Evolution of Grazing and Land Tenure Policies on Public Lands

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The period of 1965 to 1989 has been a time of change for public lands and the rules and regulations that govern their use. Demands on public lands by nontraditional users have increased and the concept of multiple use has evolved. These trends have had and will continue to have significant impact on public land policy through evolving legislation and litigation. One of the results of this evolution has been an erosion in the security of tenure for traditional users. Tenure can be defined as the permanency of right of use of an area of land under stable, specified terms.

Grazing by livestock is the oldest major economic use of federal land, involves the largest acreage of any use, and has important political, social, and economic ramifications (Clawson 1983). Public lands also provide raw materials such as timber and minerals, wildlife habitat, water, and opportunities for recreation. Public land policy and management decisions have a major influence on the stability of communities in the area. It is important for all who have an interest in public lands to understand the changing status of land policy and tenure.

Grazing on the Public Domain Prior to the Taylor Grazing Act

The public land history of western stockraising from 1865 to the 1890s was marked by chaos, violence, and depletion of the ranges through overgrazing exacerbated by climatic fluctuations (Rowley 1985). The prevailing policies of the times discouraged large free acquisitions of the public domain and prohibited leasing options. Many western range areas in the late 19th century were damaged by stockmen attempting to use the grass first and to establish rights to it by the constant presence of livestock. Because there was little regulation and no provision for security of tenure, ranchers had to maintain large numbers of livestock to prevent encroachment from newcomers. Of particular concern were the nomadic bands of sheep whose owners had little or no base property, and thus no vested interest in maintaining the land's productivity.

Controlled grazing policy on public domain began with the forest reserves. Resource depletion from overgrazing was serious enough that many in the livestock industry (particularly cattlemen) recognized the need to forego a certain amount of autonomy, and as early as 1901 support was expressed for governmental regulation of grazing on the forest preserves.

There were vast areas of public domain outside the forest preserves that did not benefit from a grazing policy until the passage of the Taylor Grazing Act of 1934.

The Taylor Grazing Act

The Taylor Grazing Act (1934) was passed:

> to stop injury to the public grazing lands by preventing overgrazing and soil deterioration; to provide for their orderly use, improvement, and development; to stabilize the livestock industry dependent on the public range. . . .

Through the mid-1960s emphasis was placed on stabilization of the rangeland livestock industry and dependent communities as a management objective. Equity considerations in public rangeland management and development worked to the advantage of local interests and traditional users, i.e., those holding grazing permits.

Erosion of Traditional User Dominance

A period of change and ferment in federal land and resource law began in the mid-1960s (Coggins and Wilkinson 1987). Hundreds of old United States Code sections that had defined management programs were superseded by new legislation. The Bureau of Land Management (BLM) received a statutory mission with passage of the Federal Land Policy and Management Act of 1976 (FLPMA) which was later amended and supplemented by the Public Rangelands Improvement Act of 1978 (PRIA). The Forest Service was affected by the National Forest Management Act of 1976 (NFMA).

While many statutes promise to affect range management in one way or another, these three laws and the National Environmental Policy Act of 1969 (NEPA) have reduced the traditional dominance of livestock grazing on public lands.

National Environmental Policy Act of 1969 (NEPA)

The 1974 court case of the Natural Resources Defense Council (NRDC) vs. Morton (then Secretary of the Interior) forced the BLM to prepare environmental impact statements on the effects of present and proposed grazing for specific sites of public lands. The BLM began the process of preparing 212 (later reduced to 144) environmental impact statements at an estimated cost of more

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Authors wish to thank Dr. W.C. Krueger, Dr. J.C. Buckhouse, and Dr. T.E. Bedell for timely review of the manuscript.

Submitted as Technical Paper 8865, Oregon Agricultural Experiment Station.

than $100 millon (Coggins and Wilkinson 1987). The resulting evaluations stated that many public lands are in poor condition compared to their historic potential; that one clear cause for this condition is overgrazing; and that improvement in range condition depends largely on reducing the number of grazing animals and limiting the areas available for grazing. If management plans are based on information compiled in the impact statements, reduced use by livestock will probably result. In the short term it is likely that marginal ranching operations would be forced out of business.

Federal Land Policy and Management Act of 1976 and Public Rangelands Improvement Act of 1978

Increased interest group pressure emphasizing increased public interest in multiple use of public land resources resulted in the Federal Land Policy and Management Act of 1976. FLPMA does not repeal the major Taylor Act provisions, but it does superimpose a new management system, with more diverse goals and emphases. FLPMA also provides for full public participation in comprehensive planning programs to determine management objectives (Coggins and Wilkinson 1987).

The stated goals of FLPMA are that public lands will be managed in such a manner:

> that will protect the quality scientific, scenic, historical, ecological, environmental, air and atmospheric, water resources, and archeological values; that where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; that will provide for outdoor recreation and human occupancy use, and which recognizes the Nation's need for domestic sources of materials, food, timber, and fiber from the public lands (Ross 1984).

