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The Voluntary Retirement Option for Federal Public Land Grazing Permittees

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THE PRESENT FEDERAL GRAZING SYSTEM

Grazing on the public lands is not stable. Few, if any, bright spots are in the future of federal public land grazing permittees. Beef is losing market share to chicken, pork, seafood, cheese and vegetables. Concerns about human health and food safety (heart disease, obesity, *e. coli*, mad-cow disease, etc.) are affecting the beef industry. Subsidies to farm and ranching industries are being phased out on private lands, which does not bode well for subsidies on public lands. The average age of the permittees is rising. Environmentalists are increasing their attention on livestock grazing. Conflicts with recreationists are increasing. Enforcement of water quality standards is increasingly likely. More endangered species listings are inevitable. More litigation is probable. New planning and management processes by federal land management agencies will possibly reduce livestock grazing numbers and certainly place more restrictions on timing, location, etc. The latter scheme requires increased federal spending which is increasingly problematic to secure. The fee on grazing is likely to rise. Bidding by environmentalists on state grazing leases will increase pressure to reform the federal grazing fee.

The system for grazing on Forest Service and Bureau of Land Management lands in the American West was established by the Taylor Grazing Act of 1934. In most areas, qualifying ranches ("base properties") were assigned an exclusive amount of AUMs (animal unit months: forage for a cow and calf for one month), theoretically based on the land's carrying capacity.

Public land livestock grazing is a privilege, not a right. If the government chooses to discontinue a "giving," that does not constitute a constitutional "taking."

However, the real estate market—due to the near certainty that the federal government will transfer grazing permits to the new base property owner—recognizes the value of a federal grazing permit attached to a base property. The result is that the base properties have increased in market value to reflect the federal AUMs that are automatically transferred to the new purchaser. In the rare, but increasing, occurrence when the government does reduce grazing, it is a loss of real money to the permittee. It is not only a loss of future subsidized grazing; it is a reduction in the fair market value of the base property.

It is understandable that ranchers—not to mention the banks that hold the mortgages on the base properties—fight so hard to keep their AUMs up.

Given the vagaries of the cattle business, operators would benefit from the flexibility to not exercise their permits, or compensation for retiring their interests in them. This is not possible under existing law, which mandates "use it or lose it."

THE STATE OF PUBLIC LAND GRAZING

Public land grazing contributes only 2% of the feed to the nation's cattle industry, and only then with a large subsidy from the federal taxpayers.

Despite overwhelming scientific information and renewed fiscal restraint, government policy toward public land livestock grazing has not changed significantly. Take for example, the Interior Columbia Basin Ecosystem Management Plan. (Similar efforts will likely spread to all federal lands.)

While new studies by 170 government scientists to guide management of 75 million federal acres in the Interior Columbia Basin in seven states (and the Oregon portions of the Klamath Basin and Great Basin), acknowledge the ecological destruction livestock cause, no grazing reductions are proposed by government managers.

Nonetheless, as more species are listed for protection under the Endangered Species Act (bull trout, westslope cutthroat trout, lynx, numerous birds, other fish, amphibians, reptiles and plants, etc.), grazing reductions are inevitable.

The alternatives in the Columbia Basin plan vary, but all will make it more expensive for ranchers to graze public lands—not in the fee, but in herding, fencing, restrictions on timing and length of grazing, and other costs. In the plan, the federal government assumes a 1% annual decline in grazing due to economic factors, not environmental forces.

The new plan further assumes that even if grazing is reduced by 50% to protect the environment, that to sustain the remaining grazing, at least \$50,000 per permittee per year will have to be expended in the form of mitigation, monitoring and management. This expense is in addition to the ongoing provision of below-cost forage.

The source for the dollar figures in the above paragraph is a leaked draft of the Eastside Draft Environmental Impact Statement being prepared for the Interior Columbia River Basin Ecosystem Management Project. Interestingly, no such information appeared in the published draft issued in May 1997.

According to the official draft EIS, the 756,000 AUMs on federal lands on the "eastside" (Oregon and Washington east of the Cascade Crest) provide a total of 243 livestock owner, operator and ranch hand jobs. While higher in certain other western states, the numbers of jobs provided by federal forage are still trivial.

As federal budgets continue to tighten, agency decisions may be based more on how much the new plans cost the taxpayers. The least expensive alternative (greatest reductions in grazing and logging) would cost about half of what is being spent today to mismanage these lands. The most expensive alternatives are those which continue to prop up livestock grazing.

THE VALUE OF PERMITS

Permits have a capital value. An estimate of their fair market value can be made by qualified real estate appraisers. The value ranges as much as the quality of the grazing land.

According to Professor Robert Nelson, School of Public Affairs at the University of Maryland (formerly with the US Dept. of Interior Office of Policy Analysis for 18 years), the West-wide capital value of a public land grazing AUM is \$50–100. Let us assume an average of \$75/AUM or \$900/AU (The real estate and ranching industries deal in “animal units” that equate to 12 AUMs).

