



**Idaho
Watersheds
Project**

Watersheds Messenger

Fall 1997 Supplement

Working to protect and restore Idaho watersheds

A Proposal To Expand the Market In Federal Public Land Grazing Permits

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The Present Federal Grazing System

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. Grazing on the public lands is not stable. Market forces and concerns about human health and food safety 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. Environmental interests are increasing their attention on livestock grazing. Conflicts with recreationists are increasing. Increased enforcement of water quality standards is 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. To help balance the federal budget, the fee on grazing is likely to rise.

The system for grazing on Forest Service and Bureau of Land Management lands in the West was established by the Taylor Grazing Act of 1934. It sought to bring order to the previously unrestricted grazing regimes. 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.

The legal distinction is critical: 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 recognizes the value of a federal grazing permit attached to a base property, due to the near certainty that the federal government will transfer grazing permits to the new base property owner. 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 to be allowed to sell 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 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. 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 new interior Columbia Basin plan vary, but all (even the preferred alternative) 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 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 that was issued, 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 increasingly be based 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.

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.

Below is a solution to an environmental problem that requires less government regulation and lets the market work. Call it supply-side ecology.

Expanding and Using the Market

Federal law should *be changed to*:

* **Allow existing permittees who hold federal grazing permits to sell any or all of their grazing permit to anyone.**

A permittee could choose to sell to another rancher, the federal government, an individual environmentalist, a state fish and wildlife agency, a private conservation organization, a hunting and fishing club, or anyone else. The sale of the permit would not require the approval of the administering agency.

If the transfer was in the form of a donation to the government or a nonprofit organization, a federal income tax deduction would be available. Alternatively, a federal income tax credit could also be extended to anyone who retired an AUM they held.

If the permit were purchased with federal moneys or federal tax-exempt income to nonprofit organizations, it could not be resold and would be permanently retired. Allowing the federal government or nonprofit organizations to also sell acquired AUMs is economically irrational. Such AUMs have no economic value if not for government subsidies.

Money to fund tax deductions (and tax credits) and for acquisition of AUMs by federal agencies could be funded from either the Land and Water Conservation Fund, by reducing agency grazing budgets, reallocating US Department of Agriculture animal damage control subsidies, or by using the Range Betterment Fund.

* **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.

* **Cap livestock grazing permits at existing levels.**

This is necessary to preserve the market value of permits. If the federal government were to simply allow more (new) grazing, the existing permits would become worthless.

* **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. It must also require that, in selling a grazing permit, the sale be complete and unconditional and no terms and conditions affecting the exercise, or non-exercise, of the lease may be attached to the sale. 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.

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

The Value of AUMs

AUMs 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 (he was previously in 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. For purposes here, let us assume an average of \$75/AUM or \$900/AUM (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 government 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 moneys are used for fences and water developments), and does not offset the federal taxpayer expenditure.

Market Expansion Can Benefit All

The Environment For every AUM that is bought and not used for grazing, the environment is improved. Species and ecosystems would recover at maximum rates.

The Taxpayer As AUMs are retired, costs of subsidizing the forage are reduced proportionally. It will be cost-effective for tax moneys to be used to retire AUMs and thereby eliminate ongoing subsidy costs.

The Federal Land Management Agencies 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. More flexibility in the management of grazing would result in better land stewardship.

The Congress Controversy could be severely diminished. Such a change in policy allows for a noncoercive option that may be exercised at the sole discretion of the existing livestock permittee. To the degree AUMs end up in the hands of entities who choose to not exercise or to retire them, there will be less controversy, less litigation, less need for funds to be spent mitigating livestock grazing damage, and less call to overturn the environmental protection statutes.

The Environmentalists For every AUM retired by this method, there would be less need for litigation, the public controversy and the political difficulties these can entail. In many cases, the cost of fixing the problem through litigation, lobbying and advocacy (including the resulting political damage control) will be higher than the cost of simply buying the problematic AUMs.

The ranchers while clearly 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 some or all of his or her federal AUMs, but still live on and/or raise livestock on the base property. A freer market in AUMs will likely increase the wealth of the permittee, since it has been shown that non-grazing interests are often willing to pay more for grazing permits than grazing interests. Finally, permittees may choose not to exercise the new option. They would be free to continue to take their chances in a dynamic economic, regulatory, budgetary and political environment.

The Cost of the Proposal

To the Environment None. Existing environmental protection laws would still be in place.

To the Taxpayer In many cases, it might be desirable for the federal land agency to buy out AUMs, resulting in a onetime increased cost, that is recouped in a few years by having eliminated ongoing subsidies. After recoupment, the continued savings could be used for debt reduction and other beneficial activities such as stream restoration, erosion control, weed eradication, etc. Since it is often cheaper to buy out the grazing permits, revenues for AUM acquisition might well come from agency planning and management budgets that are being spent to mitigate livestock grazing damage. To the degree that parties, such as federal agencies or federal tax-exempt organizations, buy AUMs and retire them, the ongoing subsidies of providing below-cost forage expensive mitigation, and destructive so-called "range improvements" are eliminated:

To the Federal Land Management Agencies As livestock grazing decreases, direct staffing support (range conservationists, etc.) of grazing will be diminished. Indirect staffing support (the various biologists, etc.) will also be less necessary to mitigate damage from livestock grazing. In an era of downsizing, staff reductions are already occurring. Existing fiefdoms would be affected.

