No. 10-1290

In The
Supreme Court of the United States

PUBLIC LANDS COUNCIL,

Petitioner,

vs.

WESTERN WATERSHEDS PROJECT, *et al.*,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF EUREKA COUNTY, NEVADA, THE NEVADA CATTLEMEN'S ASSOCIATION, NEVADA LAND ACTION ASSOCIATION, AND NEVADA WOOL GROWERS' ASSOCIATION, AS *AMICI CURIAE* SUPPORTING PETITIONER'S PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

Page

OTHER AUTHORITIES

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

INTERESTS OF *AMICI*[1]

Eureka County, Nevada is located in east-central Nevada, and comprises a population of approximately 2000 people. Of the total land area in Eureka County, 79 percent is administered by the federal government. Therefore, Eureka County's economic future relies heavily on activities conducted on or in concert with public lands.[2] Eureka County relies greatly on the ranching and farming sector for maintenance of its long-term economic stability and vitality.

The Nevada Cattlemen's Association ("NCA") is a non-profit trade organization representing public and private land ranchers in Nevada. Established in 1935, the NCA promotes stewardship of the land and the resources under the care of working ranches in the state of Nevada. Many, if not most, of the NCA's livestock producer members hold permits or leases to utilize federal lands, including those administered by the Bureau of Land Management ("BLM") and United States Forest Service ("USFS") for livestock grazing. Working on a state and national level, the NCA seeks

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[1] Pursuant to Supreme Court Rule 37.6, *amici* confirm that no counsel for a party authored this brief in whole or in part and that no person or entity other than *amici*, their members, or their counsel have made a monetary contribution to the preparation or submission of the brief. The brief is filed with the consent of the parties. *See* S.Ct.R. 37.3(a). Counsel of record for all parties received notice of the intention to file the brief at least 10 days prior to the due date of the brief.

[2] Throughout this brief, the terms "public lands" and "federal lands" are used interchangeably.

to promote working ranches and active management. As an association, the NCA works hard to create environmentally sustainable and economically viable operations across the state to support not only rural communities, but also the important open spaces of the Western United States. A large number, if not the majority, of ranches in the State of Nevada include federal or public lands essential to their operations.

Established in 1976, the Nevada Land Action Association ("NLAA") is the legal arm of the Nevada Cattlemen's Association. The NLAA acts on behalf of the NCA's membership to protect continued grazing rights or preference rights on federal lands.

The Nevada Wool Growers' Association is a non-profit corporation which works for the mutual protection and benefit of its members engaged in the wool growing and sheep and goat raising industry.

It is difficult to overstate the importance of public lands and corresponding regulations to the ranchers of the State of Nevada. Over 83 percent of Nevada's land is federally owned, and most of that land falls under the control of the Department of the Interior and the BLM. Therefore, any change in BLM grazing regulations has a tremendous impact upon public lands ranchers in the state.

Most of the ranchers who graze their livestock on the National Forests and BLM lands are economically dependent upon the use of those public lands for their livelihood. In many cases, their ranch consists of a small amount of deeded property surrounded by vast tracts of federally owned lands, which make up the

remainder of the ranch. The deeded property of the typical ranch is insufficient to support the ranchers' herds for an extended period of time. If a rancher cannot access his federally owned grazing allotment, he must either lease other pasture (if any is available), purchase alternate forage such as hay, which is extremely expensive, or sell his herd. Any of these options, even for a single grazing season, can force a ranch into bankruptcy. The longer access to an allotment is denied, the more severe the consequences to the individual rancher and to the ranching community dependent upon the federally owned lands. Because this Court's decision in this case has the potential to disrupt or ruin the family businesses of numerous livestock ranches throughout the American West, the *amici* seek to ensure that its members' position in this matter is brought to the Court's attention for consideration.

SUMMARY OF ARGUMENT

Amici Curiae urge the grant of Petitioner's petition for writ of certiorari, and the reversal of the decision of the Ninth Circuit Court of Appeals. Although the authority given to the BLM to manage public lands in the West and to regulate the private uses of those lands is strictly constrained by the laws enacted by Congress to govern grazing and other uses, including but not limited to the Taylor Grazing Act, BLM regulators must act within the strict statutory

limitations set by Congress, as well as the regulations and policies that they themselves promulgate.

