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George Cameron Coggins

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FLPMA, PRIA, AND THE
WESTERN LIVESTOCK INDUSTRY

George Cameron Coggins
Tyler Professor of Law
University of Kansas Law School
Lawrence, Kansas 66045

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I. INTRODUCTION

A. Public rangeland management is an area where the sun of legal reasoning seldom shines. The extent to which courts oversee the actions of range managers to insure compliance with the multiple use, sustained yield mandates of FLPMA and PRIA promises to be the overriding issue of the future. Multiple use management will harm the western livestock industry in the short run.

B. RESEARCH SOURCES

1. Historians' Viewpoints
   a. P. GATES, HISTORY OF PUBLIC LAND LAW (1968)
   b. E. PEFFER, CLOSING OF THE PUBLIC DOMAIN (1951)
   c. W. CALEF, PRIVATE GRAZING AND PUBLIC LANDS (1960)
   d. P. FOSS, POLITICS AND GRASS (1960)

2. Political Scientists' Viewpoints

3. Economists' Viewpoints

4. Scientists' Viewpoints
a. JOURNAL OF RANGE MANAGEMENT
b. DEVELOPING STRATEGIES FOR PUBLIC RANGELAND MANAGEMENT (compendium of papers presented to six National Academy of Sciences Symposia, now several years overdue from Westview Press)

5. Lawyers' Viewpoints


6. Reformers' Viewpoints


II. HISTORICAL BACKGROUND

A. Knowledge of the western livestock industry's structure, of the Taylor Grazing Act, 43, U.S.C. §§ 315-315r, and of the Act's implementation is necessary to an understanding of FLPMA and PRIA.

B. The Western Livestock Industry, 1850-1934

1. Ranchers acquired base ranches on or along scarce water sources, sometimes legally, giving them de facto control of the adjacent public domain. The main casualties of the range wars were the western grassland ecosystems.

2. Although the Forest Service began regulating grazing in the national forests around 1907, no federal law controlled grazing use or intensity on the public domain until 1934. In fact, the little federal law was ecologically counterproductive.
   b. The Supreme Court invented a "license" allowing anyone to graze his livestock on the public lands. Buford v. Houtz, 133 U.S. 320 (1890).

3. State law for control or protection of the public lands was absent, and state fencing/liability law was counterproductive. Much state law was directed against sheepherders and toward keeping the peace. See, e.g., Omaechevarria v. Idaho, 246 U.S. 343 (1918).

4. This largescale Tragedy of the Commons severely harmed range productivity, and much of the damage has never been repaired.

5. Early conservation was by reservation: congresses and presidents created national parks, monuments, forests, and wildlife refuges in which livestock grazing was banned or regulated.

C. The Taylor Grazing Act of 1934 (TGA), 43 U.S.C. §§ 315-315r

1. The TGA, a crisis-inspired Depression measure, effectively closed the public domain; the remaining unreserved lands were withdrawn into grazing districts. § 315. See E. PEFFER; P. FOSS; PRM II; supra.
2. The TGA was intended to stabilize the dependent livestock industry and improve range conditions. Preamble; § 315. The former purpose became subsidization, and the latter purpose was forgotten. See PRM II, supra.

3. The TGA created a preference permit system by which adjacent ranchers got exclusive grazing use.

a. § 315b:

The Secretary of the Interior is authorized to issue or cause to be issued permits to graze livestock on such grazing districts to such bona fide settlers, residents, and other stock owners and under his rules and regulations are entitled to participate in the use of the range, upon the payment annually of reasonable fees in each case to be fixed or determined from time to time in accordance with governing law. . . . Preference shall be given in the issuance of grazing permits to those within or near a district who are landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water rights, as may be necessary to permit the proper use of lands, water or water rights owned, occupied, or leased by them . . . except that no permittee complying with the rules and regulations laid down by the Secretary of the Interior shall be denied the renewal of such permit, if such denial will impair the value of the grazing unit of the permittee, when such unit is pledged as security for any bona fide loan. Such permits shall be for a period of not more than ten years, subject to the preference right of the permittees to renewal in the discretion of the Secretary of the Interior, who shall specify from time to time numbers of stock and seasons of use . . . So far as consistent with the purposes and provisions of this subchapter, grazing privileges recognized and acknowledged shall be adequately safeguarded, but the creation of a grazing district or the issuance of a permit pursuant to the provi-
sions of this subchapter shall not create any right, title, interest, or estate in or to the lands.

