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Constitutional Law - Expansion of National Power under the Property Clause: Federal Regulation of Wildlife - Kleppe v. New Mexico

Margaret Elizabeth Plumb

CASE NOTES

CONSTITUTIONAL LAW—Expansion of National Power Under the Property Clause: Federal Regulation of Wildlife. Kleppe v. New Mexico, ____ U.S. ____, 96 S.Ct. 2285 (1976).

The New Mexico Livestock Board, pursuant to the New Mexico Estray Law,[1] rounded up and removed nineteen unbranded and unclaimed burros on public lands. The burros were then sold at a public auction. After the sale, the Bureau of Land Management asserted the right to possession of the burros under the Wild Free-Roaming Horses and Burros Act[2] and demanded that the burros be returned to the public lands. The State of New Mexico, the Livestock Board and its director, and the purchaser of three of the burros sought injunctive relief and a declaratory judgment that the Wild Free-Roaming Horses and Burros Act was unconstitutional. A three-judge district court[3] held that the Act unconstitutional and enjoined its enforcement. The United States Supreme Court, in *Kleppe v. New Mexico*,[4] reversed and unanimously held that, as applied to this case, the Act is constitutional because the property clause[5] gives Congress the power to protect and regulate wildlife on public lands, state law notwithstanding.[6]

In addition to defining the current scope of federal control over wildlife, the decision in *Kleppe v. New Mexico* has broad implications for determining the expansive bounds of Congressional power under the property clause and reciprocal state legislative power over public lands and adjoining private lands. A brief history of federal legislation protecting wild horses and burros, the extent of Congressional power to regulate wildlife under the property clause and the ramifications of the *Kleppe v. New Mexico* decision are the subjects of this note.

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1. N.M. STAT. ANN. § 47-14-1 *et seq.* (Repl. 1966).
2. 16 U.S.C. §§ 1331-40 (Supp. IV, 1975).
3. 28 U.S.C. § 2282 (1970); A court of three judges is required in hearing an application for an injunction restraining the execution of an act of Congress for repugnance to the Constitution.
4. Kleppe v. New Mexico, ___U.S. ___, 96 S.Ct. 2285 (1976).
5. U.S. CONST. art. 4, § 3; "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States."
6. Kleppe v. New Mexico, *supra* note 4, at 2295.

BRIEF HISTORY OF LEGISLATION PROTECTING WILD HORSES AND BURROS

The passage of federal legislation protecting wild horses and burros was the result, in part, of public outrage at the ruthless and extensive practice of capturing and slaughtering wild horses for use in commercial products.[7] From 1900 to 1950, the number of wild horses had been reduced from approximately two million to 25,000.[8] The number of wild burros had also decreased since claims of overpopulation and competition with other feral animals resulted in systematic extermination programs.[9]

In 1959, the Wild Horse Annie Law[10] was passed which prohibited the capturing of wild horses and burros on United States land by use of airplanes and mechanized vehicles. With the most expedient method of roundup outlawed, hunters were no longer able to capture wild animals in such large quantities. However, capture by horseback, depletion of watering holes and limitation of grazing areas by fencing still threatened wild horses and their habitat.[11]

Local officials had the responsibility of enforcing the Wild Horse Annie Law. Frequently this enforcement was half-hearted because of the strong influence of vested-interest groups on behalf of game animals and domestic livestock inhabiting the same areas as wild horses and burros.[12] Public interest and concern continued to grow along with the recognition that a federal program of management and control was

7. Johnston, *The Fight to Save a Memory*, 50 TEX. L. REV. 1055, 1062 (1972).
8. *Id.* at 1055; Wyman, THE WILD HORSE OF THE WEST (1945); McKnight, *The Feral Horse in Anglo-America*, 49 GEOGRAPHICAL REV. 506 (1959).
9. Johnston, *supra* note 7, at 1055-56. The primary method of roundup was by low-flying airplanes which drive thousands of wild animals from their shelters to the open country. Horses were often shot from the air, usually not fatally since a slaughterhouse requirement was that the animals be ambulatory. The chase was continued by fast trucks with ropers lassoing the injured and exhausted animals. The horses were then tightly packed into trucks and transported to processing centers. Colts, because they weighed less, were frequently left behind, falling prey to starvation or predators.
10. 18 U.S.C. § 47 (1970).
11. Johnston, *supra* note 7, at 1059.
12. *Id.* at 1059.

