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JUDICIAL REVIEW OF BUREAU OF LAND MANAGEMENT'S LAND USE PLANS UNDER THE FEDERAL RANGELAND STATUTES

Lisa J. Hudson

I. INTRODUCTION

The Secretary of Interior, through the Bureau of Land Management (BLM), is charged with managing more than 170 million acres of federal public rangelands throughout the western United States.[1] Livestock grazing is authorized on approximately 150 million of these acres.[2] Prior to the enactment of grazing legislation, livestock grazing on federal public lands was virtually unregulated, resulting in extreme overgrazing and resource deterioration. Upon realizing the extent of the problem, Congress enacted a series of statutes directed at rangeland improvement. The three primary legislative directives governing BLM policies are the Taylor Grazing Act,[3] the Federal Land Policy and Management Act (FLPMA),[4] and the Public Rangelands Improvement Act (PRIA).[5] These acts provide policies mandating improvement of the federal public rangelands.

In *Natural Resources Defense Council v. Hodel*,[6] a 1985 decision addressing federal rangeland legislation, a Nevada federal district court upheld the modest land use plan proposed by the BLM, stating that the plan satisfied Congressional policies of rangeland improvement.[7] Although the land use plan did suggest some long term improvements, it did not advance the immediate action necessary to prevent overgrazing and environmental degradation.[8] This casenote examines the *Hodel* district court decision, addressing the judiciary's role in reviewing BLM's land use plans under the present federal rangeland statutes. The Taylor Grazing Act, FLPMA and PRIA, the three major statutes addressing range management, are first reviewed in Part II of this casenote. Part III examines the factual and legal history of the *Hodel* decision and Part IV

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1. BUREAU OF LAND MANAGEMENT, PUBLIC LAND STATISTICS 21 (1975). Federal public land is located primarily in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. *Id.*

2. *Id.*

3. 43 U.S.C. §§ 315-315r (1982 & Supp. III 1985).

4. 43 U.S.C. §§ 1701-1784 (1982 & Supp. III 1985).

5. 43 U.S.C. §§ 1901-1908 (1982).

6. 624 F. Supp. 1045 (D. Nev. 1985), *aff'd*, 819 F.2d 927 (9th Cir. 1987). The decision of the Court of Appeals for the Ninth Circuit was issued after this casenote was completed. Consequently, this casenote only addresses the federal district court decision.

7. 624 F. Supp. at 1058.

8. *See infra* text accompanying notes 69-86.

analyzes this decision in light of the facts and other court decisions. Part V concludes with a perspective on the court's role in reviewing a BLM proposed land use plan.

II. Federal Policies and Statutes Directing Public Rangeland Management

A. *The Taylor Grazing Act*

Prior to 1934, neither federal nor state governments seriously attempted to limit livestock overgrazing which contributed to the arid and deteriorating range condition.[9] Three historic developments, illustrating the condition of the land prior to 1934, helped to shape the present statute. First, the federal government's erratic methods of disposition[10] of the federal public lands to private and state hands led to instances of fraud, ownership fragmentation, and resource deterioration.[11] Second, the lack of effective legal constraints allowed powerful ranchers to deny other interested parties, homesteaders for instance, access to federal public rangelands. These actions by the powerful ranchers often resulted in range war brushfires.[12] Finally, the rise of conservation, first recognized in connection with national parks and forest policies, eventually succeeded the federal government's disposition policy and became reflected in the management of the nation's rangelands.[13] In response to these three developments, Congress enacted the Taylor Grazing Act[14] as the first comprehensive legislation regulating federal public rangeland management.

The major goals of the Taylor Grazing Act (Act) were improvement of range conditions and stabilization of the western livestock industry.[15] To accomplish these goals, the Act reasserted federal control of the federal public domain. The Secretary of Interior was delegated authority to classify land as suitable for homesteading or other disposal,[16] to organize

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9. Coggins, *The Law of Public Rangeland Management I: The Extent and Distribution of Federal Power*, 12 ENVTL. L. 535, 548-49 (1982).