b. Actual allocation of grass was made by grazing advisory boards according to formulas they devised; nomads and small operators lost out. See P. FOSS; PRM II, supra.

c. After some initial confusion, see Red Canyon Sheep Co. v. Ickes, 98 F.2d 308 (D.C. Cir. 1938), courts have emphasized the TGA proviso that grazing is only a revocable privilege. U.S. v. Fuller, 409 U.S. 488 (1973). See also U.S. v. Cox, 190 F.2d 293 (10th Cir. 1951), cert. denied, 342 U.S. 867 (1951); La Rue v. Udall, 324 F.2d 428 (D.C. Cir. 1963).

d. Although merely a privilege, the value of the TGA permits (the difference between the permit fee and the real, or "fair market," value of the grazing) has been capitalized into the value of the base ranches for sale or mortgage. See PRM II, supra. This development occurred through industry dominance over the BLM such that permit renewal became automatic and the main actors assumed that a right had vested in spite of the TGA proviso. False capitalization partially explains apparently counterproductive industry oppo-
sition to rangeland improvement through amelioration of grazing intensity.

e. On isolated parcels, the permit is called a lease, but a similar preference applies.

§ 315m.

4. As a consequence of industry domination, the BLM remained for decades an orphan agency, without funding, direction, professionalism, or esprit. Grazing fees did not even cover costs of administration; overgrazing on a wide scale continued; and BLM employees who sought range improvement through grazing reductions down to carrying capacity concepts were transferred or fired.

D. Events leading to PLPMA and PRIA

1. Congress gave the BLM temporary multiple use management authority in 1964, Classification and Multiple Use Act of 1964, 43 U.S.C. §§ 1411-1418 (expired 1970), but whatever reevaluation occurred in the agency had little effect in the field.

2. The Public Land Law Review Commission in 1970 recommended both better security of tenure (and some privatization) for ranchers and more active, ecologically based public management. PLLRC Report at ch. 6; PRM IV; Gereaud, Reavely, and Hart & Guyton articles, 6 LAND & WATER L. Rev. 47, 57, 69 (1970).
3. The Bureau finally realized that better funding was possible only if it managed scientifically. BLM studies confirmed the wretched conditions of the public lands.

4. The court in NRDC v. Morton, 388 F. Supp. 829 (D.D.C. 1974) ordered the BLM to prepare district-specific environmental impact statements on the effects of grazing; 144 EISs must be completed by 1988. The first batch of EISs confirmed poor conditions, continued overgrazing, and BLM incompetence. PRM III.

5. The conservation and environmental organizations, with the notable exception of the NRDC lawsuit, have not challenged BLM grazing programs in court. A coalition of ranchers and environmentalists was instrumental in producing PRIA in 1978, but it has disappeared. Litigation is now likely, and some suits are pending.

E. Livestock Grazing on the Public Lands

1. An AUM is one Animal-Unit-Month, which is the amount of forage necessary to feed one cow/calf unit or five sheep for a month (about 750-800 pounds). The public lands provide about 12 million AUMs to 3.5 million cattle and horses and 4.5 million sheep and goats per year.
2. About 23,000 persons and entities hold BLM permits or leases, but their circumstances vary widely. Less than 20% of the permittees have more than 80% of the AUMs allocated. Over 4000 permittees have less than 28 AUMs, and many continue to hold permits only for tradition or as a hobby. In public, all appear united (through declining livestock associations) against active management; in private, many see the need for a new management regime.

