105TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPT. 105–346
Part 1

FORAGE IMPROVEMENT ACT OF 1997

OCTOBER 24, 1997.—Ordered to be printed

Mr. SMITH of Oregon, from the Committee on Agriculture, submitted the following

REPORT

[To accompany H.R. 2493]

[Including cost estimate of the Congressional Budget Office]

The Committee on Agriculture, to whom was referred the bill (H.R. 2493) to establish a mechanism by which the Secretary of Agriculture and the Secretary of the Interior can provide for uniform management of livestock grazing on Federal lands, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Forage Improvement Act of 1997".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Rules of construction.
Sec. 3. Coordinated administration.

TITLE I—MANAGEMENT OF GRAZING ON FEDERAL LANDS

Sec. 101. Application of title.
Sec. 102. Definitions.
Sec. 103. Prohibited condition on issuance or renewal of grazing permits and leases.
Sec. 104. Monitoring.
Sec. 105. Subleasing.
Sec. 106. Coordinated resource management practices.
Sec. 107. Fees and charges.
Sec. 108. Resource Advisory Councils.

TITLE II—MISCELLANEOUS

Sec. 201. Effective date.
Sec. 202. Issuance of new regulations.

SEC. 2. RULES OF CONSTRUCTION.

(a) LIMITATION ON APPLICATION.—Nothing in this Act shall be construed to affect grazing in any unit of the National Park System, in any unit of the National Wildlife Refuge System, in any unit of the National Forest System managed as a Na-

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tional Grassland by the Secretary of Agriculture under the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010 et seq.), on any lands that are not Federal lands (as defined in section 102), or on any lands that are held by the United States in trust for the benefit of Indians.

(b) MULTIPLE USE ACTIVITIES NOT AFFECTED.—Nothing in this Act shall be construed to limit or preclude the use of, and access to, Federal lands (as defined in section 102) for hunting, fishing, recreational, watershed management, or other multiple use activities in accordance with applicable Federal and State laws and the principles of multiple use.

(c) VALID EXISTING RIGHTS.—Nothing in this Act shall be construed to affect valid existing rights, reservations, agreements, or authorizations under Federal or State law.

(d) ACCESS TO NONFEDERALLY OWNED LANDS.—Section 1323 of Public Law 96–487 (16 U.S.C. 3210) shall continue to apply with regard to access to nonfederally owned lands.

SEC. 3. COORDINATED ADMINISTRATION.

To the maximum extent practicable, the Secretary of Agriculture and the Secretary of the Interior shall provide for consistent and coordinated administration of livestock grazing and management of Federal lands (as defined in section 102), consistent with the laws governing such lands.

TITLE I—MANAGEMENT OF GRAZING ON FEDERAL LANDS

SEC. 101. APPLICATION OF TITLE.

(a) FOREST SERVICE LANDS.—This title applies to the management of grazing on National Forest System lands, by the Secretary of Agriculture under the following laws:

(1) The 11th undesignated paragraph under the heading "SURVEYING THE PUBLIC LANDS" under the heading "UNDER THE DEPARTMENT OF THE INTERIOR" in the Act of June 4, 1897 (commonly known as the Organic Administration Act of 1897) (30 Stat. 35, second full paragraph on that page; 16 U.S.C. 551).

(2) Sections 11, 12, and 19 of the Act of April 24, 1950 (commonly known as the Granger-Thye Act of 1950) (64 Stat. 85, 88, chapter 97; 16 U.S.C. 580g, 580h, 580l).

(3) The Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528 et seq.).

(4) The Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.).

(5) The National Forest Management Act of 1976 (16 U.S.C. 472a et seq.).

(6) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

(7) The Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.).

(b) BUREAU OF LAND MANAGEMENT LANDS.—This title applies to the management of grazing on Federal lands administered by the Secretary of the Interior under the following laws:

(1) The Act of June 28, 1934 (commonly known as the Taylor Grazing Act) (48 Stat. 1269, chapter 865; 43 U.S.C. 315 et seq.).

(2) The Act of August 28, 1937 (commonly known as the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act of 1937) (50 Stat. 874, chapter 876; 43 U.S.C. 1181a et seq.).

(3) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

(4) The Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.).

(5) The Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010 et seq.).

(c) CERTAIN OTHER UNITED STATES LANDS.—This title also applies to the management of grazing by the Secretary concerned on behalf of the head of another department or agency of the Federal Government under a memorandum of understanding.

SEC. 102. DEFINITIONS.

In this title:

(1) ALLOTMENT.—The term "allotment" means an area of Federal lands subject to an adjudicated or apportioned grazing preference that is appurtenant to a commensurate base property.

(2) AUTHORIZED OFFICER.—The term "authorized officer" means a person authorized by the Secretary concerned to administer this title, the laws specified in section 101, and regulations issued under this title and such laws.

(3) BASE PROPERTY.—The term "base property" means private land, water, or water rights owned or controlled by a permittee or lessee to which a Federal allotment is appurtenant.

(4) COMMENSURATE.—The term "commensurate" means private property of sufficient productivity to support the feed or water needs (or both) of livestock during the period of time that such livestock are not physically on the Federal allotment.

(5) CONSULTATION, COOPERATION, AND COORDINATION.—For the purposes of this title (and section 402(d) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1752(d))), the term "consultation, cooperation, and coordination" means to engage in good faith efforts—

(A) to fully communicate; and

(B) to provide for a mutually supported action to achieve a mutually agreed purpose.

(6) COOPERATIVE MANAGEMENT AGREEMENT.—The term "cooperative management agreement" means a written agreement between the Secretary concerned (or a designee of the Secretary concerned) and a permittee or lessee that—

(A) is consistent with and incorporates by reference relevant provisions of existing land use plans; and

(B) provides the permittee or lessee with the opportunity to exercise management flexibility beyond the limits of an allotment management plan or a grazing permit or lease that is not issued pursuant to a cooperative management agreement.

(7) COORDINATED RESOURCE MANAGEMENT.—The term "coordinated resource management" means the planning and implementation of voluntary management activities in a specified area that involves the consultation, cooperation, and coordination of the Forest Service or the Bureau of Land Management (or both) with affected State or Federal agencies, private land owners, and users of Federal lands.

(8) FEDERAL LANDS.—The term "Federal lands" means lands outside the State of Alaska that are owned by the United States and are—

(A) included in the National Forest System; or

(B) administered by the Secretary of the Interior under the laws specified in section 101(b).

(9) GRAZING PERMIT OR LEASE.—The term "grazing permit or lease" means a document authorizing use of Federal lands for the purpose of grazing livestock—

(A) within a grazing district under section 3 of the Act of June 28, 1934 (commonly known as the Taylor Grazing Act) (48 Stat. 1270, chapter 865; 43 U.S.C. 315b);

(B) outside grazing districts under section 15 of the Act of June 28, 1934 (commonly known as the Taylor Grazing Act) (48 Stat. 1275, chapter 865; 43 U.S.C. 315m); or

(C) on National Forest System lands under section 19 of the Act of April 24, 1950 (commonly known as the Granger-Thye Act of 1950) (64 Stat. 88, chapter 97; 16 U.S.C. 580l).

(10) LAND USE PLAN.—The term "land use plan" means—

(A) a land and resource management plan prepared by the Forest Service pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604) for a unit of the National Forest System; or

(B) a resource management plan (or a management framework plan that is in effect pending completion of a resource management plan) developed in accordance with the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) for Federal lands administered by the Bureau of Land Management.

(11) MONITORING.—The term "monitoring" means the orderly collection of information using techniques that are scientifically based and professionally accepted to determine trend and condition of forage and related resources on Federal lands. Such information may include historical information, but must be objective and reliable. Such information shall be used to evaluate—

(A) the effects of ecological changes and management actions on forage and related resources; and

(B) the effectiveness of actions in meeting management objectives.