FLPMA protects grazing permittees to a limited extent by retaining preferences, requiring consideration of hardships, financing range improvements, and providing for individual and institutional advice from and consultation with ranchers. However, an interpretation of the Act could support the conclusion that livestock grazing is not the primary use, but that it has been downgraded from the major rangeland use under the Taylor Act to an undifferentiated one of seven (or more) uses, and that livestock producers are not entitled to priority in forage allocation. The seven uses in order of listing (with apparently no intended priority) are: (1) outdoor recreation, (2) range (apparently used as a synonym for domestic grazing), (3) timber, (4) minerals, (5) watershed, (6) wildlife and fish, and (7) natural, scenic, scientific, and historical values.

The most difficult aspect of implementing multiple use, sustained yield management is compatibility. FLPMA assumes that compatible use combinations can be worked out, but some uses are simply incompatible with some others. For instance, clearcutting is compatible with the needs of some wildlife species, but not all, and the method generally exposes soil to water erosion and conflicts with recreation resource uses. In practice, the Bureau of Land Management's emphasis on livestock grazing has detracted from other uses. Unqualified preservation could be judged in a similar fashion. In fact, all listed uses generate at least some conflict with regard to management decisions and it will be difficult to accommodate people who represent a single use.

The Public Lands Improvement Act of 1978 (PRIA) amended FLPMA in several important respects. Most importantly, improvement of range condition is declared to be *the* goal of rangeland management and not just *a* goal. Range condition became the highest management priority with the passage of PRIA. Other provisions of the law include:

1) Inventories shall be continuously updated and trends monitored. 2) Congress stressed that the maximum tenure should be more the norm than the exception. Many ranchers are therefore assured security of tenure, though not of permitted numbers, for intermediate terms (generally ten years). The Secretary nevertheless retains considerable discretion to impose shorter permit terms. 3) Allotment Management Plans (AMP) shall be tailored to the specific range condition to be covered by such a plan, and shall be reviewed on a periodic basis to determine whether they have been effective in improving the range condition of the land. 4) The Experimental Stewardship Program is to be developed and implemented to provide incentives or rewards for the holders of grazing permits whose stewardship has improved the condition of the lands. 5) The McClure Amendment provides for a phase in of livestock reductions that may be deemed necessary to fulfill the range improvement mandate.

FLPMA mandates intensive planning and that specific management decisions made after land use plans are completed must agree with the plans. Judicial review of BLM land use plans can be expected (Coggins and Wilkinson 1987). Litigation will come from two sources: 1) when a private entity believes that a completed land use plan is inadequate, and 2) when a decision is made that some private party believes is contrary to the letter or the spirit of a pre-existing plan.

Litigation as a Means of Policy Formation

Coggins and Wilkinson (1987) provided an interesting anecdote that illustrates the role of litigation in public land policy formation. In a 1986 court decision (NRDC vs Hodel), Judge Burns in his concluding remarks provides insight into what we can expect from judicial response to litigation in areas of public policy. He described the case as one in which the NRDC asked him to become, and the BLM urged him not to become, the rangemaster for about 700,000 acres of federal lands in western Nevada. He cites cases over the prior 15 years or so in which his colleagues "have become or have been implored to become" forestmasters, roadmasters, schoolmasters, fishmasters, prisonmasters, watermasters, and the like. He noted criticism of these roles by academic commentators based on observations which include lack of training and expertise, lack of time, lack of staff assistance, etc. He noted, however, that the reason for the large scale judicial intrusion into these areas has been the inability or unwillingness of the other branches, both state and federal, to provide solutions to significant societal, environmental, and economic problems. We expect that litigation will continue and these legal "masters" will shape land use policies in the future.

FLPMA and PRIA do provide direction to range management and adequate legal tools to range managers. The statutes demand a new management regime under the far broader principles of multiple use and sustained yield. The statutes also require large-scale planning to implement multiple use management and that the plans and decisions stemming from them will provide courts with opportunities to force BLM range management into the channels Congress "envisioned" (Coggins 1983).

Coggins and Wilkinson (1987) have suggested that it is likely that the new organic acts will engender considerable litigation, in turn creating bodies of common law, leading in turn to corrective legislative action. They stated that students now in law school will in coming years be in positions to influence the directions those changes will take.

> Developments, problems, crises, and attitudes are already apparent, the intersections of which will determine future land law policy.
> . . . Proposals by the Forest Service to build roads into virgin forestlands to accelerate timber harvests are being fought in Congress and the courts. Federal land policy will be heavily influenced by federal water allocation and development policies now in a state of flux if not confusion. Pressure to discard the century-old law governing mineral claim location wanes and waxes. The growing public appetite for recreation will engender new and continuing conflicts with preservation as well as with extraction. Whether large, wild mammals can survive on this continent will largely be determined by future public land policy. Much of the western livestock industry faces curtailment or bankruptcy. The stakes are enormous, and the times are fluid. In the future of federal land and resources law lies a good part of the National's future welfare.