essential to provide genuine protection of these wild animals.[13]

In 1971, the Wild Free-Roaming Horses and Burros Act was enacted to protect "all unbranded and unclaimed horses and burros on public lands of the United States" from "capture, branding, harassment, or death."[14] According to the Act, all such animals on the public lands are to be administered by the Secretary of the Interior through the Bureau of Land Management or by the Secretary of Agriculture through the Forest Service.[15]

The Act prohibits indiscriminate reduction programs, but humane destruction of old, sick, or lame animals may be allowed if an area is overpopulated.[16] Additional excess animals may be removed for private maintenance under humane conditions and care.[17] The remains of deceased wild horses and burros may not be sold for any consideration, directly or indirectly, nor can they be processed into commercial products.[18] Although the constitutionality of the Act in all of its conceivable applications has not yet been determined, the American wild horses and burros have been afforded a measure of protection never known before.[19]

THE EXTENT OF FEDERAL REGULATION OF WILDLIFE UNDER THE PROPERTY CLAUSE

In formulating the Act, Congress apparently intended to invoke the property clause by stating that wild horses and burros "are to be considered in the area where presently found, as an integral part of the natural system of the public

13. *Id.* at 1060.
14. 16 U.S.C. § 1331-32 (Supp. IV, 1975).
15. 16 U.S.C. § 1332-33(a) (Supp. IV, 1975).
16. 16 U.S.C. § 1333(b) (Supp. IV, 1975).
17. 16 U.S.C. § 1333(b) (Supp. IV, 1975). The Bureau of Land Management has published pamphlets and booklets detailing the procedure for adopting a wild horse or burro. The applicant must sign a cooperative agreement and promise to abide by certain conditions to gain custody of the animal. The federal government remains as legal guardian and periodically the animals are checked in their "foster" homes to assure humane treatment and adequacy of facilities. As of May 12, 1976, there were more than 700 horses in "foster" homes, scattered from New York to California.
18. 16 U.S.C. § 1333(d) (Supp. IV, 1975).
19. Johnston, *supra* note 7, at 1062.

lands."[20] The animals are to be federally protected and managed as components of the lands "in a manner that is designed to achieve and maintain a thriving natural ecological balance on public lands."[21] To view, in proper perspective, the Supreme Court's recent decision unanimously upholding the constitutionality of such language, it is necessary to consider the historical evolution of federal regulation of wildlife under the property clause.

The Supreme Court examined the history of the power to control wild animals in *Geer v. Connecticut*[22] and concluded that the control of *ferae naturae* was vested by the English Crown in the colonial governments. This power passed to the states insofar as its exercise was not incompatible with the rights of federal government under the Constitution.[23]

From this basis, the rule developed that each state, in its sovereign capacity, owned the wildlife within its borders.[24] The Supreme Court later commented that state ownership was a "fiction" expressive in legal shorthand of the power of a state to preserve and regulate an important resource.[25] However, the doctrine has not been completely laid to rest as some modern decisions have recognized the right of state control under the ownership theory.[26] Yet, even without applying the state ownership doctrine, states have been permitted broad control over wildlife within state lines as an exercise of their police power—the general power to pass laws for the welfare of the people of the state.[27]

The states' degree of dominion has not been absolute, however, as the Court has held that a state's authority to reg-

20. 16 U.S.C. § 1331 (Supp. IV, 1975).
21. 16 U.S.C. § 1333(a) (Supp. IV, 1975).
22. Geer v. Connecticut, 161 U.S. 519 (1896).
23. *Id.* at 528.
24. Lacoste v. Dep't. of Conservation, 263 U.S. 545, 549 (1924).
25. Toomer v. Witsell, 334 U.S. 385, 402 (1948). In Kleppe v. New Mexico, *supra* note 4, at 2290 n.8, the Court noted that the Secretary made no claim that the United States owned the wild horses and burros found on public lands and the Court did not discuss the ownership issue, choosing, rather, to decide the case on other grounds.
26. Leger v. Louisiana Dep't. of Wildlife and Fisheries, 306 So.2d 391, 394 (La. Ct. App.), *cert. denied*, 310 So.2d 640 (La. 1975).
27. Comment, *Regulation of Wildlife in National Park System: Federal or State?*, 12 NATURAL RESOURCES J. 627, 629 (1972).

