

PRIVATE GRAZING ON PUBLIC LANDS:

Uncovering the Struggle Between Dollars and Sense

by

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Abstract

Cattle have been grazing on America's rangelands since the first settlers ventured westward. While settlements occurred along rivers and streams; the dryer, less fertile rangelands were used by ranchers to graze their cattle. As time went on these dry rangelands became increasingly contested by other land users and land disputes became common. In 1897 the federal government stepped in and began issuing grazing permits by charging a fee administered by the Forest Service, but the permits accounted for a small portion of the vast lands in the West. Ranchers were still free to roam their cattle on the majority of public lands. Fast-forward to today and the problem of private grazing on public lands has become a hotly contested problem both financially and more importantly, environmentally. This thesis offers environmentally charged policy-based strategies addressing the impacts that overgrazing has caused to the arid west, and suggests a few possible solutions to end the problem. Suggestions are made as to how the agencies involved can utilize regulations that are already in place to alter the management of the grazing permit program in order to bring about ecological change and environmental remediation of the land. By utilizing the proposal that would implement a yearly incremental increase in the grazing fee, as discussed with an eye toward allowing the rangelands time to recover, the agencies involved could increase the amount of money taken in by the grazing permit system, and benefit the environment at the same time.

TABLE OF CONTENTS

	Page
List of Figures.....	iv
List of Tables.....	iv
Acknowledgements.....	v
INTRODUCTION/ HISTORY.....	1
ENVIRONMENTAL IMPACTS.....	3
Ecological Impacts.....	4
Forest Health.....	4
Watersheds.....	5
Impacts on Wildlife.....	7
REGULATIONS.....	11
Bureau of Land Management (BLM).....	11
Forest Service.....	14
ADMINISTRATION OF GRAZING ON PUBLIC LANDS.....	17
BLM and Forest Service.....	17
Permit Fees.....	19
Stakeholders.....	23
WHAT CITIZENS CAN DO.....	26
National Environmental Policy Act (NEPA).....	27
Limitations to NEPA.....	32
PROPOSALS.....	34
Selective Retirement of Special Allotments.....	34
Complete Federal Retirement.....	36
Incremental Raising of Grazing Fees.....	38
CONCLUSION.....	41
ENDNOTES.....	43

LIST OF FIGURES

Figure	Page
Rio de Las Vacas in New Mexico (Photo 1).....	5
Location of Federal Lands by Agency (Figure 1	17

LIST OF TABLES

Table	Page
Fees Charged by Federal Agencies (Table 1.....	21

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PRIVATE GRAZING ON PUBLIC LANDS:

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The Rise of Grazing in the Arid West¹

Cattle have been grazing on America's arid rangelands ever since covered wagons brought the first settlers driving westward. Indeed, environmental historian Donald Worster says it was "the invasion [of the West] by millions of head of exogenous horses, cattle, sheep and goats in the span of a few decades that must have come with the explosive, shattering effect of all-out war."² As the West was explored, settlement occurred along rivers and streams where there was fertile soil, abundant vegetation and where water was easily available. The dryer, less productive, elevated rangelands remained generally undeveloped, so ranchers grazed their cattle on hundreds of millions of "empty" acres. But as the 1800s progressed, even these dry, semi-arid grasslands became increasingly contested by other land users such as miners, farmers, outdoor recreationists, homesteaders and even more ranchers. Land disputes became common. Also, the fragile rangeland ecosystem was quickly disappearing under hard bovine hooves and insatiable ruminant appetites.

In 1897, the federal government responded by issuing grazing permits on its forest reserves by charging a fee administered by the Forest Service—but these permits accounted for only 3.8 million acres of the vast lands of the West. Essentially, ranchers were still free to roam their cattle unabated on the majority of public lands. During this era, the range livestock producers (i.e., cattle ranchers) formed very effective political factions, and their interests were served well—even after the federal government passed the watershed Taylor Grazing Act of 1934 to exert more top-down control of land usage and stewardship, which had been massively degraded, causing the Dust Bowl and other environmental concerns. This legislation created the Grazing Service (precursor to the Bureau of Land Management or BLM), which established control of grazing on all public lands.³

This paper is organized and broken down into three major parts. The first part of the paper will lay out environmental problems that have been caused by private grazing on public lands. Through a discussion of the environmental effects that are the attributable outfall of the grazing permit system, the problems with the system will be laid out so that later in the paper possible

solutions can be addressed. The second part of the paper will talk about federal regulations and lay the groundwork of how federal departments administer grazing on public lands, focusing on the Bureau of Land Management (BLM) and the United States Forest Service (FS), the two agencies with the largest influence in the grazing permit arena. In the final section, citizen action will be discussed and possible solutions to the grazing problem will be laid out. By the end of this paper it will be shown that the private grazing on public lands exploitation problem could best be solved by a yearly incremental increase in the amount of grazing fees charged by the BLM and the FS. By increasing the grazing fee each year by 25% of the previous year's price, the grazing fee will be able to reach fair market value in just a few years. This would allow for the BLM and the FS to recoup the expenses of the grazing program, and also allow ranchers who do not want to pay the higher fees to either sell their permits to organizations that want to buy them, or simply let them revert back to the government.

Environmental Impacts of Grazing⁴

Cattle-grazing in the arid west has widespread environmental impacts. Conservation biologist Thomas Fleischner claims that "livestock grazing is the most widespread influence on native ecosystems of western North America."⁵ In this section I will

discuss environmentally related trade-offs that are made for this anthropogenic activity. The following sub-categories are but a few of the major environmental impacts caused by grazing.

Ecological impacts to the lands. The Sierra Club Grazing Committee states that it “recognizes that the preponderance of scientific evidence documents that grazing by non-native species has led to severe and sometimes irreversible degradation of native ecosystems.”⁶ This large advocacy group is but one of many that are concerned about livestock grazing and its many impacts, both environmentally and also economically.

