

Sacred Cows

Grazing on public lands yields less than five percent of the nation's beef but monopolizes 252 million of its acres. Even so, ranchers are gunning for the one law that can save fish, wildlife, and their own industry

By Ted Williams

“Mamas, don't let your babies grow up to be cowboys,” warn Willie Nelson and Waylon Jennings. It's excellent advice, at least for the few kids interested in keeping the moribund tradition of public-lands ranching alive. In the West running cattle is a brutal, draining, dirty business that couldn't survive without massive federal life support. Even with that support ranchers are feeling marginalized and unloved; they're angry, and they're getting out—but not fast enough to restore, or perhaps save, sage grouse, desert tortoises, native trout, prairie dogs, black-footed ferrets, grassland birds, and the thousands of other species cattle destroy.

In the West the livestock industry is being devastated by drought, foreign beef imports, competition from eastern operations, and healthy-diet education; and ranchers are increasingly pressured by a public out and about on its land and water. Still, they like to imagine they are victims of the National Environmental Policy Act (NEPA)—their last best hope in that it requires protection and restoration of the grasslands that feed their stock. Public-lands ranching produces less than 5 percent of the nation's beef. Yet it monopolizes 252 million acres supposedly managed for “multiple use” by the U.S. Forest Service and the Bureau of Land Management (BLM). Even national wildlife refuges, national park units, and federal wilderness areas—off-limits to virtually all other extractive industries—allow grazing where deemed a “traditional use.”

After the public gets finished paying for public-lands grazing in lost fish, wildlife, plants, soil, and water, it gets to pay for it again in dollars. According to the General Accounting Office, 10 federal agencies lost \$123 million administering grazing in fiscal 2004. On average, an “animal unit month” (AUM)—the amount of forage a cow and her calf supposedly can consume in a month—costs ranchers \$1.79 on public land and \$13.30 on private land. Meanwhile, the public buys ranchers cattle guards, water troughs, water pipes, and wildlife-killing fences on its rangeland; it hires contractors to rip up its native plant communities and replace them with alien grasses favored by alien bovines but hurtful to its wildlife; it hires predator-control agents to shoot, trap, and poison its native mammals that might eat livestock; and it hires pest-control agents to poison its prairie dogs because ranchers imagine they “compete” with cattle. This bizarre system, known by its critics as “welfare ranching,” evokes the image of the Marlboro Man unhorsed and scrounging cigarette butts from hotel ashtrays.

While cattle and bison share a common Asian progenitor, that does not mean they are ecologically interchangeable. Cattle evolved in the damp forests and swampy lowlands of subtropical Asia, while bison were molded by the relatively dry steppe-tundra ecosystem of Europe and North America. As a result, bison require far less water and

move around the upland landscape, giving grazed vegetation a chance to regenerate. The first thing a cow does is head for its natural habitat—a stream and its thin border of green. Unfortunately, about 80 percent of the fish and wildlife in the West depend on these riparian corridors.

Livestock are the main source of nonpoint water pollution in the West and the main reason 80 percent of the region's fishes and 90 percent of its grassland birds are declining. Although riparian corridors comprise only 1.5 percent of public land, 80 percent have been damaged by cattle. “Overgrazing is much too weak a term,” declared rangeland defender and author Edward Abbey. “Most of the public lands in the West are what you might call ‘cowburnt.’ Almost anywhere and everywhere you go in the American West you find hordes of these ugly, clumsy, stupid, bawling, stinking, fly-covered, shit-smearred, disease-spreading brutes. They are a pest and a plague.”

The wetter parts of the West—most notably former bison range of the Great Plains—may be appropriate for carefully controlled livestock grazing. But running any cattle in arid regions, where native vegetation did not evolve the capacity to cope with large grazers, is economically and ecologically insane. In July 1994 I visited the Gila and Aldo Leopold wilderness areas in New Mexico's Gila National Forest to inspect the cattle-pounded, semi-desert streams that had once sustained North America's only endangered inland salmonid, the Gila trout. On the middle stretch of Diamond Creek I trudged down a dusty streambed, blown out by flash floods, and through a skeletonized riparian forest that resembled a World War I battlescape. Between sandblasted corpses of cottonwoods, standing and prone, marched western yarrow, juniper, rabbitbrush, thistle, piñon, and other plants worthless to riparian wildlife and even livestock.

Ninety percent of the banks of the Gila River's east fork were raw and bleeding. Black Canyon Creek—the last perennial stream in the Aldo Leopold wilderness—still sustained trout, though they were Gila-rainbow mongrels. The stream rises in the Continental Divide between juniper-topped hills, then hurries through ponderosa pines, giant cottonwoods, Gambel oaks, willows, and stands of Mexican elderberry. In rancher Kit Laney's allotment the channel widened between sloughing banks, and wherever the sunlight hit the water, cow pies had blossomed into enormous green gobs of algae. Cattle with ribs resembling Conestoga-wagon stays stood in the flow, defecating and urinating.

