Rangeland Rights

Ranchers join forces to prevent further erosion of federal land grazing permits.

by Barbara LaBarbara

All is not quiet on the Western front.

The battle for power over Bureau of Land Management (BLM) and Forest Service land has been going on since before the Taylor Grazing Act passed in 1934. Recent years have seen an intensified effort by government officials to gain increasing regulatory control over federal land ranchers, and those ranchers' rights are slowly eroding.

With the help of Western States legislators and organized agriculture groups, many ranchers continue to fight back to keep their livestock and their rights in place. One peacemaking treaty they are now offering to Congress is the Public Rangeland Management Act or Senate bill S1459. If enacted it will be the first major revision of federal lands grazing activities since the 1934 Taylor Grazing Act.

Secretary of Interior Bruce Babbitt's Rangeland Reform '94 went into effect Aug. **21,** 1995, despite outcries from Western States Congressmen and ranchers, many of whom believe it had little to do with the health of the range or the health of the industry.

For those not familiar with Rangeland Reform '94, here is a review of its provisions:

- Dictates that the authorized grazing officer make arbitrary judgments regarding range conditions.
- Amends existing regulation to include conservation permits which would allow non-grazing for 10 years.
- Gives the federal government title to all improvements made by ranchers on federal land including water.
- Sets a list of standards and guidelines that address the entire West.
- Includes a surcharge for subleasing with limited exception for family.
- Dilutes rancher's preference rights when renewing their Federal grazing permits.
- Allows temporary non-use permits.
- Allows reduction of mandatory qualifications — one of which states, "The applicant need not be engaged in the livestock business."

Reform '94 was challenged by a Public Lands vs. Babbitt lawsuit in the fall of 1995. The lawsuit only pertains to BLM lands. A ruling in June 1996 by U.S. District Judge Clarence Brimmer restored range and preference rights safeguards and provided a major victory for agricultural and land groups.

The Associated Press reported that Brimmer sent a seething opinion to Babbitt. "With a mere stroke of his pen, the secretary (of the Interior) has boldly and blithely wrested away from Western ranchers the very certainty of range rights and the necessary security of preference rights that their livestock operations require," he wrote.

"The court cannot ignore the secretary's disregard of his congressionally imposed duty; it must be stopped before it wreaks havoc with the ranching industry that Congress has tried to preserve."

Judge Brimmer's ruling overturned the following:

- The elimination of rancher's grazing preferences. Preference rights means the rancher has preference against all other comers in the renewal of a permit. They must own property in the vicinity, not necessarily next to government property, and have had prior use,
- The U.S. government's title to range improvements including water. Title to range improvements is based on the percentage a rancher and the government contribute to the improvement. If the rancher contributes 50 percent of the cost, he will retain 50 percent ownership.
- The issuance of conservation-use permits. Conservation permits are permits to not graze livestock on federal rangelands which is a violation of federal law.
- The reduction of mandatory qualifications. Reduction of mandatory qualifications means the applicability of the person applying for the permit. It does not apply to animal units per month (AUM) or the condition of the rangeland.

All other Rangeland Reform '94 rulings stand. Even though Brimmer noted that temporary non-use or voluntary non-use is bad policy, it was sustained.

Frank Falen, Wyoming attorney, did not agree with Brimmer's decision to uphold those permits.

"If you don't use every AUM for more than three years in a row the government can cancel that part of your permit," he explains. "That is not environmentally friendly because a rancher may have taken

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non-use due to a drought situation. If he uses it under aridity conditions and causes environmental damage, he is in violation. Either way, he loses his permit."

For example, you are in trespass and can lose your permit if you have 100 AUMs for one month and run 101 animals. In the same case, if you are running 100 animals and one dies leaving you with 99, you are in violation. Likewise, if range conditions dictate that you run 50 animals, you are in violation. If either of these scenarios happen three years in a row, you can be required to relinquish a portion of your permit.