Forest health. Forest stand dynamics are changing for the worse, due in part to cattle grazing. Livestock presence alters dynamics of upland forests in the interior West. In particular, the last 100 years has seen a change from healthy, widely-spaced, fire-tolerant trees (such as ponderosa pine and western larch) accompanied by dense grasses on the forest floor, to dense stands of fire-sensitive (such as different varieties of firs) and disease susceptible trees. Livestock contribute to this change by compacting soils which reduces water infiltration rates; by increasing erosion; by consuming herbaceous plants which reduces forest floor litter and competition, a negative effect which

leads to the dense tree stands listed above. Further, livestock grazing changes the species make-up of the understory. Livestock grazing reduces the abundance of fine fuels, which used to allow low-intensity fires to spread, a normal occurrence in a healthy forest stand.⁷ The decline in forest health is one of the many ecosystem impacts of rangeland grazing.



(Photo 1) Courtesy of *Forest Guardians*: The Rio de Las Vacas in New Mexico ⁸

Watersheds. The Sierra Club notes that riparian zones, which are considered critical areas, are heavily disturbed by cattle

(Photo 1). On their Grazing Committee website, The Sierra Club posits that cattle cause stream sedimentation when they trample the banks to access water; they eat the vegetation that maintains the structural integrity of the stream banks; their fecal matter makes its way into the waterways; and livestock can spread infectious water-borne diseases through the water supply. Also, The Sierra Club notes that livestock contribute to spreading “exotic weeds” or invasive species. The seeds spread through the animals’ fecal matter or plants are transported on the hooves or hides of the roaming animals. Further, over-grazing by cattle contributes to desertification in the arid west. Their hooves trample soil and destroy the soil biocrust, exacerbating the problem of desertification. Visitors to The Sierra Club website, like busy policy-makers and their constituents after quick information, may find this information helpful as a springboard to further research the science behind the issue. These impacts on the land and habitat are but a few of the many that are associated with livestock grazing. As a result, livestock grazing has impacts on wildlife as well.

Biological impacts on wildlife. The Sierra Club goes on to say that, “Livestock production is implicated in the decline of [some fish] species as a consequence of the direct destruction of riparian and spawning habitat and the indirect affects resulting from water developments.”⁹ Fish are not the only species impacted. Many of the characteristics listed in the previous section are biological effects of livestock grazing that impact other local species also.

Conservation biologists and traditional range scientists do not see eye to eye on the management of rangelands. Range scientists use the argument of economic gain to allow them to exploit natural resources in order to continue livestock production on public lands. On the other hand, there are ecological costs associated with rangeland grazing. Conservation biologists know of significant losses to habitat such as the flora and fauna of public lands like wildlife refuges, wilderness areas, national forests and national parks:

“These costs include loss of biodiversity, lowering of population densities for a wide variety of taxa, disruption of ecosystem function including nutrient cycling and succession, change in community organization and change in the physical characteristics of both aquatic and terrestrial ecosystems.”¹⁰

Sensitive species are adversely affected by cattle grazing. First, California red-legged frogs are so highly sensitive they are at risk from anthropogenic activities, including cattle grazing.¹¹ Second, typical bird nest disturbances caused by cattle include trampling, kicking eggs out, crushing eggs by the cow's muzzle, or covering the eggs or nestlings in the nest with a manure pile. Cattle-grazing also disrupts the bird habitat when they consume the grass surrounding and protecting the nest. A new study indicates that cattle-grazing in grasslands disrupts bird habitats in an unsuspected way. Interestingly enough, this new study suggests that cows are bird predators. Two wildlife ecologists from University of Madison-Wisconsin documented cow predation with cameras near a number of different ground nests. When reviewing the camera footage the study team saw evidence of cows "removing nestlings and eggs from three active ground nests in continuously grazed pastures in southwestern Wisconsin."¹² This is a concern for birders. Birders and ornithologists are what many may think of as unlikely stakeholders in this issue. Third, livestock production, if managed improperly, has deleterious effects on fish habitat. If livestock disturb the riparian buffer around a stream, the watershed conditions are negatively influenced. Runoff increases, banks can erode and if manure is concentrated in certain areas and not managed properly, fish kills can occur. Farmers are

encouraged by voluntary government programs to keep riparian zones out of production or create physical barriers to keep the livestock out in order to preserve riparian buffers. However, many do not like the idea of the added expense to install the barriers or the time and energy required to manage such installments.¹³ This is a clash of stakeholders in the hot debate around protecting stream habitats and land use. Finally, the very fences that farmers or ranchers are reluctant to put up adversely affect non-aquatic species. Fences are problematic to wildlife because they affect natural migration patterns. Ground nesting birds are also at risk because fences provide more perches for their predators.

There is also another predator-prey concern at play in this issue. Cattle also become prey to predators. The loss of a head of cattle to a rancher is a loss of income, and many have a practice of extinguishing predators when they see them. Predators, coyotes and wolves in particular, have been destroyed in large numbers in states like New Mexico and Arizona. The loss of this carnivore, native to the rangelands, may eventually have drastic biological effects on the ecosystem. Other animals that are in competition for the grassland food sources, like prairie dogs, are also extirpated. The loss of these species is disruptive to the balance that was once achieved before cattle herds roamed the ranges. At one point in the

past history of the arid west, carcasses of buffalo that died of natural causes were eaten by the rangeland carnivores and recycled back into the system. Today the buffalo are gone and the cattle that graze the range are intended for consumption by only one species: humans. This disrupts the once balanced cycle.¹⁴

This section of the paper truly illustrates how everything in the environment is connected. Anthropogenic activities have an effect on different systems which in turn negatively impact the balance the flora and fauna have achieved within. The earth has balanced systems and attributes, including the water cycle, ecosystems and the soil of the earth, which are of particular importance to this case study. We can use scientific observation to study the effects livestock grazing has on the balance Mother Nature intends.

The body of scientific literature expresses a concern for the absence of proper rangeland management. In my view, until there are enforceable policies and incentive opportunities for all ranchers to protect the rangeland, we may permanently alter this delicate balance. With the aforementioned environmental impacts in mind, we now move on to the agency's that are responsible for the majority of the public lands where private grazing is taking place.

We will begin by looking at their regulations in order to decide whether they have the power to alter the issuance or usage of these regulations, or possibly to revoke them altogether.

Regulations: What kind of power do the agencies really have?