3. Public land grazing has very little economic significance; the 170 million acres devoted to grazing provide less than 3% of national forage requirements. The entire capitalized value of all outstanding BLM permits is estimated at $1.2 billion, or $5-$7 per acre.

III. FLPMA AND GRAZING: GENERAL

A. FLPMA policies are not self-executing (§ 1701(b)) but are influential nevertheless, e.g., Perkins v. Bergland, 608 F. 2d 803 (9th Cir. 1979) (judicial review favored), and could influence grazing management.

1. The United States will retain the lands (§ 1701(a)(1)); thus the BLM should have a more stable landed base to work with.
2. The policies on planning and multiple use, sustained yield management (§§ 1701(a)(2), (7)) were specifically enacted.

3. The eighth and twelfth policies are the crux:
   a. § 1701(a)(8). Congress directed that:

      the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, 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; and that will provide for outdoor recreation and human occupancy and use;

   b. § 1701(a)(12). But Congress also said:

      the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands . . .

4. The fair market value policy (§ 1701(a)(9)) does not apply to grazing.

B. The five main FLPMA themes should affect rangeland management.

1. Land use planning must precede and control specific allocation decisions.

2. Multiple use, sustained yield principles shall be the basic planning and management standard.

3. Environmental values and amenities must be protected.

4. Public participation is encouraged at all levels of the management process.

5. Congress will oversee and control public land disposition and management.
C. FLPMA gives the BLM adequate legal organic authority to institute a new management regime.

1. The Secretary has broad rulemaking powers. §§ 1733(a), 1740.

2. The Secretary must use permits and leases as regulatory enforcement mechanisms. § 1732(c).

3. "In managing the public lands, the Secretary shall . . . regulate [their] use, occupancy and development . . . [and] the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." § 1732(b).

4. The problem is enforcement. § 1733.
   b. BLM enforcement history is dismal. PRM II.

IV. FLPMA AND GRAZING: THE RANGE PROVISIONS

A. Grazing Fees. FLPMA froze fees, pending yet another study, to prevent an imminent rise toward fair market value. § 1751(a). PRIA later instituted a formula tied to costs of production that has drastically lowered fees to perhaps 10-15% of FMV. PRIA § 1905.
B. **Range Rehabilitation Funding.** FLPMA § 1751(b) creates a fund of half the grazing fees to be used for "on-the-ground range rehabilitation, protection, and improvements . . . [which] shall include all forms of range land betterment including, but not limited to, seeding and reseeding, fence construction, weed control, water development, and fish and wildlife habitat enhancement. . . ." PRIA amended this section to say 50% or $10 million, whichever is greater.

C. **Grazing Leases and Permits**

1. The normal permit term is to be 10 years unless the land will be used for another purpose or "it will be in the best interest of sound land management to specify a shorter term." §§ 1752(a), (b). The absence of AMP details or EIS's is not alone sufficient to justify shorter terms.

2. Present permittees retain their preferences for renewal so long as they accept and comply with permit conditions. § 1752(c).

3. An Allotment Management Plan or AMP, is a document containing a description of the lands (the allotment), the multiple use objectives, and other provisions consistent with law for each permit or lease. § 1702(k). As amended by PRIA, FLPMA now requires AMPS to be "tailored to the specific range conditions of the area." § 1752(d). AMPS
when completed are to be incorporated in the permit, *id.*, but they are discretionary. Whether or not an AMP is completed, the Secretary must "specify" in the permit "the number of animals to be grazed and the seasons of use and that he may reexamine the condition of the range at any time and, if he finds on reexamination that the condition of the range requires adjustment in the amount or any other aspect of grazing use, that the permittee or lessee shall adjust his use to the extent the Secretary concerned deems necessary. Such readjustment shall be put into full force and effect on the date specified by the Secretary concerned." § 1752(e).

a. The McClure Amendment apparently modifies this section by limiting the immediate effectiveness of AUM reductions to 10%.


c. The section was ignored in two grazing reduction cases. Valdez v. Applegate, 616 F.2d 570 (10th Cir. 1980); Hinsdale Livestock Co. v. United States, 501 F. Supp. 773 (D Mont. 1980).
4. If a permit is cancelled because the land will be devoted to another purpose, the permittee is entitled to compensation for the adjusted value of "authorized permanent improvements." § 1752(g).

