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Livestock Grazing on Public Lands:
Procedures and Issues

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The Public Lands During the Remainder of the 20th Century
Planning, Law, and Policy in the Federal Land Agencies

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- I. Grazing on public lands, particularly in the West, has been a traditional land use.
 - A. Grazing on western ranges was originally controlled by the private sector.
 1. Livestock production developed when the policy toward public lands was disposal through various homesteading acts.
 2. The grazing of public lands was free and unregulated by government until the 20th century.
 - a. Water was a key to controlling the range.
 - b. Agreements over grazing rights were made by ranchers in the same area: these agreements were often short lived.
 - c. Livestock associations strongly regulated some aspects of range use.
 - B. Regulation developed because of a need to halt deterioration of range resources and the desire by many ranchers to have a reliable, sole source of livestock forage.
 1. The courts gave the right to use public lands to all users (nomadic sheepherders as well as adjacent land owners). Buford v. Houtz 133 U.S. 320 (1890).

2. A survey of ranchers was conducted in 1905.
 - a. The majority (78%) favored some type of government control over grazing of public lands.
 - b. Over 75% felt that the carrying capacity of the range had decreased, primarily because of overgrazing.

Report of the Public Lands
Commission. Grazing on the Public
Lands. USDA, Forest Service
Bulletin No. 62 (1905).

3. The Public Lands Commission concluded that grazing should be regulated with special reference for bringing permanent settlement and that a moderate fee be charged for grazing permits.

C. A review of federal grazing regulations can be made with respect to the appropriate levels of grazing, equity questions, and grazing fees.

1. More than 200 million acres of public lands are administered by the Bureau of Land Management, U.S. Department of Interior, and the Forest Service, U.S. Department of Agriculture.

2. General references:

- a. Coggins and Lindeberg-Johnson, "The

Law of Public Rangeland Management

II: The Commons and the Taylor Act",
13 Environmental Law 1 (1982)

- b. Coggins, "The Law of Public Rangeland Management III: A Survey of Creeping Regulation at the Periphery 1934-1982", 13 Environmental Law 295 (1982)
- c. Coggins, "The Law of Public Rangeland Management IV: FLPMA, PRIA, and the Multiple Use Mandate", 14 Environmental Law 1 (1983)
- d. "The Principal Laws Relating to Forest Service Activities", USDA, Forest Service, Agr. Handbook No. 453 (1983)
- e. S. Dana and S. Fairfax, Forest and Range Policy: Its Development in the United States, 2nd Ed. (1980)

II. The levels of grazing on public lands are determined by the administrating agency based on ecological principles.

A. The Forest Service was established to manage Forest Reserves for the protection of the forest, for watershed, and for timber production. Organic Act of 1897, 16 U.S.C. 475-551.

1. The first regulations to provide grazing

on a sustained yield basis were written in 1905 based on the Public Lands Commission report of the same year. (See I.B.2.b. above).

2. The court held that the Forest Service had the right to regulate grazing. Light v. United States 200 U.S. 523 (1911) and United States v. Grimaud 220 U.S. 506 (1911)
3. The original regulations are the basis for the current regulations. Regulation 36 C.F.R. 222 - Range Management, Subpart A - Grazing and Livestock Use on the National Forest System (also USDA, Forest Service, FS-70, 1980).
 - a. Grazing permits with priority for renewal are issued for 10 years or less. Granger-Thye Act of 1950 (16 U.S.C. 580).
 - b. Grazing will be within the existing capacity and will be under allotment management plans.
 - c. Allotment management plans prescribe the manner in and extent to which livestock operations will be conducted to meet multiple use, sustained yield, economic, and other needs.

4. Grazing policies were reinforced or modified by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701-1753).

a. Applies to both Department of Agriculture and Interior.

b. Defines terms of permits and advisory boards (until Dec. 31, 1985).

5. Range improvements are authorized and needed to manage National Forest Systems lands.

a. Agreements may be made for cooperation on installing and maintaining range improvements.

b. Funds from the receipts of grazing use are designated for range betterment.

B. Public lands not withdrawn for other purposes are administered by the Bureau of Land Management.

1. The Taylor Grazing Act of 1934 (34 U.S.C. 315) regulated grazing on public lands prior to passage of FLPMA in 1976.

a. Major goals were improvement of range condition and stabilization of the western livestock industry.

b. Advisory boards were established (as amended Act of July 14, 1939, 53

Stat. 1002).

- c. No agreement exists on the success of the Taylor Grazing Act.