Ranching in the arid West, and particularly public lands ranching, is substantially different than the raising of livestock in other areas of the nation. This type of ranching involves unique management concerns involving the mix of federal, state, and private lands that can make up a Western ranching unit. Entering its fifth century, Western ranching is the oldest and most traditional form of livestock production in the nation.

ARGUMENT

I. PUBLIC LANDS RANCHING IN THE AMERICAN WEST

A. History of Livestock Grazing in the American West

The history of ranching in the Western United States involves some of the very earliest American pioneers. Spanish settlers began grazing domestic livestock in what is now New Mexico over 400 years ago, before Jamestown was colonized or the Pilgrims arrived in Plymouth. *See* Richard Flint and Shirley Cushing Flint, *The Coronado Expedition to Tierra Nueva, The 1540-1542 Route Across the Southwest*, 6 (1997). Seven thousand head of livestock were permanently introduced, along with horses, to the Southwest by Don Juan de Oñate in 1598. *See* Max L. Moorhead, *New Mexico's Royal Road, Trade and*

Travel on the Chihuahua Trail, 8 (1958); *see also* Marc Simmons, *The Last Conquistador, Juan de Oñate and the Settling of the Far Southwest*, 112-120 (1991). This ranching tradition, therefore, began in New Mexico and spread throughout the West.

In early New Mexico communities, ranchers grazed their livestock on "commons" attached to the villages. *See* Marc Simmons, *Spanish Pathways, Readings in the History of Hispanic New Mexico*, 119 (2001). Due to the arid climate, Spanish and Mexican land grants were insufficient to sustain an individual ranch. The local custom which developed in response was to use the deeded land and water as the ranch's homestead and headquarters, but then also graze on adjacent unclaimed rangelands, thereby creating a sustainable ranching unit. Community expansion within this isolated Spanish territory occurred due to ranching. "[S]tock raising, instead of farming, propelled most of the Hispanics who expanded their frontiers," and this "emergent class of stockmen, whose desire it was to add to their grazing lands, led the way." *See* Richard L. Nostrand, *The Hispano Homeland*, 76 (1992). The United States acquired all or part of the Western states of Colorado, Wyoming and Montana in the 1803 Louisiana Purchase. Forty-five years later, with the Treaty of Guadalupe Hidalgo in 1848, Mexico ceded California, Nevada, Utah, Arizona, and New Mexico, as well as parts of Colorado and Wyoming, to the United States. *See* Treaty of Guadalupe Hidalgo, 9 Stat. 922 (1848). With this, Spanish ranches throughout the West became a part

of the United States, and the United States guaranteed protection of existing rights in property that were secured by the prior sovereign. *See id.*

After the United States acquired the West, most lands were open to settlement and occupation. *See* George Cameron Coggins and Margaret Lindeberg-Johnson, "The Law of Public Rangeland Management II: The Commons and the Taylor Act," 13 Envtl. L. 1, 3-22 (1982). Initially, the United States government not only recognized the Mexican custom of grazing on adjacent unclaimed rangelands, but also promoted it in order to encourage rapid settlement of the region. In keeping with Spanish custom, rangelands were open to any who wished to use them and the "open range" system was born. *Id.* at 28-31. Use of the public lands was encouraged by the federal government in order to encourage expansion and settlement. *Id.* at 3-22. However, as with Spanish and Mexican land grants, the acreage granted by United States homestead laws was inadequate for the needs of Western ranches. The Homestead Act of 1862 granted only 160 acres of land. *See* 43 U.S.C. §§ 161-64 (repealed 1976). However, ranches located in arid regions west of the 100th meridian often require a minimum of several thousand acres of rangeland to be environmentally and economically sustainable. *See* Robert H. Nelson, "How to Reform Grazing Policy: Creating Forage Rights on Federal Rangelands," 8 Fordham Envtl. L. J. 645, 659-60 (noting that in the arid west, "the productivity of the land was so low that a small family ranch of 50 head of cattle often

required more than 5,000 acres for grazing"); *see also* Coggins & Lindeberg-Johnson, "The Law of Public Rangeland Management II," 13 Envtl. L. at 24 (noting that the 160 acres of land available to homesteaders was "grossly inadequate for a western ranching operation").

In response to this situation, stockmen would homestead a location that had water and use the surrounding open range for livestock grazing.

> Acquiring a stock range was a simple matter in the early days of the industry before the country became crowded with cattle. It was only necessary to secure title to an available water supply in order to control land for miles around as surely as though that land were actually owned.

