

# NOTES

## REFORMING FEDERAL GRAZING LAW: WILL CONGRESS PASS NEEDED LEGISLATION BEFORE THE COWS COME HOME?

### INTRODUCTION

Thousands of ranchers throughout the western United States graze their sheep and cattle on federal lands. The vast majority of these lands belong to the Forest Service and the Bureau of Land Management, which lease the public land and allocate the available grazing rights among the ranchers.<sup>1</sup> For many of these ranchers, grazing on federal lands makes cattle ranching a viable livelihood. Western ranchers support the current federal law that maintains low grazing fees while conservationists believe the lands are overgrazed, causing damage to public lands and harm to wildlife. Conservationists claim that the federal government subsidizes ranchers with low user fees and advocate increasing public grazing fees to a level comparable to private grazing fees. In addition, internal program budget deficits and national budget considerations create additional problems for governments struggling with the grazing programs.

A draft bill circulated in Congress in 1985 attempted to resolve the current problems of the federal grazing program. This note analyzes the grazing issues presented in that bill and suggests that Congress should pass the draft version of the bill, the Public Rangelands Policy Amendments Act of 1985 (PRPAA).<sup>2</sup> While supporting most sections of the PRPAA, the note points out the crucial issue of grazing fees which the proposed bill fails to address and proposes several amendments to the PRPAA that will protect our natural resources, yet not endanger the rancher of the American West. The note first examines the history and structure of private grazing on public lands and the views of those involved in the debate. It then examines the PRPAA and concludes by proposing amendments that would strengthen the Act.

### HISTORY AND STRUCTURE OF THE FEDERAL GRAZING LANDS

Private grazing on federal lands began in the late nineteenth century. As the West<sup>3</sup> was settled, the federal government made little effort to regulate

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1. The Forest Service owns 192 million acres and the Bureau of Land Management about 200 million acres, most of which is in the western third of the United States. This is roughly half of the land in the West. DEPARTMENT OF THE INTERIOR, PUBLIC LAND STATISTICS—1984 10-22 (1985) [hereinafter cited as PUBLIC LAND STATISTICS—1984].
  2. Relevant provisions of the PRPAA are located *infra* at appendix.
  3. "The West," as used in this note, includes the 11 westernmost states in the continental United

use of unsettled areas.<sup>4</sup> Indeed, the federal government gave away lands at a tremendous rate:<sup>5</sup> 328 million acres to the states,<sup>6</sup> 94 million acres to the railroads,<sup>7</sup> 287.5 million acres to homesteaders and ranchers,<sup>8</sup> and 440 million acres for other purposes, including military bounties, mining claims, and outright sale.<sup>9</sup> These groups generally left the less productive mountainous and arid land unclaimed.<sup>10</sup> These unwanted lands became today's public lands, currently grazed by privately owned sheep and cattle in accord with federal law.<sup>11</sup>

As the West grew, ranchers moved their herds from the more fertile plains and valley bottoms to less desirable areas in the mountains and deserts to provide supplemental forage for herds and to relieve pressure on the ranchers' already overgrazed claims.<sup>12</sup> In the 1890s, Congress recog-

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States, which are Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. Reference to 16 western states adds Kansas, Nebraska, North Dakota, Oklahoma, and South Dakota to the above list. These states contain the overwhelming majority of land owned by the federal government. Some statutes governing federal grazing law include only the first 11 states. See, e.g., Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1702(o) (1982). Others, like the Public Rangelands Improvements Act of 1978 (PRIA), 43 U.S.C. § 1902(i) (1982), cover 16 states.

4. The federal government encouraged the taking of unclaimed land for private use. In *Buford v. Houtz*, 133 U.S. 320 (1890), the Supreme Court granted access to public lands without regard to the claims of private landowners. These and other legislative and judicial actions encouraged the haphazard settlement of the West and created many of the problems facing the livestock industry today. See Coggins, *The Law of Public Rangeland Management I: The Extent and Distribution of Federal Power*, 12 ENVTL. L. 535 (1982) [hereinafter cited as Coggins I]. The series of five articles by Professor Coggins thoroughly reviews federal grazing law and policy. The other articles are *The Commons and the Taylor Act*, 13 ENVTL. L. 1 (1982) [hereinafter cited as Coggins II]; *A Survey of Creeping Regulation at the Periphery, 1934-1982*, 13 ENVTL. L. 295 (1983) [hereinafter cited as Coggins III]; *FLPMA, PRIA, and the Multiple Use Mandate*, 14 ENVTL. L. 1 (1983) [hereinafter cited as Coggins IV]; and *Prescriptions for Reform*, 14 ENVTL. L. 497 (1984) [hereinafter cited as Coggins V]. For the classic study on the public grazing system, see P. FOSS, *POLITICS AND GRASS* (1960).
5. The government gave away an estimated 1.2 billion acres of federal land. P. CULHANE, *PUBLIC LANDS POLITICS: INTEREST GROUP INFLUENCE ON THE FOREST SERVICE AND THE BLM* 44-45 (1981). Other statistics show government disposal of 1.1 billion acres and current holdings of 738 million acres. See M. CLAWSON, *THE PUBLIC LANDS REVISITED* 26 (1983).
6. The states received this land for many purposes and in a variety of allotments. The purposes included support of schools, funding for land grant colleges, and transportation corridors. The federal government continues to recognize state claims totaling 571,000 acres. *PUBLIC LAND STATISTICS—1984*, *supra* note 1, at 5. Some of these lands are leased by the states for livestock grazing.
7. *Id.* The railroads received alternating sections along the right of way, creating access and management difficulties for the alternate section owners. While the railroad grants encouraged settlement of the West and made grazing possible, the problems created by the checkerboard pattern of land ownership continue today. The federal government frequently owns the other lands. These problems are being solved through land swaps between the federal and state governments and private land owners, but this is a slow and cumbersome activity. See Coggins II, *supra* note 4, at 11-14.
8. *PUBLIC LAND STATISTICS—1984*, *supra* note 1, at 5. Some of the land claimed by homesteaders and ranchers was abandoned and reclaimed by later settlers. Coggins II, *supra* note 4, at 21.
9. *PUBLIC LAND STATISTICS—1984*, *supra* note 1, at 5.
10. Average BLM land requires 15 acres to support one cow for one month. Some areas require 640 acres (one square mile) for each cow each year. Nelson, *Economic Analysis of Public Rangeland Management*, in *WESTERN PUBLIC LANDS* 70 (1984).
11. Even though sheep also graze on federal grazing lands, this note will refer only to cattle. The government equates five sheep for each cow when determining carrying capacity. While the number of sheep and cattle grazed on public land are about the same, cattle occupy six times more animal unit months of use. Roughly 2000 of the 20,000 BLM permits and leases are held by sheep owners.
12. The West experienced a use explosion in the 1870s and 1880s. Millions of cattle roamed unherded and unfenced until rounded up in the spring and fall for branding and sale. The winter of 1887-88

nized the growing threat to America's forests and created the Forest Service to protect federal timberlands from lumberjacks and ranchers.<sup>13</sup> In 1934, Congress passed the Taylor Grazing Act<sup>14</sup> and established the General Land Office to protect the remaining unclaimed land, which consisted primarily of arid plains. This office later became the Bureau of Land Management (BLM).<sup>15</sup> Congress delegated to the Secretaries of Agriculture and Interior the power to divide, manage, and regulate these lands.<sup>16</sup> As early as 1934 the present federal grazing system was operational.

The federal government, through its rule-making authority,<sup>17</sup> has created a lease and permit system for grazing on the public lands. Each BLM district and Forest Service National Forest headquarters has divided the suitable areas within their territory into grazing allotments.<sup>18</sup> The grazing administrator, with the advice of the district grazing advisory boards, determines the number of animals that each specific tract can support and any necessary rehabilitation and improvements to the land.<sup>19</sup> The tracts are offered for permit use or lease,<sup>20</sup> with leasing priority generally determined by

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killed millions of cattle after a summer drought had damaged the already overgrazed plains, dealing a devastating blow to the West that stimulated federal intervention. *See Coggins II, supra* note 4, at 22-23. *See also* W. VOIGHT, PUBLIC GRAZING LANDS: USE AND MISUSE BY INDUSTRY AND GOVERNMENT 29-30 (1976). For one state's experience of these times, *see* K. TOOLE, MONTANA, AN UNCOMMON LAND 139-53 (1959).

13. Created in 1897, the Forest Service is an independent agency of the Department of Agriculture. Its purpose is to establish, control, and administer public forests for public benefit and use. 16 U.S.C. § 475 (1982). The Forest Service first instituted fees for grazing in 1906. These fees averaged \$0.05 per animal unit month. The Forest Service did not use a fixed rate, but rather used local factors in determining what each rancher should pay. *See* A. BACKIEL, FEDERAL GRAZING FEES ON LANDS ADMINISTERED BY THE BUREAU OF LAND MANAGEMENT AND THE FOREST SERVICE: A HISTORY OF LEGISLATION AND ADMINISTRATIVE POLICIES 3 (1985).
14. 43 U.S.C. §§ 315-315r (1982).
15. Originally known as the Division of Grazing, the government renamed it the Grazing Service in 1939, and in 1946 consolidated it with the General Land Office to form the Bureau of Land Management (BLM). The Taylor Act ended all homesteading by withdrawing all unclaimed federal land from disposal to the public. P. CULHANE, *supra* note 5, at 81-89. *See Coggins II, supra* note 4, at 40-60.
16. 16 U.S.C. § 5801 (1982). This statute authorizes the Secretary of Agriculture to regulate grazing on the lands administered by him, which includes the National Forests and the National Grasslands, and to regulate the terms and conditions of the permits granted for grazing. The Secretary of Interior has authority to regulate similar activities. 43 U.S.C. § 315 (1982).
17. 43 U.S.C. §§ 1701(a)(5), 1740 (1982). The regulations governing BLM grazing are located at 43 C.F.R. §§ 4000-4170 (1985) and the Forest Service grazing regulations are located at 36 C.F.R. §§ 222.1-.11, .50-.53 (1985).
18. There are 57 BLM district offices in the western United States. One intermediate supervisor is located in each of the 11 western states. The Forest Service has seven regional foresters, and one grazing district, supervised by a ranger, for each of the National Forests in the West. *See* P. CULHANE, *supra* note 5, at 60-65, 97-105.
19. 43 U.S.C. § 1753(a)-(b) (1982). The number of animals that each tract can support is its "carrying capacity." This is the figure used when determining fees and is often the essential negotiating term when renewing leases. Rehabilitation may mean seeding and fencing off barren areas, repairing gates and fences, installing gates, fences, wells and any other activity needed to support livestock grazing on the land. Ranchers usually attempt to run as many cattle as possible on a tract to make operations cost efficient and sometimes agree to increased rehabilitation duties to receive an increased carrying capacity.
20. Grazing leases, as defined at 43 C.F.R. § 4100.0-5 (1985), include isolated and disconnected tracts of the public domain as defined in § 15 of the Taylor Grazing Act (codified at 43 U.S.C. § 315m (1982)). Grazing permits, as defined at 43 C.F.R. § 4100.0-5 (1985), include those lands within grazing districts as defined by § 3 of the Taylor Act (codified at 43 U.S.C. § 315b (1982)). All recent laws and regulations refer to both permits and leases. These terms have little practical difference in meanings. This note uses both although slight variations in their nature, such as disbursement of collected fees, may in fact exist. *See infra* note 154.

prior use or adjacent land ownership.<sup>21</sup> Access to land with attached grazing permits has a tangible value pledgeable as security for a loan<sup>22</sup> or as part of a tract's market value.<sup>23</sup> The permit holders, however, receive no right, title, or interest in the land,<sup>24</sup> but they may sell or devise their permits to qualified persons.<sup>25</sup>

The system bases fees upon the tracts "carrying capacity"<sup>26</sup> multiplied by the number of months that capacity will be carried, multiplied by the fee created by the grazing formula.<sup>27</sup> The user must pay fees in full before the grazing season begins<sup>28</sup> and refunds for under-use or non-use are available<sup>29</sup> if certain conditions are met.<sup>30</sup> Leaseholders must file a variety of reports and applications to continue using public lands.<sup>31</sup> Administrative, civil, and criminal penalties result from the violation of these regulations.<sup>32</sup>

Debate over the current grazing system has centered on several areas: fee levels, grazing capacity, budget deficits, and alleged rancher domination of the decision-making process.<sup>33</sup> Despite many challenges and calls for re-