To Congress 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.

To environmentalists 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 policy change, environmentalists would have to shift staff, volunteer and financial 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 management standards, improved public processes, and/or abolition of livestock grazing. There would be far more support of AUM 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.

To Ranchers If a permittee desires, for whatever reason, to sell AUMs, there is no cost in implementing this proposal. 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 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 diversify as a result of less livestock grazing. This loss is already being felt as public land livestock grazing inevitably declines, but would be accelerated under this proposal. 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.

Will Market Expansion Work?

How successful such a buy-out program would be is anybody's guess. It's never been done before on any significant scale. However, some surrogate examples suggest it is worth trying.

State land competitive bidding attempts by environmentalists to bid on grazing permits on state lands throughout the West suggest that the market value of such permits for non-grazing uses may be higher than for grazing uses.

National Parks Prior to the establishment of Great Basin National Park, Acts of Congress 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 1996, at the request of the cattle grazing permittees, the Nevada Congressional Delegation

(two Democrats and two Republicans) attached a rider to the 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.

National wildlife refuges grazing permittees on the Sheldon National Wildlife Refuge in Nevada recently opted to surrender their permits, after payment 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 (wanting to retire?), 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 able to have more control over their own destiny.

An **Alternative: 3rd Party Payoff/Surrender Option**

An alternative to market expansion is to allow or require a federal land management agency to retire a grazing allotment if the permittee surrenders a grazing permit. Such acts would be dependent on the generosity of the permittee or of a third party such as a conservation organization paying the permittee to do so. If the land management agency were not required to retire the permit, there would be little interest among conservation organizations. In the cases cited above, The Conservation Fund was willing to pay the permittees because they felt relatively assured that the permits would be retired so the conservation benefits would occur. They relied on either a special provision of law or confidence in agency mandate and philosophy. The present mandates and practices of the Forest Service and Bureau of Land Management do not encourage such confidence.

The most attractive feature of this proposal is that it clearly avoids the sticky political and legal situation of the federal government paying permittees for grazing permits, thereby avoiding any possibility of setting legal precedent that reducing grazing is a compensable taking.

The least attractive feature is that financially, the costs of such an option would rest solely on conservation organizations, which have limited funds. To ensure the greatest possible participation by willing sellers, federal government funding is essential. Politically, the 3rd party payoff/surrender option would likely fail to attract the necessary critical mass of

support. The fairness and rationality of the proposed policy change can appeal to environmentalists, taxpayers, politicians, permittees, fiscal conservatives, compassionate liberals and others.

A Special Word To Environmentalists

It's been two decades since the passage of the Federal Lands Policy and Management Act. The effort to reform livestock grazing on the public lands has stalled. The time has come to propose a solution outside the box we (environmentalists, ranchers, bureaucrats and politicians) are stuck in.

The environmental movement is becoming increasingly polarized on the public land grazing issue. While abolitionists are ascendant, the reformers-for the moment-hold much of the power on the issue within our movement.

While immediate abolition is the most ecologically rational, it is the least politically feasible. While "reform" (however it has been defined) may be more politically feasible than abolition, it is clearly the least rational, fiscally and ecologically. Nonetheless, the last several political attempts at reforming livestock grazing policies have not been successful.

Reform measures that focus on range fee, range management standards, public involvement processes, etc., have not and will not gain a critical mass of support within the environmental community.

Expanding the AUM market to all comers, however, can be supported by all factions of the environmental movement, save its most idealist wing. To idealists, it is morally wrong to pay permittees for something they don't own, are being subsidized to do, and which causes environmental harm.

While environmentalists should support a limited expansion of the public land livestock grazing market described above, they should never forget that such an expanded market is as artificial as the current limited market. Public land AUMs would have no value if a free market truly existed and if fair market values were the rule.

Fair market value is the mutually agreed price between the seller and buyer when neither is compelled to act. In this case, present federal law compels federal land management agencies to behave in an economically irrational manner (from the taxpayer, if not agency, perspective). The present public lands AUM markets-both the one between permittees and the government and between base ranch buyers and sellers-are not free markets. Neither is this proposed expansion of the latter market, though it is more open.

Environmentalists should support the expansion of the current market for reasons of social fairness and justice and as a pragmatic method to achieve our ecological objectives.

Market expansion needs to stand on its own, as range reform that has independent utility to environmentalists, livestock permittees, agencies and Congress. It should not be linked to any other change in law or policy.

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