ulate wildlife is not exclusive of paramount powers.[28] Historically, the exercise of these paramount powers, in the form of federal authority to regulate wildlife under the property clause, has been permitted only where damage to public lands was at issue. In *Hunt v. United States*, the Court upheld the government's authority to thin overpopulated herds of deer that were damaging foliage on federal forest land.[29] This authority was extended in *New Mexico State Game Comm'n. v. Udall*[30] which appeared to illustrate the new limit of federal control of wildlife under the property clause. In this case, federal officials instituted a program of killing deer in Carlsbad Caverns National Park for a research study. The officials were then enjoined from continuing the program unless they complied with state law.[31] On appeal, the decision was reversed,[32] the district court holding that since the results of the study were to be used later to implement programs for preventing depredation of public lands, the Secretary of the Interior was acting within his authority in having the deer killed.[33]

On the basis of these decisions, the district court in New Mexico interpreted the property clause as only permitting Congress to pass legislation to protect the public lands from damage of some kind.[34] Therefore, since the Act was primarily aimed at protecting wild horses and burros, and not the land on which they lived, the court held that the Act could not be sustained as a Congressional exercise under the property clause.[35] The Supreme Court rejected this narrow reading of the property clause and held that the complete power of Congress to make "needful" regulation "respecting" public lands necessarily includes the power to protect the wildlife living there.[36] The Court noted that damage to federal land

28. Missouri v. Holland, 252 U.S. 416, 434 (1920).
29. Hunt v. United States, 278 U.S. 96, 100 (1928).
30. New Mexico State Game Comm'n. v. Udall, 281 F. Supp. 627 (D.N.M. 1968), *rev'd.*, 410 F.2d 1197 (10th Cir.), *motion for leave to file petition for writ of mandamus denied*, 396 U.S. 953, *cert. denied*, 396 U.S. 961 (1969).
31. *Id.*, 281 F. Supp. 627.
32. *Id.*, 410 F.2d 1197.
33. *Id.* at 1201.
34. New Mexico v. Morton, 406 F. Supp. 1237, 1239 (D.N.M. 1975), *rev'd. sub nom.* Kleppe v. New Mexico, *supra* note 4.
35. *Id.*, 406 F. Supp. 1239.
36. Kleppe v. New Mexico, *supra* note 4 at 2292.

is a sufficient but not necessary basis for permitting regulation under the property clause.[37] Thus, in *Kleppe v. New Mexico*, federal control over wildlife on public lands was permitted without a showing that such regulation was specifically needed to protect federal land.[38]

POSSIBLE RAMIFICATIONS OF THE *Kleppe v. New Mexico* DECISION

The possible ramifications of the *Kleppe v. New Mexico* decision are considerable since the federal government owns a third of the total land area of the United States, and most of the land in several western states.[39]

The decision should not directly affect acquired lands over which Congress may have exclusive or partial jurisdiction by virtue of state consent or cession.[40] Rather, the property clause and the Court's decision apply directly to public domain lands over which the government has paramount but not exclusive jurisdiction.[41] The public lands consist primarily of Bureau of Land Management areas and federal forest lands.[42] The extent to which Congress can use the property clause to enact general welfare laws applying to these lands appears to be almost boundless. The Court has held that "[t]he United States can prohibit absolutely or fix the terms on which its property may be used."[43] The Court later noted that "[t]he power over the public land thus entrusted to Congress is without limitations."[44]

37. *Id.*, at 2290.
38. *Id.*
39. U.S. BUREAU OF CENSUS, DEP'T. OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 203 (96th ed. 1975); Of the United States land area, 33.5% is the property of the federal government. This includes 96.4% of the land area of Alaska, 86.5% of Nevada, 66.2% of Utah, 63.7% of Idaho, 52.3% Oregon, 48% of Wyoming, 45% of California, and 43.9% of Arizona.
40. U.S. CONST. art, 1, § 8. In Kleppe v. New Mexico, *supra* note 4, at 2293, the Court noted that Congress' derivative legislative powers were not involved in this case and had nothing to do with Congress' powers under the property clause.
41. U.S. CONST. art. 4, § 3. In Kleppe v. New Mexico, *supra* note 4, at 2292, the Court remarked that under the property clause, Congress exercises the powers both of a proprietor and of a legislature over the public domain.
42. THE WORLD ALMANAC AND BOOK OF FACTS 156 (1976); Of the 704,749,883.4 acres of public domain lands, 471,631,492 acres consist of Bureau of Land Management areas, and 160,242,696.7 acres consist of federal forest lands.
43. United States v. Light, 220 U.S. 523, 536 (1911).
44. United States v. City and County of San Francisco, 310 U.S. 16, 29 (1940).

