

**HEARING ON GRAZING REDUCTIONS AND OTHER
ISSUES ON BLM LANDS**

HEARING
BEFORE THE
SUBCOMMITTEE ON NATIONAL PARKS AND PUBLIC
LANDS
OF THE
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HOUSE OF REPRESENTATIVES
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HEARING ON GRAZING REDUCTIONS AND OTHER ISSUES ON BLM LANDS

TUESDAY, SEPTEMBER 30, 1997

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON NA-
TIONAL PARKS AND PUBLIC LANDS, COMMITTEE ON RE-
SOURCEs, *Washington, DC.*

The Subcommittee met, pursuant to notice, at 10 a.m., in room 1334, Longworth House Office Building, Hon. James V. Hansen [chairman of the Subcommittee] presiding.

STATEMENT OF THE HONORABLE JAMES V. HANSEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

Mr. HANSEN. The Committee will come to order.

Good morning, and welcome to the oversight hearing today which will address grazing issues on Federal lands managed by the Bureau of Land Management. The BLM oversees the majority of Federal lands used for livestock grazing. This land area comprises approximately 175 million acres, a significant piece of real estate in the West.

The grazing of livestock, especially cattle grazing, has been an important part of our heritage, cultural, and development of the western United States. In fact, most people, if asked to picture western America, would conjure up visions of cowboys on a cattle drive. Cattle grazing embodies the very personification of what the West is. However, as we will hear from much of our testimony today, this part of our heritage may be in jeopardy of quickly becoming extinct.

In the last few years, nearly every state in the West has experienced reductions, sometimes severe reductions, in AUMs or Animal Unit Months, along with the actual use of livestock. In fact, according to the Department of Interior statistics, from 1979 through 1996, AUMs authorized by the BLM have been reduced by almost 2 million, nearly one-fifth of the total AUMs for those years. Many factors are responsible for these cutbacks and include BLM interpretations of law and regulation, a lack of monitoring, conflicts with other wildlife species, and mandatory compliance by the BLM of other laws like the Endangered Species Act. Unfortunately for the permittees, these reductions have been, in many instances, damaging and even devastating to their livestock grazing operations.

The oversight hearing today is intended to fully explore the reasons why AUM and actual use of livestock numbers have been reduced across the West. Several permittees have been severely affected and have either had to go out of the ranching business or

forced them to seriously contemplate that decision. This hearing is also intended to find solution and remedies to livestock grazing problems, both for the permittee and for the BLM.

I want to add that the hearing today is primarily focused on issues surrounding livestock reductions on BLM. It is not a hearing on the merits of H.R. 2493, a bill introduced by our colleague, Congressman Bob Smith. Testimony given today which directs itself toward H.R. 2493 is not compatible with, and not really appropriate for, the purposes of this hearing.

I want to welcome our witnesses here today. We will hear from Mr. Maitland Sharpe, Assistant Director of Renewable Resources and Planning in the BLM. We will also hear from a number of affected livestock operators representing five different states in the West and we will mention those as we start going on here. We appreciate all of you being here. And, Mr. Sharpe, we're grateful for your presence and you have the floor.

STATEMENT OF MAITLAND SHARPE, ASSISTANT DIRECTOR OF RENEWABLE RESOURCES AND PLANNING, BUREAU OF LAND MANAGEMENT

Mr. SHARPE. Thank you, Mr. Chairman. Mr. Chairman, members of the Subcommittee, I'm pleased to have the opportunity to be here today to discuss the Bureau of Land Management's range management program. I would like to address some of the concerns that the Committee has raised with respect to reductions in authorized grazing use on lands that BLM manages.

As you know, the invitation letter for this hearing indicated that the Subcommittee was interested in grazing reductions on BLM-managed public lands. Twenty years ago, BLM authorized approximately 10.8 million Animal Unit Months, AUMs, of forage use to approximately 20,600 lessees or permittees. In 1991 that figure had decreased to slightly over 9.6 million AUMs used by 19,482 lessees or permittees, and by 1996 that number was up to about 9.75 million AUMs and the number of lessees or permittees had declined further to 18,800. I attached a chart to my testimony that shows a year-by-year breakout of this information from 1977, 20 years ago, to the present.

A review of our grazing records reveals that overall restrictions having significant negative impacts on livestock operations are, we believe, the exception. Terms and conditions for grazing livestock on an allotment are designed, whenever possible, to strike a balance between public expectations of more rapid improvements to resource conditions, on the one hand, and, on the other hand, the needs of permittees to have access to adequate amounts of forage. There have been site-specific reductions or restrictions that have been put in place to better manage rangeland resources and to restore the productivity of our public rangelands. The BLM is required to protect the public lands from degradation and seek to improve the condition of the range, while at the same time managing those lands for a full range of uses, including livestock grazing.

There is no single reason for the gradual reductions in AUMs that has occurred during the past 20 years. As you noted, the reasons are many, including land lost to grazing through exchange or disposal of lands, reductions for diminished forage supply or dimin-

ished carrying capacity, adjustments for riparian area improvements, adjustments which are usually temporary and restored after the riparian areas recover, and reductions in order to protect threatened or endangered species. Also, quite significantly, there are fluctuations of a temporary nature due to drought or wildfire emergencies.

Let me give you a couple of examples. The recent Delaware and Rio Bonito land exchanges in southeastern New Mexico demonstrate the effect of land exchanges on the available number of AUMs. Through this particular exchange, BLM acquired important habitat along the Delaware and Rio Bonito Rivers that contains important biological resources and offers enhanced public-access opportunities. As a result of the exchange, about 20,000 AUMs went into private ownership. So, those are no longer counted as AUMs on public land in New Mexico, although they're still available for grazing. An example of AUM reductions in order to protect the habitat of endangered species is the BLM's management actions to protect the threatened desert tortoise. The BLM has had to impose seasonal restrictions on grazing on a number of allotments in northern Arizona, southern Utah, Nevada, and the desert area of California because it was determined that livestock grazing had adverse impacts on desert tortoises during seasons of peak tortoise foraging activity.

Additionally, there are occasional but rare reductions taken for willful, repeated violations of rules or terms and conditions of permits. Over the past 5 years, the BLM has had to impose such restrictions against about 46 operators. Those 46 cases represent approximately two-tenths of 1 percent of our total operators. Most of our operators are, we recognize, good stewards and care deeply about the health of the land.

BLM has also made reductions in some allotments where weed encroachment has reduced the forage supply. Approximately 8.5 million acres of BLM-managed public lands have suffered invasion by noxious, exotic plants. These weeds continue to spread at more than 2,000 acres per day. These weed species have little or no value as livestock forage and contribute to the loss of carrying capacity.

In addition to making reductions where necessary, BLM also restores forage to active use or increases AUMs as conditions allow. Between 1992 and 1996 about 140 operators received increases, totaling approximately 44,000 AUMs.

In close consultation with permittees, lessees, and interested members of the public, the BLM will continue to strive to meet public expectations of improving the health of the public rangelands and continue to work to foster a healthy public land livestock industry. Livestock grazing remains a central component of multiple-use management and BLM is working to achieve a program that has broad public support for public land management that includes support for continued livestock grazing.

We believe that one important way to encourage public support is to provide a mechanism for meaningful public involvement in rangeland decisions. Public involvement permits ranchers to hear the views of others and also helps non-ranchers better understand ranchers and the benefits that ranching uses bring, such as open

space, which is certainly an issue that increasingly resonates throughout the West with people of almost all backgrounds.

Through the Resource Advisory Councils and the collaborative management approach of the 1995 regulations, BLM stakeholders are playing a larger role in the land management process. We now see people working together at state and local levels to find shared solutions to very real problems. Diverse interests are forging a common vision of what the public rangelands should look like and what the land can produce. They are finding ways to put old conflicts aside. The result will be a healthier, more productive rangeland and a more stable future for the public land livestock industry.

The bottom line, in our view, is that the Bureau's grazing management program is working. We appreciate the Committee's continued interest in our range management program and I would be happy to answer any questions. I will be here throughout the hearing to hear what the other witnesses have to say and to listen to problems that may be occurring on the public lands so that we can respond to those and try to fix them. That concludes my testimony, Mr. Chairman.

[The prepared statement of Mr. Sharpe may be found at end of hearing.]

Mr. HANSEN. Thank you. The gentleman from Minnesota.

Mr. VENTO. Well, thanks, Mr. Chairman for your—for the opportunity to be recognized. Mr. Sharpe, I'm interested in—there's a suggestion in my colleague's, the Chairman's, opening statement that there are allotments that are not within BLM that are not now being permitted. And, can you give us some overview of what the numbers are?

Mr. SHARPE. Congressman, I can't give you a number. We can find that and supply it for the record.

[The information referred to may be found at end of hearing.]

Mr. VENTO. Well, I think it's important—

Mr. SHARPE. The essential point here is the number of vacant allotments at any time on BLM lands is very, very small.

Mr. VENTO. Yes, I'm concerned. I mean, has there been any reassessment? I know that we have had a number of reports that we have done over the years, the last 7 or 8 years, which I'm certain that you, Mr. Sharpe, and others, as the Assistant Director, have taken a close look at, and they, of course, deal in glowing generalities all the time, and that's about all we have time for, I guess, today, is one of the issues had been the hot desert areas, the areas that have been extended. Has there been any thought about reframing some of those areas we found? For instance, an AUM, 2,500 of acres for a single, you know, AUM on these areas—has there been any thought of retreating from those areas? They're marginally profitable.

Mr. SHARPE. The Bureau is not currently engaged, and has no plans to engage, in an exercise of reviewing the AUM allotments westside—

Mr. VENTO. Well—

Mr. SHARPE. [continuing] to make new determinations as to their general suitability for grazing.

Mr. VENTO. Does the research councils—do they undertake that particular task themselves? I mean, at some particular point, there has to be some reframing of what are, you know, productive forages and what is not, I mean, in these areas. In terms of—when you put a cow, calf, or whatever AUMs you're putting on an allotment, it very often ends up being the dominant species. It obviously chooses out certain types of forages in terms of natural, and we get, of course, the many exotics that come in there, the sagebrush, the pinion-juniper-type phenomena—

Mr. SHARPE. I understand.

Mr. VENTO. [continuing] other types of problems that occur.

Mr. SHARPE. Those decisions are being made quite properly, I think, at the local level through local land use planning efforts at the allotment level, focusing on the particular physical and biological conditions on a given allotment. The bulk of the reductions in permitted AUMs over the past years has stemmed from findings on the ground at the allotment level that the carrying capacity is not adequate to sustain the previous level of grazing use.

Mr. VENTO. Well, I know, but one of the ways that that's dealt with, just by expanding the number of acres that are covered—it doesn't always—I mean, one of the ways that that is addressed is by expanding the number of acres per AUM. It involves a lot more monitoring in terms of determining whether or not the permittee is, in fact, moving around the animals in a way that is consistent with the management of the allotment. I mean, you do reach a point of diminishing returns here, especially, isn't it—what has been the problem in terms of allocating resources and management and rangers, and so forth, to the monitoring of these types of sensitive areas?

Mr. SHARPE. We have, as you know, limited resources available to us for monitoring. As for other purposes, we have allocated those resources very carefully, focusing them on the approximately 25 percent of the total number of allotments that have been placed by the Bureau in the "I" or "Improved" category. Those are allotments on which the grazing use is considered to be particularly sensitive, allotments on which physical and biological conditions may be less than we would desire and allotments on which there are notable conflicts among the various multiple uses. We believe that that's a rational allocation of limited monitoring capacity and we are monitoring those allotments on, essentially, an annual basis with interim monitoring taking place at, it varies, but roughly 3- to 5-year intervals.

Mr. VENTO. Are any of the states still doing chaining activities?

Mr. SHARPE. There is some chaining that has taken place on BLM lands in recent years, almost all of it, I believe, in connection with trying to rehabilitate rangelands after fires, after wildland fires. We've discovered that, in some areas, chaining is virtually necessary to bring the seed in proper contact with the soil bed, in order to get adequate regeneration of vegetation needed to protect the soil and provide soil stability, reduce erosion, and permit recovery of the productive capacity of the—

Mr. VENTO. What would you—what would be your sentence answer for me or brief answer with regards to riparian issues and BLM? Of course, as you know, that they have been scored, you

know, in the last reports of GAO, some certain years ago now, in terms of having riparian areas that are in poor quality. And I guess that deals with this monitoring of these risk areas, I think, that are whatever the terminology that you use, but accurately depicting it, how would you respond to a question in terms of BLM's management of riparian areas these days?

Mr. SHARPE. We are very proud of our response to the need to place additional emphasis on riparian areas. We feel that BLM has been a national leader in that regard. We have now assessed, monitored, if you will, 78 percent of the riparian miles in the lower 48. We have classified those into three categories and we are focusing our recovery efforts on the middle category, the streams that have been identified as "functioning at risk," simply because those are the streams that respond most quickly to management efforts and, obviously, from a strategic point of view, that's the most productive place to put our resources.

Last year, 1996, we applied management to a little over 1,600 miles of streams in that category, functioning at risk, which amounts to about 11 percent of the total stream miles in that category. But we could make more progress. We would like to. We're committed to doing that, and we are working at it very hard through every means. It is absolutely a top priority for the Bureau.

Mr. VENTO. One of the suggestions here is that there's been a reduction in the amount of AUMs, in terms of the western rangelands. Can you give the reason? Is that a weather-related phenomena or is that just reflective of environmental problems or a meteorological phenomena?

Mr. SHARPE. Well, as I noted in my statement, it's a result of the interaction of a great many factors, some of them additive, some of them canceling each other out, all of them varying from year to year. It's very difficult and it would really be a mistake to try to pin this to any single factor. However, I can tell you that over the last 6-year period, the data that we have collected from the field indicates that some 89 percent of the reductions, the AUMs placed in suspended use, have been attributed to carrying capacity, as opposed to drought or fire or endangered species or wildlife or other such factors. The reductions have been made in response to limitations on carrying capacity on the ground.

Mr. VENTO. Thanks, Mr. Chairman.

Mr. HANSEN. Thank you. Mr. Sharpe, maybe I'm missing something here, but I've been reading this put out—the Council for Agriculture, Science, and Technology put out a rather extensive report indicating that the rangeland has been improving rather dramatically in the last little while, regardless of all these factors. At the same time, the number of slaughter animals on the ranges has been going down. It seems kind of an inconsistency to me that, while the range is improving, the number of animals is going down. I'm sure you mentioned other factors to the gentleman from Minnesota but there must be something else. What am I missing?

Mr. SHARPE. Well, I don't know for sure why the number of slaughter animals has been going down. I would point out that market conditions are also volatile, as we all recognize the market has been in a deep trough for the past several years. Market prices have been extremely low and, presumably, the number of animals

on the rangelands, public and private, has reflected that over the past several years. I would expect that, as the market for beef picks up, that rangelands that are now less than fully stocked are likely to become more fully stocked. That's certainly one of the factors that needs to be considered.

Mr. HANSEN. I remember a few years ago reading a very exhaustive report that the managers of public land use grazing as a tool, as they use other tools. Chaining, for example, which I think has restored a lot of rangeland; contrary to popular belief, prescribed fires; thinning, all of those things which land managers, not environmentalists, not developers, but land managers say, something that's taken good care of it. Isn't it true that use of slaughter animals is used as a tool? In other words, keep down grasses, things such as that.

Mr. SHARPE. Well, the use of livestock grazing by various classes certainly can be used as a tool in order to achieve particular resource objectives identified for a particular allotment or pasture area within an allotment. I think that for the largest part, livestock grazing on the public lands is primarily a commercial use, that the reason that the cattle are out there is primarily in order to make economic use of the forage that is available and in order to secure the benefits for individuals and ranchers and for society at large from making productive use of that forage. I would point out, at the same time, that sheep certainly are used from time to time very directly as a management tool, particularly for the effective control of leafy spurge and other weeds. In fact, in certain instances, we charge no fee for such use because the Bureau recognizes that that use is being entertained strictly for management purposes.

Mr. HANSEN. No, I think there's a basic philosophy that seems to permeate around here and in some places in America, that management versus non-management. For years, we've managed the forests. We've managed the public lands. I think it's interesting that some people now feel we shouldn't manage it. Out of that through 100 years or so, as history in my State of Utah shows, that the forests, the public lands, are in much better shape than the days the pioneers came to those valleys because people have managed it and they've used many tools—cutting, when they had to; thinning, chaining, which, in my opinion, is a good management tool.

And this report that I was referring to went on to talk about our friends to the North and Canada, who, at one time, cutoff animals on the public graze and later put them back on, even paying people from Montana to take stock across the border to keep the grasses down, so they wouldn't have fires in the fall in dry years. So, I look at that as somewhat as a management tool, and that you folks who are charged with use of the public land cannot go to the idea of just let Mother Nature do it. Mother Nature, in my opinion, I know that's speaking against deity almost, but she manages by wind, fire, earthquake, areas that I totally disagree with, and I think man has to be a good steward of the ground. I do feel, even though I'm very pro-grazing on the ground, I do feel that some ranchers have violated their privileges. I know personally I have been kicked off ground before, as a young man, and went back to the county

recorder and found out that it was public ground. I went back to the rancher and he apologized, said, "I didn't think you'd look it up." And I was also in the legislature at the time, and it kind of irritated me that some of these people feel that they're owners of the land when they're merely or only have one use. I hope all the ranchers are cautioning your people not to do that, because that really hurts your cause. And, of course, I can't say as I blame you. Somebody coming in and messing up an area but you mess it up to a certain extent, also, so I'd be a little careful there, if you would be.

The gentleman from Arizona, Mr. Shadegg, is recognized for 5 minutes.

Mr. SHADEGG. Thank you, Mr. Chairman.

Thank you, Mr. Sharpe, for being here. I'm sorry I missed the very first part of your testimony. Let me just begin with a question that you may have answered and I'm not sure I heard the answer clearly enough. Do you agree that the trends do, in fact, show that rangeland conditions are improving in the West?

Mr. SHARPE. The data available to us for the entire sweep of this century certainly indicates that range conditions have gotten better over the last hundred years. In the 1970's, Thad Box, the distinguished range professor from Utah State, tried to assess the available data and concluded with the much-quoted observation that the rangelands were, then, in the best condition that they had been in in the twentieth century.

Mr. SHADEGG. At what time—

Mr. SHARPE. I would not dispute that conclusion.

Mr. SHADEGG. How recent was that?

Mr. SHARPE. That was in the mid-1970's. BLM data, gathered since then has shown a modest but continued improvement in range condition overall. And we're very proud of that. At the same time, I should point out that this does not apply evenly across all the public lands. There are areas, there are sites, there are allotments that don't reflect that general upward trend and the additional management steps that the Bureau has been taking in recent years to put in place more effective management, which sometimes involves reductions in livestock use, and often doesn't, is in response to the continuing need, and the continuing opportunity, to improve the productivity for the full range of uses of those areas that have been somewhat laggard in terms of this general pattern of recovery.

Mr. SHADEGG. I appreciate that. It seems to me, and I think the Chairman already alluded to it, stated in a rather blunt fashion, which is kind of my way to do things, some ranchers do a good job of managing the range they're entrusted with and some don't as good a job. Have you found—well, I guess two questions. One, do you have the ability now to identify which ones are doing a good job, and to either improve their management or deal with the fact that they aren't managing properly by perhaps reducing or taking away their allotment, as one question.

And second, are the advisory councils, resource advisory councils, helping in the education on both sides? That is, of those who have the land, and of those who kind of want to manage it from some

other venue, such as the cities or a particular environmental group with a concern about it.

Mr. SHARPE. Taking your questions in reverse order, our experience to date shows that the resource advisory councils and the entire climate of collaborative management, of which the resource advisory councils are a salient part, have been very successful in terms of fostering those productive conversations from both perspectives. I believe that the most important thing we can do in order to provide for a stable future for the Western public lands livestock industry, is to continue to foster that kind of conversation. We need to improve the condition of the public rangelands and the riparian resources, including protecting endangered species and so forth and, further, to demonstrate to all of the parties who are interested in this, that, in fact, we are making progress and that the trend is up, and that the lands are getting healthier and that there's more there for everyone. I think it's that pattern, pursued and sustained over the years, that is going to put to rest the widely shared public illusion that these rangelands are in bad condition and getting worse and, by doing that, provide the foundation for a stable western livestock industry. And now I regret I've forgotten the first part of your question, if you—

[Laughter.]

Mr. SHADEGG. That's all right; that answer, I think, adequately covered it. Let me just—because I'm going to run out of time here in a minute—there are many people in my district, which is an urban district in the West, who have become persuaded that grazing on public lands is simply an idea who's time has come and gone and that grazing is, in fact, bad for public lands, period. They'd like to see it completely gone. The responsible ranchers that I know in Arizona say, to the contrary, that the evidence is quite clear that, managed properly, grazing is actually very good for the land and, indeed, improves its condition. Would you agree with the latter sentiment and do you have, or does the Bureau have, studies which you could cite for my use to try to make that point with those who are taking the other view?

Mr. SHARPE. I think that livestock use can benefit the land. You have to be specific as to what vegetation, what livestock use, the pattern of use, the precise situation. One of the difficulties in this entire business is that the truths are specific and the myths are general. And trying to—

Mr. SHADEGG. Well said.

Mr. SHARPE. [continuing] get the two together, trying to bridge that gap is always difficult. That, specifically, is the genius of a collaborative approach. If we can get people with very different viewpoints, people who embrace very different myths or senses of the world, together looking, in detail, at the same piece of turf and learning to see what's there and understand the biological processes through the same set of lenses, then the disagreement, the perceived conflict, tends to dissolve.

Mr. SHADEGG. And the last part of the question was, can you provide me or are you aware of studies that the Bureau has underway that begin to make this case: that done properly, grazing, in fact, benefits the land?

Mr. SHARPE. I am not aware of specific studies. We will certainly look into that, do a quick literature search, and provide the information for you.

Mr. SHADEGG. That would be very helpful.

Mr. SHARPE. Be happy to do—

Mr. SHADEGG. Thank you, Mr. Chairman.

[The information referred to follows:]

Mr. Sharpe submitted the following information:

The Bureau of Land Management has not done any recent studies on the issue of the benefits of livestock grazing to the land, nor do we have any underway at this time.

Mr. HANSEN. Thank you. We'll now turn 5 minutes to Mr. Hill from Montana, followed by the Republican side by Chenoweth, Hefley, and Gilcrest. We'll also get to Mrs. Green on the Democratic side.

Mr. HILL. Thank you, Mr. Chairman, and thank you, Mr. Sharpe.

One of the issues, or at least when we hear complaints with regard to dramatic changes in land management decisions by the BLM, it often has to do with aspects of the Endangered Species Act. Would you agree with that?

Mr. SHARPE. That certainly is one of the factors at work here.

Mr. HILL. There are many who would want to reform the Endangered Species Act, including I think Mr. Babbitt has made some positive statements about putting greater emphasis on making land management decisions as part of recovery planning. In other words, one of the things that's occurring today is that you, evidently, are making arbitrary or rather short-term decisions with regard to land management's decisions involving leases. Or there really is no recovery plan. It's just a sense that there could be some threat to habitat. Do you think that those sorts of changes would be constructive in terms of helping you in cooperating with ranchers if we could put greater emphasis on the recovery plan before we made those land management decisions?

Mr. SHARPE. I'm not in a position to speak to questions about potential amendments to revisions of the Endangered Species Act. That falls quite beyond my purview and beyond my expertise.

Mr. HILL. But your—

Mr. SHARPE. I would say that in terms of responding to our statutory and, I think, moral mandate to provide for protection for threatened and endangered species and their habitat, there are at least two important steps. The first step is to try to stabilize the situation when we have a situation of current jeopardy, so that we are certain that we are not further jeopardizing that species or that population. I think that the second step has to do with more comprehensive, systemic recovery planning. This often involves the development of recovery plans that involve public and private ownerships working together within a larger scheme designed to provide for the endangered species and its recovery in ways that make best use of the available resources and do impose the fewest constraints on other human uses. And, certainly, that's the direction in which society would want to move over the longer run.

Mr. HILL. One of the complaints that I hear is that decisions are being made without good science and good data. In other words, the monitoring is done for a short period of time and then decisions

are being made on the basis of relatively short or small amounts of data, I guess I would say. Do you have criteria within the agency with regard to how long monitoring ought to take place, what the quality of the data ought to be before you make significant changes in terms of AUMs or utilization?

Mr. SHARPE. Monitoring within the Bureau is conducted in a variety of fashions, depending on the area, depending on the state and the resource conditions. In each case, it follows methodologies that have been developed by range scientists within the universities' faculties and adopted specifically by BLM and detailed within our internal technical references and other publications. This is not an activity that is conducted casually. It is firmly based in good science. There are ongoing arguments over the methodology to be used. There are a great many methodologies out there; each one has its adherent and no one methodology is appropriate to all circumstances and no one methodology meets with the full approval of all observers.

But we are quite confident that our monitoring is conducted according to sound scientific principles, and the duration of monitoring, before decisions are made, is typically 5 to 10 years. The state that has rendered the largest number of decisions in recent years is Nevada, and I'm told by our staff that in most of the cases the decisions are based on at least 10 years of monitoring.

Mr. HILL. Thank you, Mr. Chairman.

Mr. HANSEN. Thank you. We have a vote on, and I would like to acknowledge Mrs. Chenoweth. Before we go, we'll have time for her 5 minutes and then a vote, possibly two votes. I apologize to the witnesses. We don't have too much control on that so we'll stand in recess while we get through these votes and then we'll be back. Mrs. Chenoweth.

Mrs. CHENOWETH. Thank you, Mr. Chairman, and I am glad you're holding this hearing and I wish I could be here for the entire hearing, but I have to chair another hearing, and so I appreciate being able to participate for just a short time. Mr. Sharpe, are you familiar with the BLM satellite network?

Mr. SHARPE. I don't believe I am, by name.

Mrs. CHENOWETH. OK. On August 7, there was a broadcast from the U.S. Bureau of Land Management's National Training Center in Phoenix. Does that ring a bell?

Mr. SHARPE. Yes.

Mrs. CHENOWETH. OK. They introduced the new Director, Mr. Shea, and he made mention of several interesting things that were on the satellite. And I know that you're here on behalf of Mr. Shea, and I wish he were here so I could ask him directly. But certain things he said I think we need to get on the record for his benefit to clarify. And I hope he didn't mean it as he apparently stated it. He stated that multiple use takes a back seat to ECA system management, and he went on to say, "and we would add for our ranching and mining readers that vision does not include mere citizens having any established rights" on these maps. I'm very disturbed about this because, certainly, the right to the allotments is an established right. It's not just a permitted right. And so I would very much appreciate hearing from Mr. Shea on that.

Furthermore, Mr. Shea indicated that, on this satellite network, that he was skeptical of the states taking over duties from the BLM, saying that oftentimes the states are too lax in their enforcement responsibilities and in enforcing rules set up by the central government.

And then the third thing was that Mr. Shea indicated, that if any elected officials gave any employee of the BLM any guff, he called it, he will not stand for that and that he wants to know right away and he will put a stop to it. I'd like to know what he means by "guff," and I would like to hear from him on that because there will not be one minute that I will neglect my oversight duties on the responsibility given to me to oversee what the BLM is doing. I took a little umbrage at that, and so I would very much appreciate hearing from Mr. Shea on that, Mr. Sharpe.

Mr. SHARPE. I'll be happy to communicate that to the Director.

Mrs. CHENOWETH. Thank you.

Mr. SHARPE. I think there's been some difficulty in communication here. Those things do not sound like the Director that I think I know. I did not hear that broadcast myself.

Mrs. CHENOWETH. That's good and—

Mr. SHARPE. So I can't speak to it directly, but I think that some additional conversation may make you feel a good deal better.

Mrs. CHENOWETH. And my door is very open to get to know him better because that's not a good start and I'm certain something must have been lacking in the communication.

Mr. Chairman, I wonder if I could submit for the record my opening statement and also the testimony of Mr. Chad Gibson.

Mr. HANSEN. Without objection, all opening statement will be part of the record.

[The prepared statement of Mrs. Chenoweth follows:]

STATEMENT OF HON. HELEN CHENOWETH, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF IDAHO

I want to thank the Chairman for holding this hearing on an issue of great concern to me, the recent and disturbing trends we are seeing on BLM lands with regard to grazing allotments. A substantial portion of my district, the Owyhee and Bruneau resource areas, depend on their ability to use by permit and by right BLM lands for the grazing of their cattle. The future of their livelihoods, families, and communities are literally at stake with what is to me clearly an arbitrary reduction in grazing allotments.

One of my constituents, Dr. Chad Gibson, was to testify today on this critical issue, but was unavoidably detained. However, he has offered his written testimony for the review of the Committee. Dr. Gibson has had over three decades experience studying the conditions of the range and how BLM policies affect those conditions. I know of no other more knowledgeable person in this issue than Dr. Gibson, and I strongly recommend the members of the Committee, and also the BLM, study and take into account Dr. Gibson's revealing observations. In fact, his comments center around how the lack of monitoring by the BLM—one of the key issues we will be looking at in this hearing—adversely impacts not only the agency's ability to accurately assess the conditions of the range, but also the trust that must exist between the agency and the people who have a stake in the use of the land.

Mr. Chairman, monitoring is the essential element of good land management. If the BLM is not properly monitoring the land, or they are not taking into account data collected by the county and other state agencies who monitor the land, then the agency is simply incapable of making good land management policy. It also means that the information that it does publish is incomplete, and thus incapacitates the ability for that agency to even conduct a legitimate public discussion.

Mr. Chairman, this notion is very troubling, especially in light of the fact that the BLM is basing its reasoning for across the board reductions in grazing allotments on this incomplete or inaccurate data. It leads me to believe that the reasoning be-

hind the reduction of AUMs has little or nothing to do with science. Rather, it appears to be the result of a political agenda that has infiltrated the basic decision-making process of the BLM. Somehow, and tragically, over the past few years, officials within the BLM have become less of land managers, and more of people policers. Its way of managing the land is to cut humans, or citizens, out of the use of the land. This is not what Congress intended, and in my opinion, is an outright violation of established rights.

Mr. Chairman, for the sake of the health of the land and of the people who depend on that land, we need to get to the bottom of this issue. I anticipate that this hearing will continue to shed light on these problems. It is my hope and goal that we take this issue out of the political advocacy realm and back into a scientific and lawful realm where it belongs. That is the message that this Administration needs to hear.

[The prepared statement of Mr. Gibson follows:]

STATEMENT OF DR. CHAD C. GIBSON, WILDER, IDAHO

Dear Chairman Hansen:

Thank you for the opportunity to present this testimony to your Committee. I hope these comments will help you understand the impact of regulatory abuse on livestock grazing preference rights and the continued viability of public land ranches in Owyhee County, Idaho. I am sorry that I was unable to be present to answer questions. I would be happy to respond by telephone or in writing if you would like clarification or additional information.

By way of introduction I am a County Extension Educator with the University of Idaho stationed in Owyhee County. I specialize in range and beef cattle management and public policy, working closely with the Owyhee County Commissioners, Land Use Planning Committee and the Owyhee Cattlemen's Association. My concern for the subject of your hearing comes from my work and my interest in ranch here in Idaho belonging to my mother. I was raised on a ranch and have remained active in the management of the home ranch since that time.

Owyhee County Idaho has 250 cattlemen operating ranches over nearly five million acres. The Bureau of Land Management administers 74 percent of the surface area of the county and about 70 percent of the livestock in our county are dependent upon use of the public lands. Consequently, the County has a significant interest in the administration of those lands. I would like to focus my comments on a number of areas of regulatory abuse resulting in reductions in livestock grazing use on the public lands of Owyhee County. These areas include land use planning, faulty monitoring and junk science, arbitrary terms and conditions, coercion resulting from alleged violations, and a lack of meaningful Consultation, Cooperation and Coordination. I will also offer a suggestion for correcting some of these negative approaches to administration and management of the public lands.

Land Use Planning

In November 1996 the BLM Owyhee Resource Area released a draft EIS for the Owyhee Resource Management Plan. It contained four alternatives for management. One alternative was to continue management under the existing 1981 Management Framework Plan. This is a standard practice for the no-action alternative and such alternatives are never given serious consideration. A second alternative (B) was developed by Owyhee County. This alternative was developed with emphasis on range-land health and multiple use and was developed with input from an array of multiple users. This alternative was presented in the BLM's EIS in an extremely negative manner and was given a heavily biased and inaccurate negative evaluation of environmental consequences. It appears that the biased and inaccurate negative interpretation and analysis was intended to slant public opinion against the alternative. A third alternative (C) was developed by the BLM staff and was termed the staff preferred alternative. This alternative was presented in the most positive manner possible with biased and inaccurate positive evaluations of environmental consequences. Again the apparent intent was to sway public review in favor of this alternative. The fourth alternative (D) was proposed by the "desert group" made up of environmental groups opposed to grazing. It also was presented in the EIS in a generally favorable manner.

The BLM staff alternative (C) was chosen as the preferred alternative in the draft EIS. This alternative establishes initial stocking levels 35 percent below current authorizations. The document contained no justification for this proposal. The 35 percent reduction was arrived at by proposing to close all allotments, with riparian areas estimated to be in less than good condition, to grazing after July 15. The closure would not apply where approved and implemented grazing plans to address ri-

parian issues were in place. The actual reduction ranged from 25 percent to 85 percent for the 40 affected allotments. When it takes 2 or 3 years to get clearance to install livestock management facilities, there is no possible way even one of the allotments could meet the "approved and implemented management plan" criteria. Even if an individual plan could be implemented in a timely manner, it would be impossible to complete all 40 of them in 2 years. Additionally the remoteness of many allotments and the roughness of the country would prohibit even turning cattle out if they would have to be gathered and taken off the allotment within a month and in some cases within 6 weeks. Since most of the turnout dates are within 2 to 6 weeks of the closure date the permittees would simply not be able to use the allotment, resulting in a 100 percent reduction in use.

This is an example of where the BLM knows full well the criteria in the preferred alternative could not be achieved and would result in significant economic harm to the affected ranches (small businesses). This action is proposed without regard to current condition and trend of riparian areas. Many of the streams involved have only 1978 inventory data and many more have very limited and mostly subjective estimates of current condition and trend. In many cases there is reliable data demonstrating significant improvement and upward trends on the affected stream and riparian segments. This blanket reduction approach was selected as the preferred alternative and the bureau rejected the Owyhee County proposal in Alternative C. Owyhee County proposed to develop site specific allotment management plans based on current and comprehensive monitoring data which would adequately consider the livestock use constraints encountered by permittees.

While the planning process is not yet complete, the bias of the agency in trying to manipulate the public process in an effort to gain support for unjustified cuts in use is fully demonstrated in the planning process up to this point.

This example also demonstrates regulatory abuse based on unreliable, cursory, heavily biased, and largely subjective monitoring, combined with junk science. Much of the monitoring data is old (1978), based on potentially biased observations of, often, irrelevant factors, and in some cases good information is improperly interpreted. The national riparian assessment team made up of the most knowledgeable people in the BLM, USFS and other Federal and State agencies completely discredits one size fits all management such as the July 15 closure, utilization and stubble height standards. They advocate site specific management plans considering all of the climatic, soils, hydrologic, vegetation, upland landscape, and grazing use factors for each site. Such programs have demonstrated repeatedly that site specific management plans are effective. This is precisely the process proposed by Owyhee County that was totally rejected by the bureau. Contentions that seasonal closures are the only answer is simply junk science.

Inaccurate and Inappropriate Monitoring

I have personally been involved in disputes over monitoring results and the application of those results toward reductions in grazing use. In two specific cases BLM personnel performed utilization studies and indicated to the permittee that livestock would have to be moved to the next pasture in the rotation. Moving early from one pasture means that more time will be spent in other units or that cattle will have to be taken off of an allotment early. Early removal results in a cut in livestock grazing use. Upon investigation of the first instance we were able to confirm with a different BLM staff member that the utilization estimates were of the magnitude of 2.5 times the actual use which had been made. The BLM withdrew its demand that livestock be moved out of the pasture in question. In the second case BLM staff agreed that the field studies of utilization were significantly higher than actual use and again withdrew a demand to move livestock.

Often land management agencies are so choked with red tape and paper work that they resort to use or blanket performance standards (junk science) for making decisions instead of relying on appropriate monitoring information. Proper and useful monitoring takes time away from meeting the paper work and red tape demands typical of a bureaucracy. In many of these cases the paper work and red tape take precedent and the appropriate monitoring is not done. Misplaced priorities lead to inappropriate standards and increased subjective observation of often irrelevant parameters. In such situations, individual biases and prejudices form the basis for decisions because objective and meaningful data is no longer available. Regulatory abuse is most often a product of the inability of a bureaucracy to maintain their statutory function as their primary objective because the focus changes from specific results to fulfilling procedural and paperwork requirements. Regardless of the reason, regulatory abuse occurs on a daily basis and in the case of the Bureau of Land Management many of the abuses result in economic harm to permittees through unjustified reductions in grazing use.