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21. Other criteria include proper range management and use of water, general needs of the applicant's livestock operations, public access, and other land use requirements of that situation. 43 C.F.R. §§ 4110.2-2(b), 4130.1-2(a) to (e) (1985). Use is for 10 years and confers priority in renewal proceedings. 43 C.F.R. § 4130.2(c)-(d) (1985). The regulations confer the priority if the lessee/permittee has complied with the rules, will accept any new terms to the lease and if the administrator allows the land to remain open for grazing. *Id.*
  22. 43 C.F.R. § 4130.8 (1985).
  23. The permits have an intangible market value that is a very important part of sales of ranches appurtenant to the permits. 43 C.F.R. § 4110.2-3 (1985). Because the permits may be transferred to another qualified livestock operator, the value of the land to which they are attached is increased. This fact increases both the mortgage costs and the market value of the land beyond what would be considered normal for grazing land. Ganzel, *Maximizing Public Land Resale Values*, in *WESTERN PUBLIC LANDS* 13 (1984). See also Reid, *Gramm, Rudman and Nieslanik*, WASH. POST NAT'L WEEKLY EDITION, Feb. 17, 1986, at 32.
  24. 43 C.F.R. § 4130.2(b) (1985).
  25. 43 C.F.R. § 4110.2-3 (1985).
  26. See *supra* note 19.
  27. 43 C.F.R. § 4130.7-1(a) to (b) (1985).
  28. 43 C.F.R. § 4130.5-1(d) (1985). The rancher can pay fees after the season if he uses an allotment management plan or cooperative management agreement. These necessitate more paperwork, negotiations and drafting time. 43 C.F.R. § 4130.7-1(d) (1985).
  29. 43 C.F.R. § 4130.7-2(b) (1985).
  30. 43 C.F.R. § 4130.7-1(d) (1985). Refunds are generally available if prior arrangements have been made or if administratively declared emergencies exist. These activities create more paperwork and require active management of the federal lands.
  31. Most activities relating to the public rangelands require a report or form. A partial list of the forms required to hold public grazing permits would include the following. A person must qualify for base property certification to bid for public grazing land. 43 C.F.R. § 4110.1 (1985). The rancher must file range improvement permit applications and enter into a cooperative agreement with the BLM before the rancher can make range improvements. 43 C.F.R. § 4120.3-1 (1985). Transfer of grazing preferences requires filing for transfer and the application for new permits or leases. 43 C.F.R. § 4110.2-3 (1985). The rancher must file a certified annual use report within 15 days of the end of the grazing season. 43 C.F.R. § 4130.6-2(d) (1985). Failure to comply with these and the other reporting and filing requirements may result in administrative penalties that include withheld, suspended, or revoked grazing privileges. 43 C.F.R. § 4170.1-1(a) to (b) (1985).
  32. 43 C.F.R. §§ 4140-4170 (1985). The failure to use, overuse of allotments, fraud or misrepresentations in any act connected with the public lands, and damaging government property or the land are among the illegal acts that permit holders can commit. 43 C.F.R. §§ 4140.1(a)(2),(a)(4)-(5), (b)(1)(ii), (b)(2)-(4), (b)(8) (1985). Civil penalties include revocation of permits. 43 C.F.R. § 4170.1 (1985). Criminal penalties include fines of up to \$1000 and 12 months imprisonment. 43 C.F.R. § 4170.2-1,-2 (1985). While these criminal penalties are of a minor nature, the loss of permits often results in bankruptcy for a rancher dependent on use of federal lands. Threatened revocation usually ensures compliance with the regulations.
  33. The extensive debates over the public lands and their relationship to the western rancher cannot be

form,<sup>34</sup> the system remained relatively unchanged until the mid-1970s when a variety of new concerns confronted the federal land system. These concerns included air and water pollution and an increase in recreational use of federal land.<sup>35</sup> In response to these concerns Congress passed the Federal Land Policy and Management Act of 1976 (FLPMA).<sup>36</sup> This Act represented the first significant change in federal grazing policy since 1934.<sup>37</sup>

The FLPMA attempted to bring order and new policies<sup>38</sup> to a decentral-

chronicled in this note. For a good history of the subject, see generally Coggins II, III, and IV, *supra* note 4.

Adela Backiel provides an outstanding analysis of the history and controversy over the grazing fee issue. See generally A. BACKIEL, *supra* note 13. She details the repeated attempts to raise public fees to comparable private fee levels and the reasons why every attempt to dramatically increase fees has failed. Backiel uses Alphonse Kerr's famous quote, "the more things change, the more they remain the same," to summarize the history of the federal grazing system. *Id.* at 38. See also W. VOIGHT, *supra* note 12 (personal history of someone concerned with the abuses of the livestock industry); M. CLAWSON, *supra* note 5, at 72 (espousing a belief that the continual fight over grazing fees and related issues indicates that the problem is almost insolvable and that it will "recur over time").

For a chronological summary of major events in grazing law, see DEPARTMENTS OF AGRICULTURE AND INTERIOR, 1985 GRAZING FEE REVIEW AND EVALUATION, DRAFT REPORT 61-62 (1985) [hereinafter cited as 1985 DRAFT REPORT].

34. "The critical factor in natural resources management in the 1970s has been *environmentalism*. As a philosophy, environmentalism is a complex blend of progressive conservationism and romantic preservationism." P. CULHANE, *supra* note 5, at 55. Professor Coggins describes the "creeping regulation at the periphery" and the pressures from many different groups that slowly changed the public outlook and administrator's management policies. Coggins IV, *supra* note 4, at 307-57. Backiel suggests that a wider variety of potential users has made federal land laws "more numerous and cumbersome." A. BACKIEL, *supra* note 13, at 16.
35. See W. VOIGHT, *supra* note 5, at 234-35. The BLM estimates that its lands experienced 59 million recreation visitor days in 1984. If the BLM implemented a use fee of one dollar per day it would triple the income collected from grazing fees. The BLM collects only about \$700,000 from wildlife and recreation fees. PUBLIC LAND STATISTICS—1984, *supra* note 1, at 114-115.
36. Pub. L. No. 94-579, 90 Stat. 2744 (codified as amended at 43 U.S.C. §§ 1701-1782 (1982)).
37. For the general policy trends in public grazing law, see generally Coggins III, *supra* note 4. "[The] FLPMA emphatically rejects the grazing-as-dominant-use tradition in public rangeland management in favor of multiple use, sustained yield principals." Coggins IV, *supra* note 4, at 15. "[T]his act, more than any other, fundamentally changed the nature of federal policy regarding rangeland." G. LIBECAP, LOCKING UP THE RANGE: FEDERAL LAND CONTROLS AND GRAZING 80 (1981). For a good overview of grazing politics within both the BLM and the Forest Service, see P. CULHANE, *supra* note 5, at 45-60, 75-97.
38. The FLPMA provides:
  - (a) The Congress declares that it is the policy of the United States that—
    - (2) the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process coordinated with other Federal and State planning efforts;
    - (5) in administering public land statutes and exercising discretionary authority granted to them, the Secretary be required to establish comprehensive rules and regulations after considering the views of the general public; and to structure adjudication procedures to assure adequate third party participation, objective administrative review of initial decisions, and expeditious decisionmaking;
    - (7) goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis of multiple use and sustained yield unless otherwise specified by law;
    - (9) 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 (1982).

The FLPMA does not set grazing fee levels but directs the Secretaries to determine a fee which is "equitable to the United States and to the holders of the grazing permits . . ." 43 U.S.C.

ized BLM.<sup>39</sup> To guide later management decisions the legislation proposed extensive planning for all grazing districts.<sup>40</sup> Congress ordered that all subsequent decisions be made under two new guiding policies for public lands: multiple use<sup>41</sup> and sustained yield.<sup>42</sup> Congress later supplemented the FLPMA with the Public Rangelands Improvement Act of 1978 (PRIA).<sup>43</sup> The PRIA continued the FLPMA's policies,<sup>44</sup> but defined them more pre-

§ 1751(a) (1982). The Secretaries' formula became the PRIA formula after lengthy discussion on its merit and structure. See A. BACKIEL, *supra* note 13, at 22-31. The importance of the FLPMA lies not with fee provisions but in the policy change to broader use. The federal law can now accommodate competing uses and allocate available use among them.

39. One of the chief criticisms of the BLM has been its decentralized structure. District advisory boards, which have local authority, make the most important decisions in the lives of the permit holders. State offices have little power, and the central District of Columbia office generally only makes policy when it must.

The BLM and the Forest Service maintained wholly separate grazing systems until 1978. The Forest Service implemented multiple use/sustained yield policies after the Multiple-Use, Sustained Yield Act of 1960. 16 U.S.C. §§ 528-531 (1982). The FLPMA applies only to the BLM. The PRIA encompasses both the Forest Service and the BLM (43 U.S.C. §§ 1902(a)(5) (1982)), as does the PRPAA (*see infra* at appendix).

40. 43 U.S.C. § 1712(a) (1982). This section directs the BLM to "develop, maintain, and when appropriate, revise land use plans . . . ." The statute further designates general criteria to be used in the planning process, the first of which is to "use and observe the principals of multiple use and sustained yield set forth in this and other applicable law . . . ." 43 U.S.C. § 1712(c) (1982). Professor Coggins detected five major themes in the FLPMA, including planning, implementation of multiple use and sustained yield as the basic management standards, protection of environmental standards, encouragement of public participation, and active legislative review of management and disposition. Coggins IV, *supra* note 4, at 14.

41. The FLPMA defines "multiple use" as:

[T]he 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.

- 43 U.S.C. § 1702(c) (1982).

The FLPMA changed a single user system into a multiple user system. Before FLPMA, the advisory committee members were only ranchers and the BLM's mandate was to use the lands for grazing. After FLPMA, the new multiple use committees were established with a variety of non-livestock industry representatives to oversee the multiple use decision-making process. These changes obviously disturbed the western livestock rancher and they will fight any further steps down this path.

42. The FLPMA defines "sustained yield" as "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." 43 U.S.C. § 1702 (1982). For congressional debate of the FLPMA, see 122 CONG. REC. 2157-59, 2361-65, 7604-07 (1976). For the legislative history of the FLPMA, see SENATE COMM. ON ENERGY AND NATURAL RESOURCES, 95TH CONG., LEGISLATIVE HISTORY OF THE FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976 (1976).

43. Pub. L. No. 95-514, 92 Stat. 1803 (1978) (codified at 43 U.S.C. §§ 1901-1908 (1982)).

The PRIA established the first statutory grazing fee formula. Prior to the PRIA the government had used administrative formulas, which could be changed at any time. The PRIA mandated use of a specific formula and ended the practice of fee moratoriums in bad economic times. The formula has not lost all flexibility, however, since its operational structure provides relief when prices drop. The new formula evidences the general trend of "creeping regulation at the periphery" that Coggins describes, and is one step away from the historical administrative subservience to their client ranchers.

44. 43 U.S.C. § 1901(b) (1982) states:

cisely.<sup>45</sup> The change in management under the FLPMA and the PRIA encourages a more diverse use of the public lands.<sup>46</sup> The issues resurfaced with the scheduled expiration of the PRIA grazing fee formula at the end of 1985.<sup>47</sup> The increasing concerns over the public lands fueled calls for the reform of federal grazing laws.<sup>48</sup>

Eighteen months of maneuvering failed to produce a bill acceptable to all concerned parties. Western Republicans circulated a draft bill, entitled the Public Rangelands Policy Amendments Act of 1985.<sup>49</sup> The draft proposed reforms concerning a variety of public land issues, including grazing fees, riparian preservation, experimental stewardship programs, advisory boards and councils, and wild horses and burros.<sup>50</sup> The Republicans did not introduce the PRPAA, however, because they could not reach a consensus on the many issues presented.<sup>51</sup>

While the PRIA and the FLPMA remain in effect, the PRIA sections pertaining to grazing fees expired on December 31, 1985.<sup>52</sup> President Reagan, however, later extended the PRIA formula for an indefinite period by executive order.<sup>53</sup> The President set \$1.35 (the 1985 fee) as the minimum chargeable fee. None of the parties involved like the current law and all want to change it.<sup>54</sup> Being an election year, it is doubtful that such sensitive issues

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Congress therefore hereby establishes and reaffirms a national policy and commitment to:

- (1) inventory and identify current public rangelands conditions and trends as part of the inventory process required by . . . the [FLPMA] . . .
- (2) manage, maintain and improve the condition of the public rangelands so that they become as productive as feasible for all rangeland values in accordance with management objectives and the land use planning process established pursuant to . . . the [FLPMA] . . . .

*Id.*

45. 43 U.S.C. § 1901(a)(1), (3) (1982).

46. The mere use of the term "multiple use" encourages a broader variety of users to utilize the federal lands. The inclusion of multiple use committees allows the government to allocate use among competing users and determine the most beneficial and higher valued use to the public. Sustained yield infers productive use only from the harvest of crops or animals, but must also include non-productive uses that benefit the user.

The ranchers resent this intrusion into their hitherto exclusive domain and remain adamantly opposed to any extension of these twin policies. Their economic livelihood has been greatly disturbed in the last 10 years and any further disruption threatens, in their eyes, their entire world.

47. The PRIA states that the PRIA fee will only be applied "for the grazing years 1979 through 1985." 43 U.S.C. § 1905 (1982).

48. The active parties in the movement were conservative western ranchers. They sought to preserve the existing fee system while appeasing conservation groups with some changes in the non-fee sections of the federal law. The PRPAA evolved from this movement.

49. The draft, dated July 23, 1985, was obtained from Senator James McClure (R-ID). Among the congressmen involved in circulating the draft bill were Rep. Ron Marlenee (R-MT), and Sens. McClure and Malcolm Wallop (R-WY).

50. See PRPAA *infra* at appendix.

51. The consensus failed despite many efforts at compromise. Some congressional staffers felt that they had produced the fairest and most balanced bill for all concerned and that after 18 months of work no further change was possible.

