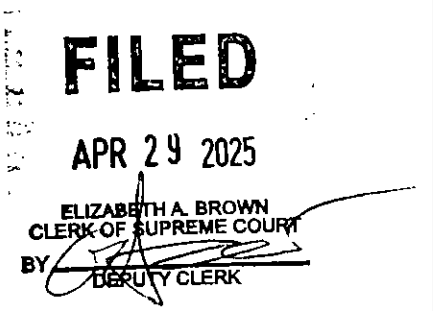
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DONALD ALT,
Appellant,
vs.
THE STATE OF NEVADA; KRISTINA SWALLOW, DIRECTOR, NEVADA DEPARTMENT OF TRANSPORTATION; LYON COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA; AND ANITA TALBOT, LYON COUNTY COURT RECORDER,
Respondents.

No. 88785-COA



ORDER OF AFFIRMANCE

Donald Alt appeals from a district court order dismissing his complaint with prejudice. Third Judicial District Court, Lyon County; Leon Aberasturi, Judge.

This matter arises out of the construction of Nevada State Route 439 (NSR 439), which is a four-lane highway connecting US Route 50 to Route 80. Relevant here, a portion of the highway was built across a portion of federal land known as the Stockton Flat Allotment. Following completion of the highway, Alt filed a civil complaint that generally alleged the Stockton Flat Allotment was a designated grazing district pursuant to the Taylor Grazing Act ("the Act"). Alt alleged that, beginning in 1998, he leased land from his son Toby Alt and used this land to obtain a 10-year grazing permit which allowed him to graze cattle on the allotment. Further, in 1999 Alt purchased "in fee simple" a grazing preference that he contends gave him a perpetual leasehold in the Stockton Flat Allotment. Alt asserted claims for inverse condemnation and/or eminent domain alleging

respondents the State of Nevada, Kristina Swallow, the Nevada Department of Transportation, Lyon County, and Anita Talbot engaged in an unlawful taking of his grazing preference when they participated in the creation of NSR 439 and, thus, he was entitled to damages.

Respondents filed a motion to dismiss arguing Alt lacked standing, his claims were untimely, and that his claims failed on the merits. Specifically, respondents argued Alt lacked standing to seek monetary damages because he did not own the land, his grazing permit expired prior to the construction of the highway, and the Bureau of Land Management (BLM) terminated his grazing preference prior to construction. Respondents further argued that, even if Alt had standing, his claims were untimely because the highway was completed in 2017 and he did not file suit until 2022. Finally, respondents argued the claims failed as a matter of law because the Act, which created the Stockton Flat Allotment and permitted the issuance of grazing permits, expressly stated that the creation of grazing districts or issuance of permits did not create a property interest.

Alt opposed the motion, arguing that, although he did not have a valid permit, he did have a valid grazing preference because he purchased the grazing preference "in fee simple" from its prior owner and his grazing preference predated the Act. Alt also argued that, even if he lacked standing, his son Toby had standing and requested leave to amend his complaint to add his son as a co-plaintiff. Further, Alt argued his claims were timely filed and not subject to dismissal pursuant to any statute of limitations. Finally, Alt acknowledged that, while most, if not all, courts have held that the Act does not create any compensable property interest, these courts failed to recognize a "latent ambiguity" in the Act which he

believed suggests the Act may recognize some property interest in public lands. Shortly after filing his opposition, Alt filed a motion to amend the complaint to add his son as a co-plaintiff and attached an affidavit from Toby which asserted he wished to be a plaintiff. Respondents opposed and argued the court should first evaluate the pending motion to dismiss before determining whether Alt could amend his complaint.

The district court entered an order denying the motion to amend without prejudice and stated Alt could refile his motion following the ruling on the motion to dismiss. The district court subsequently entered an order granting the motion to dismiss with prejudice. The district court found that Alt lacked standing because he did not own the land at issue, did not have a valid permit, and based on documents from the BLM, no longer held a valid grazing preference. The district court concluded that, because Alt lacked a compensable property interest, he lacked standing to bring suit. The court further found that the claims were barred by the statute of limitations because they were subject to Nevada's four-year "catch all" statute of limitations. Finally, the district court found that, pursuant to the Act, neither a grazing permit nor a grazing preference was a compensable property right and, thus, Alt's claim failed as a matter of law. Alt now appeals.

An order granting an NRCP 12(b)(5) motion to dismiss is reviewed de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). A decision to dismiss a complaint under NRCP 12(b)(5) is rigorously reviewed on appeal, with all alleged facts in the complaint presumed true and all inferences drawn in favor of the plaintiff. *Id.* Dismissing a complaint is appropriate "only if it appears beyond a doubt

that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief." *Id.* at 228, 181 P.3d at 672.[1]

On appeal, Alt argues, among other things, that the district court erred in dismissing his complaint as it failed to consider the "latent ambiguity" existing in the Act. He contends that, had it considered this ambiguity, it would have determined he had a compensable property interest based on legislative intent through his alleged grazing preference. Alt further argues the district court ignored NRS 568.225, which he contends established that grazing preferences are compensable property interests. Finally, Alt argues he should have been permitted to amend his complaint to add his son Toby to resolve any standing issue.