One of the most glaring problems with the environmental impacts and economic inefficiency of the grazing permit program is the fact that the agencies overseeing the whole mess have had the power all along to stop this. The Bureau of Land Management (BLM) and the Forest Service (FS) have regulations in place that require them to monitor for both ecological impacts and economic inefficiency when it comes to grazing management.¹⁵ The object of the resource management planning section in the BLM regulations is to “maximize resource values for the public through a recreational, consistently applied set of regulations and procedures which promote the concept of multiple use management” while ensuring participation by the public, as well as state and local agencies.¹⁶ With this objective in mind one might wonder why grazing permits in numerous areas have been used to the point where there is seemingly irreparable ecological harm that has been done. Is this considered the maximization of a resource for multiple uses? If grazing permits lead to unregulated private

grazing that destroys tracts of land then that would seem to be a single use that is rendering the land useless for ALL activities, rather than the ideal of the land being able to sustain multiple uses.

BLM regulations also state that there are to be resource management plans that will provide for public involvement and take into account not only natural resources, but also the impacts on local economies.¹⁷ These plans are to be based on national level policy and procedures, and will advise the State Directors and Field Managers to prepare resource management plans. It seems as though the regulations are in place for the grazing problems to have been dealt with internally, but these regulations simply have not been enforced to their full extent. Field Managers, in cooperation with the agency, are to collect environmental and economic data and information and this information is to be used both to emphasize significant issues in already used lands, and also to aid in the planning process for future uses of lands.¹⁸ Had the BLM taken the time to conduct and evaluate these informational gathering procedures, it would stand to reason that the grazing permits in many areas would prove to be more of an ecological and economic burden than anything else.

The BLM also has another section that deals with the regulation of grazing on the public lands exclusive of Alaska.¹⁹ This section states that the objectives of the grazing regulations are “to promote sustainable rangeland ecosystems; accelerate restoration and improvement of public rangelands to properly functioning conditions; to promote the orderly use, improvement and development of the public lands; to establish efficient and effective administration of grazing of public rangelands; and to provide for the sustainability of the western livestock industry and communities that are dependent upon productive, healthy public rangelands.”²⁰ From the research I have done on this issue it seems that the only objective being consistently met from the above list is the last one referring to providing for the sustainability of the livestock industry. The BLM is not in place simply to support the cattle industry through the providing of subsidies, but through the setting of low grazing fees that is essentially what they are doing.

Land use grazing plans are to be in conformance with the land use plans that I previously referred to at 43 C.F.R. § 1600, but it seems in practice this is not always the case. Changes in the use of allotments that can include the closing of whole allotments or portions of the allotments are authorized in this

section when an authorized officer determines and documents that, “the soil, vegetation, or other resources on the public lands require immediate protection because of conditions such as drought, fire, flood, or insect infestations, or that continued grazing uses pose an imminent likelihood of significant resource damage.”²¹ The above sections have laid out the fact that regulations are in place to ensure that public lands are properly maintained and cared for, and if it is proven that they are not, the BLM has the authority to close them to the public.

The Forest Service also has planning regulations in place that are very similar to those of the BLM. The FS has a land management planning regulation section that sets out the process for developing, administering and amending/revising land management plans that promotes multiple use goals just like the BLM does.²² The Forest Service also sets forth an evaluation and monitoring section that talks about the types of evaluations that are required for land management planning and how they are carried out.²³ Public participation and a collaborative model approach to land management are stressed and the interests of the appropriate agencies, Tribes, State and local governments and interested and affected communities are to be involved.²⁴ The best available science must be taken into account in the planning

process by FS officials and it should be documented that the science was appropriately interpreted and applied in the planning process.²⁵

The Forest Service also has a section of regulations specifically pertaining to grazing and livestock use on national forest system lands.²⁶ In this section, much like the BLM section on grazing, the authority of the FS grazing regulations are set out and it is stated that the FS is going to “protect the range resources and permit and regulate grazing use of all kinds and classes of livestock on all National Forest System lands and on other lands under Forest Service control.”²⁷ The Forest Service will manage the range environment and allotments will be made and analyzed with careful consideration and consultation and an allotment management plan developed.²⁸ The grazing permits are issued just as the BLM permits, for terms of up to 10 years with priority for renewal at the end of the term. These permits convey no right to title in the land, and are essentially land use permits held by the permittee. The Forest Service also reserves the right to change or cancel permits for numerous reasons that are set out in § 222.4, one of which is the permit holder being in violation of “Federal laws or regulations or State laws relating to protection of air, water, soil and vegetation, fish and wildlife, and other environmental values

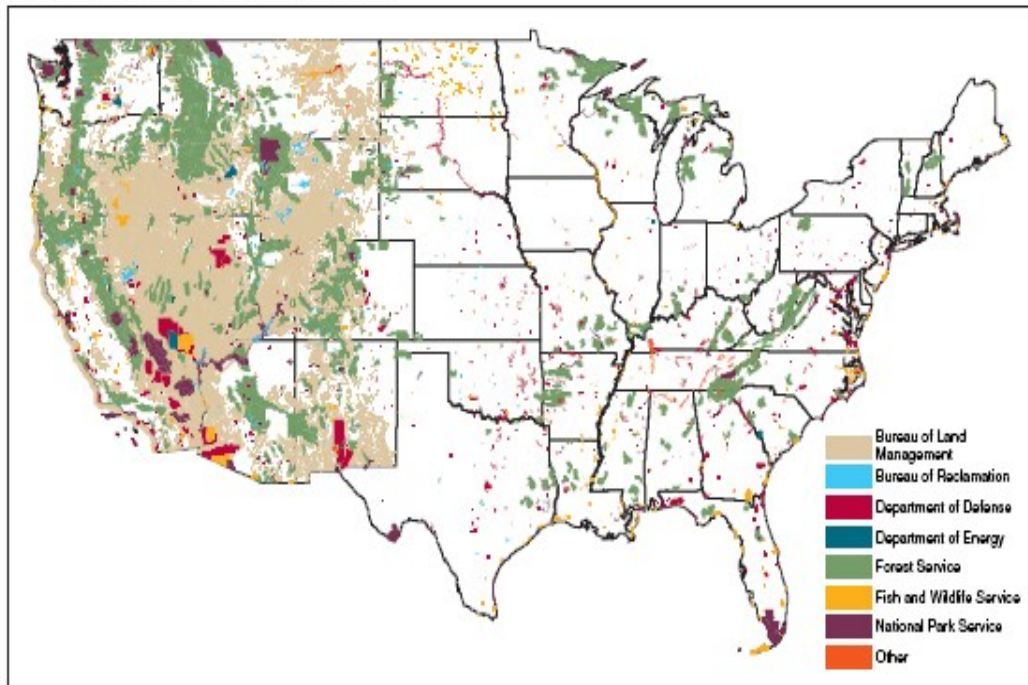
when exercising the grazing use authorized by the permit.”²⁹ It seems that both the Forest Service and The Bureau of Land Management have had the power all along to either amend or outright cancel grazing permits should they be found to have a negative environmental impact, yet this hasn’t been happening.