52. See *supra* note 47.

53. Executive Order No. 12,548, 51 Fed. Reg. 5985 (1986). The Executive Order repeats the PRIA fee provisions, as stated in 43 U.S.C. § 1905 (1982), but places a \$1.35 base price as a minimum fee. The order was signed on February 14, 1986. It resulted from extensive lobbying by top Senate Republicans. See Reid, *supra* note 23, at 32.

54. The discontent with grazing law has been a constant factor since Congress first enacted grazing laws. No plans exist to introduce the PRPAA. This note uses the PRPAA because the author

will be settled in 1986.<sup>55</sup> The positions of the rancher, the conservation-minded citizen, and the agencies and bureaucrats of the various levels of government must be examined before analyzing the strengths of the PRPAA and proposing alternatives to reform the current system.

### THE PROTAGONISTS IN THE STRUGGLE OVER GRAZING FEES

Both conservationists and ranchers advance valid arguments in support of their positions. However, both positions cannot co-exist in the same grazing system without some compromise. In general, the ranchers seek to maintain the status quo, while conservationists want higher fees and other changes in the system. State and federal bureaucrats and politicians desire some compromise to appease the greatest number of constituents. Any solution, moreover, must reduce budget problems and not create new ecological, social and economic ills in the West. Each of these groups has different concerns and therefore different solutions relating to the federal grazing system.

#### The Ranchers

Western cattle ranchers face a difficult struggle. The rancher seeks a living in a historically depressed industry. His difficulties include declining land values and loan equity, increasing hay and transportation costs, and low beef prices.<sup>56</sup> The rancher's problems have continued despite grazing fees that have dropped during the last five years.<sup>57</sup> Permit holders generally believe that the marginal value of the land they lease from the government supports its low apparent cost.<sup>58</sup>

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believes that together with the suggested amendments the draft bill represents the best solution to a very difficult issue.

The pressure is on Congress because of its failure to pass the PRPAA and the President's executive order. The executive order has already set the fees and the ranchers no longer need a new grazing law. Furthermore, the ranchers do not have to follow any of their PRPAA concessions. After the PRPAA failed, the conservatives shifted their attack to the President to get an extension of the current fee. Only Congress can change the law now, and it will do so only if environmentalists and the budget conscious can generate enough pressure to do what the livestock lobby failed to do in 1985.

55. Given the inability of Congress to settle the issue in a non-election year and its historical lack of agreement on this issue, it is unlikely that any significant reform will be undertaken in 1986. For overviews of the historical debates in this field, see generally A. BACKIEL, *supra* note 13, and P. FOSS, *supra* note 4.
56. See generally Reid, *supra* note 23; Stanfield, *Cowboys and Conservationists in Range War over Grazing Fees on Public Land*, 1985 NAT'L REV. 1624. Davis, *Cattlemen vs. Environmentalists: Congress Tries for Compromise on Disputed Grazing Fee Issue*, 1985 CONG. Q. 1676 (all presenting a brief synopsis of the present state of the livestock industry).
57. An AUM is the equivalent of one cow grazing for one month. The fee is based on the number of AUMs allocated by the government for each grazed tract. The index peaked at \$2.77 per AUM in 1979 and has since declined to \$1.35 per AUM in 1984. Today's fee has changed little since the 1968 fee of \$1.23, although this does not take into account general inflation since that time. 1985 DRAFT REPORT, *supra* note 33, at 14.
58. The essential problem with the western livestock industry is its inefficient nature. The few cattle require immense areas to satisfy their nutritional needs—needs more easily satisfied in feed-lots, irrigated meadows, or areas not requiring irrigation. One commentator has suggested that elimination of the federal system would have a negligible effect on the amount of beef produced in the United States. He suggests, somewhat facetiously, that allowing these cattle to graze on highway right of ways in the East would be more nutritious, require less space, and cost less than grazing



To justify fees amounting to a fraction of that paid for other government land and private grazing land, permit holders claim that specific problems associated with using public land warrant low fees. First, ranchers lease the land and do not receive title to it.<sup>59</sup> Second, the rancher must tolerate other uses of his pasture, including wildlife grazing,<sup>60</sup> hunting and fishing,<sup>61</sup> logging, mining, and recreational sports.<sup>62</sup> Finally, a large amount of administrative business takes place in inconvenient district offices, which require that government forms be kept and filed on both a yearly and event basis.<sup>63</sup>

Ranchers believe that the additional burdens associated with holding federal grazing permits create an intangible, harrassment cost that must be considered when comparing the actual federal fee with private grazing fees. They include these hidden costs in determining the fair rental value for federal land. The ranchers believe these costs equalize the facially different private and public costs.<sup>64</sup> The ranchers conclude that a fee increase will raise their costs above market value and place them in an inferior position to those using private lands for forage.

Ranchers feel the current fee is justified despite its apparently low level. Permit holders have consistently fought higher fees and sought fee formulas to protect fragile profits.<sup>65</sup> They depend on the current legislation to protect them against rapid increases in fees.<sup>66</sup> Fear that higher fee levels will force many of their neighbors out of business pervades the ranching communities of the West, a fear shared by their congressmen.<sup>67</sup> While the ranchers sur-

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cattle across millions of acres of fragile public land. P. WILD, *Grazing on Public Lands*, 65 SIERRA (May/June 1985).

To a great extent this is true. The only thing preventing the end of this enormous waste of resources and harm to public land is the political influence of the livestock lobby over Congress, and Congress' inability to support efficient use and preservation of our common resources. Since Congress has ignored the economic realities of ranching on public land in the West, Congress must maintain the current programs and debate minor issues to the detriment of the larger question — i.e. whether public lands ought to be leased for grazing at all.

59. 43 C.F.R. § 4130.2(b) (1985). Permits may be lost for many reasons. See *supra* note 32.
60. Forage taken by big game animals equals two-thirds of that taken by domestic livestock. M. CLAWSON, *supra* note 5, at 67. See also Coggins II, *supra* note 4, at 96-97.
61. Hunters and fishers frequently vandalize or destroy fences, gates and other improvements on the leased land. These improvements are paid for and put in by the lessee rancher.
62. This would include off-road vehicle enthusiasts, target shooters, hikers, campers and other recreationalists. Nelson believes that outdoor recreationists receive an even greater subsidy in their low cost use of the federal lands. See generally Nelson, *supra* note 10. See also *supra* note 35. Clawson notes that these are the same persons most outraged by low grazing fee levels, yet they do not criticize their own subsidy. M. CLAWSON, *supra* note 5, at 71.
- Grazing lands are simply not important to the BLM when they only generate \$17 million in revenue each year while BLM mineral and timber leases generate \$160 million per year. In 10 years the BLM took in \$50 billion from leases of offshore oil and gas leases. This compares with an estimated \$150 million income from grazing fees over the same period, which the BLM includes in its miscellaneous income category. PUBLIC LAND STATISTICS—1984, *supra* note 1, at 179.
63. See *supra* note 31.
64. Private leasing arrangements are typically annual oral agreements, with flexible payments, no written documents, and general understandings on use, maintenance, season length, refunds and improvements. 1985 DRAFT REPORT, *supra* note 33, at 67-68. This contrasts sharply with public leasing arrangements (described *supra* notes 17-32 and accompanying text).
65. A formula takes into account various price and cost changes affecting the permit holder. A formula may also include limits on the amount of change allowed each year. This promotes stable prices in an industry where two highly unstable factors, the weather and the futures market, control prices. A. BACKIEL, *supra* note 13, at 3.
66. The PRIA limits the fee change in any year to 25%. 43 U.S.C. § 1905 (1982).
67. Senator James McClure of Idaho believes that the PRPAA provisions are essential in helping the

vived a tripling of fees between 1968 and 1975,<sup>68</sup> they view further increases as a threat to their industry. Unless a compromise is reached that satisfactorily addresses these economic issues, the ranchers will oppose any attempt to alter the PRIA formula and other federal grazing legislation.<sup>69</sup>

### The Conservationists

Conservationists view the issues in a different light. They claim that these few ranchers occupy a sheltered niche and pay relatively little for the privilege of grazing on public lands.<sup>70</sup> They seek varied uses of the national lands, especially less debilitating uses than those caused by animal hooves and overgrazing.<sup>71</sup> This group concludes that reducing the number of grazing animals would rehabilitate the damaged areas.<sup>72</sup>

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current plight of the rancher. Letter from Sen. McClure to author (Oct. 1, 1985). See generally Stanfield, *supra* note 56.

68. In 1968, the ranchers paid \$0.33 per AUM for BLM grazing permits and \$0.52 per AUM for Forest Service permits. The 1976 fee was \$1.51 per AUM for BLM land and \$1.60 for Forest Service permits. 1985 DRAFT REPORT, *supra* note 33, at 63. No one knows how many ranchers will be forced into bankruptcy by higher fees. Permit holders represent only 16% of the cattle producers in the 11 western states and only 8% of the cattle producers in the 16 western states. Fee hikes will not affect all permit holders, and the adversely affected may number a few thousand among the 1.6 million cattle ranchers in the United States. 1985 DRAFT REPORT, *supra* note 33, at 3.
69. For any compromise to succeed, these legitimate concerns of the ranchers must be addressed. The competing concerns of the conservationists and the budget conscious, however, must also be addressed. A bill in which the ranchers extend current fees while conceding other issues will suffer a fate similar to the PRPAA and likely never be introduced.
70. Only 31,000 ranchers, representing eight percent of the ranchers in the Western states and two percent of the ranchers nationwide, hold permits. The remaining 98% of the cattle ranchers use feedlots or private pasture for forage. 1985 DRAFT REPORT, *supra* note 33, at 3-4.

The government also funds range improvements on leased public lands. While not directly addressed in this note, some commentators believe that this also subsidizes the western rancher. "Since ranch operators are for the most part substantially more wealthy than the average Federal taxpayer, publicly funding range investments transfers income and wealth from those with less to those who already have more." Nelson, *supra* note 10, at 53. *But see* Ganzel, *supra* note 23, at 13 ("[a]mong themselves, ranchers lamenting their property values commonly joke that they are all fools").

The PRIA appropriated at least \$15 million for range improvements from 1980 to 1986, with increased amounts thereafter. 43 U.S.C. § 1904(a) (1982). This appropriated money supplements the percentage of the grazing fee dedicated to range rehabilitation. The PRPAA does not appropriate additional range rehabilitation funds but maintains the proportion of fee receipt distributions. See PRPAA, *infra* at appendix, § 5(b). For distribution percentages of collected fees, see *infra* note 154.

71. The BLM considers 5% of its rangeland to be in excellent condition, 31% to be good, 42% fair and 18% poor. This would indicate that the public range is in relatively good shape compared to the situation described by critics of the BLM. However, "fair condition" means "51-75% depletion (severe) . . . from the virgin, or climax, plant community," a great change from the land's natural state. Therefore, 60% of the BLM's land currently has 51% or greater depletion from its natural state. "Good" rangeland can suffer 50% depletion from its natural condition. Conditions vary among the states. Montana had 72% of its BLM rangeland in excellent or good condition in 1984. Colorado had only 18% in excellent or good condition and 30% in poor condition. PUBLIC LAND STATISTICS—1984, *supra* note 1, at 81.
72. The environmentalists seek carrying levels low enough to provide adequate forage in time of drought. The number of domestic livestock grazing on BLM lands is two-thirds of the level in the mid-1950s. See M. CLAWSON, *supra* note 5, at 68. If livestock grazing is two-thirds of what it was and range conditions have not appreciably improved, then either a greater decrease in the number of grazing animals is needed to protect the land, the land may be permanently damaged from overuse in the early 1900s, or the cattle are not the problem and the number of grazing wildlife should be reduced to help the land. See *supra* note 69. See also Coggins V, *supra* note 4, at 534-40.

Higher grazing fees generally reduce the amount of livestock grazing; however, grazing fees have never been set high enough to test the quantities of forage that would be taken at different price levels. Lower fees may appear to encourage overuse; however, this effect is

The conservationists believe an alternative way to rehabilitate damaged range is through increased fees.<sup>73</sup> They contend that the government subsidizes fee levels far below market value.<sup>74</sup> These environmentalists point out that the permit holders pay \$1.35 per AUM, while other nearby ranchers pay an average of \$6.87 per AUM for private grazing land,<sup>75</sup> \$6.53 per AUM for federal grazing land leased by other federal agencies,<sup>76</sup> and between \$1.43 and \$14.00 per AUM for state leased land.<sup>77</sup> This indicates that other ranchers will pay more for government leases on land frequently near or mixed among Forest Service and BLM land.<sup>78</sup> Environmentalists point out that these other ranchers survive economically. Logically then, the few ranchers holding BLM and Forest Service permits benefit from an artificially depressed fee and can adjust to increased fees, especially if the increase occurs over a number of years.

The conservationists seek an increased awareness by the public of the issues and input on the decisions on the policies of multiple use and sustained yield. Despite the goal of broader public participation, ranchers continue to dominate the present boards.<sup>79</sup> Because these are public lands, allowing a narrow segment of the public to control the decision-making process is improper, especially since the public lands are supposed to be

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not likely because the agencies set and enforce a maximum stocking level. In addition, the permittee's tenure encourages prudent taking of forage to avoid deterioration of the range over time. The impact of livestock numbers on range condition and multiple-use benefits is an area of uncertainty.