Since Congress seems to be unwilling or unable to provide clear direction in legislation, future public land management may be impeded as lawyers for various interest groups attempt to force an interpretation of legislation through the courts. While conceding that public land management needs significant improvement, the trend to formulating policy through litigation may result in no management at all. What management does occur will be mandated by the court rather than result from the considered judgement of professionally trained managers. Behan (1981) has suggested that documentation, consistency, and correct procedure will become far more important in the forest management planning process than a land manager's solid, professional, experienced judgement. He stated further:

> Because it is mandated in law, the forest planning process now has the capability of paralyzing or displacing completely the management and production responsibilities of the agency.

Not only will traditional public rangeland users face restrictions on their use, but all other users will likely be stymied as well. Rather than proceeding along the route of confrontation and conflict through the courts, we should be attempting to bring the diverse interest groups together to communicate their concerns to each other and to form a consensus plan on how to manage our public lands with the goal of developing a healthy, productive environment so that everyone can ultimately benefit.

We have successful models to draw upon this type of an effort. Coordinated Resource Management Planning (CRMP) is a planning process that has developed over the last forty years, but is becoming increasingly important and sophisticated. This process brings together resource owners, managers, users, and organizations of interested people to develop the resource management plan (Anderson 1975, Anderson 1977). The objective of this "open" planning process is to provide a forum for exchange of views and knowledge from people with diverse perspectives, a vehicle for orderly resolution of conflicts, and broadly acceptable management goals and procedures. Increased cooperation, especially between owners and governmental agencies, has resulted from CRMP programs.

Cleary (1984) discussed an Experimental Stewardship Program in the Modoc/Washoe area of northeast California and northwest Nevada. The program included BLM, Forest Service, and private land. Representatives of agencies, organizations, and associations having direct interest in land management of the area were included as equal participants to operate the program. Over a period of time the Washoe/Modoc Program developed into a positive working partnership in natural resource management. Part of the process involved spending several sessions developing a common understanding of each other's philosophical viewpoints. An important aspect of the program's initial success was an agreement that all decisions or actions of the Steering Committee would be reached by consensus (i.e., unanimous agreement).

Another more recent example is the Oregon Watershed Improvement Coalition (OWIC). OWIC was formed in 1986 to develop communications among various groups interested in the management of riparian zones in the rangeland environments of Oregon. Membership includes Oregon Trout, Oregon Izaak Walton League, Oregon Environmental Council, Oregon Cattlemen's Association, Oregon Natural Resources Council, Oregon Forest Industries Council, and the Pacific Northwest Section of the Society for Range Management. As with the Washoe/Modoc Experimental Stewardship Program, decisions made by OWIC are arrived at by consensus. Membership has been kept small so that the group could function effectively without creating a complex administrative structure, and so that all members would have ample opportunity to participate in discussions. Through its members, OWIC networks with a large variety of individuals and organizations which share an interest in watershed issues. OWIC is not a public agency and the public at large has not been invited to attend OWIC meetings. This has been a conscious decision by the group in order to provide a favorable atmosphere conducive to frank and open discussions of ofttimes sensitive and volatile issues (OWIC fact sheet provided by W.C. Krueger, Dept. of

Rangelands Resources, Oregon State University). OWIC has had a successful beginning. Through OWIC the potential exists to develop the multitude of benefits of riparian systems and associated watersheds through spirit of cooperation and mutual understanding.

If programs such as the Washoe/Modoc Experimental Stewardship Program and OWIC can be emulated elsewhere, litigation may become less prominent in formulating public land policy and constructive management might have a chance to occur.

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Economic Losses from Broom Snakeweed Poisoning in Cattle

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Broom snakeweed *(Xanthocephalum sarothrae)* is an undesirable perennial half-shrub found on much of the rangeland in the western half of the United States and northern areas of Mexico. Broomweed infestations are cyclic and may result from climatic fluctuations rather than range overgrazing (Jameson 1970, Valentine 1974), although overgrazing expedites its density after it occurs and dense infestations become more permanent (less cyclical). Greatest plant numbers occur in the southern High-Plains and the Canadian-Pecos valleys of west Texas and eastern New Mexico (McDaniel and Sosebee 1988). The production and economic losses caused by snakeweed infestations stem from the adverse effects on two complementary processes. The forage yield is reduced on infested areas and livestock production efficiency is impaired when the plant is consumed.

The poisonous property of perennial snakeweeds was documented as early as 1936. Mathews (1936) found that snakeweed ingestion caused death in ruminants. After years of incrimination by ranchers, studies verified that snakeweed also causes abortion in ruminants. Retained placentas, pre-mature calves that are weak and underweight, and other reproductive disorders are often associated with poisoning (Dollahite and Anthony 1956, 1957; Dollahite and Allen 1959).

The dimension of the cattle poisoning problem in west Texas, along with other information, was estimated by McGinty and Welch (1987). For individual counties the cattle death loss ranged from 0 to 10% and the abortion rate ranged from 0 to 20%. The mean cattle loss for the 148-county area was 1% and the abortion rate averaged 2.9%.

Experimental evidence suggests that several factors contribute to the extent of poisoning in a cow herd. Toxicity problems usually occur during the winter and early spring when low forage availability forces animals to consume relatively large amounts of the plant. Coinciding with this time period is the stage of leaf formation, the most toxic stage of the snakeweed life cycle (Kingsbury 1964). Dollahite and Anthony (1957) also reported that

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