

Name: Colvin Cattle Company, Inc. Versus United States

Citation:

Plaintiff and Appellant: Colvin Cattle Company, Inc.

Defendant and Respondent: United States

Original Case Heard: Unknown

Case Appealed From: United States Court of Federal Claims

Case Appealed To: United States Court of Appeals for the Federal Circuit

Date Submitted:

Date Decided: November 1, 2006

OVERVIEW OF THE CASE

Colvin Cattle Company, Inc. appealed the judgment of the United States Court of Federal Claims, which dismissed its complaint that the United States Government had taken away the value its water rights and a portion of the value of its ranching operations, breached a contract, and caused other injury. The United States Court of Appeals for the Federal Circuit upheld the lower court's dismissal of these complaints.

FACTS OF THE CASE

Colvin Cattle Company, Inc. owns a 520 acre cattle ranch adjacent to the Montezuma Allotment.

The Montezuma Allotment contains 625,000 acres of public land in Nevada, and the Bureau of Land Management administers cattle grazing on it according to the 1934 Taylor Grazing Act.

The land in the Montezuma Allotment was initially conferred to the United States in 1848 through the Treaty of Hidalgo, and it has remained in the federal government's possession ever since.

Colvin Cattle Company claims, and the federal government does not dispute, that Colvin Cattle Company possesses stockwatering rights in the Montezuma Allotment.

Colvin Cattle Company grazed cattle in the Montezuma Allotment under a grazing lease from the Bureau of Land Management. The terms of the lease conveyed no right, title, or interest held by the United States in any lands or resources.

The Bureau of Land Management eventually evicted Colvin Cattle Company from the Montezuma Allotment and removed range improvements the company had made within the Allotment. It authorized another rancher to graze livestock in the area of the Allotment that was used by Colvin Cattle Company, but the rancher must haul his own water to the Allotment.

At no time did the Bureau of Land Management impeded Colvin Cattle Company's access to water in the Allotment.

TIMELINE

Colvin first applied to the Bureau of Land Management for a grazing lease in 1969. This grazing lease was granted on January 19, 1970.

The grazing lease was last renewed in 1989, for a term of ten years. In order for this lease to remain in effect Colvin Cattle Company had to make annual payments.

The terms of the lease conveyed no right, title, or interest held by the United States in any lands or resources.

In February 1995 Colvin Cattle Company failed to pay the 966 annual grazing fee.

As a result of the failure to pay the fee the Bureau of Land Management issued a trespass notice to Colvin Cattle Company on March 15, 1995, and demanded the it stop grazing cattle in the Montezuma Allotment.

In 1997 the Bureau of Land Management cancelled Colvin Cattle Company's grazing lease, and levied trespass damages against it.

Colvin Cattle Company continued to graze its livestock on the Montezuma Allotment, and on June 25, 2001 the Bureau of Land Management notified Calvin Cattle Company that it intended to remove its cattle.

In May 2002 the Bureau of Land Management canceled Colvin Cattle Company's range improvement permits and issued an initial decision that range improvements be removed.

Colvin Cattle Company did not respond to this initial decision, and on November 26, 2003 the Bureau of Land Management issued a final decision that ordered all range improvements be removed. An exclusion to these improvements were any facilities necessary for the exercise of water rights established pursuant to Nevada law.

On August 18, 2003, Colvin Cattle Company files suit in the Court of Federal Claims, asserting that rights to its water and ranching operations had been taken without compensation, the Bureau of Land Management had breached its contract, and made a claim for compensation for the value of the range improvements in the Montezuma Allotment that were removed.

MAIN ISSUES RAISED IN THE CASE

Issue #1: Colvin Cattle Company claims that the actions of the United States Government restricting its ability to graze cattle on the Montezuma Allotment was a taking of its water rights in the Allotment. It did not claim to have a right to graze cattle on the Allotment, but claims that such a right is inherent to or attached to its water rights. The court was asked to determine if this inherent grazing right existed.

Issue #2: Colvin Cattle Company claims that the Actions of the United States Government also resulted in a "taking" of its cattle ranch adjacent to the Allotment. (This "taking" was said to have resulted from the lower value of the ranch without the ability to graze cattle in the Allotment.)

Issue #3: Another rancher was allowed to graze in the Allotment after Colvin Cattle Company was evicted. Colvin Cattle Company claims that the United States Government's alleged failure to prevent this rancher and wild horses in the Allotment from infringing on their water rights also constituted a "taking".

THE COURT'S DECISION

Issue #1: The court stated that if a grazing right was not inherent or attached to Colvin Cattle Company's water rights in the Allotment, then the United States Government's actions restricting its ability to graze cattle in the Allotment did not constitute a "taking" of its water rights. As a result, a primary question to be decided in the case was whether or not the "attached" grazing right existed.

Based on the decision in *M & J Coal Company Versus the United States* the court stated that a "regulatory taking" by the United States Government could not occur unless the claimant had established a property interest for the purposes of the Fifth Amendment. The court worded the issue this way:

"...the relevant question is whether Colvin's alleged grazing interest is a stick in the bundle of rights it has acquired in the Montezuma Allotment."

The court did not rely on the United States Constitution to decide if Colvin Cattle Company had this "property interest" for grazing in the Montezuma Allotment, because the Constitution alone "neither creates nor defines the scope of property interests compensable under the Fifth Amendment." (*Maritrans Inc. Versus United States*) The court instead looked to other sources to determine if Colvin Cattle possessed this attached grazing right in the Montezuma Allotment.