Improper and unworkable terms and conditions on grazing permits or leases

The new rangeland reform regulations allow an authorized officer, by decision, to place any term and condition on a grazing permit which he feels is appropriate. The new regulations also require a permittee to accept those terms and conditions or forfeit their grazing preference right. Unless a permittee is willing and financially able to initiate an enormously expensive request for stay of the decision, the regulations require that permittees live with the decision during the appeal process. In any case, regulatory abuse through imposition of punitive or unrealistic terms and conditions place extreme financial burdens on permittees.

During 1996 the BLM Boise District re-issued term grazing permits to nearly all of the permittees in the district. In many instances the terms and conditions on those permits were impossible to achieve or were simply inappropriate. Many permits contained a term and condition for leaving a 4 inch stubble height at the end of the growing season on specified riparian areas. Some allotments operating under a rotational grazing system will without doubt violate this term and condition in the years riparian pastures are used late in the season. This term and condition was imposed on every permit in the Owyhee Resource Area where the identified stream segments occurred. Allotments with demonstrated high rates of improvement in riparian areas and allotments with stream segments where stubble height is clearly an inappropriate standard all had the same term and condition applied. The National Riparian Assessment Team of experts favor site specific management plans and reject exactly the blanket one size fits all kind of management resulting from this term and condition.

Most term permits contained a requirement for obtaining a "trailing permit" any time livestock are moved on public lands. There is no reference in the law to any kind of "trailing permit." A permittee could not move a sick animal to a different pasture or even back onto private land without first obtaining permission from BLM. Even moving strayed livestock from one allotment or pasture to their proper place of use requires prior BLM authorization under this term and condition.

Another term and condition prohibits salting within one quarter mile of any riparian area or wetland. In some allotments one cannot find a location that meets this criteria.

The term permits also contain a requirement that all grazing be in accordance with a grazing schematic showing each pasture and dates of planned use for the allotment. There have been many instances where the BLM has pursued alleged trespass actions against permittees when a few, or even one animal, is found in a pasture outside of the dates listed on the schematic, even though livestock are within the allotment. Alleged trespass actions are initiated regardless of the reason an animal is outside of the use area on the schematic. Gates are frequently encountered along public use roads passing through pastures. Such gates are often left open by passersby allowing livestock to stray into unplanned use areas. Fences in good repair at the beginning of a use period are frequently broken by wildlife activity and storm events, again allowing unplanned livestock movement. However, permittees often face alleged trespass prosecution regardless of the reason for livestock escaping the assigned use area and regardless of how much effort was made to prevent it.

The new regulations allow an authorized officer to suspend in whole or in part a grazing preference for any violation of the terms and conditions of a grazing permit or lease. Arbitrarily placing terms and conditions on a permit or lease which the authorized officer knows cannot be met provides an avenue for regulatory abuse which is perfectly legal under rangeland reform regulations.

Resolution procedures for alleged violation of terms and conditions

There are many instances where a violation of terms and conditions actions against a permittee is settled through agreement. Such agreements take on the appearance of extortion or blackmail. The fact that a permittee could in no way prevent the violation does not prevent settlement by agreement. One permittee was forced to give up an established Allotment Management Plan in favor of annual management decisions by BLM in order to avoid further action for an alleged violation. One permittee was asked to assume maintenance responsibility for a fence previously the responsibility of BLM. Another permittee was asked to build and maintain a new fence to avoid further action. Permittees are often asked to reduce or change grazing use in order to avoid further action. Since legal action to fight an accusation of violation is extremely expensive, permittees often take the only avenue they can afford by agreeing to a settlement. Arbitrary terms and conditions provide a legal vehicle for regulatory abuse through arbitrary resolution of alleged violations.

Fundamentals of rangeland health and grazing administration guidelines

The BLM Owyhee Resource Area has just released their process for addressing rangeland health through the standards and guidelines procedures. The initial process is prioritizing allotments and the second procedure is determinations of whether an allotment is meeting or progressing toward meeting the standards and guidelines. In both cases the last step in the process is Consultation, Cooperation and Coordination. The next two procedures are the selection of appropriate action and implementation of selected actions. Neither of these procedures even include Consultation, Cooperation and Coordination. It is very apparent that the program for implementing the rangeland health standards and guidelines will not include CCC with the permittees who have investments in preference right, who have intermingled private lands and or state lease lands and who depend on use of the public land for the viability of their ranching operations. It hardly seems credible that the current governing Federal statutes support this kind of regulatory procedure.

Curbing regulatory abuse through restoration of accountability

There are four primary administrative situations which lend themselves to regulatory abuse. They have been enhanced if not legalized by the new rangeland reform grazing regulations. (1) Inadequate or faulty range monitoring and use of junk science to support agenda driven decisions. (2) Authority to impose arbitrary terms and conditions on term grazing permits. (3) Accusations of violation of terms and conditions on grazing permits or leases must be disproved by the accused. (4) Legal recourse for bad decisions is limited to very expensive litigation.

Most of these situations leading to regulatory abuse could be corrected simply by requiring that an agency or proponent of a rule or order assume the burden of proof (accountability). This would significantly reduce the use of inadequate monitoring information and junk science. It would insure that terms and conditions imposed on term grazing permits or leases are achievable and scientifically sound. It would insure that accusations of violation of terms and conditions would have a demonstrably reliable basis. And it would significantly reduce the cost of legal challenges to improper decisions. I believe the appropriate language was developed in 1996 in one of the versions of H.R. 1713 which failed to gain approval in the House. "When a grazing decision is appealed to an administrative law judge, the burden of proof shall be on the proponent of the rule or order. The standard of proof shall be by a preponderance of evidence in the record as a whole." If this language were made statutory, the regulatory abuses to which permittees and lessees are frequently subjected would be significantly reduced.

Please accept my sincere thanks for the opportunity to present these comments before your Committee.

Mrs. CHENOWETH. Thank you.

Mr. Sharpe, in the Owyhee resource plan it is proposed that there be a 35 percent reduction below current authorizations, and in some cases the actual reduction was 85 percent. In your testimony, you contend that the cuts in the AUMs by the BLM have been negligible in their effects, and I'm concerned about that. I'd like for you and Mr. Shey to take a personal look at that because there's no way that our operators can operate on that kind of margin.

And, furthermore, in the Owyhee RMP, I consulted with a national assessment team made up of people from the BLM, the Forest Service, and other Federal and state agencies who examined the data that the BLM utilized in this alternative. And they found that it was a staff model and that the data that was used to support the management changes was as old as 1978, and that doesn't give us a very good analysis of what the range conditions are today because the range conditions have continued to improve, even through our drought years. And so, I would very much appreciate your looking into that and maybe when I meet with you or Mr. Shey, we can go over that.

And then, finally, Mr. Sharpe, and Mr. Chairman, Dr. Gibson in his testimony has asked some questions that I will not be able to,

because my time is running out. And I just wonder if I can submit that to the Committee to ask the questions on behalf of me.

Mr. HANSEN. Without objection, we'll take that and send it to the Department for questions. Do you want to respond to that, Mr. Sharpe?

[The information referred to may be found at end of hearing.]

Mr. SHARPE. I'd like to respond, particularly on one point, very briefly. And that is, that we understand that restrictions on grazing use are imposed on particular places. They're not spread evenly across the West, and we understand that, as a result, individual operators, individual allotments may be seriously impacted by these adjustments. There is no one in the Bureau, certainly no one at the field level, who does not take those impacts very, very seriously. Area managers agonize, they stay awake nights, before making a decision that it is necessary to impose serious reductions on grazing use on an individual operator. Those are difficult decisions to make for very human reasons, and we don't do that lightly. We do understand that people are affected.

Mr. HANSEN. We're going to run out of time here, so I think we're going to have to go—

Mrs. CHENOWETH. Mr. Chairman, I, with your indulgence, I just want to add, though, that they are human decisions and humans make mistakes. But I would appreciate very much that they evaluate the range condition based on today's standards. Thank you.

Mr. HANSEN. Thank you. We'll stand in recess. We have one vote on right now; we may have another one, and I don't know what's going to happen. I apologize. It's above my pay grade to control the floor, so enjoy yourselves. We'll try to get back as soon as we can.

[Recess.]

Mr. GILCHREST. [presiding] The hearing will come to order. A vote is still going on, but I would assume that some other members will return here shortly, although the full Committee is having their hearing with Carol Browner, Bruce Babbitt, and Dan Glickman. So, that might have upstaged us, I'm not sure, although we still have Mr. Sharpe, which I think supersedes all those three people, and some cattlemen in the audience, I'm sure.

[Laughter.]

Mr. GILCHREST. And, to the cattlemen, I offer you some comfort, even though I'm from Maryland, I guess considered the East, and I'm in eastern Maryland, to boot. But I have a couple old horses so that'll balance some of this out.

Mr. Sharpe, did you have a chance to look at, or are you in any way familiar with, the bill that came out of the Agriculture Committee dealing with grazing?

Mr. SHARPE. I testified at a hearing that was held on that bill, although, because we had not received a copy of the bill prior to the hearing, my testimony was in the nature of background, in effect, on the Bureau's range management program, rather than testimony on the bill. Subsequent to that hearing, the Secretary of Interior, Secretary Babbitt, sent a letter to Chairman Smith in which he shared with the Chairman the Secretary's, the Department's view on and objections, concerns about, that draft legislation. I have a copy of that with me if you would like to have that. It's certainly part of the public record.

Mr. GILCHREST. Could you, then, in the short time that we have, could you tell us some of your reservations or Mr. Babbitt's reservations to the bill as compared to the kind of management tools or reforms you now use?

Mr. SHARPE. Well, most fundamentally, I think it's fair to say that the view of the Department and the view of the Secretary is that, as I noted in my testimony, that BLM's range management program is working. That it is not broken, it does not need to be fixed. We think that range management is proceeding extremely well across the West through the implementation of the 1995 regulations. We have created, as I noted, a system of resource advisory councils that covers the West to provide focus for state and local level input from the full array of interests concerned with public land management.

Mr. GILCHREST. It—

Mr. SHARPE. Commodity interests, recreationists, environmentalists, wildlife folks, Native Americans, state and local government, everyone's at the table; they're talking together; they're focused on the land locally—

Mr. GILCHREST. So, with what you know about the bill, how would that change what's happening now?

Mr. SHARPE. Well, the bill would change the structure of—among other things—the resource advisory councils, so that they were advisory to both the Secretary of Agriculture and the Secretary of the Interior, covering the National Forest System as well as the lands managed by BLM.

Mr. GILCHREST. So, that doesn't happen now?

Mr. SHARPE. No, it does not. The resource advisory councils are unique to BLM at present.

Mr. GILCHREST. Are there any resource—

Mr. SHARPE. We think they are a very good idea, but we don't think that this is an appropriate time to, in effect, upset the apple cart.

Mr. GILCHREST. Are there any resource advisory councils—I guess you just answered my question. In other words, there are no resource advisory councils as far as grazing is concerned for the Department of Agriculture?

Mr. SHARPE. I believe that to be true.

Mr. GILCHREST. And the resource advisory councils that you now have in place for BLM, in your judgment work, are working very well?

Mr. SHARPE. Yes, sir.

Mr. GILCHREST. Wouldn't they act as a positive example of how things could be done for the Department of Agriculture as well, and—well, I guess they would—if you're thinking they're working well now for BLM, they would probably work well for the Department of Agriculture.

Mr. SHARPE. I think that they are a positive example. I think they provide a model from which other agencies could profit. However—

Mr. GILCHREST. What would the—

Mr. SHARPE. [continuing] in terms of the impact on BLM, we would hate to enter into a period of turmoil and uncertainty and change as a result of new legislation and the requirement to draft

new regulations and, in the case of the resource advisory councils, a change in their makeup and their scope and their structure at the very time——

Mr. GILCHREST. So is that——

Mr. SHARPE. [continuing] when we have a new mechanism that is working——

Mr. GILCHREST. So, you're saying the bill——

Mr. SHARPE. [continuing] very effectively.

Mr. GILCHREST. [continuing] the bill would not reflect the mechanism that is now in place; it would change the resource advisory councils?

Mr. SHARPE. As I understand the bill, it would substantially change the resource advisory councils because their scope would be different; an additional array of interests would be brought to the table, logically people whose primary interest is the National Forest system as opposed to the BLM public lands. There would undoubtedly be need for changes in the personnel who are the membership of the resource advisory councils. I'm afraid that there would be a serious loss of momentum for the resource advisory councils that we now have in place and we don't think that the business of managing the public lands can tolerate that sort of loss of current momentum.

Mr. GILCHREST. I guess I'll have to take a close look at what you do now and how it would be changed by this bill. Is there—could you—I just have one more question. Could you tell me something about the kind of grass that is grazed on now, whether it's on—well, I guess you can speak to BLM land, as opposed to grass that was grazed on by horses or indigenous species 300 years ago. And is there a difference as far as nutrient to the animal is concerned? Is there a difference between the indigenous grasses and non-indigenous grasses to the region as far as the soil is concerned, runoff is concerned, things like that?

Mr. SHARPE. At some peril to veracity, I will venture a gross overgeneralization.

Mr. GILCHREST. Oh.

[Laughter.]

Mr. SHARPE. By and large, across the arid and semiarid lands that the Bureau manages in the West, the native vegetation is typically an array of native shrubs, sagebrush, for example, and interspersed bunch grasses. The species of grasses that provide much of the forage base currently are, by and large, the same species that were there hundreds of years ago in pre-Columbian time, if you will, and for the reason that they are the species that have evolved on those sites under those climatic conditions and are best adapted to those sites. They are, by and large, perennial bunch grasses. Again, across the West, at the risk of overgeneralization, with the influence of European man's use of these lands, there has been, on a great many sites, a loss of—a degradation of the quality of the rangeland involving typically a loss of the perennial grasses and their replacement by annuals, and their replacement, furthermore, by a variety of shrub and woody species—pinon juniper over a great deal of the hotter portion of the West, for example. Those species are, by and large, not as effective at holding the soil in place, providing for capture and rainfall and infiltration. Erosion

tends to go up and total productivity for livestock use or for wildlife tends to go down. The exercise that the Bureau's managers are engaged in, in terms of trying to adapt management in order to help restore the full productive capacity, or something closer to the full potential productive capacity at these rangelands, is very largely a process of trying to reverse that trend away from perennials and toward annuals and woody species.

Mr GILCHREST. Is that being successful?

Mr. SHARPE. Slowly. It is a slow process. That's one of the fundamental points that we Easterners often have trouble grasping about these lands.

Mr GILCHREST. Are you from Maryland?

Mr. SHARPE. I'm from Virginia.

Mr GILCHREST. Oh, Virginia.

Mr. SHARPE. Virginia, originally.

Mr GILCHREST. But it's the—

Mr. SHARPE. These are arid and semiarid systems. On the uplands, in particular, the vast majority of the acreage, the rate of recovery, the rate of change, tends to be very, very slow. So, the public expectations for rapid change, for a dramatic recovery, with a change in management, are, by and large, misplaced. Nature does not allow for that.

Mr GILCHREST. Is it a specific policy of Interior to plant these native bunch grasses? And then, if it is, and you do that, how does that impact the present allotment system in areas that need the native grasses?

Mr. SHARPE. We are not, by and large, in the business of planting rangelands extensively. However, we are in the business, frequently, of trying to reseed post-fire where there is not an adequate seed stock available in the soil or in the area to get sufficiently rapid reseeding of vegetation to protect the soil. The soil is the most fundamental element in the equation and we've got to make sure that the soil stays there.

So, typically, post-fire, as in Utah this past year, for example, we may go in and seed either mechanically or aurally across vast expanses of acreage. In those cases, the policy is now to try to reseed with a mixture of native seeds and, in some cases, exotics, including primarily crested wheat grass, which regenerates very quickly and establishes itself very efficiently and is effective at holding the soil. But, we make sure now that the seed for native plants, including shrub species, is within the seed mix, so that over time, as competition takes place among the seeded species, the total mix of vegetation on the rangeland will be dominated by native species and much as it was before.

Mr GILCHREST. Thank you. We, unfortunately, have another vote. And I think what I'll do—first of all, Mr. Sharpe, I want to thank for coming to testify before the Committee, and we appreciate the information that you've exchanged with us. I will run over—I think I'm going to run over and vote. You have another 10-minute break, but I'll come right back and then we'll start with Mr. Flake, Mr. Menges, and Mr. Atkin—Nevada, Arizona and Utah. And, hopefully, we'll have enough time to finish your testimony. Thank you very much. We'll recess for 10 minutes.

[Recess.]

Mr. HANSEN. [presiding] We have finished with panel one, Mr. Sharpe, and the second panel, and I apologize for keeping you folks waiting, but it's probably going to go on all day: Mr. Ray Flake, Nevada County Commissioner of Ely County, if you'd like to come up? Jeff Menges, Chairman of Federal Lands Committee, National Cattlemen's Beef Association, and Brett Atkins, President of Public Lands Council from St. George, Utah. Where's Brett? Send the Saint Bernards out to find him. Well, Brett Atkins will go third then. And, Mr. Flake, we appreciate you being here and we'll turn the time to you. I apologize, members will be coming in and out because it's just one of those days. So, if, Mr. Flake, you go right ahead.

**STATEMENT OF RAY FLAKE, LINCOLN COUNTY
COMMISSIONER, STATE OF NEVADA**

Mr. FLAKE.. Thank you, Mr. Chairman. Mr. Chairman, members of the Committee, I'm here today representing People for the West, as well as Lincoln County Commission.

Our organization, the People for the West organization, advocates responsible, multiple use of public lands, balanced solutions to environmental issues, and protection of private property rights. I'm a lifetime rancher and I strive to be an active environmentalist. I like to say that I'm an active environmental, not an environmental activist. I appreciate the interest of this Subcommittee and the time spent to listen to our concerns.

Lincoln County is 98.2 percent public land. As you can realize, it's a real struggle to provide services to citizens of a county in a large area with 1.8 percent of the land for a tax base. Public land grazing is of vital importance to us. Every AUM lost is not only a loss to the individual permittee, but a loss to the community as well. In the Ely BLM district, of which Lincoln County is a part, AUM numbers are down 30 percent since 1980. This represents a loss in permit value of \$3 million and an annual direct economic loss to the livestock sector of \$1.9 million. When this is factored into the turnover of money, this represents an annual loss to the communities involved of nearly \$4 million.

In my testimony, I've outlined four areas of concerns and examples of AUM losses. No. 1, improper and incomplete range monitoring. BLM personnel are constantly changing. Monitoring methodologies are constantly changing and are not consistent from one district to the next. Overutilization of forage is frequently cited as a problem, but valid justification is not always provided. Regardless, reduction in cattle AUMs is the result. In my opinion, the problems found are often the result of improper livestock distribution and control and not overutilization. Distribution problems are best solved with water developments and more intensive management and not just by reducing numbers. Unfortunately, the policy seems to be just make cuts without attempting to solve the real problems.

No. 2, the Desert Tortoise Recovery Plan. As a result of designation of critical habitat for the endangered—Nevada County Commissioner of Ely County—desert tortoise, many of the permittees in Southern Lincoln County and Northern Clark County have been so severely impacted as to nearly put them out of business by a full-

force-and-effect decision issued by the BLM which removes livestock from the range from March 1 through June 15 each year, and has closed some allotments altogether. Currently, the BLM and the Callyanty Office is preparing a recovery plan that will close over 1,000 square miles in Lincoln County to a single-use desert tortoise habitat—all this based on flawed and inaccurate data.

The recover plan affects 19 allotments, 25 permittees, over 900,000 acres in 37,000 AUMs in Lincoln County. No scientific evidence has been given to prove that cows are harmful to the desert tortoise. In fact, studies show they seem to do better in the areas where cows are grazed.

No. 3, the Wild Horse and Burro Act and its management and problems. The wild horse and burro numbers in Nevada have grown to such proportion as to cause serious degradation of the public lands in many areas. In these areas, the rancher has no choice but to reduce his cattle numbers to keep from causing and adding to the damage to the resource. These voluntary reductions would not be necessary if the BLM kept the wild horse population at the numbers they themselves have established. Frequently, even though wild horses and burros are the source of damage, only reductions in cattle AUMs are required. It's easier to write a letter to the permittee and tell him to remove cattle than it is to get horses off the range.

Nevada is home to over 20,000, or 60 percent, of the Nation's wild horses, yet Nevada receives only about 20 percent of the wild horse and burro budget. Funding deficiencies are partly to blame for the BLM's lack of action but, even when ranchers volunteer to help the BLM solve this problem, their help is refused. The wild horse and burro program should be a quality program and not a quantity one.

No. 4, probable AUM loss due to BLM acquisition of water rights. In Lincoln County, most water rights are tied to—most grazing rights are tied to water, rather than to private property, a piece of land as such. In Nevada, as well as other states, water rights can only be held in perpetuity if the user can continuously prove beneficial use. As a result of range reform, the BLM has applied for stock watering rights and some of these actions have been denied, and they've filed suit in Nevada for this reason. Why, after 50 years, without water rights does the BLM suddenly need them to manage public land? I'm also concerned with the BLM's attempts to gain ownership interest in privately held water rights.

I'm concerned about the overall direction of the BLM, the continued erosion of AUMs; a little here and a little there adds up to be an enormous impact on the local communities. Overregulation and micromanagement handed down from Washington bureaucrats undermines the local BLM employees' ability to make sound decisions. We must double and redouble our efforts for local, community-based consensus-building land management. We challenge you, our elected representatives, to review BLM policies in order to remove unnecessary regulation and eliminate top-down micromanagement from Washington, DC and to insist that BLM policies respect state laws and our individual property rights. These policies must protect the local citizens' opportunity to provide for themselves and their families. The continued loss of AUMs harms

ranchers and their families and the communities. It also harms the public land because it eliminates the ranchers' continual monitoring stewardship, improvements, protection, and maintenance of the range itself.

There's been a lot of talk that public lands, ranchers, are welfare ranchers. But I tell you there is no such thing as a welfare rancher until he is literally out of business and standing in the welfare lines. If AUMs continue to be lost at the current rate, ranchers will be on welfare all right, but they won't be ranchers anymore. Thank you.

[The statement of Mr. Flake may be found at end of hearing.]

Mr. HANSEN. Thank you, Commissioner.

Mr. Menges?

STATEMENT OF MR. JEFF MENGES, CHAIRMAN, FEDERAL LANDS COMMITTEE, NATIONAL CATTLEMEN'S BEEF ASSOCIATION

Mr. MENGES. Thank you, Mr. Chairman. My name's Jeff Menges. I'm chairman of the Federal Lands Committee for the National Cattlemen's Beef Association. My family and I currently have three BLM allotments and, although it is too soon to determine the impact of Secretary Babbitt's Rangeland Reform grazing regulations, I have found the BLM to be basically a reasonable agency to deal with. However, it is becoming increasingly difficult to ranch profitably on the public lands, and today I would like to articulate some of the problems public land ranchers face, and offer some possible solutions for those problems.

Implementation of the Endangered Species Act by the U.S. Fish and Wildlife Service and the BLM is one major area of concern. We do not need two agencies duplicating administrative actions for the same purpose on the public lands. This is simply multiple layers of government working to accomplish the same result: protect and recover endangered plants and animals. These responsibilities could and should be administered by the land management agencies only. This would solve financial and administrative problems for both agencies.

Secretary Babbitt's grazing regulations required development of Grazing Standards and Guidelines which were required to address restoring, maintaining, or enhancing habitats of endangered species. Arizona's Standards and Guidelines were developed with input from the Resource Advisory Council and signed by the Secretary of the Interior. However, in the Draft Biological Opinion, for the BLM Safford and Tucson Field Offices in southeast Arizona, implementation of the Standards and Guidelines will be overridden by the terms and conditions in the Biological Opinion.

Our Smuggler Peak allotment is just one example. Since implementation of a winter grazing program on the Gila River pasture on the allotment in 1990, the riparian area in the pasture has been determined to be in "proper functioning condition." This area will easily meet all requirements of the Standards and Guides. However, implementation of the terms and conditions of the Draft Biological Opinion will require complete removal of cattle from the riparian areas on my allotment and on 11 additional allotments. It

further requires suspension of grazing on nine allotments, all to avoid habitat modification of habitat for pygmy owls.

Pygmy owls do not exist on any of these 21 allotments. It is not occupied habitat, nor has it been designated as critical habitat; yet, modification of this potential habitat for pygmy owls will be considered take. The resulting effect to the 21 permittees will be financially devastating as well as being contradictory to the Standards and Guidelines.

It is difficult to imagine any area that could not be considered potential habitat for some species that is listed, or may be listed, as endangered. The U.S. Fish and Wildlife Service needs more avenues for local input. Expanding the BLM Resource Advisory Councils to include recommendations to the Fish and Wildlife Service should be considered.

The Standards and Guides require allotment evaluations. This will require accurate monitoring. In recent years, monitoring has been a low priority item that has not withstood the budget cuts. We believe that vegetation monitoring is very important and should be a high priority. We recommend making monitoring a line-item so that money that is appropriated for this purpose, will have to be spent accordingly.

Another major area of concern is the lack of accountability by state wildlife agencies for the impacts their actions have on the Federal lands. The number of elk on public lands have increased over 1,000 percent since 1960. There are also substantial increases for other big game species. Much of this increase can be attributed to livestock management and industry-initiated programs like the screwworm eradication effort, which have benefited wildlife as well as livestock. The result of these additional grazing wildlife has been reduction in available AUMs for livestock, without compensation to the permittees who pay for the use of the forage.

Some states provide depredation permits to compensate ranchers for loss of forage on private land. We would support expanding that system to include other lands. My suggestion is that state wildlife agencies should enter into MOUs with Federal agencies regarding resource outcomes. Local experts should be involved in determining the outcomes. They should also be held to strict levels of accountability, as Federal grazing permittees are for range condition and trend and for mitigating damage done to permittees, either in terms of private values diminished or private penalties imposed on permittees for failure to abide by his or her permit terms and conditions as a result of state wildlife agencies' action or inaction.

Temporary issuance of some type of permittee-owned hunting permits, to compensate the permittee for their economic loss could be an option. Some ways to achieve compliance from state wildlife agencies might include suspension of some portion of transfer payments from Federal Government to state wildlife agencies and making availability of Federal funds to state wildlife agencies contingent on compliance. Thank you.

[The prepared statement of Mr. Menges may be found at end of hearing.]

Mr. HANSEN. Thank you. I have an unanimous request, Mr. Bob Smith, to enter his statement as part of the record. Is there objection?

Hearing none, so ordered.

[The prepared statement of Mr. Bob Smith may be found at end of hearing.]

Mr. HANSEN. Mr. Atkins, the gentleman from St. George, Utah, I turn the time to you.

**STATEMENT OF MR. BRENT ATKIN, PRESIDENT, PUBLIC
LANDS COUNCIL**

Mr. ATKIN. Thank you, Mr. Chairman, for the chance to testify today. I would like to talk today about some of the issues facing Federal lands ranchers with BLM allotments today that have arisen as a result of agency application of the Clean Water Act, the Clean Air Act, and the National Historic Preservation Act. These laws were well-intentioned by Congress, but regulatory agencies have converted the mandates from these laws into some rather heavy regulatory burdens in situations where Congress never imagined that these laws would be used.

Earlier this year when grazing legislation was being considered by this Subcommittee, I had the opportunity to be out here with my son, T.J. You may remember that, Mr. Chairman. One day when we were in your office talking with you, T.J., who was 10 years old at the time, asked you, "Congressman Hansen, what is the future of grazing livestock on public lands?" Your answer was, "I don't know." And I'm sure that was an honest and open answer. This is instability.

As a rancher and as a father, I would like to be able to tell my children that they will be able to continue our family's tradition of ranching and feel good about it. As things are, I don't feel good about it because I don't know if it's true. After ranching for six generations, we have taken good care of the land, and in return, it has given us the ability to make a living doing what we love to do. It is really hard for me to remain optimistic about the future of my family's ranch today. This is really a shame because, regardless of the distorted half-truths and outright lies about the effects of grazing on public lands that some interest groups continue to propound, ranchers really are stewards of the land. Abusing the resource only hurts their ability to make a living.

In my 25 years of dealing with the Bureau, with the BLM, I am finding that more and more frequently land management decisions are being made based on factors not at all related to sound land management practices. They are being caused by the applications of other laws. Ranchers are anxiously awaiting the appellate decision in a 1996 court case called Oregon Natural Desert Association v. Chief Jack Ward Thomas, better known as the Camp Creek Case. In that case, an Oregon Federal District Court judge held that pollution caused by cattle grazing constitutes a discharge into navigable waters under section 401 of the Clean Water Act, and therefore, the Forest Service was required to get a state certification before issuing a grazing permit. The case is being considered by the Ninth Circuit.

If the Ninth Circuit upholds the original decision, this will mean, in essence, that livestock grazing is equivalent to a water treatment plant for the purposes of section 401. It would also mean that

the EPA would become yet another partner agency with BLM to help manage the livestock grazing. This, again, is instability.

Likewise, the Clean Air Act is having adverse effects on proper land management. In some instances, burning of rangeland is necessary for proper management of some types of grasses and shrubs. The Department of the Interior and the U.S. Forest Service have adopted policies to improve the approval process of prescribed burns. The EPA is limiting these necessary management activities, citing clean air concerns. With the President recently announcing new particulate matter regulations, I can only guess that prescribed burning will become a thing of the past at some time. When that happens, the range conditions in areas where burning is appropriate will deteriorate, which will lead to reductions in AUMs available for grazing. This, again, is instability.

The National Historic Preservation Act is basically being implemented on public lands through Memoranda of Agreement between the states and BLM or the Forest Service. But there are many inconsistencies between these agreements. In Montana, for instance, areas that have been grazed for the past 100 years really aren't being adversely affected by archaeological restrictions. In California, however, the MOU is resulting in restrictions on areas containing lithic scatter, basically pieces of stone leftover from making arrowheads, even though these areas have also been grazed for many years. Having different standards on Federal lands in different states does not add to stability.

Considered one at a time, most of the negative effects from the laws that I have described could probably be manageable. However, these negative impacts are cumulative. By the time a rancher is facing requirements from three, four, five, or six different statutes, his ability to graze livestock on Federal land is uncertain, at best. The same situation is also faced by BLM. Agency employees spend more time consulting with other agencies on how to administer those agencies' laws and dealing with paperwork or appeals than they do actually doing the on-the-ground monitoring to safeguard the resource.

I know that it is unrealistic to think that these laws will ever be quickly changed to alleviate our problems. However, because most of the problems caused by these laws today are because of how the agencies are administering them, I don't think it would be unreasonable at all for the agencies to at least be able to work together in a manner that would allow both BLM and ranchers to do our jobs, rather than fill out papers and go to meetings. If the goal of BLM and ranchers is to protect, preserve, and improve the resource, which I think it is, then this kind of change is certainly needed.

Once again, thank you for the opportunity to be here today.

[The prepared statement of Mr. Atkin may be found at end of hearing.]

Mr. HANSEN. Thank you. I get the impression you would rather be a rancher than fill out papers and go to meetings, is that right?

Mr. ATKIN. That's exactly right.

Mr. HANSEN. How often do you see BLM fellows out on the ground?

Mr. ATKIN. Well, if I make an appointment to go with them, I'll see them, but on a normal year we probably won't see our range con. maybe but once or twice throughout the whole year. Generally, that needs to be a—we line up appointment to go look at some—

Mr. HANSEN. So, maybe once or twice a year they come out to monitor things?

Mr. ATKIN. They're probably out there a little more—as far as our range con., I'm sure he's out there a little bit more than that. But, as far as us seeing him, actually I've only seen him—I've only visited with him once in the last 2 or 3 years. My dad's, I think, seen him a couple of times. He's a good range con., too.

Mr. HANSEN. What affect has the environmental community had on your ranch, your ranching process?

Mr. ATKIN. Specifically, ours, in our operation, on our individual basis, probably the biggest effect that they've had right now is our headquarters is right on a—kind of the main road coming out there. And, instead of getting good decisions of land management, now the BLM, through pressure from the environmental community, wants to manage that main valley where our ranch headquarters is by perception, rather than if the public—and especially the environmental community doesn't perceive that it looks good, then they want us to move our cattle. It's had an upward trend for years. We've had the goal to help another species of grass come into there. There's more of that grass now than there ever was before, but yet, we've had a dry year or two and if it doesn't—isn't perceived by the public to look good, then they won't—that's how they want to manage that valley.

Mr. HANSEN. Mr. Flake, I was a little disturbed about your comment where you said something about, if I got this right, that help from ranchers is always refused by the BLM for the wild horse and burro program. Can you elaborate on that?

Mr. FLAKE.. Yes, sir. If I could, thank you, by an example. Last year when we had a drought in our area and we were—it was determined to gather a lot of wild horses. And the cost, of course, of gathering these horses is very great, very large amount. In our area, I talked to them about the horses that needed to be gathered and they said that there was a limitation on finances. And I said, in our area, in our particular range, there's an area there where you can gather horses and have to drive them for 12 miles with a helicopter to get them out to where you can corral them and load them. I said, let's don't do it; let's just wait. They'll all come over on this side the hill and I can water trap them over here. And if you would give me permission, I would water trap these horses and tell you when I had them in.

And I was told—it was told me that that contractor is paid a certain amount for gathering these horses and we don't care how much it costs him to gather them; he's paid so much to get them out. I said, you don't understand me. I would like to see more horses gathered and I'm willing to make a sacrifice and I would make the effort to water trap those horses myself and call you and tell you they're in.

The reply was, well, we have to have a load before we can haul them to the holding facilities.

I said, with your permission, I'd take them to my ranch and hold them with hay until I had a semi-load for you to take out.

And they said, well, we could never do that because the horse groups would not agree to it. Later, as I visited with the horse groups, they said that water trapping would be a way they would like to see horses gathered.

I would like to see more effort in that area, but I'm willing to make the sacrifice also. I realize there's budget constraints, but I'm willing to help. But you can't help where it's not—

Mr. HANSEN. Commissioner, have you seen Representative Jim Gibbons' bill on wild horse and perils?

Mr. FLAKE.. I know of it some, but I haven't studied it any great deal. Sorry.

Mr. HANSEN. He wants to restrict the number of horses in each state to one herd of—I can't remember the amount of animals—to be watched very carefully by a veterinarian and hold it at one size because of the damage they do to riparian areas and areas such as that. You haven't looked at that in much detail yet?

Mr. FLAKE.. I have not, no.

Mr. HANSEN. I would very appreciate hearing a comment from you if you would get a chance to look at it. If you'd let me know, I'd kind of like to know because we will probably be doing a hearing on that bill and I'd kind of like to know where the western folks, the environmentalists, the cattlemen, everybody, ATV folks are coming from on that issue.

Let me ask Mr. Menges, you, in your testimony, talked about range allotment monitoring has been a very low priority of the BLM. Can you elaborate on that a little bit?

Mr. MENGES. Yes, sir. I've been on these allotments since 1979. Until about 6 years ago, the BLM did trend monitoring and utilization monitoring nearly every year. But then it was cut out, as the budget crisis got more intense; and they're saying there's just not enough money to go around to do that. We liked the monitoring. We've always contended that the rangelands are getting better and that monitoring did, in fact, reflect that. But now we're not getting it, and so we're much more vulnerable to them coming by with a—coming out during a crisis.

For example, last year there was a severe drought down in our area. The BLM was getting hundreds of letter from people, environmental groups, I think, probably saying that a lot of damage is occurring out there, and so the BLM came out and did one-time assessments and then asked the ranchers to remove livestock ultimately. If we would have had monitoring data for the previous years to reflect that the rangelands were improving; then we'd have been on a stronger leg to stand.

Mr. HANSEN. Thank you. I hope you folks realize the warfare going on on the floor right now. Some of our friends want campaign reform, and I understand another vote is almost imminent. So I'll turn to my friend from Maryland for any questions that he has and also hand him the gavel, and I will be back at the conclusion of your—if you just hold it in recess, I'll get back as soon as I can, OK?

Mr. MENGES. OK.

Mr. HANSEN. After your comments.

Mr. MENGES. OK.

Mr. HANSEN. Thank you, and then we'll go to the third panel. We won't be long, but we're going to have another one, and I'm sorry, but, as I say, I don't control what goes on over there in the House of—the bigshots.