THE ECONOMICS OF THE EXISTING SYSTEM

The public land range fee for 1997 was calculated by an arcane and irrelevant statutory formula at \$1.35/AUM.

Even though the BLM admits spending more on grazing than it takes in, the agency considers only a small proportion of the costs. According to Nelson, the taxpayer expense in excess of revenue is conservatively \$20/AUM. While this includes direct and indirect (overhead) costs, it does not include other subsidies from the US Department of Agriculture such as Animal Damage Control services.

In contrast, the gross income the federal treasury receives from an AUM is less than \$1.35. Fifty to 62.5% (depending on the legal classification of the rangeland) of the \$1.35 is dedicated to the Range Betterment Fund (the monies are used for fences and water developments), and does not offset the federal taxpayer expenditure.

THE VOLUNTARY RETIREMENT OPTION

It would be easier—and more just—for the federal government to fairly compensate the permit holders as it reduces cattle numbers. Since the government spends substantially more than it receives for grazing, in a few years the savings realized by reducing livestock numbers can pay for the compensation.

It would be less expensive—fiscally and politically—for the agency to simply buy out the problematic grazing permits and save extensive planning, monitoring, research, public involvement, appeal, litigation and political costs.

Below is a solution to an environmental problem that requires less government regulation. Federal law should be changed to:

- **Allow a permit holder to choose to not exercise any or all of the grazing permit.**

There would be no penalty to the permittee for not grazing. This would give desirable flexibility to ranching operations, decrease livestock grazing damage, and could also increase the value of the permit, in the event the permittee later wished to sell. An allotment with more forage is more attractive to both prospective livestock operators and conservation buyers.

- **Allow existing permittees who hold federal grazing permits to sell or donate their grazing permit to the federal government, which would then retire the allotment.**

A permittee could choose to sell to the federal government, receiving fair market value for their interests in the permit. Money to fund tax deductions and for acquisition of permits by federal agencies could be funded from the Land and Water Conservation Fund, by reducing agency grazing budgets, reallocating US Department of Agriculture animal damage control subsidies, by using the Range Betterment Fund, or earmarking that small fraction of the federal grazing fee that actually makes it into the federal treasury.

Alternatively, a permittee could be compensated for retiring their interest by an individual environmentalist, a state fish and wildlife agency, a private conservation organization, a hunting and fishing club, or anyone else. If it was in the form of a donation to the government, a federal income tax deduction would be available.

- **Reaffirm that grazing the public lands is a privilege, not a right.**

Any legislation must expressly state that this change in law in no way increases or diminishes any vested interest the permittee may or may not have in public land grazing; that grazing the public lands is still a privilege and any reduction in grazing by the government is not a compensable loss to the permittee.

Existing laws designed to protect the environment would not change. The administering agencies could still choose (or be ordered by a court) to reduce, eliminate or further condition grazing to protect the environment or other public values.

WILL THE VOLUNTARY RETIREMENT OPTION WORK?

How successful might such a buy-out program be? Some examples from northern Nevada suggest it could work.

Prior to the establishment of Great Basin National Park, statutes establishing national parks in the West usually had sunset provisions for livestock grazing. In these examples, the handwriting was clearly on the wall, and in many cases, permittees opted to sell out early to the National Park Service or to conservation organizations specializing in property acquisition.

The 1986 law establishing Great Basin National Park not only grandfathered, but mandated, livestock grazing to continue. The Park Service had very limited ability to restrict grazing to protect park values. In 1995, at the request of the park's cattle grazing permittees, the Nevada Congressional Delegation (two Democrats and two Republicans) attached a rider to the FY96 Interior Appropriations Act to require the Secretary of the Interior to retire grazing permits in the park, if they were donated to the United States. Presently, The Conservation Fund is negotiating to pay the permittees the fair market value of permits in exchange for their donation to the government.

Permittees on the Sheldon National Wildlife Refuge in Nevada recently opted to retire their permits, concurrent with mutually agreed-upon compensation by The Conservation Fund. The pressure was on because the US Fish and Wildlife Service had ended grazing on the nearby Hart Mountain National Wildlife Refuge in Oregon and was preparing to undertake a process that would likely have resulted in the same at Sheldon. In the Sheldon case, such permits were different from normal USFWS permits. They were, in effect, Taylor Grazing Act relic permits from the time when the lands in question were part of the Sheldon National Antelope Range, which was then jointly operated by the Bureau of Land Management (livestock grazing) and Fish and Wildlife Service (wildlife).

How much interest will there be among livestock permittees? There is no reliable way to estimate. Factors will include the financial viability of ranching operations, the personal situations of permittees, the existing and anticipated level of conflict regarding grazing on an allotment, the price of beef, etc.

Anecdotal surveys suggest that about half of the ranchers who have taken advantage of buy-out offers have moved on to other things, and about half have purchased livestock operations not dependent on public land. The latter stayed in ranching, but wanted to be the masters of their own domains.

