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CRS Report for Congress

Grazing Fees: An Overview and Current Issues

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Summary

Charging fees for grazing private livestock on federal lands is a long-standing but contentious practice. Generally, livestock producers who use federal lands want to keep fees low, while conservation groups and others believe fees should be increased. The formula for determining the grazing fee for lands managed by the Bureau of Land Management and the Forest Service uses a base value adjusted annually by the lease rates for grazing on private lands, beef cattle prices, and the cost of livestock production. The collected fees are divided among the Treasury, states, and federal agencies. Fee reform was attempted but not adopted in the 1990s. Current issues include instances of grazing without paying fees, efforts to retire certain grazing permits, and a broad approach to buy out grazing permittees. This report will be updated as needed.

Introduction

Charging fees for grazing private livestock on federal lands is statutorily authorized and has been the policy of the Forest Service (FS, Department of Agriculture) since 1906, and of the Bureau of Land Management (BLM, Department of the Interior) since 1936. Today, fees are charged for grazing on approximately 160 million acres of BLM land and 95 million acres of FS land basically under a fee formula established in the Public Rangelands Improvement Act of 1978 (PRIA) and continued administratively.[1]

On BLM rangelands, in FY2006, there were 15,799 operators authorized to graze livestock, and they held 17,880 grazing permits and leases. Under these permits and leases, a maximum of 12,634,580 animal unit months (AUMs) of grazing could have been

[1] P.L. 95-514, 92 Stat. 1803; 43 U.S.C. §§1901, 1905. Executive Order 12548, 51 *Fed. Reg.* 5985 (February 19, 1986). These authorities govern grazing on BLM and FS lands in 16 contiguous western states, which is the focus of this report. Forest Service grasslands and "nonwestern" states have different fees. In addition, grazing occurs on other federal lands, not required to be governed by PRIA fees, including areas managed by the National Park Service, Fish and Wildlife Service, Dept. of Defense, and Dept. of Energy.

authorized for use. Instead, 7,536,412 AUMs were used. The remainder were not used due to resource protection needs, forage depletion caused by drought or fire, and economic and other factors. BLM defines an AUM, for fee purposes, as a month's use and occupancy of the range by one animal unit, which includes one yearling, one cow and her calf, one horse, or 5 sheep or goats. On FS rangelands, in FY2005 (most recent available), there were 7,039 livestock operators authorized to graze stock. A maximum of 9,432,572 head-months (HD-MOs) of grazing were under permit; 6,806,797 HD-MOs were authorized to graze. There were more than 8,000 grazing permits on FS lands as of February 2008. The FS uses HD-MO as its unit of measurement for use and occupancy of FS lands, similar to AUM. Hereafter *AUM* is used to cover both HD-MO and AUM.

The BLM and FS are charging a grazing fee of $1.35 per AUM from March 1, 2008, through February 28, 2009. This is the lowest fee that can be charged. It is generally lower than fees charged for grazing on other federal lands as well as on state and private lands. A study by the Government Accountability Office (GAO) found that other federal agencies charged $0.29 to $112.50 per AUM in FY2004. While the BLM and FS use a formula to set the grazing fee (see "The Fee Formula" below), most agencies charge a fee based on competitive methods or a market price for forage. Some seek to recover the costs of their grazing programs. State and private landowners generally seek market value for grazing, with state fees ranging from $1.35 to $80 per AUM and private fees from $8 to $23 per AUM.[2] The average monthly lease rate for grazing on private lands in 11 western states in 2006 was $15.10 per head.[3]

BLM and the FS typically spend far more managing their grazing programs than they collect in grazing fees. For example, the GAO determined that in FY2004, the agencies spent about $132.5 million on grazing management, comprised of $58.3 million for the BLM and $74.2 million for the FS. These figures include expenditures for direct costs, such as managing permits, as well as indirect costs, such as personnel. The agencies collected $17.5 million, comprised of $11.8 million in BLM receipts and $5.7 million in FS receipts.[4] Receipts for both agencies have been relatively low in recent years, apparently because western drought has contributed to reduced livestock grazing. Other estimates of the cost of livestock grazing on federal lands are much higher. For instance, a 2002 study by the Center for Biological Diversity estimated the federal cost of an array of BLM, FS, and other agency programs that benefit grazing or compensate for impacts of grazing at roughly $500 million annually. Together with the nonfederal cost, the total cost of livestock grazing could be as high as $1 billion annually, according to the study.[5]

Grazing fees have been contentious since their introduction. Generally, livestock producers who use federal lands want to keep fees low. They assert that federal fees are

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[2] U.S. Government Accountability Office, *Livestock Grazing: Federal Expenditures and Receipts Vary, Depending on the Agency and the Purpose of the Fee Charged*, GAO-05-869 (Washington, DC: September 2005), p. 37-40.