Mr. GILCHREST. [presiding] I don't have too many questions, but I understand the nature of bureaucracy and the nature of farming and, to the extent that I can, the nature of ranching and all of the environmental questions that come into play, especially over the last 10 years or so. People are learning more about the best management practices, learning more about discharges, soil erosion, native species, non-native species, problems with drought and things like that. So, it's my position, as far as this bill is concerned and this oversight hearing, is to learn as much as I can in a way that is beneficial to the ranchers and to the land. So, the question I have, basically, is: Can you graze on public land and do it in such a way—Mr. Atkin, you made a comment about the Clean Air Act and the Clean Water Act, and you have to get a discharge permit, if you want to graze in a certain area, because of soil erosion in the nearby stream. Can you graze, limit the grazing in such a way to stop sediment getting into nearby streams? Given there is no perfect solutions, but can you graze without negatively impacting a stream which is going to impact somebody downstream?

Mr. ATKIN. That question, for me, is a little bit unique because there is no running water in our—in our whole grazing—

Mr. GILCHREST. Oh, that's interesting.

Mr. ATKIN. [continuing] vicinity. So, it's a little bit out of my area, but proper grazing can reduce erosion. It can actually stimulate growth of the grasses, which will reduce the erosion. In our area, the worst erosion places that we have are the places that are grazed the least, that have sagebrush and pinon juniper that have invaded that area, and that's the area that's been grazed the least and that's where those plants flourish the most. Mr. Vento referred earlier to something to the effect that overgrazing caused that. I think it's the reverse of that. And where we have the most erosion is where that takes place.

I think if there was a way to increase the grazing and stir that ground and help—well, if you could actually light it afire and burn some of those off and then stimulate the ground by grazing, that you would actually decrease the erosion.

Mr. GILCHREST. Mr. Menges, would the—you said that for a long time, while there was monitoring from the BLM, you had fewer problems than you do now. What did the BLM people do to make things better when they came out to monitor that? Without that monitoring, things seemed to be worse? Whether it's soil erosion, whether it's the juniper woody shrub, would you suggest that there be a directive or somehow more monitoring by BLM?

Mr. MENGES. Yes, sir. When the monitoring was occurring on an annual basis and the monitoring included rainfall data, vegetation data, then it was easy to establish the trends from year to year. You would get some ups and downs, but over the long period of time you were able to establish—

Mr. GILCHREST. So, it was—

Mr. MENGES. [continuing] trends, which was basically an upward trend when you could look at it over that period of time.

Mr. GILCHREST. It was a lot easier to manage that way instead of managing in what seems to be a periodic crisis situation?

Mr. MENGES. Well, we manage the same way now as we did then. It's just that with the monitoring data available to review and to make available to the public, we had that information and could show it to people that, you know, this is actually what is happening out on the ground. Since we haven't had that for 6 years—

Mr. ATKIN. Did—

Mr. MENGES. [continuing] then we're subject to, particularly in dry times, people coming out and making one-time assessment and saying that country looks terrible.

Mr. ATKIN. Could I respond to that—

Mr. GILCHREST. Mr. Atkin?

Mr. ATKIN. [continuing] Mr. Gilchrest? There's the old saying that people are generally down on what they're not up on. And the monitoring itself doesn't do anything as far as helping the resource, but it does let them know where they're at. And all that Mr. Menges is saying is then we knew where we're at. You know, by monitoring, we had a record of—and if we're doing something that we shouldn't do, you know, if we're affecting the resource in a negative way, we want to know that as soon as anybody does. But, where the monitoring has taken place and your trend is up, it's easy to get along with people. But if you don't know, then it's common to start thinking that something's wrong.

Mr. GILCHREST. My district is predominantly agriculture—soybeans, chicken, dairy, you name it. And we have Agriculture Extension offices where the Agriculture Extension agent goes out on—and every county has one and they have an assistant, so they are constantly not only monitoring and gathering data and helping with best management practices and nutrient management of the soil, and so on and so forth, but they constantly are in touch with, for example, in our State, the University of Maryland, the soil scientist, and the latest techniques and innovative methods of farming, to not only reduce soil erosion and reduce the amount of pesticide you use or herbicide or all—all that other stuff, but they also save the farmer money when they see how they can manage in a much more scientific method. Does the BLM—did the BLM monitoring program come out and, not only gather data, but also relayed information about how to improve the range and how to move the livestock from place to place, that kind of information? Is that forthcoming from BLM as a regular course of action?

Mr. MENGES. Is that directed toward—

Mr. GILCHREST. I guess any three of the gentlemen can respond.

Mr. MENGES. I think it varies from operator to operator. Some operators are much more knowledgeable about range management practices and are much more up to date with the latest and they know their allotments and know what'll work and what won't, and it's just a matter of getting with—then, there's also range conservationists that work for the BLM that have that knowledge also. They keep up to date. Right now it's more of a riparian focus, whereas 10 years ago it was more of an upland focus. But I think

it's just a matter of sitting down with your range conservationist and getting out on the land and determining what is the best management prescription for that area between the rancher—

Mr. GILCHREST. Do you have easy access to the range conservationist?

Mr. MENGES. Well, that's diminishing over time. Right now our range conservationists are in the office doing NEPA compliance and endangered species consultation nearly constantly. We're just like Mr. Atkin; we see them only whenever we ask them and set up an appointment. Otherwise, we haven't seen much of our range con. in the last 5 years or so.

Mr. GILCHREST. Yes, sir?

Mr. ATKIN. I'd like to respond to that, too. You asked if that helped, you know, if there is that help. I think that varies, like Jeff said, between your range conservationist and your permittees. Our ranch con. right now is—he's helpful, he understands range. The one we had before him, that range con. had a forestry degree and was no help at all when that. And so, it varies a lot.

Mr. GILCHREST. Yes, sir?

Mr. FLAKE. I also have a good range con., but he's been off on other projects, as was mentioned here, and we don't see him that often. I never go out with him, but what I learned something. And hopefully it's the same as we have an exchange of information with each other as we're out there on the land. You know, you're going to think about it and do more and make more wise decisions out on the land than you are sitting in an office where you're not thinking about it. That's where to make the decisions, is out there where you're looking.

Mr. GILCHREST. I think I would agree with you. Do you have—unfortunately, Mr. Hansen was right; we have another vote. Can you, in your perspectives, can you—is there a way to manage the land to retain the allotments on public land where you could reduce the amount of unwanted woody shrubs, have more native species that seem to be—would, I would assume, seem to be able to thrive on the harsh conditions that are out there, the drought conditions. What would be your recommendation? We have a bill that came from the Agriculture Committee that we're going to work on in this Committee. We have the Interior Department saying that these Resource Councils and their methods are beginning to work now.

Could each of you give me one or two things that you could recommend to us as this legislation is developing that would be helpful for the ranchers? Mr. Atkin, you said you want—you've been ranching a long time; you want your children and your grandchildren to stay on the land. What are a couple of things that we could do to help this process and become more informed?

Mr. ATKIN. You say, what could you do?

Mr. GILCHREST. We, as Members—we're going to develop the legislation here. What do you see as some of the priorities we should look at? Riparian problems, burning problems, prescribed burns, things like that? More money for the—

Mr. ATKIN. I come from a particularly dry area, so Jeff will be more of a specialist on riparian, but one of the areas that—in our operation, if we could burn some of that country that—the sagebrush and the pinon juniper have kind of started to dominate, the

production off that land, and I think this would be a conservative estimate, would quadruple.

Mr. GILCHREST. Can you burn that pinon juniper and then manage the land so it doesn't come back again?

Mr. ATKIN. It would take quite a long time before it would come back. I don't know whether I can guarantee you that it wouldn't come back, you know—

Mr. GILCHREST. What caused it to come there in the first place?

Mr. ATKIN. Well, I don't know for sure. We were just in Yellowstone Park Saturday and they, the Federal agencies there, told us that lack of grazing is what stimulates sagebrush growth in that area. I know, in our country, when there's been quite a use change, they used to bring a lot of winter sheep herds into that country and winter those sheep herds in that area. And it was when my dad was a younger man and he seems to feel like the sagebrush was a lot less dominant then. Now, the sheep herds have all left that country and so that grazing quit. We use it in the summertime with cattle and it seems to be—the areas that we graze the least is where it has flourished the most.

Mr. GILCHREST. Thank you. Mr. Menges?

Mr. MENGES. I believe that the invasion of pinion and juniper was primarily caused by fire suppression because there would be a wave of fires come through on a fairly regular basis that would take the little ones out. Prior to the time that the fires were being suppressed aggressively, well, I don't think that we saw near the invasion of those species.

As far as the riparian and what can we do to enhance all those things, infiltration, endangered species, we have standards and guidelines that we just developed that address all those issues. We're mandated to graze in compliance with those standards and guidelines but, unfortunately, we don't get the chance to work with the Bureau who is the land management agency. The other agencies, administering the Clean Water Act, the Endangered Species Act, and other acts that Brent mentioned are really causing havoc with us. We're meeting the standards and guidelines. We're progressing toward the goals, but then we're getting lawsuits filed against us with regards to endangered species management and site-specific micromanagement-type of things that are making it very difficult for us to stay within the management plans that we've developed with the land management agency, the BLM.

Mr. GILCHREST. Is this—is BLM—if you meet the standards and guidelines that are set up, I would assume you would also directly or indirectly meet the standards of the Clean Water Act and the Endangered Species Act?

Mr. MENGES. You're supposed to but the lawsuits that have been filed have mandated consultations and biological opinions and—

Mr. GILCHREST. So, are the—

Mr. MENGES. So the biological opinion for my allotment, take, where it says we're meeting the habitat requirements described in the biological opinion and yet, for some reason, the Fish and Wildlife Service has come up with the idea that we're taking cactus ferruginous pygmy owls by grazing cattle in riparian—

Mr. GILCHREST. Is this a problem between Federal agencies, then, to some extent?

Mr. MENGES. Absolutely.

Mr. GILCHREST. The lawsuits are filed against BLM?

Mr. MENGES. The lawsuits are filed against the BLM, yes.

Mr. GILCHREST. By private citizens? Fish and Wildlife through—

Mr. MENGES. Environmental groups.

Mr. GILCHREST. I have to run before I miss this vote. Mr. Flake, do you have any comment?

Mr. FLAKE.. Just shortly—that local decisionmaking will really help in trust between the rancher and the Bureau people and more freedom to do things locally. And I know it's public land and everyone should have an input, but decisions should be weighted toward those people that live there and understand and have lived there for generations and know that land when decisions on grazing are made.

Mr. GILCHREST. Mr. Atkin has one more comment as I run out the door.

Mr. ATKIN. You ask things that you could do. In our particular area, there's one thing that's kind of concerning to me that you may be interested in. The fire budget for our BLM district is just—it's unlimited. They can spend any amount of money they want on fire. I have never seen a bad fire on our district, and when my dad was a little younger they just—they kind of deputized the livestock producers out there and said, if you see a lightning strike, go over and put it out, and if they went over and put it out, they paid them like dollars or something to do that. I don't know how high that fire budget has gotten but it's unlimited. They can spend almost whatever they want.

Mr. GILCHREST. Thank you very—

Mr. ATKIN. That's kind of out of control.

Mr. GILCHREST. Gentlemen, thank you very much. Welcome to the Nation's capitol. We'll stand in recess.

Mr. ATKIN. Thank you.

[Recess.]

Mr. HANSEN. [presiding] Our third panel is Dick Loper from Wyoming, Wesley Neil Bruton from New Mexico and Mr. Allen E. Smith from Utah. If those folks would step up to the plate, I'd appreciate it.

I think that's pronounced Bruton, is that right?

Mr. BRUTON. Yes, sir.

Mr. HANSEN. I apologize.

Mr. Loper, we'll start with you, sir. What part of Wyoming are you from?

STATEMENT OF DICK LOPER, CONSULTANT, WYOMING

Mr. LOPER. Lander, sir. We're in the west central part of the state.

Good morning, Mr. Chairman—I guess it's afternoon now but anyway.

[Laughter.]

Mr. LOPER. Thank you very much for the opportunity to testify here today. I'm Dick Loper, I live in west central Wyoming and I'm here today on behalf of the permittees in Wyoming represented by the Wyoming State Grazing Board Central Committee, and we

have about 2,500 permittees that have section 3 BLM grazing permits.

Mr. HANSEN. Mr. Loper, could you pull that microphone just a little closer to you, if you would please? Thank you.

Mr. LOPER. Thank you. I'd like to bring to the attention of this Committee an example of how public land AUMs are being reduced from the level that ranchers have been led to believe that they were have consistently available to them. In the early 1980's, the BLM policy on how to determine when changes in livestock AUMs available to ranches and wildlife were needed changed from a policy of reliance on one point in time inventories to a policy of reliance on a variety of studies over time. This secondary process that I'm talking about is called monitoring. This change in BLM policy was supported and still is, to my knowledge, by the range science community and the livestock industry, because monitoring is a much better way than an inventory procedure to determine if allotment objectives are being met over time.

Range management is still 90 percent art, 10 percent science, at best. And adequate quality and quantity of monitoring data from a variety of sources on the rangeland ecosystems will provide the manager a data base from which to manage the land. If we don't have that variety of data, though, the task of range management becomes difficult, if not impossible.

But for reasons most of us outside the BLM in this range profession don't seem to understand, the BLM policies over the last few years have encouraged and even allowed their decisionmakers to make decisions on a very limited amount of data, in some cases virtually no data at all. If we don't have a knowledge of whether or not a plant community is changing over time, and the annual studies, such as utilization, provide little more than a visual and cosmetic view of the rangelands, the levels of utilization being used as maximum limits allowed by some of these BLM proposals are not considered by the majority of the range science community to be use levels that would be normally detrimental to plant communities grazed under typical BLM grazing programs. As support for this statement, I've attached to this testimony the results of a symposium sponsored by the Society for Range Management last winter on this subject.

I'd now like to provide some actual examples of the BLM livestock grazing plans that contain language that place utilization limits on livestock grazing programs without the support data to confirm that these limits do, in fact, have a detrimental environmental impact on the public land. For example, Allotment 1803 in the Lander BLM Resource Area, a quote: They want to improve the distribution of livestock grazing by managing the utilization of perennial grasses on uplands and ephemeral drainages at 35 percent of the forage or less in all sub-units of the allotment by the year 2002. The plan goes on to say they want to decrease utilization of perennial grasses at the end of the grazing year from a moderate use today of 41 to 60 percent, to a light use in the future of 21 to 40 percent by the year 1999.

In the Cumberland allotment in the western part of Wyoming and in the Smithsfork allotment, the annual operating plans, the last 2 years they've had this statement in it: When a 60 percent

seasonal use level is met on key species, a closure notice will be issued for the affected area. The permittees will have 3 days after the receipt of the notice to remove all livestock from the Federal lands in the use area. Mr. Chairman, most of the livestock permittees are running the Cumberland live in the Randolph area in Utah. You know most of these people, I'm pretty sure: ranchers such as Charlie and Connie Rex, Ed Brown and Burdette and Simeon Weston; these are people you probably know.

These restrictions by the BLM on their grazing program at the end of the grazing season on real short notice have caused them a lot of money and management problems. It's my professional opinion that the resource conditions in the Cumberland in 1996 did not support the type of action taken by the BLM to impose utilization limits and livestock closure limits.

If the forage production in the particular allotment is consistent with the allotment production levels that were there during the adjudication of the allotment, it is my testimony on their behalf that they have a right to assume that a deal's a deal. These types of reductions of AUMs will not show up publicly because this method is largely hidden from the view of the industry, the public and from Congress. To make matters even worse, if they own private land in the allotment being closed, they can't even use their own land for grazing because their private lands are unfenced and intermingled with the BLM lands under closure. Livestock don't know the difference in ownership and they're subject to trespass and even seizure by the BLM on these lands that are closed to grazing.

In 1995, BLM was in the process of revising their technical manuals when the Association of Rangeland Consultants was asked by the Bureau to review those manuals. I'd like to close my testimony with a quote from our review. "Over the past several years, the land management agencies have abandoned the historic practice of using broad monitoring information and the art of range management to work through people in the resolution of rangeland issues. Instead, they have adopted an approach to manage rangeland issues based mainly on empirical data and established numbers or standards. The documents under review appear to continue this trend." I've seen the final documents, Mr. Chairman, and they haven't been changed to reflect our comments.

Thank you for this opportunity.

[The prepared statement of Mr. Loper may be found at end of hearing.]

Mr. HANSEN. Thank you. Mr. Burton?

STATEMENT OF WESLEY NEIL BRUTON, RANCHER, NEW MEXICO

Mr. BRUTON. Chairman Hansen and members of the Committee—

Mr. HANSEN. Pull that microphone just a little tad closer to you, if you would, please. Thank you.

Mr. BRUTON. First, let me thank you for the opportunity to speak before you today. My name is Wesley Neil Bruton. I am from San Antonio, New Mexico, where I live with my wife, son, and daughter. We are part of an agriculture operation that has been in

central New Mexico since 1880, when my great grandfather moved there from south Texas.

With my parents, we ranch and farm on private, state leases, and Federal lands. In the West, you acquire lands and the public permits that go with them by inheriting them or purchasing it. As a family, we built the operation purchasing private land along with state leases and Federal leases. I am proud that my father is here with me today, Neil Bruton, and our intentions are to pass what we have on to my daughter, Brittany, who is 12 years old today, and son, Wesley, who is 4.

Our operation includes Bureau of Land Management land, BLM land, as well as Bureau of Reclamation lands that are administered by the BLM. In many cases, these lands are commingled with state and private property, with no fencing. Frankly, Dad and I would rather be home today doing what we do best, caring for our livestock and our lands. Actions of the Federal Government have made that impossible. We have heard the stories about how our Government—our Government—is taking away citizens' rights. We thought those things happened to other people.

We were wrong and we should have known better. It has happened to the family before. The Federal Government took land from my grandparents back in 1941 for White Sands Missile Range. At that time, it was patriotism that was the standard-bearer of land grabs. We are a patriotic people. My father served in the Korean conflict and we do believe in fighting for what is right and what is ours.

We are here today to tell you about what the Federal Government has done to us in 1997 in the name of a bird. We learned this spring that Federal employees, or persons contracted by the Federal Government, trespassed on our private lands in search of endangered species, specifically the southwestern willow flycatcher. They then used the information they obtained while trespassing on our lands, our private lands, to remove us from our Federal lease lands. In that area, we ran 175 mother cows. The spring and summer of the year is the best time, for the forage is at its best, and it will also be the time that most of our cows are calving, lactating, and breeding back.

Based on the information gained through illegal entry, the Federal Government issued a decision to eliminate grazing in the area for three-and-a-half months during the prime portion of the year. That was bad enough. However, this decision was a full-force-and-effect decision, which requires immediate compliance. That immediate compliance, in our case, was for 6 days. We had only 6 days to remove 175 cows, along with many calves of varying ages and size. The river was high and flooding and the brush was in full foliage, making it virtually impossible to use horses or any other method of gathering the live—the cattle. We had to go in on foot and in small boats. We ended up hauling one heavy pregnant cow in a boat. We generally gather this area in the fall, when there is little foliage, and bait the cattle out with feed. Then it usually takes us 3 to 4 months to get the job done.

In addition to getting the cattle out of the river bottom, we had to find other pastures for them. That was no easy chore and was extremely expensive because most of our area was just recovering

from a drought. The pasture we found was over 150 miles away. In all, we spent more than \$32,000 in additional pasture rent, labor, and trucking to move livestock.

If we hadn't, if we had not complied with the order, removal order, within the 6 days allotted, we would have been guilty of willful trespass on Federal property which could have resulted in the impoundment of our cattle as well as large fines. In addition, all of the other permits on Federal lands would have been in jeopardy.

With that full-force-and-effect decision, any appeal which must initially be done through the administrative process cannot take place under after compliance with the order. We did try to use the courts to at least get more time to remove the cattle. However, in only 6 days to comply, by the time we got the lawyer hired and the proper paperwork filed, the time was up. We were denied the stay near the end of July, better than 90 days after we had to remove the cattle. We have filed an appeal administratively and have yet to hear anything about it.

The driving force behind this nightmare is the Endangered Species Act which caused the U.S. Fish and Wildlife Service to issue a notice to the Bureau of Reclamation that grazing could result in a take of the southwestern willow flycatcher. A take of an endangered species can result in criminal action as well as stiff fines. The southwestern willow flycatcher is a bird listed in March 1997 and it is a subspecies that can only be identified by the way it sings. If you have not heard one, you wouldn't know one. It amazes me that Federal employees can identify such a creature by sound alone, but they do not have the ability to identify property lines between Federal and private lands on a map.

Since this mess started, we have learned that inventories were done on our private land in 1994, 1995, and 1996 for the southwestern willow flycatcher. In 1996, cowbirds were also trapped on our private land without our knowledge or permission. The primary concern with grazing in area where there may be willow flycatchers is a cowbird. It is believed, but not scientifically proven, that cows attract cowbirds. In any event, we are told that cowbirds lay eggs in the flycatchers' nests; then the Flycatchers end up raising baby cowbirds instead of their own. There is also some concern that cattle knock down nests, but most of the low nests are over water, and our cows, at least, are not big swimmers.

The last 5 months have been a nightmare that I would not have believed could have happened to me or anyone else in this United States. And, it appears to me that it has only just begun. We have been unable to get any commitment from the Bureau of Reclamation about our future in utilizing the grazing land. There is a land use plan in the works, but grazing has yet to be addressed. At the present time, there is no stability in our agricultural operation. We don't know whether, when, or whenever we'll be able to have to remove the cattle. Our private land has no resell value. Who in their right mind would want to get involved in this ranch?

We were allowed to go back on the area August the 1st of 1997, but we did not know when we will have to be removed again. We want to leave this ranch to our children, but who would wish such a thing on their kids?

I know you are here today to discuss the reduction of the use on BLM lands. From my perspective, until and unless the Endangered Species Act is modified, future use of BLM lands will continue to be a target on the Fish and Wildlife Service, and citizens, like my family and I, are in serious trouble. There is no avenue in the Endangered Species Act for individuals to have any meaningful input. Science means nothing; economic impacts mean nothing; customs and cultural means nothing. The Fish and Wildlife Service is a kingdom of it's own and a predator to Federal funding.

Other Federal agencies are being forced to spend millions on endangered species consultation and assessments. There are no checks and balances. Few of us have money to hire attorneys to protect our rights; that's why we elect people like you.

In 3 years of Federal research, we were never once contacted about the presence of this willow flycatcher on our property. Our local government was never consulted and there was never been an economic or culture analysis done on the area in relation to this issue. Common sense indicates this would have been an ideal year to study the true affects of grazing on the willow flycatcher.

The Fish and Wildlife Service issued a permit for the Bureau of Reclamation for trapping cowbirds. We had out-of-bank flooding on the river and the cows were happy. Instead, we were put through hell. Not only have we been put through a great deal of personal stress and expense, but our own tax dollars had been paying for the oppression upon us.

I thank you again for your time and consideration. My family certainly hopes and prays that you here in Washington can see what is being done to those of us the country—in the country—before too many more of us are put out of business. Thank you.

[The prepared statement of Mr. Bruton may be found at end of hearing.]

Mr. HANSEN. Thank you, Mr. Bruton.
Mr. Smith?

STATEMENT OF ALLEN E. SMITH, RANCHER, UTAH

Mr. ALLEN SMITH. Thank you, Mr. Chairman. My name is Allen Smith and I am here on behalf of the 22,000 members of the Utah Farm Bureau Federation, many of whom, like me, are BLM grazing permittees. I'm also past chairman of the public lands for the Utah Cattlemen's Association.

We have deep concerns about the reductions of grazing on the western BLM lands. Back in 1934, in support of establishing the BLM, my grandfather, Maroni Smith, testified on the importance of protecting the stability of the livestock industry and sustainable grazing on public lands. As a third generation rancher in north-eastern Utah and a recipient of a BLM environmental stewardship award, it is somewhat ironic for me, 63 years later, to be back here opposing what we believe to be unwarranted cutbacks in BLM grazing.

We've heard rumors of BLM pressuring the Hanley Ranch in Jordan Valley, Oregon, to reduce grazing. Other concerns are outlined in my extended statement. Papercuts, as they are often called, reduce permits from preference use, which the permittee bought, to actual AUMs used. Over the years, many ranchers have voluntarily

have taken non-use in times of drought, et cetera, with the promise of getting their suspended AUMs back when ranges improve. Too many times these suspended AUMs were subsequently left, for wildlife, never returned to the permittee. No doubt this Committee will hear other examples. But I am here with a specific example of BLM grazing reductions on an historic ranch in my area, a ranch with which I am very familiar. My written extended comments and exhibits will more fully illustrate this situation.

The Nutter Ranch in my area began grazing in 1860's. When the BLM acquired control of the public lands in 1934, grazing continued on the Nutter under a BLM permit. For 18 years, this ranch has been managed by a university-trained range conservationist. A recent range evaluation by Utah State Extension Range Ecologist James Bown shows livestock are not damaging the ranges in question, a fact concerned by a letter from Dr. Bown in my extended comments.

The authorized AUMs on the Nutter in 1979 were 8,584 active and 5,416 AUMs suspended, for a total of 14,000 AUMs under the year-around grazing permit. By August 1997, the BLM had reduced the Nutter permit to 3,038 active AUMs, a loss of 5,546 and 1,783 suspended AUMs. Recently, the BLM acquired ownership of 756 acres of private bottom land from the Nutter Ranch on the Green River near Nine Mile Canyon as a mitigation agreement. These 756 acres had been part of the ranch's private grazing area since the 1860's.

Now, the BLM has notified the Nutter Ranch that they can no longer graze these acres plus an additional 1,331 acres of adjacent public land. This closure will effectively make it impossible for the ranch to use much of their private grazing land and adjacent state school trust land sections because the closure shuts off water accesses and trailways. Like a missing link in a chain, this administrative decision denies the ranch a place to raise cattle from October 15 to February and between November and April 15.

A draft Environmental Assessment for the acquired Nine Mile Canyon and the Green River area was released August 29 with a closing date of October 2. Farm Bureau did not receive a copy of this EA until September 22, when I personally took one to them. Farm Bureau usually received BLM draft EAs in Utah because the Farm Bureau tries to help ranchers work through the proposals in a cooperative way. We have requested 30 days more comment period and we await formal reply on that request. In my view, the EA is very biased in favor of recreational river runners on the Green River.

Particularly disheartening to us was the EA justification for excluding livestock listed as, one, protect natural values; two, protect cultural resources, and three, provide a wilderness quality recreational experience.

Mr. Chairman, this is not a wilderness area. If it were, the 1964 Wilderness Act would have specifically protected continued grazing. We must ask where in the BLM charter do these stated objectives take precedence over the multiple use such as the continued, well-managed grazing and continued stability of the livestock industry provided for in the Taylor Grazing Act and other Federal laws?

Another serious concern is that now, all these many years after the fact, BLM is threatening to levy agricultural trespass charges against the ranch for corrals that have been on the ranch, land, over 100 years, long before a permit for such facilities was required. Frankly, Mr. Chairman, it looks to me like the BLM may be trying to harass the ranch until they agree to provide public access across private land as their—a condition of this grazing permit. We will let the Committee form your own conclusions on this after reviewing the extended comments which include letters from the BLM to the ranch on these matters.

Thank you, Mr. Chairman and members of this Committee, for your oversight on the BLM on these issues. I appreciate the opportunity to present these comments to you.

[The prepared statement of Mr. Allen Smith follows:]

Mr. HANSEN. Thank you, Mr. Smith.

I hope you folks realize that down the hall from us there's a hearing going on regarding fire as a tool on the public land and Secretary of the Interior Babbitt and Secretary of Agriculture Glickman and a few other heavyweights are down there. So, our Committee, I think, meandered down near the end of the hall. But, most of this will be looked at in great detail.

I'm a little concerned on what each one of you said about things. And Mr. Smith, maybe got this wrong on this Nine Mile Green River EA? You say part—BLM, did they identify wilderness quality experience in justification for livestock inclusion? I mean, BLM—wilderness is abundantly clear that livestock can go in wilderness.

Mr. SMITH. In the EA I read, and I think it is a very—it was the most biased EA. I've read many over the years, Mr. Chairman. This one would have been impossible for a layperson that hadn't studied the EAs to even understand it. But they listed three objectives, three objectives only, for the acquisition of these properties. I fail to see—I'd like to see the original documentation. I don't think that those three objectives that I listed here, in fact, are the true objectives for the acquisition of these 756 acres.

Mr. HANSEN. Now, some of this is private land that you own and some of it is contiguous to public land?

Mr. SMITH. The Nutter Ranch. I don't own it, but it's a neighboring ranch to me.

Mr. HANSEN. I see. That's—

Mr. SMITH. But it was private and it was acquired by the BLM through a mitigation agreement.

Mr. HANSEN. I missed another thing. You mentioned cowbird trapping that took place on your property. What was that about?

Mr. SMITH. Then pardon me? I didn't—

Mr. HANSEN. But that was Mr. Bruton—

Mr. BRUTON. Yes, sir.

Mr. HANSEN. OK, could you respond to that? I kind of—what was—

Mr. BRUTON. OK, we weren't aware of it. In fact, we didn't even know of the 3 years of the studying being conducted on our private land. We had noticed some cages up, but we never seen any personnel around them. We never was able to find anyone. And they were doing the trapping as of last year on our private land.

Mr. HANSEN. Well, did they trespass on your ground?

Mr. BRUTON. Yes, sir, they did.

Mr. HANSEN. What justification did they have for that? Did they ask for your permission to come on the ground?

Mr. BRUTON. No, sir, they did not. They—

Mr. HANSEN. Did you talk to them about it?

Mr. BRUTON. We did talk to them about it. We told them they were in trespass. Actually, to a field trip that was on the grounds with the Fish and Wildlife, Bureau of Reclamation, and the BLM, they showed us the spot where all the nest sites were at. And that was on our private land. We notified them, told them at that time, this is all private property. And they said, "Oh, we're sorry, we might have made a mistake, but we still think we own it."

Mr. HANSEN. Did they leave when you said that?

Mr. BRUTON. No, sir, they did not.

Mr. HANSEN. Well, I guess if they have a warrant, they can come on, or with your permission they can come on. And they had neither one of those, is that right?

Mr. BRUTON. No, sir.

Mr. HANSEN. It's kind of arrogant, I would think. Mr. Smith, have you ever seen where they have increased AUMs in the last, say, 20 years?

Mr. SMITH. Mr. Chairman, I've been very active in Federal land issues since I've been a full time rancher since 1960. To my knowledge, I don't know of one rancher that has ever received their suspended AUMs back. Matter of fact, it's my personal knowledge, the last land use plan that was made for our BLM further stated that any increases that forage may be available will automatically go to wildlife. No, I don't know of any place that has—any rancher that has received their suspended AUMs back.

Mr. HANSEN. Any of the—

Mr. SMITH. It could have happened, but I'm not aware of any.

Mr. HANSEN. Any of the rest of you?

Mr. LOPER. I know of a very few examples, Mr. Chairman, but they're few and far between.

Mr. HANSEN. Now, Mr. Loper, I don't know if I understood what you're saying, but you're talking about intermingling land ownership patterns causing management problems. Explain that a little more, would you?

Mr. LOPER. Yes, sir, and I'd like to show you a map, if I could, please, of part of the area. It graphically shows an extreme example of the problems we face with the intermingled ownership. Even though it's a long ways away, you can probably see it's a checkerboard pattern. As you know, this came about as a result of the railroad situation—

Mr. HANSEN. Typical western thing, though. You look at our western states, it looks like a patchwork quilt. It's like when the President came in and declared the monument in Utah: 1.7 million acres, 200,000 acres that belongs to the State.

Mr. LOPER. Yes, sir, that's the problem we have, of course, is that these lands are unfinished and intermingled and, as a result, when the Bureau of Land Management makes a decision on grazing that, you know, has their policies as a basis for that decision, a lot of our private and state lands don't necessarily want to fully comply with that. They have other high-priority objectives, but we don't

have any choice but to go along. So, basically, we don't have any private and state land rights if we're unfinished and intermingled.

Mr. HANSEN. You also got into something about riparian areas, if I note you right, carrying more BLM grazing allotments and how important they are. Can you elaborate on that just a little bit?

Mr. LOPER. Riparian areas are kind of a critical thing around here and—

Mr. HANSEN. Personally, I think that the worst thing for riparian areas is the Wild Horse and Burro Act, but I won't elaborate on that. They go in there and mess up those areas more than anything there is around. I hope Jim Gibbons introduces his bill and I will promise him a hearing on it immediately, and I would think all these environmentalists should jump right on that one. This is where you and the environmental crowd could all get along, I would think. But, you want to elaborate on that?

Mr. LOPER. Yes, sir, and with respect to wild horses and the excess wildlife numbers, not traditional, but the riparian areas are the areas, of course, that are well-watered all year long and have the most luscious types of forage production. They represent only 1 or 2 percent of the lands in the West. Most of it's arid uplands and most of the arid uplands are owned by the BLM. And a high percent of the riparian areas are owned by private individuals or, in some cases, state lands. And most of those lands, riparian areas, are unfinished, intermingled within the BLM allotment. So, ranchers that own these riparian areas are more than happy to share the forage that they own on riparian habitat with wild horses and wildlife, so long as they feel like they're receiving fair and equitable treatment from the BLM. But, it's getting less and less of an ability to get along with the Federal agencies as a result of the policies that have evolved over the last 2 or 3 years. They're just getting hard to get along with.

Mr. HANSEN. Well, Mr. Sharpe, I hope you're taking notes on all this.

Mr. Smith, you want an additional statement?

Mr. ALLEN SMITH. I would like to just make a comment. It's coming secondhand to me by Jim Ecker, who represented the Utah Cattlemen's Association on our riparian committee in the State of Utah. He once made the comment to me and I think it—I put it in my mind. I think it's very apropos at this time. But he said, in the West, much of the riparian areas are owned by the private landowners, the ranchers, the farmers. But us public land users out there, us that use the BLMs and the forest, sometimes the decision by the Federal land managers putting us off of the uplands in the forest in the BLMs earlier or in other times puts a severe amount of pressure back on the riparian areas. And so, in effect, their decisions, by sending home a lot of the permittees early, in many cases it's putting an additional riparian stress down on those private riparian areas.

Mr. HANSEN. You notice on the back wall lights are flashing on again. A couple other questions I have, I'll just submit them in writing; hope you folks would respond to them. Appreciate that.

[The information referred to may be found at end of hearing.]

Mr. HANSEN. Thanks for this panel. Let me get the next panel on, the last panel, if we could. We're going to run out of time and

I'm embarrassed that we've played musical chairs with you folks like we have.

Steven Moyer, Director of Governmental Affairs, Trout Unlimited, and Frances A. Hunt, Director of BLM Programs, the Wilderness Society. If you folks would come up, we'd appreciate it. We appreciate you being with us and apologize to you, as we have the others, for keeping you here this long. This is a relatively short hearing that turned into a long one, and I said, I can't control the floor.

Mr. Moyer, I appreciate you being here and we'll turn the time to you, sir.

STATEMENT OF STEVEN MOYER, DIRECTOR OF GOVERNMENT AFFAIRS, TROUT UNLIMITED

Mr. MOYER. Thank you. I think you should get credit for being involved in the debate that's happening today. We just have to sit here and wait for you to come back. Our job is easier, I believe.

I'm Steve Moyer. I'm the Director of Government Affairs for Trout Unlimited. Trout Unlimited is a national fisheries conservation group dedicated to the conservation and restoration of our Nation's trout and salmon resources, and the watersheds that sustain those resources. We have about 98,000 members in 445 chapters in 38 states.

Our members have a major stake in land management decisions that affect resources on our public rangelands because trout and salmon are often found there, as well. Our members generally are trout and salmon fishermen and women who voluntarily contribute a lot of time and energy into protection and restoration of streams and rivers around the country, including those on our public rangelands. Many TU members fish on streams and BLM lands and numerous TU chapters work directly with the BLM. We have a partnership agreement with them to conduct stream restoration projects on streams on BLM lands. So I'll comment today from our experience with working with the Forest Service and BLM on rangeland and grazing management, and our experiences with working with ranchers directly on cooperative projects where we manage—help them manage—their rangelands that help them and also help the fish.

Grazing can be compatible with healthy rangelands and riparian zones and fisheries, if it's managed properly. And like I've said, we've had first-hand experience of working with ranchers to do that. We've worked with ranchers from Mossy Creek, Virginia, to the Blackfoot River in Montana, to the Crooked River in Oregon to protect and restore riparian areas that are grazed.

But also, clearly, if not managed properly, overgrazing can destroy riparian areas and fish habitats, associated sport fisheries which are sometimes extremely valuable, and lower range productivity. The Forest Service and BLM manage about 270 million acres of rangelands and on those lands we see substantial economic value coming to communities from fisheries that can be affected by rangelands. On Forest Service rangelands, for example, a substantial portion of about \$1.8 billion worth of expenditures from fishing is sustained by the fisheries that come from rangelands. But, loss of riparian habitat and widening of streams, raising of tempera-

tures, can diminish the productivity of streams for trout and salmon.