Why have the agencies decided not to step up and cancel these permits, which aren’t economically efficient (which will be addressed later) and have been shown to be ecologically damaging? The power is there for them to act, but if they decide not to use that power, then it is useless. The final section of this paper will take into account that the current agency laws aren’t working, and that something else must be done. Three proposals will be presented with one final proposal recommended based on my analysis. Now that it has been shown that the agencies do in fact have the power to cancel these permits, let’s take a further look into what these two agencies oversee in the permit system.

The BLM, under the Department of the Interior, and the Forest service, under the Department of Agriculture, federally administrate the vast majority of public lands, totaling some 449 million acres (Figure 1).³⁰ Of this land, some 235 million acres are authorized for grazing permits. The remaining federal agencies

(including all branches of the armed services) that hold land and grant grazing permits constitute about 4 million acres.³¹ Other departments issue permits according to different criteria than that of the BLM. For example, the U.S. Fish and Wildlife Service permits grazing on a year-to-year basis, depending on a refuge's land management goals, while the National Park Service permits grazing for a longer period but can choose to not renew a permit if certain conditions change, including damage to park resources, limitations to interpretive experiences, or impairment of park facilities.

Figure 1: Location of Federal Lands, by Agency



Source: U.S. Geological Survey's National Atlas Web site (data); GAO (analysis).

The BLM and Administration of Grazing on Public Lands

Grazing is allowed on BLM and Forest Service lands for the purpose of fostering economic development for private ranchers and ranching communities by providing ranchers access to additional forage. Grazing on public lands allows the ranchers' forage to be replenished during the spring and summer on their private property. Thus, particularly in the western states, where federal agencies manage anywhere from 30 to almost 85 percent of the land, access to forage increases the total forage available to ranchers, enabling them to increase the number of livestock they can support and sell. Under The Federal Land and Policy Management Act of 1976, the Taylor Grazing Act, and the Granger-Thye Act, BLM's and the Forest Service's permits and leases are set for not more than 10 years and can be renewed without competition at the end of that period, which gives the permittee or lessee a priority position against others for receiving a permit or lease—a position called "preference." While ranchers have preference, they do not obtain title to federal lands through their grazing permits and leases, nor do they have exclusive access to the federal lands, which are managed for multiple purposes or uses.³²

Historically, however, the BLM *has* shown preference toward the livestock industry and given it free range of vast public land holdings, which creates a “tragedy of the commons” degradation situation. Indeed, The Wildlife Service has claimed that BLM’s rules are so friendly to livestock grazing interests that the agency’s

“rules could or would damage wildlife, water supplies, streamside areas, vegetation and endangered species ... and would tend to give grazing a higher priority than other uses, remove the public from the decision-making process, and give away public rights on public land.”³³

Permit fee amounts and agency costs³⁴

The Forest Service and BLM’s set fee for graze permits is a result of an executive order, which currently sets the fee at \$1.35 per AUM (Animal Unit of Measure). An AUM is calculated as a months use and occupancy of the range by one animal unit which includes one yearling, or one cow and her calf, one horse, or five sheep or goats. In 2009 there were approximately 18,000 BLM and 8,000 Forest Service grazing permits.³⁵

The low fee enables ranchers to stay in production by keeping fees low to account for conditions in the livestock market. Most other federal agencies generally charge a fee based on competitive methods or set to obtain a market price for the forage

on their lands, and some of them also seek to recover expenditures for their grazing programs. Similarly, state land offices in the 16 western states and private ranchers seek market value for grazing on their lands.³⁶

If the BLM and the Forest Service were to charge a fee for the purpose of recovering their expenditures, they could have charged up to \$7.64 per AUM and \$12.26 per AUM, respectively, in 2004.³⁷ If they were to charge a market-based fee, the fee could vary but would likely not equal private or state fees. Federal grazing fees are considered user fees, like those charged at recreational sites such as federal parks and forests. User fees differ from broad-based taxes in that they attempt to recover some amount of the government expenditures made for a specific program. In terms of grazing fees, the revenue amounts generated from grazing fees vary by agency and are used to support expenditures related to grazing activity. In 2004, the BLM and Forest Service collected about \$17.5 million in grazing fees, or 83 percent of all grazing receipts that federal agencies collected (\$21 million).

From the total grazing fee amount collected, federal agencies distributed almost \$5.7 million to states and counties, deposited almost \$3.8 million in the federal treasury as miscellaneous

receipts, and deposited at least \$11.7 million to separate treasury accounts to be further appropriated or used by the agencies for their various programs—including range improvement.³⁸ As you can see, grazing permits help fund many public programs in economically starved areas of the rural West. Unfortunately, total revenues from grazing permits accounted for only one-sixth of the expenditures needed to manage these rangelands. The remaining cost of maintaining this system of public land welfare for ranchers is passed on to the general public tax treasury. Because of these low fee amounts, the BLM implicitly acknowledges its primary responsibility and accountability is to range livestock producers.