1985 DRAFT REPORT, *supra* note 33, at 45.

73. See Stanfield, *supra* note 56, at 1624. See also M. CLAWSON, *supra* note 5, at 71.

74. Coggins IV, *supra* note 4, at 21 n.202. "The subsidy is the difference between the fee and the price that willing buyer would pay. The market price for the public animal unit month's (AUMs)—as established by sales to nonpermittees—is usually three to five times the fee paid to the government." *Id.* The FLPMA mandates that the government receive "fair market value" for use of grazing land. However, fair market value is not a defined term and generally depends on who defines it. Backiel notes:

[A]dding to the confusion is the fact that statutory language and administrative policies state that fees be both "reasonable" and that "fair market value" be attained for use of Federal lands and resources. To some, these are contradictory standards which give rise to differing interpretations of the purpose of grazing fees. What might be considered as "reasonable" to some range users, may well seem unreasonable to others; what might be considered "fair market value" to some, may seem unfair to others.

A. BACKIEL, *supra* note 13, at 38. So just who and how much is subsidized is a debatable proposition—a proposition debated since 1906.

75. 1985 DRAFT REVIEW, *supra* note 33, at 42.

76. *Id.* at 10.

77. *Id.* at 74-75.

78. The \$6.53 per AUM for non-PRIA federal land includes public market costs of PRIA formula land. This sublease rate generally averages three to five times the PRIA fee. *Id.* at 10. Historically, ranchers have paid more for private land rates. In 1914, Congress determined that public grazing in national forests cost 3.9 cents per AUM while private grazing rates averaged 11.7 cents per AUM. Therefore, the present disparity in rates is not an unusual situation. See *Appropriations for Department of Agriculture for the Fiscal Year ending June 30, 1915: Hearings on H.R. 13679 Before the House Committee on Agriculture*, 63d Cong., 2d Sess. 273 (1914).

79. The FLPMA did not change the board's composition. 43 U.S.C. § 1753 (1982). The FLPMA did, however, make the district boards optional upon the petition of the permit holders in the district, unlike the earlier boards mandated by the Taylor Act. *Id.* §§ 3150-1(a), 1753(a). In addition, the FLPMA only authorized the district board's existence until December 31, 1985. *Id.* § 1753(f). These important local boards are another reason why the western ranch community pushed for passage of the PRPAA. See *infra* notes 114-126 and accompanying text. The PRIA does not mention district advisory boards. 43 U.S.C. §§ 1901-1908 (1982). Section 4(b) of the PRPAA, *infra* at appendix, extends the boards for another 10 year period, a very important provision for the ranchers.

managed on the basis of multiple use. Public participation can introduce new uses to the land, view current use with unprejudiced eyes and provide balanced suggestions for policymakers. Conservationists seek these changes to protect the public interest at the expense of a small, special interest group. The conservation positions are reasonable but must be balanced by the economic realities of the livestock industry and the administrative limitations of government.

### Government Agencies and Bureaucrats

The third group interested in grazing fees are the various government agencies that administer the permit structure. A large variety of bodies at both the federal and state levels are involved in the grazing business. Excluding the BLM and the Forest Service, eleven federal agencies, forty-four state agencies and sixty-three local governments lease grazing land in the West.<sup>80</sup> These agencies use a variety of fee systems.<sup>81</sup>

At the federal level, the BLM<sup>82</sup> and the Forest Service<sup>83</sup> lease the majority of lands.<sup>84</sup> These two agencies have distinct identities<sup>85</sup> and are subordinate to different cabinet level departments<sup>86</sup> even though they often supervise land within the same area for the same purpose. Congress exercises ultimate authority over the federal agencies but finds itself besieged by

80. 1985 DRAFT REPORT, *supra* note 33, at 27. Among the federal agencies leasing land (and the acres leased) are the Air Force (87,102), Army (155,492), Bureau of Indian Affairs (7,900,841), Fish and Wildlife Service (1,987,569), National Park Service (1,606,651), and the Coast Guard (225). Among the state land boards and education departments leasing land (and the acres leased) are Arizona (8,775,023), Colorado (2,724,698), Montana (4,090,430), New Mexico (10,962,097), Oklahoma (625,000), Utah (2,814,726), Washington (885,638), and Wyoming (3,614,887). *Id.* at 74-75.

81. The states use bids, negotiated fees, formulas, board decisions and auctions in their lease procedures. The federal agencies use bidding, private rates negotiated by the lessor and the PRIA formula. *Id.*

82. The BLM administers 187 million acres in the 11 western states, used predominantly for grazing and classified as semi-arid or arid grasslands. Coggins I, *supra* note 4, at 545-46.

83. The Forest Service administers 185.5 million acres of land, which includes both forest and range. Most is available for grazing. *Id.* at 545. The total area of federal lands grazed is about 307 million acres. 1985 DRAFT REPORT, *supra* note 33, at 1.

84. The BLM and the Forest Service own 70% of the public lands. PUBLIC LAND STATISTICS—1984, *supra* note 1, at 14.

85. The Forest Service has traditionally been considered the more professional and scientific agency and less susceptible to political influence. It has stronger internal policies, creating active management. The Forest Service is clearly structured, with a balance between central authority and local flexibility. Observers consider the BLM the more politically-oriented agency. Its management is believed less scientific and not concerned with active range management. This popular perception does not hold true today. Recent commentators have found that BLM and Forest Service officers have almost identical views on public land issues. See P. CULHANE, *supra* note 5, at 181.

The BLM and its employees have become more professional and scientific and increasingly concerned with the condition of the public rangeland and the FLPMA policies. See Nelson, *supra* note 10, at 68-70. The BLM had little planning system or integrated resource management guidelines until the 1970s, but this has changed greatly with the legislative and judicially mandated land use planning. See Coggins III, *supra* note 4, at 307. The BLM lacks centralized, internal controls and delegates much authority to local districts and their administrators. Coggins II, *supra* note 4, at 64-65. This allegedly allows ranchers to dominate the local advisory boards.

For a study of the political influences, the ways the two agencies have fought opposing interests in the public lands debate, analysis of management structure, and the quality of the staffs, see P. CULHANE, *supra* note 5, at 41-69, 75-105. For one person's views on the political games played by the various participants in this debate, see generally W. VOIGHT, *supra* note 12.

86. The Forest Service falls within the Department of Agriculture while the BLM is in the Department of the Interior.

interest groups from both sides<sup>87</sup> and factions from within Congress itself.<sup>88</sup> A new group further confuses the traditional rancher-conservationists dispute. Some bureaucrats have seized upon a grazing fee hike as one way to help balance the budget.<sup>89</sup> The mixture of these interest groups within both Congress and the supervising agencies has created a difficult situation for Congress to resolve.

The federal government is not alone in its supervision of the public lands. The states also have an interest in the grazing problem. The federal government owns between twenty-nine and eighty-eight percent of the western states,<sup>90</sup> much of which is grazed pursuant to BLM and Forest Service lease arrangements.<sup>91</sup> Each state receives a share of the fees collected for use in those grazed areas in lieu of assessing property taxes on the federal government.<sup>92</sup> Obviously the states would receive more money from increased grazing fees. Increased fees, however, could cause economic and social problems<sup>93</sup> if the increase adversely affects ranchers.<sup>94</sup> In addition, all of the western states lease grazing land.<sup>95</sup> The states rely to some extent on the federal government for overall policy and follow these developments very closely.<sup>96</sup>

The individual bureaucrats of the state and federal governments have their own interests in this dispute.<sup>97</sup> These persons serve the government

87. The National Wool Growers Association, the Cattlemen's Association, State Stockmen's Associations, and the Public Lands Council all lobby on behalf of ranchers. The Sierra Club, the National Wildlife Board, and the Wilderness Society support the conservationists. P. CULHANE, *supra* note 5, at 159-69.

88. Many congressional supporters of the ranchers are from the West, including some who ranch themselves. Others within the administration and Congress support environmental groups opposed to the current fee system. The strong positions taken by the disputing parties ensure that the congressional supporters of the parties will remain divided.

89. The federal budget deficit was \$211 billion in 1985. The BLM and Forest Service programs collected \$31,634,000 in fiscal year 1982, of which \$7,775,000 was deposited in the Federal Treasury. For the expenditure of the remainder, see *infra* note 154. The two agencies spent \$59,312,000 on their grazing programs, resulting in a net program deficit of \$27,691,000. In 1983, the program collected \$24,227,000 in fees, of which \$6,056,000 was deposited in the Federal Treasury. The two agencies spent \$58,965,000 on administration, management, and planning, resulting in a program deficit of \$34,738,000. 1985 DRAFT REPORT, *supra* note 33, at 6. For bureaucratic calls to increase grazing fees as a way of reducing the national deficit, see *Reducing the Deficit—Spending and Revenue Options*, CONGRESSIONAL BUDGET OFFICE 1983 REPORT TO THE HOUSE AND SENATE BUDGET COMMITTEES (1983). A. BACKIEL, *supra* note 13, at 39 (noting that the budget issue may be the distinguishing factor in the debate over the PRPAA).

90. The federal government owns an average of 52.2% of the western states. PUBLIC LAND STATISTICS—1984, *supra* note 1, at 10.

91. *Id.*

92. The amount paid varies from 12.5% to 37.5% of the collected fees, depending on the agency and type of use arrangement. See *infra* note 154. This totals several million dollars each year. 1985 DRAFT REPORT, *supra* note 33, at 6. While this is a relatively small amount when applied to many western states, the money is very important in rural counties whose income comes from grazing livestock on federal land. Section 5(b)(1)(D) of the PRPAA maintains this allocation (see *infra* at appendix).

93. As fees increase the less profitable livestock owners will abandon the business. This harms the many small communities in the West and could create a new generation of ghost towns. Social problems inevitably follow economic distress.

94. See *supra* notes 65-69.

95. The states use competitive bids, appraisals of fair market value, or their own formulas. The fees collected per AUM by state land boards, education departments and wildlife agencies are consistently above the current PRIA fee and range up to \$14.00 per AUM. 1985 DRAFT REPORT, *supra* note 33, at 27-28, 74-75.

96. See *supra* notes 79-88 and accompanying text.

97. "[A]s professionally trained resource managers, BLM officers have a strong commitment to the

and, for the most part, serve the government's policies.<sup>98</sup> Although bureaucrats have historically favored ranchers,<sup>99</sup> this situation has clearly changed.<sup>100</sup> State and national bureaucrats have avoided taking sides in the current dispute despite their beliefs. These administrators are generally professional land managers.<sup>101</sup> The individuals may have some political interests at stake, but by and large they attempt to implement the government's policies and manage the land in a professional manner and avoid the political struggle taking place.

The positions held by the participants in this dispute are distinct and clearly drawn. Although each side advocates meritorious policies, the policies advocated are contradictory.<sup>102</sup> The conservation of natural resources competes with the continuation of an extractive industry. The rehabilitation of public land conflicts with the preservation of local economies and society. Congress' inability to reconcile these differences indicates the depth of the dispute and the difficulty in solving these long-standing issues. The PRPAA attempted to solve these problems. Although it failed, the PRPAA sets forth several viable proposals to solve this disagreement and lay a foundation for workable compromise.

### THE PUBLIC RANGELANDS POLICY AMENDMENTS ACT OF 1985

The PRPAA was a creature of its political environment. In a time of record budget deficits, farm and ranch foreclosures, and concern about the environment, the PRPAA affects relatively few persons.<sup>103</sup> The persons affected, however, generally occupy very important positions in many rural western communities.<sup>104</sup> Although the small number of permit and lease

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principles of multiple-use land management and progressive conservatism." P. CULHANE, *supra* note 5, at 105.

98. See Coggins II, *supra* note 4, for a lengthy review of the power of the livestock industry over government agencies. Professor Coggins is generally not charitable in his assessment of BLM employees and policies. See generally W. VOIGHT, *supra* note 12 (detailing the political struggles for control of the Forest Service and the BLM and the struggles within the agencies for scarce budget appropriations and grazing rights).

99. Many within the BLM align themselves with the ranchers. Coggins believes these persons support red meat production, ignore public opinion, give little consideration to non-livestock uses, and dislike broad multiple use practices in site specific areas. "[T]hey see logical, coherent management as a drastic and fearful departure from the status quo." Coggins IV, *supra* note 4, at 99.

100. See P. CULHANE, *supra* note 5, at 105. Every BLM range manager interviewed by Culhane had degrees in range management or natural resources management. *Id.*

Professor Coggins criticizes the BLM for its non-scientific practices and passive, decentralized administration. He advocates merging the BLM's grazing division into the Forest Service's, creating one federal agency responsible for both timber and grazing. He considers the efficient and scientific Forest Service to be the logical place to unify grazing management, administration and planning. The BLM would lose most of its land but retain most of its revenue, which comes from mining and energy. Coggins V, *supra* note 4, at 511-34. Coggins' sound ideas face practical political difficulties in extinguishing and reforming such a large agency with strong constituent support.