10. Coggins, *The Law of Public Rangeland Management II: The Commons and the Taylor Act*, 13 ENVTL. L. 1, 4 (1982). Congress rapidly disposed of federal public lands to state and private hands in patterns which still impede coherent land management. For example, states received an enormous amount of federal public lands, though arbitrarily interspersed among private lands. Railroad grants still obstruct integrated land management because of "checkerboard" ownership sections with public lands. Also, through various disposition laws, homesteaders received limited amounts of land; yet, Congress often liberalized policies to accommodate the homesteaders' desires for more land. *Id.* at 6.

11. *Id.* at 4.

12. *Id.*

13. *Id.*

14. 43 U.S.C. §§ 315-315r.

15. *Id.* § 315a.

16. *Id.* § 315f.

the land into grazing districts,[17] and to make all rules, regulations and agreements necessary to carry out the legislative purposes.[18]

However, the Act's provisions often proved contradictory and unfair. For example, the Act authorized the Secretary of Interior "to issue or cause to be issued permits to graze livestock on such grazing districts to such bona fide settlers, residents, and other stock owners . . . ."[19] This gave preferential permit rights to landowners engaged in the livestock business or owners of water rights. These landowners were then able to develop a monopoly on the grazing benefits.[20] Also, as amended in 1939, the Act set up a unique system of direct advisory boards.[21] The advisory boards, composed primarily of stockmen,[22] reviewed all grazing permit applications and gave advice and made range use and management recommendations to the BLM.[23] This system effectively excluded other members of the public from participation in range management decisions, resulting in a denial of the general public's right to use the nation's natural resources.

Because the Act granted preferential rights and an exclusive participatory role to one class of users,[24] the Act proved inadequate for effective rangeland management. However, the Taylor Grazing Act represented an enormous advance over the destructive days of unregulated, free and open grazing. Congress, by exercising its control over the federal public rangelands, placed the federal government in a role as protector and manager of the land. Further, the Act set the tone and course for all subsequent federal public rangeland management.

B. *Federal Land Policy and Management Act*

By the 1970's, the poor condition of the federal public rangelands evidenced the BLM's failure to achieve one of the principal goals of the Taylor Grazing Act—to improve range conditions or at a minimum to stop injury to the federal public lands by preventing overgrazing and soil deterioration.[25] A report by the Public Land Law Review Commission

17. *Id.* § 315.
18. *Id.* § 315a.
19. *Id.* § 315b.
20. Coggins, *supra* note 10, at 49.
21. 43 U.S.C. § 315o-1.
22. *Id.* § 315o-1(a).
23. *Id.* § 315o-1(b).
24. Coggins, *supra* note 10, at 49.
25. 43 U.S.C. § 315a. In 1975, a BLM report to the Senate Appropriations Committee concluded that much of the 170 million acres of federal public rangeland was in poor and declining condition. The BLM found "only 2 percent of the rangeland in excellent condition; 28 percent was in poor condition; and 5 percent in bad condition." Furthermore, the report stated that "sixteen percent of the range continues to deteriorate." 124 Cong. Rec. S32805 (1978) (statement of Sen. Church).

(PLLRC)[26] in 1970 directed some public attention toward the rangeland problems, and recommended greater administrative flexibility and more attention to wildlife.[27] Congress finally acted on the PLLRC recommendations in 1976. At that time, Congress enacted the Federal Land Policy and Management Act (FLPMA)[28] which reasserted the compelling need to improve the federal public rangeland by emphasizing resource protection.

During the House debates on FLPMA, representatives expressed concern that "[t]he grazing lands of the West are being grazed out,"[29] and emphasized the vital need "to prevent overgrazing and halt the deterioration of public grazing lands."[30] In response to these concerns, former Montana Representative John Melcher assured Congress that "the responsibility of cancelling or modifying a lease if there is overgrazing is inherent with the Secretary of the Interior. . . . and we do not disturb that" in FLPMA.[31]

