105TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPT. 105–346
Part 2

FORAGE IMPROVEMENT ACT OF 1997

OCTOBER 24, 1997.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources, submitted the following

REPORT

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 2493]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, 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. 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 National 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 Federal lands (as defined in section 102) for hunting, fishing, recreation, 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 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 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) 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 discuss and exchange views; and

(B) to act together toward a common end or purpose.

(5) 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).

(6) 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).

(7) 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.

(8) 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.).

(9) 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).

(10) 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.

SEC. 103. PROHIBITED CONDITION REGARDING GRAZING PERMITS AND LEASES.

The Secretary concerned 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 ingress and egress for Federal personnel engaged in authorized activities regarding grazing administration on Federal in-holdings.

SEC. 104. MONITORING.

(a) MONITORING.—The monitoring of conditions and trends of forage and related resources on Federal lands within allotments shall be performed only by qualified persons from the following groups:

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

(2) Grazing permittees and lessees.

(3) Professional consultants retained by the United States or a permittee or lessee.

(b) MONITORING CRITERIA AND PROTOCOLS.—Such monitoring shall be conducted according to regional or state criteria and protocols selected by the Secretary concerned. The monitoring protocols shall be site specific, scientifically valid, and subject to peer review. Monitoring data shall be periodically verified.

(c) TYPES AND USE OF DATA COLLECTED.—The data collected from such monitoring shall include historical data and information, if available, but such data or information must be objective and reliable. The data and information collected from such monitoring shall be used to evaluate—

(1) the effects of ecological changes and management actions on forage and related resources over time;

(2) the effectiveness of actions in meeting management objectives contained in applicable land use plans; and

(3) the appropriateness of resource management objectives.

(d) NOTICE.—In conducting such 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) PROHIBITION ON SUBLEASING GRAZING PERMIT OR LEASE.—A person issued a grazing permit or lease may not enter into an agreement with another person to allow grazing on the Federal lands covered by the grazing permit or lease by livestock that are neither owned nor controlled by the person issued the grazing permit or lease.

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

SEC. 106. COOPERATIVE ALLOTMENT MANAGEMENT PLANS.

(a) WRITTEN AGREEMENTS FOR OUTCOME-BASED STANDARDS.—An allotment management plan developed under section 402(d) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1752(d)) may include a written agreement with a qualified grazing permittee or lessee described in subsection (b) (or a group of qualified grazing permittees or lessees) that provides for outcome-based standards, rather than prescriptive terms and conditions, for managing grazing activities in a specified geographic area. At the request of a qualified grazing permittee or lessee, the Secretary concerned shall consider including such a written agreement in an allotment management plan. An allotment management plan including such a written agreement shall be known as a cooperative allotment management plan.

(b) QUALIFIED GRAZING PERMITTEE OR LESSEE DESCRIBED.—A qualified grazing permittee or lessee referred to in subsection (a) is a person issued a grazing permit or lease who has demonstrated sound stewardship by meeting or exceeding the forage and rangeland goals contained in applicable land use plans for the previous five-year period.

(c) INCLUSION OF PERFORMANCE GOALS.—A written agreement entered into as part of an allotment management plan developed under section 402(d) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1752(d)) shall contain performance goals that—

(1) are expressed in objective, quantifiable, and measurable terms;

(2) establish performance indicators to be used in measuring or assessing the relevant outcomes;

(3) provide a basis for comparing management results with the established performance goals; and

(4) describe the means to be used to verify and validate measured values.

(d) 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.—

(1) CALCULATION.—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 (d)(1).

(2) LIMITATION.—The fee determined under paragraph (1) shall be the only grazing fee applicable to livestock owned or controlled by a person issued a grazing permit or lease.

(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) 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.

(e) 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.

SEC. 108. RESOURCE ADVISORY COUNCILS.

(a) ESTABLISHMENT.—

(1) JOINT ESTABLISHMENT.—The Secretary of Agriculture and the Secretary of the Interior may 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.—A Resource Advisory Council shall not be established 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) TREATMENT OF EXISTING ADVISORY COUNCILS.—To the extent practicable, the Secretaries shall implement this section 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)) for the purpose of providing advice regarding grazing issues.

(5) 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 within the area covered by the Council; and

(2) major management decisions, while working within the broad management objectives established for such Federal lands in applicable land use plans.

(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.

(7) 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.

PURPOSE OF THE BILL

The purpose of H.R. 2493 is 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.

BACKGROUND AND NEED FOR LEGISLATION

Background—Grazing on National Forests and public lands

Federal statutes controlling grazing on lands now administered as National Forests, BLM grazing districts, and the Bureau of Land Management (BLM) scattered parcels outside of organized grazing districts evolved from customary open range control practices of the nineteenth 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 to the Constitution.