101. *Id.*

102. Federal laws in part cause the contradictory policies. See *supra* note 74.

103. There are about 31,000 permit and lease holders. 1985 DRAFT REPORT, *supra* note 33, at 3.

104. Culhane surveyed many western communities and found that the community leaders, many mayors and most county commissioners were livestock ranchers, as were most of those persons involved in irrigation, conservation, and water districts. These people had strong ties to community realtors, businessmen and local government officials. P. CULHANE, *supra* note 5, at 159-61, 180.

holders produce an insignificant amount of beef<sup>105</sup> on a vast expanse of public land<sup>106</sup> in sparsely populated western states, their ranching activities have an enormous impact on the economic base of the region as well as on the citizens who desire to use the public lands for other purposes.<sup>107</sup>

The PRPAA attempts to reach a compromise on many of the disputed issues. These issues include grazing fees (the primary source of dispute), advisory boards (the second most important issue), and the less important issues of riparian areas, wild horses and burros, and experimental stewardship programs. All of the PRPAA's provisions, however, must play some role in the compromise needed in this field.

### Grazing Fees

The most controversial section of the PRPAA is its position on grazing fees.<sup>108</sup> The PRPAA *does not change* the current fee formula.<sup>109</sup> The PRIA fee was calculated from a base value of \$1.23 per AUM, which is modified by three variables: a forage value index, a beef cattle price index, and a prices paid index.<sup>110</sup> The 1985 federal grazing fee of \$1.35 per AUM stands substantially lower than the average private grazing contract fee and the appraised grazing rental value of the federal lands, which average about seven dollars per AUM.<sup>111</sup> Thus, the PRPAA retains the PRIA base and

105. Only two percent of the nation's cattle producers hold permits. This represents only eight percent of the cattle producers in the 16 western states. The West as a whole, including private and public grazing, produces only 17% of the nation's cattle. 1985 DRAFT REPORT, *supra* note 33, at 3.

106. They graze about 307 million acres. *Id.* at 1. This is an area roughly equivalent in size to the New England and Atlantic Coast states combined. PUBLIC LAND STATISTICS--1984, *supra* note 1, at 10.

107. The BLM took in \$214 million in 1984. This included \$153 million from timber sales and only \$17 million from grazing. PUBLIC LAND STATISTICS--1984, *supra* note 1, at 179. Grazing fee receipts have averaged about one percent of BLM total receipts since 1936. The percentage is similar for Forest Service receipts. See A. BACKIEL, *supra* note 13, at 32.

108. Various articles and editorials attest that grazing fees were the most publicized segment of the draft bill. See Stanfield, *supra* note 56; Davis, *supra* note 56, at 1676. For several newspaper editorials on the topic, see *Ranchers: Plan to raise grazing fees out of line*, USA Today, Feb. 3, 1986, A8, col. 1; *A Bad Budget Example*, Chi. Tribune, Jan. 31, 1986, 16, col. 1 ("Ranchers cannot be allowed to continue to chew their cud"); *Reagan must extend grazing fee formula for public lands*, Great Falls (Mont.) Tribune, Dec. 30, 1985, 8, col. 1:

Low rates on public lands may amount to a subsidy of sorts, but . . . cattle and sheep producers do not receive the basic price and loan supports that grain farmers enjoy. There may be instances of overgrazing, but there are many other examples of excellent stewardship of public lands through cooperation with private ranchers.

109. The PRPAA restates the PRIA fee formula language. 43 U.S.C. § 1905 (1982). See PRPAA, *infra* at appendix, § 5(a)(1).

110. These indexes are based on annual government studies, modified by historical data from the base period of 1964-68 and converted into index values. The Forage Value Index evaluates the market value of the public lands. It utilizes informal surveys of cattle operators and seeks the average rental value of private grazing lands in their area. The Beef Cattle Price Index evaluates the average annual transaction prices of cattle marketed at over 500 pounds. Based on a survey of stockyards, auctions and dealers, it excludes calves and sheep from the final price. The Prices Paid Index weighs selected components of the National Index of Prices Paid by Farmers, a government survey. See *infra* note 169 (discussing index components and weighing). These survey results are gathered locally and then averaged on a westwide basis. 1985 DRAFT REPORT, *supra* note 33, at 19-24.

An alternative to a single fee would be fees for regions that display similar terrain, vegetation and costs. A westwide formula is an average value that benefits ranchers in high cost areas and penalizes areas where the regional fee falls below the westwide fee. The BLM has calculated regional figures for all of the proposed fee options. Any new fee arrangement must consider this alternative method of structuring the fee calculation system. *Id.* at 3.

111. *Id.* at 10. The federal lands leased for an average of \$6.53 per AUM and the private lands for \$6.87

indexes, a fact that lies at the center of the dispute over the PRPAA.

Ranchers support, and conservationists oppose, Congress' failure to change the PRIA formula. Ranchers emphasize that grazing pressure on the land would not decrease with higher fees.<sup>112</sup> They fear the economic and social results of increased fees. Conservationists view the failure to increase fees as continuation of an unfair subsidy for a privileged few,<sup>113</sup> which slows range rehabilitation and decreases long-term productivity. Conservationists believe that the PRPAA fails to address these crucial issues by ignoring the need for higher fees that can solve budget and conservation problems.

### Advisory Boards and Councils

The makeup of boards and councils that administer the grazing system constitutes the second important segment of the PRPAA. As established by the FLPMA, these groups exist on two levels. The Secretary of Interior creates multiple use councils to act as general advisory panels.<sup>114</sup> These councils consist of any citizen the Secretary chooses.<sup>115</sup> The second group, district advisory boards, serve all BLM district offices and National Forest headquarters.<sup>116</sup> Although having no enforceable authority and theoretically only advising the Forest Service and the BLM on management allotment plans and the use of range betterment funds,<sup>117</sup> through time these boards have become the actual decision makers in those areas.<sup>118</sup> The district grazing advisory boards include only lessees and permit holders from that area.<sup>119</sup> Critics allege that the boards dominate the administrators and

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per AUM. *Id.* The PRIA formula charges about 21% of the appraised market value as determined in 1982-83. The appraised market value equals what the federal lands would realistically lease for in a free market system. These values vary greatly with the quality and location of the land. *Id.* at 45.

112. The 1985 Draft Report evaluated various fee alternatives and their impact on the federal government, state governments, administrative costs, and permittee impact. The report calculates that if fees rose from the current \$1.50 rate to \$4.00-5.00, then herd sizes across the West would decline three to six percent. This small reduction would only slightly reduce the overgrazing problem, since it matters little whether 95 or 100 cattle graze a tract of land. Land requires either a significant reduction of grazing levels or regular rest periods to recover. Therefore, only greatly increased fees will lessen stress on the land; however, such action is not a viable position of compromise. Moderately higher fees benefit the land through additional funding for range rehabilitation and sustained yield planning. *Id.* at 37-45.
113. Only 16% of the West's ranchers graze livestock on federal land. They represent two percent of the 1.6 million cattle producers nationwide. *Id.* at 3, 73-75.
114. The multiple use advisory councils consist of 10 to 15 members representing "various major citizens' interests concerning the problems relating to land use planning or the management of the public lands located within the area . . . ." 43 U.S.C. § 1739 (1982).
115. The FLPMA requires one "elected official of general purpose government" on each advisory board. 43 U.S.C. § 1739(a) (1982).
116. 16 U.S.C. § 580k, 43 U.S.C. § 1753 (1982).
117. 43 U.S.C. § 1753(c) (1982). The Forest Service boards must give "advice and recommendations" on "any matter pertaining to (1) the modification of the terms, or the denial of a renewal of, or a reduction in, a grazing permit, or (2) the establishment or modification of an individual or community allotment." 16 U.S.C. § 580k(d) (1982).
118. A strong criticism of federal grazing activities is that the de facto decision makers for the lands are the advisory board leaseholders, and not the professional range administrators staffing the government bureaucracy.
119. The Forest Service boards must contain one wildlife representative from a state game commission or similar body. 16 U.S.C. § 580k(3) (1982). The FLPMA sets the maximum size of these boards at 15 persons. The lessees and permittees in the district choose the members. 43 U.S.C. § 1753(c) (1982).



abuse the system.<sup>120</sup>

By limiting the number of permit holders on each council,<sup>121</sup> the PRPAA converts the general advisory councils into a true multi-interest panel representing all groups interested in federal grazing lands. The PRPAA alters the district advisory boards by including non-permit holding representatives, requiring at least one from a private wildlife and fish group and at least one from a similar state agency.<sup>122</sup> The PRPAA would have extended these provisions for another ten years.<sup>123</sup>

All of the groups in dispute over this bill generally support these board and council changes. While the ranchers dislike relinquishing exclusive control of local boards, they would have received a ten year extension of their existence.<sup>124</sup> Without the district boards, civil servants would make decisions presently made by the ranchers, something the ranchers could not tolerate.<sup>125</sup> While conservationists agree the change is overdue, it is obvious that their token representatives may have little impact when opposed by a majority of permit holders on each district board.<sup>126</sup>

### Other PRPAA Issues

The PRPAA alters federal grazing law in several other ways. The first change creates an innovative riparian planning and funding program.<sup>127</sup> Until the PRPAA there had been no specific efforts promoting riparian values or protecting the many streams and rivers on federal grazing land. The

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120. See G. LIBECAP, *supra* note 37, at 53-55. The FLPMA threatened the district boards by making them an optional part of the grazing system. The Taylor Act requires an advisory board. 43 U.S.C. § 3150-1 (1982). The FLPMA provided that only upon petition will advisory boards be established, and such boards had authorization only until 1985. 43 U.S.C. § 1753 (1982). Their former function has generally been assumed by the multiple use councils, creating a temporary duplication of government panels.

"The dismantling of the once-powerful advisory boards was testimony to the relative decline of rancher authority over the land they grazed in the 1970's." G. LIBECAP, *supra* note 37, at 80-81. See generally W. VOIGHT, *supra* note 12. The Secretary may now, with the aid of the new multiple use councils, specify carrying capacity, season length, and management goals. For a list of the members, see PRPAA, *infra* at appendix, § 4(c). The members shall "fully, fairly, and legitimately represent diverse points of view and the broad range of major citizens' interests concerning the problems relating to land use planning or the management of the public lands." *Id.* at § 4(c). The PRPAA creates a council that can consider the multiple uses of these lands and advise the government on which policies best serve a sustained yield.

121. One member shall be a "domestic livestock grazing representative" and no more than one-third of the advisory council can hold grazing permits. *Id.*

122. See PRPAA, *infra* at appendix, § 4(a).

123. *Id.* § 4(b). The district advisory boards were scheduled to expire on December 31, 1985. The executive order extended the district boards for an indefinite period. See *supra* note 53.

124. Conservationists hope the additional members will help disseminate their viewpoint at the local level and influence carrying capacity on individual allotments to create an overall reduction in land use. See G. LIBECAP, *supra* note 37, at 80-82. There has been extremely little research done on the positions and policies of the individual western rancher. To some extent, the policies are those of the national organizations. The typical rancher seems to support land conservation efforts and steps to maintain productivity. The ranchers must balance these considerations with the need to provide for themselves and their families. In general, the ranchers are aware of conservation measures and, to a point, will not oppose them.

125. See *supra* note 53.

126. The conservation members will find themselves regularly outvoted by wide margins. They hope that their repeated voicing of their position and a long-term movement toward lower carrying levels would be effective.

127. Riparian refers to rivers and their immediate surroundings. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (unabridged) 1960 (1981).

PRPAA elevates riparian features to equal planning, development, and management status with the other multiple use and sustained yield concerns of the FLPMA and the PRIA.<sup>128</sup> The Secretaries may designate "key riparian management areas" to protect specific riparian areas.<sup>129</sup> Existing land use plans must be amended within three years and all new planning must integrate riparian concerns.<sup>130</sup> The PRPAA funds these practices with twenty-five percent of the collected fees.<sup>131</sup> This program represents a major achievement for the conservation movement. It creates an innovative program supported by adequate funding to protect and rehabilitate a fragile portion of the national lands.<sup>132</sup>

The PRPAA also unifies the BLM and Forest Service planning schedules. Presently, the Forest Service must update land use plans at least every fifteen years while the BLM has no similar requirements.<sup>133</sup> The PRPAA switches BLM planning to the fifteen year schedule.<sup>134</sup> This represents another victory for the conservation movement. The PRPAA ensures that BLM management will utilize current planning so it may address current concerns involving the public lands.<sup>135</sup>

Two other PRPAA changes are the extension of the experimental stewardship program and the inclusion of the National Grasslands within the PRIA. The PRIA created an experimental stewardship program which provided incentives and rewards for the improvement of range conditions by the lessee.<sup>136</sup> The PRPAA extended the program and established multiple use stewardship committees<sup>137</sup> to study and develop the program for wider use.<sup>138</sup> The PRIA exempted the National Grasslands from its provisions.<sup>139</sup> The Department of Agriculture, which runs these lands, must apply differ-

128. The FLPMA includes "water resource . . . values" with its other general concerns. 43 U.S.C. § 1701(a)(8) (1982). The PRIA cites excess saltation, reduced quantity and availability, and increased run-off and flooding as some of problems caused by damaged watersheds. *Id.* § 1901(a)(3). For the PRPAA's general policies on the riparian issue, see PRPAA, *infra* at appendix, § 3(a).

129. See PRPAA, *infra* at appendix, § 3(c). The PRPAA includes appropriate criteria for determining whether the land and water meet the program's qualifications.