(12) NATIONAL FOREST SYSTEM.—The term "National Forest System" has the meaning given such term in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a)), except that the term does not include any lands managed as a National Grassland under the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010 et seq.).

(13) SECRETARY CONCERNED.—The term "Secretary concerned" means—

(A) the Secretary of Agriculture, with respect to the National Forest System; and

(B) the Secretary of the Interior, with respect to Federal lands administered by the Secretary of the Interior under the laws specified in section 101(b),.

(14) SIXTEEN CONTIGUOUS WESTERN STATES.—The term "sixteen contiguous Western States" means the States of Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming.

(15) SUBLEASE.—The term "sublease" means an agreement by a permittee or lessee that allows grazing on Federal lands by livestock not owned or controlled by the permittee or lessee.

SEC. 103. PROHIBITED CONDITION ON ISSUANCE OR RENEWAL OF GRAZING PERMITS AND LEASES.

The Secretary concerned may not impose as a condition for the issuance or renewal of a grazing permit or lease that the permittee or lessee provide access across private property unless the condition is limited to access for Federal personnel engaged in authorized land management activities.

SEC. 104. MONITORING.

(a) MONITORING.—The monitoring of resource conditions and trends on Federal lands within an allotment shall be performed by a qualified person approved by the Secretary concerned and selected only from among the following:

(1) Federal, State, or local government personnel.

(2) A grazing permittee or lessee.

(3) A professional consultant retained by the United States or a permittee or lessee.

(b) MONITORING CRITERIA AND PROTOCOLS.—Monitoring shall be conducted according to regional or State criteria and protocols that are scientifically based, professionally accepted, and site specific.

(c) NOTICE.—In conducting monitoring, the Secretary concerned shall provide reasonable notice of the monitoring to affected permittees or lessees, including prior notice to the extent practicable of not less than 48 hours.

SEC. 105. SUBLEASING.

(a) IN GENERAL.—The Secretary concerned shall authorize subleasing with respect to a grazing permit or lease, in whole or in part, only—

(1) if the permittee or lessee is unable to make full grazing use of the permit or lease due to ill health or death;

(2) under a cooperative agreement with a grazing permittee or lessee (or group of grazing permittees or lessees); or

(3) if the grazing permit or lease is issued to a grazing association whose members or shareholders have exclusive rights to graze livestock on the Federal lands allotted to the grazing association.

(b) TREATMENT OF OWNERSHIP BY RELATIVES.—

(1) IN GENERAL.—Livestock owned by a relative described in paragraph (2) of a permittee or lessee shall be considered as owned or controlled by the permittee or lessee for purposes of this title.

(2) COVERED RELATIVES.—A relative referred to in paragraph (1), with respect to a permittee or lessee, means a spouse, a parent or spouse of a parent, a grandparent or spouse of a grandparent, a sibling or spouse of a sibling, a child, or a grandchild of the permittee or lessee.

(c) TREATMENT OF LEASE OR SUBLEASE OF BASE PROPERTY.—The leasing or subleasing of the base property of a permittee or lessee, in whole or in part, shall not be considered to be a sublease of a grazing permit or lease. The grazing preference associated with such base property shall be transferred to the person controlling the leased or subleased base property, and all terms and conditions of the existing grazing permit or lease, or cooperative management agreement and the covenants of the allotment management, if such exists, shall bind such person.

SEC. 106. COORDINATED RESOURCE MANAGEMENT PRACTICES.

(a) USE OF COORDINATED RESOURCE MANAGEMENT PRACTICES ENCOURAGED.—The Secretary concerned may encourage the use of coordinated resource management practices when such practices are authorized under a cooperative management agreement entered into with a permittee or lessee (or an organized group of permittees or lessees) in a specified geographic area. The coordinated resource management practices shall be—

(1) scientifically based; and

(2) consistent with goals and management objectives of the applicable land use plan.

(b) FEDERAL ADVISORY COMMITTEE ACT.—Activities under this section shall be exempt from the Federal Advisory Committee Act (5 U.S.C. App.).

SEC. 107. FEES AND CHARGES.

(a) GRAZING FEES.—The fee for each animal unit month in a grazing fee year for livestock grazing on Federal lands in the sixteen contiguous western States shall be equal to the 12-year average of the total gross value of production for beef cattle for the 12 years preceding the grazing fee year, multiplied by the 12-year average of the United States Treasury Securities six-month bill "new issue" rate, and divided by 12. The gross value of production for beef cattle shall be determined by the Economic Research Service of the Department of Agriculture in accordance with subsection (e)(1).

(b) DEFINITION OF ANIMAL UNIT MONTH.—For the purposes of billing only, the term "animal unit month" means one month's use and occupancy of range by—

(1) one cow, bull, steer, heifer, horse, burro, or mule, seven sheep, or seven goats, each of which is six months of age or older on the date on which the animal begins grazing on Federal lands;

(2) any such animal regardless of age if the animal is weaned on the date on which the animal begins grazing on Federal lands; and

(3) any such animal that will become 12 months of age during the period of use authorized under a grazing permit.

(c) LIVESTOCK NOT COUNTED.—There shall not be counted as an animal unit month the use of Federal lands for grazing by an animal that is less than six months of age on the date on which the animal begins grazing on such lands and is the progeny of an animal on which a grazing fee is paid if the animal is removed from such lands before becoming 12 months of age.

(d) TREATMENT OF OTHER FEES AND CHARGES.—

(1) AMOUNT OF FLPMA FEES AND CHARGES.—The fees and charges under section 304(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734(a)) shall reflect processing costs and shall be adjusted periodically as such costs change, but in no case shall such fees and charges exceed the actual administrative and processing costs incurred by the Secretary concerned.

(2) NOTICE OF CHANGES.—Notice of a change in a service charge shall be published in the Federal Register.

(e) CRITERIA FOR ECONOMIC RESEARCH SERVICE.—

(1) GROSS VALUE OF PRODUCTION OF BEEF CATTLE.—The Economic Research Service of the Department of Agriculture shall continue to compile and report the gross value of production of beef cattle, on a dollars-per-bred-cow basis for the United States, as is currently published by the Service in: "Economic Indicators of the Farm Sector: Cost of Production—Major Field Crops and Livestock and Dairy" (Cow-calf production cash costs and returns).

(2) AVAILABILITY.—For the purposes of determining the grazing fee for a given grazing fee year, the gross value of production (as described above) for the previous calendar year shall be made available to the Secretary concerned, and published in the Federal Register, on or before February 15 of each year.

SEC. 108. RESOURCE ADVISORY COUNCILS.

(a) ESTABLISHMENT REQUIRED.—

(1) JOINT ESTABLISHMENT.—The Secretary of Agriculture and the Secretary of the Interior shall jointly establish and operate a Resource Advisory Council on a State, regional, or local level to provide advice on management issues regarding Federal lands in the area to be covered by the Council.

(2) ESTABLISHMENT BY SINGLE SECRETARY.—If the Federal lands in an area for which a Resource Advisory Council is to be established are under the jurisdiction of a single Secretary concerned, that Secretary concerned shall be responsible for the establishment and operation of the Resource Advisory Council.

(3) EXCEPTION TO REQUIREMENT.—A Resource Advisory Council is not required in any State, region, or local area in which the Secretaries jointly determine that there is insufficient interest in participation on a Resource Advisory

Council to ensure that membership can be fairly balanced in terms of the points of view represented and the functions to be performed.

(4) CONSULTATION.—The establishment of a Resource Advisory Council for a State, region, or local area shall be made in consultation with the Governor of the affected State.