Agency	Range of fees charged per AUM (or equivalent) ^a	Average fee charged per AUM (or equivalent) ^a	Approach to setting fee
Interior			
BLM	^b	\$1.43	Executive order—formula
National Park Service	\$1.35 to \$7.00 1.50 to 25.00 per acre	4.30	Fixed prices and market value
Reclamation	1.27 to 56.46	10.93	Market value and fixed prices
U.S. Fish and Wildlife Service	0.29 to 34.44	11.24	Market value and negotiated prices
USDA			
Forest Service—16 western states	^b	1.43	Executive order—formula
Forest Service—grasslands	^b	1.52	Formula
Forest Service—eastern states	2.47 to 5.04	^b	Formula and market value
DOE	^b	1.43	BLM fee—formula
DOD			
Air Force	1.35 to 26.67 ^c	15.49	Market value
Army	0.99 to 66.09 ^c	19.10	Market value
Corps	0.82 to 112.50 ^c	6.22	Market value
Navy	10.42 to 97.49 ^c	32.60	Market value

-Source: BLM & Forest Service (data): GAO (analysis)

There is no doubt that this current system encourages ranching on areas that would not be financially viable were it not for this system of costly ranching subsidies. The final outcome enables ranchers to graze arid areas of the West that are not normally financially viable. The romantic vision of the rugged, self-reliant, individualist rancher is in fact largely an illusion. But how was this system created? Stockmen have always been a small fraction of the overall population, but in spite of their small numbers, range livestock producers exert a powerful influence over government within their states and over Congressional delegations—the Senate, especially. One reason for this is that relatively unpopulous range livestock regions account for approximately one-third of the total Senate membership, thus westerners generally wield disproportionate influence in the Senate. Furthermore, ranchers' influence with the BLM is enhanced by the BLM's structure. Because the agency is organized by state offices, rather than multistate regional offices, power in the BLM is highly concentrated in the state directors, and the state directors' power base is in turn strongly entrenched in state and local interests still heavily influenced by the grazing industry.³⁹

Stakeholders

The era of cattle grazing favoritism is beginning to be reconsidered. Increasingly, the interests of other public lands stakeholders are being debated by an increasingly environmentally aware electorate, public advocacy groups, media and politicians. These groups have disparate interests, too. A few of these groups include:

- Recreationists;
- Conservatives;
- Tax payers;
- Conservationists and environmentalists;
- And even ranchers.

Indeed, federal subsidies given to range livestock producers have created an enduring stamp on how we romanticize and use the West. Grazing permits (which, remember, are nothing but user fees for public lands) can be sold as other use permits—including as conservation easements to take overgrazed rangeland out of use. Below, I will present the position of each interest group listed above.

Recreationists. Over the past few decades, recreation on public lands has increased steadily. This interest group ranges from hikers to mountain bikers; from birders to hunters. Economically, in 2006, hunters, anglers and wildlife watchers spent over \$7 billion in the Rocky Mountain States, and non-motorized outdoor recreation generated over \$22 billion in economic activity.⁴⁰ Interest groups include grassroots advocacy groups, as well as wilderness interest groups such as the Sierra Club.

Conservatives. While the idea of the rugged, individualist cowboy is largely a myth, traditional conservative values are still very important to the West. There is growing pressure from conservatives to end the system of cheap BLM user fees that enable ranchers to become a drain on taxpayer dollars. This is the idea behind Republicans for Environmental Protection America, or REP America, headed by Rob Sisson.⁴¹ This group advocates political reform based on traditional conservative republican principles of financial prudence and minimal government assistance. Sisson speaks for many traditional conservatives who feel a free market is integral to reducing government waste of revenue and to maximizing market efficiency.

Concerned tax payers. As explained above, range livestock grazing on public lands benefits only the private rancher, at the expense of all tax payers. Those who are concerned about the amount of tax revenue spent on this subsidy form an interest group that votes. But in order for this faction to become effective, the voter must be informed and concerned. Politicians are only held accountable when an informed and concerned electorate votes for their best interests, instead of conceding an issue to a vocal but small faction of ranchers. Ranchers have historically had good representation by state politicians, but because the majority of the West's population now lives in urban centers, this representation is being challenged by tax payers that want to redirect the allocation of their tax revenue.

Conservationists and Environmentalists. While the effects of heavy cattle grazing in arid rangelands have been known for at least a century, only recently has the economic paradigm of grazing been challenged. Conservationists are ultimately concerned about restoring the fragile western ecosystems, but they have been using new tactics. There is a growing movement to buy out active grazing permits and permanently retire them from the market into conservation easement-style perpetuity. This movement entails giving ranchers money to take grazing permits out of circulation.⁴²

Ranchers. Grazing on arid western lands will always exist, and *co-exist*, with other interests. There is a very useful need and justifiable industry that validates the inclusion of cattle grazing on western public lands. Ranchers still have a powerful voice with politicians, too. But other factors such as international competition, increasing costs of feed and other animal inputs, climate change and drought all have compounded the ranchers' difficulties. In fact, many ranchers are retiring from the livestock industry, citing the factors above. Low grazing fees are essential if many ranchers hope to continue in the livestock industry, so attempts to tighten BLM regulations to raise fees always face staunch resistance from the livestock interest groups such as the Cattlemen's Beef Association, and politicians from ranching districts are very hard to persuade.⁴³

So Where Do We Stand and What Can We Do?

The environmental impacts of livestock grazing on publicly owned federal lands are something that have been highly contested for many years. Despite the contestations, and the fact that the agencies have seemingly had the power to regulate the grazing all along, the impacts have remained virtually unchanged. The last

part of this paper outlines ways in which the common citizen can have a voice and possibly bring about change in this arena. While livestock grazing on public lands has widely been criticized for being virtually impossible to stop by people not directly involved with the process, there are certain ways that the average person can get involved and have their voice heard. This final section will address a major avenue for public comment, and wrap up by bringing the reader up to speed with the current state of affairs in this hotly contested issue.

The National Environmental Policy Act (NEPA)⁴⁴

Livestock grazing management on publicly owned federal lands is periodically opened up to public review and participation during a National Environmental Policy Act (NEPA) review. During a NEPA review, a federal agency proposes a management activity for federal land (such as the issue or renewal of grazing permits). Then, at various stages, it invites public comment on the proposal and alternative proposals. The agency is then required to analyze each proposal in the context of the public comments that it receives. As a citizen, a NEPA review provides you with your most important opportunity to impact public lands livestock grazing at a

site-specific or regional level. If you are well prepared, you can use this process to work toward your goal of reducing the adverse environmental impacts that are often caused by livestock grazing. One of your goals in this public comment process should be to garner social pressure in order to try and induce the managing agency (usually, the BLM or the U.S. Forest Service) to make a resource-protective decision at the end of the formal NEPA review. If you get such a decision, then there is no need to appeal to a higher level. Unfortunately, you must often appeal the agency's decision, as this step is required before a lawsuit can be filed. If your appeal is granted then changes to the project may be required or the project may be thrown out entirely. In that case, your efforts would have saved you from having to resort to litigation in order to achieve your goal. The appeal officer may also reject your appeal, and in that case your only recourse is litigation.