[3] U.S. Dept. of Agriculture, National Agricultural Statistics Service, *Agricultural Statistics 2007*, Table 9-48, at [http://www.nass.usda.gov/Publications/Ag_Statistics/2007/index.asp].

[4] GAO-05-869, p. 21-22 and p. 30-31.

[5] A copy of the report, *Assessing the Full Cost of the Federal Grazing Program*, is available at [http://www.biologicaldiversity.org/swcbd/Programs/grazing/Assessing_the_full_cost.pdf].

not comparable to fees for leasing private rangelands, because public lands often are less productive; must be shared with other public users; and often lack water, fencing, or other amenities thereby increasing operating costs. They fear that fee increases may force many small and medium-sized ranchers out of business. Conservation groups generally assert that low fees contribute to overgrazing and deteriorated range conditions. Critics assert that low fees subsidize ranchers and contribute to budget shortfalls because federal fees are lower than private grazing land lease rates and do not cover the costs of range management. They further contend that, because part of the collected fees is used for range improvements, higher fees could enhance the productive potential and environmental quality of federal rangelands.

Current Grazing Fee Formula and Distribution of Receipts

The Fee Formula. The fee charged by the FS and BLM is based on the grazing on federal rangelands of a specified number of animals for one month. PRIA establishes a policy of charging a grazing fee that is "equitable" and prevents economic disruption and harm to the western livestock industry. The law requires the Secretaries of Agriculture and the Interior to set a fee annually that is the estimated economic value of grazing to the livestock owner. The fee is to represent the fair market value of grazing, beginning with a 1966 base value of $1.23 per AUM. This value is adjusted for three factors based on costs in western states of (1) the rental charge for pasturing cattle on private rangelands, (2) the sales price of beef cattle, and (3) the cost of livestock production. Congress also established that the annual fee adjustment could not exceed 25% of the previous year's fee.

PRIA required a seven-year trial (1979-1985) of the formula while the FS and BLM undertook a study to help Congress determine a permanent fee or fee formula. President Reagan issued Executive Order 12548 (February 14, 1986) to continue indefinitely the PRIA fee formula, and established the minimum fee of $1.35 per AUM. Without that requirement, the 2008 fee would have been below one dollar, due to a decrease in beef cattle prices and an increase in production costs, according to the BLM and the FS. The annual grazing fees since 1981, when the FS and BLM began charging the same fee, are shown in **Table 1**. The fee has ranged from $1.35 to $2.31.

Table 1. Grazing Fees from 1981 to 2008 (dollars per AUM)

1981.....$2.31	1990.....$1.81	1999.....$1.35
1982.....$1.86	1991.....$1.97	2000.....$1.35
1983.....$1.40	1992.....$1.92	2001.....$1.35
1984.....$1.37	1993.....$1.86	2002.....$1.43
1985.....$1.35	1994.....$1.98	2003.....$1.35
1986.....$1.35	1995.....$1.61	2004.....$1.43
1987.....$1.35	1996.....$1.35	2005.....$1.79
1988.....$1.54	1997.....$1.35	2006.....$1.56
1989.....$1.86	1998.....$1.35	2007.....$1.35
		2008.....$1.35

Distribution of Receipts. Fifty percent of all fees collected, or $10 million — whichever is greater — go to a range betterment fund in the Treasury. The fund is used for range rehabilitation, protection, and improvement including grass seeding and reseeding, fence construction, weed control, water development, and fish and wildlife

habitat. Under law, one-half of the fund is to be used as directed by the Secretary of the Interior or of Agriculture, and the other half is authorized to be spent in the district, region, or forest that generated the fees, as the Secretary determines after consultation with user representatives.[6] Agency regulations contain additional detail. For example, BLM regulations provide that half of the fund is to be allocated by the Secretary on a priority basis, and the rest is to be spent in the state and district where derived. Forest Service regulations provide that half of the monies are to be used in the national forest where derived, and the rest in the FS region where the forest is located. In general, the FS returns all range betterment funds to the forest that generated them.