In *Kleppe*, the Court approved broad Congressional power to regulate public lands[45] and extended the scope of the property clause one step further to include protecting the wildlife thereon.[46] The immediate surface result of the Court's decision will be to seriously affect the viability of state estray laws and provisions thereof. The Court has ruled that, though the Act does not establish exclusive federal jurisdiction over public lands, it overrides state estray laws insofar as they attempt to regulate federally protected animals.[47] The Court acknowledged the power of states to retain jurisdiction over federal lands within state territory but noted that under the supremacy clause[48] federal legislation under the property clause necessarily overrides conflicting state laws.[49] No longer may state or county livestock inspectors send estray horses and burros captured on federal land to public markets[50] nor may permits be issued to round up unclaimed horses on federal lands.[51]

The act protects wild horses and burros on both public and private lands,[52] but the Supreme Court in its recent decision held only that the Act, as it applies to animals taken from public lands, was constitutional and left undetermined the extent, if any, to which the property clause empowers Congress to protect animals on private lands.[53] The Court noted, however, that under some circumstances, regulations under the property clause may have some effect on private lands not otherwise under federal control.[54] This appears

45. Kleppe v. New Mexico, *supra* note 4, at 2291.
46. *Id.*, at 2292, 2295.
47. *Id.*, at 2294.
48. U.S. CONST. art. 6.
49. Kleppe v. New Mexico, *supra* note 4, at 2293.
50. WYO. STAT. § 11-500 (Supp. 1975); "The inspector shall order the estray animal sent to the most feasible convenient public market designated by the inspector, and there to be sold." This provision and numerous other similar state provisions, as they pertain to wild horses and burros captured on public lands, are now nullities. The validity of the provision, as it pertains to wild horses and burros captured on private land is questionable.
51. WYO. STAT. § 11.503 (Supp. 1975) requires written permission "from the person, persons, organization or corporation who has ownership or control of the surface rights of the range whereon the unclaimed horses are to be gathered or rounded up." While it is clear that estray horses may not be rounded up on federal land, it is likely that this provision, as it pertains to the issuance of round-up permits based on the consent of private land owners, will also be voided by future Court decision.
52. 16 U.S.C. § 1334 (Supp. IV, 1975).
53. Kleppe v. New Mexico, *supra* note 4, at 2295.
54. *Id.*

to be true with respect to activities which directly affect public lands, such as the erection of a fence which encloses federal acreage,[55] or activities which imperil public lands, such as the building of fire near a national forest.[56]

In the future, the Court may hold that federal regulation over wild horses and burros normally occupying public lands as their habitat does not cease during the occasional wanderings of the animals on state and private land. If the Court should extend this protection to animals infrequently grazing on public land, the next question is whether the Act[57] "will be read to provide federal jurisdiction over every wild horse or burro that at any time sets foot upon federal land."[58] The Court's resolution of these issues will be significant in determining the bounds of Congressional power to regulate wildlife under the property clause.[59]

The full scope of federal control over wildlife is already considerable since, in addition to utilizing the property clause, Congress has also enacted wildlife legislation under other enumerated powers. Migratory birds[60] and endangered species[61] have been protected by the government under its treaty-making power,[62] and marine animals[63] have been protected under the commerce clause.[64]

In some areas, Congress has chosen not to supersede state jurisdiction. In establishing the National Wildlife

55. Camfield v. United States, 167 U.S. 518, 525-26 (1897).
56. United States v. Alford, 274 U.S. 264, 267 (1927).
57. 166 U.S.C. § 1334 (Supp. IV, 1975).
58. Kleppe v. New Mexico, *supra* note 4, at 2295.
59. *Id.* at 2291.
60. Migratory Bird Treaty Act of 1918, 16 U.S.C. § 703 (Supp. IV, 1975), *amending* 16 U.S.C. §§ 703-11 (1970). The constitutionality of the original enactment was upheld in Missouri v. Holland, *supra* note 28, at 420.
61. Endangered Species Act of 1973, 16 U.S.C. §§ 1531-43 (Supp. IV, 1975). Congress also enacted the Bald Eagle Protection Act, 16 U.S.C. §§ 668-68c (Supp. IV, 1975), *amending* 16 U.S.C. §§ 668-68d (1970) which prohibits the killing or sale of bald and golden eagles. It is not readily apparent upon which basis of Congressional power the Act was enacted since the statutory language contains no express reference to the property clause, commerce clause, or treaty-making provision. Neither has there been a judicial interpretation of the underlying Congressional power since the states have not challenged the constitutionality of this statute.
62. U.S. CONST. art. 2, § 2.
63. Marine Mammal Protection Act of 1972, 16 U.S.C. §§ 1361-407 (Supp. IV, 1975).
64. U.S. CONST. art. 1, § 8.

