

Speaker Argues Access To Public Lands Grazing Not Conditional

McIntosh from pg. 1

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Allotments, as they are under private ownership, do not qualify as public land.

For example, McIntosh shared that the history of allotments on National Forest lands harkens back to 1910 when the U.S. Forest Service (USFS) was so corrupt that a six-month investigation was held to determine what was occurring in the agency. In many cases, USFS agents were refusing to carry out orders from the Secretary of the Agriculture. As a result of the investigation, the Secretary of Agriculture ordered USFS to dispose of all land in the national forests. Much of this disposal was carried out via the allotment system that allowed private citizens to hold a kind of "surface right" to grazing while USFS retained mineral and timber rights.

However, current USFS management does not recognize allotment holders as having a "right," but rather the option to have conditional use of the land, according to McIntosh. Under this system, grazing can only be done on the allotment under a government permit. This understanding is flawed, McIntosh said.

"As long as the Forest Service claims to own the land and claims the rancher is trespassing by grazing, the rancher will lose," he noted.

McIntosh said when the USFS argues against a rancher's grazing rights in court, two cases are usually brought up: *Light v. U.S.* and *U.S. v. Grimaud*. In both of these cases, the courts found the rancher was trespassing because the rancher did not have a permit to graze. However, the courts noted in *Grimaud* prohibiting grazing was allowable to protect the

government's actual interest in the timber growth.

However, when the federal government came for the property of rancher JB Curtin in order to create Yosemite National Park in 1866, Curtin continued to graze the land in Yosemite, arguing he did not need to have a grazing permit in order to exercise his grazing rights on his allotment. The U.S. Supreme Court agreed, noting that preventing Curtin from grazing his 23,000 acres of range rights would have been an "unconstitutional taking of property."

In his presentations, McIntosh provides a bevy of legal case references that affirm the fact that ranchers who own allotments do have grazing "rights."

"The law is on your side," McIntosh said. "The only reason the USFS has power over you is not because you are trespassing on public land when you don't have a

grazing permit for your allotment, but because your right to graze your allotment is not being affirmed. Ignorance of the law is what is killing ranches in the West."

In order to right this problem, McIntosh advocates that ranchers become educated on the legal backing they have in relation to their allotment grazing rights and use those laws to dialog with government agencies. Working with lawyers who will actually research and understand grazing law is also paramount.

"The RAOA currently has two cases in New Mexico and one case in Colorado in process on the subject of allotment grazing rights," McIntosh said. "We need ranchers to join our organization and support our efforts while these cases are litigated."

For more information about the Range Allotment Owners Association, visit www.rangeallotmentowners.com.

Cases Affirming Allotment Grazing Rights

McIntosh encourages ranchers to spend some time reading the key cases that have affirmed that grazing allotments have grazing rights. Access to these cases can be found on the website www.justia.com or on the Cornell Legal Information Institute website (www.law.cornell.edu). The cases are:

- *Atherton v. Fowler*, 96 US 513 (1877)
- *Rector v. Gibbon*, 111 US 276 (1884)
- *Griffith v. Godey*, 113 US 89 (1885)
- *Brooks v. Warren*, 13 P 175 (1886)
- *Comm. Natl. Bank of Odgen v. Davidson*, 22 P 517 (1889)
- *Wilson v. Everett*, 139 US 616 (1891)
- *Cameron v. United States*, supra, *Lonergan v. Buford*, 148 US 581 (1893)
- *Swan Land & Cattle Co. v. Frank*, 148 US 603 (1893)
- *Grayson v. Lynch*, 163 US 468 (1896)
- *Salina Stock Co. v. Salina Creek Irr. Co.*, 163 US 109 (1896)
- *Ward v. Sherman*, 192 US 168 (1904)
- *Bacon v. Walker*, 204 US 311 (1907)
- *Bown v. Walling*, 204 US 320 (1907)
- *Curtin v. Benson*, 222 US 78 (1911)
- *Omaechevarria v. Idaho*, 246 US 343 (1918)