

Subcommittee on Federal Lands

Tom McClintock, Chairman
Hearing Memorandum

July 10, 2018

To: Members of the Subcommittee on Federal Lands

From: Majority Committee Staff – Brandon Miller
Subcommittee on Federal Lands (x67736)

Hearing: Oversight Hearing entitled: *“The Essential Role of Livestock Grazing on Federal Lands and Its Importance to Rural America”*
July 12, 2018, at 10:00 A.M.; 1324 Longworth House Office Building

Summary

The Subcommittee on Federal Lands will hold an oversight hearing on *“The Essential Role of Livestock Grazing on Federal Lands and Its Importance to Rural America”* on Thursday, July 12, 2018, at 10:00 a.m. in 1324 Longworth House Office Building.

The Committee on Natural Resources has jurisdiction over public lands generally, including entry, easements, and grazing thereon. This hearing will examine the status of livestock grazing on public lands, the numerous environmental benefits of responsible grazing, and existing challenges facing the industry, including federal regulatory policies that unnecessarily restrict access to land, water and other resources and rights that are essential to the viability of the ranching industry and regional economies.

During this hearing, the Subcommittee will hear testimony from witnesses regarding the economic and environmental importance of public lands grazing and evaluate solutions to address regulatory burdens and inefficiencies, and potential reforms to better align land management policies with the economic and environmental needs of communities across the western United States.

Witnesses

The Honorable Brad Little
Lieutenant Governor
State of Idaho
Boise, ID

Dr. Dave Naugle
Sage Grouse Initiative Science Advisor and Professor
Wildlife Biology Program
University of Montana
Missoula, MT

Mr. Erik Molvar
Executive Director
Western Watersheds Project
Laramie, WY

Ms. Stefanie Smallhouse
President
Arizona Farm Bureau
Gilbert, AZ

Background

Ranching on public lands provides important economic benefits to the federal land management agencies and to the American people. This is especially true in the western States, where roughly half the land is federally owned. Grazing activities also provide important conservation and ecosystem benefits. Public lands ranchers have historically been good stewards of their grazing allotments, frequently paying out-of-pocket for water source management, wildfire fuels reduction, and species habitat restoration.¹ This stewardship provides significant cost savings for federal land management agencies that are already struggling to keep up with substantial deferred maintenance backlogs.

Public land ranchers also perform tasks that benefit other multiple-uses on federal land. These tasks include clearing public trails, monitoring recreation trends, and frequently being first responders to wildfires and other natural disasters.² The daily monitoring performed by these ranchers provides substantial assistance to agency field staff who are responsible for millions of acres of public land.

The benefits provided by responsible public grazing are rarely heralded, with growing challenges and opposition that threaten a thriving future. In addition, ever-expanding regulatory requirements have increased the costs of ranching on federal lands. Public lands ranchers have also been increasingly targeted with frivolous lawsuits filed by litigation activist groups. These lawsuits, and the fear of future lawsuits, slow permitting processes and impose greater regulatory uncertainty and added costs upon ranchers.

Federal land management agencies that oversee the grazing program face similar legal threats. The same fear of litigation leads federal land management agencies to make decisions attempting to appease repeat litigants, rather than seeking what is best for the land.

Federal Grazing Laws and Policies

The majority of grazing on federal land occurs on land managed by either the Bureau of Land Management (BLM) or the U.S. Forest Service (USFS). Both agencies operate under

¹Barry, S. (2015). *The Benefits of Livestock Grazing - Livestock Grazing: A Conservation Tool on California's Annual Grasslands*. University of California.

²Madsen, S. L. (2018, March 25). Rangeland Firefighting Provides Model for Ranchers and Government Workers to Collaborate. *The Spokesman-Review*.

multiple-use and sustained-yield missions and livestock grazing is one of the approved activities on the lands. More than 22,000 public lands ranchers manage over 250 million acres of public land.³ These ranchers also own roughly 129 million acres of private rangeland that is intertwined with the public grazing lands.⁴

Grazing on USFS land has been authorized since 1897 at the inception of the agency.⁵ Prior to 1934, grazing on federal land was unregulated. That year, President Roosevelt signed the Taylor Grazing Act of 1934 (43 U.S.C. 315 et seq.) into law. That Act created grazing districts on Department of the Interior (DOI) land, regulated grazing and rangeland improvements in western States, and established the Division of Grazing (later renamed the U.S. Grazing Service) within DOI.⁶ In 1946, the Grazing Service and the General Land Office were consolidated into the BLM. When the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) was enacted, BLM land was required to be managed for multiple uses and sustained yield through a land-use planning process. Two years later, the Public Rangeland Improvement Act of 1978 was enacted (PRIA, 43 U.S.C. 1901 et seq.), setting up the grazing permit and lease fee formula.⁷

Grazing on BLM Land

DOI administers grazing on BLM rangeland through both permits and leases based on livestock use of the land for one month. These permits are renewable and generally last 10 years. BLM uses an “animal unit month” (AUM) to determine the stocking rate for each allotment it manages. AUMs are defined as one month’s use and occupancy of the range by one animal unit, which includes one yearling, one cow and her calf, one horse, or five sheep and goats.⁸ Grazing fees are charged by the AUM.

