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WHY GRAZING FEES ON FEDERAL LANDS SHOULD NOT BE RAISED

INTRODUCTION

Congress currently is considering legislation which would increase the fees charged by the federal government to the 31,000 Western ranchers who graze sheep and cattle on 318 million acres of federally owned land. A proposed 33.3 percent hike in the fees is contained in the appropriation bill for the Department of the Interior (H.R. 5503), which passed the House of Representatives on July 22, and in the authorization bill for the Bureau of Land Management (H.R. 1096), which passed the House last summer. Action on both bills is expected soon in the Senate.

According to a recent report by the Secretaries of Agriculture and the Interior, the federal government spent \$52.3 million more on rangeland administration in 1990 than it received in grazing fees,¹ prompting the claim that ranchers who graze their sheep or cattle on federal land are receiving a subsidy. The wide disparity between grazing fees on federal and private rangeland also gives plausibility to the notion that ranchers receive a subsidy. The proposed fee increases are intended to eliminate this supposed subsidy. The average grazing fee on private land in 1991 was estimated by one researcher to be \$9.19 per Animal Unit Month or AUM. An Animal Unit Month represents the amount of forage that normally would be consumed over a one-month period by one cow and her calf, or five sheep, or one horse. The fee on federal land currently is only \$1.92 per AUM.

The argument for a fee hike is appealing on its surface, but closer scrutiny reveals serious flaws. For instance:

- ◆ There is a good reason why the price charged for grazing on public land typically is lower than for private land. Private land generally is of better quality and the owners provide ranchers with fences,

¹ Department of Agriculture, U.S. Forest Service, and Department of the Interior, Bureau of Land Management, *Grazing Fee Review and Evaluation: Update of the 1986 Final Report*, (April 30, 1992), p. 7, Figure 1.5. Data cited are based on the best available data from the most recent year available.

roads, water, and protection for livestock. Ranchers must provide these services for themselves on public land.

- ◆ **The federal government does not, in fact, own the valuable water rights on its Western lands.** These rights already belong to the ranchers. Private landowners leasing out their rangeland, on the other hand, own the rights on their own lands. Thus it should be expected that ranchers using public land should pay a lower fee than they would pay for access to private land—otherwise ranchers would be charged for rights they already own on public land.
- ◆ **The federal government retains title to public land, but it may not actually own the grazing rights.** The law is unclear as to whether Uncle Sam or the ranchers own the rights. Ranchers used these lands for decades before the government began charging fees, but the federal government never explicitly recognized an ownership right to graze these lands. The government has, however, recognized property rights of some kind with respect to grazing. In fact, the Internal Revenue Service treats a rancher's grazing rights as private property for estate tax purposes.
- ◆ **If the fees were raised by the amount being considered by Congress, fewer ranchers would make use of public grazing lands.** In all probability, Washington would end up collecting less revenue rather than more.
- ◆ **The controlled grazing that now occurs helps to protect the ecology of the West, and so reduces the costs taxpayers otherwise would pay to protect the environment.** For instance, cattle aid decomposition of vegetation by trampling the soil and even help spread seed and fertilizer. Also, foraging keeps grass short and so helps prevent prairie fires. In fact, without cattle, much of the fertile land would become desert.

The dispute over grazing fees has its origin in government ownership of the land. If Congress were to sell the land to private owners, the government would obtain billions of dollars in proceeds and market-driven fees would accurately reflect the value of grazing rights to ranchers. Short of this step, lawmakers should recognize the flimsiness of the argument that ranchers receive a subsidy and keep grazing fees at their current levels.

ORIGINS OF THE GRAZING FEE CONTROVERSY

The ranchers who homesteaded the Western rangelands acquired some parcels of land outright, but simultaneously they obtained the right to graze livestock on adjoining lands still owned by the federal government. Just as mining companies in some instances acquired the mineral rights underneath federal land, so these ranchers acquired the grazing rights. Moreover, under state property laws in the Western states, water was and still is considered owned by whoever first makes beneficial use of it. Since the ranchers used the water on the federal lands for their

cattle and sheep, and the federal government did not, the ranchers became the owners of the water rights.

Fair Market Value. Ranchers initially were not charged for access to federal land, but grazing fees were instituted in 1906. Significantly, the charge first was called a tax rather than a fee, out of tacit recognition that the ranchers already had the right to graze their cattle on federal land. The purpose of the tax was to pay for the cost to the federal government of managing the lands to prevent overgrazing. The Taylor Grazing Act, passed in 1934, required the federal government to charge the "fair market value" to the ranchers for their grazing allotments. Later, in 1978, the Public Rangeland Improvement Act (PRIA) created the current formula used to set the fees.