And a paper that was done by the American Fishery Society, the professional society of the fisheries biologists of this country, in 1994, found that about 50 percent of western rangeland streams were damaged, at least to some degree, by grazing. Overgrazing has been a factor, sometimes not the largest factor, but a factor in just about all the endangered trout and salmon species that have occurred in the country. There are now 18 species of trout and salmon that are listed as threatened or endangered, including extremely valuable fisheries, like steelhead, which are now listed as threatened from the Canadian border in central Washington through Idaho and all the way down to Los Angeles. So, we have widespread problems with grazing affecting fisheries. Sometimes it's not the biggest problem that affect fish, but it—it often is a problem.

And, for those reasons, we think that there has to be change that occurs in Federal grazing management practices. It's a big job, but we think that ranchers, conservationists, and the agencies can be up to the task. We're hopeful about it, and one of the reasons we're hopeful about it is because we see some positive developments that are occurring, one of which is the Resource Conservation Council that had been put into effect by BLM. TU members are all RACs in several states, in several places, and they report to us that those RACs are making headway in bringing people together to find solutions to difficult problems and to work on the standards and guidelines that will guide grazing. I think that's one very important example of important improvements that are occurring that should not be undercut by Federal legislation that's now pending before Congress.

There are other positive developments as well. I listed some of those in my testimony, but one of the most important things that I think hasn't really been discussed here but we keep talking around it is the need to get more funding to the agencies to do things, like monitoring and management. It seems like we're all agreeing that monitoring could be better, that management could be better. It seems to me that we ought to figure out how much money that costs and how to get that money to pay for either the agencies or consultants, like the one that's here at this hearing, to do the work that would make us all happier.

And we would like to work with Congress and the agencies to get them to figure out how much more money is needed to get the people out on the ground to do a better job, rather than passing legislation, such as pending before the Committee, that we think would undercut the progress that we think is occurring.

So, with that, I'll end my testimony and again, thank you very much for the opportunity to testify.

[The prepared statement of Mr. Moyer may be found at end of hearing.]

Mr. HANSEN. Thank you, Mr. Moyer. We appreciate your testimony.

Frances Hunt, we'll turn the time to you.

**STATEMENT OF FRANCES HUNT, DIRECTOR, BLM PROGRAMS,
THE WILDERNESS SOCIETY**

Ms. HUNT. Thank you, Mr. Chairman. In the interest of time, I'm going to focus on four key concepts affecting range management today. But, before I begin, I'll note that there are several attachments to my statement, and one of those is an open letter to Representative Bob Smith signed by over 100 national, regional, and local wildlife and fish, conservation, fiscal, and environmental groups.

The first of the points—four points—I'll make today is this, and that is, that we must never forget that our public rangelands do, indeed, belong to all Americans and that no one group or interest has the right to use these lands in such a way as to impair their productivity or to deny other legitimate range uses and benefits. Now, grazing is absolutely one of many appropriate uses of the public lands, but private ranchers do not have an absolute right to graze the public's land, and private ranching operations on our Federal lands cannot be allowed to degrade fish, wildlife, water, recreation, or other public values. This longstanding distinction between rights and privileges is clearly delineated in the Taylor Grazing Act, and I've attached that section of the Taylor Grazing Act to my statement.

The second important concept to remember is that, because the Federal rangelands belong to all Americans and because they should be managed for the greatest benefit of all American citizens, it is completely appropriate that these lands be managed to a very strict standard of resource conservation. Private livestock operators who choose to seek to graze livestock on Federal lands must expect that they're going to be required to operate their activities so as to safeguard the public's resources. And they shouldn't necessarily expect that the land management practices that they use on the private lands or state lands that they own or lease are going to be adequate or appropriate for the protection of the valuable and diverse Federal resources that Federal rangelands contain.

Third, it's unfortunately clear from a review of both BLM and Forest Service data that our Nation's rangelands are not currently in a very good condition. Although in certain areas of the western United States Federal land grazing is, indeed, well-managed and is managed with limited negative environmental impacts, too often, still, and in too many places, still, livestock grazing permitted by the Federal agencies is having serious negative environmental impacts: damage to fisheries, damage to water resources, damage to recreational opportunities. And, of course, the sad irony of this situation is that resource damage harms both the ranchers and the rest of the American public, who seek to use, enjoy, and benefit from these lands.

The final point I'm going to make today is related, again, to resource conditions. An examination of these resource conditions, and BLM and Forest Service policies and activities and funding levels all clearly indicate that the agencies need to do a much better job of monitoring, managing and protecting our public rangelands.

I have three charts attached to my testimony, Mr. Chairman.

This is a chart put together with BLM data. It depicts current rangeland conditions, current as of 1996. The first bar here is the

total Federal acreage of rangelands managed by the BLM for grazing, some 156 million acres. The two bars that come next depict that amount of acreage that is in excellent and good condition. The two bars following that, the red bars, show the amount of rangeland that's considered by the agencies to be in fair or poor condition. And the final red bar is an unclassified or an unknown. And one thing you see, unfortunately, immediately when you look at this chart is that we have far more of our Federal rangelands in poor condition than are in excellent, and more that are in fair than are in good. In fact, over 50 percent of the BLM-managed public rangelands are considered to be in, to varying degrees, a damaged condition.

Now that data paints a troubling picture but, if you look at EPA and GAO reports, you'll see that that data probably underestimates the data—excuse me, underestimates the damage because it is for all rangelands and, in fact, our riparian areas, our streams, our rivers, the very areas that provide the fish and wildlife habitat so important are actually in even worse condition.

I'll finish my testimony with one chart that quickly shows BLM monitoring activities. Unfortunately, as we have heard several times today, in many ways and in many places, the BLM has too few resources, too few people, and too little ability to get out and do the kind of on-the-ground job that needs to be done. That's spend the time on the ground, and spend the time with the rancher. If someone had testified to the number of acres that an average range con. has to manage, I think we'd all be astounded. It's not a job I would take willingly a this point.

But this is this chart summarized 1996 monitoring activity by the agency. Again, this is the total acreage or total number of allotments, a little over 21,000, 22,000 on BLM land. They were only able to get out on about 4,000 of them. And there are a lot of acres that they never get to and the result is not only that resource conditions may suffer but confusion and a lack of information between the agency and the ranchers and the agency and the public. And we think that one of the reasons our rangelands continue to be in poor conditions are because the agency just is not able for a number of reasons to get out there and do the monitoring job they should do. Thank you, Mr. Chairman.

[The prepared statement of Ms. Hunt may be found at end of hearing.]

Mr. HANSEN. Thank you. I appreciate the testimony of both of you. I have a number of questions for you, but I also have a clock ticking on me up there. And I've got about 4 minutes to get to the floor and do something. So, could I submit those questions, not only to the present panel, but to others that were here? This is something we want to ponder, go over, examine the testimony, work on a few things, get a little more information from BLM, maybe the Forest Service and others regarding grazing.

[The information referred to may be found at end of hearing.]

Mr. HANSEN. So, with that, let me thank each and every witness for being here and, gee, I appreciate your patience. It's a terrible thing when we're running in and out this way. Believe me, they used to say two things you don't want to see made: One is sausage and one is laws, and I can understand that. And today we're com-

peting with some heavyweights down the block, but let me thank you for coming here to Washington, taking the time to give us your excellent testimony, and we will look at it. We do expect to be able to correspond with you on various areas.

With that, this hearing is adjourned.

[Whereupon, at 1:30 p.m., the Subcommittee was adjourned subject to the call of the Chair.]

[Additional material submitted for the record follows.]

STATEMENT OF JEFF MENGES, CHAIRMAN, FEDERAL LANDS COMMITTEE, NATIONAL
CATTLEMEN'S BEEF ASSOCIATION

Thank you Mr. Chairman, my name is Jeff Menges. I am the Chairman of the Federal Lands Committee for the National Cattlemen's Beef Association.

My family and I currently have two BLM allotments in Arizona and one in New Mexico. Although it is too soon to determine the impacts of Secretary Babbitt's Rangeland Reform grazing regulations, I have found the BLM to be a reasonable agency to deal with. However it is becoming increasingly difficult to ranch profitably on the public lands. Today, I would like to articulate some of the problems public land ranchers face and offer some possible solutions for these problems to this Subcommittee.

Implementation of the Endangered Species Act by the United States Fish and Wildlife Service is one area of major concern. We do not need two agencies duplicating administrative actions for the same purpose on the public lands. To draft a Biological Opinion for BLM lands, the BLM biologists must first draft a Biological Evaluation which is then reviewed and rewritten by USFWS biologists as a draft Biological Opinion. Consultation between the agencies then occurs and the result is a Final Biological Opinion. On Federal land this is simply multiple layers of government working to accomplish the same result: protect and recover endangered plants and animals. These responsibilities could and should be administered by the land management agencies only. This would solve financial and administrative problems for both agencies. It would also allow more timely, achievable decisions so the land management agencies and the multiple users can function efficiently.

Secretary Babbitt's grazing regulations required development of Grazing Standards and Guidelines (S&G's). These S&G's in turn were required to address "restoring, maintaining, or enhancing habitats" of endangered species. Arizona's S&G's were developed with input from the Resource Advisory Council (a group on which I served) and signed by the Secretary of Interior. However in the Draft Biological Opinion developed by the USFWS for livestock grazing administered by the BLM Safford and Tucson Field offices in southeast Arizona, implementation of the S&G's will be overridden by the mandatory terms and conditions in the Biological Opinion. Our Smuggler Peak allotment is just one example.

Since implementation of a winter grazing program on the Gila River pasture on the allotment in 1990, the riparian area in the pasture has been determined to be in proper functioning condition, the highest category. This area will easily meet all requirements of the S&G's. However, implementation of the terms and conditions in the Draft Biological Opinion will require complete removal of cattle from the river riparian area on my allotment and on 11 additional allotments to maintain habitat features necessary to support breeding populations of pygmy owls. It further requires suspension of grazing on nine allotments, again to avoid habitat modification for pygmy owls. Pygmy owls do not exist on any of these 21 allotments; it is not occupied habitat, nor has it been designated as critical habitat for pygmy owls, yet modification of this **potential habitat** for pygmy owls will be considered "take."

The USFWS takes this position even when Section 2 of the Endangered Species Act defines "take" as meaning "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct." Also, in a recent decision, the United States Supreme Court stated:

in the context of the ESA, that definition naturally encompasses habitat modification that results in actual death or injury to members of an endangered species.

Babbitt v. Sweet Home Chap. Of Communities for a Greater Oregon, 132 L. Ed. 2d 597, 610 (1995).

Even with this seemingly clear direction, the USFWS continues to determine that a modification of potential habitat is a taking of an endangered species. The resulting effect to the 21 permittees will be financially devastating as well as being contradictory to the S&G's which were approved by the Secretary of the Interior.

It is difficult to imagine any area that could not be considered potential habitat for some species that is either listed or may be listed as endangered. The USFWS needs more avenues for local input. Expanding BLM Resource Advisory Councils to include recommendations to the USFWS should be considered.

The S&G's require allotment evaluations. This will require accurate data to be gathered from monitoring. In recent years monitoring has been a low priority item that has not withstood the budget cutting process. We believe that vegetation monitoring is very important and should be a high priority for the BLM. We recommend making vegetation monitoring a line item so that monies appropriated for this purpose will have to be spent accordingly. An annual monitoring report should follow.

Another major area of concern is the lack of accountability by State wildlife agencies for the impacts their actions have on Federal lands. Using BLM's own numbers, the number of elk on public lands (excluding Alaska) have increased from 18,278 in 1960, to 142,870 in 1988, to 201,904 in 1996—this is over a 1,000 percent in the past 36 years. There are also substantial increases for antelope, deer, bighorn sheep, and moose. For the elk population, much of this increase can be attributed to livestock management and livestock industry-initiated programs like the screwworm eradication effort, which have benefited wildlife as well as livestock. The result of all these additional grazing wildlife has been resource degradation and reduction in available AUM's for livestock, without compensation to permittees who pay for use of the forage. Again, accurate vegetation monitoring is needed to accumulate data needed to address this problem.

Some states provide depredation permits to compensate ranchers for loss of forage. We would support expanding that system to include other lands. A process emphasizing local input need established whereby wildlife population and management can be incorporated into management of Federal lands. My suggestion is that State wildlife agencies should:

1. Enter into MOU's with Federal agencies regarding resource outcomes. Local experts should be involved in determining the outcomes. Participation with RAC's should be encouraged.
2. Be held to strict levels of accountability, as Federal grazing permittees are, for range condition and trend, to the extent that their actions or inactions impede the meeting of desired outcomes.
3. Be held accountable for mitigating damage done to permittees, either in terms of private values diminished by some action or inaction, or by the penalties imposed on permittees for failure to abide by his or her permit terms and conditions as result of State wildlife agencies' action or inaction. Available options might include:

- A. Temporary issuance of "permitted" hunting permits for a special hunting period to correct adverse wildlife impacts and compensate permittee for economic loss;
- B. Issuance of permittee owned hunting permits on an annual basis to compensate permittee for economic loss.
- C. Payments by State wildlife agencies to permittees for economic loss.

Some ways to achieve compliance from State wildlife agencies might include:

1. Suspension of some portion of transfer payments from Federal to state governments (particularly those payments that go directly to State wildlife agencies).
2. Make availability of Federal funds to State wildlife agencies contingent on compliance.

Thank you for the opportunity to speak with you today. I look forward to working with your Subcommittee to make improvements with respect to these issues.

STATEMENT OF BRENT ATKIN, PRESIDENT, PUBLIC LANDS COUNCIL

Thank you, Mr. Chairman, for the chance to testify today. I would like to talk today about some of the issues facing Federal lands ranchers with BLM allotments today that have arisen as a result of agency application of the Clean Water Act, the Clean Air Act, and the National Historic Preservation Act. These laws were well intentioned by Congress when they were passed and have no-doubt solved many problems that gave rise to them in the first place. However, over time, as is the case with many laws, regulatory agencies have converted the mandates from these laws into some rather heavy regulatory burdens in situations where Congress never imagined that these laws would be used.

Earlier this year when grazing legislation was being considered by this Subcommittee, I had the opportunity to be out here with my son T.J.—you may remember that, Mr. Chairman. One day when we were in your office talking with you, T.J., who was 10 years old at the time, asked you, "Congressman Hansen, what is the future of grazing livestock on public lands?" Your answer was "I don't know." This is instability.

As a rancher and as a father, I would like to be able to tell my sons that they will be able to continue our family's tradition of ranching, and feel good about it. As things are, I don't feel good about it, because I don't know if it's true. My family has been ranching for six generations. We have taken good care of the land, and in return it has given us the ability to make a living doing what we love to do: ranching. It is really hard for me to remain optimistic about the future of my fam-

ily's ranch today. Some days I even wonder who in their right mind would ever want their children to ranch on Federal lands. This is really a shame because, regardless of the distorted half-truths and outright lies about the effects of grazing on public lands that some interest groups continue to propound, ranchers really are stewards of the land. They have no choice: abusing the resource only hurts their ability to make a living from it.

In my 25 years of dealing with the Bureau of Land Management, I am finding that more and more frequently, land management decisions are being made based on factors not at all related to sound land management practices that are being caused by the application of other laws.

Right now, western livestock producers everywhere are anxiously awaiting the appellate decision in a 1996 court case called *Oregon Natural Desert Association v. Chief Jack Ward Thomas*, better known as the Camp Creek case. In that case, an Oregon Federal District Court judge held that pollution caused by cattle grazing constitutes a "discharge into navigable waters" under section 401 of the Clean Water Act, and therefore the Forest Service was required to get a State certification before issuing a grazing permit.

For a while, no one was sure if the government was even going to appeal the original decision. EPA did not want to appeal, the Forest Service did want to, and fortunately the Solicitor General sided with the Forest Service. Now, however, the case is being considered by the 9th Circuit. If the 9th Circuit upholds the original decision, this will mean, in essence, that livestock grazing is equivalent to a water treatment plant for purposes of section 401. It would also mean that the Environmental Protection Agency would become yet another partner agency with BLM to "help" manage livestock grazing. This is instability.

Likewise, the Clean Air Act is having adverse effects on proper land management. In some instances, burning of rangeland is necessary for proper management of some types of grasses and shrubs. In many areas this burning has not occurred for several decades, and now that the Department of the Interior and the U.S. Forest Service have adopted policies to improve the approval process for prescribed burns, the Environmental Protection Agency is limiting these necessary management activities, citing Clean Air Concerns. With the President recently announcing new particulate matter regulations, I can only guess that prescribed burning will become a thing of the past at some point. When that happens, the range condition in areas where burning is appropriate will deteriorate, which will lead to reductions in AUM's available for grazing. This is instability.

Finally, I want to touch on how the National Historic Preservation Act creates instability. As I understand it, this Act is basically being implemented on public lands through Memoranda of Agreement between the States and BLM or the Forest Service. But, there are some inconsistencies between these agreements, which results in ranchers in different states being subjected to different standards, even though it is still Federal land. In Montana, for instance, areas that have been grazed for the past 100 years really aren't being adversely affected by archaeological restrictions. This seems to be based on common sense: if an archaeological site has been subjected to grazing for the past 100 years, any damage that could have been done, has been done, and it doesn't make any sense to put restrictions on it now. In California, however, the MOU is resulting in restrictions on areas containing "lithic scatter" (basically pieces of stones leftover from making arrowheads), even though these areas have also been grazed for many, many years. Having different standards on Federal lands in different states does not add to stability.

Considered one at a time, most of the negative effects from the laws that I have described today could probably be manageable. However, these negative impacts are cumulative: by the time a rancher is facing requirements from 3, 4, 5, or 6 different statutes, his ability to graze livestock on Federal land is uncertain at best. The only thing that is certain is that he will spend more time trying to comply with regulatory requirements than he will spend actually ranching. This same situation is also faced by BLM: agency employees spend more time consulting with other agencies on how to administer those agencies' laws and dealing with paperwork or appeals than they do actually doing the on-the-ground monitoring to safeguard the resource.

I know that it is unrealistic to think that these laws will ever be quickly changed to alleviate our problems. However, because most of the problems caused by these laws today are because of how the agencies are administering them, I don't think it would be unreasonable at all for the agencies to at least be able to work together in a manner that would allow both BLM and ranchers to do our jobs, rather than fill out papers and go to meetings. If the goal of BLM and ranchers is to protect, preserve, and improve the resource, which I think it is, then this kind of change is certainly needed.

Once again, thank you for the opportunity to appear here today.

STATEMENT OF WESLEY NEIL BRUTON, SAN ANTONIO, NEW MEXICO

Chairman Hansen and members of the Committee, first let me thank you for the opportunity to speak before you today. My name is Wesley Neil Bruton and I am from San Antonio, New Mexico, where I live with my wife, daughter and son. We are part of a family agricultural operation that has been in Central New Mexico since 1880 when my great grandfather moved there from South Texas.

With my parents, we ranch and farm on private, state and Federal lands. In the West, you acquire land and the public permits that go with it, by inheriting it or purchasing it. As a family, we built the operation purchasing private land along with state and Federal leases. I am proud that my father is here with me today. It is our intention to pass what we have on to my daughter, Brittany, who turns 12 today, and Wesley, who is 4.

We earn everything we have. We do not have Federal insurance or retirement plans. We do not get paid vacations. We pay our taxes and we've never been on welfare.

Our operation includes Bureau of Land Management (BLM) land as well as Bureau of Reclamation lands that are administered by the BLM. In many cases, these lands are co-mingled with state and/or private property, with no fencing.

Frankly, Dad and I would rather be home today, doing what we think we do best, caring for our animals and our land. Actions of the Federal Government have made that impossible.

We have heard the stories about how the government, our government, is taking away citizens rights. We thought those things happened to other people. We were wrong and we should have known better. It has happened to the family before.

The Federal Government took land from my grandparents back in 1941 for White Sands Missile Range. At that time, it was patriotism that was the standard bearer for land grabs. We are a patriotic people. My father served in the Korean conflict and we do believe in fighting for what is ours and what is right.

We are here today to tell you about what the Federal Government has done to us in 1997 in the name of a bird. We learned this spring that Federal employees or folks contracted by the Federal Government trespassed on our PRIVATE land in search of endangered species, specifically the Southwestern Willow Flycatcher.

They then used the information they obtained while trespassing on our land, our private land, to remove us from one of our Federal land leases. In that area, we run 175 mother cows. The spring and summer of the year is when the forage is at its best, and it is also the time when most of the cows are calving, lactating and breeding back.

Based on the information gained through illegal entry, the Federal Government issued a decision to eliminate grazing in the area for three-and-a-half months during the prime portion of the year. That was bad enough.

However, the decision was a "full force and effect" decision which requires IMMEDIATE compliance. That immediate compliance in our case was six (6) days. We had only 6 days to remove 175 cows, along with many calves of varying ages and sizes. The river was high and flooding and the brush was all in full foliage, making it impossible to use horses or any other method of gathering the cattle. We had to go in on foot and in small boats. We ended up hauling one heavily pregnant cow out in a boat.

We generally gather this area in the fall, when there is little foliage and bait the cattle out with feed. Then it usually takes us 3 to 4 months to get the job done.

In addition to getting the cattle out of the river bottom, we had to find other pasture for them. That was no easy chore and was extremely expensive because most of our area was just recovering from a drought. The pasture we found was over 150 miles away. In all we spent more than \$32,000 in additional pasture rent, labor and trucking to move the animals.

If we had not complied with the removal order within the 6 days allotted, we would have been guilty of willful trespass on Federal property which could have resulted in the impoundment of our cattle as well as large fines. In addition, all of our other permits on Federal lands would have been in jeopardy.

With a full force and effect decision, any appeal, which must initially be done through the administrative process, cannot take place until after compliance with the order. We did try to use the courts to at least get more time to remove the cattle. However, with only 6 days to comply, by the time we got a lawyer hired and the proper paperwork filed, the time was up.

We were denied the stay near the end of July, better than 90 days after we had to remove the cattle. We have filed an appeal administratively, and have yet to hear anything about it.

The driving force behind this nightmare is the Endangered Species Act which caused the U.S. Fish & Wildlife Service to issue a notice to the Bureau of Reclamation that grazing could result in a "take" of the Southwestern Willow Flycatcher. A "take" of an endangered species can result in criminal action as well as stiff fines.

The Southwestern Willow Flycatcher is a bird listed in March 1997. It is a subspecies that can only be identified by the way it sings. If you haven't heard one, you won't know one.

It amazes me that Federal employees can identify such a creature by sound alone, but they do not have the ability to identify property lines between Federal and private land on a map.

Since this mess has started, we learned that inventories were done on our PRIVATE land in 1994, 1995 and 1996 for the Southwestern Willow Flycatcher. In 1996, cowbirds were also trapped on our private land without our knowledge or permission. The primary concern with grazing in areas where there may be willow flycatchers is the cowbird. It is believed, but not scientifically proven, that cows attract cowbirds. The cowbird is also present where there are several other forms of livestock.

In any event, we are told that cowbirds lay their eggs in flycatcher nests. The flycatchers then end up raising baby cowbirds instead of their own. There is also some concern that cattle knock down nests, but most of the low nests are over the water and our cows, at least, are not big swimmers.

The last 5 months have been a nightmare that I would not have believed could have happened to me or anyone else in this United States. And, it appears that it has only just begun. We have been unable to get any commitment from the Bureau of Reclamation about our future in utilizing the grazing land. There is a land use plan in the works, but grazing has yet to be addressed.

At the present time there is no stability in our agricultural operation. We don't know where or if we will be able to use the land we have paid to use and have maintained for years. Our private land now has no resale value. Who in their right mind would want to get involved in this mess?

We were allowed to go back on the area with the cattle on August 1, 1997, but we do not know when we will be forced to remove them again. We have been told that we will be allowed additional AUMs this winter to make up for those lost. But, our livestock are unable to benefit from the prime nutritional value in the forage that was there in the spring and summer because we were forced to remove them. And, you cannot make up for the nutritional value lost to the cattle at a critical time in their life cycle.

We want to leave this ranch to our children, but who would wish such a thing on their kids?

I know you are here today to discuss the reduction of use on BLM lands. From my perspective, until and unless the Endangered Species Act is modified, future use of BLM lands will continue to be a target of the Fish & Wildlife Service and citizens like my family and I are in serious trouble.

There is no avenue in the Endangered Species Act for individuals to have any meaningful input. Science means nothing. Economic impact means nothing. Custom and culture mean nothing. The Fish & Wildlife Service is a kingdom of its own and is a predator to Federal funding. Other Federal agencies are being forced to spend millions on endangered species consultation and assessment. There are no checks and balances.

Private citizens like us cannot constantly patrol their property to keep Federal intruders from trespassing. And few of us have the money to hire lawyers to protect our rights. That's why we elected folks like you.

In 3 years of Federal research, we were never once contacted about the presence of the willow flycatcher on our property. Our local government was never consulted and there has never been any economic or cultural analysis done on the area in relation to this issue.

Common sense indicates that this would have been an ideal year to study the true affects of grazing on the willow flycatcher. The Fish & Wildlife Service was trapping cowbirds, we had out-of-bank flooding on the river, and the cows were happy. Instead, we were put through hell. Not only have we been put through a great deal of personal stress and expense, but our own tax dollars have been paying for the oppression upon us.

I thank you again for your time and consideration. My family certainly hopes and prays that you folks here in Washington can see what is being done to those of us in the country before too many more of us are put out of business.

Testimony of Maitland Sharpe
Assistant Director, Renewable Resources and Planning
Bureau of Land Management
Before the Subcommittee on National Parks and Public Lands of the House Resources Committee
Oversight of the Bureau of Land Management's
Range Management Program
September 30, 1997

Mr. Chairman, members of the Subcommittee, I appreciate the opportunity to come before you today to discuss the Bureau of Land Management's (BLM) range management program. I wish to address some of the concerns that the Committee has raised concerning possible reductions in authorized grazing on BLM-managed public lands.

Let me begin with a brief overview of the BLM's grazing program. The Department of the Interior has a long history of managing livestock grazing on the public lands. In response to widespread overgrazing and environmental degradation on public lands in the West, Congress passed the Taylor Grazing Act in 1934 to regulate the occupancy and use of the public land, preserve the land from destruction or unnecessary injury, and to provide for its orderly use, improvement, and development. For over sixty years, we have worked with permittees, lessees and interested members of the public to develop partnerships to achieve these goals. A great deal of progress has been made. We look forward to continuing to work with all these parties to achieve additional improvement in the health of the public rangelands and to sustain the health of the livestock industry.

In 1995, the BLM finalized important revisions to its grazing regulations. Among other things, the revisions sought to provide tools to achieve consensus among public land users on how to best achieve and maintain healthy public rangelands. A very important success story in achieving that consensus has been the invaluable guidance provided by the Resource Advisory Councils (RAC) to BLM managers. The role of the RACs is to provide advice and local perspectives to BLM. The RAC members must reside in the State within the Council's geographic jurisdiction. Each RAC may focus on the full array of multiple-use issues associated with public lands within its area of jurisdiction. In terms of grazing management, the RACs have been instrumental in the preparation of State or regional standards and guidelines for assuring healthy rangelands.

The BLM and the RACs--in close consultation with permittees, lessees, and interested members of the public--have completed standards and guidelines for most western States. The standards and guidelines are designed to provide specific measures of rangeland health and to identify best management practices in keeping with the characteristics of a State or region, such as climate and vegetation types. The standards and guidelines provide a consensus view of how to maintain and seek additional improvement in the health of the public rangelands. The BLM is very grateful to

the many RAC members, permittees, lessees, and interested members of the public who devoted many hours to making the standards and guidelines a success.

Mr. Chairman, the invitation letter for this hearing indicated the subcommittee's interest in grazing reductions on BLM-managed public lands. Twenty years ago, the BLM authorized approximately 10.8 million Animal Unit Months (AUMs) of forage use to approximately 20,600 lessees or permittees. In 1991 that figure had decreased to slightly over 9.6 million AUMs to 19,482 lessees or permittees and by 1996 that number was up to about 9.75 million AUMs and 18,800 lessees or permittees. I have attached a chart to my testimony that shows a year-by-year breakout of this information from 1977 to the present.

A review of our grazing records reveals that overall restrictions having significant negative impacts on livestock operations are the exception. Terms and conditions for grazing livestock on an allotment are designed, wherever possible, to strike a balance between public expectations of rapid improvements to resource conditions and the needs of permittees to have access to adequate amounts of forage.

There have been site-specific reductions or restrictions that have been put in place to better manage rangeland resources. The BLM is required to protect the public lands from degradation and seek to improve the condition of the range, while managing these lands for a full range of uses.

There is no one single reason for the gradual reductions in AUMs that has occurred during the past 20 years. The reasons are many, including land lost to grazing through exchange or disposal of lands; reductions for diminished forage supply; adjustments for riparian area improvement (usually temporary); and reductions in order to protect threatened or endangered species. Also, there are fluctuations of a temporary nature due to drought or wildfire emergencies.

Let me give you a couple of examples. Between 1991 and 1997, the BLM in Nevada completed a series of land exchanges to restore threatened Lahontan cutthroat trout habitat in order to implement the Marys River Riparian/Aquatic Habitat Management Plan and the Recovery Plan for this species. Through these exchanges the BLM was able to acquire 79 miles of stream, 10,635 acres of wet meadows, marshes, and riparian habitat, and 60 miles of public access. In this series of land exchanges, 62,897 acres of public land was transferred to private entities, primarily livestock permittees, local ranchers, and mining operators. As a result, public land grazing use in Nevada was reduced by 14,977 AUMs. In many cases grazing continued on these former public lands. However, because these lands are no longer in public ownership a reduction in AUMs in Nevada is reflected in our records.

Another example of how land exchanges can affect the available number of AUMs can be found in the recent Delaware and Rio Bonito Land Exchanges in southeastern New Mexico. Through this exchange BLM acquired important habitat along the Delaware and Rio Bonito Rivers that contains important biological resources and offers enhanced public-access opportunities. As a

result of the exchange, about 20,000 AUMs went into private ownership and so no longer are counted as AUMs on public land in New Mexico.

An example of AUM reductions in order to protect the habitat of endangered species is the BLM's management actions to protect the threatened Desert Tortoise in 1992. The BLM had to reduce seasonal grazing on a number of allotments in Northern Arizona, Southern Utah, Southern Nevada, and Eastern California because it was determined that livestock grazing had adverse impacts on Desert Tortoises during certain seasons. We would be poor stewards of the public's lands if we failed to ensure that the BLM authorized actions were consistent with conserving important biological features of the American West such as the Desert tortoise.

The BLM has made adjustments in some allotments where weed encroachment has reduced the forage supply. Approximately 8.5 million acres of BLM-managed public lands suffer from the invasion of noxious, or exotic plants and weeds. These weeds continue to spread at a rate of more than 2,000 acres a day. These weeds have little value to livestock and contribute to the loss of forage availability.

Additionally, there are occasional, but rare, reductions taken for willful, repeated violations of rules or terms and conditions of permits. Over the past five years, the BLM has had to impose such reductions against about 46 operators. These 46 cases represent approximately two-tenths of 1% (.2%) of our total operators. Most of our operators are good stewards of the land and care greatly about the health of the land.

In addition to make reductions where necessary, the BLM does restore to active use or increase AUMs as conditions allow. Between 1992 and 1996 about 140 operators received increases totaling approximately 43,800 AUMs.

In close consultation with permittees, lessees and interested members of the public, we will continue to strive to meet public expectations of improving the health of the public rangelands, and continue to work to foster a healthy public land livestock industry. Livestock grazing remains a central component of multiple use management and the BLM is working to achieve a program that has broad public support. One way to encourage public support is to provide a mechanism for meaningful public participation. Meaningful participation not only permits ranchers to hear the views of others, but it also helps non-ranchers better understand ranchers and the benefits they bring, such as open space—an issue that increasingly resonates throughout the West with people of almost all backgrounds. Through the RACs and public-participation provisions of the 1995 regulations, more BLM stakeholders are participating in the process and learning our programs and responsibilities. We strongly prefer upfront participation to paralyzing lawsuits and injunctions. Only with significant public participation and support can we achieve the stability that public-land ranchers want and deserve.

To ensure that the 1995 regulations did not create unintended effects, we will be performing a review of how the regulations are being implemented and what their impact has been. The

purpose of the review is to gather information about the effectiveness of the regulations, including a review of the program's costs and benefits, an assessment of the extent to which the regulations and goals are being accomplished, and a measurement of the consistency of their application. The information will be used to identify existing or potential problems and inefficiencies and aid in the search for effective and innovative solutions. The review will occur this winter with a scheduled completion date of late spring.

We will also continue to make use of the tools that the National Environmental Policy Act (NEPA) provides us. NEPA has greatly facilitated our dialogue with the public and coordination with Federal, State, and local agencies. This dialogue and coordination has led to better cooperation in seeking to reach our common goals of good range management.

The fears held by some in the West concerning the 1995 regulatory revisions have not come true. Instead, ranchers, environmentalists and other interests are sitting around tables talking and making progress on specific, local issues, rather than shouting at each other. Many environmentalists and ranchers are realizing that they have a lot more in common than they originally thought. All of us want better wildlife habitat, improved water quality, open space, and healthy rural economies. Ranchers and environmentalists learned this by talking and working together on a wide variety of issues. Consensus and cooperation, I believe, are the future of public land management--not protests, appeals and lawsuits.

The bottom line is that the Bureau's grazing management program is working. People are sitting down together, at State and local levels, to find shared solutions to real problems. Diverse interests are forging a shared vision of what the public rangelands should look like and produce and they are finding ways to put old conflicts aside. The result will be healthier, more productive rangelands and a more stable future for the public land livestock industry. Does this mean that all issues between permittees, environmentalists and the BLM have been resolved? Of course not. But by and large collaboration rather than confrontation is becoming the order of the day.

We at the BLM appreciate the Committee's interest in the BLM's range management program. I would be happy to answer any questions.

HISTORY OF GRAZING USE ON BLM-MANAGED PUBLIC LANDS

Year	AUMs*	Permittees/Lessee**
1977	10,813,000	20,600
1978	11,716,000	21,600
1979	10,720,000	20,200
1980	10,308,000	20,200
1981	10,483,000	19,900
1982	10,657,000	20,800
1983	10,336,000	20,600
1984	11,067,000	20,600
1985	11,218,000	20,000
1986	10,447,000	19,600
1987	11,178,000	19,500
1988	10,099,000	19,700
1989	11,043,000	19,600
1990	10,845,000	19,200
1991	9,602,000	19,400
1992	10,088,000	19,100
1993	9,758,000	19,000
1994	9,913,000	18,900
1995	9,941,000	18,800
1996	9,739,000	18,800

* Rounded to the nearest thousand

**Rounded to the nearest hundred

**Number of Empty Allotments
On BLM-Managed Public Lands
(Fall 1996)**

	Number of Empty Allotments	Total Number of Allotments
Total	978	21,892
Arizona	9	846
California	94	826
Colorado	162	2,454
Idaho	81	2,320
Montana	230	5,302
New Mexico	78	2,280
Nevada	47	847
Oregon	127	2,073
Utah	77	1,488
Wyoming	73	3,456

We have not quantified the size and location of these empty allotments. However, it is important to note that many, if not most, of these "empty" allotments are small, isolated and/or inconvenient to graze parcels that would present administrative difficulties for BLM to oversee and would be largely uneconomical for permittees.

People for the West!



*Fighting for America's
Communities*

TESTIMONY PRESENTED TO THE U.S. HOUSE OF REPRESENTATIVES SUBCOMMITTEE ON
NATIONAL PARKS AND PUBLIC LANDS GRAZING OVERSIGHT HEARING
SEPTEMBER 30, 1997 - WASHINGTON, DC

BY RAY FLAKE, LINCOLN COUNTY COMMISSIONER, STATE OF NEVADA, ON BEHALF OF
PEOPLE FOR THE WEST-THE NATIONAL COALITION FOR PUBLIC LANDS AND NATURAL
RESOURCES AS A MEMBER. SUBMITTED FOR THE RECORD SEPTEMBER 30, 1997

I am Ray Flake, representing People for the West (PFW). People for the West is a national grassroots organization made up of honest, hard working people from all walks of life who love the land and are striving to protect multiple use of public lands and private property rights while preserving the customs and cultures of the people who live on the land. Due to the ever increasing federal regulations and heavy handed agency management practices and administrative policies, the very existence of those who have lived on and been stewards of the western range lands for generations is seriously threatened. People for the West was formed to work within the system to address and change these problems. I have spent my life as a rancher. I love the land and truly attempt to be an active environmentalist in my life and work.