FLPMA is a comprehensive statement of the public policy commanding efficient resource use and public rangeland improvement. In FLPMA, Congress implicitly denounces BLM's past practices by finding a substantial amount of the federal public rangeland deteriorating in quality but recognizes that installation of additional rangeland improvements could arrest much of the continuing deterioration.[32] Congress directs the BLM to effectively manage the public lands in FLPMA through a systematic inventory of rangelands, a land use planning process and the protection of certain lands in their natural condition.[33]

Congress did not repeal the provisions of the Taylor Grazing Act when enacting FLPMA. Rather, Congress added a new management structure with emphases on mandatory land use planning,[34] and multiple use and sustained yield principles.[35] Congress borrowed much of the language in FLPMA regarding multiple use, sustained yield from the 1960 legislation applicable to the Forest Service's management of the national forests— the

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26. In 1964, President Lyndon B. Johnson signed Public Law 88-606, creating the Public Land Law Review Commission. The Commission was formed to review all of the public land laws, as well as the rules and regulations promulgated under those laws, to determine whether the law needed to be revised. E. BAYNARD, III, PUBLIC LAND LAW & PROCEDURE 13 (1986).

27. PUBLIC LAND LAW REVIEW COMM'N, ONE THIRD OF THE NATION'S LAND (1970).

28. 43 U.S.C. §§ 1701-1782.

29. 122 Cong. Rec. 23459 (1976) (statement of Rep. Yates).

30. *Id.* at 23462 (statement of Rep. Eckhardt).

31. *Id.* (statement of Rep. Melcher). Mr. Melcher is currently a United States Senator for the state of Montana.

32. 43 U.S.C. § 1751(b)(1).

33. *Id.*

34. *Id.* §§ 1711-1712.

35. *Id.* §§ 1701(a)(7), 1702(c), 1702(h), 1732(a).

Multiple-Use, Sustained-Yield Act (MUSYA).[36] However, in MUSYA Congress directs the Secretary of Agriculture in only general, nonmandatory language to administer the five primary uses of the national forests[37] and to give "due consideration" to relative resource values.[38]

While the basic command of FLPMA is similar to MUSYA, FLPMA's language differs by being replete with management directives in mandatory language. The Secretary of Interior shall inventory,[39] shall prepare land use plans,[40] shall give priority to areas of critical environmental concern,[41] and shall prevent undue degradation of the lands.[42] Further, FLPMA's basic command requires that the Secretary of Interior manage the land "in accordance with the land-use plan,"[43] binding the Secretary of Interior and the agency to a rational, coordinated management scheme.

FLPMA also contains substantive mandates on managerial discretion. Section 1702(c) states that management cannot cause "permanent impairment of the productivity of the land and the quality of the environment"[44] and consideration must be given to the relative values of the resource.[45] The nonimpairment standard is nondiscretionary. Congress clearly requires that management practices do not detract from future productivity. A second mandate found in FLPMA provides that the Secretary of Interior shall take action necessary to prevent unnecessary or undue degradation of the land.[46] Again, the statute reflects Congress' overall aim of mandatory range improvement.

While FLPMA is a great advance over the Taylor Grazing Act, Congress failed to resolve adequately basic management conflicts or translate underlying principles into binding commands.[47] For instance, Congress failed to ensure that the planning process would be implemented fully and neglected to define precise standards.[48] Two years later, Congress again tackled the problem with the enactment of the Public Rangelands

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36. 16 U.S.C. §§ 528-531 (1982).

37. The five primary uses of the national forests are outdoor recreation, range, timber, watershed, wildlife and fish purposes. These uses were declared supplemental to and not in derrogation of the original purposes of the national forests as declared in the Organic Act. *Id.* § 528.

38. *Id.* § 529.

39. 43 U.S.C. § 1711(a).

40. *Id.* § 1712(a).

41. *Id.* § 1712(c)(3).

42. *Id.* § 1732(b).

43. *Id.* § 1732(a).

44. *Id.* § 1702(c).

45. *Id.*

46. *Id.* § 1732(b).