130. *Id.* § 3(d)-(e).

131. *Id.* § 5(b). This would have amounted to just over \$6 million if the program had been in effect in 1983. 1985 DRAFT REPORT, *supra* note 33, at 6.

132. The ranchers accepted this program as part of the final PRPAA draft bill and it is in the best interest of the public lands for the next grazing bill to include it.

133. 43 U.S.C. § 1712(a) (1982). The FLPMA requires the BLM to "when appropriate, revise land use plans . . ." *Id.*

134. See PRPAA, *infra* at appendix, § 2.

135. The BLM has ignored and delayed land use planning, which generally makes management less scientific and less effective. Some stockmen criticize the great expansion of planning for the public lands. They claim the great expense, uncertain value, increased administrative budgets and additional paperwork and planners make the program inefficient. Because the land changes so little most tracts do not require new plans every 15 years. Some feel that planning for planning's sake balloons administrative costs and creates the deficits. These persons think that those interested in budget overruns should seek a more austere government dedicated to the essential administrative needs of the program and enforcement of the existing rules.

136. 43 U.S.C. § 1908 (1982). The incentives include payment by the government of 50% of the grazing fees for the Experimental Stewardship area. Congress was to receive the results by December 31, 1985, for recommendations and further legislation. *Id.* § 1908(b).

137. The stewardship program encourages active private management by the permit holder. This program is generally considered fairly successful and all of the parties concerned approve of the program.

138. See PRPAA, *infra* at appendix, § 6(a)-(b).

139. 43 U.S.C. § 1907 (1982).

ent standards than it uses on its Forest Service lands. This change helps integrate the national grazing system and avoid some duplication within the Department of Agriculture.

### THE PRPAA: A TRANSITION IN FEDERAL GRAZING LAW

The first step in changing federal grazing law should be to adopt the PRPAA as it is now written. The bill represents a compromise between the ranchers' need for a continuing grazing formula and renewal of advisory boards and the conservationists' need to solidify their gains on the advisory boards, riparian relief, and planning requirements. It represents the best solution to the unresolved grazing issues for several reasons even though the PRPAA is not the perfect solution.

First, the PRPAA represents a relatively balanced compromise between potential harm to ranchers caused by the higher fees and constructive use and rehabilitation of the public range.<sup>140</sup> The compromise allows the ranchers to maintain the current formula.<sup>141</sup> The livestock industry also receives an extension of the district advisory committees, although the PRPAA requires two non-permit holders on each committee.<sup>142</sup> In exchange for these provisions, the environmental movement received three things, the most important being the riparian program and funding. Conservationists also negotiated the BLM's switch in planning schedules as well as appointments and the changes to the advisory boards and councils.<sup>143</sup> The ranchers were willing to make these concessions in the PRPAA so long as the current fee formula was maintained.<sup>144</sup> While the western ranchers may not accept a bill raising fees, non-western congressmen may support its passage. The environmental lobby demands some increase in fees, which explains the failure of the PRPAA draft bill.<sup>145</sup> Congress, however, must amend the PRPAA to address the budget issue before it can be passed into law. While a dubious solution to the overgrazing and rancher hardship issues, increased fees present an answer to the budget problem.

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140. This author feels that the ranchers gave up less than the conservation movement, and that while the western Republicans wrote a bill they could sell to the livestock industry, they did not write a bill they could sell to the portions of Congress concerned with environmental issues and budget deficits.

141. The ranchers appear willing to give away many things to maintain their control over the grazing system. The thing they apparently do not want to compromise is the fee level. Therefore, if a reasonable and moderate fee hike could be agreed to, it would appear to be relatively simple to pass a comprehensive package to reform the federal grazing system. Enactment of most of the PRPAA would represent a substantial step in the direction of much needed reform.

142. See *supra* note 122.

143. These changes provide for increased supervision of the public lands by a larger variety of groups interested in the public lands.

144. The 1985 Draft Report suggests that while moderate fee increases would force some ranchers to leave their land, the "typical" permittee would not have to discontinue operations until the fee reached \$8.85 per AUM. 1985 DRAFT REPORT, *supra* note 33, at 41. This indicates that ranchers may have more room to compromise than is believed. Fee increase of two to three dollars would not have a significant impact on the ranchers. There would, however, be some impact if fees rose above that amount, including bankruptcy of ranchers and bank failures across the West. Congress must weigh the competing issues here and resolve them to best serve society as a whole.

145. Even a small fee increase would be a gesture by the ranchers that they recognize the conservation position. If a small fee hike were included the conservation community would be much more amenable to the PRPAA.

The livestock owners present a strong social, economic, and fiscal case for supporting the PRPAA's continuation of the current PRIA fee system. While declining fees indicate to some that ranchers can easily absorb fee increases, the decline in grazing fees since 1981 was caused by falling beef prices, thereby reducing the corresponding fee index.<sup>146</sup> Because the index is based on the rancher's costs, the fees only drop when the rancher's ability to pay also declines.

Increased access to district boards and multiple use councils, an increased amount of land use planning,<sup>147</sup> and the riparian programs are all reasons for the environmentalists to support the PRPAA. All of these are payoffs from the biggest victory of the environmental movement: the mid-1970s policy changes promoting multiple use and sustained yield of the public lands. Continued access to the decision-making process will slowly shift the public lands from the exclusive province of the cattle rancher to public use as envisioned by the conservation community. If the fees are not raised, the concessions gained in the PRPAA will be partial steps to the multiple use goal.<sup>148</sup> Moreover, because of the budget constraints, the PRPAA could be introduced with the fee hike included in it.

The PRPAA fails because it does not address the budget problem.<sup>149</sup> Simply put, the grazing programs cost the government more money to run than they generate in revenue.<sup>150</sup> For every \$1.35 collected from the ranchers the federal government spends about \$3.50.<sup>151</sup> Current fiscal consciousness will prevent grazing reform if the legislation fails to address this issue. Therefore, while the public should support the PRPAA for the changes it brings to other issues, Congress must amend the PRPAA fee provisions to a level that will resolve the budget problems without harming the rancher.

Several fee alternatives proposed by the BLM and Forest Service would generate \$75 to \$85 million in additional fees,<sup>152</sup> and eliminate the pro-

146. 1985 DRAFT REPORT, *supra* note 33, at 19-23. One can argue that the fee index functions too well. While some may argue for a fixed fee, this ignores economic reality and the ranchers ability to pay in different economic situations. In good years, the indexes rise, as does the rancher's ability to pay. In tougher times, however, the ranchers lack extra capital to cover fixed fee costs. The formula compensates for changing prices and promotes stability in a volatile industry.

147. One major problem with these studies is that they may eventually cost \$200 million. This dwarfs the annual administrative budget for the grazing lands of around \$30 million. Nelson, *supra* note 10, at 63-70. Section 2 of the PRPAA, *infra* at appendix, continues the extensive and detailed planning process pursuant to multiple use and sustained yield goals. Another problem was the lack of uniform definitions—what one group considered poor grazing land may have meant something else to a different group in a distant state which had a different climate and vegetation. See Coggins II, *supra* note 4, at 87-88.

148. The conservationists could still compromise on the PRPAA. It may be feasible to accept the PRPAA as written, even if it includes no fee changes. If the conservationists offered the PRPAA as a bill, the western congressmen would likely jump at the chance to bring home a grazing bill that included no fee changes.

149. Budget problems were also raised in 1914, 1920, 1946, 1947, 1951, 1968 and the 1970s. See A. BACKIEL, *supra* note 13, at 3, 7, 11, 13, 15, 17-18.

150. The BLM and the Forest Service had costs of \$58.9 million for planning, management and range improvements in 1983. The two agencies collected \$24.2 million in grazing fees, creating a program deficit of \$34.7 million in 1983. 1985 DRAFT REPORT, *supra* note 33, at 6.

151. *Id.*

152. The Modified PRIA, Livestock Price, and Modified Market Value formulas would have generated between \$75 and \$85 million in 1983, which exceeds the \$60 million in administrative costs. These alternative formula incomes compare to the \$24 million actually generated by the PRIA formula. *Id.* at 37-38.

gram's internal deficit. Other proposed fee alternatives would generate lesser amounts and only reduce the program's deficit.<sup>153</sup> Only a portion of the receipts, however, go directly into the federal treasury.<sup>154</sup> The PRPAA continues to allocate the bulk of the collected fees to range rehabilitation and riparian areas.<sup>155</sup> State governments would also receive a share of the money, but must balance this against the problems caused by disruptions to the local economies.<sup>156</sup> Although dramatic fee increases could significantly decrease the program's internal deficit, grossly higher fees would destroy many ranchers and force marginally profitable permittees out of ranching.<sup>157</sup> The average rancher can, however, maintain profitable use of the public lands until the fee reaches about \$9.00 per AUM.<sup>158</sup> The proposed alternatives only raise the fee to about \$5.00 per AUM, about half of what would cause the typical permit holder great trouble. Therefore, the proposed alternatives would have a beneficial fiscal impact while causing only slight harm to the average rancher.<sup>159</sup>

### PROPOSED AMENDMENTS TO THE PRPAA: ALTERNATIVE FEES

While the PRPAA solves most of the disputed issues, one key issue must be resolved in order to facilitate acceptance of the bill by all concerned parties. The PRPAA should increase grazing fees slightly, an increase of between \$1.00 and \$2.00 per AUM. Given the potentially serious economic impacts of significant increases in the fees, the first step toward returning the fees to a fair level should be a token increase. Both conservationists and

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153. The Nonfee Costs formula would have generated \$46 million in revenue, thereby only lessening the deficit. *Id.*

154. Fee distribution depends on the collecting agency and the type of use arrangement. The Forest Service allocates 50% of receipts to the range betterment fund, 25% to the United States treasury, and 25% to the states in which the fee was collected. The PRPAA does not change this. The BLM collects funds from its more numerous permits and allocates 50% for range betterment, 12.5% to the states, and 37.5% to the treasury. The PRPAA changes this by only allocating 12.5% to the treasury and devoting the remaining 25% to the new riparian program. For lease arrangements, the BLM gives 50% to the state and 50% to the range betterment fund. The PRPAA does not change this. 43 U.S.C. §§ 315i, 1751(a)-(b) (1982). See PRPAA, *infra* at appendix, § 5(b)(1).

155. 43 U.S.C. §§ 315i, 1751(a)-(b) (1982). PRPAA, *infra* at appendix, § 5(b)(1).

156. Fee increases would cause immediate expansion of local economies as new government spending offset the rancher's losses. The livestock industry, however, would not receive the funds, which would benefit construction, finance, insurance, real estate and trades. Thus, the additional government spending fails to support the group hurt most by increased fees. 1985 DRAFT REPORT, *supra* note 33, at 44.

157. The government calculates that permittee returns over cash costs would decline \$21 million to \$73 million, or a decrease of \$667 to \$2355 per permit holder, depending on the fee alternative chosen. Given the marginal profits associated with western ranching, these increases represent significant hazards for the ranchers. *Id.* at 40.

158. The 1985 Draft Report states that only significant increases in fees would have a great impact on the western livestock industry. Fees would have to reach \$8.85 per AUM before the "typical permittee" would stop using federal lands. While permittees of lower profit levels might become bankrupt, these would number a few thousand out of over 1.5 million cattle producers in the United States. *Id.* at 41.

159. *Id.* Environmentalists approve of increased range rehabilitation funds and decreased herd size. When combined with the PRPAA's advisory board and riparian area changes, the conservation-oriented will find much to support in the revised PRPAA. State governments will receive more money and avoid catastrophic effects on local economies. Moreover, the ranchers will suffer less than under proposed fee alternatives put forward by the federal government. Federal permit value will remain at a fraction of its assessed market value, a point that the ranchers should not forget.

ranchers will likely accept token increases. The ranchers would not accept significant increases in the fees, and no fee change, as the PRPAA currently advocates, is unacceptable to conservationists. This change also addresses the important issue of budget deficits, which the current PRPAA ignores.

As the system stands after President Reagan's February 14, 1986 executive order, the PRIA formula is indefinitely extended and must charge a minimum fee of \$1.35.<sup>160</sup> The Secretaries of Agriculture and Interior can continue to set the fees but only within the congressionally mandated PRIA formula and the Reagan base price. Congress must determine the formula necessary to calculate the higher fees. Of the five alternatives proposed by the Draft Report,<sup>161</sup> the Nonfee (Differential) Costs system formula is the best option. Alternatively, Congress should consider adding a surcharge to the current PRIA formula as a solution if the interested parties cannot agree to an alternative fee.

### The Nonfee Costs Alternative

The best way to raise fees is the Nonfee (Differential) Costs system. The

160. Executive Order No. 12,548, 51 Fed. Reg. 5985 (1986).

161. In the 1985 Draft Report, the Secretaries of Agriculture and Interior proposed a Modified PRIA formula, a Nonfee (Differential) Costs formula, a Livestock Price formula, a Modified Market Value formula, and a Competitive Bid formula.