I am also Vice Chairman of the Lincoln County Commission, the President of the Lincoln County Farm Bureau and Board member, a member of the Southern Mojave Resource Advisory Council and a member and past Chairman of the Lincoln County Public Lands Commission. Because of that personal expertise and my extensive experience as a ranch manager, I have been asked to provide this testimony. I have spent many, many days on drought tours, wild horse tours, and allotment analysis reviews in an effort to

The National Coalition for Public Lands and Natural Resources

help permittees negotiate resource area needs and management decisions to help prevent the continued loss of AUM's in Lincoln County. We do this because without these efforts ranchers are frequently forced to accept formal decisions by the BLM to reduce AUM's which are then never returned to the allotment. The loss of AUM's in my county has been very significant. We are dependent on economic activity generated on public land for survival since our county is composed of 98.2% public land.

I appreciate the interest of this Subcommittee and the time spent to listen to our concerns and fears. I will address the following subjects: I) Improper and incomplete range monitoring causing loss of AUM's; II) The Tortoise Recovery Plan and its affect on allotment loss and AUM loss in Southern Lincoln County; III) The Wild Horse and Burro Act (WHBA) and how mismanagement by the BLM is causing resource deterioration and loss of AUM's to permittees; IV) Probable AUM loss due to BLM acquisition of water rights since Rangeland Reform 94, and V) Summary

I. Improper and Incomplete Range Monitoring Causing Loss of AUM's

The BLM is supposed to monitor livestock grazing on the permittees' allotments. Over the years, they have failed to collect data and constantly changed methodologies for monitoring, while personnel continually change. The result has been reductions in AUM's that are not always needed. My personal opinion is that there are two chief reasons for this. First, pressure from environmental groups, their lawsuits, or their misinformation campaigns (all of which share the same purpose - eliminating cattle grazing on public lands) has forced the BLM to comply with their demands. Second, administrative directives and policies have been implemented that favor the interests of these pressure groups with the overall effect of slowly reducing public land grazing. All this is done regardless of the actual conditions of the range, the needs of the rancher, or the benefits that public land grazing provides to the range, both economically and biologically.

I have chosen the Henrie Complex Allotment Review in southern Lincoln County as an example. In this review, the BLM proposed to cut the permittee's AUM's by 70% from 4,160 to 1,249 AUM's. The basis of this decision was that resource utilization had supposedly exceeded the established amount.

Many deficiencies in the BLM's analysis are found in the Henrie Allotment Evaluation. In Table 3 of the evaluation (I have included this table and others with my testimony), BLM summarized use pattern mapping. The results indicated less than 60% of the allotment was measured in the first year and less than 10% of the allotment was measured in the second year. Yet the recommendations derived from these figures is for the entire allotment. Furthermore, evaluations to determine a stocking rate only include areas of 50% and above utilization. BLM uses that percentage because they feel any areas that show less than 50% utilization are not suitable for livestock. But as a life long rancher, I can tell you that the acreage of an allotment that is suitable for grazing does not fluctuate as much as is indicated in the Henrie evaluation.

In table 10 of the Henrie Evaluation, BLM summarizes information for the key areas. NO maps were included to let the reader see where these areas are located and how they relate to the total allotment. Even so, the BLM determined in the table that utilization levels and ecological condition and trend requirements are for the most part being met. In some areas, such as Meadow Valley Wash use levels and ecological condition and trend requirements are not being met. However, only a small portion of the allotment is not in compliance. What this indicates to me is a problem of livestock distribution and *not over utilization* as shown in the table. Distribution problems are best solved with water developments, fencing and more intensive management. But reducing livestock numbers was the recommended solution. Unfortunately, reducing livestock numbers will not necessarily change distribution and forage utilization. So problems in the Meadow Valley Wash portion of the allotment will likely continue to exist. Therefore, the real problem was never addressed by the BLM's recommendations.

The Ely District Resource Management Plan states that a five year period is supposed to be used to establish vegetative community trends. In the Henric allotment evaluation, key areas were established as monitoring sites. Table 3 shows two of the key areas they were using to read utilization and trend were established this year and another just three years ago. Yet data from these key areas was still used to set a five year trend without collecting five years worth of data from them. The data collected from the other four key areas which met the five year criteria showed that 31% of the allotment had not been checked, that 48% had slight use, 4.6% had moderate use, 1.4% had heavy use, and 15% had severe use. No use pattern maps were provided to show how these figures were provided or whether physical evaluations were actually taken.

Neither of these two tables makes it clear whether wild horses, cattle, or wildlife were primarily responsible for these forage utilization figures. Wild horses, burros, and wildlife all utilize the forage but only cattle numbers are adjusted according to the figures shown for use. This leads me to conclude that by including data from new key areas without allowing the proper amount of time to collect data from them was an attempt to juggle the numbers to justify a reduction in cattle AUM's as opposed to defining a need to redistribute existing cattle use.

Further examples of questionable AUM reductions can be given upon request. As in the Henric allotment, they reflect an overall attempt to continue to cut AUM numbers over time without ever restoring AUM's even when the range improves. Furthermore, while many animals utilize the forage, that utilization is affected by animal type and distribution as much as population numbers. Except in times of severe drought, in my experience, solutions that incorporate ways to distribute cattle and other animals away from over utilized areas or other management changes are not always explored. Generally, only AUM reductions are offered as a solution. The policy seems to be to just make cuts without attempting to solve problems.

It would seem that a small AUM cut here and there would not amount to much, but when you look at the total impact of the cuts in the last ten years, for example, it is easy to see that there are less and less cattle on the public lands, why ranchers are becoming fewer and fewer, and why counties with high percentages of public lands are having such a hard time trying to provide services for the people. Lincoln County has 98.2% of its land as public. That leaves only 1.8% of its land as a tax base. In BLM's Ely District, AUM numbers are down 29.9% from 1980 causing a loss in permit values of \$3,289,818 and annual direct economic loss to the livestock sector of \$1,867,194. With an economic multiplier factor of 2.08 for the rest of the economic activity in the county that is affected by these cut backs, it is easy to see how devastating even a small reduction in AUM's affects the economy of the area (see exhibit).

II. The Desert Tortoise Recovery Plan and its effect on AUM Loss and Allotment Loss

On April 2, 1990 the Desert Tortoise was listed as a threatened species. The designated habitat included 21 million acres of which 14 million acres is federal land. On January 23, 1991, the BLM sent a Biological Evaluation Opinion of the designated habitat to the US Fish and Wildlife Service (FWS) hoping they would accept the BLM's evaluation and agree to a no jeopardy opinion. This Biological Opinion was issued August 14, 1991. Pursuant to this opinion the BLM issued in early 1992, a Full Force and Effect decision to many of the permittees in Southern Lincoln County and Northern Clark County. The Full Force and Effect decision closed many of the allotments for a period of time from March 1 until June 15 each year - a critical period for cattle grazing.

Because of the economic impact on the ranchers, they appealed the decision. This appeal was filed in the Office of Hearings and Appeals (OHA) of the BLM and was heard by Administrative Law Judge Ramon M. Child on January 24, 1995 in Las Vegas, Nevada. Even though Judge Child said that the OHA has no authority to review the merits of FWS Biological Opinions, it is significant that he still ruled that the Biological Evaluation Opinion of the BLM "was and is a flawed document" based on the lack of scientific evidence to support the BLM's Biological Opinion which was adopted by FWS. In other words, the BLM

and the Fish and Wildlife service did not use accurate, well documented, scientific data as the basis of the Biological Opinion which in turn was used as the basis of the reduction of AUM's and allotment closures

In the meantime, the BLM is preparing a recovery plan for the Desert Tortoise in Southern Lincoln County. So far, they plan to set aside 1000 square miles as a single use area for the tortoise limiting virtually all other uses of the area. This is a serious attack on the multiple use concept which is the mandate for BLM lands and multiple use is strongly supported by People for the West. At long last, Lincoln County, the BLM, permittees, and other members of the public are now involved with the preparation of the Tortoise Recovery Plan. But so much has already been done that we feel that there is little we can accomplish by being pulled in so late in the planning process.

Although the recovery plan is not complete, the most alarming aspect of the whole process is that I believe this effort is strictly political. As I stated before, the basis of the Full Force and Effect decision to eliminate cattle in the tortoise habitat and the resulting AUM loss was not based on accurate data. No scientific proof has ever been given that proper livestock grazing is harmful to the tortoise. Questions of accuracy were raised in many areas. One example was a 1990 study conducted by Vernon Bostick which indicated that livestock grazing appears to be necessary to the health and viability of the tortoise. While this study was largely ignored by the FWS at the time, it still raises questions that have not yet been answered today. Furthermore, as I can attest myself from my experience on the Southern Mojave Resource Advisory Council and elsewhere, evidence is mounting that tortoise numbers are up in areas where cattle are grazed and down in areas where they are not.

The point is that the BLM at the very least should conduct a study to answer these questions once and for all before the Tortoise Recovery Plan for Lincoln County is complete. Regardless of this lack of accurate information to date, the status of the endangered tortoise is being used as an excuse to remove livestock from the range. The Tortoise Recovery Plan affects 19 allotments, 25 permittees, 909,533 acres, and 37,818 AUM's in Lincoln County.

III. The Wild Horse and Burro Act (WHBA) and Its Management and Problems.

From the time of passage of the WHBA, wild horses have become a growing problem in Nevada. The BLM has never been able to grasp the size of the problem and never came forth with an effective program. The wild horse population exploded on the public lands to the great detriment of the range resource. Before the passage of the WHBA in 1971, the ranchers under the direction of the County Commissioners managed the wild horse herds and controlled their numbers at no cost to the government. Because of the lack of management, many herds have grown to an unmanageable size, all available feed has been eaten and the range resource trashed. This has made it necessary for ranchers to reduce the size of cattle herds because of their desire to protect the range. This is not just a desire but a need. If they fail to protect the range from damage regardless of cause, they will lose the use of the range for grazing purposes. Voluntary reductions in AUM's result in the same economic losses as any other type of AUM reduction. These voluntary reductions in cattle numbers would not be necessary if the BLM kept wild horse populations at the number they themselves established.

Even though much money has been spent by the Bureau, the problem won't go away and is still completely out of hand in many areas of the state. There are over 20,000 wild horses in Nevada. This is about 60% of the wild horses in the nation. Yet, Nevada receives only about 20% of the WHBA budget. Many of the ranchers are willing to help to bring this situation into control but their help is always refused by the Bureau. It would seem that in order to protect the resource and preserve the cattle industry, we should all work together to solve these problems.

On the allotments I manage, we will be facing an evaluation next year to determine proper stocking levels for livestock and wild horses. We have had some dry years and I have voluntarily adjusted livestock numbers down to protect the resource. I know that if I fail to protect the range and keep it healthy, I will not be able to stay in business. This is true regardless of cause. If the resource is degraded by wild horse numbers, I will still be out of business. While I have been reducing cattle numbers to protect the range,

the wild horse numbers have been growing unchecked until last year (1996). Finally, the BLM gathered 60 head of horses but only after they closed a portion of our allotment to livestock grazing. This is an example of involuntary cattle AUM reductions due to wild horse degradation. There are still over 200 head of horses in the herd management area. It was determined in the early 1980's that 17 head was a proper number. I am afraid in the evaluation, the BLM will start the evaluation at the reduced number of cattle and increased number of horses instead of starting with the number of cattle AUM's adjudicated to the ranch and the original wild horse population level set by law. With an inaccurate point of reference, I fear the BLM will arrive at what they feel is a balanced number between the two animals for our allotments.

IV) Probable AUM Loss Due to BLM Acquisition of Water Rights Since Rangeland Reform '94

In Lincoln County, most of the grazing rights are tied to water rights. These are water based grazing permits and are unlike other grazing permits that are tied to privately owned base property. The appropriation and use of water is regulated by the state of Nevada and water rights are viewed as private property. The value of a ranch is greatly affected by the amount of water controlled by the ranch. If BLM is able to gain ownership of significant numbers of water rights, ranch values will decrease as well as the tax base for my county. This of course translates to AUM loss if ranchers go out of business.

In Nevada as well as other Western states, water rights can only be maintained by beneficial use. For stock water rights, the owner of that right must show beneficial use by watering livestock or the water right can be applied for and perfected by another stockman who can prove beneficial use. Since the BLM does not own livestock, they can not show beneficial use of stock water rights if they gain ownership of those rights.

As a result of Rangeland Reform '94, BLM has applied for stock watering rights and some of these applications were recently denied by the state. Because of SB96, a state law that requires beneficial use,

BLM was denied a series of applications. Since then, BLM has filed a law suit against the state of Nevada.

This new BLM policy concerns me greatly. First, the BLM's attempts to own stock water rights is a recent trend. Why, after 50 years, does the BLM suddenly need water rights to manage federal lands? Water rights are private property and we should prevent efforts to nationalize private property. Second, in their law suit against the state, BLM contended they are being discriminated against in the current state law. Our state law simply requires beneficial use of the stock water rights. If BLM does not own livestock, how can they show beneficial use of stock water? I am concerned that if BLM can own stock water rights without proving beneficial use, the stockmen will be discriminated against because stockmen must show beneficial use in order to continue to hold their water rights.

Lastly, I am concerned with on going attempts by the BLM to gain an interest in privately held water rights. There is a trend of requiring the permittee to turn over a portion of his water rights to the BLM in order to provide new developments or improve old developments. This directly affects AUM's because if the rancher does not agree to the trade off, he can not distribute cattle appropriately to protect the range which then causes the BLM to reduce his AUM's as a result of the rancher's inability to prevent over utilization in certain areas. In addition, the loss of water rights will not only cause the loss of AUM's but eventually will cause the loss of the grazing rights as well. Water rights presently in private ownership should remain that way. As water rights are increasingly acquired by the BLM, ranchers will increasingly loose control and stability of their businesses which is a critical concern in our county.

Summary

First, monitoring practices should be improved and standardized to prevent inaccuracies and unfair decisions. Existing rules and regulations for monitoring should not be ignored or improperly followed. If BLM personnel did what they say they are supposed to do, many of these monitoring problems would not exist.

Second, endangered species such as the desert tortoise should be thoroughly studied and accurate data used as the basis of recovery plans as well as resource management plans and allotment management practices that reflect this accurate information. Economic viability of ranches should not be held hostage to the needs of one species when the rationale for current decisions on management of that species are based on flawed data.

Third, in order to protect wild horse populations, appropriate management must include adequate population control to achieve a balance between their needs and those of cattle and other wildlife. Additionally, protecting the interests and economic viability of the ranches and people of Lincoln County who are affected by the lack of sound wild horse management should be a part of the solution. Currently, none of the animals on the range are benefiting from the over-population of the wild horses and burros - not even the wild horses and burros themselves. It is irresponsible for the BLM to allow wild horse and burro numbers to increase to the point that the resource is seriously degraded while adjusting cattle numbers to alleviate allotment deterioration even though cattle are not the source of the degradation.

Finally, it is not appropriate for the BLM to seek ownership of water rights associated with grazing permits since the BLM will not utilize those rights for livestock watering. The water rights attached to grazing permits must remain in private ownership because the tax base of the state and counties depend upon the revenue generated by the AUM's adjudicated to ranches that hold those rights. The loss of privately held water rights will further decrease ranch values and erode the county's tax base which will devastate the county.

As a member of People for the West, a County Commissioner, Farm Bureau President, and a life long rancher among other things, I accept the challenge to improve stewardship of public lands on a local level. Together with federal agencies, we should pledge to educate and provide correct information to the public.

We must lengthen our stride and re-double our efforts for community based - consensus building public land management.

I have many friends who work for the BLM. In our local district, we are working together better than we have for many years. I feel we have a mutual respect and are committed to work together to care for and preserve our public lands. I can cite many instances where the BLM and the local ranchers temporarily worked out cattle distribution, reduced numbers, made water improvements, hauled water, or otherwise came up with temporary solutions that protected the resource in a spirit of cooperation and shared concern for the resource.

Still, I am concerned about the overall direction of the BLM. The continued erosion of AUM's a little here and a little there all adds up to be an enormous impact on the local community. Over regulation and micromanagement handed down from Washington bureaucrats undermines the local BLM employees ability to make sound decisions let alone jointly work out solutions with permittees that are necessary to achieve the best management for local conditions.

We challenge you, our elected representatives to review BLM policies in order to remove unnecessary regulation and eliminate top down micromanagement from Washington DC and to insist that BLM policies respect states law and our individual property rights. These policies must protect the local citizens' opportunity to provide for themselves and their families. The continued loss of AUM's harms ranchers, their families, and their communities. Additionally, AUM loss harms public land conditions because it eliminates the ranchers' continual monitoring, stewardship, improvements, protection and maintenance of the range. There is no such thing as a welfare rancher until he is literally out of business and on the welfare lines. If AUM's continue to be lost at the current rate, ranchers will be on welfare, all right, but they won't be ranchers anymore.

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3. Memorandum from Tim Tetzl* - subject: Preliminary Data from the Report "A Review of Public Land Grazing in Eastern Nevada" 1997 Resource Concepts, Inc
4. 1995 Record of Decision for Appellants: Thomas French, Karen Budd-Falen, David B. Frank. For Respondents: Burton J. Stanley, John R. Payne. For Intervenor: Deborah S. Reames, Joseph J. Brecher. Before Administrative Law Judge Ramon Chuid January 24, 1994.
5. Rangelands, June 1990, "The Desert Tortoise in Relation to Cattle Grazing," by Vernon Bostick*
6. Areas in Lincoln County Affected by Clark County Tortoise Habitat Conservation Plan*.
7. Lincoln County Record Office, September 19, 1997 fax memorandum from Curtis G. Tucker*, US BLM Ely Field Office listing wild horse and burros statistics bureau wide.
8. Nevada Office of Attorney General - State Bill 96 codified at N.R.S. 533.503 and Memorandum of Points and Authorities in Support of Petition for Judicial Review case no. 97-CV-119, Dept. No. 1.

* Copies attached herewith.

Table 10. Upland Studies Summary

STUDY AREA	ALLOTMENT	ECOLOGICAL SITE NO.	EIT APP.	PREMISE STATUS	LONG TERM OBJECTIVES			SHORT TERM OBJECTIVES					NATIONAL RPT	
					REY A COMP BY WT.	REY A COMP BY WT.	REY A COMP BY WT.	REASON OF USE	ALLOWABLE USE LEVEL	CP	S	P		M
RA1 Richberry Flat		T-10 B R-66 B Blackberry burn	EPHE BIRI	Early Serial (68 11)	IMPROVE	3%	Rid Serial >24%	40	40	45	45	TL L, M (2)	X	Use levels acceptable. Trend static to downward.
RA2 Wood Ranch		T-9 E R-67 E Blackberry burn	OREY BIRI	Early Serial (11)	Maintain or IMPROVE	3%	Rid Serial >20%	30	50	60	60	TL L, M	X	Use levels acceptable. Trend static to downward.
RA3 Camp Pass Burn		T-6 B R-67 B Blackberry burn	EPHE BIRI	Early Serial (11)	Maintain or IMPROVE	3%	Rid Serial >24%	30	50	50	50	TL L, M	X	Use levels acceptable.
RA4 Lynah Crowning		T-9 E R-67 E Lawn burn	OREY BIRI	Early Serial (24)	Maintain or IMPROVE	5%	Rid Serial >24%	30	50	50	50	TL L, M	X	Use levels acceptable. Trend static
RA5 Valley Wash		T-9 B R-67 B Wash	OREY		IMPROVE	10%		50	50	60	60	TL L, M	X	Use levels unacceptable.
RA6 South Crowning		T-9 B R-66 B Wash burn	BIRI	Rid Serial (11)	Maintain	0%	Rid Serial >23%	40	40	50	50	TL L, M (2)	X	Use levels acceptable.
RA7 North Canyon		T-9 B R-66 B Wash burn	BIRI OREY	Early Serial (11)	IMPROVE	10%	Rid Serial >24%	40	40	50	50	TL L, M (2)	X	Use levels unacceptable.

1. L - Livestock; B - Bird; W - Wildlife; TL - Ecological site and frequency data indicates that the present serial stage of these sites is not meeting the desired plant community objectives for livestock and wild horses. (2) - Rehabilitation 1 desert tortoise habitat.

** RA1 was not completed on RA5, *** RA5 & RA7 were established in June 1997.

1. The identified serial stage for each area could be down-graded one serial stage, where possible, due to lack of perennial grasses and dominance of introduced annual grasses and forbs.

EPHE=Heavily Ephemeral, BIRI=Big Galista, OUY=Oulethia micrantha, SPAN=Spanish Bluegrass, WASH=Purple three-awn, black-head dropper, COM=Common, AMMO=Creosote spp., LATI=Crooked bush, AMMO=White creosote

Memorandum

Date: 19 September 1997
To: Connie Simkins
From: Tim Tetz ^T
Subject: Preliminary Data from the report entitled *A Review of Public Land Grazing in Eastern Nevada*

In response to the questions related to your phone call, I submit the following facts that we have determined for the BLM Ely District. As we discussed, these data only summarize the Ely BLM District which is comprised of the Caliente, Schell, and Egan Resource Areas.

I will be leaving the office this afternoon at 3:00. I will be gone until Saturday evening. I should be home for a majority of the day Sunday until Sunday evening. Then I will be leaving until Wednesday. (Of course you are welcome to leave a voicemail message at either my home 882-2838 or office, and I will return your call as soon as possible.) I encourage you and Ray Flake to review the enclosed material and contact me to discuss the important conclusions and conclusions that we can make from the preliminary data for Eastern Nevada.

TABLE 1.0 - A Summary of the Ely BLM District NGS Database

Time Period		Caliente Resource Area	Egan Resource Area	Schell Resource Area	Ely District
Adjudication to 1980	Adjudicated Preference	171,148	262,597	286,118	719,863
	Post Adjudication Actions	-55,909	-47,968	-18,372	-122,249
	Permitted Preference as of 1980	115,241	214,611	267,746	597,598
	Percent Change (Adjudication to 1980)	-32.67%	-18.14%	-6.42%	-16.93%
1980-Sept. 1997	Number of Evaluations				
	Evaluation Changes in Preference	-1,943	-32,171	-31,669	-65,783
	Other Changes in Preference	+801	-3,452	-380	-3,131
	September 1, 1997 Preference	114,099	179,088	235,797	528,984

	Percent Change (1980-1997)	-0.99%	-23.99%	-11.93%	-14.87%
	Percent Change (Adjudication-1997)	-33.33%	-59.61%	-17.59%	-29.29%
	Change in Permit Values 1980-1997 (\$37.00/ALU)	\$42,254	\$1,065,651	\$1,182,113	\$3,289,819
	Annual Direct Economic Impact to Livestock Sector (1980-1997) ¹	\$23,962	\$1,172,283	\$470,829	\$1,867,194

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¹ Once these impacts are felt within the other sectors of the rural Nevada economy (mining, construction, manufacturing, transportation, trade, services, and government), the estimated total decrease in annual economic activity is estimated to be \$3,397,965.

The Desert Tortoise in Relation to Cattle Grazing

Vernon Boalick

The Historical Evidence

Early History

The desert tortoise has inhabited the Mojave and Sonoran deserts in the southwestern United States and Mexico for thousands of years. For the past three or four centuries, the desert tortoise has shared its habitat in Mexico and California with cattle.

There is no information on tortoise abundance in pioneer days, but we do have good information on cattle abundance and range conditions a century ago. The build up in livestock numbers in the 1870's and '80's, which is well documented in Arizona (Griffiths 1901, Thornber 1910), occurred over all the western range. Stoddart and Smith (1955) estimated that about 85 percent of livestock on the range perished in the late 1880's. We know that desert tortoises survived this severe overgrazing because they didn't become extinct.

World War I encouraged a second build up in range livestock numbers. Beef sold at high prices and the range was free. Universal overgrazing was the inevitable result.

The decade of the Thirties was ushered in by the severest drought of record. In addition to peak numbers of livestock, the western range was plagued by hordes of rabbits, rodents, and grasshoppers (Vorhies and Taylor 1933). Ranchers burned the spines off cactus in an attempt to save their cattle from starvation. Death losses from starvation and invading poison plants were severe. The destruction of the western range is documented in Senate Document 199 (US Forest Service 1933).

In view of the concern expressed by some people for the past ten years, it is amazing that any tortoise survived the many years of unregulated livestock grazing that preceded enactment of the Taylor Grazing Act of 1934. From a single census in a single year, Schneider (1980) drew the following conclusions: 1. That the population is declining rapidly towards extinction. 2. That overgrazing by cows is responsible. 3. That desert tortoises should be listed as endangered. 4. That their habitats should be closed to grazing. Schneider summed up his report with this statement: "... the outlook for the future of the species [desert tortoise] in the state [Arizona] appears grim."

Mortimer and Schneider (1983) censused a desert tortoise population with the highest density known in Nevada. Their data showed a 45 percent increase in population over a census made five years before by another

biologist. Nevertheless, Mortimer recommended that this habitat be closed to cattle grazing for 15 years so the tortoise population could recover. He summed up his report with this statement: "... habitat and wildlife managers must determine if livestock grazing operations can co-exist with tortoise and other wildlife on the Mojave Desert Biome."

The Taylor Act

The Taylor Grazing Act of 1934 ended the free-for-all, get-all-you-can-while-you-can, uncontrolled grazing which had destroyed the range resource on the public domain. Every decade since the original reduction of roughly 50 percent in grazing use, the Bureau of Land Management has made reductions in the amount of livestock use permitted. Permitted use today is only about ten percent of the livestock use that occurred during the free range days. If the conservative grazing management that is being practiced today has such a detrimental impact on desert tortoise populations, how could the species have survived through all those years of uncontrolled livestock grazing?

Dr. Kristin Berry interviewed all the long-time residents in the Mojave and Sonoran deserts she could find and questioned them about the abundance of desert tortoises years ago.

The following quotation is from Dr. Berry's *Tortoises For Tomorrow*.

"Long-time desert residents in California noted extraordinary densities [in the early Thirties] that could have been as high as 2,000 per square mile."

The evidence that Dr. Berry accumulated is ample to support her conclusion, but I will review only one interview. A member of a survey party in Antelope Valley in 1933 saw over 100 tortoises in one place at one time. He told Dr. Berry that tortoises "were everywhere... all over the ground."

A density of 2,000 tortoises per square mile is three tortoises per acre. The year 1933 was the third year of the great drought, and the culmination of years of overgrazing by livestock. Let's assume that forage production was 90 pounds per acre (on an overgrazed desert range in a drought year, this is a liberal estimate).

Cattle were starving, we can assume that they grazed the range as closely as possible. This means that cattle would have consumed about 90 percent of the forage produced. If there were any sheep on the range, forage use by livestock would be even greater. At the very most, there was only three pounds of forage left for each tortoise for the year. But in the early Thirties western ranges were overrun by jack rabbits (Vorhies and Taylor 1933)

Editor's Note:
Readers may also wish to read the article "Habitat Management for Desert Tortoises in Nevada" by Joseph V. H. Ross, *Rangelands*, 8(6) 236-250 December 1986.

and heavily infested with grasshoppers.

Grasshoppers feed all day, jack rabbits all night; tortoises about 7 hours per week if the weather is not too hot or too cold for them to leave their well insulated burrows (calculated from data presented by Nagy and Medica 1986).

While livestock, jack rabbits, and grasshoppers were busy grubbing the range to stave off starvation, the tranquil tortoise whiled away the time snoozing in its burrow. Then how did they survive? Easy enough—they used a different food source.

The toothless tortoise is ill equipped to harvest and masticate range forage. The tortoise can harvest only tender vegetation, and it can't masticate even that. The tortoise can't process enough bulky, low analysis forage fast enough to meet its nutritional requirements (Nagy & Medica 1986). They solved this problem long ago—they allow other animals to do it for them. Desert tortoises feed primarily on dung. The more animals using the range, the more dung, which makes more food available for tortoises.

In the millennia preceding the advent of domestic livestock on the range, tortoises subsisted on pellets excreted by rabbits, deer, and bighorn and scats of predators. Tortoise populations adjusted to the amount of dung available; their numbers were low (Mollhausen 1854).

The Western Regional Extension Publication No. 39: *By-products and Unusual Feedstuffs in Livestock Rations* (Bath et al. 1980) states: "... it is commonly estimated that 80% of the total nutrients in feeds are excreted by animals as manure." The desert tortoise is well adapted for making use of cow dung. Four days elapse between meals. This allows plenty of time for the tortoise to complete the digestion that began in the cow's stomach. The digested food moves slowly, ever so slowly, through tortoise intestines. This trip takes 17 days (Nagy and Medica 1986).

It is a biological law that all organisms tend to increase to the limits of their food supply. Therefore, it is natural and to be expected that desert tortoise numbers and livestock numbers peaked on the public domain at the same time.

It is also a natural law that if the food supply is diminished for any population, that population will adjust to come in balance with the reduced food supply. For 50 years BLM has been reducing the numbers of livestock permitted on the Federal Range. For 50 years desert tortoise populations have been declining.

Beaver Dam Mountains

We can be fairly certain that before the Mormon colonization of this area in the late 1850's, Beaver Dam Mountains in Utah was a Joshua-tree savannah with a bunchgrass understory similar to portions of the McCullough Mountains in Nevada that have never been grazed for lack of water (Bostick 1973).

Because of their persistence as relics, we know that bush mully and Indian ricegrass were members of this pristine grassland community. Ten years after settlement Mormon cattle had become numerous and were grazing the range too closely to permit Indian ricegrass to mature seed. The original grassland was converted to typical

Mojave Desert dominated by creosote bush and white bur-sage with an understory of exotic annuals from the Mediterranean region.

The intense competition for forage by livestock owners was halted by the Taylor Grazing act of 1934. The big reduction in grazing use in 1936 (about 50 percent) didn't bring about any noticeable range improvement, and another cut in authorized use was made by shortening the length of the grazing season. It was after this second cut that Woodbury and Hardy (1948) reported a desert tortoise population density of 160 tortoises per square mile.

BLM made further cuts in grazing use in the early fifties and again in the sixties. In 1970 1,500 acres of tortoise habitat were fenced and closed to all grazing by livestock. Sheep use was eliminated. Four years later Coombs (1974) reported 39 tortoises per square mile. Between Hardy's census in 1948 and Coombs' census in 1974, livestock grazing was reduced 100 percent. There was a 74 percent reduction in tortoise density.

Rabbits were abundant in the enclosure until 1962, and tortoises could meet their protein requirements by eating rabbit pellets. Rabbits were scarce after 1963. The tortoises were doing so poorly that a veterinarian, Dr. James Jarchow, was consulted. Dr. Jarchow (1987) found that the six tortoises from the enclosure that he examined were all suffering from osteoporosis. He attributed this condition to insufficient protein in their diet.

- Dr. Jarchow wrote a prescription for these tortoises.
1. He recommended a predator control program "designed to eliminate those individual predators preying chiefly on this species."
 2. He recommended that "desert tortoise habitat should be managed to promote the resurgence of *Muhlenbergia porteri* growth... and seeding campaigns should be instituted."
 3. "Supplemental feed, in the form of scattered timothy or Bermuda hay, should be provided in times of drought and midsummer."
 4. Additional enclosures should be erected in critical areas."

This prescription is not backed by clinical experience; there is no evidence that any of these remedies prescribed are practical and beneficial. Years of management by untested theories have brought this once thriving population to the verge of extinction.

Dr. Jarchow examined five tortoises from the Littlefield plot, which is open to cattle grazing. For three of these he reported "No abnormalities were evident." The abnormalities noted in the other two specimens were not related to their diet. He also took blood samples from each tortoise and sent them to a laboratory for a complete analysis. From these data he concluded they "... were considered presently healthy and well nourished."

Although it is coincidental and not planned, these two plots in the Beaver Dam Mountains demonstrate the relation of cattle grazing to desert tortoise welfare. Cattle have been excluded from the Utah plot for 19 years; the tortoises exhibit symptoms of protein starvation, associated

with high mortality. The Arizona plot is open to cattle grazing; the tortoises are healthy and well nourished.

If tortoise biologists are correct, then areas from which livestock have been excluded for a long time should have thriving tortoise populations. On the other hand, the science of range ecology predicts that excluding cattle will reduce the tortoise population and they will become rare.

Cattle Excluded Areas

Cattle have been excluded from the Nevada Test Site and the Desert Wildlife Range for many years. Tortoises are rare and doing poorly at both sites.

A small tortoise population was studied intensively for ten years in Rock Valley on the Nevada Test Site from which cattle had been excluded for 40 years. Those tortoises were under continual stress. They suffered from a scarcity of water, insufficient nitrogen (protein) in their diet, and an excess of potassium.

They could excrete the potassium in their urine as other animals do, but urinating would have left them dehydrated. Tortoises urinate only when they have water to drink. They could have converted the potassium to an insoluble form and excreted it in their feces. This requires nitrogen, which would have had to come from catabolizing their own tissues (Nagy and Medica 1986).

This stress could be relieved if these tortoises had access to their natural food source, cow dung. Fresh cow dung is 85 to 90 percent water. Bees and butterflies drink from fresh cow pies. Cow dung could also supply the high quality protein tortoises require. The excess potassium came from consuming plant material high in potassium but low in other nutrients.

Thousands of years of adaptation to a highly nutritious dung diet has left the desert tortoise ill prepared to switch to a bulky diet of fresh plant material. Nagy and Medica (1986) found that during the spring active period, desert tortoises would not or could not eat enough plant material to maintain their body weight. During the lush spring period desert tortoises were on a reducing diet.

Summary and Conclusions

The historical record shows that:

1. Desert tortoises have coexisted with cattle for 300 years in California and Mexico and at least 100 years elsewhere.
2. The highest tortoise densities known occurred at a time when overgrazing by livestock was the severest ever known.
3. The fewer the cattle on a range, the fewer the number of tortoises.

4. Excluding cattle for many years endangers the tortoise population.

It is known all over the world and is very well understood in the developing countries of Africa that overuse of the range by one species of animal will degrade the range for that species and its numbers will decline, but this same overuse will improve the range for another species and its numbers will increase. Severe overgrazing of the public domain by livestock after World War I improved the habitat for tortoise and brought on a population explosion similar to the famous deer irruption on the Kaibab.

BLM's conservative grazing management program is designed to restore ranges degraded by years of overuse by livestock. Restoring the range is beneficial to some wildlife, bighorn for instance, but it is detrimental to tortoises. Like jackrabbits and mule deer, desert tortoises thrive on deteriorated range lands. Declining numbers of desert tortoises since the Taylor Grazing Act of 1934 is a direct result of decreased livestock grazing and improved range conditions.

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AREAS IN LINCOLN COUNTY affected by the Clark County
Tortoise Habitat Conservation Plan (HCP)

Allotment Number	Allotment Name	Operator(s) Name	Acres	AUM's in Allotment
19	Delamar	Courtney Dahl	241,755	5,558
20	Grapevine	Henry Rice	33,328	560
21	Breedkove	Henry Rice	102,755	864
22	Rox	Keith Cutler	25,870	756
23	Mormon Peak	Don Gates	82,296	600
24	Henrie	Henry Rice Ole Olson	131,796	1950
25	Morrison-Wingert	Ole Olson	36,590	2220
26	Boulder Spring	John Ballew	13,537	416
75	Garden Spring	Newby Brothers	38,823	2809
76	White Rock	Newby Brothers	32,916	2880
78	Beacon	Jerry Wood, Ed Larson, Roy Lundgren	5,682	2095
79	Flat Top Mesa	Harold Wittwer	6,033	104
80	Pulsipher Wash	Bryan Hafen	3,408	
81	Jackrabbit	Larry Hardy, Vic Knight, Wm. Pulsipher, Chas. Simmons	9,755	100
82	Sand Hollow	Elden Hafen, Kelton Hafen, Norm Gubler	35,174	2430
83	Summit Spring	Newby Brothers	18,035	715
84	Snow Springs	Fenton Bowler, Ed Balen, John Bowler, Bill Mull, Larry Staheli	44,142	3507
85	Terry	Bill Mull, Fenton Bowler	30,163	3500
86	Lime Mountain	Norm Gubler	18,575	6754
TOTALS	19	25 individuals	909,533	37,618



Facsimile

Date: September 19, 1997__ #Pages: __1__

File Code: 1120

To: Connie Simkins

Office: Lincoln County Record

Fax Number: (702) 726-3331

Message

The following is in response to your questions:

Number of WH&B Bureau wide as of Oct. 1, 1996	42,180
Number in Nevada as of 10/1/96	28,480
The current estimate is	20,000*

*Nevada has removed approximately 6,350 animals this FY. After adding this years foal crop, the population is probably about 20,000.

Bureau FY 97 WH&B budget**	\$15,866,000
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Nevada budget Combined with NPO budget and cannot be separated. Approximately 20% of the BLM budget goes to NV.