Congress recently ordered the two government agencies responsible for managing public rangeland—the Department of Agriculture's U.S. Forest Service and the Department of the Interior's Bureau of Land Management (BLM)—to update their 1986 report assessing the fair market value of federal grazing lands. The agencies concluded this year that the government currently charges below fair market value. This conclusion was based partially on the fact that the government charges substantially less money to ranchers to graze their cattle on federal land than private land owners charge ranchers. The current federal charge is \$1.92 per AUM. While nobody actually knows the average charge for the use of private pasture, most estimates place it significantly higher than \$1.92 per AUM. According to Frederick W. Obermiller, Professor of Agricultural and Resource Economics at Oregon State University, the average rental rate for private pasture is \$9.19 per AUM.² The BLM also estimates that about 16 percent of federal rangeland is in poor shape. This has prompted members of Congress to advocate higher grazing fees to reduce grazing, which is perceived by some to harm the ecology.

Congressional Proposals. There are three fee increase proposals now before Congress. One by Representative Michael Synar, the Oklahoma Democrat, would raise federal fees over several years to a minimum of \$8.70 per AUM. A second proposal, offered by Representative Ralph Regula, the Ohio Republican, passed the House last year as part of H.R. 1096, the BLM authorization bill, and now is pending in the Senate. This would raise fees by 33.3 percent per year for several years, reaching an expected level of \$4.68 to \$4.87 per AUM in 1996, and likely rising even higher in subsequent years. A third proposal, which is a variation of the second, is contained in the version of H.R. 5503, the Department of the Interior Appropriations bill, which passed the House on July 22 of this year. Because H.R. 5503 is an appropriation bill, it cannot set fees for more than one year at a time. Therefore, H.R. 5503 contains only the first of the series of 33.3 percent fee increases proposed by Regula. This would raise the fee from \$1.92 to \$2.56 per AUM. If a one-year increase passes, Regula is expected to propose a further increase next year.

² Frederick W. Obermiller, "The June 20, 1991, Synar Amendment to the House Interior Appropriations Bill Effects on Fee Receipts and Grazing Use of Public Lands—A Preliminary Assessment," June 23, 1991, p. 4.

Raising fees would seem on its face to solve two problems at once. The action would eliminate what appears to be a subsidy to ranchers, and a fee hike would reduce the supposed environmental harm caused by grazing. But the issue turns out to be much more complex. In fact, large increases in grazing fees actually could exacerbate the problems they are meant to solve.

WHY FEDERAL LAND IS WORTH LESS

In determining whether the government charges the fair market value for grazing on federal lands, a 1986 report by the Forest Service and the BLM and a 1992 update conducted by the same agencies make two crucial errors.³ First, the report and update use faulty statistical methods to arrive at the conclusion that fees are too low. Cy Jamison, Director of BLM, has acknowledged these statistical methodology problems, admitting that “[f]rom where we took off to do the [1992] study, it never resolved issues of how the methodology [used originally in the 1986 report] was developed to set the fee. We need to go back and look at the whole picture.”

Second, the report and the update assume that the value of foraging on federal land is equivalent to foraging on privately leased land. It is not. The right to graze on private land is far more valuable than the same right on federal land, because there are a variety of important differences between federal and private land.

Poorer Quality. For one thing, federal rangelands generally are of poorer quality, more remote, and more difficult to manage and control than private lands. Homesteaders had their choice of land, so naturally they took the best lands for themselves. Only the least valuable parcels remained federally owned.

Fewer Services. For another thing, private lessors provide a number of important and valuable services that the federal government does not provide. A rancher who leases federal rangeland, for instance, usually must, among other things, build his own roads, erect and repair his own fences, and furnish his own water tanks and reservoirs. A rancher who leases private rangeland has all these services provided for him.

Shared Access. Another important difference is that a rancher who leases federal rangeland must share the land with the general public. Campers and hunters often leave gates open, requiring the rancher to retrieve strays and leading to loss of some to predators. Further, hunters sometimes shoot cattle by accident. On private lands, the lessor not only will prevent public access, thereby decreasing the frequency of animal loss, but normally is obliged to round up any strays that do wander. And in some instances the lessor even will insure

³ Department of Agriculture, U.S. Forest Service, and Department of the Interior, Bureau of Land Management, *Grazing Fee Review and Evaluation* (1986). For the 1992 update, see footnote 1, above.

the lessee against this loss as a part of his fee. The federal government never does this.