Victor Westphall, *The Public Domain in New Mexico, 1854-1891*, 42 (1965). Other historians have noted that

> Since there was only limited arable land in New Mexico, and that was largely occupied [by 1877], the paramount attraction was the pasturelands. The key to their occupancy was water. He who controlled the water controlled all the surrounding lands. Ownership of a few acres with surface water frequently carried with it undisturbed use of thousands of acres of grasslands which were a part of the public domain.

Ira G. Clark, *Water in New Mexico, A History of Its Management and Use*, 48 (1987). The New Mexico

experience was very similar in all of the states and territories of the West.

The Mining Act of 1866, 43 U.S.C. § 661, provided that "rights to the use of water" on the public lands which are "recognized and acknowledged by the local customs, laws, and decisions of courts" would be "maintained and protected." This has been interpreted as a federal deferral to state and local law and custom in matters of water rights. *See Andrus v. Charlestone Stone Products Co., Inc.*, 436 U.S. 604, 614 (1978). Allowing state water law to control afforded the United States the ability to allow possessory interests to be created on federal lands. Congress "encouraged expansion, exploitation and development of the public lands" in the hope that this would lead to settlement resulting in acquisition or sale of the public domain. *See Wilkenson v. Dep't of the Interior*, 634 F. Supp. 1265, 1275 (D. Colo. 1986); *see also Buford v. Houtz*, 133 U.S. 320, 326 (1890) (stating that rangelands "shall be free to the people who seek to use them"); *but see Omaechevarria v. Idaho*, 246 U.S. 343, 352 (1917) (allowing limited state regulation of the right to use public lands). While Western states tried both "to crystallize rights on the open public domain" and to protect that land from overgrazing, the stock grower himself

> knew that his greatest asset for the success of his endeavor was the right which he enjoyed to graze his livestock on the open country. He regarded that right as sacred. He regarded it as something that would sustain

> him and his dependents and that he, in turn, would hand down to his descendants to carry on.

See "McCarran Appeals for Open Public Domain," *American Cattle Producer*, February 1942, 19-20.

Because Western stockmen could not homestead and thereby acquire title to the thousands of acres necessary for a viable ranch operation, they generally acquired title to just those essential lands with waters, including streams, ponds, springs, etc. *See* Phillip O. Foss, *Politics and Grass, The Administration of Grazing on the Public Domain*, 26-29 (1960). Using those waters, described by the federal surveyor-general for the Territory of New Mexico as "the nucleus of their stock ranges" (Clark, at 49), stockmen established Western ranches. Therefore, the best lands – those with water and most amenable to settlement – were acquired by early settlers, homesteaders and ranchers. *See* Marc Stimpert, "Counterpoint: Opportunities Lost and Opportunities Gained: Separating Truth from Myth in the Western Ranching Debate," 36 Envtl. L. 481, 497 (2006). Over the years, Congress reserved blocks of other public lands for specific purposes, such as Indian homelands, military reservations, and national forests. Yet, millions of acres in the West remained unclaimed for federal reservation for specific purposes or for transfer into private ownership. *See* Coggins & Lindeberg-Johnson, "The Law of Public Rangeland Management II," 13 Envtl. L. at 20-21. Many of these remaining lands were usable only for range purposes, the

grazing of livestock. *See id.* The federal government freely allowed possessory livestock uses of public lands under the "open range" system throughout the nineteenth century and well into the twentieth. *See id.* at 20-30.

Although the Spanish concept of "open range" had worked well when there remained a great deal of open land for settlement and pasturing, as the ranges became filled with livestock, cattle and sheep competed for range space, and population increased, the system began to fall apart. *See* Foss, at 34-35. With no restrictions on any individual grazing operator, the numbers of livestock grew significantly. *See Public Lands Council v. Babbitt*, 529 U.S. 728, 731 (2000) (noting that there were over seven million head of cattle in the Great Plains during the 1880s boom). Livestock overpopulation led to range degradation as well as human conflict. *See id.* at 732. Congress's response to this problem was limited, passing a series of acts between 1877 and 1916 which increased the amount of land which could be obtained through settlement. *See, e.g.*, The Desert Lands Act of 1877, 43 U.S.C. §§ 321-323 (granting 640 acres to anyone who could irrigate within three years); Enlarged Homestead Act of 1909, 43 U.S.C. § 218 (repealed 1976) (increasing homesteads to 320 acres); Stock-Raising Homestead Act of 1916, 43 U.S.C. §§ 219-301 (repealed 1976) (allowing free entry into 640 acres for grazing purposes). However, for a great length of time Congress did not change the open range policy on public lands.