The Modified PRIA system uses the same indexes as the PRIA, but weighs factors within one of the three indexes in a different way and uses appraised values for its base. These changes are located *infra* note 169. If this alternative had been in use, fees from 1980 to 1984 would have been between \$5.48 and \$4.31 per AUM, or two to three times their actual value of \$2.36 to \$1.37 per AUM. Of the alternative formulas not discussed in the text, this is the best alternative. It would be fairly easy to implement and would eliminate the budget deficit. In the Modified PRIA, the fees relate directly to relevant agricultural prices and are based upon the entire ranch economy. The Modified PRIA does, however, place fees a little too high and would have more severe effects than the Nonfee Costs system.

The second alternative, Nonfee Costs, is discussed in the text. The fee from this formula would have ranged from \$2.66 to \$3.35 per AUM, for 1980 to 1984. See *infra* notes 162-75 and accompanying text for discussion.

The third proposed alternative bases fees on beef prices. This Livestock Price formula sets fees at 20% of the price received for calves. Single variable fees are vulnerable, however, to isolated market shifts and do not reflect the broad spectrum of factors that go into the ranch economy. From 1980 to 1984 the beef price alternative would have created fees ranging from \$4.08 to \$5.06 per AUM.

The Modified Market Value system, the fourth option, compares the private land lease rate with appraised animal base value. This alternative also depends on a single variable, the grazing lease market. It would have generated fees from \$4.31 to \$4.82 per AUM during 1980 to 1984.

The fifth proposed system relies on auctioning grazing tracts to the ranchers. While the other systems relate to historical base values and yearly economic factors, the Competitive Bid system places the lease in the hands of the highest valued user. Some minimum bid requirement would exist, probably the appraised market value of the tract.

This program would have the highest administrative cost, about three times that of the PRIA formula, because of the individual bidding process. The other alternatives also increase administrative costs, but not to the degree of the competitive bid system. Increased program costs would partially negate increased revenues from an alternative formula. In addition, under the Competitive Bid alternative only one person would bid for many of the allotments. The lack of competition because of access problems and collusion could result in many ranchers paying the minimum amount, thus frustrating the purpose behind the competing bids. 1985 DRAFT REPORT, *supra* note 33, at 19-45. Competitive Bid systems had been discussed as early as 1906 but were not adopted because of their instability and benefits to the larger, wealthier ranchers. See A. BACKIEL, *supra* note 13, at 3.

One way to mitigate harm caused by increased fees would be to implement fee increases over several grazing years. An immediate increase of \$3.00 per AUM would be much more difficult to swallow than a three dollar increase over three or six years.

PRIA utilized a base rate modified by grazing lease rates and the ranchers' ability to pay.<sup>162</sup> The Nonfee Costs system changes the formula by attempting to include other costs that affect the ranchers in their use of the public range.<sup>163</sup> The Nonfee Costs formula increases the PRIA base value and modifies the PRIA variable indexes.<sup>164</sup> The nonfee base price would have been \$2.86 in 1983,<sup>165</sup> an increase from the PRIA base of \$1.23.<sup>166</sup> The formula uses a base value modified by forage value, beef prices, and price paid indexes.<sup>167</sup> The base period updates the PRIA base period to account for general inflation.<sup>168</sup> The indexes have been subtly altered by the BLM and the Forest Service to provide for more accurate reflections of economic activity.<sup>169</sup> The Nonfee Costs formula offered in this note bases its formula on the years 1980-1984. If this alternative had been in use, the fees would

162. A. BACKIEL, *supra* note 13, at 33.

163. 1985 DRAFT REPORT, *supra* note 33, at 30.

164. The following should replace the PRIA grazing fee formula, located at 43 U.S.C. § 1905 (1982), and replace § 5(a)(1) of the PRPAA, *infra* at appendix.

For the grazing years 1987 through 1997, the Secretaries of Agriculture and Interior shall charge the fee for domestic livestock grazing on the public rangelands which Congress finds represents the economic value of the use of the land to the user, and under which Congress finds fair market value for public grazing equals the \$2.86 base value established by the 1983 update of the 1966 Western Grazing Livestock Survey multiplied by the result of the Forage Value Index (based on an annual AUM weighed survey of private grazing land lease rates for the 16 western states, 1980-1984 = 100) multiplied by the Combined Index (Beef Cattle Price Index [based on existing beef cattle prices weighed by AUM's for the 16 Western states, 1980-1984 = 100] divided by the National Prices Paid Index [weighed to reflect all production costs (both farm and non-farm origin) for typical cow-calf operation in the 16 western states, 1980-1984 = 100]) and divided by 100: Provided, That the annual increase or decrease in such fee for any year shall be limited to not more than plus or minus 25 per centum of the previous year's fee.

The formula looks like this:

$$\text{Fee} = \frac{\text{Appraised base value} \times (FVI \times (BCPI/PPI))}{100}$$

1985 DRAFT REPORT, *supra* note 33, at 30. The 25% change limit ensures it will take several years for the full effect of the fee increase to be felt by ranchers, and allows them several years to assimilate the increase.

165. The formula determines base value by subtracting the nonfee costs value of \$2.09 from the private grazing land lease rate of the lowest priced western region. The formula discounts the lease rate by 10% because most ranchers using private land receive that deduction for advance payment of fees. *Id.* at 30-31.

166. The PRIA base (\$1.23) was calculated by subtracting the nonfee (differential) costs (\$0.55) from the estimated private land lease rate in the 1966 Western Livestock Grazing Survey of Private Grazing Land Lease Rates (\$1.79). *Id.* at 17.

167. See *supra* note 110 for the PRIA's original definitions of these terms. See *supra* note 164 for the proposed definitions.

168. The livestock industry experienced a 380% increase in nonfee costs since the 1966 Western Livestock Grazing Survey. This increase inflated the PRIA nonfee cost differential from \$0.55 to \$2.09, which the Nonfee Costs formula proposed in this note adopts. See *supra* note 165. 1985 DRAFT REPORT, *supra* note 33, at 30-31.

169. The Nonfee Costs alternative proposed by this note changes neither the Forage Value Index nor the Beef Cattle Price Index. The Prices Paid Index was altered to include several factors not embraced by the PRIA formula. The PRIA index contains the following, adjusted by the weights included parenthetically: fuels and energy (14.5), farm and motor supplies (12.0), autos and trucks (4.5), tractors and self-propelled machinery (4.5), other machinery (12.0), building and fencing material (14.5), farm services (18.0), interest (6.0), and farm wage rates (14.0). 1985 DRAFT REPORT, *supra* note 33, at 24.

The proposed Input Costs Index reweighs the formula to include production costs of farm origin, such as fertilizer and feed. The factors, adjusted by their relative weights in parenthesis, are: feed (42.6), fuels and energy (6.7), tractors and self-propelled machinery (7.2), building and fencing materials (4.8), farm services (4.9), interest (19.0), taxes and insurance (6.3), and farm wage rates (8.5). *Id.* If changing the components of the PRIA formula were the only step taken by Congress then the fee would rise from \$1.40 per AUM to \$2.85 per AUM. *Id.* at 23. The President's execu-

have ranged from \$3.35 in 1980 to \$2.63 in 1985.<sup>170</sup>

The nonfee system would approximately double existing fees and reduce the program deficit by about two-thirds.<sup>171</sup> Permit holders face decreased return above cost of about \$667 per rancher,<sup>172</sup> a significant but not unreasonable amount. Herd size would decline by about three percent.<sup>173</sup> The ranchers facing financial problems would be those overwhelmingly dependent on the use of federal lands, primarily those in the desert southwest.<sup>174</sup> Federal "worst-case" scenarios of the counties most dependent on federal lands suggest that tripling fees would cause a two percent reduction in the counties' net incomes.<sup>175</sup>

Because the nonfee alternative does not eliminate the program deficit, it is not a perfect alternative. It is, however, a position that all parties can accept. By switching to a nonfee cost alternative, an increase in fees would have some impact on the livestock industry's profits and production, and also reduce the program deficit. The alternative formula provides additional fees for range and riparian rehabilitation. While the deficit is not completely eradicated, the Nonfee Costs alternative represents a substantial step toward that end that should be supported as an amendment to the reintroduced PRPAA.

### Permanent Surcharge Alternative

Congress could also raise grazing fees through a permanent surcharge to the base value of the fee. The government should add a one dollar surcharge to the current fee, raising the base value of the PRIA from \$1.23 to \$2.23.<sup>176</sup> This would be easy to administer under the current procedures and forms.<sup>177</sup> The surcharge would increase revenue almost to the level of a

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tive order maintains the PRIA Prices Paid Index. Executive Order No. 12,548, 51 Fed. Reg. 5985 § 2(d) (1986).

170. 1985 DRAFT REPORT, *supra* note 33, at 31.

171. In 1983 the Nonfee (Differential) Costs formula would have generated \$46.8 million on costs of \$60 million, leaving a deficit of \$13.2 million. The actual 1983 PRIA income was \$24.3 million on costs of \$60 million, for a deficit of \$35.7 million. *Id.* at 37-38.

172. The 1985 Draft Report calculated the adverse cost to ranchers as the decrease in income above costs (profit) as a result of the implementation of the five proposed fee alternatives. The Nonfee Costs alternative projected reductions of returns above cost at about \$21 million. By distributing the \$21 million loss among the 31,000 holders each loses about \$667. *Id.* at 40.

173. *Id.* at 41.

174. The southwestern states depend most on federal lands for forage, with Arizona the most dependent state with 60% of the cattlemen holding permits. Only Nevada, Utah, Arizona and New Mexico rely on federal land for more than 25% of their forage. For the northern Rockies and the West Coast, increases in capital costs (higher interest rates) have a greater impact on the livestock industry than fee increases. *Id.* at 42, 49, 53-54.

175. Each state had one county selected as the one most dependent on federal lands. Average loss in total county net income with a fee of four dollars was 2.1%, with a variation of 5.7% to 0.1%. A 5% decline in total county net income would create severe economic hardship. While increased government spending offsets this slightly, non-ranch sectors of the economy receive the benefit, and not those hurt by the higher fees. *Id.* at 54-55.

176. Section 6(a) of the PRIA, located at 43 U.S.C. § 1905 (1982), should be modified by replacing "under which Congress finds fair market value for public grazing equals the \$1.23 base established by the 1966 Western Livestock Grazing Survey multiplied . . ." with "under which Congress finds the fair market value for public grazing equals \$2.23 multiplied . . ."

177. Congress would only have to change the dollar amount on all forms. A simple sticker for the forms and administrative announcements would probably suffice to effectuate the change.



nonfee cost alternative<sup>178</sup> and have slightly less adverse impact on ranchers' costs, profits and herd sizes.<sup>179</sup> As an intermediate alternative between the more radical modified market value, modified-PRIA and competitive bid fee alternatives proposed in the 1985 Draft Report, the surcharge provides a viable compromise.<sup>180</sup>

While neither the nonfee cost nor the dollar surcharge achieve solvent budgets, they do represent universally fair positions for all the concerned parties.<sup>181</sup>

### CONCLUSION

The federal grazing system needs reform. There has been significant change since the mid-1970s, change that has agitated the ranch industry into attempts to entrench their way of life while the conservation movement has simultaneously attempted to continue further reform of the public lands. The Public Rangelands Policy Amendments Act of 1985 sought to preserve key features of the federal program while providing minor change to increase public involvement and protect the public lands. Congress produced several compromises, but could not resolve the dispute and the bill was never introduced. A vital need exists for legislation addressing the problems of budget deficits. The legislation must not, however, upset the delicate economic balance that exists in the West.

Congress should pass the PRPAA after amending the existing grazing fee formula to a Nonfee (Differential) Costs formula. Congress could, alternatively, impose a permanent surcharge on the current fee while debating further changes in federal grazing law. The PRPAA would then represent a balanced solution to the differences between the interested parties. The bill as drafted embodies most of the needed compromises. If the ranchers accept some moderate fee hike, implemented over several years, then the last and most important compromise could be resolved and the budget issue solved as well. The PRPAA, if amended, would address the problems in the fed-

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178. Revenue in 1985 would have been about \$40 million, enough to reduce the deficit by a significant amount.

179. No figures exist on the exact impact of this increase. Because the increase is slightly less than the non-fee cost alternative, the dollar surcharge would have slightly less effect. For example, if total county net income would drop 2.1% with a fee of \$4.00, a fee of about \$2.50 would only cause a decrease in total county net income of about 1.5%.

180. The surcharge could probably be accomplished through executive order, similar to President Reagan's executive order that put a minimum price on the fee formula. The President could mandate a \$2.35 base instead of a \$1.35 base. Given the discretionary power held by the Secretaries in charge of the program in setting fees, the President could easily raise fees a slight amount until Congress can agree on a permanent funding formula.

181. Environmentalists approve of increased range rehabilitation funds and decreased herd size. When combined with the PRPAA's advisory board changes, the conservation-oriented will find much to support in the revised PRPAA. State governments will receive more money and avoid catastrophic effects on local economies. Moreover, the ranchers will suffer less than under fee alternatives proposed by the government. Federal permit value would also remain a fraction of its assessed market value.

eral grazing system. Congress should pass the PRPAA as the first step in the long term reform of the federal grazing system.

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## APPENDIX A BILL

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Public Rangelands Policy Amendments Act of 1986."