In considering this question of whether Colvin Cattle Company had the grazing right attached to its water rights in the Montezuma Allotment, the court considered the following:

[1] The United States Constitution provides that "Congress shall have the Power to dispose of and make all needful Rules and Regulations respecting the territory or other Property belonging to the United States" and that the "United States can prohibit absolutely or fix the terms on which its property may be used".

[2] The United States Government has owned the Montezuma Allotment since 1848, and has always been subject to the principles mentioned in [1] above. In line with these principles, the United States Congress enacted the Taylor Grazing Act, which permitted the grazing of cattle on public land, but did not confer any grazing rights on private parties. Because any right to graze cattle would not have been allowed after the enactment of the Taylor Grazing Act any grazing right obtained by Colvin Cattle Company would have had to been obtained prior to the Taylor Grazing Act's establishment.

[3] Prior to the creation of the Taylor Grazing Act any grazing done on Federal lands was done at the United States' sufferance. This grazing of livestock on Federal lands, was and still is, a privilege. Any "implied" license to graze livestock on public lands prior to the Taylor Grazing Act can be removed by the Government.

[4] Colvin Cattle Company asserts that it was granted grazing rights under Nevada Law. However, although the court recognized that under the Mining Act of 1866 the United States recognized water rights granted under state law, it found that the 1925 Nevada Stockwatering Act, and Nevada Supreme Court interpretations of the act could not be used to establish any "attached" grazing right to Colvin Cattle Company's water rights. (Because the Montezuma Allotment is, and has always been, under the ownership of the Federal Government, no right could be obtained in it without congressional authorization. This

meant that no right in the Montezuma Allotment could have been conferred by the Stockwatering Act, even if the law had been written to do so.

[5] Colvin Cattle Company can not argue that grazing is the only beneficial use for which it may exercise its water rights in the Montezuma Allotment. Even if that was true, the court could not find the value of those water rights sufficiently damaged because grazing was not a stick in the bundle of rights that Colvin Cattle Company had in the Montezuma Allotment.

The court concluded that Colvin Cattle Company's water rights did not include an attached right to graze livestock, and therefore no action by the government to restrict that grazing on Federal land could be considered a taking under the Fifth Amendment.

Issue #2: The court denied Colvin's claim that there was a "taking" under the Fifth Amendment due to the loss in value of the cattle ranch outside of and adjacent to the Montezuma Allotment. Although the court recognized that the ranch may have lost value when Colvin Cattle Company's lease expired and its cattle were evicted, the loss in value was not due to restrictions on a constitutional recognized property right, and therefore a "taking" could not be established under the Fifth Amendment. In making the decision on this issue the court relies on a principle established in *United States V. Fuller*, which holds that "the Fifth Amendment does not require the Government to pay for that element of value based on the use of the respondent's fee lands in combination with the Government's permit lands."

Issue #3: The court denied Colvin Cattle Company's claim of a taking because the federal government allegedly failed to prevent a successor to its lease in the Montezuma Allotment from allowing its livestock to drink water from sources in the Allotment, thus infringing on Colvin Cattle Company's water rights. The court points out that the federal government required the second rancher to provide water for his own livestock. The court also relies on a principle found in *Alves V. United States*, which states "There clearly can be no taking when whatever acts complained of are those of private parties."

The court also found that the drinking of wild horses also did not constitute a taking, because wild animals can not be considered an instrument of the government capable of causing a taking. In this part of its decision the court relies on *Mountain States Legal Foundation V Hodel* and *Douglas V. Seacoast Products, Inc.*

Court Case Citations

Moden V. United States (404 F.3D 1335 [Federal Circuit Court 2005])
Crater Corporation V. Lucent Techs, Incorporated (255 F.3D 1361, 1366 [Federal Circuit 2001])
M & J Coal Company V. United States (47 F.3D 1148, 1153-1154 [Federal Circuit 2002])
Conti V. United States (291 F.3D 1334, 1339 [Federal Circuit 2002])
Lucas V. South Carolina Coast Council (505 U.S. 1002, 1027 [1992])
Maritrans Incorporated V. United States (342 F.3d 1344, 1352 [Federal Circuit 2003])
Light V. United States (220 U.S. 535, 536 [1911])
Omaechevarria V. Idaho (246 U.S. 343, 352 [1918])
Buford V. Houtz (133 U.S. 320, 326 [1980])
In re Calvo (253 P. 671, 675 [Nevada 1927])
Itcaina V. Marble (55 P. 2D 625, 629-630 [1937])
Kleppe V. New Mexico (426 U.S. 529, 539-540 [1976])
Ansablere V. Laborde (409 U.S. 488, 493 [Nevada 1957])
United States V. Fuller (48 F.3D 1575, 1580 [Federal Circuit 1995])

767 Third Avenue Associates V. United States (48 F.3D 1575, 1580 [Federal Circuit 1995])
Douglas V. Seacoast Products, Incorporated (431 U.S. 265, 284 [1977])
John R. Sand & Gravel company V. United States (457 F.3D 1345, 1354 [Federal Circuit 2006])
Julius Goldman's Egg City V. United States (556 F.2D 1096, 1099 [Ct. Cl. 1977])

Cited Laws

43 U.S.C. – Section 315 (Taylor Grazing Act)
43 U.S.C. – Section 1752
43 U.S.C. – Section 661 (Mining Act of 1866)
Nevada Revised Statutes – Section 533.485 – 533.510 (Stockwatering Act)
43 U.S.C. – Section 1752(G)