In Fiscal Year (FY) 2015, 62.3% of the BLM’s 248.3 million acres were available for livestock grazing, but only 40.1% were used for grazing.⁹ In FY2016, the BLM only authorized 8.7 million AUMs of the 12.36 million available for authorization.¹⁰ In some cases, the difference in lands available and land used is due to economic factors, resource protection, or lack of forage due to wildfire and drought. Regulatory uncertainty in the form of abrupt Animal Unit Month (AUM) reductions and on/off date adjustments can leave permittees with very few options short of selling off their herd.

In administering livestock grazing, BLM is required to establish standards and guidelines that take into consideration watershed function, nutrient cycling, water quality, habitat for threatened and endangered species, and other functions of rangeland health.¹¹ BLM is further required to monitor the rangeland and—if grazing is determined to be a significant causal factor

³ Public Lands Council. (2018). *About*. <http://publiclandscouncil.org/about-2/>

⁴ *Ibid.*

⁵ U.S. Forest Service. “*Why does the Forest Service permit livestock grazing on National Forest System lands?*”

⁶ 43 U.S.C. 315.

⁷ Bureau of Land Management. “*National History*.”

⁸ CRS. “*Statistics on Livestock Grazing on Federal Lands: FY2002 to FY2016*.” August 28, 2017.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ 43 C.F.R. 4180.1-2.

for not achieving rangeland health standards—adjust levels of authorized grazing accordingly.¹² BLM generally determines if grazing allotments are meeting standards through a rangeland health evaluation and it uses this evaluation to inform grazing permits, which are subject to federal environmental review requirements under the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 et seq.)

Grazing on USFS Land

The U.S. Department of Agriculture administers grazing on USFS land only through permits in terms of livestock on the land for one month. USFS uses the term “head months” (HD-MOs) to indicate the time in months that livestock spend on USFS rangeland.¹³

Almost 50% of USFS land in FY2015 was available for livestock grazing, but only 40.1% were used by permittees and billed by the USFS.¹⁴ USFS cites inadequate forage on some grazing eligible lands for this disparity. Although almost half of the land under USFS management is in a grazing allotment, not all of the land is ideal for grazing due to lack of forage.¹⁵ In FY2016, USFS had the ability to authorize 8.2 million HD-MOs but only authorized and billed permittees for 6.88 million HD-MOs.¹⁶

Grazing Fees

BLM and USFS charge operators grazing fees for utilizing federal land in 16 western States.¹⁷ The fees charged by BLM and the USFS for permits and leases are established under a fee formula set up in PRIA. Under PRIA, fees are adjusted yearly based on three cost factors in western States: the rental charge for pasturing cattle on private range lands, the sale price of beef cattle, and the cost of livestock production.¹⁸ The current fee per AUM and HD-MO is \$1.41.¹⁹

For both BLM and USFS, 50% of the funds collected from grazing fees, or \$10 million, whichever is larger, are allocated to the Range Betterment Fund, which is subject to appropriation, for purposes of range land maintenance, including, but not limited to, seeding and reseeded, fence construction, water development, weed and other plant control, and fish and wildlife habitat enhancement within allotments.²⁰ Historically, BLM received the full \$10 million requested, including in the 2018 omnibus appropriation act.²¹ In recent years, USFS requested and received roughly half of the total fees collected.²² The 2018 omnibus appropriations act provided USFS \$2.065 million from the Fund.²³

¹² 43 C.F.R. 4180.2.

¹³ CRS, “*Statistics on Livestock Grazing on Federal Lands: FY2002 to FY2016.*” August 28, 2017.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ Bureau of Land Management. “*BLM and Forest Service Announce 2018 Grazing Fees.*” January 30, 2018.

¹⁸ CRS, “*Grazing Fees: Overview and Issues.*” September 29, 2016.

¹⁹ Bureau of Land Management. “*BLM and Forest Service Announce 2018 Grazing Fees.*” January 30, 2018.

²⁰ *Ibid.*

²¹ Congressional Record Vol. 164 No. 50 – Book II. Page H2611.