Because the operating costs of ranching on public lands are much higher than on private lands, the rights to graze public lands are worth less. In order to make a fair comparison, therefore, one would need to adjust the average grazing fee on private land by subtracting the value of all the services that a private landlord provides, differences in fence and road maintenance costs, the value of private water rights, and the value of the right to exclude the general public, as well as the differences in the underlying quality of the land. Oregon State University's Obermiller has estimated the appropriate fee differential between federal and private rangelands. By his calculations, if private land were provided under the same terms and conditions that currently apply to federal land, then even the best private land would be worth only \$4.51 per AUM.⁴

This represents the highest fair market value that any parcel of rangeland could have, and it would have to be a premium-quality parcel. The overwhelming majority of public parcels are of lesser quality, more remote, and more difficult to manage. Thus, their fair market value is much lower—\$2.09 per AUM or less, according to Obermiller.⁵ Indeed, for a substantial portion of the federal government's rangeland, even the current fee of \$1.92 per AUM is too high. According to the Forest Service, approximately 20 percent of the grazing allotments currently available go unused.

THE EXISTENCE OF PRIOR PRIVATE GRAZING RIGHTS

Another important difference between federal and private rangelands calls into question whether the federal government should charge any fee at all. Many Americans tend to think that owning a parcel of land implies the rights to build, farm, or use the land's resources, such as grass, timber, water, or minerals. But different individuals actually can own partial rights to the same piece of land. This is the case with federal rangeland. The land does not belong wholly to the federal government. Ranchers who graze their sheep or cattle on federal rangelands already own a variety of important and valuable property rights to the land.

In most instances, ranchers began to use lands adjacent to their homesteads and the water on it to graze their livestock decades before the federal government started charging a grazing tax or fee. Indeed, the federal government implicitly recognized these pre-existing grazing and water "rights."

Recognizing Rights. When it first started charging a fee and regulating the number of cattle or sheep that could graze on the open range, for instance, it assigned the grazing allotments on the basis of these pre-existing rights. Further, the government in numerous other ways recognizes that some form of rancher owner-

4 Frederick W. Obermiller, "The Treasury and Land Use Implications of Increases in Grazing Fees on the Western Public Rangelands as Proposed Under H.R. 5503," July 13, 1992, p. 6.

5 *Ibid.*

ship exists. The Internal Revenue Service levies an estate tax on the ranchers' ownership interests in federal lands. Also, the military is required by law to compensate ranchers whenever it appropriates the federal land. In addition, range rights can be purchased only from the rancher who owns them, not from the federal government. ¹⁶ Finally, the ranchers whose sheep and cattle graze on federal land have constructed, mostly at their own expense, hundreds of millions of dollars worth of fences, wells, reservoirs, and other improvements that are not required when they lease private rangeland. When Congress passed the Taylor Grazing Act in 1934, it explicitly recognized that ranchers owned these improvements. In fact, the Act required subsequent purchasers of the grazing permits to reimburse the previous owner for the value of those improvements.

One can argue, as many Western ranchers do, that pre-existing grazing rights already fully entitle them to graze their cattle and sheep on federal land. According to this view, any fee at all represents an attempt by the federal government to make the ranchers pay for property rights they already own. Moreover, even if a modest grazing fee can be justified as a user charge for land management services that the federal government provides, the government should take account of the ranchers' water rights and improvements in setting the level of the fee. The ranchers cannot fairly be charged for what is already theirs. Indeed, the government risks expensive litigation if it raises fees significantly, on the basis that it has "taken" the ranchers' property and thus owes them compensation.

HIGHER FEES COULD MEAN LESS REVENUE

Advocates of higher grazing fees want the federal government to take in more revenue so that it can cover fully the costs it incurs in managing federal range lands for ranchers. Their argument assumes that the federal government is not breaking even already. However, this is far from clear. The \$52 million shortfall cited in the Forest Service-BLM update contains many costs not related to administering the grazing program. This alleged shortfall includes management costs that are attributable to recreational and other non-grazing uses of rangelands. Excluding these other costs from the calculation, it turns out that the average cost of grazing program management alone is only \$1.47 per AUM for BLM land and \$1.78 for the Forest Service land, according to Professor Obermiller. ¹⁷ Since the federal grazing fee in 1990 was \$1.91 per AUM, the government has been making a slight profit on its grazing programs, not a loss. By comparison, the federal government recovers only one percent of its recreational management costs though user fees for visitors. ¹⁸

⁶ Wayne Hage, *Storm Over Rangelands* (2nd ed.) (Bellevue, WA: Free Enterprise Press, 1990).

⁷ Frederick W. Obermiller, "In Search of Reason: The Federal Grazing (Fee) Debate," testimony presented to the Subcommittee on Public Lands, National Parks, and Forests, Committee on Energy and Natural Resources, 102nd Congress, 2nd Session, July 1, 1992, p. 44.

⁸ M. Clawson, *The Federal Lands Revisited* (Baltimore, Maryland: Johns Hopkins University Press, 1983), p. 100.

