

DECISION



15744
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

[Limits of Livestock Grazing Privilege]

FILE: B-186373

DATE: December 30, 1980

MATTER OF: Indian Grazing Privileges on the Garrison
Dam Project

DIGEST: Public Law 87-695, 76 Stat. 594 (1962), permits the Three Affiliated Tribes of the Fort Berthold Reservation to graze livestock without charge on the former Indian lands acquired by the United States in connection with the Garrison Dam project. This privilege is limited to lands which were actually acquired from Indians and does not extend to lands that were acquired from non-Indians.

The Chief Counsel of the Army's Office of the Chief of Engineers has requested our opinion on whether Indian grazing rights at the Garrison Dam project extend to lands which were acquired from non-Indians as well as to lands acquired from Indians.

The Flood Control Act of December 22, 1944, 58 Stat. 887, established a comprehensive plan for the improvement of the Missouri River Basin and authorized the Secretary of the Army to acquire all lands necessary for the project. Most of the needed land lay within Indian reservations, and these lands were acquired from a number of Indian tribes, under varying terms worked out in several different statutes. Generally, the tribes were granted permission to continue to graze stock on the land. However, grazing privileges were not granted to the Three Affiliated Tribes of the Fort Berthold Reservation when their land was acquired for the Garrison Dam project in 1949. Pub. L. No. 81-437, 63 Stat. 1026. This omission was corrected by Public Law 87-695 (September 25, 1962), 76 Stat. 594, which extended grazing privileges to the Three Affiliated Tribes.

Not all of the project land which lay within reservations was owned by Indians. Some of the land was owned by non-Indians, who had acquired it from Indians through direct purchase, tax sales, etc. A question has arisen in connection with Indian grazing privileges as to whether the privilege is limited to land actually acquired from Indians or whether it extends to project lands within a reservation that were acquired from non-Indians.

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We first considered this question in B-142250, May 2, 1961, where we held that the grazing provisions in Public Law 85-916, 72 Stat. 1766 (1958), and Public Law 85-923, 72 Stat. 1773 (1958), applied only to lands that had been acquired from Indians. In 1977, we reviewed the grazing provision in Public Law 83-776, § X, 68 Stat. 1191, 1193 (1954), and held that it applied to land that had been acquired from non-Indians as well as to land that had been acquired from Indians. 56 Comp. Gen. 655 (1977). We also overruled our earlier decision, B-142250, May 2, 1961.

The Army Corps of Engineers now asks us for an interpretation of the grazing provision in Public Law 87-695. In administering its projects in the Missouri River Basin, the Corps wants to be able to treat all Indian tribes in the same fashion. Thus, it would like us to interpret the grazing provision in Public Law 87-695 as applicable to lands that were acquired from both Indians and non-Indians. However, because the law is explicit on this point, we cannot make such an interpretation.

As the Corps itself acknowledges, grazing privileges granted to the Three Affiliated Tribes "are somewhat different from those of other tribes." As first introduced, the bill which became Public Law 87-695 contained language similar to that which we interpreted in 56 Comp. Gen. 655:

"That the Three Affiliated Tribes of the Fort Berthold Reservation are hereby granted the exclusive right, without cost, to use all lands owned by the United States on the Fort Berthold Reservation lying between the shoreline of the Garrison Dam Reservoir and the exterior boundaries of the Garrison Dam project for grazing purposes for the benefit of the tribe and its members subject to the rights under existing grazing leases and permits. The tribe shall have the right to lease such land for grazing purposes to members or nonmembers of the tribe for such rental and on such terms and conditions as the Secretary of the Interior may prescribe." S. 1161, 87th Cong., 2d Sess., introduced March 2, 1961 (emphasis added).

However, the bill was amended by the Senate Committee on Interior and Insular Affairs, and the enacted version read as follows:

"Subject to the right of the United States to occupy, use, and control the lands acquired by the United States within the Fort Berthold Reservation for the construction, operation, and maintenance of the Garrison Dam and Reservoir project pursuant to the Flood Control Act of 1944, approved December 22, 1944, and amendatory laws, as determined necessary by the Secretary of the Army adequately to serve said purposes, the Three Affiliated Tribes of the Fort Berthold Reservation shall be permitted to graze stock without charge on such former Indian land as the Secretary of the Army determines is not devoted to other beneficial uses, and to lease such land for grazing purposes to members or nonmembers of the tribes on such terms and conditions as the Secretary of the Interior may prescribe. The foregoing grant of grazing privileges shall be subject to rights under existing grazing leases and permits." Pub. L. No. 87-695, 76 Stat. 594 (1962) (emphasis added).

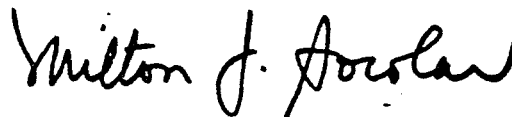
The plain meaning of the words "former Indian land," plus the fact that this phrase was substituted for "all lands owned by the United States on the Fort Berthold Reservation lying between the shoreline of the Garrison Dam Reservoir and the exterior boundaries of the Garrison Dam project" make it clear that the grazing privilege is limited to land which was acquired from Indians. This interpretation is reinforced by the Department of Interior's comments on the final version of the bill:

"The one recommendation of the Department that is not included in the bill is language that makes the grazing privilege apply to all project lands within the reservation boundaries, regardless of who was the former owner. The bill limits the grazing privilege to project lands within the reservation boundaries that were formerly owned by Indians. Convincing arguments can be advanced in favor of both of these approaches. While we prefer to extend the privilege to all project lands within the reservation boundaries, regardless of the former owners, we do not object to the language of the bill if that is the considered judgment of the committee." H.R. Rep. No. 2348, 87th Cong., 2d Sess. 2 (1962).

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To adopt the Army's suggested interpretation would be to revert to the language of the bill as introduced, language which was specifically changed in the legislative process.

In summary, we find that the grazing privilege granted by Public Law 87-695 is limited to lands which were acquired by the United States from Indians and does not extend to lands that were acquired from non-Indians. While we appreciate the Army's desire for consistency in the application of the Missouri River Basin statutes, the differences in statutory language make this consistency impossible. Should this impose an undue administrative burden upon the Army, its only recourse is to seek an amendment to Public Law 87-695.

A handwritten signature in dark ink, reading "Milton J. Aroslan". The signature is written in a cursive style with a large, stylized initial 'M'.

Acting Comptroller General
of the United States