²² CRS, “*Grazing Fees: Overview and Issues.*” September 29, 2016.

²³ Congressional Record Vol. 164 No. 50 – Book II. Page H2627.

The remaining 50% is allocated differently by the agencies. In the case of USFS, 25% of the remaining funds are deposited into the Treasury and 25% are given to the States. In the case of BLM permits, 12.5% is given to the States, and 37.5% is deposited into the Treasury. For leases, the additional 50% of funds are allocated to the States.²⁴ For both BLM and the USFS, the State share of funds must be used in the counties where they were generated.

Litigation

Litigation activist groups increasingly exploit environmental laws such as the Endangered Species Act (16 U.S.C. 1531 et seq.) and NEPA to stop, or significantly delay grazing, and other multiple-use activities on public lands. The number of lawsuits being filed is substantial, with one study showing that over the course of a ten-year period, eight litigation activist groups filed over 3,300 lawsuits nationwide.²⁵ This steady onslaught of costly litigation, often challenging minor process-related decisions, allows these groups to circumvent the authority given to federal land management agencies by Congress.²⁶ Without enough staff and resources to challenge every suit, the government frequently settles cases, at which point the plaintiffs are able to recover attorney's fees under the Equal Access to Justice Act (EAJA, 28 U.S.C. 2412).²⁷

This EAJA loophole, allowing well-funded litigation activist groups to recover attorney's fees, funds a perpetual cycle of challenges to continued responsible grazing on federal land. One such environmental legal group's annual report boasted that 31% of its income came from attorney fee awards.²⁸ This steady stream of almost guaranteed payments has created an atmosphere that rewards and encourages endless legal attacks that undermine multiple-use activities, stymie proper federal land management, increase federal costs and impose detrimental impacts to the environment and western economies.

Environmental Benefits from Public Lands Grazing

Livestock grazing on public lands has increasingly become recognized as a strategic tool for rangeland management. A study by the Natural Resources Conservation Service recently found that rangeland areas with thriving plant and wildlife populations have frequently benefitted greatly from grazing.²⁹ Strategic grazing also decreases fine fuels, which greatly reduces the risk of catastrophic wildfire.³⁰ Well managed grazing encourages healthy forage growth and stronger root systems.³¹ Finally, grazing has been shown to help prevent invasion by noxious weeds that pose extreme threats to both wildlife habitat and agricultural crops.³² Science has continued to demonstrate that grazing is not only compatible with rangeland, but is in fact vital to the rangeland health.

²⁴ CRS, "Grazing Fees: Overview and Issues." September 29, 2016.

²⁵ Pendley, W. P. (2012). Equal Access To Justice Act Is Neither Equal Nor Just: Environmental Groups Get Paid Off And File More Lawsuits; Meanwhile Private Citizens Battle For Years For Their Fees. Mountain States Legal Foundation

²⁶ Dumas, C. R. (2011). EAJA loophole attacked. Capital Press.

²⁷ Ibid.

²⁸ 2017 Annual Report (Publication). (n.d.). Boise, ID: Advocates for the West.

²⁹ Briske, D.D., editor. {2011}. Conservation Benefits of Rangeland Practices: Assessment, Recommendations, and Knowledge Gaps. United States Department of Agriculture, Natural Resources Conservation Service.

³⁰ Sorenson, L. (2010, October 05). Study shows the benefits of grazing rangeland before a fire.

³¹ Andrae, J. (2017, April 20). Grazing to Grow Better Pasture.

³² McGrane, P. (n.d.). Grazing Goats Help Control Invasive Weed Species - USDA.

Management Benefits from Public Lands Grazing:

In addition to the economic and environmental benefits, public lands grazing also delivers considerable value and cost-savings to our federal land management agencies. On private land, ranchers pay a single lease fee in order to graze their herds. On public lands, they must pay a grazing fee and also pay for the land maintenance costs for that land, whereas on private land, the landowner is responsible for maintenance. Research has shown it costs on average \$1.20 per animal unit (AUM) more than it costs to graze on private land.³³ By paying these maintenance costs, public lands ranchers save the BLM roughly \$750 million a year.³⁴ It costs the BLM \$3 less to manage public land that is grazed compared to the cost of managing ungrazed land.³⁵ These raw numbers demonstrate what great partners public lands ranchers are to federal land management agencies and American taxpayers.

³³ Rimbey, N., and L.A. Torell. 2011. "Grazing Costs: What's the Current Situation?" Agricultural Economics Extension Series No 2011-02.

³⁴ The Value of Ranching. (n.d.). Retrieved from http://publiclandscouncil.org/wp-content/uploads/2015/07/ValueofRanching_Onesheet-1.pdf

³⁵ Ibid.