B. Regulation of Public Lands Ranching

On a national level, regulation of public lands ranching was virtually non-existent prior to 1934. However, in Nevada, where over 83 percent of the state consists of federal lands,[3] the state government took greater steps to regulate ranching practices than any other Western state. Under what were known as the "stock-watering acts," stock growers who made "beneficial uses" of water on the public range could continue to control not only that water, but also the surrounding range. *See* Karen R. Merrill, *Public Lands and Political Meaning: Ranchers, the Government and the Property between Them*, 182 (2002). In the words of Nevada senator Key Pittman, in testimony during hearings on the Taylor Grazing Act, these acts were intended "to vest a right in a range on the public domain through control of water rights." U.S. Congress, Senate, Committee on Public Lands and Surveys, *To Provide for the Orderly Use, Improvement, and Development of the Public Range*,

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[3] Federal land ownership is great throughout the Western United States, but in no state is it in larger proportion than in Nevada. In comparison, Alaska consists of 60% federal land, Arizona consists of 41% federal land, California consists of 35% federal land, Colorado consists of 35% federal land, Hawaii consists of 12% federal land, Idaho consists of 62.5% federal land, Montana consists of 29% federal land, New Mexico consists of 29% federal land, Oregon consists of 26% federal land, Utah consists of 64% federal land, Washington consists of 27% federal land, and Wyoming consists of 48% federal land. *See* "Public Ownership by State," http://www.nrcm.org/documents/publiclandownership.pdf (Last accessed May 16, 2011).

Hearings on H.R. 2835 and H.R. 6462, 73d Cong., 2d sess. (1933 and 1934), 9. Indeed, the stock-watering acts, combined with the low productivity of the land, made Nevada home to larger rancher operations than in any other state in the West.[4] *See* Merrill, at 183.

The depression of the 1930s, combined with drought and "dust bowl" conditions, as well as recognition of prior policy failure, pushed Congress to act on a national level. *See Public Lands Council v. Babbitt*, 529 U.S. at 733. Cattlemen, including those in Nevada, encouraged and supported basic federal regulation of the rangelands, and the result was the Taylor Grazing Act of 1934 ("TGA"). 48 Stat. 1269 (codified as amended at 43 U.S.C. §§ 315-315r (2006)); *see also* Merrill, at 183. The TGA had three purposes:

- regulation of the occupancy and use of the public rangelands,
- protection of the public rangelands from harm, and
- stabilization of the livestock industry.

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[4] Nevada is hard, dry country. The BLM estimates that, in an average year, it takes 636 acres of land to provide adequate forage for one cow. *See* M. Benjamin Eichenberg, "Fighting for a Way of Life: Public Lands and the Ranchers Who Own Them – An Analysis of *Colvin Cattle Co. v. United States*, 468 F.3d 803 (2006)," 14 Hastings W.-N.W. J. Envtl. L. & Pol'y 1613 (Summer 2008).

48 Stat. 1269; *see also Public Lands Council v. Babbitt*, 167 F.3d 1287, 1290 (10th Cir. 1999), *aff'd*, 529 U.S. 728, 733 (2000). The Tenth Circuit noted that the purpose of the TGA is "to stabilize, preserve, and protect the use of public lands for livestock grazing purposes." *Barton v. United States*, 609 F.2d 977 (10th Cir. 1979). The "Act was intended to address . . . the need to stabilize the livestock industry by preserving ranchers' access to the federal lands in a manner that would guard the land against destruction." *Public Lands Council v. Babbitt*, 167 F.3d at 1290. Pursuant to the TGA, the Secretary of the Interior ("the Secretary") was to create grazing districts from among the public domain used for grazing, and to determine the amount of grazing to be permitted in each district. 43 U.S.C. §§ 315, 315a and 315b; *see also Public Lands Council v. Babbitt*, 529 U.S. at 733. Grazing districts were to "promote the highest use of the public land, pending its final disposal." 43 U.S.C. § 315.