While it may be difficult to get an agency to make conservation-oriented decisions, it is not impossible. Assume going into this process that you will not get that resource-protective decision from the agency that you desire. Assume that the agency will make a bad decision that you will need to appeal, that your appeal will be denied at the higher levels of the agency or government, and that you will need to sue the agency later.

However, if you mobilize a great deal of support for your positions, build coalitions with other local environmental groups and submit numerous well thought out comments from the start, you might get lucky and the land may receive the protection it needs at the end of the NEPA process.

The NEPA Process and Your Role in It

The NEPA process is essentially broken into five stages: Scoping, The Issuance of the Environmental Impact Statement (EIS) or Environmental Assessment (EA), Final Decision, Appeal Process, and finally Litigation. The final two stages can be brought about by the public in cases where they are not happy with the agencies final decision.

The first stage of the NEPA process is called the “scoping” stage. In this stage, the agency usually proposes a single management plan for consideration. After the plan is proposed the public is asked for their comments. Usually, no significant analysis of the plan or existing resource conditions on the allotment is provided at this stage. Public comment is very hard at this stage. Comments often stress the procedural requirements that the

agency must follow, suggest what topics or significant issues the agency should deal with, how to deal with such topics, what biases to avoid in addressing such topics, what alternatives should be considered, etc. The agency is especially looking for information that you know that they may not know (rare flower locations, sightings of, and locations of, rare animals). If you have this kind of information, you should certainly submit it. After the agency collects the scoping comments and completes their analyses they can begin stage two.

Stage two involves the agency issuing either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). It is at this stage that public comments are the most effective. You need to challenge any faulty analysis or claim that is being used by the agency to justify plans to continue or expand livestock grazing. You can present alternatives to the agency's proposed action that would lessen the adverse impacts that you believe would likely be generated by implementation of the agency's preferred proposal. By utilizing field data, peer-reviewed, published scientific articles, favorable court decisions, and any other "best available information" (or "best available science") you can prod the agency into modifying its preferred proposal so that the adverse impacts likely to be generated will be lessened

substantially or eliminated altogether. Comments at this stage are critical because the ones you make at this stage (along with those made during the scoping stage) will largely determine the issues you can raise effectively in future appeals and litigation concerning the final decision made by the agency.

After an agency has made a final decision (stage three), the public then has a period of time in which to file an appeal (stage four). After reviewing the responses to the public comments, you need to determine the adequacy of their responses and decide what you wish to attack in your appeal. The more claims you have that are supported by data and articles, the more intimidating your appeal looks, and the more likely you will be to succeed in winning an appeal. If your appeal is rejected by the agency, then you need to decide whether or not you want to challenge the agency's final decision and appeal rejection through litigation (stage five). At this point you need to take a very close look at whether or not the agency has violated any environmental laws, and what your chances are should you take them to court. This is the final stage of the NEPA process, and if you decide not to take the issue to court, then for the moment your course of action is over.

Limitations to NEPA

While NEPA is the best way for public comments on this issue, there are a number of limitations to the actual process.

These limits include the following:

1) NEPA's broad public participation requirements apply when an EIS is required, not when EA's are prepared – which is the level of review for approximately ninety-nine percent of projects subject to NEPA.⁴⁵

2) NEPA only requires analysis of social and economic impacts in limited circumstances.⁴⁶

3) NEPA does not impose any substantive obligations on federal agencies, mandating that agencies consider and fully disclose the environmental impacts of proposed projects. The Supreme Court has explained that NEPA, “merely prohibits uninformed—rather than unwise—agency action.”⁴⁷

While the NEPA process may seem somewhat “flimsy”, it is also the best thing available to the average citizen in that it at least offers the public a voice through the comment stages when an EIS was issued. That was until August of 2007, when there was a recent policy change at the Bureau of Land Management. The BLM

created eight new “categorical exclusions” designed to speed up the approval process for a slew of activities on public lands, including grazing, logging, oil and gas drilling and recreational use.⁴⁸ One of the major changes is the paring down of the renewal process of the roughly 18,000 grazing permits the agency administers. In the past the BLM was required to conduct a formal EA and call for public comments under NEPA when a permit was up for renewal. Now under the new guidelines , if the allotment appears to be in good shape and the permit is being renewed for roughly the same use as before, the agency may approve the renewal without a rigorous assessment — or formal public comment.⁴⁹ This would worry any environmentalist. The BLM has essentially circumvented the only real public “check” on the issuance of their grazing permits, and left no other avenue for comment. With large numbers of permits able to be fast-tracked every year, it seems as though there is no other way to stop the grazing than to buy the permits from the ranchers themselves and recently conservation groups have attempted to do just that.

Since only Congress can approve a permanent retirement of grazing allotments, and the legislative odds of getting something passed that would entail a federal buyout are very slim, it seems that the only recourse is the public purchase of private cattlemen’s

permits. While this may sound like a simple solution, you have to take into account that you are essentially taking away these cattle owner's livelihood, and that could be a very expensive and time consuming process. In the end, it seems as though there are many valid reasons why we should limit livestock grazing on public-owned lands, but that there are simply too few ways to go about getting it done.

Proposals

While there could arguably be many different ways to approach the problem of private grazing on public lands, it seems as though there are three main remedies that could possibly solve this environmental disaster.⁵⁰ The remedies are: selective retirement of special allotments of grazing permits, a complete federal retirement of all grazing permits, and finally the incremental raising of the grazing fee. This next section will talk about the pros and cons of each of these.

Selective Retirement of Special Allotments: Under the idea of selective retirement a rancher that has a grazing permit would be able to sell that permit to say, an environmental

organization, which would pay him a average AUM fee that was well over the private fee average. This would allow for the rancher to make money off his permit one last time before essentially allowing the permit to be retired. Once the permits were purchased from the rancher the organizational would then petition either the BLM or the Forest Service (depending on who he has the permit with) to not allow the permit to be reissued. Only Congress can officially retire a grazing permit, but the governmental agencies have already been receptive to the idea of selective retirement of permits that have been purchased with the idea that they will never again be issued.