### LAND USE PLANNING AND MONITORING

Sec. 2. Section 202 (a) of the Federal Land Policy and Management Act (43 U.S.C. 1712 (a)) is hereby amended to read as follows:

Sec. 202 (a)(1) The Secretary shall with public involvement and consistent with the terms and conditions of this Act and other applicable law, develop, maintain, and from time to time when he finds conditions in a tract or area have significantly changed (but at least every fifteen years) revise, land use plans which provide by tracts or areas for the use of the public lands. Land use plans shall be developed for all areas of the public lands regardless of whether such lands previously have been classified, withdrawn, set aside or otherwise designated for one or more uses. Land use plans shall fully incorporate and reflect the standards and guidelines contained in subsections (b) and (c) of this section, other applicable requirements or provisions of this Act, and the requirements of other laws applicable to the public lands. The Secretary shall attempt to complete such incorporation for all units of the public lands no later than December 31, 1991. Until such time as a unit of the public lands is managed under land use plans developed in accordance with this Act, the management of such unit may continue under existing land use plans or management direction.

(2) As part of the inventory required pursuant to section 201 of this Act and the development, maintenance and revision of land use plans the Secretary shall establish a program to closely monitor range conditions and other values of the public lands. The Secretary shall include in each new (or revised) plan a report detailing range conditions, trends, and changes in range conditions and other values that have occurred during the period covered by the previous plan (or existing plan), as well as a description of longer term trends and conditions.

### RIPARIAN AREAS

Sec. 3 (a) As an integrated and equal consideration in developing, maintaining and revising land use plans for the public lands pursuant to the Federal Land Policy and Management Act (as amended), and land and resource management plans for the National Forest System pursuant to the Forest and Rangeland Renewal Resources Planning Act of 1974 as amended by the National Forest Management Act of 1976, the Secretaries of the Interior and Agriculture, respectively, shall inventory, identify and consider riparian values in addition to, and in conjunction with, their other integrated planning requirements and responsibilities for plans covering areas of the public rangelands.

(b) Each land use or land and resource management plan shall identify and incorporate such provisions, projects, actions plans and schedules as are necessary to maintain, protect, restore or improve, and monitor, riparian values in areas covered by the plan to promptly achieve a healthy and productive ecological and range condition. Allotment management plans shall include such terms or conditions as are necessary to maintain, protect, restore, or improve riparian values pursuant to the land use or land and resource management plan.

(c) Where the Secretary concerned determines in the land use or land and resource management planning process that riparian values in a given area are unsatisfactory and that special management emphasis or increased funding are necessary to maintain, restore or improve existing or potential riparian values or areas, he may designate the area as a "key riparian management area." In determining whether to designate an area as a "key riparian management area," the Secretary concerned shall be guided by the following criteria:

(1) whether the area has especially important values for water production or retention; flood, salinity or erosion control; critical or sensitive plant fish and wildlife habitat; critical or sensitive plants species, communities or vegetative associations; and/or scenic, recreational or other important values which merit special management emphasis or funding;

(2) whether riparian values are so degraded that significant environmental damage is occurring and more conventional riparian habitat improvement efforts, projects or levels of funding are unlikely to be sufficient to promptly achieve desired improvement results; and

(3) whether existing or potential riparian values are likely to be maximized by making public investments in the area pursuant to the authority of subparagraph 5(b)(1)(B) of this Act.

(d) If upon enactment of this Act, initial land use plans for the public lands pursuant to the Federal Land Policy and Management Act (as amended) or initial land and resource management plans for national forest lands pursuant to the Forest and Rangeland Renewable Resources Planning Act of 1984 . . . the requirements of this section for the inventorying, identification, monitoring, protection and enhancement of riparian values and areas shall be met by adopting amendments (as opposed to revisions) of any such plans within 3 years of the date of enactment of this Act.

. . . .

### GRAZING BOARDS AND COUNCILS

Sec. 4. (a) Section 403 (c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1753) is amended by adding the following new sentence at the end thereof:

Each board shall also have one wildlife representative from the State agency or public body having jurisdiction over wildlife and fish in the area concerned, and at least one wildlife representative to be appointed by the Secretary concerned in close consultation with, and from the ranks of, such individuals, groups, organizations and associations as are involved with wildlife and fish management issues in the area administered by the office concerned.

(b) Section 403 (f) of the Federal Land Policy and Management Act of 1976 is hereby amended by changing "1985" to "1995."

(c) Section 309 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1739) is hereby amended to read as follows:

Sec. 309 (a) For at least each Bureau district office and for such other administrative units as he may deem advisable, the Secretary shall establish multiple-use advisory councils (hereinafter referred to as "advisory councils") of not less than ten and not more than fifteen members appointed by him. Such councils shall be balanced and members shall be appointed and certified by the Secretary to fully, fairly and legitimately represent diverse points of view and the broad range of major citizens interests concerning the problems relating to land use planning or the management of the public lands located within the area for which an advisory council is established. Advisory council members shall be appointed without reference to political party affiliation, (and the Secretary shall so certify), in accordance with rules prescribed by the Secretary, Provided, however, That:

. . . .

(2) each advisory council shall contain at least the following members, who shall be appointed by the Secretary in close consultation and coordination with, and from the ranks of, such individuals, groups, organizations and associations as are generally recognized to be concerned with, and shall be certified by the Secretary to represent, the particular multiple use and/or land use described:

i. a representative from the State agency or public body having jurisdiction over wildlife and fish in the area concerned;

ii. a wildlife and/or fish representative;

iii. a motorized recreation representative;

iv. an environmental protection representative;

v. a soil and water conservation representative;

vi. a domestic livestock grazing representative;

vii. an elected official of general purpose government serving the people of the area for which an advisory council is established;

viii. where significant resources exist within the area, a representative of the locatable minerals industry;

ix. where significant resources exist within the area, a representative concerned with cultural, paleontological, archeological or historical preservation and protection; and

x. where significant resources exist within the area, a representative of the leasable minerals industry.

(3) no more than one third of the members of an advisory council at any given time shall be holders of either federal domestic livestock grazing permits or leases or mineral permits or leases.

(b) Each advisory council established by the Secretary under this section shall meet at least once a year. Such meetings may be called by the Secretary or by majority vote of the council.

(c) Members of advisory councils shall serve without pay, except travel and per diem will be paid each member for meetings called by the Secretary, and for up to 3 meetings per year called by majority vote of the council.

(d) An advisory council may furnish advice to the Secretary with respect to (1) land use planning, classification, retention, management and disposal of the public lands within the area for which the advisory council is established; (2) conflict resolution; (3) such other matters as may be assigned to it by the Secretary; and shall also review and comment to the Secretary on the advice and recommendations of the grazing advisory board within the area for which the council is established.

#### GRAZING FEES AND RANGE IMPROVEMENT FUNDING

Sec. 5. (a)(1) The Secretaries of Agriculture and Interior shall charge the fee for domestic livestock grazing on the public rangelands which equals the \$1.23 base established by the 1966 Western Livestock Grazing Survey multiplied by the result of the Forage Value Index (computed annually from data supplied by the Economic Research Service) added to the Combined Index (Beef Cattle Price Index minus the Price Paid Index) and divided by 100: (Provided, that the annual increase or decrease in such fee for any given year shall be limited to not more than plus or minus 25 percentum of the previous year's fee).

(2) The Secretaries shall promulgate regulations providing for collection of grazing fees at the end of a grazing season. Such season end billing may be used at the discretion of the Secretaries as an incentive to grazing permittees or lessees for accelerating or maintaining the improvement of range conditions on public rangelands.

(b) Subsections 401 (b)(1) and (2) of the Federal Land Policy and Management Act of 1976 (as amended) are hereby amended to read as follows:

(b)(1) Notwithstanding any other provisions of the law, beginning in fiscal year 1987, all moneys received by the United States as fees for domestic livestock grazing on the public lands . . . [is] to be disposed of as follows:

A. Except as provided in the last clause of subparagraph (D) of this subsection, fifty per centum of all said moneys shall be used for a diverse mix of range improvements, one half of which is authorized to be appropriated and made available for use in the district, region, or national forest from which such moneys were derived . . . for the purpose of on-the-ground range rehabilitation, protection, and improvements on such lands, and the remaining one-half shall be used for on-the-ground range rehabilitation . . . as the Secretary concerned directs. Any funds so appropriated shall be in addition to any other appropriations made to the respective Secretary for planning and administration of the range betterment program and for other range management. Such rehabilitation, protection, and improvements shall include a diverse mix of all forms of range improvements, as such improvements are defined in section 3(f) of the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1902), and, as the respective Secretary may direct after consultation with the grazing advisory boards, multiple-use advisory councils, Experimental Stewardship Committees and other interested parties.

B. Twenty-five per centum of all said moneys is authorized to be appropriated and used specifically for on-the-ground range improvement projects (and maintenance thereof) and

conservation efforts designed for the benefit of such key riparian management areas as the Secretaries may designate pursuant to section 3 of this Act.

C. Twelve and one half per centum of all said moneys is authorized to be appropriated and used for on-the-ground range improvements (and maintenance thereof) and conservation efforts designed specifically for the benefit of fish and wildlife populations or habitat.

D. Twelve and one half per centum of all said moneys shall be paid at the end of each fiscal year to the State in which the grazing lands, district, region or national forest producing such moneys are situated, to be expended as the State legislature of such State may prescribe for the benefit of the county or counties in which the grazing lands, district, region or national forest are situated; Provided, further, That for moneys collected under the authority of section 15 of the Taylor Grazing Act (43 U.S.C. 315m) 50 per centum (as opposed to 12 1/2 per centum) shall be paid to the States in accordance with this subparagraph with such additional per centum derived from the moneys otherwise allocated by subparagraphs (B) and (C) of this subsection: Provided, further, That for moneys collected from National Forests in the sixteen contiguous western States under the provisions of this section, an additional amount equivalent to twelve and one half per centum of all said moneys shall be paid to the State or county (as provided by existing law) in which the national forest lands producing such moneys are situated, with such additional per centum to be derived from the moneys otherwise allocated by subparagraph (c) of this subsection.

. . . .

#### EXPERIMENTAL STEWARDSHIP PROGRAM

Sec. 6. (a) The Secretaries of the Interior and Agriculture, individually or jointly, are hereby authorized to continue to develop and implement an Experimental Stewardship Program as set forth in Section 12 of the Public Rangelands Improvement Act of 1978 . . . . Provided, however, That such program shall henceforth be subject to the following provisions:

(1) for each area of the public rangelands administered pursuant to the Experimental Stewardship Program the Secretary or Secretaries shall establish a multiple-use Stewardship Committee;

(2) each Stewardship Committee shall be composed of a representative of the Secretary or Secretaries and such members as the Secretary or Secretaries deem appropriate, but shall, to the maximum extent practicable, include individuals or representatives of state and local government and groups or organizations concerned with all multiple uses in the area, including individuals concerned with wildlife, fisheries and environmental protection;

(3) in conjunction with the goal of exploring innovative grazing management policies and systems which might provide incentives to improving range conditions, Stewardship Committees should endeavor to recommend solutions to natural resource conflicts and develop proposals to improve multiple-use resource management in the area concerned;

(4) areas administered pursuant to the Experimental Stewardship Program shall be closely monitored by the Secretary or Secretaries to determine whether such program is resulting in improved range conditions, better multiple-use management, better conflict resolution and/or other improvements in land management or land conditions.

(b) In addition to the report to Congress on the Experimental Stewardship Program required by subsection 12(b) of the Public Rangelands Improvement Act of 1978, the Secretary or Secretaries shall [every five years] . . . report to Congress on the results of the Experimental Stewardship Program and provide recommendations to Congress for expanding, modifying, terminating or otherwise amending the program. Such report shall also discuss the interrelationship between Stewardship Committees, grazing advisory boards and multiple use advisory councils with a view toward promoting coordination and cooperation between such panels and recommending elimination of any duplicative functions or procedures.

#### WILD HORSES AND BURROS

[Section 7 of the draft bill has been omitted from this appendix.]

**SUBLEASING**

Sec. 8. A grazing permittee or lessee shall not unilaterally make a temporary reassignment of the grazing privileges granted under a term grazing permit or lease. In those cases where the Secretary concerned determines that temporary reassignment of grazing privileges authorized by term grazing permit or lease from the permit or lease holder to a third party is in the best interest of sound range management, such temporary reassignment may be authorized for periods not to exceed 1 year without further authorization; Provided, That, the dollar equivalent of value, in excess of the grazing fee established and paid to the United States Government, received by the holder of a term grazing permit or lease as compensation for allowing domestic livestock that are not owned or legally controlled by the permittee or lessee of record to graze on public lands, shall be paid to the Secretary by the permittee or lessee, and disposed of a[s] provided for by Section 401(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701):

Provided further that if the dollar value prescribed above is not paid to the Secretary, the grazing permit or lease shall be cancelled: Provided further, that nothing in this Act shall be deemed to affect either the right of the owner of base property or livestock to sell or lease said base property or livestock, or the authority of the Secretary, in his discretion, to reassign the permit or lease to the purchaser or lessee.

**MISCELLANEOUS**

Sec. 9. (b) Section 11 of the Public Rangelands Improvement Act of 1978 is hereby repealed. Notwithstanding any other provision of law the provisions of this Act and the Public Rangelands Improvement Act shall apply to the National Grasslands.