The Secretary established thirty-seven grazing districts encompassing 140 million acres. *Id.* at 734. The TGA expressly withdrew the land reserved in a grazing district from all forms of entry and settlement. 43 U.S.C. § 315. Inclusion of public land into a grazing district therefore reserved that land for grazing and "the primary use of that land should be grazing." *Public Lands Council v. Babbitt*, 167 F.3d at 1308. To individual ranchers within grazing districts,

the Secretary would issue permits to graze livestock within those districts on the following basis:

> Preference shall be given in the issuance of grazing permits to those within or near a district who are landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water rights, as may be necessary to permit the proper use of lands, water or water rights owned, or leased by them . . .

43 U.S.C. § 315b. In order to issue those permits, the Secretary had to determine the grazing capacity of each district and then "adjudicate" the grazing rights among range users. *See Public Lands Council v. Babbitt*, 529 U.S. at 733-734.

First preference for adjudicated grazing rights went to those ranchers who owned stock and "base property," which was private land or water rights (since water rights were a severed and separate estate from federal land), and who grazed public range during the five years prior to 1934. This first preference recognized the fact that many ranchers would keep livestock on their private land part of the year and graze public land the remainder of the year. *See id.* at 734. Second preference went to owners of "base property" which was nearby to the federal range, but who had not actually used the public lands for grazing during the prior five years. *See id.* The third preference went to "stock owners without base property, like the nomadic sheep herder." *See id.*

These were not the only factors that went into the decision to grant grazing privileges, however. Preference in obtaining grazing privileges was

> accorded to owners of land or water who could support their livestock during the seasons when they were off the grazing district, who required the federal lands in conjunction with their own [lands] to form an economic ranching unit, and who had used the range during the priority period.

Foss, at 63. The preference right does not guarantee a certain level of grazing but it gives the holder the right to use the maximum amount of grazing that the range will support at any given time, up to the preference limit. *See* Foss, at 63-64. The grazing preference

> served as a stabilizing force for the livestock industry and promoted orderly use of the range by guaranteeing permittees the right to graze a predictable number of stock on the public lands and by allowing them to gauge how large or small their livestock operations could be.

Public Lands Council v. Babbitt, 167 F.3d 1287, 1310 (10th Cir. 1999) (Tacha, J. dissenting), *aff'd*, 529 U.S. 728 (2000).

> Possession of a grazing preference attached to qualified base property guaranteed a rancher in possession of a permit the right to graze forage up to the amount specified by the preference so long as forage was

> available . . . and provided them with the certainty that if forage were abundant, grazing up to their preference limit would be authorized.

Id. at 1311. Once established, the grazing preference "is to be regarded as an indefinitely continuing right." *Shufflebarger v. Commissioner*, 24 T.C. 980, 992 (1955) (regarding Forest Service preference right).

Once the adjudications were completed, the Secretary was obliged to "safeguard" the "grazing privileges recognized and acknowledged . . . [s]o far as consistent with the purposes and provisions of this Act." 43 U.S.C. § 315b. The Secretary has the "affirmative obligation to adequately safeguard" grazing privileges of a preference holder. *See Oman v. United States*, 179 F.2d 738, 742 (10th Cir. 1949). In *Red Canyon Sheep Co. v. Ickes*, 98 F.2d 308 (D.C. Cir. 1938), the District of Columbia Circuit allowed an injunction action to proceed against the Secretary in order to preclude an exchange of public lands that would cut off Red Canyon Sheep Company's grazing preference under the TGA:

> We recognize that the rights under the Taylor Grazing Act do not fall within the conventional category of vested rights in property. Yet, whether they be called rights, privileges, or bare licenses, or by whatever name, while they exist they are something of real value to

> the possessors and something which have their source in an enactment of the Congress.

98 F.2d 308, 315. This Court confirmed the Secretary's responsibilities to "adequately safeguard" the grazing privileges of ranchers under the TGA:

> Given the broad discretionary powers that the Taylor Grazing Act grants the Secretary, we must read that Act as here granting the Secretary at least ordinary administrative leeway to assess 'safeguard[ing]' in terms of the Act's other purposes and provisions.

Public Lands Council v. Babbitt, 529 U.S. at 742.