47. Coggins, *The Law of Public Rangeland Management V: Prescriptions for Reform*, 14 ENVTL. L. 497, 505 (1984).

48. *Id.*

Improvement Act (PRIA)[49] in 1978. PRIA included a number of innovative programs,[50] yet PRIA's biggest contribution is its embodiment of Congress' explicit directive that range condition improvement be the highest management priority.[51]

C. *Public Rangelands Improvement Act*

During Senate considerations of PRIA, Congress once again stated its desire to build upon past efforts and recognized PRIA as a step toward the preservation and restoration of the federal public rangelands.[52] Recognizing that considerable portions of the public rangelands remain in unsatisfactory condition, Congress stated that the condition should be corrected with intensive maintenance, management and improvement programs.[53]

Section 1903(b) is undoubtedly the most important provision of PRIA. In this section Congress explicitly makes range improvement the primary goal of range management programs by directing the Secretary of Interior to manage the public rangelands so that "the goal of such management shall be to improve the range conditions of the public rangelands so that they become as productive as feasible"[54] in accordance with the objectives stated in the land use plans.

Although the conclusions stated by Congress were unexceptional and clearly evident prior to PRIA, PRIA reaffirms Congressional concern. Further, the policies enunciated in Section 1901(b) define the ends that Congress intends to achieve,[55] and provides a basis for judicial review of the

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49. 43 U.S.C. §§ 1901-1908.

50. For example, Section 1908 enunciates an Experimental Stewardship Program authorizing the Secretary of the Interior to explore innovative grazing management policies and systems which might provide incentives to improve range conditions.

51. 43 U.S.C. § 1903(b).

52. Congress recognized that considerable portions of the rangelands are in unsatisfactory condition and will remain so unless a co-ordinated effort is undertaken to improve and then properly manage these federal public rangelands. *Id.* § 1901(a).

53. *Id.*

54. *Id.* § 1903(b).

55. The statute provides:

> The Congress therefore hereby establishes and reaffirms a national policy and commitment to:
> (1) inventory and identify current public rangelands conditions and trends as a part of the inventory process . . . ;
> (2) manage, maintain and improve the condition of the public rangelands so that they become as productive as feasible for all rangeland values in accordance with management objectives and the land use planning process . . . ;
> (3) charge a fee for public grazing use which is equitable and reflects the [potential economic disruption and harm to the western livestock industry] . . . ;
> (4) continue the policy of protecting wild free-roaming horses and burros from capture, branding, harassment, or death, while at the same time facilitating the removal and disposal of excess wild free-roaming horses and burros which pose a threat to themselves and their

BLM's land use plans. All land use plans implemented by the BLM must parallel the policies enunciated by Congress.

Throughout PRIA, Congress established a single management priority—to improve unconditionally the condition on the rangelands. The courts, in turn, must review an agency's decision in light of the applicable statutes which embody Congressional findings, policies and underlying Congressional urgency to improve the federal public rangelands.

III. NATURAL RESOURCES DEFENSE COUNCIL V. HODEL

A. *Factual and Legal History*

The Reno, Nevada watershed is of significant value to the surrounding community, containing rivers, streams and other water bodies which are sources of scarce western water supplies.[56] The watershed provides a habitat for large number of wildlife and supports many varied forms of vegetation.[57] Improper and excessive livestock grazing has resulted in the destruction of critical wildlife habitat, reduced the capacity of the soils to absorb and retain water and increased soil erosion due to altered plant cover.[58] These problems were at the core of the issues raised in *Natural Resources Defense Council v. Hodel.*[59]

In *Hodel*, a Nevada federal district court decision, the Natural Resources Defense Council (NRDC)[60] sought to overturn a decision made by the BLM relating to livestock grazing on public lands in the Reno area. Rather than immediately reducing livestock numbers, the BLM chose to install range improvement methods such as protective fences, water storage and development, and seeding and vegetation manipulation.[61] While the BLM's land use plan called for an overall improvement in the quality of some of the allotments, the BLM chose to maintain existing levels of livestock use.[62]

The NRDC challenged the BLM's actions on a number of grounds. First, the NRDC claimed the grazing environmental impact statement

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habitat and to other rangeland values;

Id. § 1901(b).

56. Affidavit of William R. Meiners, Environmental Consultant specializing in resource management and land use planning, 4-5 (March 30, 1985) (obtained from the Natural Resources Defense Council, San Francisco, California).