(b) DUTIES.—Each Resource Advisory Council shall advise the Secretary concerned and appropriate State officials on—

(1) matters regarding the preparation, amendment, and implementation of land use plans and activity plans for Federal lands (and resources thereof) within the area covered by the Council; and

(2) major management decisions, while working within the broad management objectives established for such Federal lands.

(c) VOTING.—All decisions and recommendations by a Resource Advisory Council shall be on the basis of a majority vote of its members.

(d) DISREGARD OF ADVICE.—If a Resource Advisory Council is concerned that its advice is being arbitrarily disregarded, the Resource Advisory Council may request that the Secretary concerned respond directly to the Resource Advisory Council's concerns. The Secretary concerned shall submit to the Council a written response to the request within 60 days after the Secretary receives the request. The response of the Secretary concerned shall not—

(1) constitute a decision on the merits of any issue that is or might become the subject of an administrative appeal; or

(2) be subject to appeal.

(e) MEMBERSHIP.—

(1) NUMBERS.—The Secretary of Agriculture and the Secretary of the Interior (or the Secretary concerned in the case of a Resource Advisory Council established by a single Secretary) shall appoint the members of each Resource Advisory Council. Such appointments shall be made in consultation with the Governor of the affected State or States. A Council shall consist of not less than nine members and not more than fifteen members.

(2) REPRESENTATION.—In appointing members to a Resource Advisory Council, the Secretaries or the Secretary concerned (as the case may be) shall provide for balanced and broad representation of permittees and lessees holding a grazing permit or lease and other groups, such as commercial interests, recreational users, representatives of recognized local environmental or conservation organizations, educational, professional, or academic interests, representatives of State and local government or governmental agencies, Indian tribes, and other members of the affected public.

(3) INCLUSION OF ELECTED OFFICIAL.—The Secretaries or the Secretary concerned (as the case may be) shall appoint as a member of each Resource Advisory Council at least one elected official of a general purpose government serving the people of the area covered by the Council.

(4) PROHIBITION ON CONCURRENT SERVICE.—No person may serve concurrently on more than one Resource Advisory Council.

(5) RESIDENCY REQUIREMENT.—Members of a Resource Advisory Council must reside in the geographic area covered by the Council.

(6) GRANDFATHER CLAUSE.—A person serving on the date of the enactment of this Act as a member of an advisory council established under section 309(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1739(a)) for the purpose of providing advice regarding grazing issues shall serve as a member on the corresponding Resource Advisory Council established under this section for the balance of the person's term as a member on the original advisory council.

(e) SUBGROUPS.—A Resource Advisory Council may establish such subgroups as the Council considers necessary, including working groups, technical review teams, and rangeland resource groups.

(f) TERMS.—Resource Advisory Council members shall be appointed for two-year terms. Members may be appointed to additional terms at the discretion of the Secretaries or the Secretary concerned (as the case may be). The Secretaries or the Secretary concerned (as the case may be), with the concurrence of the Governor of the State in which the Council is located, may terminate the service of a member of that Council, upon written notice, if—

(1) the member no longer meets the requirements under which the member was appointed or fails or is unable to participate regularly in the work of the Council; or

(2) the Secretaries or the Secretary concerned (as the case may be) and the Governor determine that termination is in the public interest.

(g) COMPENSATION AND REIMBURSEMENT OF EXPENSES.—A member of a Resource Advisory Council shall not receive any compensation in connection with the performance of the member's duties, but shall be reimbursed for travel within the geographic area covered by the Council and per diem expenses only while on official business, as authorized by section 5703 of title 5, United States Code.

(h) FEDERAL ADVISORY COMMITTEE ACT.—Except to the extent that it is inconsistent with this title, the Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the Resource Advisory Councils.

(i) STATE GRAZING DISTRICTS.—Resource Advisory Councils shall coordinate and cooperate with State Grazing Districts established pursuant to State law.

TITLE II—MISCELLANEOUS

SEC. 201. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

SEC. 202. ISSUANCE OF NEW REGULATIONS.

The Secretary of Agriculture and the Secretary of the Interior shall—

(1) coordinate the promulgation of new regulations to carry out this Act; and

(2) publish such regulations simultaneously not later than 180 days after the date of the enactment of this Act.

BRIEF EXPLANATION

H.R. 2493 provides for more uniform administration and management of domestic livestock grazing on National Forests administered by the Forest Service and public lands administered by the Bureau of Land Management in the sixteen contiguous Western States.

PURPOSE AND NEED

Background—Grazing on national forests and public lands

Federal statutes controlling grazing on lands now administered as National Forests, BLM grazing districts, and BLM scattered parcels outside of organized grazing districts evolved from customary open range control practices of the 19th century. Prior to 1905, domestic livestock grazing on federal public domain lands in the West were regulated only under state and territorial laws pursuant to the police power reserved by the Tenth Amendment.

In 1905 the first Chief of the Forest Service, Gifford Pinchot, was delegated authority under the "Organic Administration Act" (Act of June 4, 1897, Ch. 2, 30 Stat. 11, as amended; 16 U.S.C. 473–475, 477–482, 551) to issue permits to ranchers to graze their stock on Forest Reserve allotments (Congress renamed the Forest Reserves as National Forests at the request of the Forest Service in 1907). These permits were preferentially allocated to property owners who had historically used and depended upon forested grazing lands located near their privately owned homesteads. In the absence of explicit statutory authority, Pinchot issued a regulatory *Use Book* explaining that the objectives of his new grazing regulations were to conserve public resources and, among other things, protect the financial welfare of ranchers dependent on federal forest forage supplies by shielding them from outside competition. Forage supplies were apportioned among local ranchers based on prior use rates, but the total amount of forage allocated to livestock could not exceed the carrying capacity of the range.

Since regulation of livestock grazing was not explicitly mentioned in the 1897 Act, the issuance of grazing permits was soon challenged in the federal courts. (Not until the Granger-Thye Act of 1950 (Act of April 24, 1950, ch. 97, Sec. 11, 64 Stat. 65) was enacted did Congress give the Secretary of Agriculture explicit authority to issue grazing permits and levy grazing fees).

In 1911 the U.S. Supreme Court decided, in two related cases, that the Secretary of Agriculture's authority to issue and enforce administrative grazing rules, including grazing permits with attached terms and conditions, was lawful under the 1897 Act. The Court found that the issuance of grazing permits with attached terms and conditions was not an illegal delegation of legislative power at odds with the Property Clause of the United States Constitution. (Article IV, § 3, cl. 2: "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States . . ." *United States* v. *Grimaud,* 220 U.S. 506; *Light* v. *United States,* 220 U.S. 523).

Not until the Taylor Grazing Act (June 28, 1938, ch. 865, 48 Stat. 1269, 43 U.S.C. 315, 315a to 315n, 315o–1, 485, 1171) was signed into law by President Roosevelt was grazing on the public domain lands subject to similar regulation. The preamble to the Taylor Grazing Act declared that the purpose of the Act was "to stop injury to the public grazing lands by preventing overgrazing and soil deterioration; to provide for their orderly use, improvement, and development; [and] to stabilize the livestock industry dependent on the public range."

Emulating the Forest Service, the Grazing Service in the Department of the Interior (renamed the Bureau of Land Management in 1946), issued grazing permits and leases to ranchers owning or leasing private property adjacent or near to the public domain lands upon which their stock had customarily grazed. These grazing permits and leases were issued to ranchers with "base property" of sufficient productivity "to permit the proper use of lands, water, or water rights, owned, occupied, or leased by them . . ." (43 U.S.C. § 315b).

