R. § 4100-5 (definitions of "grazing preference" and "base property"). Moreover, and critically, the preferences attach to, and are dependent upon, the existence of a "base property." *Id.* This "base property" is private land owned or controlled by the preference owner, that provides the ceiling for any issued grazing permit. *Id.* There is no guarantee that the entire amount of forage described by the preference (in the form of permitted use AUMs) will be provided in any given year; however, the statute protects and provides a right to priority over whatever level of grazing that is ultimately authorized. *Public Lands Council*, 529 U.S. at 740.

[4] The IBLA noted that the Taylor Grazing Act expressly provides that the issuance of a grazing permit does "not create any right, title, interest or estate in or to the lands." A.R. 1163 (190 IBLA at 385) (quoting 43 U.S.C. § 413b). The quoted provision, however, on its face, only applies to grazing *permits*. The statute is silent as to the rights provided by grazing *preferences*.

Under Idaho law, real property includes land and that which is appurtenant to land. Idaho Code § 55-101. Because grazing preferences "attach to" the base property, they are appurtenant and therefore are property rights under state law. 43 C.F.R. § 4100-5 (definition of "grazing preference"); Idaho Code § 25-901 ("a grazing preference right shall be considered an appurtenance of the base property through which the grazing preference is maintained"). These rights may not rise to the level of absolute fee title, but nonetheless they possess legal significance. As such, they must be recognized and protected by the federal government, just as they are by the State of Idaho.

These definitions are particularly relevant because the U.S. Supreme Court recently confirmed that deference to an agency's interpretation of its own regulations is not automatically granted, but is in fact contingent upon the historical context and purpose of the regulations in question. *Kisor v. Wilkie*, 139 S. Ct. 2400, 2415 (2019) ("A court must carefully consider the text, structure, history, and purpose of a regulation before resorting to deference."). One of the earliest cases to analyze the Taylor Grazing Act, *Red Canyon Sheep Co. v. Ickes*, made a lengthy comparison between the grazing entitlements created by the Act and the system of prior appropriation prevalent across the Western United States. 98 F.2d 308 (D.C. Cir. 1938). *Red Canyon Sheep* concerned the opposition to a land exchange between the Department of Interior and a neighboring private landholder brought by sheep ranchers in New Mexico. The land exchange would have eliminated the public rangeland upon which the plaintiffs had grazed for decades, and which had recently been organized into a Grazing District under the Taylor Grazing Act. *Id.* at 311. The plaintiffs sought equitable relief, arguing that this land exchange would render the significant improvements they had made on the public lands valueless and would destroy their livestock operation because they could not secure any other grazing lands nearby. *Id.* The court

agreed, and recognized that the Taylor Grazing Act created an equitable interest in livestock operations that are dependent upon public land. The Court drew a specific analogy between water rights and grazing preference in that both were premised on the "equitable protection" that is due to property interests that fall short of absolute fee title:

> There are well known situations where equitable protection is accorded to rights or interests which do not come within the category of vested interests in property. Among these are cases involving water rights, both the rights recognized under the rule of prior appropriation in the Western states and riparian rights. While the owner of a water right has a vested interest in that right, the right itself is something less than the full ownership of property because it is a right not to the corpus of the water but to the use of the water.

Red Canyon Sheep, 98 F.2d at 315-316 (citing numerous cases from across the West). This concept of equitable protection likewise extended to hunting on publicly owned lands. *Id.* (citing additional cases). Given the analogy to other types of natural resource management, the court in *Red Canyon Sheep* ultimately recognized that an equitable interest exists in the various types of statutory entitlements created by the Taylor Grazing Act. *Id.* at 316 ("To hold that the appellants' rights are not of sufficient dignity to be *entitled to equitable protection* would be inconsistent with the cases discussing other analogous subjects of equitable protection *and with the purposes of the Act itself*.") (emphasis added). Accordingly, the land transfer was deemed "an illegal invasion of the asserted rights of the appellants which a court of equity has jurisdiction to enjoin." *Id.* at 322.

Beyond the analogy to water rights and hunting rights considered in *Red Canyon Sheep*, grazing interests have also been considered as *profits a prendre* by some courts. *See id.* at 316 (citing *Council v. Sanderlin*, 111 S.E. 365 (N.C. 1922)); *see also Sproul v. Gilbert*, 359 P.2d 543, 566 (Or. 1961) (Rossman, J. dissenting). Consequently, early decisions recognized that the statutory entitlements created by the Taylor Grazing Act were enforceable via traditional common

law remedies against other private parties. *See, e.g.*, *Garcia v. Sumrall*, 121 P.2d 640 (Ariz. 1942) (trespass); *Oman v. United States*, 179 F.2d 738, 742 (10th Cir. 1949) (damages).