57. *Id.*

58. *Id.* at 4.

59. 624 F. Supp. 1045 (D. Nev. 1985).

60. Plaintiffs in this case included the Natural Resources Defense Council, Inc., the Sierra Club, and the Nevada Outdoor Recreation Association, Inc.

61. *Hodel*, 624 F. Supp. at 1057.

62. Memorandum of Points and Authorities in Support of Defendants' Motion for Summary Judgment at 12, 624 F. Supp. 1045 [hereinafter Defendants' Memorandum].

(EIS) prepared by the BLM lacked the information and analysis necessary to allow reasoned decisionmaking and informed public participation, contrary to the requirements of the National Environmental Policy Act (NEPA).[63] Second, the BLM's failure to take drastic and immediate actions to prevent overgrazing and unnecessary environmental degradation was contrary to the mandates of FLPMA and PRIA as well as the agency's own regulations.[64] Third, contrary to the planning requirements of FLPMA, PRIA and applicable regulations, the final land use plan, or management framework plan (MFP), failed to establish the basic terms and objectives for future livestock grazing.[65]

The court rejected the NRDC's contentions. Although noting that many of the complaints raised had factual merit suggesting either bad management or an insensitivity to environmental concerns,[66] the court concluded that the complaints did not give rise to a cause of action. The court reasoned that to conclude otherwise would "ultimately require this court to adopt the opinion of one expert over that of another, or to adopt one theory of range management over another."[67] Consequently, the court granted summary judgment to the BLM.[68] This casenote addresses NRDC's second and third contentions, alleging violations by the BLM of the federal rangeland statutes and applicable regulations.

B. *Analysis*

The NRDC first contended that the BLM's land use plan conflicted with statutory Congressional mandates and BLM regulations by failing to curb overgrazing and take the affirmative steps necessary to remedy past degradation of the federal public rangelands.[69] The NRDC relied upon the federal statutes which, as highlighted earlier, all emphasize the protection of the rangeland resources and the prevention of injury caused by overgrazing. Likewise, the NRDC noted the BLM regulations which expressly state that "authorized livestock grazing use shall not exceed the livestock grazing capacity . . . ."[70]

Yet the final EIS revealed substantial environmental problems and resource conflicts caused by excessive and improper livestock grazing. The draft EIS, prepared by the BLM and substantially adopted in the final EIS,

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63. 42 U.S.C. §§ 4321-4370 [codified as amended]; *Hodel*, 624 F. Supp. at 1049.
64. *Hodel*, 624 F. Supp. at 1056.
65. *Id.* at 1058.
66. *Id.* at 1047.
67. *Id.* at 1048.
68. *Id.* at 1063.
69. *Id.* at 1056.
70. 43 C.F.R. § 4130.6-1(a)(1986).

acknowledged that "[o]verutilization is occurring in 15 allotments,"[71] and such overutilization and overgrazing by livestock resulted in deterioration of critically important riparian sites, meadow areas and mule deer habitat.[72] Further, "improper" range management practices such as year-round grazing and grazing too early in the season also caused serious harm to the rangelands, particularly in vital riparian and aspen communities.[73] These EIS documents also revealed that improvement would not occur until excessive grazing and other improper grazing practices were changed.[74]

Despite the overwhelming evidence in the BLM's own studies of the serious environmental damage resulting from livestock mismanagement and the recognition that reductions in livestock grazing use were clearly necessary, the BLM's land use plan did not recommend specific reductions in grazing use. Rather, the BLM proposed minimal range improvements, such as forage improvements,[75] and deferred adjustments in levels of permitted livestock grazing until more accurate monitoring data was accumulated.[76] The BLM also justified its decision by pointing out that the No Action alternative was within the statutory discretion of the agency.[77] However, by accepting the No Action alternative, the BLM ignored its statutory and regulatory duties mandating range improvement through the elimination of overgrazing.