The main problem with the idea of selective retirement is that the ranchers have to agree to sell their permits off, instead of keeping them. Ranchers have been reticent in the past of allowing their permits to all into the hands of “non-ranchers”, and some would rather die than see the lands not able to have cattle on them. Since the selective retirement idea would mostly be made up of environmental organizations that would have to raise the money to buy the permits, some ranchers may be turned off by their proposals. Another major problem with the idea of selective retirement is the fact that the process would take many years to accomplish. Ranchers are not going to let go of their permits

cheaply, and so someone is going to have to come up with big money to pry them away. While it is true that environmental organizations have a way of raising money for worthy causes, it may take tens of years before all of the permits that include environmental at risk land are bought back. Another smaller problem could be the process of deciding what permits are purchased first. While it should be fairly easy to decide what lands are more environmentally at risk than others, who is to say that the permit holders of those lands would sell? Do you spend years trying to pry away permits from a rancher with no intent of ever selling that has high-risk land inside his permit, or do you go for the low-hanging fruit and buy up all the easy to obtain permits you can first?

Complete Federal Retirement: Under the idea of a complete federal retirement of grazing permits no new permits will be issued, and when the current ones run out then the permit holders are simply reimbursed for the value of the permits they held. In recent Congresses there has been legislation introduced that intended to buy out grazing permit holders. For example, H.R. 3166 in the 109th Congress provided that permittees who voluntarily relinquished their permits would be compensated at a rate of \$175 per AUM, estimated at more than twice the market

rate.⁵¹ Under that bill the allotments, once sold back, would have been permanently closed to grazing. Legislation like this is back by environmental groups such as the National Public Lands Grazing Campaign, as a way to enhance protection of the lands, attempt to resolve conflicts between grazing and other land uses, and finally as a way to provide economic options to the current permit holders that they might not otherwise have.

The biggest problem with a national buyout is would be the cost. According to proponents, a national buyout program could cost upwards of \$3.1 billion if all permits were relinquished. While it could be said that the program would save more than that amount of money over time, that is a lot of money to spend all at once, especially in the current economic climate. Notwithstanding the obvious monetary issues that a proposal such as this would face, one should also take into account the fact that legislation such as those would have to pass in Congress, and those who support grazing would probably be against this. It would seem that a very expensive program that also would put an end to a lot of grazing in the west would not be very well received in numerous districts all over the great country.

The Raising of Grazing Fees: The third and final proposal is the idea of an incremental raise in the grazing fees over the next few years in order to lift the price per AUM to a level that not only represents a number closer to the fair market values, but one that allows for the BLM and FS to at least cover their expenses. The Public Range Improvement Act (PRIA) formula, established in 1978, set forth a policy of charging a grazing fee that was equitable and would prevent disruption and harm to the livestock industry. The law requires that the grazing fee charged by the FS and BLM be set annually. Congress also established that the fee adjustment would not exceed 25% of the previous year's fee. That being said, the current fee is set at \$1.35 for 2009, but could potentially be raised 25%, up to \$1.68 for 2010. By increasing the fee an addition 25% for say, the next 10 years, you would enable the fee to rise to a level where ranchers either agreed to pay the fair market value, or would relinquish their permits. At this point environmental groups could then purchase the permits, or possibly the agencies would simply choose to not issue them anymore.

While this proposal would take some time to “weed out” the ranchers who do not want to pay fair market value for their permits, it is a process that would not cost additional dollars to conservation groups or the federal government. By increasing the

fee you are simply allowing permittees to decide how much these permits are really worth to them. This proposal does not force the ranchers to give up their permits, and also does not allow for them to request outrageous sums of money for the transfer of them either. Under the fee raising scenario everyone gets to decide how much they are willing to pay to keep using the permitted land. I feel as though this proposal would be in the best interest of all the parties. The agencies are allowed to move closer to breaking even on the grazing programs, high-risk lands that are not worth high priced permits will be allowed to be “retired” by agencies when permits are not renewed by ranchers unwilling to pay higher fees, and the neither the government nor conservation groups are required to open their pocketbooks.

The Raising of Grazing Fees proposal would be fairly easy to implement in that Congress has already established that the annual fee can be increased by 25% of the previous year’s fee. Since it is already permitted, all that would need to happen is that the Secretaries of Agriculture and the Interior set next year’s fee 25% higher than this year’s fee. Now of course livestock grazers will be upset that the fee is increasing, but they are still paying less than fair market value for the permits, so they do not have all that much room to complain. In a few years the fee would rise to a

level where it would be near market value, and at that point it would stand to reason that fewer permittees would be willing to pay the grazing fee, and as such their permits would run out. The raising of the fee could be stated to help in numerous ways. The first way, as has been mentioned already, is that an increase in the fee would help to increase the price to fair market value. The second way that an increased fee would be a benefit is that it could help to attribute to cost recovery by the agencies. As stated earlier, the BLM and FS pay out a lot more than they take in as they administer their respective grazing programs. An increased fee would help to offset their costs while allowing them to maintain, or even increase the amount of care that they give to the permitted lands. The final way that an increased fee could be seen to help would be that those ranchers that are really into it for the long haul would simply pay the increased fee and go about their business, and the permittees that are simply in this for a payout would step aside.

Conclusion:

In summation, the current state of private grazing on public lands is at a point where the environmental and economic costs of the practice far outweigh the benefits. Something must be done in order to tip the scales toward equity. Environmental degradation of the public lands is increasing at an alarming rate, and the low grazing fee paid by the permittees does not allow for the agencies to even break even on the grazing program's costs, let alone allow for them to put extra money into making sure that the ecosystems are being properly maintained or protected.

While the problem is not going to fix itself, there are proposed solutions that would allow for change to take place. The most appropriate proposal to begin to right this environmental wrong is by an incremental increase of the current grazing fee. This increase would allow for the fee to approach fair market value and also allow for the agencies to recoup expenses and invest more into environmental protection of their lands. The increased fee is not a governmentally implemented taking of the ranchers' permits, nor is it a type of selected retirement that third parties would have to pony up money for. The increased fee simply allows for those who really value the permits to keep using them as they have been, while allowing others to step aside when their benefit does not

outweigh the burden of the increased fee. Once the permits are no longer used for grazing they could either be transferred or sold to say an environmental group, or returned to the agency with the idea that the agency would no longer lend that area out to grazing.