A new Public Rangelands Management Act (PRMA), S1459, (see outline below) is currently working its way through Congress. It replaces last year's PRMA S852. Pete Domenici (R-N.M.), Craig Thomas, (R-Wyo.) Larry Craig, (R-Idaho), and Max Baucus (D-Mont.), are major sponsors of the bill.

"As for clarity and quality of legislative language, S1459 is superior to S852," says Brian Garber, associate director of the Public Lands Council. "For example, S852 stated all prodigy born on Federal Lands would graze free. That means in three generations nobody would be paying to graze on Federal Lands."

In July 1996 The National Cattlemen's Beef Association (NCBA) joined a diverse group of 205 agricultural, business, environmental and sportsmen advocates urging all legislators to support S1459. The groups say it should pass for the following reasons:

- It maintains widespread public participation in the management of federal lands.
- The bill maintains the "multiple use" of public lands. It states it shall not be construed as limiting or precluding recreational, hunting or fishing activities on federal lands in accordance with applicable federal and state laws.
- National Environmental Protection Act (NEPA) provisions in the bill will protect the environment and restore the original intent of NEPA.
- The Congressional Budget Office has scored the new grazing-fee formula contained in the bill and determined that enactment would decrease direct federal spending by about $16 million over the period from 1996 to 2000, as well as increase offsetting receipts by about $20 million over the same period.

"The time has come to restore common sense to the management of the federal lands and allow ranchers utilizing those lands to continue the production of food and fiber," say NCBA leaders.

Garber believes 99 percent of the West have not yet felt the full effects of Reform '94. He says with the current status of Congress, Babbitt is being careful.

"If President Clinton is re-elected, Babbit will begin to implement his regulations," he says. "How much he does depends on what happens in Congress. If the House cannot or does not pass PRMA, he will see that as a mandate because the West cannot carry the votes. If they don't bring this to a vote, I guess he's right."

The bill has passed the Senate and is currently in the House. Gary Ziehe, legislative assistant to Domenici, says proponents of the bill are trying to get agreement on needed changes before they have the votes to pass it in the House. The House Speaker has said he will work for a vote on the House floor during the week of Sept. 16.

"Even if this bill is not signed into law this year, I believe we have set the stage for future legislation." Ziehe says. "This is not the end of the war."

Meanwhile, the erosion continues— on diminutive right at a time.

Major points of S1459
PUBLIC RANGELANDS MANAGEMENT ACT

- **Codification of Regulations** — Reverts to the grazing regulations in place prior to Reform '94.
- **Application of Act** — Requires the Secretary of Agriculture and the Secretary of Interior to coordinate the promulgation of new regulations under the Act and to coordinate administration of grazing.
- **Objectives** — Promotes healthy sustained rangeland with an emphasis on scientific monitoring.
- **NEPA** — Requires reports evaluating monitoring data and the issuance of a temporary non-renewable permit not subject to NEPA requirements. NEPA below the land use plan level will not be required.
- **Livestock Grazing Capacity** — Allows maximum sustainable stocking rate without long term damage.
- **Grazing Preference** — Defined as number of AUMs adjudicated or apportioned.
- **Review of Resource Condition** — the Secretary of Interior to review monitoring data half way through the permit term and may modify permit if resource management objective are not being met.
- **Ownership of Cooperative Range Improvements** — title proportional to the amount permittee and US contribute to construction only.
- **Water Rights** — No water rights on Federal Land shall be acquired, perfected, owned, controlled, maintained, administered, or transferred in connection with livestock grazing management other than in accordance with State law. Transfer of water right from permittee to U.S. government cannot be a pre-condition of receiving a permit.
- **Permit Renewal** — Permittee has first priority for renewal if land remains suitable for livestock grazing.
- **Subleasing** — Pre-Reform '94 definition retained. It is not a sublease if a relative owns livestock or when leasing base property and preference is transferred. Sublease is okay in cases due to ill health or death. Other subleasing is illegal. No surcharge on legal sublease.
- **Grazing Fees** — Multiplier is T-bill rate. Retains ERS as calculator of gross value.
- **Definition of AUM** — 7:1 sheep to cow ratio recommendation.