Second, the NRDC alleged the final land use plan failed to establish the basic terms and objectives for future livestock grazing necessary to fulfill the planning requirements of the federal rangeland statutes and BLM regulations.[78] The NRDC stated that one of FLPMA's basic ideas, reaffirmed in PRIA, mandated the development, maintenance and revision of comprehensive land use plans governing public rangeland management to improve federal public rangelands.[79] The BLM regulations promulgated to implement the statutes state that land use plans "are designed to guide and control future management actions."[80] To achieve this end, the

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71. Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Summary Judgment at 51, *Hodel*, 624 F. Supp. 1045 [hereinafter Plaintiffs' Memorandum] (quoting Bureau of Land Management, Reno Grazing Draft Environmental Impact Statement at 3-9 (July 12, 1982) [hereinafter Draft EIS]).

72. *Id.* (citing Draft EIS at 2-6, 2-13).

73. *Id.* at 13 (citing Draft EIS at 2-1, 2-6, 2-9, 2-13, 2-14, 3-9, 3-10).

74. *Id.* at 47.

75. Forage improvements in the short term include installing protective fences, seeding and developing water supplies. *Hodel*, 624 F. Supp. at 1057.

76. Defendants' Memorandum, *supra* note 62, at 49-50.

77. *Id.* at 49.

78. *Hodel*, 624 F. Supp. at 1058-59.

79. 43 U.S.C. §§ 1701(a)(2), 1712, 1732(a), 1901(b)(2), 1903(b).

80. 43 C.F.R. § 1601.0-2.

plans must contain specific provisions which establish allowable resource uses and related levels of production or use, goals and objectives to be attained, program constraints and any support action necessary to achieve the stated objectives.[81]

The proposals stated in the final land use plan are vague and do not contain the specific terms and conditions necessary to satisfy the planning requirements. For example, in an effort to protect areas of fisheries and riparian habitat from overutilization by domestic livestock, the planned action included "special management considerations."[82] While the draft EIS refers generally to "certain management actions . . . necessary to correct [existing resource] problems,"[83] those actions are never specified in the final land use plan. As such, these vague proposals do not represent a plan that follows the statutory mandates, but instead allows the BLM unfettered discretion in future management decisions.

The BLM argued that the land use planning requirements of the statute only demanded broad statements of purpose and the inclusion of extensive and detailed information in the land use plan. Agreeing with the BLM, the court stated that the regulations and statutes insisted upon objective oriented statements in the plan; the plan had to be concrete enough to permit Congress and the public to know what the BLM intended to do with the grazing lands, what improvements were needed, and a rough timetable for their implementation.[84] Any more specific information, the court stated, would be an "administrative straight-jacket which eliminates the room for any flexibility to meet changing conditions."[85] Although the court must avoid any controversies amounting to a choice between experts,[86] the court cannot accept an agency's proposed action based solely upon an agency's unfettered discretion. As highlighted earlier in FLPMA and PRIA, Congress clearly evidenced their intent to mandate immediate and aggressive rangeland improvement programs. The BLM's recognition of range deterioration resulting primarily from overgrazing, coupled with its refusal to act aggressively toward a remedy for the problem, presents a situation clearly addressed in the federal range statutes. The court must review the action to determine whether it complies with the Congressional mandates.

While the above facts warrant close judicial scrutiny of the BLM's land use plan, the following precedent also warrants such scrutiny. In

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81. *Id.* § 1601.0-5(k).
82. Bureau of Land Management, Management Framework Plan 359 (March 5, 1982).
83. Plaintiffs' Memorandum, *supra* note 71, at 24 (quoting Draft EIS at 1-1).
84. *Hodel*, 624 F. Supp. at 1060.
85. *Id.*
86. Perkins v. Bergland, 608 F.2d 803, 807 (9th Cir. 1979).