Something must be done in order to help protect public lands in the west from the environmental abuses associated with private grazing. It has gotten to a point where the ranchers have seemingly grown so strong that the environment no longer means anything to them other than something that must be used up as a way to make money. This cannot continue as it has for the past 100 years. The implementation of an incremental increase to the grazing fee will be an easy way to begin the movement toward the retirement and repair of ecosystems that have been damaged by the grazing process. When I think about what must be done to fix the problem of private grazing on public lands I wonder who should really be in charge of fixing it. Should the BLM be upset about the fee? What about the Forest Service? If these agencies do not feel as though they can change what is going on then I feel as though if not us, then who, and if not now, then when?

Endnotes:

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- ¹ For the purposes of this thesis, the “West” or “Arid West” consist of the areas of the following states: Washington, Oregon, Idaho, California, Wyoming, Nevada, Arizona, New Mexico, Utah, Colorado, Montana, North Dakota, South Dakota, Nebraska, Kansas, and Oklahoma
- ² Worster, Donald. Under *Western Skies: Nature and History in the American West*. New York: Oxford University Press, 1992.
- ³ Donahue, Debra L. *The Western Range Revisited: Removing livestock from Public Lands to Conserve Native Biodiversity*. University of Oklahoma Press: Norman, 1999.
- ⁴ The majority of the environmental impacts discussed in this paper have been brought to light previously by The Sierra Club which has a page devoted to grazing here. → <http://www.sierraclub.org/grazing/>
- ⁵ Fleischner, Thomas L. “Ecological Costs of Livestock Grazing in Western North America.” *Conservation Biology* 1994. 8(3): 629-644.
- ⁶ The Sierra Club “Grazing: impacts of livestock production on public lands-ecological impacts”; www.sierraclub.org/grazing/livestock/ecological.asp
- ⁷ Belsky, A.J. et al. “Effects of livestock grazing on stand dynamics and soils in upland forest of the interior West.” *Conservation Biology*, vol 11 pp 315-327.
- ⁸ <http://www.cpluhna.nau.edu/Change/grazing.htm>
- ⁹ www.sierraclub.org/grazing/livestock/ecological.asp
- ¹⁰ Fleischner 1994
- ¹¹ Fellers, Gary M. et al. “Diurnal versus nocturnal surveys for California red-legged frogs.” *Journal of Wildlife Management*, Dec 2006. vol 70 (6) pp 1805-1808
- ¹² Nack, Jamie L. et al. “Apparent predation by cattle at grassland bird nests” *The Wilson Bulletin*, Mar 2005 vol 117 (1) pp 56-62
- ¹³ Lyons, J. et al. “Influence of intensive rotational grazing on bank erosion, fish habitat quality, and fish communities in southwestern Wisconsin trout streams” *Journal of Soil and Water Conservation*, Third quarter 2000. Vol 55 (3) pp 271-276.
- ¹⁴ Freilich, Jerome E. et al. “Ecological effects of ranching: A six-point critique” *Bioscience*, Aug. 2003. vol 53 (8).
- ¹⁵ (BLM: 40 C.F.R. § 1600 : FS: 36 C.F.R. § 219)
- ¹⁶ 40 C.F.R. § 1601
- ¹⁷ 43 C.F.R. § 1601.0-8
- ¹⁸ 43 C.F.R. § 1610.4-3

¹⁹ 43 C.F.R. § 4100

²⁰ 43 C.F.R. § 4100.0-2

²¹ 43 C.F.R. § 4110.3-3(b)(1) i-ii

²² 36 C.F.R. § 219.1

²³ 36 C.F.R. § 219.6

²⁴ 36 C.F.R. § 219.9

²⁵ 36 C.F.R. § 219.11

²⁶ 36 C.F.R. § 222

²⁷ 36 C.F.R. § 221.1

²⁸ 36 C.F.R. § 222.2

²⁹ 36 C.F.R. § 222.4(6)

³⁰ United States Government Accountability Office. *Livestock Grazing: Federal Expenditures and Receipts Vary, Depending on the Agency and Purpose of the Charged Fee*. GAO-05-869. September 2005.

³¹ *Id.*

³² *Id.*

³³ Davis, Tony. "New grazing rules ride on doctored science." *High Country News*, July 25, 2005.

³⁴ See Table 1 on pg. 21

³⁵ http://www.blm.gov/wo/st/en/info/newsroom/2009/january/NR_01_30_2009.html

³⁶ GAO Report 2005

³⁷ *Id.*

³⁸ *Id.*

³⁹ Donahue, Debra L. *The Western Range Revisited: Removing livestock from Public Lands to Conserve Native Biodiversity*. University of Oklahoma Press: Norman, 1999.

⁴⁰ Haefele, Michelle; Morton, Pete; Culver, Nada. "Natural Dividends: Wildland Protection and the Changing Economy of the Rocky Mountain West." *The Wilderness Society*, 2005. www.wilderness.org/Library/Documents/NaturalDividends.cfm

⁴¹ <http://www.rep.org/policy/publiclands.html>

⁴² Reese, April. "The Big Buyout." *High Country News*, April 4, 2005.

⁴³ Hoekenga, Christine. “Free Range.” *High Country News*, September 7, 2007.

⁴⁴ 42 U.S.C. 4321-4370

⁴⁵ Johnson, Stephen. “NEPA and SEPA’s In the Quest for Environmental Justice.” 30 *Loy. L.A. L. Rev.* 565, 575 (1997).

⁴⁶ 43 U.S.C. § 4331(a)

⁴⁷ *Robertson v. Methow Valley*, 490 U.S. 332, 351 (1989).

⁴⁸ Hoekenga, Christine. “Free Range.” *High Country News*, September 7, 2007.

⁴⁹ *Id.* See below links for PDF Documents

http://www.blm.gov/pgdata/etc/medialib/blm/wo/Planning_and_Renewable_Resources/planning_images.Par.0459.File.dat/Grazing_CX_Analysis_Additional_CX.pdf.

<http://www.rangenet.org/trader/GrazingCX07/Guidance%20on%20the%20Use%20of%20a%20New%20CEs%20for%20Grazing.pdf>.

⁵⁰ Various proposals are discussed both on The Sierra Club grazing site (<http://www.sierraclub.org/grazing/>) and also in a CRS Report for Congress (<http://ncseonline.org/NLE/crs/abstract.cfm?NLEid=185>)

⁵¹ CRS Report for Congress. Grazing Fees: An Overview and Current Issues, <http://ncseonline.org/NLE/crs/abstract.cfm?NLEid=185>