In 1905 the first Chief of the Forest Service, Gifford Pinchot, was delegated authority under the 1897 Organic Administration Act (Act of June 4, 1897, ch. 2, 30 Stat. 11; 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. 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. *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 BLM 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).

Under 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 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 BLM. 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 AUM. 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 provisions were enjoined, and the decision now is on appeal to the Tenth 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, superseded 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 the Committee on Resources 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) clari-

fication 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 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 of H.R. 2493) that the Secretaries "may not impose as a condition on a grazing permit or lease that the permittee or lessee provide ingress or egress across private land except for federal personnel engaged in authorized activities regarding grazing administration on Federal in-holdings." 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 of H.R. 2493 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 public 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 rep-

resents an equitable return to the U.S. for use of the land for public forage.

In 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 16 contiguous western states, of which the National Grasslands comprise 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.

COMMITTEE ACTION

H.R. 2493 was introduced on September 18, 1997, by Congressman Robert F. (Bob) Smith (R–OR) together with 27 original cosponsors. The bill was referred to the Committee on Resources, and in addition to the Committee on Agriculture. The Committee on Agriculture held a hearing on the provisions of the bill on September 17, 1997, and ordered the bill reported with amendments to the House of Representatives on September 24, 1997, by voice vote.

On October 8, 1997, the full Committee on Resources met to mark up H.R. 2493. An amendment in the nature of a substitute was offered by Mr. Smith of Oregon which made several changes to the bill. An amendment to strike Section 108 of the Smith amendment was offered by Congressman Bruce Vento (D–MN), and it failed by voice vote. An amendment to Section 103 of the Smith amendment to clarify that a condition to a grazing permit allowing access across the private land of a permittee for federal personnel engaged in grazing administration activities may be required only where there is a federal inholding requiring such access, was offered by Congresswoman Helen Chenoweth (R–ID), and was adopted by a voice vote. Congressman Vento offered a Substitute to the Smith amendment which deleted all non-fee related provisions and substituted a fee provision setting the fee equal to the level charged by states for grazing on state lands. The Vento amendment failed by a voice vote. The Smith amendment in the nature of a substitute to H.R. 2493, as amended, was adopted by a voice vote, and the bill as amended was then ordered reported favorably to the House of Representatives by a rollcall vote of 23 to 3, as follows:

Committee on Resources
U.S. House of Representatives
105th Congress

Full Committee

Date 10-8-97

Roll No. 1

Bill No. H.R. 2493 Short Title Forage Improvement Act of 1997

Amendment or matter voted on: Final Passage

Member	Yea	Nay	Pres	Member	Yea	Nay	Pres
Mr. Young (Chairman)	X			*Mr. Miller*			
Mr. Tauzin	X			*Mr. Markey*			
Mr. Hansen	X			*Mr. Rahall*			
Mr. Saxton	X			*Mr. Vento*		X	
Mr. Gallegly				*Mr. Kildee*			
Mr. Duncan				*Mr. DeFazio*		X	
Mr. Hefley				*Mr. Faleomavaega*			
Mr. Doolittle	X			*Mr. Abercrombie*			
Mr. Gilchrest				*Mr. Ortiz*			
Mr. Calvert	X			*Mr. Pickett*	X		
Mr. Pombo	X			*Mr. Pallone*			
Mrs. Cubin	X			*Mr. Dooley*	X		
Mrs. Chenoweth	X			*Mr. Romero-Barcelo*			
Mrs. Linda Smith	X			*Mr. Hinchey*			
Mr. Radanovich	X			*Mr. Underwood*			
Mr. Jones				*Mr. Farr*	X		
Mr. Thornberry	X			*Mr. Kennedy*			
Mr. Shadegg				*Mr. Adam Smith*		X	
Mr. Ensign	X			*Mr. Delahunt*			
Mr. Bob Smith	X			*Mr. John*	X		
Mr. Cannon				*Ms. Green*			
Mr. Brady				*Mr. Kind*			
Mr. Peterson	X			*Mr. Doggett*			
Mr. Hill	X						
Mr. Schaffer	X						
Mr. Gibbons	X						
Mr. Crapo	X			**TOTAL**	23	3	

On October 22, 1997, the full Committee on Resources met for the first time since the previous meeting on October 8, 1997. Mr. Smith of Oregon moved to reconsider the vote to adopt H.R. 2493. After determining that Mr. Smith of Oregon had voted on the prevailing side on the original vote, the vote was reconsidered and the bill was again ordered reported favorably to the House of Representatives with a quorum actually present, by a rollcall of 22–7, as follows:

Committee on Resources
U.S. House of Representatives
105th Congress

Full Committee

Date 10-22-97

Roll No. 1

Bill No. HR 2493 Short Title Forage Improvement Act of 1997

Amendment or matter voted on:

Final Passage

Member	Yea	Nay	Pres	Member	Yea	Nay	Pres
Mr. Young (Chairman)	X			*Mr. Miller*			
Mr. Tauzin	X			*Mr. Markey*			
Mr. Hansen	X			*Mr. Rahall*			
Mr. Saxton	X			*Mr. Vento*		X	
Mr. Gallegly				*Mr. Kildee*			
Mr. Duncan				*Mr. DeFazio*		X	
Mr. Hefley				*Mr. Faleomavaega*	X		
Mr. Doolittle	X			*Mr. Abercrombie*			
Mr. Gilchrest	X			*Mr. Ortiz*	X		
Mr. Calvert	X			*Mr. Pickett*	X		
Mr. Pombo	X			*Mr. Pallone*			
Mrs. Cubin				*Mr. Dooley*			
Mrs. Chenoweth	X			*Mr. Romero-Barcelo*			
Mrs. Linda Smith	X			*Mr. Hinchey*		X	
Mr. Radanovich				*Mr. Underwood*	X		
Mr. Jones	X			*Mr. Farr*			
Mr. Thornberry				*Mr. Kennedy*		X	
Mr. Shadegg	X			*Mr. Adam Smith*		X	
Mr. Ensign	X			*Mr. Delahunt*			
Mr. Bob Smith	X			*Mr. John*			
Mr. Cannon	X			*Ms. Green*		X	
Mr. Brady				*Mr. Kind*		X	
Mr. Peterson	X			*Mr. Doggett*			
Mr. Hill	X						
Mr. Schaffer	X						
Mr. Gibbons							
Mr. Crapo				**TOTAL**	22	7	

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. Black's Law Dictionary (Fifth Edition) states that "[a] thing is 'appurtenant' to something else when it stands in relation of an incident to a principal and is necessarily connected with the use and enjoyment of the latter."

(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. (See discussion of "appurtenant" in definition of allotment, above.)

(4) CONSULTATION, COOPERATION, AND COORDINATION.—This term means to engage in good faith efforts: (1) to discuss and exchange views; and (2) to act together toward a common end or purpose. This definition is intended to more closely conform to standard dictionary definitions of these terms.

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

(6) 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.

(7) 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 BLM pursuant to FLPMA.

(8) 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.

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

(10) SIXTEEN CONTIGUOUS WESTERN 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 grazing permits and leases

Access across private property shall not be required as a condition to a permit or lease unless the condition is limited to ingress and egress for federal personnel engaged in grazing administration activities on federal in-holdings. 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

(a) MONITORING.—Monitoring of trends and conditions of forage and related resources 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. As used in this subsection, the term "related resources" means any natural resource directly affected by grazing. Neither the Forest Service nor the BLM is currently able to devote the resources necessary to base management decisions on empirical data. This section permits the Secretaries to expand their monitoring activities while improving the quality of data collected.

(b) MONITORING CRITERIA AND PROTOCOLS.—Monitoring shall be conducted according to regional or state criteria and protocols that

are site specific, scientifically valid, and subject to peer review. Monitoring data shall be periodically verified.

The Committee intends that the Secretaries adapt the peer review procedures used by U.S. Department of Agriculture's National Research Initiative Competitive Grants Program for research proposals to implement this subsection. These procedures follow the recommendations of the National Academy of Sciences contained in its 1989 report entitled "Investing in Research" and are also used by the National Science Foundation, the National Institutes of Health, as well as U.S.D.A. research agencies.

Periodic verification of data means that the Secretaries from time to time conduct quality control checks to verify that monitoring data was collected in a manner consistent with protocols established under this section.

Currently, the Secretary concerned may reject data which were not collected consistent with whatever informal protocols or procedures are deemed appropriate. Under this Act the Secretaries retain the power to reject data that was collected contrary to the requirements of this section.

The amendments adopted by the Committee on Resources delete Section 104(b) "INSPECTION" of H.R. 2493 as introduced. The authority of the Secretary concerned to inspect lands subject to grazing permits or leases is unaffected by this Act.

(c) TYPES AND USE OF DATA COLLECTED.—Historical data and information, if objective and reliable, shall be included in any analysis of the monitoring data in order to compare past range management conditions to current conditions. Monitoring data and information shall be used to evaluate: (1) the effects of ecological changes and management actions on forage and related resources over time; (2) the effectiveness of meeting management objectives contained in land use plans; and (3) the appropriateness of resource management objectives.