Public-lands ranching in places like the Gila and Aldo Leopold wilderness areas cannot be “reformed,” because it shouldn't happen in the first place. In the memorable words of the Sierra Club's Rose Strickland, “Reform is fine—except when that to be reformed is inherently impractical. Given enough hidden subsidization, special assistance, and publicized misinformation, banana plantations in Minnesota could be made to seem feasible.”

Part of the trouble is that most Americans have never seen the West in anything but cow-nuked condition. They don't understand that there was a time when it didn't look like a black-and-white John Wayne movie, that there were tallgrass prairies, shortgrass prairies, and rolling seas of wildflowers. They don't realize that this wasn't always a

land of head cuts and dry washes; that in semi-desert the predominant ground cover shouldn't be vascular plants like the ones invading Diamond Creek but “biological crusts”—complex communities of tiny organisms such as lichens, mosses, algae, and cyanobacteria that aid germination by absorbing sunlight, prevent erosion, retain water, boost fertility by fixing atmospheric nitrogen and carbon, repel weeds, and die when stabbed by bovine hooves.

But grazing differs from other extractive industries in that the damage it causes is reversible—sometimes rapidly reversible. An eight-year grazing moratorium in Utah's Rich County resulted in a 350 percent increase in use by and diversity of small mammals, raptors, and passerine birds. And 12 years ago, when a smart, tough manager named Barry Reiswig kicked the cows off the Hart Mountain National Antelope Refuge in southeast Oregon—touching off a political firestorm that got him reassigned—the refuge started doing what it was designed to do. Since then populations of sage grouse, plummeting almost everywhere else, have increased by 537 percent, and pronghorn populations by about 34 percent.

One of the gravest dangers facing fish, wildlife, and the livestock industry itself is the ongoing circumvention and contravention of the National Environmental Policy Act by Congress and the Bush administration. But the industry prevails on Congress to routinely forgive agencies for renewing grazing permits sans environmental review. A year ago it wangled a rider allowing a NEPA exclusion for up to 800 Forest Service grazing allotments leased to ranchers. Another rider allows the Forest Service and the BLM to skip environmental review until 2008. As I write this, in mid-November 2005, the House NEPA Task Force is holding hearings in an effort to get further NEPA exemptions for public-lands ranchers.

NEPA flouting is a congressional tradition, but the Bush administration is goosing it along. For example, last June the BLM released a set of rules (supposedly being tweaked in a “supplemental environmental impact statement”) that would 1) remove the requirement for prompt action against hurtful grazing practices; 2) cut the public out of the decision-making processes; 3) extend the deadline for mandatory reform of grazing abuses from a year to two years while adding a five-year phase-in period for cow reductions of more than 9 percent; 4) enjoin the agency from suspending permits for ranchers who, outside their allotments, violate federal statutes; and 5) grant ranchers ownership of the public's water.

The rules so worried the US Fish and Wildlife Service that it prepared a report on them for the BLM, making such observations as: “The owner of the trespassing livestock that are found on National Wildlife Refuge lands, for example, would no longer risk loss or suspension of his BLM grazing permit. Such a change communicates to permittees that attention to a healthy rangeland ethic ends at their permit boundary.” And: “We believe that many of the Proposed Revisions would give priority to a use that is often in competition with fish and wildlife resources.” The BLM did not acknowledge these comments, nor did it include them in its final EIS.

The BLM had assigned biologist Erick Campbell to a team of 15 agency scientists charged with vetting the new rules. “The Proposed Action will have a slow, long-term adverse impact on wildlife and biological diversity in general,” wrote Campbell, a respected 30-year BLM veteran who had worked closely with ranchers and was anything but anti-cow. “Upland and riparian habitats will continue to decline due to increasing an already burdensome grazing appeals process, lack of ability to control illegal activities on public lands, and allowing livestock operators to acquire rights to livestock management facilities and vegetation on public lands.”

The response of the Bush administration was to kick Campbell off the team and rewrite his comments and those of his fellow team members so that grazing reappeared as a honey-flavored ecological elixir. Campbell, who retired in frustration, told me this: “BLM’s D.C. office said, ‘We can’t put this on the streets; this shows that grazing is bad.’ Well, all the scientific literature says it is bad. The stuff I cited was peer-reviewed. They took the substance out of what I wrote and reversed me 180 degrees. This whole thing was at the behest of the livestock industry. You can make some progress like [former Interior Secretary Bruce] Babbitt’s rangeland standards and guides, which were a hundred years overdue. But when you finally get something that’s working, the industry comes in behind you and destroys it.”