D. Grazing Advisory Boards are resurrected until 1986, but their functions are limited to advice on AMP development and range betterment spending. § 1753.

E. The Upshot is that FLPMA's grazing provisions enhance legal security of tenure for the permittee and continue the fee subsidy, but FLPMA also confirms the administrative authority to condition the permit and the allowed grazing as the agency sees fit to meet other objectives. In public rangeland management, however, what the agency does has always been more important than what the law says.

V. PRIA AND GRAZING

A. The Public Rangelands Improvement Act of 1978, 43 U.S.C. §§ 1901-1908 is the product of rare agreement among all contending groups that range management needed better financing. PRIA goes well beyone funding, and in some respects may ultimately have more of an impact on the western grazing industry than FLPMA. PRIA's funding program should not obscure the basic fact that every section of PRIA is aimed at improvement
of range conditions. If ever taken seriously by the BLM, a new range betterment program could have severe shortterm detrimental effects on permittees.

B. PRIA Findings and Policies. "Vast segments" of the public rangelands "are in an unsatisfactory condition" that may get worse, with high risk to all other values; such poor conditions require "an intensive public rangelands maintenance, management, and improvement program involving significant increases in levels of rangeland management and improvement funding for multiple-use values." § 1901(a). Congress then reaffirmed its policy (not self-executing, § 1901(c)) commitment to full inventorying and monitoring (§ 1901(b)(1)), and to improve range conditions so that the lands "become as productive as feasible for all rangeland values" in accordance with planning and management objectives. § 1901(b)(1), (2). [Fee and wild horse provisions are omitted herein.]

C. PRIA Definitions

1. Public rangeland law, science, and management have long been hampered by the absence of a definitive glossary of common terms. See PRM V. PRIA tries to supply some definitions, but Congress as a semantic committee may have invented a camel.
2. § 1901(f):

The term 'range improvement' means any activity or program on or relating to rangelands which is designed to improve production of forage; change vegetative composition; control patterns of use; provide water; stabilize soil and water conditions; and provide habitat for livestock and wildlife.

3. § 1902(e) defines "native vegetation" as vegetative communities "identified with a healthy and productive range condition," but the term is not used elsewhere in the Act.

4. § 1902(d):

The term 'range condition' means the quality of the land reflected in its ability in specific vegetative areas to support various levels of productivity in accordance with range management objective and the land use planning process, and relates to soil quality, forage values (whether seasonal or year round), wildlife habitat, watershed and plant communities, the present state of vegetation of a range site in relation to the potential plant community for that site, and the relative degree to which the kinds, proportions, and amounts of vegetation in a plant community resemble that of the desired community for that site.

   a. Prior definitions emphasized "climax communities" of vegetation; this is a hybrid definition keyed partially to planning goals.

   b. Because of its semantic flexibility, this definition likely will not appreciably promote much-needed rationalization of public range management.
D. PRIA Management Commands

1. Section 1903 of PRIA, because it is potentially the single most significant public rangeland statute, deserves to be quoted in its entirety:

   (a) Following enactment of this chapter, the Secretary of the Interior and the Secretary of Agriculture shall update, develop (where necessary) and maintain on a continuing basis thereafter, an inventory of range conditions and record of trends of range conditions on the public rangelands, and shall categorize or identify such lands on the basis of the range conditions and trends thereof as they deem appropriate. Such inventories shall be conducted and maintained by the Secretary as a part of the inventory process required by section 201(a) of the Federal Land Policy and Management Act (43 U.S.C. 1711), and by the Secretary of Agriculture in accordance with section 1603 of title 16; shall be kept current on a regular basis so as to reflect changes in range conditions; and shall be available to the public.

