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# A Proposal for Reallocation of Federal Grazing—Revisited

## B. Delworth Gardner

Over a quarter of a century ago, I analyzed the allocation procedures utilized by the federal agencies which administer livestock grazing on the public lands (Gardner 1962). Two factors contributing to grazing misallocation and reduced range productivity were identified: (1) the "eligibility" requirements that qualify permittees for grazing privileges prevented the utilization of forage by ranchers who would value it most, and (2) use-tenure insecurity resulting from cuts in permitted grazing impeded private investment in range improvements on the public ranges. In a second paper, I proposed that the grazing privilege system be reformed such that efficient allocation of forage and tenure security could be more nearly achieved (Gardner 1963). Following in this paper is further discussion of my proposal to create perpetual grazing rights, why it is still applicable today, and why I believe that little was done to implement it.

### The Allocation of Grazing Permits on the Federal Lands

#### Some History

When public control of livestock grazing on the public lands was initiated many decades ago, agency regulations required that rancher applicants be engaged in the livestock business and that they own or control land or water base property. This "commensurability" requirement was designed to eliminate the so-called "itinerant" stockman from consideration for permits. These "nomadic" livestock producers, often with little or no ranch property of their own, moved large herds of grazing animals across vast areas of the West during the various seasons of the year when forage was available. Commensurability was thought to promote the stability of the ranching and derivative industries that make up the local community.

The other major eligibility requirement was "use-priority" which gave preference to those applicants who were using the public land prior to governmental regulation.

At the time when government control of grazing was being considered, ranchers who had been previously utilizing the public lands and paying no fees felt economically threatened. Naturally, they resisted the new regulations. To minimize their political opposition, these ranchers were given preference by the government for receiving the available permits via the eligibility requirements. Fees were set at very low levels, presumably only to cover the costs of administering the new grazing programs. Agency

boards of local ranchers were given considerable power to influence grazing policy decisions. These stratagems had their desired effects. Political opposition by ranchers was not sufficiently strong to block the proposed regulation and control.

#### Modern Day Issues

The system that restricted permit allocation to only those "qualified" permittees has been incapable of responding to changes in the livestock business and other pressures on the public lands and thus is becoming increasingly inefficient (Gardner 1984). Non-permittee ranchers desire access to the subsidized grazing. This can be accomplished only by becoming "eligible," often requiring the purchase of the base property or livestock of an existing permittee.

With the increase in the demand for outdoor recreation and the emergence of the environmental movement in the 1960's and 1970's, other outputs from the federal lands have become increasingly valuable and new pressures are being brought to reduce livestock grazing. As a consequence, the total animal-unit-months (AUMs) of permitted livestock grazing were reduced, first on the national forests in the 1950's and 1960's, and later on the public domain (Gardner 1962). The result has been a waning of confidence that federal grazing will continue to be available to permittees at favorable terms.

It is axiomatic that successful entrepreneurs must be capable of responding quickly to changes in technological possibilities, prices, and costs if they are to survive in a competitive market environment. Yet federal agencies dictate stocking rates, classes of livestock that can be grazed, the length of the grazing season and what can and cannot be done to increase forage yields. Permittees have little freedom to choose and utilize different grazing regimes, various grazing intensities, and earlier or later grazing than dictated by the regulating agency. Also, permitted grazing may be cut by agency discretion giving rise to tenure insecurity described above. Incentives are weak at best for rancher investment in capital improvements that might increase the productivity of the public ranges and thus benefit all public land users.

#### Perpetual Grazing Rights Plan

In 1963 I proposed the creation of perpetual grazing rights. The government would specify the quantity of AUMs that could be grazed on a given allotment, the class of grazing animals (e.g., cattle or sheep), and the season of use. These rights would be issued to the existing permittees as a substitute for existing permits.

Eligibility requirements would be eliminated and the

The paper has benefited from suggestions by Ray Huffaker, Arden Pope, John Workman, Dean Lueck and Ed Frandsen. The editor of *Rangelands*, Gary Frasier and an anonymous reviewer were immensely helpful in shortening and recasting the paper. Only the author, however, should be blamed for errors in fact and logic which remain.

grazing rights could be freely transferred in voluntary market transactions. Thus, property rights in grazing would be created that were defined, defendable, and divisible. If the federal government decided that range condition warranted an increase in livestock AUMs, it would simply create new rights and auction them off to the highest bidder. If it wanted to decrease grazing, it could buy up the existing rights at market prices. Very importantly, if other user groups wanted the forage or the grazing allotment without livestock, they could purchase the rights in the market. The proposal seemed to promote an efficient allocation of resources and security of tenure lacking in the existing procedures and yet continued to give the government final authority to set stocking rates.

