



CENTER FOR BIOLOGICAL DIVERSITY

8 November 2005

Secretary Mike Johanns
U.S. Department of Agriculture
1400 Independence Ave SW
Washington, D.C. 20250

Secretary Gale Norton
U.S. Department of the Interior
1849 C Street NW
Washington, D.C. 20240

RE: Petition for rulemaking to amend the grazing fee regulations to reflect the fair market value of federal forage

Dear Secretaries Johanns and Norton,

Petitioners for rulemaking request that the Secretaries of Interior (DOI) and Agriculture (USDA) establish a fair and just fee for livestock grazing on certain federal lands in the sixteen western states.¹ The current grazing fee formula adopted by the Bureau of Land Management (BLM) and the USDA-Forest Service fails to track changes in market rates and overemphasizes “ability to pay” factors. Grazing fees paid on Forest Service and BLM lands continue to fall further behind grazing fees charged for equivalent forage on state and private lands throughout the West.

The BLM and Forest Service manage approximately 70 percent of all federally owned lands. Approximately 93 percent, or 167 million acres, of public lands managed by the BLM (exclusive of Alaska) are available for livestock grazing.² The Forest Service permits grazing on over 92

¹ This petition for rulemaking concerns the grazing fee charged on national forests and some grasslands managed by the Forest Service, and lands managed for livestock grazing both within grazing districts (administered under Section 3 of the Taylor Grazing Act), outside grazing districts (administered under Section 15 of the Taylor Grazing Act) and on Oregon and California Railroad grant lands managed by the Bureau of Land Management in Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington and Wyoming.

² Moskowitz, K. and C. Romaniello (2002). Assessing the Full Cost of the Federal Grazing Program. Report prepared for the Center for Biological Diversity. Tucson, AZ: 6.

million acres of National Forest System lands in the western states, including national forests and grasslands.³

Current federal grazing fee receipts fail to recover even 15 percent of the known direct and indirect costs of administering the federal grazing program on Forest Service and BLM lands, which include vegetation restoration; range “improvements”; some, but not all, resource monitoring; and salaries and overhead expenses for range management personnel. The low fee also does not repay the ecological costs of public lands grazing: impaired watersheds and water quality; increased flammability of forests; proliferation of invasive species; degraded wildlife habitat; and species imperilment. The ecological costs alone expose the exorbitantly high costs of renting public lands forage that supplies only two percent of the total feed consumed by beef cattle in the 48 contiguous states.

The current grazing fee is calculated using a formula established in the Public Rangelands Improvement Act of 1978 (PRIA). The fee is set annually, and is charged per “animal unit month” (AUM), or the amount of forage required to sustain one “animal unit” for one month.⁴ An “animal unit” is defined as one cow and her calf, one horse, or five sheep or goats. The PRIA formula was set to expire in 1986, but President Reagan extended its use indefinitely. In 1988, the Secretaries approved the continued use of the PRIA formula. In 1991, Congress directed the agencies to reevaluate the PRIA formula and the resulting “fair market value” study showed the grazing fee was lower than necessary to recover costs. The Government Accountability Office (GAO) also reported in 1991 that the low fee was an inherent result of the formula’s design, which begins with a low base fee and is adjusted using an index that heavily weighs factors such as grazing permittees’ ability to pay.⁵

In 1994, the Secretaries set forth new rules under the joint banner “Rangeland Reform,” which proposed using a new base value and a slightly different formula for setting the grazing fee.⁶ This change would have resulted in a significant increase in the cost recovery of the federal grazing program, but it was never adopted.⁷

A new GAO report on grazing fees and cost recovery showed that the federal government spends *at least* \$144 million annually to support public lands grazing, principally on Forest Service and BLM lands, and recovers less than one-sixth of that cost in grazing fees.⁸ The 2005 report noted that the BLM and Forest Service grazing fee *decreased* by 40 percent between 1980 and 2004, while fees charged by private ranchers *increased* 78 percent over the same period.⁹

³ GAO (2005). Livestock grazing: Federal expenditures and receipts vary depending on the agency and the purpose of the fee charged. GAO-05-869. Government Accountability Office. Washington, DC: 72-75.

⁴ “Animal unit month” and “head month” are different measurements, the latter defined by the Forest Service as “the time in months that livestock spend on National Forest System land,” that the agency uses for billing purposes.

⁵ GAO (1991). Current formula keeps grazing fees low. RCED-91-185BR. General Accounting Office. Washington, DC, cover letter by James Duffus III, Director of Natural Resources Management Issues, GAO to Hon. Mike Synar, Chairman House subcommittee on Environment, Energy, and Natural Resources, dated June 11, 1991.

⁶ Bureau of Land Management (1994). Rangeland Reform '94 Final Environmental Impact Statement. Bureau of Land Management. Washington, DC, , Appendix B; 59 Fed. Reg. 14314 (Mar. 25, 1994); 59 Fed. Reg. 22094 (Apr. 28, 1994) (proposed BLM rules); 59 Fed. Reg. 22094 (Apr. 28, 1994) (proposed Forest Service rules).

⁷ 60 Fed. Reg. 9899 (Feb. 22, 1995).

⁸ GAO (2005): 5-7.

⁹ Id. at 7 (emphasis added).

The report suggested that the competitive market practices used by other federal agencies to set the grazing fees could help to close the gap between expenditures and receipts in the Forest Service and BLM grazing programs, and more closely align the fee with market prices.¹⁰

Authority to set the grazing fee is vested in the Secretaries by (1) the IOAA, which authorizes federal agencies to assess fees for specific services provided to “identifiable recipients”;¹¹ (2) the National Forests Management Act (NFMA), which provides for issuance of grazing permits by the Secretary of Agriculture “under such terms and conditions as she may deem proper”;¹² and (3) the Taylor Grazing Act (TGA), which states that the “Secretary of the Interior is hereby authorized to issue or cause to be issued permits to graze livestock . . . upon the payment annually of *reasonable* fees...”¹³

The current formula violates Congressional guidance to the Secretaries under the TGA, the Federal Lands Policy and Management Act (FLPMA), and PRIA because it produces a fee that is (a) unreasonable, (b) unrepresentative of fair market value, and (c) inequitable to the United States and to the majority of livestock producers. Alternatively, the current fee formula established by PRIA expired following the seven-year trial period, President Reagan had no authority to extend the formula by Executive Order, and therefore the Secretaries should consider a new formula that complies with the Taylor Grazing Act and the Federal Lands Policy and Management Act, and the Independent Offices Appropriations Act.

An increase in the federal grazing fee in the West would not significantly disrupt or cause harm to the livestock industry, but would help to stabilize it by creating a consistent market price for western forage resources, while generating more revenue to DOI and USDA to help offset the significant annual deficit in federal spending from operating the federal grazing program.

Congress, the Administration, and auditing agencies have known for decades that the grazing fee does not cover the costs of the federal grazing program. As a matter of law and as a matter of sound policy, the Secretaries should revise their grazing fee regulations to accurately reflect the fair market value of grazing on public lands.

Sincerely,

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¹⁰ Id.

¹¹ Office of Management and Budget. Memorandum for Heads of Executive Departments and Establishments, re. User charges. Circular A-25 (revised) (undated, unpaginated).

¹² 16 U.S.C. § 580(l) (2004).

¹³ 43 U.S.C. § 315(b) (2004) (emphasis added).