(d) 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) PROHIBITION ON SUBLEASING GRAZING PERMIT.—Subleasing, defined as entering into an agreement to allow grazing on federal lands covered by a grazing permit or lease by livestock neither owned nor controlled by the person issued the permit or lease, is prohibited.

Certain practices not now considered to be subleasing of a permit or lease because ownership or control of the livestock is retained by the permittee or lessee are not intended to be prohibited by this section, including, but not limited to, those situations where 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; or (4) is grazing livestock owned by spouse, parent, or child of the permittee or lessee.

(b) 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.

The amendments adopted by the Committee on Resources delete language contained in H.R. 2493 as introduced stating that the lessee of base property to whom a grazing permit or lease is transferred shall be bound by the terms and conditions and other agreements associated with the grazing permit. The deleted language is unnecessary because the Secretary has broad authority under FLPMA to suspend, cancel, or modify permits and can, therefore, impose similar or different conditions on any transferred permit or lease as the Secretary deems necessary.

Section 106. Cooperative allotment management plans

(a) WRITTEN AGREEMENTS FOR OUTCOME-BASED STANDARDS.—An allotment management plan developed under Section 402(d) of FLPMA may include a written agreement with a "qualified" permittee(s) or lessee(s), that provides for outcome-based standards rather than prescriptive terms and conditions for managing grazing activities in a specified geographic area. At the request of a qualified grazing permittee or lessee, the Secretary concerned shall consider including such a written document in an allotment management plan.

This section of the bill is intended to be completely consistent with the grazing provisions of FLPMA. Previous Administration efforts to implement flexible management practices through so called "cooperative management agreements" were found to violate fundamental provisions of FLPMA by a federal district court (*N.R.D.C.* v. *Hodel*, 618 F. Supp. 848, 1985). The Committee notes that the existing grazing regulatory regime contained in FLPMA gives the Secretary a high level of discretion to set terms and conditions for grazing permits and leases directly or indirectly through allotment management plans incorporated into such permits and leases. The Committee believes that it is both possible and desirable to encourage, but not mandate, a more flexible regulatory approach that promotes good range management without changing any of the protections found in existing law. Therefore, Section 106 of H.R. 2493 is intended to be completely consistent with Section 402 of FLPMA and other provisions of that Act affecting grazing while providing an incentive for grazing permittees and lessees to improve and protect rangeland health. In addition, it requires more accountability from permittees and lessees than is the case under present administrative practice (see subsection (c), below) and is available only to persons who have demonstrated sound stewardship of public lands.

(b) QUALIFIED GRAZING PERMITTEE OR LESSEE DESCRIBED.—A "qualified" permittee or lessee is a person who has demonstrated sound stewardship by meeting or exceeding the forage and rangeland goals contained in applicable land use plans for the previous five years. The Committee does not intend that minor non-compliance with a grazing permit prescription (e.g., failing to keep gates closed, etc.) by a permittee or lessee would disqualify that person

from participating in a cooperative allotment management plan under this section.

(c) INCLUSION OF PERFORMANCE GOALS.—The written agreement shall contain performance goals that: (1) are expressed in objective, quantifiable, and measurable terms; (2) establish performance indicators to be used in measuring or assessing the relevant outcomes; (3) provide a basis for comparing management results with established performance goals; and (4) describe the means to be used to verify and validate measured values.

(d) FEDERAL ADVISORY COMMITTEE ACT.—Activities under this section are exempt from the Federal Advisory Committee Act.

Section 107. Fees and charges

(a) GRAZING FEES.—The fee formula for each AUM 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 resulted in higher grazing fees in 12 of the last 15 years compared to fees collected under the current formula.

The fee determined under this paragraph shall be the only grazing fee applicable to livestock owned or controlled by a person issued a permit or lease. Since Section 105 prohibits subleasing of a permit or lease, there is no need to levy a surcharge to discourage this practice.

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

(e) TREATMENT OF OTHER FEES AND CHARGES.—Fees and charges under Section 304(a) of FLPMA shall not exceed the actual administrative and processing costs incurred.

The amendments adopted by the Committee on Resources delete Section 106(d)(1) "CROSSING PERMITS, TRANSFERS, AND BILLING NOTICES" of H.R. 2493 as introduced which mandated certain fees. Nothing in H.R. 2493 affects the existing authority of the Secretar-

ies 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 may, 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 the RAC.

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 RAC 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.—RACs shall use majority voting. The Committee intends the section to correct certain practices that violate the spirit of Section 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 RAC 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 RAC. A RAC shall consist of not less than nine members and not more than 15 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 RAC. Members of existing RACs 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 RAC is located, may terminate the services of a member under specified circumstances.