In implementing the Taylor Grazing Act, between 1936 and the early 1950s the amount of forage allocated to each permittee or lessee was determined by administrative adjudication based on prior use rates and the aggregate supply of public domain forage available, under the principle of sound conservation, to all competing livestock operators. (See generally: *Public Lands Council et. al.* v. *Babbitt,* 929 F. Supp. 1436 (D. Wyoming 1996)). Temporary revocable grazing licenses were issued to public domain ranchers pending the final adjudication of grazing preferences (a term often used interchangeably to mean which rancher was entitled to receive a grazing permit and also the quantity of forage allocated by the permit, measured in mature animals per month, or AUMs). The locations upon which the stock grazed came to be referred to as a grazing allotment, a spatially defined parcel of rangeland aligned with prior use patterns.

Background—National grasslands

In 1954, the Forest Service assumed administrative responsibility for the Land Utilization (LU) Grazing Projects located in the Great Plains, projects stemming from a Depression-era land condemnation and purchase program administered by the Soil Conservation Service under the auspices of the Bankhead-Jones Farm Tenant Act (July 22, 1937, ch. 517, 50 Stat. 522). The public use specified in the "Declarations of Takings" filed in federal district courts upon condemnation and acquisition of the LU lands by the United States was, without exception, "demonstrational livestock grazing," hence the name—LU Grazing Projects. As in the Taylor Grazing Act, Title III of the Bankhead-Jones Farm Tenant Act recognized that sound livestock management practices would promote the achievement of soil and water conservation objectives. (7 U.S.C. 1010–1012).

Thus, as of 1954 the Forest Service administered regulated grazing programs on National Forests and on non-timbered grasslands acquired for the purpose of livestock grazing and accomplishment of soil and water conservation objectives. Just as the Forest Service had renamed the original "Forest Reserves" as "National Forests" in 1907, so too did the Service rename the LU Grazing Projects "National Grasslands" by means of a 1960 Secretarial Order. (*Federal Register,* June 24, 1960).

Subsequent statutes have expanded the scope of multiple uses permitted on National Forests, National Grasslands, and public lands. These supplemental authorities are identified in Section 101 (Application of title) of H.R. 2493, The Forage Improvement Act of 1997.

Background—Grazing Fees

Fees have been charged for domestic livestock grazing on National Forests since 1906, a year after the Forest Reserves were transferred to the Forest Service from the General Land Office in the Department of the Interior. Although the Forest Service relied on the broad administrative powers given to its Chief in the Organic Administration Act of 1897 as an early rationale for setting grazing fees, explicit statutory authority did not exist until the Granger-Thye Act was passed in 1950.

The Taylor Grazing Act gave the Secretary of the Interior authority to charge grazing fees on rangelands now administered by the Bureau of Land Management. But neither the Taylor Grazing Act nor the Granger-Thye Act gave specific direction on fee levels. The Taylor Grazing Act authorized the Secretary to charge "reasonable" fees for access to public domain forage. The word "reasonable" was not defined in the statute, however, providing the basis for a continuing federal grazing fee controversy. For example, Public Law 376, enacted August 6, 1947, defined "reasonable" to include not only the permittee/lessee, but also the local ranching-dependent communities—a congressional expression of community stability as a public policy concern in establishing the magnitude of federal grazing fees. This "stability" fee applied only to grazing on BLM-administered rangelands.

Not until 1969, under pressure from both Congress and the Bureau of the Budget, did both agencies adopt a uniform formula fee

system. The purpose of the 1969 federal grazing fee system was to charge a single grazing fee in the West (except for the National Grasslands) that would, on average, keep total grazing costs on BLM and National Forest lands equal to total grazing costs on comparable privately-owned rangelands, all non-fee costs considered, using a common quantity of forage (the AUM or about 860 pounds of forage per month) as the unit of measure. For several different reasons, this 1969 fee system was contentious. Congress subsequently imposed four moratoria on increases in the federal grazing fee from one year to the next, with the last of the four included in Section 401(a) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701 *et seq*.). FLPMA also repealed the 1947 BLM community stability grazing fee system.

Congress temporarily settled the grazing fee debate by enacting the Public Rangelands Improvement Act of 1978 (Public Law 95–514, Oct. 25 1978, 92 Stat. 1803, 16 U.S.C. 1332, 1333, 43 U.S.C. 1739, 1751 to 1753, 1901 to 1908), establishing a statutory grazing fee formula commonly known as the PRIA fee system. However, authority for the PRIA fee system expired December 31, 1985. Since February, 1986 the PRIA formula has been kept alive via Presidential Executive Order 12548 which set a minimum grazing fee of $1.35 per AMU. Since 1987 numerous bills to create a new statutory grazing fee formula have been introduced in Congress but none were enacted.

Need for Legislation-Non-Fee Issues

Not since 1978 has Congress passed significant federal rangeland or western livestock grazing legislation. However, the Department of the Interior (joined initially by the Forest Service in the Department of Agriculture) did attempt a major administrative revision of Chapter 35 (Federal Land Policy and Management) of the Code of Federal Regulations known as *Range Reform '94* via draft regulations published in the *Federal Register* on August 13, 1993, and revised and published as proposed regulations governing grazing on lands administered by the BLM on March 25, 1994. The proposed rules were the subject of an initial 120-day comment period that was scheduled to close on July 28, 1994. Numerous public meetings were held by the Department on the proposed regulations.

No House oversight hearings were held on *Range Reform '94,* but the Senate Committee on Energy and Natural Resources held a series of hearings in Washington, D.C., on April 20, 1994; in Albuquerque, New Mexico, on May 14, 1994; in Twin Falls, Idaho, on July 8, 1994; in Richfield, Utah, on July 11, 1994; and in Casper, Wyoming, on July 15, 1994.

Final grazing regulations were promulgated by the Department of the Interior on February 22, 1995 and published in the Federal Register. As a result of an informal agreement with several members of Congress, the regulations did not take effect until August 21, 1995.

In 1996 a federal district court (*Public Lands Council et al.* v. *Babbitt,* 929 F. Supp. 1436 (D. Wyoming)) found four key provisions of the new regulations to be arbitrary and/or capricious, and, in three instances, in excess of statutory authority. These provi-

sions were enjoined, and the decision now is on appeal to the 10th Circuit, United States Court of Appeals.

Separately, the 104th Congress debated bills in both the Senate and the House of Representatives which would have, if enacted, superceded the Range Reform '94 regulatory initiative. S. 1459, sponsored by Senator Pete Domenici of New Mexico, passed the Senate on March 21, 1996 and was reported to the House by this Committee on July 12, 1996. No further action was taken on the bill.

In the 105th Congress, Representative Robert F. (Bob) Smith, Chairman of the Committee on Agriculture and Member of this Committee, introduced H.R. 2493 to address six broad categories of issues. These issues were jointly drawn from the new federal rangeland grazing regulations issued by Interior Secretary Bruce Babbitt in 1995 (and supported by national environmental groups), and also from expressed needs of the western ranching industry and rural communities. The identified categories included (1) clarification of relevant terms widely used in federal grazing administration and in range science; (2) continuation of the multiple interest group Resource Advisory Councils established by Secretary Babbitt; (3) increased focus on science-based monitoring of changes in vegetation and other resources on rangelands conducted by trained professionals; (4) encouragement of coordinated resource management involving all interests, not just federal land ranchers; (5) clarification of circumstances under which subleases of federal land grazing allotments would be subject to surcharges by the federal government; and (6) implementation of a grazing fee formula approved by the Senate in the 104th Congress and continuation of the ten year term of grazing permits and leases. Because of strong opposition by environmental groups, a proposal to improve the management of the National Grasslands was dropped from the bill as introduced.