The agencies allocate the remaining 50% of the collections differently. For the FS, 25% of the funds are deposited in the Treasury and 25% are given to the states (16 U.S.C. §500; see **Figure 1**). For the BLM, states receive 12.5% of monies collected from lands defined in §3 of the Taylor Grazing Act[7] and 37.5% is deposited in the Treasury. Section 3 lands are those within grazing districts for which the BLM issues grazing permits. (See **Figure 2**.) By contrast, states receive 50% of fees collected from BLM lands defined in §15 of the Taylor Grazing Act. Section 15 lands are those outside grazing districts for which the BLM leases grazing allotments. (See **Figure 3**.) For both agencies, any state share is to be used to benefit the counties that generated the receipts.

Figure 1. Distribution of Forest Service Grazing Fees

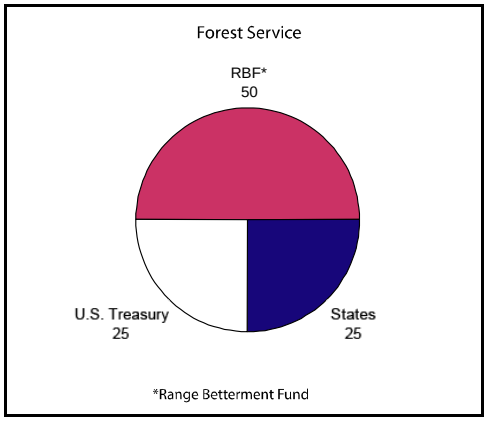


Figure 2. Distribution of BLM Grazing Fees: Section 3

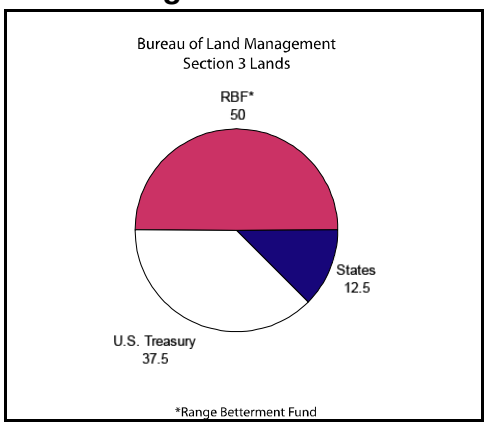
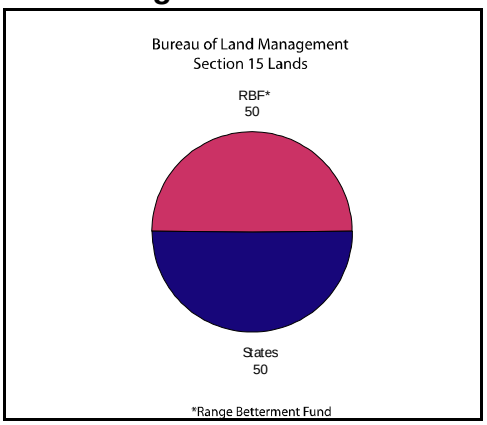


Figure 3. Distribution of BLM Grazing Fees: Section 15



[6] 43 U.S.C. §1751(b)(1). For the FS, see 36 C.F.R. §222.10. For the BLM, see 43 C.F.R. §4120.3-8.

[7] Act of June 28, 1934; ch. 865, 48 Stat. 1269. 43 U.S.C. §§315, 315i.

Fee Evaluation and Reform Attempts

PRIA directed the Interior and Agriculture Secretaries to report to Congress, by December 31, 1985, on the results of their evaluation of the fee formula and other grazing fee options and their recommendations for implementing a permanent grazing fee. The Secretaries' report included (1) a discussion of livestock production in the western United States; (2) an estimate of each agency's cost for implementing its grazing programs; (3) estimates of the market value for public rangeland grazing; (4) potential modifications to the PRIA formula; (5) alternative fee systems; and (6) economic effects of the fee system options on permittees.[8] A 1992 revision of the report updated the appraised fair market value of grazing on federal rangelands, determined the costs of range management programs, and recalculated the PRIA base value through the application of economic indices. The study results, criticized by some as using faulty evaluation methods, were not adopted and the report has not been updated since.

President Clinton proposed, and Congress considered, grazing fee reform in the 1990s, but no reforms were adopted. In 1993, the Clinton Administration proposed an administrative increase in the fee, and revisions of other grazing policies. The proposed fee formula started with a base value of $3.96 per AUM, and was to be adjusted to reflect annual changes in private land lease rates in the West (called the Forage Value Index). The current PRIA formula is adjusted using multiple indices, a practice that some criticize as double-counting ability-to-pay factors. Congressional objections forestalled an administrative increase, and new rules for BLM rangeland management that took effect on August 21, 1995 did not increase fees.