I anticipated that the grazing fee issue might be relevant to the political feasibility of the proposal. If grazing rights were perpetual and freely transferable among ranchers, the expected minimum market transfer price of the rights would be the capitalized differential between the expected average value of the grazing and the average costs of taking the forage. One of these costs would be the fee paid to the government. Thus, the level of the fee and the value of the right would be inversely related.

At fee levels existing in the early 1960s when the proposal was made, the new rights could have been expected to be worth more than the permits they replaced because they were transferable and offered greater economic security. Thus, unless fees were raised, wealth windfalls would have been created for the permittees. Since the alleged "subsidy" to ranchers has always been controversial, it appeared that the political feasibility of the proposal would be enhanced by not directly increasing the wealth of the permittees. To avoid this problem, I recommended that the fee be fixed at a level which would make the new rights equal in value to the old permits.

The increased fees would have been attractive to the taxpayer owners of the public lands and to the government agencies desiring larger budgets. Environmental organizations would have been sated because they have always wanted the subsidy to ranchers reduced and more revenues for range improvements. The ranchers would have tenure security and a vigorous market in which they could buy and sell the grazing rights. Thus, the proposal appeared to be attractive to all the relevant parties.

Then why hasn't the proposal been adopted in the intervening years? The answer to this question is complex.

In my view, public choice theory provides the most plausible answer. This theory postulates that given interest groups can manipulate legislative, administrative, and judicial decisions to their advantage, even though in aggregate across all interests, the contest for government favors is likely to be negative-sum. That is, the total gains captured by the winners of some public action (e.g., environmental groups) are less than the total losses suffered by the losers (e.g. rancher permittees). Presumably, recreational, environmental, and conservation organizations that wanted reduced livestock grazing on the public

lands believed it was in their interest to retain the existing permit system and used judicial action and pressure on the legislative and executive branches to accomplish their goals. This doesn't mean that they are satisfied with the status quo, but they certainly did not want any reforms that gave definable rights to the livestock permittees.

Evidence that supports this hypothesis is found in two recent suits: 1) a 1985 suit brought in a federal court to block "cooperative management agreements" (CMAs) that were created to implement the "experimental rancher stewardship" (ESP) programs as authorized by the Public Rangeland Improvement Act (PRIA), and 2) a 1986 suit challenging the grazing fee formula also authorized in PRIA.

### **The Suit Against Cooperative Management Agreements**

The Federal Land Policy and Management Act (FLPMA) of 1976 was very restrictive in the regulations imposed on ranchers. However, PRIA of 1978 took a halting step forward to loosen these restrictions and give permittees more flexibility.

Despite evidence to the contrary (Box 1978), FLPMA simply asserted that the federal rangeland was "continuing to deteriorate" (43 U.S.C. art. 1751, Sec. 401(b), 1976) and instituted comprehensive long-run federal management of rangeland for the twin purposes of sustained yield and multiple use. It authorized the Secretary of Interior to cancel, suspend, or modify permits as punishment for rule violations; to offer short-term licenses rather than ten-year permits when they are in the "interest of sound land management", and to limit the guarantee of renewal to an offer of "first priority" so long as expiring permit holders were willing to accept any new conditions of the Secretary (43 U.S.C. art. 1751, Sec. 402 (a), 1976).

PRIA repeated the assertion of deterioration of public rangeland and supplemented FLPMA's comprehensive land management program by authorizing additional funds for federal rangeland management programs (43 U.S. Code, art. 1901, Sec. 5, 1978). However, PRIA broke new ground by establishing the Experimental Stewardship Program (43 U.S.C. 1906, Sec. 12, 1978). The ESP authorized the Secretaries of the Interior and Agriculture to "... explore innovative grazing management policies and systems which might provide incentives to improve range condition. . . and such other incentives as they may deem appropriate."

Under this authority, the Secretaries implemented the 5D0 Cooperative Management Agreement program. The CMAs were cooperative agreements between government officials and grazing permittees who demonstrate exemplary rangeland management practices. The agreements established mutually determined "performance standards" for the graziers. Cooperative permittees, viewed as the stewards of their grazing allotments, were to be rewarded with increased tenure security. Since arbitrary cuts could not be made without review, the permittees were left relatively free to determine the livestock numbers

revenues that are designated by formula to be spent to improve range productivity.