We conclude that, because the Act unambiguously provides that grazing permits do not create a compensable property interest, a conclusion which also necessarily applies to grazing preferences such as the one Alt claims,[2] the district court did not err by dismissing the complaint with prejudice.[3]

---

[1]On appeal, Alt argues that he was entitled to a lesser standard when the district court evaluated the motion to dismiss because he is proceeding pro se. We reject this contention as pro se parties are generally held to the same standards as other litigants. *See Rodriguez v. Fiesta Palms, LLC*, 134 Nev. 654, 659, 428 P.3d 255, 258-59 (2018) (noting there are no special rules for pro se litigants).

[2]Grazing preference holders "have a superior or priority position against others for the purpose of receiving a grazing permit of lease." 43 C.F.R. § 4100.0-5 (providing definitions for terms used in the Act).

[3]In light of our conclusion regarding the merits of Alt's complaint, we do not reach the merits of his standing and statute of limitations arguments. Additionally, although the district court considered documents outside the pleadings in addressing the standing issue, because we need not address

The Act permits the Secretary of the Interior to designate certain areas as grazing districts. *See Public Lands Couns. v. Babbitt*, 529 U.S. 728, 734 (2000) (detailing how the Interior Department administers the Act, including the creation of grazing districts and issuance of permits). Pursuant to the Act, the Interior Department designated the Stockton Flat Allotment as a grazing district and issued grazing permits. The Act further states that "[p]reference shall be given in the issuance of grazing permits to those within or near a district who are landowners engaged in the livestock business," or those who lease nearby land and engage in the livestock interest. 43 U.S.C. § 315b. The Act then goes on to state that:

> So far as consistent with the purposes and provisions of this subchapter, grazing privileges recognized and acknowledged shall be adequately safeguarded, but the creation of a grazing district or issuance of a permit pursuant to the provisions of this subchapter shall not create any right, title, interest, or estate in or to the lands.

Id. The district court relied upon this language in determining that, even if Alt had a grazing preference in the Stockton Flat Allotment, he did not have a compensable property interest in that preference and, thus, he could not support an inverse condemnation claim.

On appeal, Alt argues there is "latent ambiguity" in this portion of the Act that he contends supports a conclusion that he has a compensable property interest based on his alleged grazing preference. We disagree.

---

that issue and Alt does not argue that the motion to dismiss should have been converted to one for summary judgment, we do not address whether the motion should have been converted under the circumstances presented here.

While Alt concedes that most, if not all, courts to consider the Act have held that it does not provide for the creation of compensable property interests in grazing permits issued under the Act, he argues that this is because all of the courts to have considered this issue have failed to consider the "latent ambiguity" within the Act. Specifically, Alt argues that the language in the Act providing that "grazing privileges recognized and acknowledged shall be adequately protected" should be read as providing for a protected property interest in any privileges existing at or before the time the Act was adopted. Alt contends this interpretation should be adopted instead of the one relied on by the district court, which focuses on the latter half of the above quoted sentence stating that there are no property rights in permits issued pursuant to the Act. Alt maintains that his preferred construction of the statute would give him a property interest because the ownership of his grazing preference can be traced back to a period prior to the passage of the Act and, thus, his preference must be safeguarded pursuant to the Act.

Alt argues that his preference predates the creation of the Act because he can trace its ownership to ranchers who grazed cattle on the Stockton Flat Allotment before the Act's passage and before the Stockton Flat Allotment was designated a grazing district. Alt reasons that with this historical background in mind, the statute is ambiguous and the legislative history behind the Act demonstrates Congress intended to compensate individuals such as himself. We reject the contention that a preference which allegedly predates the Act creates a property interest regardless of the plain language in the Act itself. Prior to the passage of the Act, "grazing on federal public lands was done at the United States' sufferance." *Colvin Cattle Co., Inc. v. United States*, 468 F.3d 803, 807 (Fed. Cir. 2006); *see also*

Light v. United States, 220 U.S. 523, 535 (1911) (recognizing that allowing ranchers to use public lands without objection did not "deprive the United States of the power of recalling any implied license under which the land had been used for private purposes"); *Ansolabehere v. Laborde*, 73 Nev. 93, 100, 310 P.2d 842, 845 (1957) (recognizing that even if ranchers had an "implied license" to graze on public land prior to the Act's passage, this "license" did not create a property right and could be withdrawn). Accordingly, to the extent Alt argues that because his preference allegedly predated the Act, the plain language either somehow does not apply to him or required safeguarding of this pre-Act right, this is incorrect as the Act extinguished any "implied license" his predecessors may have enjoyed. *See also United States v. Grumaud*, 220 U.S. 506, 521 (1911) (recognizing that while the United States may have previously implicitly allowed its public land to be used for cattle grazing, this was "curtailed and qualified by Congress, to the extent that such privilege should not be exercised in contravention of the rules and regulations").