American Motorcyclist Association v. Watt (I) & (II),[87] two California federal district court decisions, the courts reviewed an agency action under FLPMA § 1781.[88] Section 1781 requires the BLM to prepare land use plans for the California Desert Conservation Area (CDCA) premised on multiple use and an emphasis on protecting the CDCA's natural resources. The CDCA had been used increasingly for off-road vehicle (ORV) recreation and potentially threatened the natural resources found in the CDCA. Upon completion of the land use plan, various plaintiffs challenged the proposal.[89]

The court in *American Motorcyclist Association (I)* discussed plaintiffs' claims against the BLM on procedural grounds.[90] In *American Motorcyclist Association (II)*, the federal district court addressed the substantive requirements of BLM planning. The CDCA plan stated that ORV use could be restricted to "Class L" areas and set out criteria by which "Class L" areas would be determined.[91] Plaintiffs claimed that the route approval criteria for Class L areas found in the agency's plan were inconsistent with BLM regulations. The regulations demanded that route designation shall be based on the protection of the resources of the public lands, the promotion of the safety of all users, and the minimization of conflicts and environmental damage.[92] In contrast, the challenged criteria contained in the proposed plan simply posed the question of whether the route would cause considerable adverse impacts.[93] The court found that although the criteria was neutrally phrased, the criteria did not explicitly prohibit route designation in any defined situation.[94] "The 'considerable adverse impacts' standard is qualitatively different than the minimization criteria mandated . . . and in practice is almost certain to skew route designation decision-making in favor of ORV use."[95] Viewed as a whole, the court concluded that the land use plan would very likely result in a route selection process which did not comply in significant respects with the express standards set out in the regulations.[96] Reviewing the legislative history of the statutes, the explicit language of the statutes, and the BLM's regulations, the court determined that Congress had clearly spoken in the

87. American Motorcyclist Ass'n v. Watt (I), 534 F. Supp. 923 (C.D. Cal. 1981), American Motorcyclist Ass'n v. Watt (II), 543 F. Supp. 789 (C.D. Cal. 1982).

88. 43 U.S.C. § 1781.

89. Plaintiffs included Inyo County, environmental groups, off-road vehicle (ORV) associations and governmental units.

90. *American Motorcyclist Ass'n (I)*, 534 F. Supp. at 924.

91. *American Motorcyclist Ass'n (II)*, 543 F. Supp. at 797.

92. *See* 43 C.F.R. § 8342.1.

93. *American Motorcyclist Ass'n (II)*, 543 F. Supp. at 797.

94. *Id.*

95. *Id.*

96. *Id.*

situation warranting the court's active role.

Yet the court in *Hodel* glossed over the clear intent expressed in FLPMA and PRIA and completely ignored the regulations implementing those statutes. Rather than reviewing the land use plan to determine whether it was contrary to such statutory and regulatory requirements, and therefore "not in accordance with the law,"[97] the court found the statutes not sufficiently specific to limit clearly agency discretion. Even though the proposed actions were not aggressive or immediate, absent a more clear statutory limit on agency discretion, the court would not disturb the plan.[98]

As in *Perkins v. Bergland*,[99] the court in *Hodel* limited its review of the BLM's decision to whether the land use plan was "arbitrary, capricious or contrary to law."[100] However, strict adherence to the analysis found in *Perkins* was inappropriate. In *Perkins*, two grazing permittees challenged the Forest Service's decision regarding the appropriate grazing levels on their allotments.[101] The permittees argued that the Multiple-Use, Sustained-Yield Act of 1960 (MUSYA)[102] provided standards for judicial review. The court rejected the permittees' contentions and concluded that in cases in which the relevant statutes contained vague directives, only a limited review was appropriate. The court presumed proper review of an agency decision and stated:

> These sections of MUSYA (16 U.S.C. §§ 528, 529, 531) contain the most general clauses and phrases. . . . This language, [due consideration be given to the relative values of the various resource] partially defined in Section 531 in such terms as 'that [which] will best meet the needs of the American people' and 'making the most judicious use of the land', can hardly be considered concrete limits upon agency discretion. Rather, it is language which 'breathe[s] discretion at every pore.'[103]

The court in *Perkins* looked to MUSYA to determine the amount of discretion granted an agency whereas the court in *Hodel* interpreted FLPMA and PRIA. MUSYA is a far more general statute than FLPMA and does not contain the express, mandatory directive embodied in FLPMA.[104] PRIA is an extension of FLPMA which reaffirms Congressional concern and explicitly states that range condition improvement is

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97. Administrative Procedure Act, 5 U.S.C. § 706(2)(A) (1982).