**A large part of the Bureau wide budget supports NV. All of the animals processed each year in the Palomino Valley facility are from Nevada and approximately 80% of the animals shipped through Elm Creek, Nebraska Holding Facility are from Nevada.

From: Curtis G. Tucker

U.S. Department of the Interior • Bureau of Land Management
Ely Field Office
Phone: (702) 289-1641 • Fax: (702) 289-1910

Dedicated to the wise use of Wyoming's Section 3 grazing lands.

WYOMING STATE GRAZING BOARD

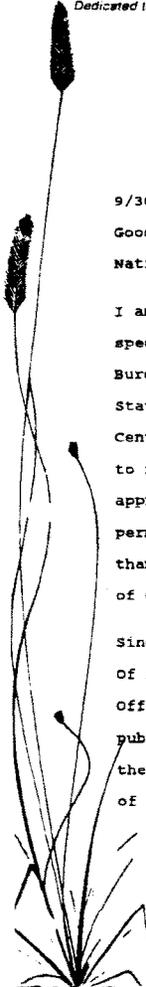
CENTRAL COMMITTEE
P.O. Box 1202 Lander, Wyoming 82520
(307) 332-2601

9/30/97

Good morning, Mr. Chairman, and members of the Subcommittee on National Parks and Public Lands.

I am Dick Loper, a private rangeland management consultant specializing in issues that relate to livestock grazing on Bureau of Land Management public lands in the western United States. One of my clients is the Wyoming State Grazing Board Central Committee, an Organization chartered by Wyoming Statutes to represent the technical range management interests of the approximately 2500 ranchers that hold Section 3 type BLM grazing permits in Wyoming. It is on their behalf that I would like to thank you for the opportunity to offer testimony on the subject of Grazing Reductions on BLM lands.

Since the passage of the Taylor Grazing Act in 1934, the Bureau of Land Management and it's predecessor agency the General Land Office, has been given the authority by Congress to manage the public grazing lands in the west. Congress has properly directed them to provide for Regulations and policies for the protection of the natural resources under their responsibility.



As many of you are aware, the land ownership pattern in the west is often fragmented into a zig - saw puzzle format that contains a mixture of federal lands, State lands, and private lands. In an effort to settle the west after the Civil War, the federal government encouraged, and our private enterprise system of commerce accepted, the opportunities to change the ownership of lands that contained water and potential for agriculture from public domain ownership into private land ownership. Western States received ownership of parcels of public domain upon entry to the Republic of the United States. The federal government retained the balance of the public domain no body wanted to purchase and until the passage of the Federal Land Policy and Management Act of 1976, these lands were intended for disposal.

Over the ensuing years, a combination of these various ownerships were combined into livestock ranching units.

Most of the west is an arid land, and it takes a large number of rangeland acres to economically sustain a family ranching unit. In Wyoming, it usually takes a minimum of a 300 to 400 mother cow ranch to make a marginal living for a ranch family. If livestock prices are good, this size ranch will produce a gross family income of around \$20 to \$25,000, before taxes. Typically, these livestock will spend 6 months of the late fall, winter, and early spring period on private ranch base property, and 6 months on a combination of BLM, State, and sometimes USFS, native rangelands.

Because our summer grazing areas in Wyoming and much of the west are very arid and composed of mostly public lands, water sources, commonly called riparian areas, typically make up only 2% to 4% of the acres in the allotment. It is a restatement of the obvious to say that these watered acres are critically important to all of the multiple uses in the west, but very few of these watered acres are in public ownership.

A very high percent of these permanent water locations are privately owned, and they are usually unfenced and intermingled with public lands and open to use by wildlife, wild horses, livestock, and the general public. With respect to forage production, riparian areas will produce 10 times more forage per acre than will an acre of dry upland native rangeland.

On average, about 4800 acres of native rangelands, and a minimum of 500 to a 1000 acres of private ranch base property for use as hay production, winter grazing land, and ranch facilities location, will be needed to support a 300 to 400 head family ranch operation. The intermingled, and usually unfenced, pattern of mixed ownership of rangelands and riparian habitat in Wyoming, Utah, and much of the west, virtually requires that the BLM and owners of these unfenced, intermingled private lands and state land grazing leases, develop a partnership in the surface management of these large blocks of grazing lands called allotments.

Successful partnerships, by definition, provide a balance of benefits to both parties. For the last 60 years, ranchers and the BLM have worked together and have forged a partnership that the Department of Interior itself has admitted has resulted in the rangelands of the west being in the best condition of this century. These land management partnerships contributed to the customs and culture of the west that are now admired and visited by people from all over the world. With some exceptions, the air and water in the rural west is clean and fishable; wildlife numbers are abundant; and we enjoy a quality of life we would not trade for an alternative.

Our western ranch families are pleased to share the abundant clean air, wildlife, fishing, and open spaces with the public who come to the west to visit and enjoy the attributes of the west that were developed by that historic partnership between the BLM and our ranch families.

As I stated before, Congress has properly conveyed to the BLM, the responsibility and authority to develop Regulations and policies to plan and properly manage public lands in the west. Part of that responsibility requires that they conduct an inventory of public natural resources, and equitably divide the use of those resources among the multiple uses. It is also their responsibility to monitor the use of those public resources to insure that everyone is getting their fair share, and that the principals of sustained yield and environmental protection are maintained.

With respect to the livestock component of the multiple uses of public land, their fair share of the forage produced from public lands has historically been expressed as a specific number of Animal Unit Months, (AUM's), called the preference level of the ranch. The preference level of public livestock AUM's was formally adjudicated to these ranches by the federal government in the 1940's, 1950's and 1960's. The transcripts and records taken by the BLM during the adjudication period leave no doubt that it was the intent of the federal government at that time to continue their part of the historic partnership between the western ranching industry and the BLM. The adjudication records document that the Government encouraged these ranches to invest a considerable amount of private funds and management skills in the management of public lands to maintain or improve the condition of these lands. As a part of their contribution to this effort, the BLM developed an infrastructure of highly trained and experienced rangeland managers. In general, these men and women have served the public well in this endeavor, and while there is still a job of range management to do in the west, the condition of the unfenced, and intermingled ownership of rangelands are in their best condition of this century, and getting better and better over time as management skills and technology provide.

The record shows that so long as these public rangelands were healthy and in good condition and producing adequate amounts of forage, that the federal government has consistently given commitments to provide a reasonably stable source of public forage to these ranches.

But this historic partnership and commitment to provide a stable source of livestock forage is being eroded. In more and more situations, BLM regulations and policies reflect a retreat from this commitment. Agency interpretations of how to apply the National Environmental Policy Act, The Clean Water Act, The Rare & Endangered Species Act, The Historic Preservation Act, etc., to the planning and management of rangelands now used for grazing livestock and other traditional multiple uses, often results in restrictions to these multiple uses in ways that cause significant economic and social impacts to ranchers, school districts, County government programs, and to the stability of local communities.

The ranch families with whom I work in Wyoming realize that, in order to survive on the ranch, that they must evolve with the changes that take place when more and more demands are placed on the use of BLM rangelands by uses other than livestock. These men, women, and children on these family ranches are just as willing as other components of society to support the intent of Congress to protect water and air quality, to protect and maintain historic trails and structures, and provide for healthy rangelands.

I would like to bring to the attention of this committee, an example outside the application of these federal environmental statutes, of how the ability of these ranches to use public land AUM's are being reduced from the level they have been led to believe was going to be consistently available to their ranches.

In the early 1980's, the BLM policy on how to determine when changes in livestock AUM's available to ranches and wildlife were needed, changed from a policy of reliance on one point in time inventories of rangelands, to a reliance on field studies that would document changes over time of components of rangeland resources. This process is called, MONITORING. This change in BLM policy was, and still is to my knowledge, fully supported by the Range Science community and the livestock industry because monitoring is a much better way to determine if allotment objectives were being met over time.

The operative phrase in a monitoring program, is " change over time ". Range science literature for years has documented that excepting significant impact events such as fire, insect plagues, prolonged drought, chemical treatments of surface vegetation, etc., that the capability of rangelands to produce vegetation do not change very fast. Under normal situations of precipitation and temperature, rangeland conditions can be conserved with moderate and stable stocking rates of livestock and wildlife.

The usual components of a monitoring program include the study of a variety of plant community attributes at the same location over a time.

Different types of data are collected at different time periods. For example, photo's of a monitoring site should be taken at least once a year, at the same time of the year, if at all possible.

If a knowledge of the amount or pattern of distribution of dead plant material remaining on the site after the grazing season is important to know, this parameter should be studied each year. Most monitoring studies also gather annual information on the numbers of animals that have used the allotment, and the utilization levels or stubble heights on selected plants as a result of that grazing use. This information may be useful to determine a cause and effect relationship to any documented changes to the plant community over the time period of the monitoring program.

Because the frequency of plants, their basal cover, canopy cover, or percent composition by weight in the plant communities exhibit change, if any, slowly over time, these parameter are usually studied over 3 to 5 year intervals. Current field procedures available to range managers are seldom sensitive enough to document if annual changes in plant community structure and function have occurred. Changes over time of the components of a plant community are called the "TREND" of that plant community.

Range managers attempt to design grazing programs to influence the trend of a plant community towards resource objectives that meet the needs of the soil and plant community, and the livestock and wildlife that graze the land.

The interactions and interrelationships between the many components of a rangeland ecosystem and the users of that ecosystem are very complex.

Range management is still 90% art, and 10% science, at best, but adequate quantity and quality monitoring data from a variety of ecosystem parameters will provide the manager a data base on which to manage the land.

If we do not have that variety of data available to us, the task of range management becomes very difficult, if not impossible.

The design of an effective monitoring program is a package deal. It is seldom, if ever, a useful exercise to study just a very few components of a rangeland ecosystem. It has been said that a person who has only a little knowledge on a subject should not be placed into a position of decision making on that subject. This statement is especially true in situations where BLM managers have the power to control the economic well being of ranches dependant on federal grazing lands by controlling the number of livestock AUM's available for use by that ranch.

But for reasons those of us in the range profession outside the BLM do not understand, BLM policies over the past few years are allowing their decision makers to base decisions on livestock reductions on a very limited amount of data, or in some cases, virtually no data at all.

For example, data on the annual utilization of plant species by grazing animals, when combined with trend data of soil and plant community attributes over time, can contribute to a determination of the possible causes and effects of those observed trends in the plant community.

If the observed trends are unacceptable, then the manager has an obligation to change the grazing program to try and accomplish the desired objectives. But absent a knowledge of whether or not a plant community is changing over time, annual utilization data provides little more than a visual and cosmetic view of the rangeland.

In my capacity as a rangeland consultant to family ranches dependent of BLM grazing lands, I am now seeing allotment plans that for the first time in my 20 year career, propose that livestock must be removed from the allotment when certain levels of utilization have been reached on selected plants on selected areas of the allotment. prior to the point in time when BLM has information to support that level of use is having an adverse impact on the ecosystem. The levels of utilization being used as the maximum limits allowed by these proposals are not considered by the majority of the range science community to be use levels that would normally be detrimental to plant communities grazed under typical BLM management guidelines that include deferred rotation, rest rotation, and time controlled grazing of these allotments. As support for this statement, I have attached to my testimony, statements from a Symposium sponsored by the Society For Range Management last winter on this subject.

I would now like to provide some actual examples of BLM livestock plans that contain language that places a utilization limit on the livestock grazing program without the support data to confirm that the limits, do in fact, have a detrimental environmental impact on public lands:

Allotment No. 00564, Worland Wyoming District:

Pg. 10, " The goal is not to exceed 20% utilization on the key perennial grasses prior to seedripeness. "

" If the use is consistently heavier than 20% prior to seedripeness, the permittee will run fewer cattle or delay livestock turnout the following year. "

Allotments No. 01006, 01007, 01059, 01062, 01012, & 01078, Cody Wyo. Resource Area

" Use levels will be maintained at 40% of current growth of perennial grasses during the spring/summer grazing period within each respective geographical unit "

" All allotments administered by the BLM will be deferred during the growing season every third year. The growing season has been determined to be the active growth period of the plant and is April 15 - July 1. AUM's will be used based on the annual livestock demands of the operator within the allowable levels listed above "

Allotment No. 1803, Lander BLM Resource Area

" Improve distribution of domestic livestock by managing the utilization of perennial grasses on upland and ephemeral drainage sites at 35% or less in all sub-units of the allotment by the year 2002 " .

" Decrease utilization of perennial grasses at the end of the grazing season from moderate, (41 - 60%) to light, (21 - 40%) by the year 1999 in sub-units 1 & 2 " .

1996 Annual Operating Plan for the Cumberland Allotment, and 1997 Annual Operating Plan For The Smithsfork Allotment, Kemmerer BLM Resource Area.

" When a 60% seasonal use level is met on the key species, a closure notice will be issued for the affected area. The permittees will have 3 days after receipt of the Notice to remove all livestock from the federal lands in the use area. "

The Cumberland allotment is located on the border between Wyoming and Utah. Mr. Chairman, most of livestock permittees who run livestock in the Cumberland allotment live in the Randolph area in Utah. You probably know most of these men and women. These technically unjustified utilization limits and livestock management restrictions on Utah family ranchers Charles and Connie Rex, Ed Bown, and Burdette and Simeon Weston, and others, caused these people a lot of money and management problems.

It is my profession opinion that resource conditions in the Cumberland allotment in 1996 did not support the action taken by the BLM to impose utilization limits and closures to livestock grazing.

These BLM proposals have the effect of requiring the removal of livestock before the time period stated in the annual authorization to graze provided to the rancher by the BLM at the start of the grazing season. In these situations, a rancher was given an authorization by the BLM to graze a certain number of livestock for a set amount of time.

If the forage production on the allotment for a particular year is consistent with the production levels that were used to adjudicate his/her allotment, it is my testimony on their behalf that they have a right to assume that a deal is a deal.

Ranchers are business people. It is economically very disruptive to be told on short notice that your livestock must be removed from the allotment prior to the point in time as stated in the permit to graze. This procedure is increasingly being used by the BLM to reduce livestock AUM's on public lands by imposing utilization limits and full force and effect decisions to close allotments to livestock use when those arbitrary limits have been reached. This is an innovative way, but technically inappropriate way, to circumvent the traditional process of basing resource management decisions on a true knowledge of impacts to natural resources.

Reductions in the number of AUM's the BLM will allow a rancher to use at the end of the grazing season will not publicly show up as formal reductions to the preference. This method of reduction is largely hidden from the view of the industry, the public, and from Congress, because ranchers have very little opportunity for recourse when this occurs. When they are told on short notice to remove their livestock from public lands, they are much too busy gathering cows to take somewhere else to have the time to file appeals or contact sources for assistance.

If they own private lands in the allotment being closed, they can't even use their own land for grazing because their private lands are unfenced and intermingled with the BLM lands under closure.

Cows on open range don't know the difference in ownerships, and they would be subject to trespass and perhaps seizure by the BLM if they strayed onto public lands closed to grazing.

In 1995, the BLM was in the process of revising their technical monitoring manuals. The Association Of Rangeland Consultants was asked by the BLM to review and provide comments to the BLM on these DRAFT manuals. I would like to close my testimony today with a quote from our review of those DRAFT BLM Manuals.

" Over the past several years, the land management agencies have abandon the historic practice of using broad monitoring information and the art of range management to work through people in the resolution of rangeland issues. Instead, they have adopted an approach to manage rangeland issues based mainly on empirical data and established numbers or standards. The documents under review appear to continue this trend ".

Mr. Chairman, members of the Committee, I have seen the FINAL Manuals and they were not changed to reflect our comments.

Thank you for this opportunity to present this growing problem for your consideration.

Dick Loper
Lander, Wyo., 82520

Statement by Allen E. Smith
before the U.S. House of Representatives hearing
in the Subcommittee on National Parks and Public Lands
regarding BLM Grazing Reductions

September 30, 1997

Thank you, Mr. Chairman. My name is Allan E. Smith and I am here on behalf of the 22,000 members of the Utah Farm Bureau Federation, many of whom, like me, are BLM grazing permittees. I'm also past chairman of public lands for the Utah Cattlemens Association. We have deep concerns about reductions of grazing on Western BLM lands.

Back in 1934, in support of establishing the BLM, my grandfather, Maroni Smith, testified on the importance of protecting the stability of the livestock industry and sustainable grazing on public land. As a third generation rancher in Northeastern Utah, and a recipient of a BLM environmental stewardship award, it is somewhat ironic for me, 63 years later, to be back here opposing what we believe to be unwarranted cutbacks in BLM grazing. We've heard rumors of BLM pressuring the Hanley Ranch in Jordan Valley, Oregon to reduce grazing. Other concerns are outlined in my extended statement. "Paper cuts," as they are often called, reduce permits from preference use, which the permittee bought, to actual AUM's used. Over the years, many ranchers have voluntarily taken non-use in times of drought, etc. with the promise of getting their suspended AUM's back when ranges improve. Too many times these suspended AUM's are subsequently left for wildlife and never returned to the permittee. No doubt this committee will hear other examples. But I am here with a specific example of BLM grazing reductions on an historic ranch in my area, a ranch with which I am very familiar. My written extended comments and exhibits will more fully illustrate this situation.

Allan E. Smith Statement - page two
September 30, 1997

The Nutter Ranch in my area began grazing in the 1860's. When the BLM acquired control of the public lands in 1934, grazing continued on the Nutter under a BLM permit. For 18 recent years this ranch has been managed by a university-trained range conservationist. A recent range evaluation by Utah State University Extension Range Ecologist James Bown shows livestock are not damaging the ranges in question, a fact confirmed by a letter from Dr. Bown in my extended comments.

The authorized AUM's on the Nutter in 1979 were 8,584 active and 5,416 AUM's suspended, for a total of 14,000 AUM's under the year-around grazing permit. By August, 1997, the BLM had reduced the Nutter permit to 3,038 active AUM's, a loss of 5,546 and 1,783 suspended AUM's. Recently, the BLM acquired ownership of 756 acres of private bottom land from the Nutter Ranch on the Green River near Nine Mile Canyon as part of a mitigation agreement. These 756 acres had been a part of the ranch's private grazing area since the 1860's. Now, the BLM has notified the Nutter Ranch that they can no longer graze these acres, plus an additional 1,331 acres of adjacent public land. This closure will effectively make it impossible for the ranch to use much of their private grazing land and adjacent state school trust land sections, because the closure shuts off the water access and trailways. Like a missing link in a chain, this administrative decision denies the ranch a place to graze cattle from October 15 to February and between November and April 15.

A draft Environmental Assessment (EA) for the acquired Nine Mile Canyon and Green River area was released August 29 with a closing date of October 2. Farm Bureau did not receive a copy of the EA until September 22 when I personally took one to them. Farm Bureau usually receives BLM draft EA's in Utah because Farm Bureau tries to help ranchers work through the proposals in a cooperative way. We have requested 30 days

Allan E. Smith Statement - page three
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more comment period and we await formal reply on that request. In my view, the EA is very biased in favor of recreational river runners on the Green River. Particularly disheartening to us was the EA justification for excluding livestock listed as: "(1) protect natural values, (2) protect cultural resources, and (3) **provide a wilderness quality recreational experience.**" (Emphasis added).

Mr. Chairman, this is **not** a wilderness area. If it were, the 1964 Wilderness Act would have specifically protected continued grazing. We must ask where in the BLM charter do the three stated objectives take precedence over multiple use such as continued, well-managed grazing and continued stability of the livestock industry provided for in the Taylor Grazing Act and other federal laws?

Another serious concern is that now, all these many years after the fact, BLM is threatening to levy agricultural trespass charges against the ranch for corrals that have been on the BLM land over 100 years, long before a permit for such facilities was required. Frankly, Mr. Chairman, it looks to me like BLM may be trying to harass the ranch until they agree to provide public access across private land as a condition of this grazing permit. We will let the committee form your own conclusions on this after reviewing the extended statement which includes letters from the BLM to the ranch on these matters.

Thank you, Mr. Chairman and members of this committee, for your oversight of the BLM on these issues. I appreciate the opportunity to present these comments to you.

EXTENDED STATEMENT

by Allan E. Smith, on behalf of
 Utah Farm Bureau Federation
 before the U.S. House of Representatives
 Subcommittee on National Parks & Public Lands
 hearing on BLM Grazing Reductions

September 30, 1997

Attached hereto is a copy of the oral statement presented to the committee hearing.

In addition, we wish to enter into the record various documents relating to the reduction of permitted grazing by the Nutter Ranch on Bureau of Land Management lands in Northeastern Utah by the Vernal and Moab Districts. The documents attached include:

1. An August 30, 1993 letter from the Nutter Ranch manager (known at that time as the Sabine property) to the State Director of the BLM requesting his intervention into what the ranch manager believed was unwarranted restriction on the ranch operation by the BLM district offices;
2. A letter dated August 25, 1995 from the ranch manager to BLM's Price River Resource Area Manager expressing willingness to develop alternative grazing programs to satisfy any concerns the BLM may have, and proposing several alternatives;
3. A November 13, 1995 response from the Price River Resource Area Manager responding to the ranch manager's August 25 letter, which essentially rejects the ranch proposals and outlines further concerns of the BLM **and giving the ranch manager only 4 days to accept the new conditions outlined in the November 13 letter if the permit is to be issued;**
4. A November 16, 1995 letter from the ranch manager to the BLM expressing dismay at such a short time frame to prepare an appeal to the decision document and requesting a face-to-face meeting to discuss the issues. (It should be noted that the ranch manager is a university-trained range conservationist.)
5. An undated letter (written either May 4 or 5) from Dr. James Bowns, a noted range scientist holding joint Extension appointment with Southern Utah University and Utah State University. That letter both counters claims that livestock are damaging the resource and, uncharacteristically, complains to the BLM area manager about the animosity the BLM is showing to the ranch manager. Dr. Bowns verifies that the ranch managers requests of the BLM are reasonable and scientifically sound. **It should be noted that Dr. Bowns is assigned by the state of Utah as one of three range scientists to engage in conflict resolution between federal agencies and permittees.**

Extended Statement by Allen E. Smith - page two
before Subcommittee on National Parks & Public Lands
September 30, 1997

6. Correspondence from the ranch manager to the Vernal District office dated January 20, 1997 and another, undated letter, but written immediately subsequent to the January 20 letter, commenting on the scoping meetings held by the BLM on the Environmental Assessment that ultimately proposed to so severely restrict grazing on the lands in question;

7. Two documents: (1) page 5 from the EA verifying the reductions in BLM grazing prior to the EA's new, proposed reductions, and (2) Appendix F: Grazing Allotments, taken from a 1979 BLM permit listing verifying the ranch had 8,584 active AUM's in the subject area at that time.

Preston Nutter Ranch
P.O. Box 824
Price, Utah 84501

Aug. 30, 1983

State Director
BLM Utah State Office
Salt Lake City, Utah 84111

Dear Sir:

In response to the reassessment of Lands originally excluded from the Desolation Canyon Wilderness Study Area (Ut - 060-0688) we object to the reinclusion of Rock House Canyon/Cedar Ridge areas, and the creation of a new area in the Jack Canyon Study Area.

Nutter Ranch is the largest permittee in the Price Area of the Moab District. The inclusion of these areas constitutes an inconvenience to the ranch in preventing needed range improvements on SLM Lands for increased forage, water developments and other range management practices. This also separates our private lands located along the Nine Mile Creek. The road down Green River, Horse Bench is our method of reaching this area for developing these private lands or checking our cattle that winter in the breaks of the Green River. There is also the possibility of the development of alternative fuels located in this area.

Our Cow Camp is located in the head of Rock House Canyon and is only used during the Winter and Spring months when the cattle are in the area. The Jack Creek area was used in the 1800's by J. H. Lunt, the first cattleman in the area, who was later bought out by Preston Nutter.

The Preston Nutter Ranch is dependant upon the forage produced in this area and depends upon using this area and would like to see range improvements to increase the availability of forage and water in these areas. To restrict range improvements motorized vehicles, equipment, etc. would create a financial burden upon the ranch.

The protection of this area over the years has restricted the intrusion of people into this area. We have taken a lot of pride in our cow outfit and have protected our privacy. There is evidence throughout the area of early settlers, explorers, trappers and the Indians. The naturalness of this area is only due to the fact the area is being viewed from the river. There are many roads and trails throughout this area which are used by the cowboys and oilfield personnell. The access of this area from the Green River is straight up 3,000 foot cliffs or up brushy canyons.

The size and shape of this Wilderness Area is not equally distributed because it is bounded on the east bank of the Green River by the Indian Reservation and throws the pressure on the west bank where our cattle graze. Also, the limiting of grazing along the river from October 15 to November 15 would hamper our natural drift of cattle into and out of the area.

Sabine's, Preston Nutter Ranch would like to see this area left a wild and scenic river and cannot agree with the Wilderness aspect when it interferes with our "bread n' butter". We are interested in the development of all the natural resources in this area and cannot see the additional restrictions that would be placed upon the Nutter Ranch.

Thank you,

James L. Brown
James L. Brown, Manager
PRESTON NUTTER RANCH

Roosevelt, Utah
August 25, 1995

Bureau of Land Management
Price River R. A.
Price, Utah 84501

Dear Mark Bailey,

In our meeting on August 2nd 1995, I expressed my concern on the cancellation of grazing on the Green River bottoms and the mouth of Nine Mile creek. The consensus of the group, myself, Mark Bailey, Ray Jensen, and Dennis Willis was to write a proposal for the grazing future in the Nine Mile bottoms.

It is my proposal that the permittee and the BLM set up a monitoring study that will measure the grazing effect upon the various plants both riparian and upland species. This could be done by establishing some photo and trend plots to monitor species changes in both the uplands and the riparian areas.

Dennis Willis mentioned the concern with the cottonwood regeneration and the recreational conflicts. The recreation conflict could be eliminated by the season of use, early spring or late fall grazing. The cottonwoods and other riparian plants would also benefit by use after dormancy or prior to green up in the spring.

It is my proposal that we monitor the different effects with a monitoring program to evaluate the effects of livestock use during the different seasons.

- 1) Livestock grazing during the early spring season prior to green-up, and grazing March 15th, most years.
- 2) Livestock grazing until green-up, April 15th.
- 3) Livestock grazing in the late fall while the ground is frozen, Oct. 15 to Nov. 15.

I ask you to consider these options for continued grazing in this area that is on the Wilderness designation. I am willing to work closely with you in a plan that will continue grazing and protect the resources in a multiple use approach.

Thank you,

Jim Brown
Nutter Ranch Enterprises
585 Miller Dr. (67-7)
Roosevelt, Utah 84066



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
 Moab District
 Price River Resource Area
 125 South 600 West
 P.O. Box 7004
 Price, Utah 84501

4130(437051)
 (UT-066)

Jim Brown
 Nutter Ranch Enterprises
 585 Miller Dr. (67-7)
 Roosevelt, Utah 84066

NOV 13 1995

Dear Mr. Brown:

This is in response to your letter of August 25, 1995. In our meeting on August 2, 1995 it was stated that no grazing would be allowed at the confluence of Nine Mile Creek and along the Green River (see enclosed map). This was based on the following:

1. The Price River Management Framework Plan (the Land Use Plan for the resource area), identified BLM's desire to acquire private lands located near the mouth of Nine Mile Creek. In 1993, these lands were deeded to the BLM by Pacific Enterprises Oil Company. The acquisition was pursued to further the objectives of the Desolation and Gray Canyons of the Green River Management Plan. Objectives of this plan include maintaining the natural character of the canyon and provide a quality wilderness experience for recreation users of the canyon. Prior to authorizing grazing, we must determine grazing is consistent with the purposes for which the land was acquired. Your proposal does not clearly demonstrate these objectives would not be compromised if we permit grazing on the acquired lands.
2. In 1969, Desolation Canyon from the mouth of Nine Mile Creek to Florence Creek was designated a National Historic Landmark. Desolation Canyon was selected as a landmark because it was here that John Wesley Powell first entered unknown territory and of all the Green and Colorado river system, this canyon is the least changed from the time of Powell. The purpose of the landmark program is to identify and protect sites and areas of national significance. To authorize grazing on these acquired lands would be a federal action that must be consistent with the landmark's purpose and would require consultation with the National Advisory Council on Historic Preservation.

3. Rangeland monitoring has been collected on the area for several years. The Horse Bench winter pasture is serviced by snow cover only in mid-winter and by open water in Nine Mile Creek and along the Green River. A few springs service a small portion of the bench. Our existing monitoring studies indicate excessive use of forage in the riparian and upland areas along the subject land. Years of use pattern mapping show poor distribution of livestock on the east end of Horse Bench, including the subject lands. Heavy to severe use (70 - 90+ percent) has consistently occurred at the mouth of Nine Mile Creek. Use is concentrated in that area because of the availability of water, protection from wind and storms and the warmer temperatures at the lower elevations. Removal of livestock from this area also seems to be a problem. Cattle were consistently left along the Green River after the date they should have been removed. Such use is detrimental to riparian woody plants, naturalness of the area and the experience of recreational users.

4. You stated that grazing would not be detrimental to riparian and upland areas and would be compatible with recreation uses of the area. These are unsubstantiated conclusions that do not comport with our past experience or observations of grazing use on these lands. In the spirit of consultation and cooperation, you were asked to present a grazing and monitoring plan that would conform with other uses and objectives for the area.

You have not presented any new information to support your position that re-establishing grazing would be a compatible and conforming use. Your plan only proposes to initiate more intensive, long term monitoring studies. In addition to your proposal being non-specific as to the monitoring plan, such an approach would only serve to prolong conflicts with other users of the lands. Our existing monitoring studies indicate excessive use of forage occurred when the subject land was grazed during the season you propose. Such use is detrimental to riparian woody plants, naturalness of the area and the experience of recreational users.

A term and condition of the grazing permit that was offered to you was that all range improvements would be brought to BLM standards by October 31, 1997. A schedule was agreed to outlining that a portion of the projects would be worked on over the three year period. The first year's proportionate share of maintenance has been worked on and completed as agreed to.

BLM is concerned with the public's access to public lands. We appreciate your cooperation in moving the "No Trespassing, Private Land" signs at the head of Twin Hollow, T13E, R15E, sec 20, NE¼. We remind you that the associated unauthorized fence at the same location needs to be removed by November 17, 1995.

There are concerns that have been brought to our attention concerning the Steer Ridge/Gooseneck private property fence lines between yourself, Jensen's and public lands. For several years the Rock Creek and Green River allotment permittees traded grazing use on private property bordering the two allotments. This was done due to the natural topography and access from Lower Steer Ridge and Gooseneck Ridge.

It is our understanding that you have decided not to honor the old land trade agreement and want to have each party fence their own respective property. Since the land is private, BLM has no objection to that decision. However, the fencing would enclose public land in with the private land.

If the properties are fenced, BLM wants the fences to be on the property lines. This would delineate ownership lines and facilitate orderly livestock management of the area.

Thank you for your cooperation with these matters. If you want to complete the transfer of the grazing permit, sign and return it to the above address by November 17, 1995.

Sincerely,

Mark E. Bailey

Area Manager

cc: Hunt Oil Inc.

Roosevelt, Utah
November 16, 1995

Bureau of Land Management
Price River R. A.
Price, Utah 84501

Dear Mark Bailey,

In response to your letter, November 13, there is a problem with the November 17, 1995 deadline for responding to your letter. More time is needed to appeal the content of your letter with you. We need to have a meeting to review the content of your letter face to face and discuss it at some length as it effects the long term grazing on the ranch.

It seems that in reviewing your letter there is no multiple use mentioned regarding either grazing or wildlife use, the only single use considered is recreation. No where in your letter do I see anything about ecosystem management of which proper grazing by livestock and wildlife would be a big part of the total picture.

I was my understanding that I make some grazing proposals and myself and the BLM personnel would review them and come up with a viable solution (grazing plan and monitoring method) acceptable to both parties? I presented three grazing proposals that varied the season of use that reduced the conflict with recreation and you say that is not "new" information. How can the grazing season be any different and still consider recreation? Have any of these periods of use been tried and monitored? To my knowledge the reduced grazing time and season of use by livestock and wildlife has not been tried and monitored. You mention a lot of historical events but no new future grazing plans.

The grazing permits have been in non-use for the past grazing seasons and the riparian and upland areas should show signs of improving dramatically with the non-use and the increased moisture year. I would like to review the monitoring results and pictures with the range conservationist on the ground for the past several years. It would not be in our best interest to begin a new monitoring study if the old one is acceptable to both parties. I mentioned in my proposal that this should be done with both parties present if possible. Maybe we could use the rapid assessment method that was presented at the Range Society meeting that we both attended in Price, Utah last week?



SOUTHERN UTAH UNIVERSITY
Cedar City, Utah 84720

Mark Bailey

Mr. Mark Bailey
Area Manager
Bureau of Land Management
125 S. 600 W.
Price, Utah 84501

Dear Mark,

I am writing to express my opinion about the controversy surrounding the grazing of the Nine Mile/Green River bottoms. This is my second trip to this allotment in the past five years but the authorized permittee has changed during the interim period.

The controversy, as I perceive it, is whether or not cattle should be allowed to graze on the lands recently acquired by the BLM from a private company. I also understand that a planning amendment must be completed which will determine if livestock grazing is appropriate for those acquired lands. This latter requirement, as I understand it, is mandatory and not a subject of debate.

A portion of these acquired lands were once cleared, irrigated and cultivated. This is readily apparent from the remnants of irrigation ditches and reservoirs. It appears to me that irrigation waters accumulated salts in the cultivated areas which has left these soils extremely high in salt or alkali. The soils currently show excess salt on the surface and the vegetation is dominated by salt grass (*Distichlis*), greasewood (*Sarcobatus*) and Tamarix.

The current permittee is requesting that he be allowed to graze the acquired lands during a part of the winter. BLM managers seem to be opposed to this proposal based on the real or perceived conflict with people floating the Green River. Since boaters will not be in the area at the same time that the cattle are the concern must be the presence of cow manure or the utilization of vegetation. The other concern is the lack of cottonwood reproduction in the area. Since the area has been farmed in the past it is obvious that the native vegetation, whatever it was, had been exterminated and replaced by the halophytes listed above. Cottonwoods are obvious phreatophytes, but are they capable of reproducing in such saline or alkali conditions? The older cottonwoods predate cultivation and salt deposition may make reproduction difficult if not impossible. This may be an example of biological inertia where the old trees persist but recruitment of young trees is limited. These concerns should be addressed in the planning amendment.

Another problem is the difficulty of keeping cattle out of the river bottoms even when they are placed above the fence. There are a number of places that the cattle can access the bottoms and it would be extremely difficult to fence them out.

Learning Lives Forever.

I cannot see that cattle would have any measurable effect on the vegetation if they are allowed to graze during the winter and are removed in the early spring prior to recreational use of the area. I also feel the recreational use of those acquired lands would be very limited. This could be a good example of multiple use where the uses occur over during different times of the year.

The main concern I have is the large population of perennial pepperweed or tall whitetop. This noxious weed is a much greater problem and threat to the area than the limited winter cattle use requested by Mr. Brown. This problem should definitely be addressed in the plan.

I am also concerned about the animosity shown toward Mr. Brown. This was also a problem with the previous permittee. Mr. Brown is a well trained range manager who is well respected in his profession. I do not consider his requests to be unreasonable and I think that he should be treated with more courtesy. I also feel that my presence in this dispute was resented by the BLM. I don't ask to be involved in such issues, but my position requires that I be involved when my services are requested.

In summary, I do not think that limited winter cattle use on the acquired lands will have any measurable impact on the vegetation. They should, however, be removed prior to the boating season. I also think that it might be better to have the Vernal district take the lead on the analysis and writing of the planning amendment.

If you have questions I can be reached at 586-7922.

Sincerely,



James E. Bowns, Ph.D.
Extension Rangeland Specialist

c. Jim Brown ✓
Ron Trogstad

James L. Brown
585 Miller Dr. (67-7)
Roosevelt, Utah 84066

January 20, 1997

Dept. of Interior, BLM
Vernal District Office
170 South 500 East
Vernal, Utah 84078
Att: Ron Trogstad, Team Leader

Dear Ron,

Here are the areas of concern regarding the scoping meetings held January 8 and 9 on the recently "acquired" lands at the mouth of Nine Mile Creek.

1. Historical use of this land has been agriculture for centuries because of the archaeological sites in the area. There are remnants of dwellings, granaries, look-outs and petroglyphs in the area. In these granaries pre-Ute Indians stored the crops they had raised and pecked out pictures of the game they hunted upon the canyon walls. Historic livestock grazing has had no effect upon these sites, though many of the sites have been damaged or destroyed by others using the area in more recent years.

In more recent history the land has been used by the Spanish in connection with gold lore. Others, namely trappers, outlaws, soldiers, prospectors and explorers made use of this area grazing their mounts on the bottom land.