A number of organizations have raised concerns about preserving access to federal lands for a variety of uses, including hunting, fishing, and other multiple use activities. Therefore the Committee believes it is appropriate to restate in this legislation (see section 2(b)) its commitment to open access to federal lands by explicitly noting that nothing in H.R. 2493 or the amendment in the nature of a substitute restricts access to these lands for lawful multiple use activities. Open access to the public lands has been public policy since at least the enactment of the Unlawful Inclosures of Public Lands Act (Feb. 25, 1885) which states that "No person, by force, threats, intimidation, or by any fencing or inclosing, or any other unlawful means, shall prevent or obstruct . . . any person from peaceably entering upon . . . any tract of public land . . ." (43 U.S.C. 1063).

On the other hand private property owners are concerned that their constitutional rights also continue to be protected. Therefore, the Committee also believes it is also appropriate to restate its commitment to the rule of law by noting in this legislation (see section 103(b) of H.R. 2493 and section 103 of the substitute) that the Secretaries "may not impose as a condition on a grazing permit or lease that the permittee or lessee provide access across private property unless the condition is limited to access for Federal per-

sonnel engaged in authorized grazing administration activities. This provision is nothing more than a restatement of the holding by the Supreme Court in *Dolan* v. *City of Tigard* which states that:

> Under the well settled doctrine of 'unconstitutional conditions,' the government may not require a person to give up a constitutional right... in exchange for a discretionary benefit conferred by the government where the property sought has little or no relationship to the benefit. (512 U.S. 374, 385, 1994)
>
> Access to public lands and grazing are unrelated issues. Ranchers pay a grazing fee for the use of the forage, not for exclusive use of public land tracts. Section 103 simply ensures that grazing permits and access to America's public lands will not become entangled through agency action, and will prevent lawsuits on this issue.

Need for legislation—the grazing fee issue

While the grazing fee issue was not addressed in the final regulations promulgated by the Secretary of the Interior on February 22, 1995, it has continued to be a significant policy dilemma. Several unsuccessful efforts have been made in Congress to pass an alternative statutory formula.

The PRIA fee is complicated and widely misunderstood. It is based on a "level playing field" concept, attempting to equate total costs of grazing on federal lands with total costs of grazing on comparable private lands in the western states. This has been done by adjusting a "base fee" of $1.23 per head per month using annual changes in indices representing (1) prices received for livestock, (2) costs of producing livestock, and (3) comparable private grazing land rental rates. The $1.23 base fee was derived from a 1966 survey of the western livestock industry, and it represents the amount that would have been charged in 1966 to create a "level playing field" for both the federal and the private land ranchers, given all of the additional regulatory compliance, poorer livestock performance, and higher herd management costs incurred in grazing stock on federal lands.

Over the past 19 years the PRIA fee has varied from a low of $1.35 per AUM (the floor amount set by Executive Order 12548) to a high of $2.31. While the grazing fee buys only access to federal forage, the private grazing rental rate buys forage, exclusive use of the land, fencing, veterinarian services, insurance, and land and water improvements along with the livestock management provided by the landlord.

Only occasionally has the PRIA fee recovered the costs of administering the BLM and Forest Service livestock grazing programs—costs reported by the respective Secretaries to Congress in 1992. Consequently, the PRIA fee system has been controversial because the complexity of the formula makes it difficult for the average citizen, agency administrator, or Member of Congress to evaluate the cost and quality differences between private and pubic grazing rates. Cost recovery analysis has also tended to ignore the large cost inefficiencies inherent in government resource management.

The proposed new fee structure in The Forage Improvement Act of 1997 takes a different path in addressing these concerns. It can best be understood as a "cash crop share" arrangement. The crop is the average value of beef production per head per month in the western states. The share is equal to the average rate of return on six month Treasury bills, a measure of what it costs the United States to borrow money. The averages are calculated over a 12-year period corresponding to the normal cattle market cycle, thus stabilizing prospective annual rates of change in the calculated grazing fee. There is a very close relationship between the cost of borrowing and lending for the Federal government with the six month Treasury bill borrowing rate being slightly higher. The opportunity cost of using public lands for grazing is the difference between what that land, converted to cash, would return if invested (i.e. the lending rate) and the income produced from grazing on those lands. The fee formula in H.R. 2493 is equal or slightly greater than the opportunity cost of using the land for grazing and therefore represents an equitable return to the U.S. for use of the land for public forage.

At current prices, this new fee proposal would increase the amount charged federal land ranchers by over 36 percent. It is, as the relevant statutes require, reasonable and equitable to both the user—the western rancher—and to the United States. Perhaps most importantly, this new fee is simple and easy to understand.

Need not addressed—Resolution of the National Grasslands issue

Although H.R. 2493 as reported does not contain reforms to the administration of the National Grasslands, the Committee feels that such changes are needed. The Forest Service oversees over 131 million acres of National Forest System lands in the sixteen contiguous Western States, of which the National Grasslands comprise only 3.8 million acres. These acquired (i.e., not reserved from the public domain) lands are open grasslands that are part of the tall and mixed grass prairies of the Great Plains and the Forest Service has administered them since 1954 under statutes designed primarily for the administration and management of National Forests. The Committee believes that the National Grasslands can be more effectively and efficiently managed by the Secretary of Agriculture if administered as a separate entity from the National Forest System.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; table of contents

This Act may be cited as the "Forage Improvement Act of 1997."

Section 2. Rules of construction

(a) LIMITATION ON APPLICATION.—The Act does not apply to lands administered as part of the National Park System, the National Wildlife Refuge System, Indian trust lands, or to the National Grasslands.

(b) MULTIPLE USE ACTIVITIES NOT AFFECTED.—The Act does not limit or restrict the use of federal lands for purposes of hunting,

fishing, recreation, or any other multiple use currently permitted under federal or state law.

(c) VALID EXISTING RIGHTS.—The Act does not affect valid existing rights, reservations, authorizations, or agreements under federal or state law.

(d) ACCESS TO NONFEDERALLY OWNED LANDS.—Existing law requiring that the Secretary of Agriculture and the Secretary of the Interior grant access to non-federal land is made applicable to this Act.

Section 3. Coordinated administration

The Secretary of Agriculture and the Secretary of the Interior shall, to the maximum extent practicable, provide for consistent and coordinated administration of livestock grazing and management of federal lands, consistent with laws governing these lands.

TITLE I—MANAGEMENT OF GRAZING ON FEDERAL LANDS

Section 101. Application of title

(a) FOREST SERVICE LANDS.—The Act applies to National Forest System lands, excluding the National Grasslands, administered by the Secretary of Agriculture under seven statutes.

(b) BUREAU OF LAND MANAGEMENT LANDS.—The Act applies to lands administered by the Secretary of the Interior under five statutes.

(c) CERTAIN OTHER UNITED STATES LANDS.—The Act also applies to lands managed by either Secretary for grazing purposes on behalf of the head of any other agency under a memorandum of understanding.

Section 102. Definitions

(1) ALLOTMENT.—This term means an area of Federal Land subject to an adjudicated or apportioned grazing preference that is appurtenant to a base property.

(2) AUTHORIZED OFFICER.—This term means a person authorized by the Secretary concerned to administer this Act.

(3) BASE PROPERTY.—This term means private or other non-federal land, water, or water rights owned or controlled by a permittee or lessee to which a Federal allotment is appurtenant.

(4) COMMENSURATE.—This term means private property of sufficient productivity to support the feed or water needs of livestock during the period of time that such livestock are not physically on the Federal allotment.

(5) CONSULTATION, COOPERATION, AND COORDINATION.—This term means to engage in good faith efforts: (1) to fully communicate; and (2) to provide for a mutually supported action to achieve a mutually agreed purpose.

(6) COOPERATIVE MANAGEMENT AGREEMENT.—This term means a written agreement that: 1) is consistent with and incorporates by reference relevant provisions of existing land use plans; and 2) provides management flexibility beyond the limits of an allotment management plan or a grazing permit or lease.