In light of the "equitable protection" afforded to grazing interests and other such legal privileges, it is evident that a grazing preference cannot simply "disappear" at the whim of the BLM, without notice or any opportunity for a hearing.

C. The Decision Ignores the Plain Language of BLM's Regulations.

BLM argues that grazing preference cannot "exist in a vacuum" without a grazing permit. A.R. 1164 (190 IBLA at 386). If BLM's newfound interpretation were correct, then the grazing preference would terminate immediately upon the termination of a permit or lease. However, BLM's regulations provide no such express provision. Instead, grazing preference is defined based upon the existence of land or water, *i.e.* base property, and not the existence of a permit. 43 C.F.R. § 4100.0-5 (definition of "grazing preference"). So long as the base property exists, the grazing preference should also exist, independently of the permit. *Id.* This has been BLM's longstanding interpretation, as demonstrated by its regulation on "base property." That regulation provides:

> *When a permit or lease terminates* because of a loss of ownership or control of a base property, *the grazing preference shall remain with the base property and be available through application and transfer procedures at 43 CFR § 4110.2-3, to the new owner* or person in control of that base property.

43 C.F.R. § 4110.2-1(d) (emphasis added). This regulation could not possibly be given effect under BLM's current interpretation that grazing preference is dependent on a grazing permit.

Moreover, the concept contained in this provision is particularly relevant because it also demonstrates how the IBLA decision here departs from IBLA precedent. In the administrative proceeding the Plaintiffs cited to *James G. Katsilometes v. Bureau of Land Management* to demonstrate how the IBLA has recognized that grazing preferences can exist independently in the

absence of a grazing permit. AR 2550-2552 (citing 157 IBLA 230 (2002)).[5] *Katsilometes* concerned a complicated series of transfers of private base property (along with the attached grazing preferences) that occurred over the course of several decades. The only way the IBLA could sort out the confusing mix of conveyances and testamentary dispositions was to hold that the grazing preferences still exist even in the absence of a grazing permit unless BLM takes affirmative action to cancel a preference. 157 IBLA at 252-253.[6] A plain reading of *Katsilometes* undercuts the IBLA's current position that the unique status of testamentary dispositions are somehow unrelated to any concept of a grazing preference as "stand-alone interest," 190 IBLA at 388, A.R. 1166, because the preferences in that case *had to be* "stand-alone interests" in order to have survived the various transfers at issue in that case. This is particularly true given that the IBLA's conclusory statement is antithetical to the applicable grazing regulations. *See* 43 C.F.R. §§ 4110.2-3(b), (c) and (e). Consequently, BLM's new theory that a grazing preference has no existence outside the existence of a grazing permit is contrary to the IBLA's own precedent as well as the agency's regulations.

[5] The Plaintiffs below also cited to additional case law which demonstrates that a grazing preference is "alienable, heritable, and taxable." This is in stark contrast to a grazing permit, which is no more taxable or transferable than a driver's license. *See* A.R. 2548-2549 (citing *Shufflebarger v. Commissioner*, 24 T.C. 980, 981, n.1 (1955) and *Red Canyon Sheep Co*, 98 F.2d 308). Indeed, the IRS specifically recognizes that "[f]ederal grazing privileges [are] *an intangible asset*" that are part of a decedent's gross estate. *Uecker v. Commissioner,* 81 T.C. 983, 993 (1983), *aff'd*, 766 F.2d 909 (5th Cir. 1985) (emphasis added).

[6] Contrary to what the IBLA Decision implies, there is no distinction relative to the maintenance and continuation of the grazing preference between testamentary dispositions in 43 C.F.R. § 4110.2-3(e) and permit non-renewals contained in 43 C.F.R. § 4110.1(b)(1).