The government defendants argued that the level of the fee has no impact on the quantity of allowable grazing. Speaking for the Forest Service, "The permitted use level is determined through the Forest planning and allotment management planning processes and is set in the grazing permit. This process occurs entirely independently of grazing fees. Therefore, physical and biological effects of permitted livestock grazing are determined by factors other than the grazing fee levels" (USDA, Finding 1987, Workman 1988).

Both theoretical and empirical considerations are relevant to this dispute. For various reasons, collectively and perhaps individually, permittees usually do not actually graze the number of AUMs authorized. The difference between permitted and actual use is termed nonuse. Nonuse has been recorded by the Forest Service over the period 1979 to 1986 and has varied from a low of 11.1% in 1980 to a high of 15% in 1986.

The fact that some nonuse is now occurring at present fee levels is evidence that for one reason or another some grazing is not worth what the permittees are being asked to pay for it. Therefore, raising the fee would almost surely result in more nonuse. The plaintiffs were technically correct in asserting that a rise in the fee would reduce livestock grazing. On the other hand, the fact that many permittees are utilizing the full allowable use implies that raising the fee would reduce their permit values but may not affect the quantity of grazing.

What do the available data indicate about fees and nonuse? Not much variation in annual nonuse exists. The government maintains that there is no relationship between the fee and the quantity of grazing demanded over the years that the PRIA formula has been in effect, 1979-1986 (USDA, Finding 1987). The government correctly argued that other factors appear to correlate more closely with variation in actual use than do grazing fees. "For example, the costs that livestock producers pay for production of their cattle, and the prices they receive for those cattle, may influence the level of actual use and therefore nonuse. A statistical analysis comparing beef cattle prices in 1979-1986, with the percent of nonuse, shows a strong negative correlation. That is, as beef cattle prices increase, percent nonuse tends to decrease. Also, a statistical analysis for the same period comparing producer prices paid (cost of livestock production), with percent of nonuse, shows a strong positive correlation" (USDA, Finding 1987).

The problem is that both beef prices received and production costs incurred are terms in the formula for determining the grazing fee. As beef cattle prices rise, the profitability of grazing should increase and nonuse should fall, all other things equal. As production costs increase, the profitability of public grazing should decrease and nonuse should increase. As the value of substitute forage decreases, nonuse of permitted federal forage should

increase as ranchers shift to the now cheaper private substitutes.

In summary, it is clear that changes in the fee itself are not closely associated with changes in nonuse over the period of the PRIA formula, although individual components of the fee do seem to be so associated. However, much variation exists in the physical and economic situations of individual ranchers that would cause them to value the federal forage at different levels, and no one really knows how many would opt for nonuse in the face of substantially higher fees.

### Summary and Conclusions

I believe that the nature of the allocation problem on government-owned ranges has changed over the past 25 years. In 1963, I was concerned primarily about the allocation of the allowable grazing among potentially competing ranchers. Clearly, the critical allocation problem now is between livestock producers and other users of the public ranges.

As in 1963, I see no compelling reasons for maintaining the eligibility requirements for receiving grazing preferences. There is no question that the allowable quantity of livestock grazing would be more efficiently allocated if grazing rights were created along the lines of my original proposal. Incentives to invest in range improvements would exist if these improvements were truly economically feasible. Potential users who now regard the public lands as unavailable to them could easily acquire access by buying out the ranchers.

In my opinion, there is also little doubt that the quantity of grazing that is now allowable to livestock could be much more efficiently utilized if ranchers were given more management flexibility as was attempted in the cooperative management program. However, there is little available evidence for this conclusion, except *a priori* logic. That stewardship program should be reinstated to permit us to observe whether or not ranchers would increase range efficiency and productivity and by how much.

The level of rancher subsidy and fees will continue to be a controversial subject. But the ranchers are not the only ones who benefit more from the public lands than they are paying. If the environmental organizations and recreationists want to reduce livestock grazing in order to increase the amount of forage left for their users or for the public generally, they might think about taxing themselves to buy the ranchers out and/or contribute funds for range improvement. It is possible that they could do it more economically under a scheme of transferable rights to forage than attempting to manipulate political and legal institutions via rent-seeking expenditures they are now making.

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