The circumvention and contravention of NEPA by the administration and Congress makes it easier for the livestock industry to regulate the regulators. Consider the case of Wyoming rancher Frank Robbins, whose family has strong ties with powerful Alabama politicians. From 1996 to 2001 the BLM handed him grazing-violation citations as if they were green stamps: 8 “non-willful” trespass violations, 4 willful trespass violations, and 12 repeated willful trespass violations. He refused to pay the fines, ran cattle after his permits were revoked, and, according to the US Department of Agriculture, collected at least \$42,655 in federal subsidies. He also sued the BLM and individual staffers for “racketeering,” claiming they were conspiring to drive him out of business. In response to all this the BLM agreed in November 2002 to grant him additional grazing flexibility, award him additional rights of way and permits, waive 16 adjudications for grazing violations, settle lawsuits in which he had demanded internal documents, and guarantee that he need not converse with local BLM regulators but could take his grievances straight to the BLM’s director in Washington. On top of all this the agreement allowed Robbins to press forward with his racketeering suit. His end of the bargain required him to commit only unintentional grazing violations for two years; after that he could go back to intentional ones.

This placed the Department of Justice in the awkward position of having to defend local BLM staffers for trying to enforce regulations and the DC office for refusing to enforce them. Left to swing in the wind by their agency, the defendants contacted Public Employees for Environmental Responsibility. PEER took the matter to Interior’s inspector general, who, on February 10, 2005, reported that “normal processes were circumvented; negotiations were conducted by the Office of Solicitor without involving BLM in the process; concerns articulated by the Department of Justice and the BLM field office were ignored by the Office of Solicitor and were not communicated to the BLM decision-maker; and the interests of the BLM and those of individual BLM

employees were not adequately protected.” The Western Watersheds Project sued. All the heat and light frightened the Bush administration more than the prospect of offending the Alabama delegation; and, with inadvertent political assistance from Robbins, who persevered in his grazing violations, it rescinded the agreement.

Dulled though it is, NEPA remains a fearsome sword for litigators like Laird Lucas, who runs the public-interest law firm Advocates for the West and who represented the Western Watersheds Project when it sued the BLM over the Robbins agreement. Currently Lucas's firm and Western Watersheds have litigation or administrative appeals on about 15 million acres of public range in five western states, mostly in the sage-steppe ecosystem of the high desert. In the stunning, wildlife-rich Owyhee Mountains of southwest Idaho, they took on some of the loudest, nastiest property-rights zealots in the nation. Their victories here require the BLM to implement habitat protections until it complies with NEPA. In Nevada, Advocates for the West persuaded a conservative judge that the BLM had violated NEPA by not studying impacts on sensitive species, particularly sage grouse. In Utah, Advocates confronted gross NEPA violations on 2.5 million acres, winning a settlement in 2005 that commits the BLM to an EIS, new land-use plans, scientific monitoring, and a better grazing regime with input from and inspections by the Western Watersheds Project. The agencies don't take any public complaint seriously until there's a lawsuit, and NEPA is always the plaintiffs' most effective weapon.

The way livestock operators have done business on public lands is rapidly coming to an end,” comments Lucas. “Now they know that. The economics of the industry are driving them out anyway. Our hope is that people will recognize voluntary grazing buyouts as a solution.” These buyouts are happening all over the West, mostly with private money but occasionally with federal. In the Sawtooth National Recreational Area of central Idaho, the Western Watersheds Project sued the Forest Service for allowing grazing in fragile, high-elevation riparian areas in clear violation of its own EIS. When the allotment was closed by court order, local ranchers entreated their champion, Representative Mike Simpson (R-ID), to engineer a federal buyout. Accordingly, Simpson introduced the Central Idaho Economic Development and Recreation Act, which would designate 300,000 acres of wilderness and provide funds for voluntary grazing buyouts.

The Grand Canyon Trust and The Conservation Fund recently bought out grazing allotments on 850,000 acres of public land from the Utah border to the north rim of the Grand Canyon, thereby connecting eight wilderness areas, three national monuments, and two national recreation areas.

