5. GRAZING POLICY:

Resolve rangeland disputes with contracts, not armed conflicts

— by Shawn Regan

As Interior Secretary, Ryan Zinke will inherit a vast system of federal rangelands in the western United States—one that has brought about significant conflicts in recent years.

The Bureau of Land Management (BLM) administers nearly 18,000 grazing permits across 155 million acres of public lands in the West.[20] In 2015, these lands provided 8.6 million animal unit months (AUMs) worth of forage for livestock while also being managed for recreation, conservation, and other multiple-use purposes.[21]

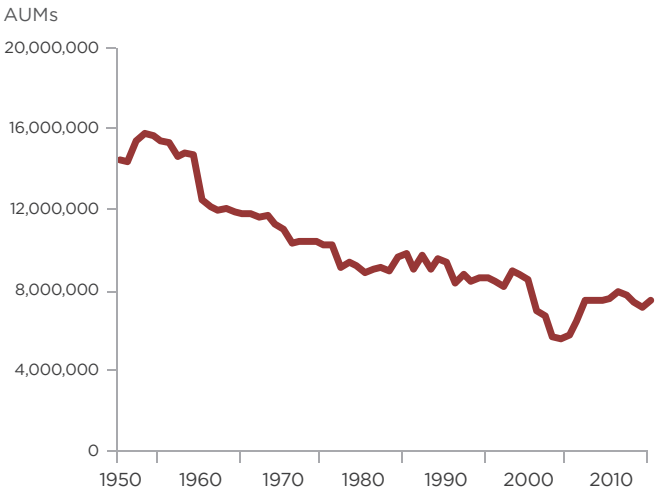
Today's grazing policies, however, encourage conflict rather than negotiation among competing interest groups. Ranchers have gradually had their grazing permits revoked as public-land policies have shifted toward conservation and recreation and away from grazing, timber harvesting, and other forms of resource extraction. Today, the BLM authorizes half the amount of grazing on federal rangelands as it did in the 1950s, and this decline has often pitted ranchers and environmentalists against each other in a zero-sum battle over the western range.[22]

At their core, such conflicts are the result of poorly defined grazing rights and restrictions on trading them. Current policies do not recognize grazing permits as a secure property right, nor do they allow grazing permits to be transferred for non-grazing purposes. This means that environmental and other competing interest groups have little or no way to bargain with ranchers to acquire grazing permits, and as a result, disputes must be resolved through litigation or political battles instead of through negotiation or cooperation.

The framework of today's grazing policy dates back to the Taylor Grazing Act of 1934.[23] The act requires that grazing permits be attached to specific "base properties"—private properties that the government deems qualified for public-land grazing privileges. As a result, a grazing permit can have a significant effect on the value of a rancher's property. When these properties are bought and sold, the new owner pays for the grazing permit, which is capitalized into the value of the base property.[24]

The law, however, never clarified whether grazing permits are secure property rights. Instead, it refers only to "grazing privileges" while also stating, somewhat vaguely, that those privileges "shall be adequately safe-guarded."[25] The result has been a decades-long fight over the nature and security of

GRAZING AUTHORIZED WITHIN BLM GRAZING DISTRICTS



Source: Bureau of Land Management

grazing rights in the West. And because grazing permits are attached to private properties, and restrictions on those permits can have a direct impact on the value of a ranch, it's no surprise that ranchers feel threatened by actions that reduce grazing on public lands.

To address these points of contention, grazing policies should be reformed to encourage contractual solutions instead of litigation or armed conflicts. Specifically, Congress should clarify that a grazing permit constitutes a secure property right (or a permanent-use right) to a portion of the federal rangeland. In addition, it should make those rights transferable, even for non-grazing purposes such as conservation or recreation.

Several changes would help make this possible. First, under the current system, ranchers are required to graze livestock on their allotments at their permitted levels or they risk losing their grazing privileges—in other words, it's "use it or lose it." If a permittee abandons grazing activities on a significant portion of an allotment, the BLM can transfer the permit to another rancher willing to use the allotment for grazing.[26]

Second, the base-property requirement raises the cost of trading grazing permits and restricts who can hold grazing permits. Groups seeking to acquire grazing rights must purchase or already own qualifying base properties to which grazing privileges can be assigned. Removing these requirements would allow permits to more easily be transferable to their highest-value uses, whether that's grazing, conservation, or recreation.

When property rights are secure, enforced, and transferable, disputes among competing users are more likely to be resolved peacefully, cooperatively, and in a mutually beneficial manner. Clarifying grazing rights and making them transferable for non-grazing purposes would go a long way toward encouraging more trading and less raiding on the western range.

Policy Reforms:

- Establish permanent, negotiable grazing permits as secure property rights. This could be done by selling the rights to current permit holders. Proceeds from the sale of grazing permits could be used to purchase and maintain areas of high value for recreation or preservation.
- Make grazing rights transferable, even to non-ranchers. Remove the the use-it-or-lose-it requirement, the base-property requirement, and any requirements that permit holders must be in the livestock business.
- Clearly define ecological standards necessary for maintaining these permanent-use rights, such as the conditions for access, fire and weed control, livestock wildlife protection, and water rights. Remove or curtail rigid requirements of stocking rates and season-of-use requirements to give permit holders the flexibility to meet these ecological standards however they best can, whether by grazing or non-grazing means. Establish penalties for failing to meet permit conditions.

Further Reading:

- "Managing Conflicts over Western Rangelands," by Shawn Regan. *PERC Policy Series* No. 54 (January 2016).
- "How to Reform Grazing Policy: Creating Forage Rights on Federal Rangelands," by Robert H. Nelson. *Fordham Environmental Law Journal*. 8:645-690 (1997).
- "Sailing the Sagebrush Sea," by Gregg Simonds. *Environmental Policy in the Anthropocene*. PERC (2016).