Early livestock users in the area were the Lunts' who grazed their livestock year round along the river and eventually moved to Emery county. In Jack Creek, J. H. Lunt placed his initials, brand and date in the mid 1880's under a ledge. An area in Jack Creek is known as Lunt's Horse Pasture. They trailed their cattle and horses up the river to the mouth of Nine Mile and down river as far as Nutter's rock.

Old Shed Lent was perhaps the first to bring stock in to Nine Mile according to the "Early History of Duchesne County". Preston Nutter acquired these grazing rights and employed Shedrach Lunt as his watchman on the range in his old age. The BLM credits Mr. Nutter with building the roads into this area prior to 1914, he built a road down Nine Mile creek much earlier.

Lew Taylor, who's grandfather explored for the US Army reports that the Nine Mile Creek did not flow into the Green River but was a large grassy meadow at the mouth until after the headwaters were heavily grazed.

Mr. Nutter began ranching in the northeastern Utah territory in 1883 with a spread of ten by thirty miles square, with headquarters out of Thompson Springs. In 1886 he incorporated the Preston Nutter Corporation and he later sold out his cattle interests in the Hill Creek area to the Webster City Cattle Company in 1893. According to Don Wilcox, Nutter homesteaded on the east side of the Green river, this was never proved up on.

Others connected to the Green River Corridor (Desolation Canyon) are the Sand Wash Ferry, Ray Thompson, the Sand Wash Mining Company, Dutch Henry, the McPhearson's, the Seamount's, the Ute tribe, early sheepmen, (Smiths, Bowns, etc.) and others who I may have missed and who have used these lands beneficially.

2. I am a firm believer of multiple use concept. I believe all uses that are beneficial to the land should be considered. These uses should include livestock and wildlife properly grazing the land, mineral and oil development, water, recreation uses, boating, hunting, hiking, sight seeing or other limited uses, but not to excess that they ruin the fragile resources.

I want to see the (water) riparian resources used but not abused. Proper grazing will not harm this resource.

It was mentioned that threatened and endangered species (wildlife) are present such as the prairie falcon, spotted bat, and the endangered fish in the river. The past use of this abandoned farm land must be in harmony with their habitat, because they are still using the area.

*The Endangered Species Act specifies that no Federal action can be taken which will destroy or adversely modify critical habitat of an endangered species. There have been no studies to the contrary.

The BLM has been charged with the multiple use concept since its beginning in 1934. This is reaffirmed in the Salt Lake Tribune, Oct. 22, 1966, when acting BLM director, Mike Dombeck writes "We now have an opportunity to shift the dialogue away from the few narrow issues to the more fundamental principles that unite all who use and care for public lands. BLM: WE WANT TO HELP PUBLIC-LAND RANCHERS."

In the Desolation Canyon area there is livestock grazing on all sides of the Green River, both up and down river including the T.N. Jensen private lands located within the Desolation Canyon area. These grazing allotments are listed in the River Management Plan handbook.

The Desolation Canyon area includes Ute tribal lands on the east side of the Green River extending from below Tabyago canyon to Florence creek. The Ute tribe has their own recreation restrictions and this forces BLM river recreation use on the west side of the river. There are thousands of acres of Ute Tribal lands included in the area from below Tabyago to Florence Creek, using the one mile wide designation and for about 40 miles along the river.

The McPhearson (Wilcox) lands located at the mouth of Florence Creek and above acquired in 1948 and given to the Ute Indian tribe and are included in the river plan.

When the Desolation Canyon monument at Sand Wash was dedicated, Virginia Nutter Pice stated that the Desolation Canyon was not desolate but that the ranchers were abandoned. Some of the earliest history is found in this area. Most of livestock use along this stretch of river occurs during the boating of season, after high water.

3. Potential conflicts between recreation uses and livestock grazing can be minimized by adjusting the season of use by livestock to either early spring or late fall after high water.

The area of concern is only used slightly by boaters because of the closeness to Sand Wash boat ramp, about 2 miles down river. Sometimes a boat group will pull into the mouth of Nine Mile Creek and walk over to the cabin. There are no sandy beaches in the area, only steep banks.

There are no organized campgrounds, only a crude fire ring, with cement blocks and a few charcoal briquets brought in by cat fishermen (1996). Motorized travel into the area is limited by very rough roads and the Nine Mile creek crossing is bad at the best and can only be used when the water is low. Most of the fishermen and hikers do not stay long because of the insects.

There is no monitoring data available on visitor day use in this area, to my knowledge. In my association from 1970 to the present, I would not see more than 1 or 2 boating parties a year camp in this area and about the same number of fishermen and hikers would use the area. This was evident because of the garbage left for me to collect at 1 or 2 camping and or fishing spots.

On May 3, 1996, the BLM RAC group witnessed a boating party pass up these lands and use the other side of the river at Duches Hole and set up camp.

4. The present condition of these lands is abandoned farm lands that have been use for the grazing of domestic livestock and wildlife on grasses that now cover the area.

The first elk were seen in this area in 1983, during the hard winter. The elk are marking and breaking some of the cottonwoods with their horns. (1996) There is now a small resident herd. There are a very few deer in the area, as the numbers are down presently.

5. One of the major concerns is the introduction of tall white top, *Lepidium latifolium*, by river flooding or migrant birds. There is presently a small plant population of tall white top to be controlled. Its control should be addressed in the EA along with any other noxious weeds in the area.

Another concern is tamarisk, *Tamarix ramosissima*, that is choking the waterway and replacing the willow and cottonwood along the Green River. Both of these species should be controlled by either chemical or biological means. Tamarisk is constricting the river flow with thick stands that collect sediment and prevent the proper use of the flood plains where replacement of cottonwood trees establish and endangered fish reproduce in the back waters. I have photo data on the various aged trees present in May 1996, no other monitoring data was done in 1996.

6. I object to having this area made a "special recreation area" as it has been referred to by some. I have found that "special" single use areas mean there are "special rules" that are not compatible with the multiple use concept. In a BLM letter dated, Nov, 2, 1979, it states "Coordination has been carried out to ensure that the provisions of the River Management Plan result in minimum conflict with other multiple use resource management values." "The River Management Plan is a recreation use management plan." (Single use)

7. This area has been addressed in the Diamond Mountain Resource Area Plan, I believe they refer to it as a "critical concern area", and it should be addressed in an planning amendment and added into that document. I would recommend that this area be included in the Vernal BLM office, as there is only 40 acres in Carbon County. This area is just as close to Vernal, being served by a county road to Sand Wash boat ramp. The Vernal Office controls the grazing allotments in Sand Wash area.

8. At the scoping meetings it was mentioned that the area IS NOT eligible for the Wild and Scenic River designation.

9. At the Price scoping meeting, Serria club member, Dave, said "that grazing was NOT a problem in a wilderness area." These lands do not qualify as they have been farmed and the man made marks are still evident on the land. There is still concern over the wilderness bill HR 1500.

10. I am not clear on the guide lines for adding formerly private historic lands into a National Historic Landmark designation and what the implications are upon grazing or its effects? Could this be handled with a planning amendment because it is a historic area and has been grazed and/or farmed for over 100 years? The Historic Sites Act was written in 1935 "to identify and protect historic sites, buildings, or areas of national significance."

They selected a length of river 45 miles long that contained the remnants of three actively grazed areas and previously farmed areas with buildings and equipment, and had an Indian reservation along approximately 40 miles along one side.

It was brought out in the scoping meeting that these lands were to be left in the condition Powell found them in 1869, but the Historic Sites Act was not written until 1935 and the designation of Desolation Canyon was not made until 1969. Early livestockmen were using these areas about that same time or before.

Break B47 - Ditt in Cookhouse
 11. I feel strongly about the issuing of a grazing permit including these lands 1/6/95 to Hunt Oil Co. This was sometime after the land had been "acquired" by the BLM. Then in July 1995, The Price Resource Area, cancelled that permit to Nutter Ranch c/o James Brown. They said there would be no grazing on the Nine Mile bottoms. I was asked to make an alternative grazing plan which I did and presented it to Mark Bailey, Dennis Willis and Dave Mills, in Price, Utah. This was never acted upon.

12. During our May 3, 1995 meeting on the ground, with Dr. Jim Bowns of the BLM RAC, we went to the uplands above the river bottoms to observe the lands in question. It was proposed that the lands be fenced off, this would require a lot of costly fencing and cause the livestock to jump off ledges trying to get to water. It would be extremely costly to control the livestock and monitor the gates to prevent trespass. This would cause the fence line area to be over grazed and cause other grazing and wildlife problems in the uplands away from the old Ranch bottoms. This area would work well in a grazing system as it has for the past 100+ years. I first came to work for the Nutter outfit in 1970 and have hands on experience in this area and know how the cattle respond here and the many trails under the ledges.

13. I would like to ask why studies and inventories were not conducted when the land was "acquired"? It seems that the BLM is always inventorying lands or doing studies. To place a tight restriction upon this parcel of land would impact the other BLM leases, the State lands and other private lands in the immediate area. This would be another reason to accept the Diamond Mountain Plan which is complete and covers the area. This acquired land could be added with a planning amendment. The Price area does not have such an up to date plan.

14. I would like to suggest the CRM (Coordinated Resource Management) planning process, where what is best for the resource could win out. I feel a workable solution can be achieved, but not all at the expense of the historic use of the land.

*Thank you
 James R. Brown*

James L. Brown
Nutter Ranch Enterprises
585 Miller Dr. 67-7
Roosevelt, Utah 84066

Dept. of Interior, BLM
Vernal District Office
170 South 500 East
Vernal, Utah 84078
Att: Ron Trogstad, Team Leader

Dear Ron,

Here is some additional concerns that have surfaced since my January 20, 1997 letter on the "acquiring" of the lands at the mouth of Nine Mile Creek.

15. In the Desolation And Gray canyons of the Green River Management plan on page 7 is a sketch of what the visual corridor concept, "limited to what can be seen or heard from the river." Does this mean that any other uses that can not be seen or heard from the Green River are OK?

16. In the same document there is a management action for the increasing of number of boaters during the major use season (May 1 to September 30) from 30,000 to 35,000 passenger days per calendar year. The resource can only stand so much "loving" or over use. It seems that the use of this resource is being over used and needs to be limited to the an average of the original number of passenger days for the years 1973-75 of between 9,000 to 24,000 passenger days. In view of the same breath the statement is made that the single most used spot is Rock Creek (private property) and it is being "loved" to death.

17. On page 41 of the River document there is a statement about early livestock and outlaw history within the management plan area and the possibility of more outside the 1 mile border. These are some of the sites I have been referring to and "we" the public are concerned about their protection.

18. In the enclosed past correspondence with the BLM, enclosed letters dated Nov. 29, 1982, Nov. 29, 1982, May 10, 1983, July 7, 1983, Aug. 30, 1983 and Jan. 20, 1984, I have tried to show the adverse effects upon the Nutter Ranch.

These letter address the historic and cultural importance of the area, the multiple use of the land and water resources, length of grazing periods, there are excerpts from magazines and newspapers about issues that are pertinent to this River area. Also maps that show the BLM intends on multiple use?

Thank you,

James L. Brown
Nutter Ranch

Environmental Assessment No 1997-18
Planning Amendment for Land Acquisition in Private
 Interrelated with the acquired land. For a more detailed discussion of resource values and uses, refer to DMRMP, PRMFP, and the Nine Mile Canyon Recreation and Cultural Resources Management Plan.

A. Livestock Grazing: The acquired lands are located within the Green River grazing allotment which encompasses 102,671 acres. The allotment is mostly in Carbon County with a small portion in Duchesne and Uintah Counties. Elevation ranges from 10,100 feet at Bruin Point to 4,600 feet at the Green River on the acquired lands. The present total recognized grazing use on the allotment is 4,821 AUMs; 3,038 of which are active and the remaining 1,783 suspended.

The forage carrying capacity for the allotment and the acquired land was calculated from the range survey of 1978-79 and monitoring data. The acquired lands annual produce an estimated 64 AUMs. Using an allowable use factor of 50 percent, it is estimated that 32 AUMs would be available for cattle grazing.

The Horse Bench winter pasture, which encompasses the acquired lands, totals approximately 21,600 acres, or about 21 percent of the allotment. The authorized use period for this pasture is from February 1 to April 15, with allowances for 500 cattle and 1,158 AUMs.

Historical records indicate Nine Mile Canyon has been grazed with cattle since the late 1870's. Prior to 1984 Horse Bench pasture was grazed most years, and between 1984 through 1993 it was grazed sporadically. Through this planning effort and change in livestock operators, the Horse Bench pasture has not been grazed since the spring of 1993.

Management of the Horse Bench Pasture is difficult for various reasons. Access to Horse Bench is limited as there is only one four-wheel drive vehicle route into the area. In most years this area is unaccessible during the months of October through May, which includes the period when grazing is allowed. Nine Mile Creek is also often impassable during the spring when high water runoff occurs. Proper distribution of cattle over the entire pasture is dependent on adequate snow cover, and in most years, the snow is usually gone by February or March. There are numerous springs/seeps located on the side slopes of Horse Bench. Most are unreliable, alkaline, and frozen in the winter months, making the Green River and Nine Mile Creek the main open flowing water source for winter cattle within the pasture. When snow is not available, the cattle tend to congregates at the Nine Mile/Green River bottom area on the acquired lands. Historical records indicate that cattle were often stranded in this area due to severe winter storms and that many died on isolated points or by falling through the ice on the river. These conditions have often contributed to cattle staying beyond the authorized use period.

Since 1987, utilization and trend monitoring data has been collected at the established study plot on the uplands of Horse Bench proper, three miles west of the acquired lands. To date no study plots have been established on the acquired land; however, analysis of existing study field notes and general observation records provide some indication of utilization and thus vegetative condition of these lands. These records indicate moderate to heavy grazing has taken place on the river bottom area. Such conclusions are based on the sparseness of desirable grass species (Indian ricegrass and needle and thread grass) and these grass species being limited to protected sites, e.g., rocky areas and under shrubs. Visual observations indicate light to moderate usage has been made on the saltgrass community at the river bottom. Past heavy grazing on the hillside slopes, between Horse Bench and the river bottom area, are indicated by abundant annual grasses and snakeweed.

B. Cultural Resources: About 90 percent of the planning area is within the Desolation Canyon National Historic Landmark, which is listed on the National Register of Historic Places. The area, designated in 1969 and shown on Figure 5, includes those lands within one mile on both sides of

August 1997

APPENDIX F: GRAZING ALLOTMENTS*Desolation and Gray Canyons of the Green River
River Management Plan (1979)*

Grazing allotments along the Green River through Desolation and Gray Canyons are:

Green River Allotment - Preston Nutter Corporation (Basic Operation)

Allotment Number	Livestock		Period		Active AUM's
	No.	Class	From	To	
4049	1200	C	11/16	12/15	1080
4049	930	C	12/16	03/15	2511
4049	1130	C	03/16	04/15	1017
4049	1800	C	04/16	05/31	2430
4049	400	C	06/01	11/15	880
4049	121	C	06/01	11/15	666

Rock Creek Allotment - T. N. Jensen (Basic Operation)

4101	110	C	11/1	04/15	605
4101	300	C	04/16	10/31	585
4101	20	C	06/16	09/30	70
4101	37	C	06/01	10/31	185
4101	20	H	11/01	04/15	110
4101	20	H	04/16	10/31	39

Last Chance Allotment

River AllotmentElliot Mountain Allotment - Jay Pagano (Basic Operation)

4042	1500	S	12/01	04/30	1500
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(Has taken total nonuse for the last four years)

Price River Allotment - Edward Abbey (Basic Operation)

4125	10	C	05/16	09/15	40
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Season of use occurs from March 1 to November 15. Yearly variations in livestock numbers range from complete nonuse to 935 sheep or 1800 cattle. This is during short, specific seasons of use. Only a small portion of the above allotments lie along the canyon bottoms of the Green River, as such, most of the use occurs away from the river bottoms.

Roosevelt, Utah
February, 29, 1996

The Honorable Mike Donbeck
Director, Bureau of Land Management
U.S. Department of the Interior
Washington, D.C. 20240

Dear Mike,

I am writing in response to the BLM response to you, dated February 5, 1996. I have contacted Mr. Ron Trogstad, Vernal Resource office and he is willing to make an on the ground inspection in about 30 days. I have requested any grazing or clipping information from Mr. Mark Bailey, Price Resource office, letter dated February 26th.

I have reviewed the following information with Allan Smith, Public Lands representative.

Here is my concern:

- 1) Grazing permit, term 01/01/1994 to 12/31 1997, terms and condition #2 ..cattle removed prior to April 15. This is the grazing permit I could live with.
- 2) Grazing application date 1/06/95, term and condition #2.. grazing permitted but removed prior to April 15.
- 3) Grazing permit, term 03/01/1995 to 12/31/1999, terms and condition #2 No cattle will be allowed to graze.. This is the grazing permit that was transferred to Nutter Ranch Enterprises.
- 4) Grazing permit, term 3/01/1995 to 12/31/199, term and condition #5, No cattle grazing permitted until land use plans are amended to determine appropriate uses on the 756 acres acquired from Pacific Enterprises.

The land acquired from Pacific Enterprises was acquired before these permits were issued. I am having a hard time finding any logic in the issuing of these permits. I have enclosed copies with marked corresponding numbers.

Thank you, if you need any additional information please contact me at 801-722-4776, work, after hours 801-722-5763, home.

Sincerely,

Jim Brown,
Nutter Ranch Ent.
585 Miller Dr. 67-7
Roosevelt, Utah 84066

cc: Sen. Robert F. Bennett, Senator, Washington, D.C.
Sen. Orrin G. Hatch, Senator, Washington, D.C.
Rep. James V. Hansen, Representative, Washington, D.C.
Rep. Bill Orton, Representative, Washington, D.C.
Rep. Enid G. Waldholtz, Representative, Washington, D.C.



TESTIMONY OF STEVEN N. MOYER
Government Affairs Director of TROUT UNLIMITED
on the STATUS OF LIVESTOCK GRAZING ON BUREAU of LAND
MANAGEMENT (BLM) LANDS
before the
SUBCOMMITTEE ON NATIONAL PARKS, FORESTS AND LANDS
of the
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES
September 30, 1997

Mr. Chairman, members of the Subcommittee, I appreciate the opportunity to give you the views of Trout Unlimited (TU) on the status of livestock grazing on BLM lands.

Trout Unlimited is a national fisheries conservation group dedicated to the conservation, protection and restoration of our nation's trout and salmon resources, and the watersheds that sustain those resources. TU has over 98,000 members in 445 chapters in 38 states. TU and its members have a major stake in land management decisions, such as management of livestock grazing, that effect trout and salmon resources on our BLM lands. Our members generally are trout and salmon anglers who voluntarily contribute substantial amounts of their personal resources to aquatic habitat protection and restoration efforts. TU has a national partnership agreement with the BLM to work together cooperatively to protect and restore trout and salmon habitats on BLM lands. Many TU members fish on streams on BLM lands, numerous TU chapters – in partnership with the BLM – conduct stream restoration projects on streams on BLM lands, and many of our members participate vigorously in land management decisions for our BLM lands.

America's Leading Coldwater Fisheries Conservation Organization
Washington, D.C. Headquarters: 1500 Wilson Blvd., Suite 310, Arlington, VA 22209-2404
Main Number: 703-522-0200 FAX: 703-284-9400

I will comment today from our experience of working with the Forest Service and BLM on rangeland and grazing management, and our experience of working with ranchers to cooperatively improve their grazing management practices on federal as well as private lands.

Grazing can be compatible with healthy rangelands, riparian zones, and fisheries if managed properly. TU has first hand experience in working with ranchers that demonstrates that grazing and healthy fisheries can co-exist. Our members have worked cooperatively with ranchers from Mossy Creek, Virginia, to the Blackfoot River valley in Montana, to the Crooked River in Oregon, to protect and restore riparian areas and the fisheries that they sustain. Sport fisheries flourish on each of these three streams because of the success of our partnerships with ranchers. Successful management practices generally involve placing special emphasis on protecting and restoring riparian zones and associated fisheries within land management plans, excluding livestock from riparian zones with fencing or rotational grazing that keeps livestock out of riparian zones when riparian areas are most vulnerable to degradation, resting overgrazed areas for periods of time sufficient to encourage riparian restoration, and reducing livestock numbers within overgrazed allotments to assist riparian restoration. These are not hi-tech, nor usually high-cost solutions. Often the solutions do require changes in traditional management practices, and sometimes the changes are difficult for some ranchers to accept. But it is our experience that in most cases, once the terms and conditions of grazing permits are clearly understood, ranchers accept the changes and work in good faith with the land management agencies to implement them.

Overgrazing can destroy riparian zones, fish habitats, associated sport fisheries, and range productivity that is essential for the permittee's uses: it continues to be a serious problem on some public lands. Many western communities, sport fishermen and women, and other recreationists depend on healthy riparian areas and associated fisheries on our federal public rangelands. The Forest Service and BLM manage roughly 300 million acres of rangelands. The fisheries produced on these rangelands provide a significant share of the 37 million angler days of recreation and \$1.8 billion dollars in expenditures per year by anglers fishing on these public lands. Yet, in too many places in the west, overgrazing threatens these high resource values. Riparian and fisheries habitat damages stems from the following: loss of riparian vegetation; degradation (i.e.,

increased widening of streams and decreased stream depths) of stream channels and shape; increased stream temperatures caused by the decrease in shade and widening of channels; and lowering of groundwater tables and decreasing summer stream flows. All of these factors contribute to lost rangeland health and fisheries habitat.

Livestock grazing has caused considerable damage to streams in the west. A 1994 position paper published by the American Fisheries Society (AFS) cited overgrazing as one of the most serious threats to fisheries in the west, and conservatively estimated that more than 50% of western rangeland streams were damaged by overgrazing. The AFS paper cited a 1988 General Accounting Office study that found: 1) 51% of Colorado riparian areas surveyed along 5,300 miles of perennial streams were in poor condition; 2) in four BLM districts in Nevada, 68% to 93% of the riparian habitat was in poor to fair condition; 3) 80% to 90% of the riparian areas in the Tonto National Forest (Arizona) were in unsatisfactory condition; 4) 37% of inventoried riparian areas in the Sawtooth National Forest (Idaho) were in poor condition; and 5) 78% of all riparian areas in the Modoc National Forest (California) were in poor or fair condition. Although improvements have been made in some of these areas, TU has had considerable firsthand experience with ongoing, intractable overgrazing problems on some of our public lands, including: overgrazing affecting the endangered California golden trout on the Inyo National Forest (California), overgrazing limiting the recovery of the endangered Gila trout on the Gila National Forest (New Mexico), and overgrazing affecting declining steelhead population (a candidate for listing) in the John Day drainage on the Malheur National Forest (Oregon). In sum, finding solutions to overgrazing problems on our western public lands is one of the largest natural resource problems facing the federal land management agencies, Congress, federal land ranchers, and conservationists.

Although there is much work to be done, the Forest Service and BLM are addressing overgrazing problems in many areas.

We see encouraging progress on the ground on some public lands and in some agency policies toward improving grazing management and lessening the impact of overgrazing on riparian areas and fisheries resources. Some examples include the following.

- **Consensus Building in BLM Resource Advisory Councils (RACs):** The BLM established the RACs under its "Rangeland Reform" regulatory changes in 1995. Although we, and many conservationists, were skeptical of the RACs initially, the RACs have performed fairly well in our experience. TU has had several of its members serve as RAC members; they report that the RACs have generally done well at building consensus on standards and guidelines for grazing on BLM lands within their jurisdictions. Most importantly, participation on the RACs has provided TU members and other conservationists with a useful way to shape grazing policies that was never available before under the old grazing regulations which were dominated by ranchers.
- **Cooperative Riparian Management Program:** In 1996 the Forest Service, BLM and NRCS initiated a collaborative approach to riparian management that attempts to integrate better the ecological, economic, and social factors involved in livestock grazing problems in riparian areas and get better cooperation from the interested parties. The program established an interagency National Riparian Service Team to act as a catalyst to resolve difficult riparian management decisions at the ground level with the cooperation of the affected interests. This approach involves using a common minimum assessment method for evaluating riparian health and condition in a problem area, and getting cooperative help in resolving the situation. This program is just getting off the ground and holds promise to help the agencies do a better job of protecting and restoring riparian areas and associated fisheries.
- **Interior and Upper Columbia Basin fisheries conservation efforts:** Since 1994, the BLM and Forest Service have begun to implement fisheries conservation strategies on their lands in the Pacific Northwest and in the Columbia River basin to improve the health of riparian areas and restore endangered and declining fisheries, many of them trout and salmon populations. The interim programs, called PACFISH and INFISH, have lessened somewhat grazing impacts on trout and salmon throughout the interior and upper Columbia River basin. The agencies are now poised to take the next step of establishing longer term riparian protection and fisheries restoration strategies into the land management plans of the basin

through EIS's that will amend Forest Service and BLM land management plans. We are hopeful that the agencies will make decisions that will do a good job of managing livestock grazing in the basin so that it will be compatible with the fisheries restoration program to ensure survival of jeopardized trout and salmon populations in the basin.

Congress should encourage these positive developments and provide adequate funding to agencies to enable further achievements to be made. The developments highlighted above are positive. The list is not intended to be inclusive: there are other signs of progress on improving grazing management on federal lands. Congress, conservationists, and federal land ranchers should support and help nurture these positive developments, for they are the means to improve grazing management on our public lands.

Additionally, Congress should seriously assess the staffing and resource needs of the BLM and Forest Service to determine the increases that are desperately needed to improve grazing management. As emphasized in the agency's Cooperative Riparian Management Program, good grazing and riparian management requires interdisciplinary teams, including range conservationists, hydrologists, and fisheries biologists. In particular, Congress should provide additional funding and staff for the fisheries programs of the BLM and the Forest Service. Funding for the fisheries program has declined 27% over the past four fiscal years in the Forest Service; the BLM has never received funding for any more than a very small, inadequate fisheries program. Eleven National Forests with major aquatic resource inventories have no fisheries biologists to help manage the resource; some state BLM programs have but 1 or 2 fisheries biologists, such as Arizona and New Mexico, to try to manage BLM fish habitats over those vast areas. With 18 species of trout and salmon listed as threatened or endangered in the west, including recreationally valuable species such as steelhead and coho salmon, the Clinton Administration and Congress must address the fisheries program funding needs immediately. Providing substantial new dollars for these programs in FY 1999 would help considerably with solving current rangeland management problems.

Congress should not weaken resource conservation efforts on federal lands by attempting to pass a bill, such as HR 2493, "The Forage Improvement Act," which

would allow grazing to dominate over other rangeland uses and undercut advances in resource conservation now being made on public rangelands. Agriculture Committee Chairman Smith has introduced, and pushed through his Committee, HR 2493. Although it is narrower than last year's S. 1459, "The Public Rangelands Management Act," it is still biased in favor of ranchers in every way, would weaken conservation safeguards for fisheries resources on our public lands, exclude the interested public from key management decisions, and would undermine progress made by BLM and the Forest Service under the new regulations recently established by the agencies. The following are several of the critical shortcomings of HR 2493.

- HR 2493 ignores the huge fisheries and riparian habitat problems on public lands and favors grazing over other uses of federal rangelands at every turn. For example, the bill would eliminate current rangeland regulations of the Forest Service and BLM, including all the conservation provisions that they now contain -- including conservation use, rangeland health standards and guidelines, RACs and other forms of public participation in grazing decisions, and improved monitoring of rangeland health -- and would require the agencies to revise their regulations in accordance with the bill, which is far worse on each of these provisions.
- Section 102 of the bill redefines the existing approach to grazing management decisions of "consultation, cooperation, and coordination" in a manner that eliminates agency decision-making authority. The bill requires the agencies to achieve consensus with permittees before taking action that is needed to reduce resource damage, giving permittees virtual veto power over grazing decisions.
- Section 104 contains provisions that undercut monitoring and inspection of grazing activities on public lands. The bill narrowly focuses monitoring and inspection activities on forage resources, ignoring the health of other rangeland resources, such as fisheries. The agencies must monitor the health of the full range of rangeland resources, or they will be unable to protect and restore them. The bill also requires 48 hour notice to permittees prior to inspection, a provision that would hamper law enforcement actions against trespass cattle and other violations of current law. Finally, the bill would make it illegal for the agencies to utilize citizen monitoring of the health of rangeland resources. In several areas of the west, TU chapters work closely with the land management agencies and the state agencies to monitor the status of trout and salmon populations. In one notable case, the Oakbrook Chapter

of Trout Unlimited has journeyed to LaBarge Creek watershed of Wyoming BLM lands for four consecutive years to restore native cutthroat trout habitat and monitor the effectiveness of their work. It is unwise and unfair to prohibit a conservation organization, which cares so much about a stream that it spends considerable amounts of money and time to restore the stream, from participating in monitoring the effectiveness of its efforts.

- Section 107 would require the BLM to revise its RAC regulations in a manner that undercuts the existing balance between ranchers, conservationists and other interests (currently, membership is balanced between three groups -- ranchers, conservationists, and local interests), and gives ranchers the dominant role. Section 107 would require RAC membership to be "balanced" between ranchers as one category, and every other interest as another. This, coupled with the Section 107 requirement that RAC decisions be based on "majority vote," undermines the current consensus-facilitating standard whereby a majority of each of the three groups must agree before a proposal is approved.

TU urges the Subcommittee not to press such a bill, for it is not needed. Instead, we urge the Subcommittee and Congress to assist the positive developments occurring in the federal land management agencies, especially by providing additional funding where it is needed to effect better grazing management practices.

Thank you for the opportunity to provide these comments.

Disclosure Form***Biography*****Steven N. Moyer, Director of Government Affairs, Trout Unlimited****1500 Wilson Blvd., Suite 310****Arlington, VA 22209****Ph: 703-284-9406****Fx: 703-284-9400****email: smoyer@tu.org**

Steve Moyer has been TU's government affairs director for nearly five years. He manages TU's government affairs and grassroots advocacy programs. He presents TU's advocacy agenda to Congress, federal and state agencies, the media, and the general public. Water quality, instream flows, Pacific salmon recovery, and protecting and restoring native trout and salmon populations are TU's highest priorities. Prior to joining Trout Unlimited, Mr. Moyer led advocacy efforts at the National Wildlife Federation on behalf of fisheries and wetlands. He holds a B.S. in Wildlife Management from the University of Maine and an M.S. in Fisheries Science from Virginia Tech.

Department of the Interior grants

1. TU has received a grant from the BLM each of the past three fiscal years for the cooperative Bring Back the Natives program. The purpose of the program is to restore native fish populations on Forest Service and BLM lands through collaborative work with local conservationists, local citizens groups, ranchers, and the state and federal resource agencies. TU received \$50,000 in FY 95, \$40,000 in FY 96, and \$60,000 in FY 97 to help implement the Bring Back the Natives program.



THE WILDERNESS SOCIETY

Testimony of Frances A. Hunt, Director, BLM Programs,
The Wilderness Society

before the
House Resources Committee, Subcommittee on National Parks, Forests and Lands
regarding the
Bureau of Land Management and Federal Grazing
September 30, 1997

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify before you today. The Wilderness Society (TWS) was founded in 1935, and is a non-profit membership organization devoted to preserving wilderness and wildlife, protecting America's prime forests, parks, rivers, deserts, and shorelines, and fostering an American land ethic. My testimony today addresses 1) basic concepts that should guide range management, 2) current conditions of our public rangelands and the efforts of the BLM to manage these lands, 3) fundamental principles of true range reform, and 4) H.R. 2493.

I. Key Concepts Regarding Federal Rangelands

TWS and our members have a long-standing interest in the conservation of the federal rangelands managed by both the Forest Service and the Bureau of Land Management (BLM). The Wilderness Society has participated in land use and allotment-level planning efforts around the West as well as in the development and revision of the range management policies of both agencies at regional and national levels. Our members use the public lands for a wide variety of purposes, including to hunt, fish, boat and camp.

The work of The Wilderness Society on issues related to the sound management of our public's rangelands is guided by 4 important concepts, which I will outline for you today. These concepts help shape our vision for the future of our federal rangelands: a future in which healthy resource conditions fully support the diverse range of multiple uses and values that our federal lands can and should provide to the American public, including productive fish and wildlife habitat, clean water, grazing, recreation, and wilderness.

1. First, and foremost, we must never forget that our public rangelands belong to all Americans, and that no one group or interest has the right to use these lands in such a way as to impair their productivity or deny other legitimate range uses and benefits. While grazing is one of many appropriate uses of the public land, private ranchers do not have a right to graze the public's land and private ranching operations on our federal lands cannot be allowed to degrade our fish, wildlife, water, recreation or other public values. The plain wording of the Taylor Grazing Act clearly identifies grazing use as a privilege, not a right.

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"... So far as consistent with the purposes and provisions of this subchapter, grazing privileges recognized and acknowledged shall be adequately safeguarded, but the creation of a grazing district or the issuance of a permit pursuant to the provisions of this subchapter shall not create any right, title, interest, or estate in or to the lands."
(U.S.C. Title 43. Section 315b.)

2. Because the federal rangelands belong to all Americans, and should be managed for the greatest good of all, it is completely appropriate -- in fact it is essential -- that these lands be managed to a strict standard of resource conservation. Private livestock operators who choose to seek the privilege of grazing on our federal lands must expect that they will be required to operate their activities so as to safeguard the public's resources. They should not necessarily expect that the land management practices that they use on private or state lands that they lease or own will be adequate to protect valuable and diverse federal resources.

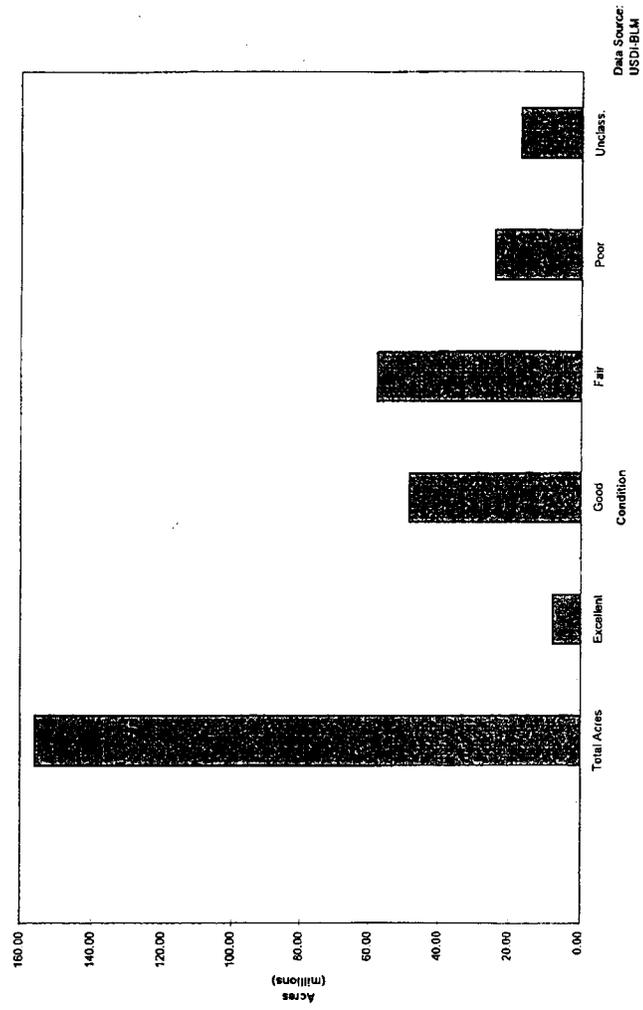
3. Our nation's rangelands are not currently being maintained in an acceptable condition. Although in certain areas of the western United States, federal land grazing is well managed with limited negative environmental impacts, too often and in too many places livestock grazing as permitted by the federal agencies is having serious negative impacts: soil erosion, water pollution, loss of plant and animal communities, lost recreational opportunities for fishing, hiking, and hunting. The sad irony of this situation is that this resource damage harms both ranchers and other members of the American public who seek to use, enjoy, and benefit from these lands.

