

NATIONAL PUBLIC LANDS GRAZING CAMPAIGN

The Multiple-Use Conflict Resolution Act Will Not Create New Rights in Grazing Permits

Grazing permits/leases do not convey rights to graze federal lands.

Grazing permits/leases issued under the Taylor Grazing Act (TGA) of 1934 allow the permit/lease holder the privilege to use publicly owned forage. The permits do not bestow a *right* to permittees to graze federal lands. This distinction was intended by Congress in the TGA,¹ articulated in agency regulations,² restated in federal grazing studies,³ confirmed by scholars,⁴ and upheld by the Supreme Court as recently as 2000.⁵ Federal grazing permits are revocable, amendable, non-assignable ten-year licenses to graze public lands that do not convey property rights to grazing permittees/lessees.

Grazing permit buyout does not create new rights in permits.

One fear of creating a voluntary grazing permit/lease buyout program is that it would create a new, unintended compensable property right in grazing permits/leases. The establishment of such a program, it is feared, could require the government to reimburse ranchers every time federal managers reduce or eliminate grazing privileges in the normal course of business pursuant to federal law and regulations.

Such a fear is unfounded, as the federal government has already established a limited grazing permit/lease buyout program and it has not conferred any unintended permit/lease rights to grazing permittees/lessees. Since 1948 federal law has mandated that the government compensate federal grazing permittees/lessees when their grazing privileges are reduced or eliminated for military purposes *without creating new property rights in grazing permits/leases*. Appended to the Taylor Grazing Act (TGA), the military permit/lease buyout provision also includes a “savings clause” that protects the government from any extraneous claims of grazing permit/lease property rights:

*Whenever use for war or national defense purposes of the public domain or other property owned by or under the control of the United States prevents its use for grazing, persons holding grazing permits or licenses and persons whose grazing permits or licenses have been or will be canceled because of such use shall be paid out of the funds appropriated or allocated for such project such amounts as the head of the department or agency so using the lands shall determine to be fair and reasonable for the losses suffered by such persons as a result of the use of such lands for war or national defense purposes. Such payments shall be deemed payment in full for such losses. **Nothing contained in this section shall be construed to create any liability not now existing against the United States.***⁶

For more than half a century, no public lands grazing permittee/lessee who has had their grazing permit/lease eliminated for non-military purposes has claimed they are nevertheless owed compensation under this provision. It is extremely unlikely that such a challenge would ever be successful.

As introduced, MUCRA (H.R. 3166) avoids creating new rights in grazing permits/leases.

In a variety of different contexts, the Supreme Court has stated that the provision of a government benefit does not create a property right in potential recipients *when Congress has explicitly excluded that interpretation in the authorizing legislation.*⁷ Congress need only include a savings clause similar to that in the TGA military permit/lease buyout provision above in any legislation authorizing a federal grazing permit/lease buyout program to prohibit wildcat claims to grazing permit/lease property rights.

The National Public Lands Grazing Campaign will only support a legislated buyout program with the requisite savings clause. If, during the political process, such language is dropped or modified and the legislation becomes a problem, NPLGC will kill the bill.

¹ 43 U.S.C. §315b.

² See, e.g., 36 C.F.R. 222.3(b).

³ USDI-BLM, USDA-Forest Service. 1995. Rangeland Reform '94 Final Environmental Impact Statement. USDI-BLM. Washington, D.C.: 125.

⁴ Donahue, D. 1999. The Western Range Revisited: Removing Livestock from Public Lands to Conserve Native Biodiversity. Univ. Oklahoma Press, Norman, OK: 38.

⁵ Public Lands Council v. Babbitt, 529 U.S. 728, 741 (2000). See also U.S. v. Fuller, 409 U.S. 488 (1973) (holding that the federal government is not required by the Fifth Amendment to compensate a property owner in a condemnation action for the extra value of his private property attributed to his federal grazing permit).

⁶ 43 U.S.C. § 315q.

⁷ Bowen v. Public Agencies Opposed to Social Security Entrapment, 477 U.S. 41 (1986), citing Nat'l Rail Passenger Corp. v. Atchison, 477 U.S. 41 (1985) and Sinking Fund Cases, 99 U.S. 700 (1879).