

## [Award of Attorney Fees is Improper Where Litigation Sought Renewal of Grazing Permits Rather than the Grant or Renewal of a License](#)

Posted on October 21, 2010 by [David J. McMahon](#)

In [Western Watersheds v. Interior Board of Land Appeals](#), 2010 DJDAR 15784 (9<sup>th</sup> Cir. 2010), the [Ninth Circuit](#) decided a case involving the interplay between the renewal of [Bureau of Land Management](#) (BLM) [grazing permits](#) and the fee shifting provisions of the [Equal Access to Justice Act](#) (“EAJA”).

After the BLM issued decisions renewing grazing permits in Idaho, the [Western Watersheds Project](#), (“Western”) a conservation group, filed administrative appeals of those decisions. In essence, Western alleged that the permits were improperly granted in violation of federal regulations and the [National Environmental Policy Act](#) (“NEPA”).

An administrative law judge consolidated the appeals and issued a partial stay. This was a substantial victory for Western and, subsequently, the parties entered into a settlement agreement. Western moved for fees and costs under the Equal Access to Justice Act (EAJA). The EAJA partially waives the sovereign immunity of the United States allowing an award of attorneys’ fees in limited circumstances

The administrative law judge denied the motion for fees in its entirety, and Western appealed to the [Interior Board of Land Appeals](#) (Board). The Board affirmed, as did the district court, finding that the “**adjudication was for the purpose of granting or renewing a license,**” and was not within the purview of the EAJA. Western appealed the decision to the Ninth Circuit.

The Ninth Circuit affirmed the decision of the district court noting that Western’s administrative appeal was to challenge BLM’s renewal of grazing permits. For this reason the EAJA was inapplicable to the proceedings.