While the TGA provided management for grazing federal lands "pending [their] final disposal," 43 U.S.C. § 315, Congress decided in 1976 that those same lands would remain under federal ownership and management in perpetuity. 43 U.S.C. § 1701(a)(1). In enacting the Federal Lands Policy and Management Act ("FLPMA"), 43 U.S.C. §§ 1701-1784, Congress required the Department of the Interior to take many new steps in the care and management of federal lands, now that they were not to be disposed of. These steps included inventories and classifications, 43 U.S.C. § 1711, land use planning, 43 U.S.C. § 1712, and wilderness assessment, 43 U.S.C. § 1782. However, Congress left the TGA largely intact and reaffirmed the adjudications of grazing rights on lands administered by the BLM, requiring (in most cases) grazing permits to be issued for ten years, *see* 43 U.S.C. § 1752(a), giving existing permit holders first

priority for renewal of their grazing permits, 43 U.S.C. § 1752(c), and requiring two years advance notice before cancellation of a grazing permit where lands are withdrawn from grazing use, 43 U.S.C. § 1752(g). Therefore, the TGA remains in effect after the enactment of FLPMA thirty-five years ago. Certain procedures have been mandated by FLPMA, but the rights and privileges granted and guaranteed by the TGA are still viable.

C. Practical Aspects of Western Public Lands Ranching

"Public lands ranchers" in the West are those who use a mix of lands in their livestock operations, which includes land owned by the federal and/or state governments. Frequently, a Western ranch will include a combination of privately-owned (deeded) lands, BLM-administered federal lands, and state lands.[5] Many public lands ranches will also have a Forest Service permit for seasonal grazing of livestock on forest lands. Other public lands ranches may include permits or leases for reclamation lands, military lands, lands of other federal enclaves, or

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[5] State lands are those granted by the United States to newly-admitted states in order to provide income for state government operations. Due to abuses in the use and sale of lands in earlier state grants, Congress placed express trust restrictions on the grants to a number of the Western states. *See, e.g., Lassen v. Arizona*, 385 U.S. 458, 459-464 (1967).

even tribal lands. All of these lands are managed by the rancher as a ranch unit.

The private, deeded land in a ranch unit is typically the better land, containing perennial water sources (access to streams to ponds, springs or groundwater wells), or including good grazing land or having natural advantages of terrain, access to highways, and the like. The private land many times originated as a homestead entry or was obtained through another of the Congressional acts allowing settlement of the West. *See* Coggins & Lindeberg-Johnson, "The Law of Public Rangeland Management II," 13 Envtl. L. at 4-22. The ranch house and other essential ranch buildings are usually on the private land as well.

Water sources (springs, wells, and earthen tanks) are scattered strategically throughout the ranch unit, designed primarily to provide water to livestock as they graze in the various pastures on the ranch. The days of simply turning cattle out on the range are fading. Many, if not most, ranchers now employ various methods of rotation of pastures in order to control utilization of livestock forage to facilitate its growth and viability. A good rancher knows all of his or her grasses, forbs and other palatable forage, knows when and how they grow, and manages livestock to maximize the forage value to them, while maintaining good plant vigor and reproduction.

Common improvements on leased lands (federal, state, and other) within a ranch unit include roads,

fences, water tanks, windmills and pens for holding cattle. These improvements must be spread throughout the ranch in order to adequately feed, water, move and control the livestock. Federal and state laws require approval of the placement of permanent improvements on their lands. *See*, *e.g.*, 43 U.S.C. §§ 1752(g), 1702(k). Few Western ranches have free-flowing, perennial waters, so most ranchers must construct (and constantly maintain) earthen tanks, to catch surface flowing waters, and windmills or other wells, to pull deep groundwater to tanks on the surface. Cattle require substantial amounts of water every day.

A fully-deeded Western ranch is a rarity and mixed ownership is the norm. Frequently ranches have only a small amount of private land. Under the TGA, private land or water adjacent to federal lands is required in order to qualify for the lease or permit. *See* 43 U.S.C. § 315b.

II. ECONOMIC IMPACTS OF THE FEDERAL LANDS RANCH

The *amici* in this litigation are concerned about possible economic impacts that will, in turn, have significant social and cultural impacts on their way of life. As noted above, livestock grazing has occurred on public lands in the southwestern United States since 1598. *Summary of the Historical Encyclopedia of New Mexico, New Mexico Historical Association, Albuquerque, New Mexico* (1945). Thus, it is an entrenched

component in the history, culture, economy, and society of the Southwest. Adverse grazing regulations may lead to the disintegration of the history, culture, and economy of communities associated with or dependent on livestock grazing, with consequent social and health effects in both local and regional contexts. The economic impacts of public lands ranching in Nevada cannot be overstated. Over 83 percent of the land within the state of Nevada is federally owned, and much of that land is controlled by the Department of the Interior and the BLM.