For a discussion of the Grazing Service see Coggins and Lindeberg-Johnson, "The Law of Public Rangeland Management II", 13 Environmental Law 1 (1982).

- 2. Bureau of Land Management established in 1946 and had little budget or control.
 - a. Preference and permits established before carrying capacity determined.
 - b. Court ruled in 1952 that BLM could reduce a permit. Sellas v. Kirk 200 F.2d 217 (9th Cir. 1952). Amer. Horse Protection Assoc. v. Fizzell (DC Nev) 403 F Supp 1026 (1975).
 - c. Efforts to reduce grazing pressures had limited success in the 1950's and 1960's.
 - d. More recent efforts have reduced grazing use towards, and in many cases, within grazing capacities.
 - e. In 1974, the Bureau of Land Management was ordered to prepare environmental impact statements on livestock grazing programs for grazing districts pursuant to the National Environmental

Policy Act of 1969 (42 U.S.C. 4321-4361). NRDC v. Morton 388 F. Supp 829 (D.D.C. 1974), affirmed 527 F.2d 1386 (D.C.Cir. 1976). See also Coggins, "The Law of Public Rangeland Management III," 13 Environmental Law 351-365 (1982).

f. Not until 1976 was there a case where BLM suspended or revoked a permit for violation of rules. Diamond Ring Ranch v. Morton 531 F.2d 1397 (10th Cir.).

3. BLM grazing regulations were revised in 1984.

a. "The objectives are for orderly use, improvement and development of public lands..." Dept. of Interior, Bureau of Land Management [Circular No. 2514] 43 C.F.R. Parts 4100. Grazing Administration.

b. Other objectives related to overgrazing, stabilization of the livestock industry, inventories and monitoring, multiple use, sustained yield and environmental objectives.

c. Allocation of forage is to consider livestock grazing, wild free-roaming

horses and burros, wildlife and other uses in the land use plan.

- d. Reaffirms that when grazing use is in excess of the amount of forage available, the excess grazing preference is suspended (4100.3-2).
- e. Permanent changes in available forage is accomplished over a 5-year period (4100.3-3). The McClure Amendment, Department of the Interior and Related Agencies Appropriation Act, Pub. No. 96-126, 93 Stat 954,956 (1959).

III. Equity has been a goal of public range management.

- A. The original grazing regulations of the Forest Service contained references about small land owners and had upper limits on the amount of grazing an individual could obtain.
 - 1. Current regulations do not specify limits on permits or state goals with respect to small landowners.
 - 2. The Chief of the Forest Service may set special or upper limits on the number of livestock a person is entitled to hold a permit. Regulation 36 C.F.R. 222 Subpart A (1980).
- B. An original goal of the Taylor Grazing Act of

1934 was to stabilize the western livestock industry.

1. Current regulations cite stabilization of the livestock industry dependent on the public range as an objective. 43 C.F.R. Part 4100.0-2 (1984).
2. Federal Land Planning and Management Act of 1976 emphasized multiple use and sustained yield principles as opposed to grazing-as-dominant-use as contained in the Taylor Grazing Act; FLPMA also does not specify stabilization of the livestock industry as a specific objective.
3. In the preface of the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901-08), fairness to the user is cited as a criteria for setting grazing fees.

IV. The grazing fee issue is an important aspect of grazing regulation on public lands.

A. References on grazing fees include:

1. See Quigley, Taylor and Cawley. "Public Resource Pricing: Analysis of Range Policy." USDA Forest Service General Technical Report (1987) (in press).
2. Bergland and Andrus, "Study of Fees for Grazing Livestock on Federal Lands," a report from the Secretaries of the

Interior and Agriculture (1977).

3. U.S. Departments of Agriculture and the Interior, "Grazing Fee Review and Evaluation, Final Report" (1986).

B. Originally, fees were established as reasonable to both the government and the user.

1. The Forest Service fees were set by the Forester in 1905 regulations.
 - a. Fee adjustments were made considering the industry's well being.
 - b. Grazing fee studies started in 1916 and have continued periodically over the years.
 - c. Fee studies usually concluded that the fee should be linked to private lease rates in some fashion.
 - d. In 1931, the fee was 25% below the study level based on private rates and was indexed to beef prices which made the fee a function of the industry's ability to pay.
2. Original grazing fees on public lands administered under the Taylor Grazing Act were to cover the cost of administering the grazing program.
 - a. The uniform fee was upheld as was the

authority to make rules with respect to grazing on public lands. Dewar v. Brooks 313 U.S 354, 85 L.Ed 1399, 61 S.Ct. 979 (1941).