   (b) The Secretary shall manage the public rangelands in accordance with the Taylor Grazing Act (43 U.S.C. 315-315(0)), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701-1782), and other applicable law consistent with the public rangelands improvement program pursuant to this chapter. Except where the land use planning process required pursuant to section 202 of the Federal Land Policy and Management Act (43 U.S.C. 1712) determines otherwise or the Secretary determines, and sets forth his reasons for this determination, that grazing uses should be discontinued (either temporarily or permanently) on certain lands, the goal of such management shall be to improve the range conditions of the public rangelands so that they become as productive as feasible in accordance with the rangeland management objectives established through the land use planning process, and consistent with the values and objectives listed in sections 1901(a) and (b)(2) of this title.

2. The inventory/monitoring requirement of § 1903(a) reinforces § 1711 of FLPMA, and, by explicitly
tying inventories to range condition and trend, should force the BLM to measure and concentrate on the actual effects of its practices. Since January 1981 however, the agency has abandoned any pretense of compliance with this section. See PRM IV.

3. Section 1903(b) is susceptible to varying interpretations. Its core meaning, however, is clearly that range condition improvement is to be the goal, not just a goal, of public rangeland management. Taylor Act and FLPMA management must be "consistent" with the range improvement program. Stripped of its verbiage, the provision states that "the goal of such management shall be to improve the range conditions of the public rangelands so that they become as productive as feasible .." Again, the current Administration has completely ignored this overriding command.

E. PRIA Range Improvement Funding. In addition to the fund created by FLPMA out of grazing fee receipts, PRIA authorizes the appropriation of substantial additional amounts for on-the-ground work.

F. PRIA Experimental Stewardship

1. Section 1908 authorizes the Secretaries to experiment with agreements using "innovative grazing management policies and systems, which rewards permittees "whose stewardship results in an improvement of the range condition."
2. The current Administration has perverted this program by using it as a device to abdicate management responsibility without the accountability for improvement specified in the section. PRM V.

G. The McClure Amendment, an uncodified rider to the annual BLM appropriations bill, limits the immediate effectiveness of grazing reductions to 10% with the remaining reductions effective after time for appeal has expired. E.g., Act of Nov. 27, 1979, Pub. L. No. 96-126, 93 Stat. 954.

VI. MULTIPLE USE, SUSTAINED YIELD PLANNING AND MANAGEMENT UNDER FLPMA AND PRIA

A. General

1. Before FLPMA, the BLM purported to be a multiple use agency (see LaRue v. Udall, 324 F.2d 428 (D.C. Cir. 1963)), and it began a form of planning in 1969. See PRM IV. In fact, however, the BLM was a prototypical dominant use (grazing) agency, and its early planning efforts were only formalization of agency infighting and incompetence.

2. FLPMA requires a rational planning and management system premised on multiple use, sustained yield principles. PRIA reinforces and reaffirms this command.
B. Multiple Use Planning Under FLPMA. FLPMA demands a new three-step management process: inventories; plan development; and individual decisions in accordance with the plans.