4. An examination of resource conditions, BLM and Forest Service policies and management activities, and funding levels clearly indicates that these agencies need to do a much better job of monitoring, managing, and protecting our public rangelands. These agencies are the stewards of our federal rangelands, and they have not been careful stewards of the public resources which have been entrusted to them. I have attached to my testimony three (3) charts that illustrate this important point:

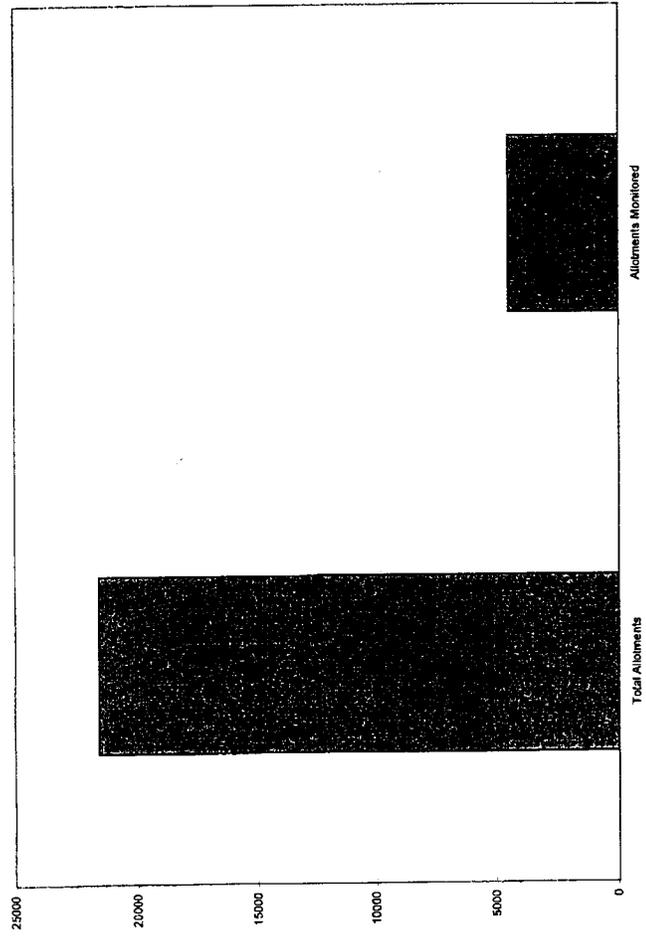
* **Federal Rangeland Conditions - 1996:** According to the BLM's own data, of the approximately 156 million acres of federal rangelands managed by the agency, over half are in an unacceptable condition. Currently, as the chart attached to my testimony demonstrates, a greater percentage of our federal rangelands are in "poor" condition than are in "excellent" and a greater percentage are in "fair" condition than are in "good" condition. These statistics, provided by the agency, demonstrate the unfortunate fact that our public rangelands are NOT being well protected. Damaged public rangelands hurt a wide variety of public interests: fish, wildlife, grazing, and other.

In fact, both EPA and General Accounting Office studies have demonstrated that these statistics actually underestimate the damage to our public rangelands, as they obscure the fact that some 70 percent of our federal streams and riparian areas are in a degraded condition. Our western streams and riparian areas are the most ecologically significant component of the arid west; they provide key habitat to a wide range of fish, wildlife, and plant species. Degradation of riparian areas has pushed many species to the brink of extinction and damaged the public's opportunities to hunt, fish, recreate in these areas or to use these streams as municipal drinking water sources.

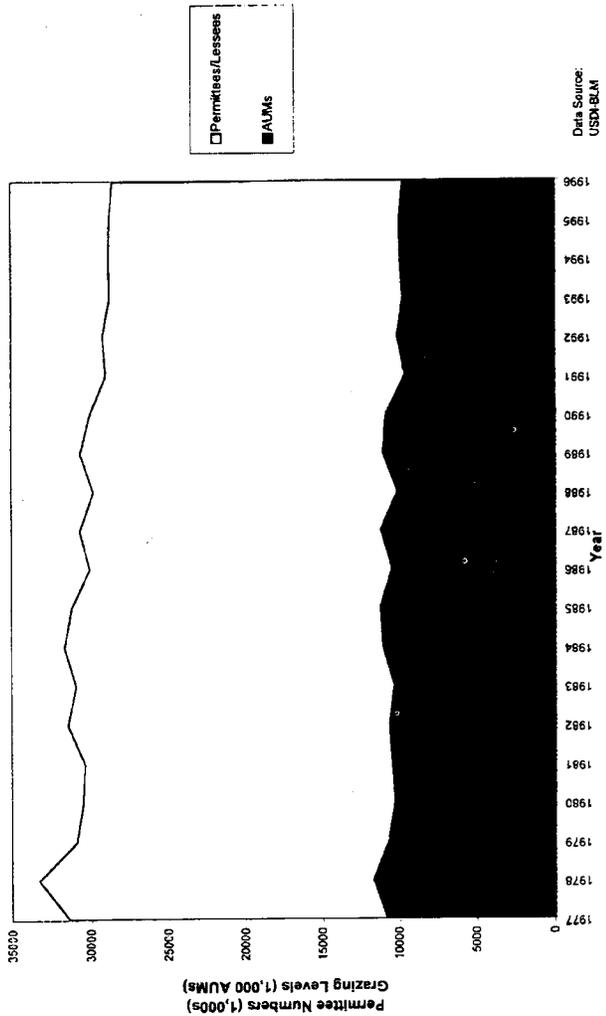
Federal Rangeland Conditions 1996



BLM Range Monitoring 1996



Public Lands Livestock Grazing Levels and Permittee Numbers
(1977-1996)



* **BLM Range Monitoring - 1996:** Numerous GAO and other studies have documented how inadequately both the BLM and Forest Service monitor the public's rangelands. Lack of agency funding and personnel prevent these agencies from adequately obtaining even the most basic of management related information on millions of acres of our federal lands. BLM's failure to adequately monitor public rangelands and the diversity of fish, wildlife, plant, water, and other important resources which these lands contain directly contributes to the agency's failure to adequately manage and conserve these lands.

* **Public Land Livestock Grazing Levels and Permittee Numbers (1977-1996):** Over the past 20 years, the number of public land grazing permittees has decreased slightly, while grazing levels have held roughly constant. This trend reflects changes in the industry nationally, as livestock operations have tended to get larger and a smaller number of permittees hold a dominant portion of federal Animal Unit Months (AUMs). Although the public land livestock industry likes to blame federal range policies for a wide range of ills, in fact, changes in the public land ranching industry are driven more by global and national economics affecting the market for beef and by changing demographic trends, than by changes in federal rangeland policies.

II. Current Status: Range Policies and Ecological Conditions

Grazing by privately-owned domestic livestock is the most extensive economic use of the public's lands, occurring on over 250 million acres managed by the Bureau of Land Management (BLM) and U.S. Forest Service. Numerous authorities have analyzed and documented the fact that grazing has had and is currently having serious impacts on the varied resources of these lands. In vast areas of the West, domestic livestock on the public's lands are:

- * overgrazing grasses and other plants. As a result of being consumed beyond their ability to renew themselves, vegetative species are disappearing from federal rangelands, to be replaced by unpalatable weeds, thorny shrubs and unproductive woodlands (BLM, 1989) as well as by exotic, non-native species (D'Antonio, et al., 1992).

- * contributing to erosion and the destruction of the vital living crust of rangeland soils (Anderson, et al., 1982). Erosion is estimated to be robbing millions of acres of public lands of valuable topsoil (National Research Council, 1994).

- * competing directly with wildlife species for limited vegetative resources as well as for space. In many cases, wildlife are losing and their numbers are declining (Flather, et al. 1994). Among the species that have been and are being affected by domestic livestock grazing are prairie dogs, desert tortoise, Sonoran pronghorn antelope, and numerous species of birds, including game birds such as sharp-tailed grouse and sagehens. (Nowakowski, et al., 1982; U.S. General Accounting Office, 1991). Grazing has also negatively affected Neotropical migratory land birds and their habitats (Bock, et al., 1993).

- * damaging riparian areas -- the thin ribbons of green vegetation that border water sources and provide vegetation, cover and water vital to the survival of virtually all kinds of wildlife in the arid (water-poor) West. Livestock use of many of these areas is changing, reducing or eliminating the

vegetation on their borders, trampling their banks, degrading water quality, and increasing water temperatures (Armour, et al., 1994; U.S. Environmental Protection Agency, 1990).

* According to the BLM, only about one-half of the total 160 million acres of public lands grazed by domestic livestock are in an acceptable or "functioning" ecological condition. Worse yet, an even higher percentage -- almost 70 percent -- of riparian areas are in a damaged condition. U.S. General Accounting Office, 1988; Departments of Interior and Agriculture, 1994.)

* degrading fish habitats and contributing to the imperilment of numerous fish species throughout the West, including in particular native trout (Fleishner, 1994) and salmon species (U.S. Forest Service and BLM, 1994).

References for this listing of environmental impacts are attached to this statement. Also attached to my testimony is a recent scientific report summarizing the scientific literature on the impact of livestock grazing on stream and riparian ecosystems in the western United States. This review, written by Dr. Joy Belski of the Oregon Natural Desert Association, provides compelling evidence of the damage that livestock cause to western streams and rivers. Dr. Belski's report has been accepted for publication by *The Journal of Air and Soil Conservation*, a peer-reviewed scientific journal.

III. What Are The Principles Of True Range Reform?

As controversy has raged over questions related to "range reform" policies and proposed legislation, conservation groups have developed a list of conservation principles which have been widely circulated over the last five years. A memo listing these principles was sent to Senator Pete Domenici (R-NM) in August of 1995. The following is a listing of some of the most important principles that the conservation community maintains must be part of any legitimate attempt to reform the current fiscal and environmental problems associated with the management of federal rangelands, and includes occasional references to the current Department of Interior grazing regulations, which were promulgated in 1995. Unfortunately, we do not find that the draft grazing bill that we have reviewed includes any of these important principles. In fact, in too many instances, the bill actually runs counter to these principles.

1. Overall Federal Rangeland Policy

We believe that the restoration and preservation of the ecological health of the nation's federal rangelands must be the primary goal of the federal range program. Therefore, current environmental protection laws and regulations must be maintained and indeed strengthened. To achieve this goal, we believe strong, responsible national environmental standards and guidelines must be established to promote healthy, productive federal forests and rangelands.

Only by protecting the basic health and productivity of these important lands can the nation receive the full array of federal range resource benefits, economic and ecological. By extension, we maintain that federal rangelands truly should be managed for this full array of multiple-uses and values which includes: hunting, fishing, hiking, birding, recreation, archeological, and other non-economic activities as well as for the economic uses which have had precedence for so long..

According to government documents published by numerous agencies, including the BLM, EPA, and the U.S. General Accounting Office, large acreages of the public's rangelands remain in

unsatisfactory condition as the result of excessive and mismanaged grazing. Of absolute importance, given the finding by the EPA that riparian areas are "in the worst condition in history," is the development of a concrete and objective timetable for restoring proper functioning condition and riparian health, with interim, enforceable goals adopted to achieve this restoration. In addition, the existing so-called "Range Betterment Fund" which presently provides a livestock industry subsidy that produces few, if any, improvements to the actual conditions found on federal rangeland, should be reformed and reallocated to the protection and restoration of federal streams and riparian areas.

The current Department of Interior (DOI) regulations provide four basic "standing orders" -- or "fundamentals of rangeland health" -- to public lands managers: 1) keep watersheds healthy, 2) ecological processes must be maintained, 3) water quality must meet state standards, and 4) habitat must be provided to Threatened and Endangered Species.

We believe that such appropriate "fundamentals of rangeland health" must be translated into actual on-the-ground resource conservation through strong and environmentally responsible standards and guidelines. These standards and guidelines must provide consistent direction on sound grazing management practices and prevent environmental degradation. If these standards for rangeland health are not met, the managing agencies must be able to take prompt and adequate action to halt and repair damage caused by livestock grazing.

Finally, we believe federal range policies should encourage good stewards of the land and hold accountable those who violate federal environmental protection laws and regulations during their use of public lands for grazing. Given the environmental degradation that grazing has already caused, prompt, consistent compliance with all existing environmental protections must be guaranteed; there should be no exemption for grazing-related decisions or actions under NEPA or other laws.

The existing DOI grazing regulations promulgated in 1995 require that managers take action before the start of the next grazing season, if it is found that grazing is impeding the attainment of resource objectives. Such prompt action is necessary to stop resource damage from grazing. Previously, range management decisions have often been delayed by the agencies using the excuse that they had to monitor range conditions (often for years) before acting. These delays have resulted in continued damage to range resources, as the agencies have a very poor record of accomplishing planned monitoring.

2. Addressing Rangeland "Suitability"

The sound ecological management of our rangelands can only be accomplished if a process for assessing the basic suitability of federal lands for livestock grazing is established. Not all public rangelands are capable of sustaining livestock grazing over time; still others should not be grazed because of the significance or sensitivity of their non-livestock resources and values (fish, wildlife, recreation, archeological, other). For example, the GAO has found that there is no sound ecological basis for classifying the arid, fragile lands of the hot deserts of the western United States as suitable for grazing. Yet these lands are currently being grazed and ecological damage is therefore occurring.

3. Providing Fair Returns to Taxpayers

Just as federal range policy must insure the ecological health of our public rangelands, federal grazing programs should also generate fair market grazing fees, or, at a minimum, grazing fees that

cover the government's cost to manage grazing and protect federal rangelands. In 1993, for example, the Forest Service and BLM each spent about \$5.81 per animal unit month (AUM) on the grazing program, over \$4 more than the current grazing fee. In addition, private ranchers should not be allowed to profit from artificially-low federal grazing fees by subleasing their lands to other ranchers. As stated above, the so-called "Range Betterment Fund" should be reformed and reallocated to the protection and restoration of federal streams and riparian areas.

4. Providing Fair and Open Public Participation

The public lands belong to all Americans, and must be managed sustainably to meet the diverse needs of the American public, including the needs of future generations. Therefore, we believe that all citizens who wish to be involved in grazing decision-making must be permitted to participate in all environmentally important decisions and actions. This means, for example, that individuals must be permitted to participate in annual grazing management decisions that are made at the "allotment" or grazing permit level, and to do so even if they do not live in the immediate vicinity of those specific federal rangelands. Likewise, the ability of adversely affected citizens to responsibly appeal and protest unsound grazing decisions must not be abridged. In addition, all advisory councils established to guide management of the federal lands must be fully representative, truly balanced, and broad-based.

The current DOI grazing regulations expanded public involvement to allow all interested citizens and groups access to grazing management and decision-making on public lands.

5. Conservation Use

Resting the public's lands from livestock grazing should be promoted, not penalized. Indeed, in some cases, especially cases of riparian area degradation, rest ("conservation use") is the most effective tool for rehabilitation. In addition, conservationists believe that "grazing" permits should not be limited only to individuals and organizations in the "livestock business." Consequently, we maintain that anyone who owns base property should be entitled to receive a "grazing" permit and to use that permit to rest the associated public lands for conservation purposes for substantial lengths of time. Specifically, conservation organizations, state agencies, and land trusts such as The Nature Conservancy should be allowed to hold grazing permits in order to protect and restore sensitive areas and important range resources.

The current DOI regulations were specifically intended to 1) allow permit holders to take conservation use, and 2) remove the previous restrictions which have limited grazing permits only to those individuals and entities which are deemed to be in the "livestock business."

6. Range Improvements

We believe that title to both permanent and non-structural range improvements built on public land should be held by the federal government. Granting private interests title to range improvements on federal lands leaves taxpayers vulnerable to so-called "private property takings" claims and likewise makes it difficult for the agencies to transfer or terminate grazing privileges if resource conditions or poor stewardship demands a change in range management.

IV. Analysis of Smith Grazing Proposal

Congressman Bob Smith (R-OR) is introduced legislation -- "The Forage Improvement Act of 1997" (H.R. 2493) -- that addresses federal rangelands managed by the Forest Service and the Bureau of Land Management. The Wilderness Society (TWS) has reviewed this legislation, which clearly is a lead from the failed Domenici bill in the 104th Congress. Our review demonstrates that H.R. 2493 is a "dominant use" bill for grazing that:

1. ignores important considerations of resource protection and restoration,
2. eliminates important progress toward improved range management made in the 1995 BLM regulations,
3. promotes overgrazing by maintaining taxpayer subsidies to the livestock industry,
4. hampers agency efforts to protect our nation's lands,
5. limits public participation in public land management, and
6. threatens to change the existing privilege of public land grazing into a "private property right."

As a result, the bill threatens fish, wildlife, recreation, archeological, and other values enjoyed by millions of Americans annually from the over 250 million acres of federal rangelands. Over 100 diverse conservation, sporting, taxpayers, and environmental groups have already gone on record in opposition to the main provisions of the H.R. 2493. A letter from these groups is attached to my statement. Specifically, H.R. 2493:

1.) Ignores the current significant ecological issues and problems facing our nation's public lands and fails to provide any viable policies to protect and restore our public rangelands.

The most fundamentally important component of any attempt to "reform" management of our nation's federal rangelands must attend to the health and productivity of these important and valuable lands. The restoration and preservation of the ecological health of the nation's federal rangelands must be the primary goal of the federal range program. Although the current BLM regulations contain numerous provisions to address and protect rangeland health (conservation use, standards of rangeland health, increased public involvement in range management, greater attention to resource health and status at the beginning of each grazing season, etc.) the draft Smith proposal fails to include any provisions that will improve range management. In fact, in almost every instance, this bill actively undercuts rangeland health by eliminating existing protections and making it extremely difficult for the agencies to take future actions to protect resource conditions.

2.) Promotes overgrazing as it creates a "new" bargain-basement grazing fee formula and expands the ability of private livestock operators to profit at taxpayers' expense by subleasing the public's land to other operators.

Under the formula contained in Section 107 of the Smith bill, the grazing fee will return only a fraction of the costs of the federal grazing program to taxpayers. The Forest Service and BLM annually each spend about \$5.81 per animal per month on grazing. Incredibly, the previous draft of the bill would have produced a fee (\$1.60 per animal per month) that is even lower than the grazing fee proposed last year by Sen. Domenici (\$1.67) in S. 1459. This "new" fee is also far below the private land lease rates charged in most western states, which range from \$5.30 to \$9.00 in the arid West and up to \$12.00 in the Great Plains where most National Grasslands are found.

In addition, under Section 105 of the bill, the Forest Service -- for the first time -- will be forced to allow livestock operators to sublease National Forest rangelands to other ranchers. The Smith bill also eliminates provisions of the current BLM regulations which provide for a grazing fee surcharge that is charged to permit holders who sublease their permitted federal rangelands to other operators. As a result, both Forest Service and BLM permittees will now be able to pocket the profit they receive by charging higher grazing fees to these other operators. Taxpayer and fiscally conservative groups have long opposed below-cost grazing fees and subleasing.

Bargain basement grazing fees are by no means "just" a fiscal issue. As the Council on Environmental Quality (1981), the Office of Management and Budget (1985), and many others have recognized, cheap grazing fees encourage livestock operators to run grazing operations on "marginal" federal rangelands - lands that would not be grazed if fees were higher. In far too many cases, the same conditions that make public rangelands marginal for grazing economically also make these lands marginal ecologically, for example: they are arid, have poor or highly erosive soils, minimal vegetative cover, etc. Grazing these ecologically marginal areas produces significant damage to fish and wildlife populations, water quality, recreational opportunities and other important public values. The Wilderness Society and other conservation groups have long advocated increasing the federal grazing fee to reduce the damaging incentive to overgraze sensitive, marginal rangelands.

3.) Hampers Forest Service and BLM efforts to make sound and timely management decisions to protect and restore healthy fish and wildlife habitat and other valuable resources on our public lands.

The proposed bill hampers agency ability to protect federal lands in at least four ways:

1. Section 102 redefines the concept of "consultation, cooperation, and coordination" in such a way as to strip much of the fundamental decision making and land management responsibility and discretion from federal agencies and give undue influence over federal land management to private interests. Specifically, the bill directs the agencies to try to reach consensus with permittees before taking needed actions to address resource damage. This new requirement is far in excess of an appropriate level of consultation. In fact, the Smith bill as currently drafted will give livestock operators a virtual "veto power" over both 1) agency land management decision making (Section 102) and 2) grazing permit renewal decisions (Section 103) and will likely increase damage to recreation, fish, wildlife and other values. These provisions undercut existing agency authorities that are clearly articulated in the Federal Land Policy and Management Act (FLPMA) at Section 402 and elsewhere. Currently, the agencies are required to engage in consultation with permittees and others on a host of grazing decisions, but they have not previously been directed to reach consensus.
2. The bill contains damaging provisions that affect the monitoring and inspection of federal rangelands (Section 104). The Smith bill appears to narrowly and inappropriately focus the agencies' monitoring and inspection activities almost solely on "forage" resources. Both the Forest Service and BLM now have the responsibility to manage for and protect the full range of multiple uses found on our nation's rangelands. If these agencies are not allowed -- and even encouraged -- to monitor the full spectrum of resources and resource conditions (fish, wildlife, water, recreation, vegetation, archeological, etc.) then it will be impossible for them to adequately protect the public's resources. Furthermore, with respect to the inspection of public rangelands (inspection addresses issues of livestock trespass and other violations of law or regulation) the bill's 48-hour notice requirement -- at

Section 104 (c) -- will moot the effectiveness of this key element of the agencies' enforcement responsibilities.

3. The bill apparently seeks to scuttle current Forest Service and BLM grazing regulations (Section 202) and the conservation provisions that they now contain. For example, current BLM regulations address a number of important provisions that promote the protection of range resources, including conservation use (the voluntary resting of overgrazed federal lands), standards of rangeland health, increased public involvement in range management, and greater agency attention to resource health and resource status at the beginning of each grazing season. None of these important issues are addressed in this bill, and none of the provisions in the bill begin to effectively replace these important features of the current regulations.

4. Although the Smith proposal appears to limit agency discretion and effectiveness and downplay public participation at every turn, it consistently maximizes the power and flexibility afforded to public land ranchers. The bill's provision for "cooperative management agreements" -- Section 102 -- is a case in point. Historically, grazing operations on federal lands were guided by the terms and conditions of the grazing permit. In the 60's, the agencies began to develop "allotment management plans" in order to offer increased management flexibility to livestock operators. Now, Rcp. Smith seeks to create yet another "flexible" opportunity: the cooperative management agreement. Nowhere in the bill's description of these agreements are conservation goals mentioned or accountability measures for such agreements described. While flexibility, in and of itself, can be an important goal, the whole thrust of the Smith bill appears to push flexibility for private livestock interests at the expense of agency efforts to protect the public's lands and resources.

4.) Limits the ability of hunters, anglers, recreationists and others to use public lands and participate in the management and protection of public land resources. By contrast, livestock operators are given new opportunities to expand their control over resource management decisions.

The bill at Section 108 purports to legislatively continue the current Resource Advisory Councils (RACs), which exist in every western state as a result of the 1995 BLM grazing regs. However, the bill fundamentally alters the development and functioning of these RACs by failing to guarantee for balance in their membership and instead giving livestock permittees and related interests an inappropriately dominant role. Section 108 appears to specify that RAC membership is to be balanced between livestock interests on one hand and all other interests on the other. This membership imbalance, coupled with the bill's provision that RAC decisions will be made on the basis of "majority vote," effectively undermines the broad public purposes and balanced guidance for which these councils were created.

The bill also mandates -- in Section 108 -- a role for rancher-dominated state grazing boards in RAC decision making and the management of public lands. No other interest has a mandatory role in the process or the benefit of such officially sanctioned, single-purpose boards. In fact, the Smith bill actually restores this inappropriate role to the grazing boards, as the BLM range regulations of 1995 eliminated the outdated and biased grazing boards and their undue influence over the management of the public's lands.

The Smith bill also eliminates any effective role for the public in the monitoring of range conditions on federal lands -- Section 104. Currently, numerous conservation groups across the country provide

important monitoring information and resource status updates for federal lands to the Forest Service and BLM. The Smith bill appears to presume that livestock operators can and will provide unbiased information on range conditions, but the public has no useful role to play in monitoring for the protection and management of our public lands.

When the Smith bill's provisions with respect to the RACs and public participation are read in conjunction with the bill's treatment of "consultation, cooperation, and coordination" it becomes apparent that this bill gives dominant emphasis to grazing and grazing interests -- not to the provision of balanced, multiple-use, federal land management that benefits all Americans.

Finally, the bill threatens the public's access to its federal lands by limiting the ability of the Forest Service and BLM to "bargain" with ranchers during the federal grazing permit process for public access to federal lands surrounded by the rancher's private lands. Currently, the agencies can address issues of access to federal lands that are surrounded by the rancher's private lands during the discussions involved in the permitting process. As written, Section 103 eliminates the ability of the agencies to achieve such public access and effectively "privatizes" these public lands. Under the provisions of this bill, it would be almost impossible for the public to gain access to these "land-locked" federal areas for hunting, fishing, or other purposes.

5.) Attacks long-standing legislative and judicial precedents by treating public land grazing as a "private property right" not as a privilege.

There are numerous provisions of this draft bill that seem intended to further the inaccurate perception that grazing is a "right," not a privilege on federal lands. Taken together, these provisions create a dangerous threat to the public's ownership of its federal rangelands and to their sound and balanced management by the federal agencies.

1. In Section 2 (c), the Smith bill references so-called "valid existing rights." We are left with the implication that this language may refer to grazing operations on federal lands. The Taylor Grazing Act and FLPMA both clearly indicate that a grazing permit is a revocable privilege -- not a contractual right -- on federal lands. The Taylor Grazing Act (U.S.C. Title 43, Sect. 315b) states: ... "grazing privileges recognized and acknowledged shall be adequately safeguarded, but the creation of a grazing district or the issuance of a permit pursuant to the provisions of this subchapter shall not create any right, title, interest, or estate in or to the lands."

This distinction has both important fiscal and resource protection implications: if grazing is a "right" on federal lands, then the agencies may have only limited ability to change grazing management and protect natural resources without being obliged to pay "just compensation" under the Fifth Amendment. If grazing is considered a "right" then the public may be forced to "pay" ranchers when grazing practices must be changed to protect public resources.

2. In the definitions of Section 102, the bill defines the term "allotment" to mean "an area of Federal land subject to an adjudicated or apportioned grazing preference that is appurtenant to a commensurate base property." The use of the phrase "appurtenant to" again implies, in legal terms, a property right, not a revocable privilege.

3. In at least two instances, this legislation gives private ranchers effective "veto power" over agency decisions. In Section 102, the bill defines the concept of "consultation, cooperation, and coordination"

in such a way as to strip much of the fundamental decision making and land management responsibility and discretion from federal agencies and give undue influence over federal land management to private interests. Specifically, the bill directs the agencies to try to reach consensus with permittees before taking needed actions to address resource damage. This new and inappropriate requirement is forced on agency planning, permit condition, and permit renewal decision making. This requirement runs counter to the management responsibilities and discretion as described by FLPMA in Section 402 and elsewhere.

IV. CONCLUSION:

Of all the uses made of our federal lands, livestock grazing has the most extensive ecological impact, affecting some 250 million acres of land and associated resources. While grazing is but one of many legitimate uses of our federal rangelands, too often, and in too many places, poorly managed grazing has degraded the public's resources: water, wildlife, fish, recreation, archeological, and other. The protection and restoration of our federal rangelands and the provision of true multiple benefits to the public from these lands must become the priority for the Forest Service and the BLM. The Wilderness Society believes that achieving sound management of our federal lands will require additional efforts by both the Forest Service and Bureau of Land Management as well as significant policy and legislative reforms, as outlined in this statement. Unfortunately, Rep. Smith's grazing proposal violates several of these fundamental principles of range reform. We encourage this Subcommittee and the Congress not to pass this legislation.

**Testimony of Frances A. Hunt, The Wilderness Society
September 17, 1997**

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An Open Letter to House Agriculture Committee Chair, Rep. Bob Smith

Dear Chairman Smith:

We, the undersigned representatives of the nation's conservation, taxpayer, and environmental organizations, are deeply committed to improving the fiscal and on the ground management of our nation's National Forests, National Grasslands, and Bureau of Land Management (BLM) public rangelands. Our organizations represent the diverse interests of millions of American citizens nationwide who use, enjoy, and benefit from the multiple resources (wildlife, recreation, and other) found on our federal rangelands. Grazing has -- by far -- the most extensive ecological impact of any use of these valuable public rangelands, as over 250 million acres of these lands are grazed by sheep or cattle. On behalf of our members and organizations, we strongly urge you not to promote any grazing legislation that would:

1. lock-in a new, subsidized grazing fee for livestock operators on federal lands; our organizations believe that grazing fees should -- at a minimum -- cover the government's cost of running the federal grazing program;
2. enact new procedural hurdles that would make it even more difficult than it now is for Forest Service or BLM managers to protect and restore public rangeland resources;
3. limit public participation in federal decision-making or hamper the ability of concerned groups and individuals to appeal unsound federal grazing decisions; and
4. undercut the multiple use management and conservation of the National Grasslands by removing them from the National Forest System or by eliminating the application of the National Forest Management Act to these important areas.

Our organizations believe that true reform of grazing management must include the following provisions:

1. an overall emphasis on the restoration of federal rangelands that have been damaged by poorly managed grazing and the protection of the ecological health of remaining federal rangelands;
2. a sensible grazing fee that delivers a fair return to the U.S. Treasury, to replace the current fee which costs taxpayers roughly \$4 for every dollar spent on the federal grazing program;
3. fair and open public participation (including the ability to appeal unsound grazing decisions) to all citizens who wish to be meaningfully involved; and
4. grazing permits that can be held by non-ranchers and that allow federal rangelands to be "rested" (conservation use) without penalty.

Thank you for your attention to our concerns.

Sincerely,

Frances A. Hunt
The Wilderness Society

Steve Moyer
Trout Unlimited

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Questions for Hearing on September 17th, and 30th 1997

USFS

- The USFS recently were questioned by the livestock industry regarding the Southwest Regional Forester endorsed strategy entitled "Company' Coming". This strategy, if implemented would prove extremely detrimental to the public lands livestock industry economic base by conceivably putting many operators out of business. Mr. Unger, then USFS Associate Chief, responded that the Washington Office of the US Forest Service was in agreement with the issued concerns and that the "draft" did not portray a balance of uses and emphasis (Note that nowhere in the document does it say "draft"). Ironically, not long after his letter to the Public Lands Council, Mr. Unger took retirement. This leaves question as to where the Forest Service now stands on initiatives of the type demonstrated by "Company's Coming". This Committee might be best served if the Chief of the Forest Service provided details on the status of this disconcerting strategy, and if the Forest Service is presently developing a replacement strategy which does provide the necessary balance of uses in a fair and impartial manner to all users. Further, when strategies are being proposed of this nature which could have far reaching consequences, is it not best to go to the various users, the local communities, and the scientific community to ascertain if what you are proposing is the best for the resources, the local economy and the user himself? Also, we are aware that the US Forest Service has in the past contracted with State Universities to have economic analysis conducted on proposed actions which may impact not only the operator but also the local/regional economy. Are you presently conducting economics on your proposed actions and sharing it with the public for comment prior to issuing an action?
- The Forest Service, on some Forests we are aware of, are limiting the type of grazing systems that can be utilized on the allotments. For example, where there is an allotment assigned to a permittee, the Forest Service is oftentimes imposing grazing changes which require the permittee to shift from a Deferred Rotation System to a Rest Rotation system. The change in essence now disallows the permittee to access the full allotment over each given season while rotating use areas, and accordingly under rest rotation only allows him onto the allotment with the same numbers of livestock for only two out of three years. This in effect cuts the individuals permit by 1/3rd. Further, in many states where there are only very limited private lands to lease, this action puts tremendous stress on the operator, with few or no options available. Is it not best to work through whatever problems are perceived and come to agreement as opposed to imposing the will of Forest Service upon the users?
- Many allotments on the Forest are reported as being vacant for several years and very little reportedly being done to reallocate the forage. An example of this concern is the Carson District of the Toiyabe National Forest in Nevada where the vacancy rate exceeds 55% and the Forest vacancy rate is 35% overall and growing. This is a dangerous trend that is creating concern for the states and communities dependent upon an Agricultural base and where the public lands sometimes exceed all other land ownership in size. Why is the Forest Service so non-responsive to the needs of these communities and permittees and taking so much time with the reallocation process? We realize that a recent commitment has been made to reopen many Forest Plans to revision, however, permittees cannot wait for 2-3 years to get back on the Forest. Debtors won't wait and banks don't lend without secure permits. To hang these permittees and communities out for extended periods of time waiting on bureaucracy to act will result in their demise. Can you provide concise deadlines by which to assure reallocation of these permits? Is the Forest Service not able to permit livestock grazing to continue with an Annual Operating Permit and close monitoring?

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- With fire being a major cause of catastrophic event, what are the public lands agencies doing to manage the unharvested fuels which are building rapidly as a result of major reductions in livestock numbers, closure of allotments, or vacancies with no reallocation to date? If fuels continue to build with no livestock to harvest the forage, is it not apparent that the threat of fire will continue to grow? Do you agree that well managed livestock grazing is possibly the most feasible tool to manage fuels against the threat of wildfire while still enhancing the overall condition of the resource?

Questions for Both the US Forest Service and The Bureau of Land Management (BLM)

- The public land agencies have embraced a practice of prescribed burns as a means of managing resources and creating improved conditions. Is the resource evaluated prior to the burn to ascertain if the target specie can be harvested commercially for potential biomass uses while yet creating the desired response following harvest? The vast stands of Western Juniper, and also the millions of acres of Pinyon pine/Utah juniper in the West are examples of biomass which could potentially be included in commercial, large scale harvest as opposed to destruction by prescribed burns. Certainly, if carefully planned, stimulation of rural economies along with resource enhancement could potentially be realized. We recognize the potential for resource improvement through carefully applied prescribed burns, however, we also need assurance that the resources are being evaluated for other less impacting possibilities.
- It has come to our attention that the reductions in AUM's are commonly occurring in several locations whenever a ranch sales and the permit is transferred. Do the US Forest Service and BLM each conduct the necessary evaluations, prior to the intended sale, to clearly demonstrate that a reduction is indeed necessary, or is this transaction found to be a convenient time for which to initiate a cut? By not honoring the permit represented in the sale of the ranch, the agency is in effect reducing rancher wealth and everything he has worked to buildup, oftentimes for retirement. In addition, reducing the permit at the time of transfer could potentially render a ranch operation non-viable as an economic unit for the buyer.
- The Forest Service recently were included under the provisions of Mediation. It seems that this process has great potential for furthering the activity of cooperation, coordination, and consultation by providing the opportunity to settle differences with professional mediation assistance, as opposed to bringing attorneys into a lengthy and costly appeal process. Where is the Forest Service in terms of providing the promised field guidance on the mediation process? Should this process not be a provision available to the users of the BLM administered lands? It seems that continuity in the manner by which we treat the users has value. Also, any and all opportunity to bring resolution to differences while avoiding the courts is a cost savings to all parties.
- The BLM has been actively reevaluating allotments since about the mid 1980's. Following the evaluation period, the agencies have the option of either reaching an agreement with the permittee relative to the findings, or issuing a decision. It has come to our attention that significant reductions are occurring in many areas of the West on BLM allotments impacting livestock operations and local rural economies. Are the BLM and/or Forest Service conducting economic analysis and soliciting public inputs before decisioning the permit and creating the impact? If not, why not? In Nevada alone we have heard reports of multimillion impacts, as determined by economists, which have potentially occurred as a result of the agencies reducing permits significantly.

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- The BLM reportedly is changing season of use on many year round permits in areas such as Southern Nevada where there is virtually no private lands by which to relocate livestock. In essence this tactic can effectively put a water based operator out of business fast. Why can't the BLM work with the operator to establish seasonal use areas over these areas which accommodate his needs while yet protecting the resources. Certainly, the Science and Art of Range Management has taken us a long ways over the past fifty years and many new grazing systems and range improvement practices show promise for mitigating this type of problem. I am further concerned that with the wholesale approach to remove livestock during the Spring period, cheatgrass and other opportunist annuals will gain more ground and create increasingly more hazardous conditions for wildfire as flashy fuel. When fire occurs on cheatgrass effected range, the loss of perenniaal desirable plants far exceeds anything that livestock could do. Scientists have published much on this subject and it seems inappropriate that we remove livestock at a time that they could provide value in removing a problem competitive plant, which competes for moisture, and also greatly reduce the hazards of wildfire.
- While Coordinated Resource Management (CRM) is a known and practiced process for addressing issues relating to resource management, we are also aware of other processes, such as Holistic Resource Management (HRM), and Alternative Dispute Resolution (ADR) which have proven beneficial in many areas. Are the BLM and Forest Service using these tools, and what are your observations relative to including them as a part of the Forage Improvement Act of 1997 ?
- What measures are the agencies taking to accelerate the development of Allotment Management Plans? There are many complaints regarding the slow pace carried out by the agencies toward completing AMP development. It seems that while the resource budgets have not changed dramatically over the years, the commitment to AMP development apparently has. Could the agencies provide to this Committee a breakdown, by state and by year, of the development of AMP's over the past 20 years? It seems that the AMP is possibly the only signed agreement which the permittee has to take to the bank in terms of his future. To redirect funding to other, non allotment related functions, would obviously create a severe concern for the permittees and their futures.