No grazing fee bills have passed either chamber for several years. In the 104th Congress, the Senate passed a bill to establish a new grazing fee formula and alter rangeland regulations. The formula was to be derived from the three-year average of the total gross value of production for beef and no longer indexed to operating costs and private land lease rates, as under PRIA. By one estimate, the measure would have resulted in an increase of about $0.50 per AUM. In the 105th Congress, the House passed a bill with a fee formula based on a 12-year average of beef cattle production costs and revenues. The formula would have resulted in a 1997 fee of about $1.84 per AUM.

Current Issues and Legislation

There is ongoing debate about the appropriate grazing fee, with several key areas of contention. First, there are differences over which criteria should prevail in setting fees: fair market value; cost recovery (whereby the monies collected would cover the government's cost of running the program); sustaining ranching, or resource-based rural economies generally; or diversification of local economies. Second, there is disagreement over the validity of fair market value estimates for federal grazing because federal and private lands for leasing are not always directly comparable. Third, whether to have a uniform fee, or varied fees based on biological and economic conditions, is an area of debate. Fourth, there are diverse views on the environmental costs and benefits of grazing

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[8] U.S. Dept. of Agriculture, Forest Service, and U.S. Dept. of the Interior, Bureau of Land Management, *Grazing Fee Review and Evaluation*, A Report from the Secretary of Agriculture and the Secretary of the Interior (Washington, DC: February 1986).

on federal lands and on the environmental impact of changes in grazing levels. Fifth, it is uncertain whether fee increases would reduce the number of cattle grazing on sensitive lands, such as riparian areas. Sixth, some environmentalists assert that the fee is not the main issue, but that all livestock grazing should be barred to protect federal lands.

A handful of livestock owners in some western states have grazed cattle on federal land without getting a permit or paying the required fee. The BLM and FS have responded at times by fining and jailing the owners as well as impounding and selling the trespassing cattle. The livestock owners claim they do not need to have permits or pay grazing fees because the land is owned by the public; or that other rights, such as state water rights, extend to the accompanying forage; or the BLM improperly allowed wild horses and burros to graze the land. A particularly long-running controversy involved grazing without permits by Western Shoshone Indians on land in Nevada they asserted belongs to the tribe under a treaty, but which the federal government manages as public land.

There have been efforts to end livestock grazing on certain federal lands through voluntary retirement of permits and leases and subsequent closure of the allotments to grazing. This practice is opposed by those who support ranching on the affected lands, fear a widespread effort to eliminate ranching as a way of life, or question the legality of the process. Supporters seek to have ranchers relinquish their permits to the government in exchange for compensation by third parties, particularly environmental groups. After acquiring the permits through transfer, the groups advocate agency amendments to land use plans to devote the grazing lands to other purposes, such as watershed conservation. These groups would not pay grazing fees under their permits if they opt not to graze during the amendment process, because fees are paid for actual grazing.

In recent Congresses, legislation has been introduced to buy out grazing permittees (or lessees) on federal lands generally. For instance, H.R. 3166 in the 109th Congress provided that permittees who voluntarily relinquished their permits would be compensated at a rate of $175 per AUM, estimated at more than twice the market rate. The allotments would have been permanently closed to grazing. Such legislation, backed by the National Public Lands Grazing Campaign, is advocated to enhance resource protection, resolve conflicts between grazing and other land uses, provide economic options to permittees, and save money. According to proponents, such a national buyout program would cost about $3.1 billion if all permits were relinquished, but would save more than that amount over time. H.R. 3166 would have authorized $100 million to compensate permit holders and make transition payments to counties, and established priorities for compensation if funds were insufficient for all buyouts. Opponents of buyout legislation include those who support grazing, others who fear the creation of a compensable property right in grazing permits, some who contend the program would be too costly, or still others who support different types of grazing reform. Other legislation has sought to buy out grazing leases on particular allotments, and to retire those allotments from grazing use (e.g., S. 2379, 110th Congress, for land within the Cascade-Siskiyou National Monument in Oregon). Still other measures have sought to require federal land management agencies to compensate permit holders when certain actions reduced or eliminated grazing and alternative forage was not available (e.g., H.R. 411, 109th Congress).