(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) STATE GRAZING DISTRICTS.—Resources Advisory Councils shall coordinate and cooperate with state grazing districts established pursuant to state law.

The amendments adopted by the Committee on Resources delete an unnecessary provision in this section which permits the removal of a RAC member for conviction of a federal felony. Another provision in this section permits removal for any reason the Secretaries deem to be in the public interest, which encompasses the deleted provision.

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 those 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 resources. 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 RACs which would contain only National Forest Lands should not be beyond the existing resources of the Secretary of Agriculture.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

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

FEDERAL ADVISORY COMMITTEE STATEMENT

Pursuant to Section 108(a)(4) of H.R. 2493, 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) of H.R. 2493 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.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact H.R. 2493.

COST OF THE LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 2493. However, clause 7(d) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 2493 does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in tax expenditures. Enactment of H.R. 2493 would increase gross income from grazing fees by nearly $7 million over the 1998–2002 period.

2. With respect to the requirement of clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 2493.

3. With respect to the requirement of clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2493 from the Director of the Congressional Budget Office.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 15, 1997.

Hon. DON YOUNG,
Chairman, Committee on Resources,
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 Majorie Miller (for the state and local impact).

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

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 $5.6 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 $10 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 close to $7 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 net decrease in direct spending of $5.6 million over the 1998–2002 period. In addition, discretionary spending totaling about $10 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 years, in millions of dollars—				
	1998	1999	2000	2001	2002
CHANGES IN DIRECT SPENDING (including offsetting receipts)					
Change in Offsetting Receipts:					
Estimated Budget Authority	−1	−1	−1	−1	−1
Estimated Outlays	−1	−1	−1	−1	−1
Change in Direct Spending:					
Estimated Budget Authority	0	(1)	(1)	(1)	(1)
Estimated Outlays	0	(1)	(1)	(1)	(1)
Net Change:					
Estimated Budget Authority	−1	−1	−1	−1	−1
Estimated Outlays	−1	−1	−1	−1	−1
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	6	1	1	1	1
Estimated Outlays	6	1	1	1	1

[1] Less than $500,000.

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

Basis of 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 im-

plement 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 would be partially offset by the bill's revised definition of AUM. Overall, CBO estimates that offsetting receipts would increase by a little over $1 million annually beginning in fiscal year 1998 and by a total of about $7 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, in all 16 western states, 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 reductions in offsetting receipts attributable to the bill's change in the definition of animal unit month and its elimination of subleasing surcharges, which are discussed below.

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 re-

gardless 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 for 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.

Subleasing. Under current law, BLM applies a surcharge for livestock not owned by a permittee that is grazed under a permit. The surcharge, which is levied on the individual who controls the permit, is based on 35 percent of the difference between the federal grazing fee and private grazing fees in the state where the subleasing occurs. Section 107 of this bill provides that the fee charged for each AUM under a permit is the only grazing fee that may be charged to a permittee. Therefore, BLM would be prohibited from levying any surcharge. Based on information from BLM, we estimate that prohibiting those subleasing surcharges would reduce offsetting receipts to the government by about $500,000 per year. Because the Forest Service does not currently permit subleasing, Forest Service receipts would not be affected by the provision.

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 $300,000 a year beginning in fiscal year 1999 and by a total of $1.2 million over the 1998–2002 period.

Spending subject to appropriation

CBO estimates that additional discretionary spending would be about $6 million in fiscal year 1998 and a total of about $10 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 al-

most $1 million per year beginning in fiscal year 1999 and by about $3 million over the 1999–2002 period.

Advisory Councils. Section 108 would permit the Secretaries of Agriculture and the Interior to jointly establish Resource Advisory Councils (RACs) on a state, regional, or local level. The bill would direct the secretaries to implement the administrative changes specified in section 108 by modifying existing RACs, to the extent practicable. The section would allow members to receive reimbursement for travel and per diem expenses while on official business. BLM currently operates 24 multiple-use resource advisory councils, and the Forest Service does not operate any. Based on information from the Forest Service, enacting H.R. 2493 would increase the number of RACs required nationwide because the Forest Service would be required to establish RACs where that agency has sole jurisdiction over the federal land, which would increase discretionary spending for travel, per diem and other administrative costs. We estimate that any such increase would total less than $500,000 per year, assuming appropriation of the necessary amounts.

Other Potential Changes in Discretionary Spending. Section 107 would require the Economic Research Service 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 $1 million a year. For the purposes of enforcing pay-as-you-go procedures, 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	2003	2004	2005	2006	2007
Change in outlays	−1	−1	−1	−1	−1	−1	−1	−1	−1	−1
Change in receipts	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(1)	(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 $0.3 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 more than $1 million compared to payments under current law.