(7) COORDINATED RESOURCE MANAGEMENT.—This term means planning and implementation of voluntary management activities

that involves consultation, cooperation, and coordination with federal and state agencies, private land owners, and users of Federal lands.

(8) FEDERAL LANDS.—This term means lands owned by the U.S. outside of Alaska that are National Forests or public lands administered by the Bureau of Land Management.

(9) GRAZING PERMIT OR LEASE.—This term means a document authorizing the use of federal lands for grazing pursuant to the Taylor Grazing Act and the Granger-Thye Act of 1950.

(10) LAND USE PLANS.—This term means a land use plan: prepared by the Forest Service pursuant to the Forest and Rangeland Renewable Resources Planning Act of 1974; or a land use plan developed by the Bureau of Land Management pursuant to the Federal Land Policy Management Act of 1976.

(11) MONITORING.—This term means the collection of information using scientifically based and professionally accepted techniques to determine trend and condition of forage and related resources on Federal lands. Such information may include historical information, but must be objective and reliable. This information shall be used to evaluate: (1) the effects of ecological changes and management actions on forage and related resources; and (2) the effectiveness of actions in meeting management objectives.

(12) NATIONAL FOREST SYSTEM.—This term means National Forests, but not the National Grasslands. The definition is for use in implementing this Act only and is not intended to remove the National Grasslands from the National Forest System or to change the way that these lands are currently administered.

(13) SECRETARY CONCERNED.—This term means either the Secretary of Agriculture or the Secretary of the Interior with regard to lands administered respectively.

(14) SIXTEEN CONTIGUOUS STATES.—This term means the States of Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming.

Section 103. Prohibited condition in issuance or renewal of grazing permits and leases

Access across private property may not be imposed as a condition to a permit or lease unless the condition is limited to access for Federal personnel engaged in authorized land management activities.

This provision restates the Supreme Court's holding in *Dolan* v. *City of Tigard* (512 U.S. 374, 1994). (See discussion of this case under the heading "Need for Legislation—Non-Fee Issues", above.)

Section 104. Monitoring and inspection

(a) MONITORING.—Monitoring of trends and conditions on Federal lands within grazing allotments shall be performed by: Federal, State, or local government personnel; grazing permittees and lessees; or professional consultants retained by the United States or a permittee, or a lessee.

Neither the Forest Service nor the Bureau of Land Management is currently able to devote the resources necessary to base management decisions on empirical data. This section permits the Sec-

retaries to expand their monitoring activities while improving the quality of data collected.

The substitute deletes section 104(b) "INSPECTION" of H.R 2493. Therefore, the authority of the Secretary concerned to inspect federal lands subject to grazing permits or leases is unaffected by this Act.

(b) MONITORING CRITERIA AND PROTOCOLS.—Monitoring shall be conducted according to regional or state criteria and protocols that are scientifically based, professionally accepted, and site specific.

(c) NOTICE.—Permittees and lessees will be given reasonable notice of monitoring activities, including prior notice of 48 hours, to the extent practicable.

Section 105. Subleasing

(a) IN GENERAL.—The Secretary concerned shall authorize subleasing only when the permittee or lessee: (1) is unable to make full grazing use of the permit or lease due to ill health or death; (2) is a participant in a cooperative agreement with another permittee or lessee; (3) is a member of a grazing association whose shareholders have exclusive rights to graze livestock on the Federal lands allotted to the grazing association.

(b) TREATMENT OF OWNERSHIP BY RELATIVES.—Livestock owned by certain relatives is considered to be owned or controlled by the permittee or lessee.

(c) TREATMENT OF LEASE OR SUBLEASE OF BASE PROPERTY.—The leasing or subleasing of the base property, in whole or in part, of a permittee or leasee shall not be considered to be a sublease of the grazing permit or lease and the grazing preference associated with such base property shall be transferred to the person controlling the base property.

Section 106. Coordinated resource management practices

(a) USE OF COORDINATED RESOURCE MANAGEMENT ENCOURAGED.—The Secretary concerned may encourage the use of coordinated resource management practices when these practices are authorized under a cooperative management agreement. The coordinated resource management practices shall be: (1) scientifically based; and (2) consistent with the goals and management objectives of the applicable land use plan.

(b) FEDERAL ADVISORY COMMITTEE ACT.—Activities under this section are exempt from FACA.

Section 107. Fees and charges

(a) GRAZING FEES.—The fee formula for each animal unit month in a grazing fee year shall be equal to the 12 year average for the total gross value of production for beef cattle for the 12 years preceding the grazing fee year, multiplied by the 12 year average of the United States Treasury Securities six-month bill "new issue" rate, and divided by 12 to provide a monthly figure. The formula uses a 12 year average because livestock prices historically have a 12 year market cycle.

According to testimony presented by a range economist at the hearing held in the Committee on Agriculture on September 17, 1997, the fee formula contained in this legislation would have re-

sulted in higher grazing fees in 12 of the last 15 years compared to fees collected under the current formula.

(b) DEFINITION OF ANIMAL UNIT MONTH.—An animal unit month is defined as: (1) one cow, bull, steer, heifer, horse, burro, or mule, seven sheep, or seven goats, each of which is six months or older; (2) any such animal if the animal is weaned on the date on which it begins grazing; and (3) any such animal that will become 12 months of age during a period of use authorized under a grazing permit.

(c) LIVESTOCK NOT COUNTED.—Animals less than six months old on the date on which it began grazing and is the progeny of an animal on which a grazing fee is paid are not counted in the fee, if the animal is removed before it is a year old.

(d) TREATMENT OF OTHER FEES AND CHARGES.—Fees and charges under section 304(a) of the Federal Land Policy and Management Act of 1976 shall not exceed the actual administrative and processing costs incurred.

(e) CRITERIA FOR ECONOMIC RESEARCH SERVICE.—The Economic Research Service of U.S.D.A. shall continue to compile and report the gross value of production of beef cattle as currently published in an existing document.

The substitute deletes subsection 107(d)(1) of the bill as introduced which mandated certain fees. Nothing in the substitute affects the existing authority of the Secretaries to charge fees for grazing related services currently authorized by law.

Section 108. Resource Advisory Councils

(a) ESTABLISHMENT.—The Secretary of Agriculture and the Secretary of the Interior shall, in consultation with the Governor of the affected State establish, separately or jointly, Resource Advisory Councils (RACs) on a State, regional, or local level to provide advice on management issues regarding Federal lands within the area to be covered by such Council.

To the extent practicable, the Secretaries shall implement this section by modifying existing RACs. Given that the Secretary of the Interior has already established RACs in those areas where it is appropriate to do so, the Committee intends that the Forest Service participate in any existing RAC containing National Forest lands within its geographic boundary and that the Secretary of Agriculture separately establish RACs only in geographic areas containing National Forest lands outside of existing RACs.

(b) DUTIES.—Each Resource Advisory Council shall advise the Secretary concerned and appropriate State officials on land use planning within the areas covered by the Council and shall also advise on major management decisions.

(c) VOTING.—Councils shall use majority voting. The Committee intends the section to correct certain practices that violate the spirit of sec. 5(b)(3) of the Federal Advisory Committee Act which states that each standing committee of the House and Senate shall enact legislation that contains "appropriate provisions to assure that the advice and recommendations of the advisory committees will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment."

Currently RACs use non-consensus, bloc or "pod" voting designed to manipulate the influence of one interest group or another, a practice that violates basic notions of fairness and independence. The Committee believes that the "one man, one vote" principle constitutionally required for elections is the appropriate standard for RACs established under this Act

(d) DISREGARD OF ADVICE.—If a RAC thinks its advice is being arbitrarily disregarded, it may request an explanation from the Secretary, who shall respond to the Council within 60 days.