1. Section 1711(a) requires the Secretary to prepare an inventory "of all public lands and their resource and other values," with priority on areas of critical environmental concern (ACEGs).
   a. Intensity of data collection is itself a controversial matter: the loser in any resource reallocation always claims more information is necessary.
   b. ACECs are areas "where special management attention is required...to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes." § 1702(a).
   c. PRIA expands the inventory requirement and keys it to range condition and trend. § 1903(a).
   d. Range scientists believe that BLM inventory and monitoring systems and practices are unworkable and inadequate. Further, since 1981, the BLM has abandoned a full inventory program. See PRM IV.
2. Section 1712 requires the preparation and appropriate revision of land use plans for all public lands but no definitive planning procedure is specified.
   a. The legislative history indicates that Congress wanted the BLM to emulate Forest Service planning processes. See PRM IV.
   b. Public participation at all stages is mandated. §§ 1712(c)(9),(f).
   c. Thus, BLM planning regulations control. 43 C.F.R. §§ 1600 et. seq.
   d. In the first challenge to a BLM land use plan (for the California Desert Conservation Area), the court held that the BLM had failed to abide by its own regulations and the consultation requirements of FLPMA, but the court refused to enjoin the effectiveness of the plan because equitable considerations militated against plaintiffs. American Motorcyclist Assn. v. Watt, 534 F. Supp. 923 (C.D. Cal 1981), aff'd, 714 F.2d 962 (9th Cir. 1983) (AMA I).

3. The planning criteria of FLPMA are also less than 100% definitive. § 1712(c) says the Secretary shall:
(1) use and observe the principles of multiple use and sustained yield set forth in this and other applicable law;

(2) use a systematic interdisciplinary approach to achieve integrated consideration of physical biological, economic, and other sciences;

(3) give priority to the designation and protection of areas of critical environmental concern;

(4) rely to the extent it is available, on the inventory of the public lands, their resources, and other values;

(5) consider present and potential uses of the public lands;

(6) consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values;

(7) weigh long-term benefits to the public against short-term benefits;

(8) provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans; and

(9) to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located ... Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.

4. This round of planning should be more than futile paper-shuffling because FLPMA requires subsequent decisions to be based on and in accordance with completed plans. §§ 1712(e), 1732(a). Further,
BLM planning efforts apparently will be subject to judicial review both at the stage of completed plans, AMA I, *supra*, and when subsequent management decisions arguably conflict with plan provisions. See PRM IV. In addition, the two judicial decisions on BLM planning indicate that review will be both procedural (AMA I), and substantive (is the plan itself consistent with applicable criteria?). See American Motorcyclist Ass'n v. Watt, 543 F. Supp. 789 (C.D. Cal. 1982) (AMA II). Cf. California v. Block, 690 F 2d 753 (9th Cir. 1982).

5. The future portends extensive litigation over BLM planning efforts. Given the agency's inability to plan or to implement multiple use, sustained yield management, the BLM is likely to be buffeted by judicial oversight. Change is inevitable over the long run, and change has ominous implications for present BLM permittees and lessees.

C. Multiple Use, Sustained Yield (MUSY) Management.

The change of most consequence in FLPMA is the congressional command to manage for multiple use and sustained yield. Section 1732(a) states that the Interior Secretary "shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him . . . when they are available. . . ." Other sections buttress this command
and require consideration of MUSY at all stages of management. §§ 1701(a)(7), 1712(c)(1), 1702(c), (h), (1), 1781.

1. The MUSY concept originated in the Forest Service, and the Multiple Use, Sustained Yield Act of 1960, 16 U.S.C. §§ 520-531, first enshrined the concept into law. Although the Forest Service emphasizes timber production in practice (its operative slogan is "GOTAC," for Get Out The Allowable Cut), its management does give detailed consideration to all renewable resources, and its "nondeclining evenflow" harvesting program is a concrete variant of sustained yield. See Symposium on the National Forest Management Act, 8 ENVTL. L. 9 (1978).

2. FLPMA Section 1702(c):

The term "multiple use" means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values and harmonious and coordinated management of the various resources without permanent impairment of the productivity of
the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.

3. Section 1702(h):

(h) The term "sustained yield" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use.