THE BENEFITS OF THE VOLUNTARY RETIREMENT OPTION

Species and ecosystems would recover at maximum rates and in the most cost-effective manner.

As permits are retired, taxpayer costs of subsidizing the forage are reduced proportionally.

The Forest Service and Bureau of Land Management could more easily meet the environmental protection standards of state and federal law if livestock grazing were reduced, resulting in better stewardship.

Controversy could be severely diminished. There would be less litigation, less need for funds to be spent mitigating livestock grazing damage, and less call to overturn the environmental protection statutes.

While not vesting a legal right to graze (something permittees have never had), such a change in law would provide more options to livestock permittees. A permittee could choose to sell a federal permit, but still live on and/or raise livestock on the base property.

Very importantly, the option to exercise the voluntary retirement option rests solely with the permittee. If they didn't want to retire, they would be free to continue to take their chances in a dynamic economic, regulatory, budgetary and political environment.

THE COSTS OF THE VOLUNTARY RETIREMENT OPTION

A one-time increased cost to taxpayers is inevitable, but it is recouped in a few years by having eliminated ongoing subsidies. After recoupment, the continued savings could be used for national debt reduction and other beneficial activities such as stream restoration, erosion control, weed eradication, etc.

Under current budgeting policies, new expenditures must be offset by savings during the same budget year. This can lead to a penny-wise, pound-foolish result where, even though the investment of buying and retiring AUMs has an average payback of 3.75 years, it is budgetarily impossible to undertake. An exception is clearly justified in this case.

As livestock grazing decreases, agency direct staffing support (range conservationists, etc.) of grazing will be diminished. In an era of downsizing, staff reductions are already occurring. Existing fiefdoms would be affected.

Just as the public land grazing permittee presently has no option but to fight desperately to hold on to the AUMs attached to the base property, environmentalists have no option but to exercise traditional environmental

protection strategies in the arenas of administrative reform, judicial enforcement and legislative change.

While these methods have been somewhat effective and can still be so in the future, they are not necessarily the most efficient use of resources. These methods cause social and political stress, and are not always successful. To take advantage of the voluntary retirement option, environmentalists would have to shift resources. There would be less litigation to enforce the nation's environmental laws, as would there be less lobbying for a higher grazing fee, better regulatory standards, improved public processes, and/or abolition of livestock grazing. There would be more lobbying for funds to provide for permit acquisition from willing sellers. Existing fiefdoms would be affected.

Those environmentalists that believe, as a matter of principle, that it is wrong to allow livestock grazing permittees to profit from the privilege of livestock grazing on the public lands, will not be placated.

For those permittees who desire to stay in public land livestock grazing, nominally the status quo remains. However, if enough willing sellers exercise their option, this will have effects on those who remain. Politically, the numbers of public land permittees will decrease, reducing the ability to maintain current subsidies.

The public would also increasingly see retired allotments in recovery and in stark contrast to those still being grazed. This would increase pressures on remaining permittees.

Citizens who enjoy living in "ranching communities" will feel a loss as these communities accelerate their ongoing diversification.

A permittee could choose to sell a federal permit, but still live on and/or raise livestock on the base property.

Those ranchers who believe as a matter of principle that it is wrong to reduce livestock grazing on the public lands will feel threatened by this proposal.

A SPECIAL ROLE FOR CONSERVATION ORGANIZATIONS

Under the voluntary retirement option, conservation organizations could compensate ranchers at a mutually agreed upon price (generally fair market value) for retiring an allotment. However, funds from conservation organizations for such are quite limited. Available funds will be a small fraction of the potential demand. The largest—and most rational—source of funds for implementing the voluntary retirement option is the federal government.

If such a voluntary retirement option is enacted by Congress, conservation organizations should reserve their scarce dollars to pay premiums to cooperating permittees above and beyond the fair market value the federal government will pay. It is sound public policy to prohibit the federal government from paying more than fair market value. It is also sound policy for conservation organizations to reallocate funds they would spend on regulatory enforcement of the nation's environmental laws on public grazing allotments. Rather than paying for lawyers and others to make permittees and the land management agencies obey the law, they should pay permittees a premium. A market would develop around said premium. It would be dependent on the number of AUMs available for retirement and the amount of money environmental organizations have to spend. For discussion purposes, conservation organiza-

tions might offer a \$5/AUM premium for a non-special grazing allotment. For allotment in Wilderness Study Areas, it might be \$7.50/AUM. For designated Wilderness and Wild and Scenic Rivers, \$10/AUM. For National Wildlife Refuges and National Parks, perhaps it would be \$20/AUM.

CONCLUSION

While the voluntary retirement option is a radical departure from the traditional debates on public land livestock grazing, it is equally rational. It addresses directly the market value of federal grazing permits, which is the major subtext in the debate over public land livestock grazing.

Politically, the fairness and rationality of the proposed policy change can appeal to environmentalists, taxpayers, politicians, permittees, fiscal conservatives, compassionate liberals and others. Since it is a solution outside the box we are all in, it will require leadership in all camps and a willingness to try something different.

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