- b. Numerous attempts have been made to tie fees on the public domain to comparable private lease rates.
- c. Fees were tied to livestock prices in 1958.

C. In 1959, the Forest Service and Bureau of Land Management were directed to obtain fair market value from grazing fees. Bureau of the Budget, "User Charges," Cir. No. A25 (1959).

- 1. Attempts were made by the agency and the Executive Office to institute new fees.
- 2. In 1969, the Office of Management and Budget instituted fee increases based on a formula developed from a 1966 study.
 - a. The fee was to be the same for both agencies.
 - b. Fee increases were to be phased in over a 10-year period in order to minimize adverse impacts on the livestock industry.
 - c. Moratoriums occurred which resulted in incremental increases in only 4 of 10 years.

3. The Federal Land Policy and Management Act of 1976 reasserted that "the United States receive fair market value of the use of the public lands and their resources unless otherwise provided for by statute." 43 U.S.C. 1701(a)(9) (1976).
 - a. A study was to be conducted to determine grazing values.
 - b. The fee was frozen until the study was completed.
 - c. The study recommended virtually the same fee formula as in the OMB schedule.
4. Congress defined the fee in the Public Rangelands Improvement Act of 1978.
 - a. Congress modified the 1969 formula to be adjusted to livestock prices and costs of production.
 - b. The annual increase in fees could not exceed 25% of the previous year.
 - c. The fee schedule expired Dec. 31, 1985.
 - d. Another grazing fee study was completed.
5. The PRIA formula was replaced by an Executive Order of the President (Feb. 14, 1986).

- a. The PRIA formula was continued indefinitely with the addition of a minimum fee of \$1.35 per AUM.
- b. The Executive Order has been challenged by NRDC. NRDC, et al. v. Hodel and Lyng U.S. Eastern Calif. CIV S-86-0548 (1986).

D. Permit value is an issue that has been associated with grazing fees and grazing levels.

1. Permit value accrued because fees were below economic value and because of tenure associated with the permits.
2. The courts and agencies have not recognized permit value. United States v. Cox (CA 10 NM) F2d 293, cert den 342 U.S. 867, 96 L Ed 652, 72 S Ct 107 (1951). Mollohan v. Gray (CA 9 Ariz) 413 F2d 349 (1969). United States v. Fuller 409 U.S. 499, 35 L Ed2d 16, 93 S Ct 801 (1973).
3. The real estate market, the lending community, and the IRS recognize the value of permits.
4. It is argued that permit value is a direct subsidy to current permit holders.
 - a. Only the original permittees obtained a one time subsidy.

- b. Most current permittees have paid or are paying for the permit value.

V. Grazing will occur on public lands in the future.

A. Continuing efforts will be made to obtain proper grazing use.

1. Land management agencies are mandated to manage grazing within carrying capacities.
2. Special interest groups, which might be labeled "anti-grazing," will continue to work toward better condition of the Nation's resources.
3. Livestock groups at the local and state levels have and will continue to work towards good management of a resource vital to their industry.
4. Land use plans influence grazing on public lands. NRDC. et al. v. Hodel, R-84-13-ECR (DC Nev. 1985).

B. Emphasis on other uses of public lands will continue.

1. Issues such as riparian area management, and wildlife habitat and management influenced the discussion of the "not-to-be" omnibus rangeland bill in 1985.
2. After the passage of the Wild Horses and Burros Protection Act of 1971 (16 U.S.C. 1331-1340), it has been amended by other

public land laws to modify methods of control of feral animals (FLPMA and PRIA).

3. All recent legislation has emphasized multiple use. Act of December 12, 1980 (96 Stat 2957).
4. Livestock grazing is compatible with many other uses including wildlife and recreation.

C. The current grazing fee formula will be changed and fees will increase.

1. OMB has attempted to apply a competitive bid system for grazing on public lands.
2. In the current case in California, NRDC and others charge that low fees cause overgrazing.
 - a. This is a myth; the level of grazing and grazing fees are separate issues.
 - b. Increasing the fee may decrease grazing amounts, but it will not guarantee that reductions will occur where they are needed.
3. The possibility of higher fees raises equity questions.
 - a. Those in agriculture who are most financially vulnerable are those who can least afford increases in production costs.

b. Higher fees may adversely impact ethnic minorities in the Southwest. Gray, "Small range-livestock enterprises in north-central New Mexico," New Mexico State Univ. (1973).

4. Determination of grazing fees will be legislative rather than administrative or judicial.