(e) MEMBERSHIP.—The Secretaries, in consultation with the Governor of the affected State or States, shall jointly appoint the members of each Resource Advisory Council. A Council shall consist of not less than nine members and not more than fifteen members. The Secretaries shall appoint a balanced and broad representation of permittees and lessees and members from other groups, such as commercial interests, recreational users, representatives of recognized local environmental or conservation organizations, educational, professional, or academic interests representatives of States and local government or governmental agencies, Indian tribes, and other members of the affected public. At least one elected official of a general purpose government shall also be appointed. Members must reside in the geographic area covered by the Council. Members of existing councils are "grandfathered" for the balance of their terms.

(f) TERMS.—Members shall be appointed for two year terms and the Secretaries, with the concurrence of the Governor of the State of which the council is located, may terminate the services of a Member under specified circumstances.

The substitute deletes as unnecessary a provision which would permit the removal of a council member for conviction of a federal felony. Another provision in this subsection permits removal for any reason the Secretaries deem to be in the public interest, which encompasses the deleted provision.

(g) COMPENSATION AND REIMBURSEMENT OF EXPENSES.—Members may not be compensated but travel expenses and per diem may be reimbursed under certain circumstances.

(h) FEDERAL ADVISORY COMMITTEE ACT.—The Federal Advisory Committee Act applies to the extent that it is not inconsistent with the provisions of this Act.

(i) Resources Advisory Councils shall coordinate and cooperate with state grazing districts established pursuant to State law.

TITLE II-MISCELLANEOUS

Section 201. Effective date.

The Act will be effective upon the date of enactment.

Section 202. Issuance of new regulations.

The Secretaries shall coordinate the promulgation of new regulations to carry out the Act and shall publish such regulations simultaneously not later than 180 days after the date of the enactment of this Act.

The Committee notes that the Secretary of the Interior established present RACs using his existing legal and administrative re-

sources. The Committee sees no reason why the modification of the present system to implement this Act will impose an undue burden on existing resources. Likewise, the limited number of RAC's which would contain only National Forest Lands should not be beyond the existing resources of the Secretary of Agriculture.

COMMITTEE CONSIDERATION

I—Hearings

On September 17, 1997 The Subcommittee on Livestock, Dairy, and Poultry held a hearing on the legislative language identical to that introduced as H.R. 2493, the Forage Improvement Act of 1997, by Chairman Bob Smith the following day, September 18, 1997. Testimony was taken from representatives of the U.S. Department of Agriculture, the U.S. Department of the Interior, the Public Lands Council, the Wilderness Society, the New Mexico Public Lands Council, the National Wildlife Federation, the American Farm Bureau Federation, and University Professors.

II—Full committee

The Committee on Agriculture met, pursuant to notice and with a quorum present, on September 24, 1997, to consider H.R. 2493 and other pending business.

Chairman Smith offered an Amendment in the Nature of a Substitute to H.R. 2493, asked for and received unanimous consent to have the bill considered as original text for purpose of amendment. Counsel gave a brief description of the Amendment in the Nature of a Substitute.

After a brief statement by Chairman Smith, Mr. Pomeroy asked that the Committee include report language which would indicate that the Committee would continue to explore ways to reform administration of the National Grasslands in a manner that addresses and promotes both agriculture and other natural resource values. Chairman Smith indicated that he would continue to work with Mr. Pomeroy on this issue.

Mr. Barrett then offered a motion that the bill H.R. 2493, as amended, be adopted and favorably reported to the House with the recommendation that it do pass. Mr. Barrett's motion was agreed to by a voice vote of the Committee.

REPORTING THE BILL—ROLLCALL VOTES

In compliance with clause 2(l)(2) of rule XI of the House of Representatives, H.R. 2493 was reported by voice vote with a majority quorum present. There was no request for a recorded vote.

BUDGET ACT COMPLIANCE (SECTIONS 308, 403, AND 424)

The provisions of clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a)(1) of the Congressional Budget Act of 1974 (relating to estimates of new budget authority, new spending authority, new credit authority, or increased or decreased revenues or tax expenditures) are not considered applicable. The estimate and comparison required to be prepared by the Director of the Congressional Budget Office under clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives and sections

403 and 424 of the Congressional Budget Act of 1974 submitted to the Committee prior to the filing of this report are as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 1, 1997.

Hon. ROBERT F. SMITH,
Chairman, Committee on Agriculture,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2493, the Forage Improvement Act of 1997.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Victoria V. Heid (for federal costs) and Marjorie Miller (for the state and local impact).

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 2493—Forage Improvement Act of 1997

Summary: H.R. 2493 would modify how the Bureau of Land Management (BLM), within the Department of the Interior, and the Forest Service, within the Department of Agriculture, administer livestock grazing on public lands.

H.R. 2493 would change the formula for computing grazing fees. The bill also would redefine "animal unit month" (AUM) by increasing the number of sheep and goats allowed per AUM from five to seven. These changes would apply to grazing on federal land administered by BLM and the Forest Service (excluding the National Grasslands). CBO expects that these changes would increase the government's net income from grazing fees by about $6 million over the 1998–2002 period. Because H.R. 2493 would affect direct spending, pay-as-you-go procedures would apply to the bill.

This legislation also would make several other changes to the management of grazing on public lands that would increase discretionary spending by an estimated $15 million over the next five years, subject to appropriation of the necessary amounts.

H.R. 2493 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: CBO estimates that enacting H.R. 2493 would increase gross income from grazing fees by about $10 million over the 1998–2002 period. Because a portion of that income is shared with state governments, CBO estimates that enacting the bill would result in a new decrease in direct spending of about $6 million over the 1998–2002 period. In addition, discretionary spending totaling about $15 million over the next five years would result from this bill, assuming appropriation of the estimated amounts.

The estimated budgetary impact of H.R. 2493 is shown in the following table.

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002
CHANGES IN DIRECT SPENDING (including offsetting receipts)					
Change in offsetting receipts:					
Estimated budget authority	−2	−2	−2	−2	−2
Estimated outlays	−2	−2	−2	−2	−2
Change in Direct Spending:					
Estimated budget authority	0	([1])	([1])	([1])	([1])
Estimated outlays	0	([1])	([1])	([1])	([1])
Net Change:					
Estimated budget authority	−2	−1	−1	−1	−1
estimated outlays	−2	−1	−1	−1	−1
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated authorization level	7	2	2	2	2
Estimated outlays	7	2	2	2	2

[1] Less than $500,000.

The cost of this legislation fall within budget functions 300 (natural resources and the environment) and 800 (general government).

Basis estimate: The bill states that its provisions would become effective on the date of enactment. For purposes of this estimate, CBO assumes that the bill would be enacted in time to implement the new fee for the 1998 grazing year, which begins March 1, 1998.

Offsetting Receipts

CBO estimates that the new formula would increase the amount of grazing fee receipts that would be collected over the next five years compared to current law. The increase in the amount charged per AUM (in the West) and per head month (in the East) would be partially offset by the bill's revised definition of AUM. Overall, CBO estimates that offsetting receipts would increase by almost $2 million annually beginning in fiscal year 1998 and by a total of about $10 million over the 1998–2002 period.

Grazing Fees.—Section 107 would base the new grazing fee on two factors: the value of beef cattle and the interest rate. Specifically, the bill would set the basic grazing fee for each animal unit month at the average of the total gross value of production for beef cattle (as compiled by the Economic Research Service (ERS) of the Department of Agriculture) for the 12 years preceding the grazing fee year, multiplied by the average of the "new issue" rate for six-month Treasury bills for the 12 years preceding the grazing fee year, and divided by 12.