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

Previous CBO estimate: On October 1, 1997, CBO prepared a cost estimate for H.R. 2493 as ordered reported by the House Committee on Agriculture on September 24, 1997. This version of H.R. 2493 includes a number of changes to the language, and the cost estimate differs accordingly.

Estimate prepared by: Federal Costs: Victoria V. Heid; Impact on State, Local, and Tribal governments: Marjorie Miller.

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

COMPLIANCE WITH PUBLIC LAW 104–4

H.R. 2493 contains no unfunded mandates.

CHANGES IN EXISTING LAW

If enacted, H.R. 2493 would make no changes in existing law.

ADDITIONAL VIEWS OF MRS. CHENOWETH

I appreciate all of Agriculture Committee Chairman Bob Smith's hard work on the grazing issue. I agree with Chairman Smith that the current federal management of grazing on public lands must be comprehensively overhauled. Although I voted yea to favorably report H.R. 2493 to the House Floor, I continue to have several concerns.

My concerns are twofold: (i) I have specific concerns about the language of the bill, including how it may impact private property rights; and (ii) I am concerned about the bill being further compromised on the House floor to where it will do more harm than good to the public lands cattle industry.

First, I am concerned that a number of the definitions found in Sec. 102 are susceptible to distortion and abuse. Specifically, "allotment" as defined by H.R. 2493 is unclear. No doubt should be left that the allotment is the area provided for the grazing of livestock under a grazing preference right as acknowledged in *PLC* v. *Babbitt* (the so-called *Brimmer Decision*), currently on appeal to the Tenth Circuit of the U.S. Court of Appeals. In fact, the concept that an allotment is itself private property when it is used for the exercise of an adjudicated grazing preference will be tried in June, 1998 by the U.S. Court of Claims in *Hage* v. *U.S.* I am gravely concerned that the private property right about which these cases are argued could be negatively impacted by H.R. 2493. Until these legal questions are answered, I strongly recommend that H.R. 2493's definition of "allotment" be amended to ensure clarity.

Next, "base property" as defined in the bill could allow the Secretary, when transferring a preference right, to affix any private property (no matter how minimal) or even a state leased cabin site to a grazing preference right and the associated allotment. The Taylor Grazing Act already establishes the foundation for "base property," and I am concerned H.R. 2493 unnecessarily expands Taylor. As written, the bill may allow the BLM to grant a preference to someone who does not even own private land or a water right. Stability of the western livestock industry is gained by maintaining attachment of grazing preference rights to property in or near an allotment within a grazing district.

Additionally, the definition of "consultation, cooperation and coordination" must be tightened or removed altogether. H.R. 2493 would amend the CCC's current definition found in 43 U.S.C. § 1752(d), and does not contain the words "careful and considered." As written, H.R. 2493 allows the Secretary to continue to allow interference from the "interested public" in nearly all grazing management decisions. At some point the courts will have an opportunity to evaluate the definition in current regulation for consistency with the intent of Congress in FLPMA. I do not believe that the standard accepted definition of CCC read in Sec. 1752(d) would

support the current regulations, and they will be struck. But if H.R. 2493's CCC definition becomes statutory law, the opportunity to challenge the current regulation in court will be lost. Because of this, coupled with the fact that CCC is not mentioned in any other part of H.R. 2493, I would urge the removal of the CCC language.

Regarding Section 106(c) of H.R. 2493, the reference to Allotment Management Plans (AMP) should be changed to Cooperative Allotment Management Plans so that this section does not affect current Allotment Management Plans developed or being developed pursuant to Sec. 1752(d) of FLPMA when they are not intended to be a Cooperative AMP. As H.R. 2493 is written, it would require amendment of all existing AMPs and require that any new AMP (not just the Cooperative AMP) contain the performance standards contained in the subsection. I would recommend that the language be changed to prevent the agencies from revisiting existing AMPs.

Regarding Sec. 107 on grazing fees and charges, I believe that it is not in the best interest of the industry to have grazing fees dependent upon the price of money *and* a variable (cattle prices) that both react to supply and demand in exactly the opposite direction of the grazing forage market. The administrative fee for grazing use should be based on the private grazing forage market and determined through indexing a base fee with changes in that market. A fee should represent a fair return of administrative costs for the government. Establishing a base fee through an assessment of monthly production value for beef cattle as proposed in H.R. 2493 is a fair and equitable approach. A fee structure which maintains a fair and equitable balance between public land and private land grazers is essential. Adjusting the base fee in relation to changes in the private land grazing forage market will maintain fairness and equity. I do not agree with placing the determination of which animals qualify for the fee into statutory language. This is a matter best left to administrative determination, and Sec. 107 should be redrafted to reflect this.