4. The overriding question is whether these generalities are something more than a collection of vacuous platitudes constituting merely a "succotash syndrome."


c. But the assumptions underlying the succotash syndrome position do not stand up to statutory
analysis. The definitions quoted above do supply adequate "law to apply" for judicial review of multiple use decisions. **See PRM IV.**

5. If courts ever deign to read the FLPMA sections on MUSY, they should be able to find standards applicable to some situations.

a. The statute demands a rough equality of consideration and treatment for all of the listed resources; that congressional theme is emphasized by the awkward, semi-alphabetical listing of the various resources. The BLM remains a dominant-use-for-grazing agency and many of its decisions could be vulnerable on that ground alone. A litigant could fairly easily show for instance, that the BLM systematically ignores watershed values and downgrades wildlife habitat in its range management.

b. The general goal of MUSY management -- meeting the needs of the American people -- is often subordinated to local economic concerns. To choose the "best" and "harmonious" combination of resource uses, the agency must eschew short-term expediency, its only real operative philosophy.
c. The statute specifically cautions against decisionmaking premised solely on optimization of one resource, but the BLM persists in thinking that maximum red meat production is the overriding criterion.

d. The statute specifically forbids management that causes "permanent impairment of the productivity of the land and the quality of the environment." § 1702(c). The standard is mandatory and ought to be enforceable whenever a practice, such as prolonged over-grazing, is allowed to continue. Further, this command arguably creates an affirmative duty to reclaim impaired lands PRM IV.

e. The BLM is not even arguably complying with the duty to manage for sustained yield; instead, its failure to raise land productivity insures annual low-level outputs of all renewable resources.

6. The grazing cases decided after enactment of FLPMA largely ignore the statute and the foregoing.

a. Perkins v Bergland, supra. The Forest Service drastically reduced AUMs under permit. The court held the action reviewable, citing § 1701(a)(6), even though § 1752(e) gave the Secretary great discretion, but it limited the scope of review by requiring the rancher
to demonstrate that the agency's factual findings were "irrational," i.e., wholly without foundation in the record.

b. Valdez v. Applegate, supra. The Tenth Circuit enjoined the effectiveness of reductions ordered after EIS completion; § 1752(e) was ignored and the McClure Amendment was shrugged off in favor of unexplained equitable considerations.

c. Hinsdale Livestock Co. v. United States, supra. Except for the policy in favor of judicial review, FLPMA was entirely ignored in this triply erroneous opinion holding that, because drought conditions can never create an emergency situation (relying on plaintiff's dubious experts while discounting the agency testimony entirely), the BLM could not reduce grazing intensity during the drought.

d. Several other cases raised property questions of little general import Garcia v. Andrus, 692 F.2d 89 (9th Cir. 1982); Holland Livestock Ranch v. U.S., 714 F.2d 90 (9th Cir. 1983) (presumption of trespass).
VII. SUMMARY AND PROGNOSIS

A. In the 1970s, the BLM made several sincere, if less than competent, attempts to reform public rangeland management by looking more closely at actual range conditions, seeking more funding for improvements, and trying to bring grazing intensity down to within carrying capacity. Those efforts although promising, may have been doomed because of the agency's legacy of impotence in the face of permittee opposition and its studied ignorance or rewriting of governing law. In any event, the Reagan BLM promptly cancelled all ongoing reforms and ceded or abdicated its management responsibility to the permittees.

B The ranchers realize that the honeymoon is nearing its end. Many Watt policies have been thoroughly discredited and Secretary Clark is quietly repudiating others. BLM budget cuts have been severe, and environmentalist opposition to BLM sins of omission is heating up. Many realize that a new balance is as inevitable as it is necessary, but polarization prevents affirmative steps toward a new accord.

C. While it is possible that public rangeland management will remain an insular system outside the mainstream of modern public land law, it is more probable that a revolution in range management will gather momentum.
The western livestock industry faces legal changes that could alter all existing relationships between the public lands and their primary users. As the permittees have enjoyed a subsidized monopoly for a half century, any significant changes in law or agency practice will redound to their detriment.