Having resolved Alt's argument regarding his alleged "pre-existing privilege" we turn now to the language of the Act itself. A statute is only ambiguous if it "is capable of being understood in two or more senses by reasonably informed persons[.]" *McKay v. Bd. of Supervisors of Carson City*, 102 Nev. 644, 649, 730 P.2d 438, 442 (1986). And here, the statute is not ambiguous because the plain language clearly states that the creation of a grazing district or the granting of a permit pursuant to the Act "shall not create any right, title, interest or estate in or to the lands."[4] 43 U.S.C.

---

[4]Notably, Alt does not even assert that he has a grazing permit, and instead contends he has a property interest based on a grazing preference, which awards priority position for obtaining a grazing permit. *See* C.F.R. §

§ 315b. Indeed, the United States Supreme Court has expressly recognized as much, concluding that "[t]he provisions of the Taylor Grazing Act . . . make clear the congressional intent that no compensable property right be created in the permit lands themselves." *See United States v. Fuller*, 409 U.S. 488, 494 (1973); *see also Mollohan v. Gray*, 413 F.2d 349, 353 (9th Cir. 1969) (holding that grazing permits "confer upon the recipients a mere privilege to graze livestock, and this privilege may be withdrawn by the United States without payment of compensation").

Moreover, while Alt attempts to create an ambiguity through a selective reading of the "adequately safeguarded" language, his interpretation would read out not only the express language providing that grazing permits do not create property interests, but also the introductory language of this sentence, which directs the Department of the Interior to take actions "consistent with the purposes and provisions of this subchapter." *See Public Lands Council*, 529 U.S. at 741-42 (holding the "safeguard" language, when evaluated in conjunction with the language stating there is no property interest, demonstrates only that the Department is free "to determine just how, and the extent to which, 'grazing privileges' shall be safeguarded, in light of the Act's basic purposes"). Further, adopting Alt's argument would render the portion of the Act regarding the creation of property interests meaningless because it would in essence require this court to hold that a portion of the Act is inapplicable to a certain class of ranchers, even though the Act does not contain such an exception. *See Leven v. Frey*, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007)

4100.0-5 (stating that those with a grazing preference have a priority position for obtaining a grazing permit).

(holding "statutory interpretation should not render any part of a statute meaningless").

Based on the foregoing analysis, we conclude that Alt's ambiguity argument does not provide a basis for relief. As a result, we conclude the district court properly rejected that argument and determined that, under the Act's plain language, Alt did not have a compensable property interest in his grazing preference.

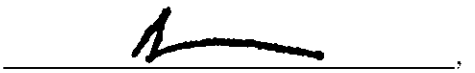
Turning to Alt's additional argument that NRS 568.225 created a compensable property interest in his grazing preference, we likewise reject this argument. While NRS 568.225(1)(b) states that grazing preferences are appurtenant to the base property, and an individual who purchases or leases the base property cannot be denied this preference without just compensation, this statutory provision cannot and does not grant Alt a property interest in the federal land at issue here. Indeed, the plain language of NRS 568.225(1) expressly states that the statute applies "except as otherwise provided in the Taylor Grazing Act." And as noted above, the Act expressly provides that grazing permits do not create a property interest, *see* 43 U.S.C. § 315b, a conclusion that necessarily also applies to grazing preferences such the one Alt claims, which, as discussed above, simply gives priority position to obtain a permit, *see* C.F.R. § 4100.0-5. Thus, the plain language of NRS 568.225(1) makes clear that this statute does not create a property interest in grazing preferences applicable to federal land.

Moreover, even assuming NRS 568.225 did purport to create a property interest in federal land, any such provision would be preempted by the Act. *See Ansolabehere*, 73 Nev. at 97, 310 P.2d at 844 (holding that when the United States, as owner of the public lands, "entered upon the

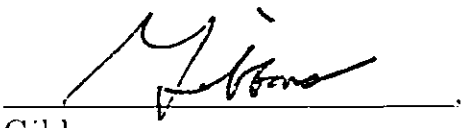
control and administration" of such lands through the Taylor Grazing Act, Nevada laws regarding the regulation of such land "were superseded and rendered ineffective"). Thus, we conclude NRS 568.225 does not create a compensable property interest in Alt's claimed grazing preference for the Stockton Flat Allotment and his reliance on this statute does not provide a basis for relief from the district court's decision.

Accordingly, based on the reasoning set forth above, we affirm the district court's dismissal of Alt's complaint.[5]

It is so ORDERED.



_____, C.J.
Bulla



_____, J.
Gibbons

_____, J.
Westbrook

cc: Hon. Leon Aberasturi, District Judge
Donald Alt
Thorndal Armstrong /Las Vegas
Thorndal Armstrong/Reno
Attorney General/Transportation Division/Carson City
Third District Court Clerk

---

[5]In light of our resolution of this matter, we likewise affirm the denial of Alt's motion to amend his complaint to add an additional plaintiff. And insofar as Alt raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given our disposition of this matter.