In addition, I remain concerned about the specific language of the bill in Sec. 108, the Resource Advisory Councils (RAC). I do not see any redeeming value in codifying the RACs. As long as RAC's exist by regulation, they can be eliminated by regulation. By leaving them an administrative entity they can either be fixed or eliminated. I would recommend deleting Sec. 108 in its entirety.

Generally speaking, I am concerned about how the enactment of *any* grazing legislation will impact the Taylor Grazing Act. The ranchers who will be affected by H.R. 2493 claim a private property right in their grazing preference and forage right which is attached to the surface of the grazing lands in the western states. Their claim to such private property right stems, in part, from the possessory interest and right which their predecessors in interest acquired through settlement of the grazing lands decades ago. Such property rights were acquired through the common law as ranchers settled the arid western lands, laid claim to the water by prior appropriation, and grazed their livestock on the lands served by the water. Through the years, Congress has confirmed and validated such property rights to the surface estate of these lands on many occasions. The Taylor Grazing Act acknowledged the existence of such rights, provided that none of such rights should be diminished

or impaired, and authorized the Secretary of Interior to begin an adjudicatory process by which existing grazing allotments would be surveyed. That process was the culmination of the identification of allotments within which ranchers can exercise their private property rights to grazing preference and forage rights.

The private property right in the allotment provides the base for United States District Judge Brimmer's decision in *PLC* v. *Babbitt,* and the base upon which the Court of Claims will decide the takings issue in *Hage* v. *United States.* Great care must be taken that no new legislation, no matter how good the motive, can provide a basis for the federal management agencies to assert that the Congress has undermined these private property interests and rights which are based upon common law, customary law, state law, and previous confirmatory and validation Acts of Congress.

Finally, in my state of Idaho, I have constituents who run their ranching operation on nearly 100 percent federally managed lands. Some are third, fourth and even fifth generation ranchers. Over the years they have been asked to compromise and compromise, and then compromise again, to where they've nearly been compromised right off the land, out of business and out of their family's livelihood. I will not stand idly by and let this happen.

Some have characterized my views on this issue as being in the extreme. It is not my intention to hold to an unrealistic or unreasonable position, which might then be described as extreme. I believe I am merely representing a portion of my constituency who believe they would be negatively affected by this legislation. Although this constituency may be in the minority, I believe it is sometimes the role of government to secure the rights and interests of the minority from the tyranny of the majority.

James Madison observed in 1787, "That as different interests necessarily result from the liberty meant to be secured, the major interest might under sudden impulses be tempted to commit injustice on the minority. * * * How is the danger in all cases of interested coalitions to oppress the minority to be guarded against?" Again, I will not stand idly by and let this happen.

There has grown a mistrust between ranchers, the managing federal agencies, and many extreme environmental groups who are dedicated to the eradication of cattle ranching on public lands. We have taken steps to educate and bridge the gap of misunderstanding. Indeed, I brought the House leadership to Idaho to examine many of these issues, including the fact that most ranchers are excellent caretakers of the range. But until the education is complete and people understand that the multiple-use management of public lands necessarily includes the livestock industry, it is my view that no meaningful or beneficial legislation can be enacted.

HELEN CHENOWETH.

DISSENTING VIEWS

We are strongly opposed to H.R. 2493, the so-called "Forage Improvement Act of 1997". This ill-conceived legislation, which was just introduced on September 24, 1997, has been rushed through both the Agriculture and Resources Committees with no legislative hearings and little opportunity for Members to consider and debate its far-reaching provisions. The rush with which the majority is moving this bill is evident by the fact that the Resources Committee had to order the bill reported on two different occasions because of the procedural problems that developed in the majority's first attempt to speed this bill to the Full House.

We are jointed in our opposition to H.R. 2493 by the Administration and a broad array of hunting and fishing organizations, taxpayer watchdog groups, and environmental organizations. All recognize this bill for what it is; special-interest legislation that is a bad deal for the American taxpayer, harms the environment, and undermines sound public land management.

H.R. 2493 is based on the controversial legislation (S. 1459) that the House of Representatives refused to consider in the 104th Congress. The bill flies in the face of previous House action on the grazing issue. The House of Representatives has voted on a strong bipartisan basis several times in recent years to significantly increase the grazing fees charged for the use of public lands. In fact, just four years ago the House voted by a 317 to 106-margin to overhaul the entire public lands grazing program by significantly raising the grazing fee, enhancing the management of public rangelands, and providing for true multiple-use of these public resources. H.R. 2493 goes in a completely different direction than previous House actions. The bill changes the management of the public rangelands for the benefit of a few at the expense of the many.