98. *Hodel*, 624 F. Supp. at 1058.

99. 608 F.2d 803 (9th Cir. 1979).

100. *Hodel*, 624 F. Supp. at 1058 (quoting the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)).

101. *Perkins*, 608 F.2d at 804.

102. 16 U.S.C. §§ 528-531.

103. *Perkins*, 608 F.2d at 806 (citations omitted).

104. See *supra* text accompanying notes 34-43.

the highest management priority[105] and provides the device for funding such improvements.[106] Together FLPMA and PRIA represent a clear Congressional policy toward range improvement as the primary management goal. These statutes provide a clear limit on agency discretion.

Further, the regulations implementing the statutes prohibit overgrazing of livestock.[107] One of the objectives of the regulations is to enhance the productivity of the public rangelands by preventing overgrazing and soil deterioration.[108] The regulations are clear and unambiguous, yet the court did not carefully review the regulations to determine if the BLM's actions accorded with the regulations. The BLM admitted the overgrazing problem in its own documents and stated that the resource damage would continue unless excessive grazing and other improper current practices were changed.[109] Despite the widespread problem, the BLM did not implement immediate steps to remedy the overgrazing. This condition of the current practices and the resulting damage constitutes a violation of the BLM's statutory and regulatory duties. The court did not apply the facts to the law and thus erroneously determined that the plan was in accordance with the law.

The regulations also state that land use plans "are designed to guide and control future management actions."[110] However, the BLM did not allocate forage. Nor did the plan contain objectives and constraints that would control future range decisionmaking. The BLM argued that the specifics would be set at the permit decision stage and that the land use plans address broader issues. The court agreed, stating that the broad, objective oriented statements seemed to be the proper material for a land use plan. The conclusion ignores the clear language of the statutes and regulations and instead allows the BLM to avoid any specific limitations on future uses. The vague, generalized "plan" does not meet the statutory requirements and allows the agency unfettered discretion to manage livestock grazing use on federal public lands.

V. CONCLUSION

Although recognizing that an aggressive approach to range improvement "might be closer to what Congress had in mind,"[111] the Nevada

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105. 43 U.S.C. § 1903(b).

106. *Id.* § 1904.

107. *See* 43 C.F.R. §§ 4130.6-1(a), 4100.0-2.

108. 43 C.F.R. § 4100.0-2.

109. Plaintiffs' Memorandum, *supra* note 71, at 13 (citing Draft EIS at 2-1, 2-6, 2-9, 2-13, 2-14, 3-9, 3-10).

110. 43 C.F.R. § 1601.0-2.

111. In a brief opinion, the Court of Appeals for the Ninth Circuit affirmed the lower court's decision in *Hodel*. Like the district court, the Ninth Circuit did not address the pertinent question of

federal district court in *Hodel* hid behind deference to agency management decisions. Yet the question addressed in *Hodel* did not involve a choice between one theory of range management against another. Rather, the *Hodel* decision addresses questions of statutory interpretation and agency noncompliance. The court neglected its duty by failing to follow Congressional mandates embodied in FLMPA and PRIA.[112] Consequently, the court in *Hodel*, as well as other courts, must reverse a land use plan if the agency fails to follow relevant substantive standards.

American Motorcyclist Association (I) & (II), as well as other decisions in the field,[113] evidence a judicial willingness to review an agency's land use plans. These courts have reviewed the agency's proposed action and determined its validity through an interpretation of the spirit and letter of the statutes and regulations. These cases represent a positive step toward an active judicial role in agency planning that will undoubtedly result in more rational, co-ordinated management plans and ensure agency compliance with the Congressional mandates.

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whether the BLM violated substantive statutory requirements.

112. *Hodel*, 624 F. Supp. at 1058.

113. *See, e.g.*, Valdez v. Applegate, 616 F.2d 570 (10th Cir. 1980); Hinsdale Livestock Co. v. United States, 501 F. Supp. 773 (D. Mont. 1980).