Refuge System, Congress provided that the authority of the states to control fish and resident wildlife in the system would not be affected.[65] However, state control over various game animals might be seriously undermined by the implications of the *Kleppe v. New Mexico* decision. In *Kleppe*, the property clause was invoked because Congress found the wild horses and burros to be "an integral part of the natural system of the public lands."[66] Since the constitutionality of such a finding has now been unanimously upheld, it is conceivable that in the future Congress might find that elk, deer, and other game animals are an integral part of the natural system of public lands and a federal statute regulating their management on public and adjoining private lands will be enacted, thus superseding all relevant conflicting state statutes. Interior Secretary Kleppe has assured various Fish and Game Commissioners that it is not the Department of Interior's intent to ask Congress for legislation regulating wildlife species and game animals on public lands.[67] However, Kleppe noted that the Supreme Court's recent decision makes it clear that Congress does have the power to delegate wildlife functions on public lands to federal agencies.[68]

Thus, the possibility exists of erosion of states' control over hunting and fishing within their borders. The wisdom of such a course of action is questionable since wildlife found in the several states is characterized by such diversity that a rational system of regulation could not be formulated by a single federal body. It would not be reasonable to assume that Congress could enact legislation well-suited to the regulation of the fish of the New England streams, the reptiles of the southern swamps, the predators of the midwestern plains, and the big game of the Rocky Mountains.

A further ramification of *Kleppe* is the possible expansion of federal control in areas other than wildlife regulation. The scope of this possible expansion is indeterminable since

65. 16 U.S.C. § 668dd(c) (Supp. IV, 1975).
66. 16 U.S.C. § 1331 (Supp. IV, 1975).
67. Associated Press News Release, July 27, 1976; Remarks made by Secretary of the Interior, Thomas Kleppe, to the 56th annual conference of the Western Association of Fish and Game Commissioners in Sun Valley, Idaho.
68. *Id.*

the Court noted that "the furthest reaches of the power granted by the property clause have not yet been definitively resolved."[69] However, it is significant that the Court held that the property clause must be given an expansive reading.[70]

In discussing the permissible reaches of the property clause, the Court, in *Kleppe*, reaffirmed the power of Congress to control the occupancy and use of public lands, to protect the lands from damage, and to prescribe the conditions upon which others may obtain rights in them.[71] In these areas, the *Kleppe* decision represents no change from prior constitutional law. The primary significance of *Kleppe*, for predicting the future scope of the property clause, is the Court's conclusion that federal legislative power is not confined solely to the enactment of land regulatory measures.[72] This determination can have far-reaching effects when coupled with the Court's approval of federal regulation of activities on private lands under certain circumstances.[73]

The Court has held that states may prescribe police regulations applicable to public lands if they are not inconsistent with federal law.[74] However, where Congress chooses to act, all conflicting state regulations pertaining to public lands are invalid, even where the federal statutes are exercises of police power traditionally reserved to the states.[75] The *Kleppe* decision, permitting federal regulation of wildlife on public lands, indicates the Court's approval of increased federal power under the property clause to enact police regulations by declaring a relationship between the subject matter of the legislation and the system of public lands.

If the outer limit of the current constitutional test of federal control under the property clause is whether there is a conceivable connection between the subject matter of the law and the public lands and whether actions on private lands

69. Kleppe v. New Mexico, *supra* note 4, at 2291.
70. *Id.* at 2290, 2292.
71. *Id.* at 2292, *citing* Utah Power and Light Co. v. United States, 243 U.S. 389, 405 (1917).
72. Kleppe v. New Mexico, *supra* note 4, at 2292.
73. *Id.* at 2295.
74. McKelvey v. United States, 260 U.S. 353, 359 (1922).
75. *Id.*

"affect or imperil" adjoining public lands, Congress potentially has the power to supersede conflicting state laws in a multitude of areas including mining,[76] water rights, and land use regulation. While it is doubtful that there will be a rash of Congressional Acts superseding state laws in these and other fields, the possibility that Congress may possess such constitutional power would constitute a serious encroachment on traditional state sovereignty.