H.R. 2493 does not define total gross value of production but refers to data published annually by ERS in *Economic Indicators of the Farm Sector: Costs of Production.* The total gross value of production, as defined by ERS, is equal to the price of cattle multiplied by the quantity produced (number of pounds). Therefore, the new formula would yield a grazing fee that increases or decreases over time, depending largely on changes in the price of cattle. In contrast, the current fee varies in response not only to changes in the price of cattle, but also to changes in the private lease rate for grazing land and the cost to produce beef. In addition, the current fee formula sets a minimum of $1.35 per AUM and limits the annual change in the fee to 25 percent. Both formulas are likely to result in varying fees from year to year.

The fee for the 1996 grazing fee year was $1.35 per AUM on most public rangelands, and the fee for the 1997 grazing fee year is $1.35 per AUM. Using ERS's most recent data for the total gross value of production and projecting changes in cattle prices and interest rates, CBO estimates that the proposed new formula would result in a grazing fee averaging about 20 cents more per AUM over the 1998–2002 period in the western states than the grazing fee under current law.

Under current law, CBO projects grazing fee receipts of $22 million a year over the next five years. We estimate that implementing the formula contained in H.R. 2493 would yield an average increase in offsetting receipts of more than $2 million annually beginning in fiscal year 1998, excluding a small reduction in offsetting receipts attributable to the bill's change in the definition of animal unit month, as described below.

By applying the bill to land managed under the Granger-Thye Act, section 101 of H.R. 2493 appears to apply the proposed new fee to grazing in all national forests—including those in the eastern states. The Secretary of Agriculture currently has the authority to establish grazing fees on national forests in the eastern states at his discretion. Fees in the East range from $2.24 to $9.00 per head month and average $2.50 per head month. (The number of head months, similar to animal unit months, is a measure of how many animals forage and how long they forage on National Forest System lands.) CBO estimates that applying the new fee formula to national forests in the East would reduce receipts relative to current law, but we estimate that change would total less than $100,000 per year. Grazing in the East represents only about 1 percent of the total grazing administered by the Forest Service.

Animal Unit Month Redefined.—Section 107 would revise the definition of animal unit month (AUM) by increasing the number of sheep and goats per AUM from five to seven. That change would effectively decrease the cost of grazing sheep and goats by almost one-third. The fee per AUM would be established under the bill regardless of the type of livestock grazed, and the forage area needed to sustain a fixed number of sheep and goats would be unchanged by the definition, but owners of sheep and goats could purchase fewer AUMs to support the same number of animals under the new definition. Some producers might slightly increase the size of their sheep and goat herds in response to lower effective costs of grazing on public land. Because the grazing fees are only a fraction of the total cost to raise sheep and goats, however, we expect a net drop in the number of AUMs and an associated decrease in offsetting receipts of about $600,000 per year beginning in 1998.

Other Direct Spending

Current law (7 U.S.C. 1012, 16 U.S.C. 500, and 43 U.S.C. 315) requires the Forest Service and BLM to distribute a portion of the offsetting receipts from grazing on public lands to the states. Payments are made in the fiscal year following the year that grazing fees are received by the federal government, and are currently projected to total $4.5 million a year. CBO estimates that enacting H.R. 2493 would increase payments to states by about $400,000 a

year beginning in fiscal year 1999 and by a total of almost $2 million over the 1998–2002 period.

Spending Subject to Appropriation

CBO estimates that additional discretionary spending would be about $7 million in fiscal year 1998 and a total of about $15 million during the 1998–2002 period, assuming appropriation of the estimated amounts. Specific provisions are discussed below.

New Rulemaking.—Section 202 would direct the Secretaries of Agriculture and the interior to coordinate the promulgation of new regulations to carry out H.R. 2493 and to publish such regulations simultaneously within 180 days after enactment of the bill. Based on information from BLM and the Forest Service, CBO estimates that completing this new rulemaking and modifying existing grazing permits would cost about $6 million in fiscal year 1998.

Range Improvements.—The Federal Land Policy and Management Act of 1976 authorizes appropriations for range improvement of 50 percent of the income from grazing fees received during the prior fiscal year. If H.R. 2493 were enacted and the Congress appropriated 50 percent of grazing fee receipts for range improvements, then appropriations for range improvements would increase by about $4 million over the 1998–2002 period.

Advisory Councils.—Section 108 would require the Secretaries of Agriculture and the Interior to establish joint Resource Advisory Councils (RACs) on a state, regional, or local level. The section also would allow members to receive reimbursement for travel and per diem expenses while on official business. According to BLM, that agency currently operates 24 multiple-use resource advisory councils but does not operate any grazing advisory councils. Based on information from BLM and the Forest Service, enacting H.R. 2493 could double the number of RACs required nationwide, which would increase discretionary spending for travel, per diem and other administrative costs by a total of about $1 million per year, assuming appropriation of the necessary amounts.

Other Potential Changes in Discretionary Spending.—Section 107 would require the Economic Research Service to continue to compile and report the total gross production value for beef cattle for the purpose of calculating the grazing fee. ERS has conducted a survey on which to base total gross value of production about every five years and has indexed the data based on changes in cattle prices for annual updates. If section 107 is interpreted to mean that ERS must conduct annual surveys, CBO estimates that each year's survey costs could be as high as $500,000. However, because it is unclear whether surveys would have to be conducted more often, we have not included any additional discretionary spending for such surveys in this estimate.

Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. As shown in the following table, CBO estimates that enacting H.R. 2493 would decrease direct spending by about $2 million in fiscal year 1998 and by about $11 million over the 1998–2007 period.

For the purposes of enforcing pay-as-you-go procedures, however, only the effects in the budget year and the subsequent four years are counted.

[By fiscal year, in millions of dollars]

	1998	1999	2000	2001	2002	2203	2004	2005	2006	2007
Change in outlays	−2	−1	−1	−1	−1	−1	−1	−1	−1	−1
Change in receipts[1]	....	....	....	....	....	....	....	....	....	....

[1] Not applicable.

Estimated impact on State, local, and tribal governments: H.R. 2493 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. The bill would increase payments to states by about $0.4 million per year beginning in fiscal year 1999, because they receive a portion of receipts from grazing on public lands. for the 1998–2002 period, payments to states would increase by a total of almost $2 million compared to payments under current law.

Esimtated impact on the private sector: The bill would impose no new private-sector mandates as defined in UMRA.

Estimate prepared by: Federal costs: Victoria V. Heid and Impact on State, local, and tribal governments: Marjorie Miller.

Estimated approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee finds the Constitutional authority for this legislation in Article I, clause 8, section 18, that grants Congress the power to make all laws necessary and proper for carrying out the powers vested by Congress in the Government of the United States or in any department or officer thereof.

OVERSIGHT STATEMENT

No summary of oversight findings and recommendations made by the Committee on Government Reform and Oversight as provided for in clause 2(l)(3)(D) of rule XI, and under clause 4(c)(2) of Rule X of the Rules of the House of Representatives was available to the Committee with reference to the subject matter specifically addressed by H.R. 2493.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI, and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee on Agriculture's oversight findings and recommendations are reflected in the body of this report.

COMMITTEE COST ESTIMATE

Pursuant to clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee report incorporates the cost estimate prepared by the Director of the Congressional Budget Office pursuant to sections 403 and 424 of the Congressional Budget Act of 1974.

ADVISORY COMMITTEE STATEMENT

Pursuant to section 108(a)(4) of the Amendment in the Nature of a Substitute, the functions of the proposed Resource Advisory Councils are, to the maximum extent practicable, to be carried out by modifying existing advisory councils established under section 309(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1739(a)). Section 108(c) the Amendment in the Nature of a Substitute implements section 5(b)(3) of the Federal Advisory Committee Act by assuring that the advice and recommendations of the advisory committees will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104–1).

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act (Public Law 104–4).