A \$100 million voluntary buyout bill for ranchers across the West, introduced by Representative Raul Grijalva (D-AZ), only sounds like a public rip-off. “The federal grazing program loses a quarter-billion dollars a year,” says Andy Kerr, director of a consortium of public-lands grazing activists called the National Public Lands Grazing Campaign, who thinks the GAO's estimate of \$123 million is way too conservative. “So the \$175 per AUM price in our [Grijalva's] bill is a fabulous deal for taxpayers. The reductions in the cost of managing the system will pay back the upfront costs of buying

out ranchers in a few years, and the ecological benefits will be huge.” While Kerr admits the bill appears dead in the water, he points out that at the request of wildlife advocates and ranchers, Senator Gordon Smith (R-OR) is preparing legislation to purchase grazing allotments in the Cascade-Siskiyou National Monument. “I’m optimistic that there are going to be site-specific buyouts legislated by Congress,” Kerr says. “The National Cattlemen’s Beef Association opposes buyouts, but on the Cascade-Siskiyou they’re neutral, which in DC means: ‘Do what you have to do, and we’ll look the other way.’” The association’s local affiliates are supporting the buyout, as are the Jackson County Commission, the governor, local state legislators, and the county’s two daily newspapers.

But Kerr cautions that buyouts can happen only if the ranchers want them, and that they will want them only if NEPA limits the number of cows they can run on public land. The current attack on NEPA is giving them second thoughts. What’s more, talk of large-scale federal buyouts is making private buyouts more difficult. “Stupid,” is how the National Wildlife Federation’s Hank Fischer describes legislation like Grijalva’s. “Every deal I negotiate now starts at \$175 an AUM, twice what the grazing is worth. I’ve never paid that much, and I’ve retired 21 allotments in the Yellowstone ecosystem—300,000 acres. I think bills like that are pushed by people who are well intended but politically naive.”

While many imperiled species don’t have time to wait for the political change that will allow large-scale government buyout legislation, that change is under way. “Big federal buyouts won’t happen quickly,” says Lucas. “But they might happen over a 10-year period. At some point the ranching community needs to say: ‘We’re old; our sons are not taking over; we’re not making money—let’s have a buyout program.’” Jon Marvel, director of the Western Watersheds Project, agrees. “If ranchers want this, it will happen,” he says. “We had thought [Representative Grijalva’s] legislation would be specific to Arizona because 150 ranchers were clamoring for it after the prolonged drought obliged the Tonto National Forest to stop all grazing.” But in 2005 the drought broke, the forest reopened, NEPA came under increased attack, and the hopes of ranchers sprouted along with the grass.

“I understand those kind of complaints [like Fischer’s],” declares grazing-reform activist and Arizona State University law professor Joe Feller, who assists conservation groups with buyouts. “But for this to really happen on a large scale, we’ll need a federal program.” Although he’s dealing with willing sellers and buyers, Feller encounters opposition to buyouts, especially from property-rights barkers. “People believe in ranching even though they’re losing money,” he says, “and they don’t like to see their neighbors bought out.” Feller reports that the Grand Canyon Trust used to get some cooperation from the Bush administration (which likes buyouts because they’re a popular way of dispensing pork to Republicans), but that all the noise from public-lands ranching preservationists has frightened it away. According to sworn testimony by Richard Nicholas, former public-lands chairman of the Utah Cattlemen’s Association, BLM director Kathleen Clarke encouraged his group to sue her agency after failing in

her own clandestine efforts to nix a large grazing buyout in the Grand Staircase-Escalante National Monument in Utah.

Kerr says this: “The public-lands ranching industry is going extinct, and [a federal] buyout is a fair way to address this inevitability. It's a politically elegant solution—the golden saddle. I tell my enviro friends, ‘Hey, it's only money.’ We environmentalists are always saying there is more to life than money, so why get hung up on giving these ranchers a generous deal?”

Kit Laney, whose 145,000-acre wilderness grazing allotment in New Mexico's Gila National Forest I inspected in 1994, considers himself a victim of NEPA, and in a way he's right. Egged on by the livestock industry and financially backed by his fellow New Mexicans and a property-rights outfit called the Paragon Foundation, he consistently ignored Forest Service citations and permit cancellations. There was endless litigation, all of it won by the Forest Service and environmental groups, using NEPA documents as evidence. Laney's in-our-face outlaw ranching ended in March 2004 when the Forest Service finally ran out of patience, rounded up his trespassing cattle, and sold them at public auction. For assaulting federal law-enforcement officers during the roundup, Laney was jailed for six months. Proceeds from the sale of his stock went to the government as partial reimbursement, leaving taxpayers about \$150,000 short.

In 2006 Black Canyon Creek runs clear and cold through a rapidly recovering riparian forest. The mongrel trout have been removed and the pure Gilas restored. The east fork of the Gila River looks like a cover of *Trout* magazine. And while middle Diamond Creek isn't running water quite yet, the grass component is back, knee-high last spring. The Nature Conservancy has acquired permits to five allotments (four of them at least partially in wilderness), by buying the ranches that held them; and it and its rancher tenant have voluntarily reduced cattle from 1,688 head to 230.

Meanwhile, the Forest Service has reduced the number of cattle on the old Laney allotment from 578 to the exact number this dry, fragile, beautiful land and its fish and wildlife can safely handle: zero.