Historically, the Court has permitted expansion of Congressional power under the commerce clause to include regulation of activities only vaguely related to interstate commerce.[77] Should the Court permit a similar expansion of federal power under the property clause, state authority to enact general welfare laws pertaining to private lands adjoining public lands and private surface land over federally-owned minerals will be substantially curtailed.

In the case of the wild horses and burros, there was evidence that state and local protection of the animals was largely ineffective and a national system of management was necessary.[78] However, many forms of wildlife can be adequately managed and protected by state law and it would be hoped that states would retain the power to regulate most activities on adjoining private lands. Therefore, a definitive Supreme Court ruling is needed to establish specific limits

76. In Herschler v. Kleppe, No. C76-108 (D. Wyo., filed June 9, 1976), the governor of Wyoming is seeking injunctive relief against enforcement of federal regulations, to the extent that they assert jurisdiction under the Mineral Leasing Act [30 U.S.C. §§ 181-287 (1970)] and the Mineral Leasing Act for Acquired Lands [30 U.S.C. §§ 351-59 (1970)] to preclude the application of state law governing reclamation of mined lands within Wyoming. *See generally* Alfers, *Accommodation or Preemption? State and Federal Control of Private Coal Lands in Wyoming*, 12 LAND & WATER L. REV. 73 (1977).

77. Perez v. United States, 402 U.S. 146 (1971); Wickard v. Filburn, 317 U.S. 111 (1942).

78. Johnston, *supra* note 7, at 1063; *But see* Romero, *Donkey Dilemma Damages Public Land*, High Country News, January 30, 1976, at 1, col. 4. This article argues in favor of stricter burro control and reports that oversized burro herds in California and New Mexico are causing detrimental effects to vegetation and native wildlife populations. 16 U.S.C. § 1333(a) (Supp. IV, 1975) anticipates potential problems in this area and authorizes federal management "carried out in consultation with the wildlife agency of the State . . . in order to protect the natural ecological balance of all wildlife species which inhabit such lands, particularly endangered wildlife species. Any adjustments in forage allocations . . . shall take into consideration the needs of other wildlife species which inhabit such lands."

on the extent to which Congress can supersede state regulations pertaining to wildlife roaming on private and public lands and general welfare activities conducted on adjoining private lands.

CONCLUSION

The Supreme Court's recent decision in *Kleppe v. New Mexico* marks an approval of increased federal control over wildlife on public lands. The Court held that, under the property clause, Congress has unlimited authority to determine what are "needful" rules "respecting" public lands, including the power to protect wild horses and burros as components of such lands. Since the states were unable or unwilling to provide effective protection, the Court's unanimous decision should be applauded for guaranteeing that federal legislation, essential to the animals' welfare, will remain in force. The limits of Congressional power under the property clause are undetermined, however, since the Court refrained from deciding the constitutionality of the Act as it applies to wild horses and burros on private land. It would seem incongruous to withdraw federal protection from animals usually occupying public lands during their occasional wanderings on private lands. Yet in deciding this question, the Court should consider the possible erosion of states' police power over game animals and other *ferae naturae* as a consequence of further expansion of federal control over wildlife.

The *Kleppe* decision also has significant implications for determining the future scope of federal power under the property clause in areas other than wildlife regulation. The Court indicates that a federal statute can pass constitutional muster under the property clause without being a land regulatory measure if Congress declares a relationship between the subject matter of the statute and the system of public lands. Application of this standard could justify a wide variety of Congressional enactments serving a valuable purpose in matters where a national need is evident but also posing, in many instances, a major threat to the rights reserved

to the several states. The Court also approved extending Congressional power under the property clause beyond territorial limits in certain circumstances which may leave the door open to a possible erosion of states' power to enact general welfare laws concerning private lands.

The Court has indicated a reluctance to permit a state to obstruct Congressional intent, and in this case, a federal management program was enacted largely because state protection of the wild horses and burros was unsuccessful. However, other wild animals and general welfare activities on adjoining private lands can be equally well regulated by state laws, and undoubtedly, in future decisions, the Supreme Court will have to determine the fine line.

MARGARET ELIZABETH PLUMB