At a time when the Federal budget is seriously squeezed, H.R. 2493 continues the subsidized use of public resources for wealthy and corporate cattle operations. Proponents of H.R. 2493 don't want to talk about the fact that on public lands, 9 percent of the permittees control 60 percent of the forage or that on national forest lands, 12 percent of permittees control 63 percent or the forage.

According to the Interior Dept. Inspector General, grazing benefits are provided to a vast array of large ranching operations, foreign-owned companies, and domestic corporate conglomerates whose primary business is unrelated to the livestock industry. These operations include a national brewery company, a Japanese land and livestock company, a national oil company, and a life insurance company. We don't believe that such wingtip cowboys as Metropolitan Life, the J.R. Simplot Company, and Anheuser-Busch need or deserve to have their grazing fees on public lands kept way below market rates. Less than 3 percent of the Nation's beef cattle

are grazed on public lands, the other 97 plus percent do without the benefit of the Federal grazing subsidy.

Every western State charges a grazing fee that is higher than the Federal Government, with several charging six times as much. H.R. 2493 continues this disparity with a new grazing fee formula, based on the discredited formula contained in S. 1459, that in no way reflects fair market value for the use of public resources. According to the Congressional Budget Office, little additional Federal revenue would be generated from the bill's low fee. In fact, coupled with the bill's new administrative requirements on the land management agencies, the grazing program will lose even more money than it currently does.

The bill's fee formula is also imprecise and confusing (the bill provides that the gazing fee equal 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 average of the "new issue" rate for six-month Treasury bills for the 12 years preceding the grazing fee year and divided by 12).

More important, H.R. 2493's fee formula is flawed in its application. Under H.R. 2493 grazing permittees will pay less in fees than they did in 1980! The bill also increases the number of sheep and goats per animal unit month (AUM) from five to seven. According to CBO "that change would effectively decrease the cost of grazing sheep and goats by almost one-third." CBO goes on to point out that this change alone will cost the Treasury about $600,000 per year.

Incredibly, the bill also allows ranchers who hold a grazing permit for public lands to sublease these lands to private interests at a significant profit. Under current law, the BLM applies a surcharge for livestock not owned by a permittee that is grazed under a permit. H.R. 2493 would prohibit the BLM from levying any surcharge. Worse, it directs the Forest Service to allow subleasing a practice it does not currently permit. According to the CBO, prohibiting subleasing surcharges will cost the Treasury at $500,000 per year.

In a bow to special interests, H.R. 2493 undercuts the broad-based Resource Advisory Councils (RACs) that Interior Secretary Babbitt put in place to replace the old discredited Grazing Advisory Boards. Using statutory authority that expressly provides for such councils, the Secretary established RACs that operate on a consensus basis involving all parties interested in the management of public rangelands. H.R. 2493 replaces the current RAC requirement for consensus decisions and instead provides that RACs will be run by majority vote. In addition, H.R. 2493 directs the Secretary to modify the existing RACs "for the purpose of providing advice regarding grazing issues." By all accounts RACs have been successful in developing standards and guidelines to improve the health of public rangelands. The changes proposed by the bill will not enhance the RACs. They work to instead undermine what has been to date a very successful initiative.

H.R. 2493 provides a new ill-defined standard for monitoring of rangelands. Since no hearings were held on the bill, we are unable to get any public assessment of what this standard would entail. However, we would note that Interior Secretary Babbitt in his Oc-

tober 6, 1997 letter to the Committee has raised legitimate questions and concerns with the language.

We are also concerned that the bill contains a new definition of the word "allotment" which appears to convey the idea that a property right attaches to grazing permits and leases. Such a change runs counter to the clear legislative language of the Taylor Grazing Act and other statutory law that grazing is a privilege and not a right. The definition contained in the bill is not found in any statutory law and would open this question to new interpretations.

Since the Committee failed to hold a legislative hearing on this far-reaching bill, Members have been denied the chance assess or receive testimony on the many issues associated with this bill. However, it is obvious from what we have noted thus far that H.R. 2493 has many serious problems.

Interior Secretary Babbitt has notified the Committee that if H.R. 2493 is presented to the President, he will recommend a veto of this legislation. We concur with this recommendation. H.R. 2493 is seriously flawed legislation that runs counter to the House's past bipartisan support for real reform of the grazing program. The clear result of the bill is that grazing will be the dominant use of the public lands to the detriment of the taxpayer, the environment, and other multiple-uses. As such, we oppose the bill and urge it defeat.

GEORGE MILLER.
BRUCE F. VENTO.
LLOYD DOGGETT.
ED MARKEY.
MAURICE D. HINCHEY.
DALE E. KILDEE.
PETER DEFAZIO.
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