The BLM has issued grazing permits to approximately 19,000 ranchers and farmers, primarily in the eleven Western states. *See* George Cameron Coggins, Charles F. Wilkinson & John D. Leshy, *Federal Public Land and Resources Law*, 777-778 (5th ed. 2002). Not only do the regulations discussed in this litigation affect the 19,000 ranchers and farmers with BLM grazing permits, but they also have a great impact on the economics of the West as a whole. Public lands ranches provide employment and economic opportunity throughout the West and particularly in rural areas dominated by federal lands. *See* J.M. Fowler, D. Rush, J.M. Hawkes, and T.D. Darden, *Economic Characteristics of the Western Livestock Industry* (1994). They "contribute significantly to the local economies" of Western counties and states, like *Amicus Curiae* Eureka County, Nevada. *See id.* at 44. In many Western states, the economic effects of public lands ranches are pervasive because those ranches are generally widespread throughout the

state's area. A 1994 study estimated that the direct expenditures in local economies by ranchers using federal lands for grazing were over $800 million, without accounting for any multiplier effects. *See id.* at 2.

Amicus Curiae Eureka County, Nevada consists of 79 percent federally-managed land, with 73 percent managed by the BLM. *See* Elizabeth Fadali, William W. Riggs, Kim Dorris & Thomas R. Harris, "Updated Economic Linkages in the Economy of Eureka County," Technical Report UCED 2005/06-14, accessed at http://www.cabnr.unr.edu/uced/Reports/Technical/fy2005_2006/2005_06_14.pdf (last accessed May 16, 2011). Therefore, nearly all of Eureka County's economic future is tied to activities conducted on or in concert with public lands, including grazing activities. Public lands grazing is vital to Eureka County and its residents, and provides an excellent example of how critical public lands grazing is to the West as a whole. Every ranch animal represents not only economic gain to the ranch's owner, but also to the county. When a ranch loses access to some of the forage that has allowed it to support its cows, horses, or sheep, that loss of forage and resulting loss of animals not only constitutes an effective capital loss to the ranch, but also to the county where the ranch is a part of the tax base. Economists have estimated that for every dollar generated by the cattle-raising sector in Eureka County, the county as a whole will benefit from $2.02 of total revenue. *See* Fadali, et al. 47. This high final demand multiplier suggests strong economic

linkages of the livestock sector to other sectors of the county's economy. *See id.* Further, for every dollar generated by livestock production, total county household income increases by $1.68, and for every job added by the livestock sector, total employment in Eureka County increases by 1.44 employees. *See id.* Therefore, the whole of Eureka County will be impacted by the outcome of this litigation.

Public lands ranching has allowed beneficial uses of federal lands that otherwise would have never occurred, making those lands productive for food for the nation. *See Red Canyon Sheep Co. v. Ickes*, 98 F.2d 308, 314 (D.C. Cir. 1938) (TGA "is designed to provide for the most beneficial use possible of the public range in the interest . . . of the public at large. The livestock industry of the West is an important source of food supply for the people of the nation."). Since the BLM-administered federal lands are the lands that went unreserved for special federal purposes and unclaimed for private ownership, they tend to be the more remote and least productive of the federal, and perhaps all Western, lands. *See* Coggins & Lindeberg-Johnson, "The Law of Public Rangeland Management II," 13 Envtl. L. at 20-22. Many federal lands are too far from any productive uses other than ranching. The TGA and FLPMA have afforded these lands a useful purpose to the nation through inclusion in public lands ranches. *See United States v. Fuller*, 409 U.S. 488, 495 (1973) ("[G]razing permits are of considerable value to ranchers and serve a corresponding public interest in assuring the 'most beneficial use' of range lands") (5-4 decision) (Powell, J., dissenting).

The regulations adopted by the BLM in 2006 establishing administrative requirements have the potential to have significant impacts on Western economies affected by public lands ranching. These regulations authorize ranchers to jointly own rangeland improvements and water rights, establish enforcement standards and timeframes for BLM's public range regulation, and establish public participation requirements. These regulations have not been applied, delaying any positive impact on those economies and for Western public lands ranchers. It is for this reason that the *amici curiae* urge this Court to grant Petitioner's petition for writ of certiorari.

CONCLUSION

Amici Curiae urges the Supreme Court to grant Petitioner's petition for writ of certiorari, and to reverse the decision of the Ninth Circuit Court of Appeals.

Respectfully submitted,

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