II. BLM'S NEW REINTERPRETATION OF GRAZING PREFERENCES WILL SIGNIFICANTLY DESTABILIZE THE WESTERN LIVESTOCK INDUSTRY.

Public lands ranching in Idaho, and indeed throughout the West, is dependent upon the uniform application of the Taylor Grazing Act, and certain norms are expected. One reasonable expectation is that grazing preferences have permanence, and those preferences cannot, and will not, be destroyed based upon the whim of BLM.[7] Indeed, this is why Harold Ickes, Secretary of the Interior during the Act's passage, stated that the Taylor Grazing Act was intended to provide "those engaged in the livestock industry" with "certainty of tenure in their grazing use of the public lands." H.R. Rep. No. 73-903, at 7. State law has mirrored the intent of Congress in this regard. For instance, codified in Idaho law is the acknowledgement that grazing preferences are appurtenant to the land, and convey with the base property. Idaho Code § 25-901. Indeed, this right is so vital to public lands ranching in Idaho, it has been afforded protections against uncompensated takings. *Id.* § 25-902. As the Tenth Circuit has acknowledged, "[t]he purpose of the Taylor Grazing Act is to stabilize the livestock industry and to permit the use of the public range according to the needs and the qualifications of the livestock operators with base holdings." *Chournos*, 193 F.2d at 323. The BLM's newly developed theory threatens to undermine the well-established norms and expectations of ranchers, and significantly destabilize the livestock industry.

As noted above, the Taylor Grazing Act and its implementing regulations[8] make clear that permits and preferences are created separately, and are likewise terminated separately. Thus, even

[7] *See* 78 Cong. Rec. 11153 (1934) (remarks of Senator McCarran stating that the purpose of the Act was to "guarantee that the rights to grazing privileges which are conveyed by the bill shall be so definite and so certain that they may be recognized as security when the holder seeks a loan.").

[8] Relatedly, this case presents an opportunity for this Court to apply the landmark decision recently announced in *Kisor v. Wilkie* in the context of public land management under the grazing regulations promulgated under the TGA. 139 S.Ct. 2400 (2019). The Plaintiffs' brief demonstrates

a rancher who has a preference without a permit still has *something* because he can transfer or sell his base property to another party, who will retain priority for permit renewal by virtue of the statutory entitlement attached to his base property. But if BLM's position is allowed to stand, it would mean that grazing preferences no longer can exist without a grazing permit in place should BLM not have renewed the permit per Section 4110.1(b)(1). Every livestock operator with a non-renewed permit could find themselves in the position of Plaintiffs: a permit non-renewal automatically becomes a preference cancellation without any further due process.

The elimination of the concept of preference, or, at a minimum, the resulting significant disruptions to reasonable expectations, could devalue private lands across the West. Where a historical ranch is left without an active permit, for whatever reason, the property would also lose its long-held preference rights should BLM not have renewed the permit per Section 4110.1(b)(1). *See e.g.,* Pl.'s Br.' at 27-28, ECF No. 24-1. The market value of such a ranch would be much less than a comparable property, given that there was little to no possibility of having priority for issuance of any subsequent grazing permit. Indeed, the fear of such a situation is precisely what motivated Congress to pass the Taylor Grazing Act in the first place.[9] If BLM's position in this

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at length why the BLM Decision is not entitled to deference under *Kisor.* The grazing regulations at issue here are not ambiguous, and even if they were, the agency's new reinterpretation of these regulations is unreasonable, thereby failing to satisfy the revised standard of *Auer* deference. *See* Pl.'s Br. at 19-28, ECF No. 24-1.

[9] The namesake of the Taylor Grazing Act, Congressman Edward T. Taylor of Colorado, explained why preference rights are necessary:

> [T]o build up or maintain and stabilize the stockraising industry there must be some assurance as to where and what kind of range [that ranchers] may rely upon for their stock, what they can definitely rely upon in the way of pasturage. [] Otherwise, there would be no permanence to the business. People who have herds would not be safe; they would have no credit with the banks for securing money. They cannot

case becomes the new default for all its permit non-renewals, the economic effect of this decision could affect almost every grazing permittee across the West, including the members of the Associations. Even if a rancher has a permit that is not renewed for reasons that do not stem from improper livestock management (e.g., non-use or changed resource conditions), there is the threat that his grazing preference will disappear, creating a penalty without an offense. This effect is contrary to the intent of the Taylor Grazing Act, and should be prevented by this Court.

CONCLUSION

For the foregoing reasons, and those provided by Plaintiffs in their opening brief, the Associations urge the Court to set aside the Decision, and reinstate the grazing preferences properly held by Plaintiffs.

> secure money from the banks if they cannot show that they have some definite and sufficient place on the range where their stock may be adequately grazed.

78 Cong. Rec. 5371 (1934).

DATED this 23rd day of August 2019

Respectfully submitted,

/s/ Brian Gregg Sheldon

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CERTIFICATE OF SERVICE

I hereby certify that, on the 23rd day of August 2019, I electronically filed the foregoing with the Clerk of the U.S. District Court for the District of Idaho using the CM/ECF system which sent a Notice of Electronic filing to all parties of record.

/s/ Brian Gregg Sheldon
Brian Gregg Sheldon