Notwithstanding any calculation of appropriate management costs, higher grazing fees probably would result in a net loss of funds to the federal government. While the government would collect more money from any grazing allotments that continue to be used, a higher fee would mean that more allotments would fall into disuse. Some 20 percent of the current available allotments, or some four to five million AUMs, already go unused because, for many parcels, the current fee of \$1.92 per AUM already is too high. Studies by Professor Obermiller indicate that the number of allotments used would fall sharply under the grazing fee formula proposed in the legislation now before Congress, from the current level of about 18 million AUMs to only about 9 million by 1996.⁹ Since the formula proposed in H.R. 5503 eventually could raise the fee for grazing on federal land above the fair market value of even the best parcels, the number of allotments used conceivably could drop to zero sometime after 1996.

How Costs Would Increase

The argument for raising fees implicitly assumes that the government's cost of administering its lands would be reduced with less grazing. In fact, most of the costs of monitoring and managing federal rangelands would be incurred whatever the level of grazing because most of the government's administration costs are fixed. Further, the government no longer would enjoy the many benefits it now receives from private ranchers, such as building and maintenance of roads and fences, the creation of watering holes, the clearing of brush, and control of erosion and predators. BLM Director Cy Jamison predicts that if ranchers were removed from federal land, the cost to the government of managing the range actually would increase by as much as 50 percent.

The increased outlays for the federal government due to higher grazing fees probably would be much greater than this estimate of increased outlays. For one thing, if ranchers are priced off federal rangelands, the government would have to build hundreds of thousands of miles of fences to keep cattle from trespassing onto federal land. In the Eastern states, a cattle owner is responsible for putting a fence around his land to keep his cattle in, and is liable to his neighbors if his cattle escape and trespass onto the neighbors' land. However, in most Western states, a landowner who fails to put a fence around his own land may not recover for trespass if other people's cattle come onto his land because the landowner is legally responsible for fencing the cattle out.

Billions for Fences. No one knows precisely how many miles of fencing the federal government would have to build. Because federal land in most Western states is interspersed with private land in a checkerboard pattern, however, the amount of fencing required would be enormous. In one grazing district in Wyoming alone, the BLM estimates that it will have to put up 13,222 miles of fencing at a cost of almost \$98 million if cattle grazing is discontinued because of excessive fees. The total cost to the federal government of fencing cattle off all its Western rangelands could be several billion dollars.¹⁰

9 Obermiller, testimony of July 13, 1992, *op. cit.*, p. 7.

The federal government also would have to pay additional billions of dollars to survey its land and determine its property boundaries. This was never completed in the past because there was no need to determine the precise boundaries between the federal lands and the adjoining private lands whose owners were using the federal lands. Since the cost of fencing and surveying would, in many instances, exceed the value of the land itself, the government might have to let ranchers graze their cattle for free. If the federal government were to attempt to force the costs of fencing or surveying onto adjacent private landowners, it would face substantial litigation costs.

Reduced Revenues. Above a certain level, a higher fee will produce less grazing fee revenue than a lower one. Professor Obermiller's calculations suggest that, ignoring increased outlays and reduced income tax receipts, gross grazing fee revenue alone would be maximized at a fee of around \$3.30 per AUM. But this would bring in only about \$15 million in additional federal revenue because of the sharp reduction in the number of AUMs that would continue to be used, considerably less than the \$25 million anticipated by proponents of higher fees. Under the formula proposed in H.R. 5503, grazing fees would rise above their gross revenue-maximizing level of \$3.30 per AUM by 1994, and so the federal government would experience a reduction in grazing fee revenue when higher fees took effect in subsequent years.¹¹ Moreover, Obermiller's figure of \$3.30 per AUM does not take into account either the increased costs that higher fees would entail or the loss in federal income tax revenues that would accompany a contraction in the cattle industry. Overall, even at Obermiller's gross revenue-maximizing level, net revenue probably still would decline. This would occur both because of higher costs and because a higher fee would reduce federal income tax collections by more than the increase in grazing fee revenue.

Because federal land in most Western states is interspersed with private land in a checkerboard pattern, most private ranchers have to use some federal land in order to raise their cattle. The private acreage alone cannot support enough head of cattle year-round to make most ranch operations profitable. Moreover, most ranchers paid a price for their land and have mortgage loans that reflect the current grazing fees. A fee increase immediately would reduce the value of their ranches as collateral, making it difficult or impossible for many to get operating capital. Thus, many ranchers—whose average annual income is only \$28,000 even under the current fees—would be driven out of business. This would mean significant economic harm to the Western states and a reduction in U.S. beef, lamb, and wool production.

10 See Warren Brookes, "Can Democrats Take Back the West?" *The Washington Times*, September 17, 1991, p. F4.

11 Obermiller, testimony of July 13, 1992, *op. cit.*, p. 7.