National Letter

10 September 1996

The Honorable Sherwood L. Boehlert
2246 Rayburn House Office Building
Washington, DC 20515-3223

Dear Congressman Boehlert,

Thank you for the opportunity to review and comment on the public rangelands grazing bill compromise you released on 2 August. The Wildlife Society is an association of professional wildlife biologists and managers. Like the Senate-passed bill (S. 1459), this version favors livestock interests by limiting public involvement in grazing decisions and subsidizing public rangelands at the expense of fish, wildlife and recreational resources. The compromise bill will exacerbate current rangeland problems because it benefits livestock interests at the expense of multiple-use. We offer the following additional comments for your consideration.

- ***State fish and wildlife agencies and non-grazing permit holders should be included in grazing management decisions.*** Presently, the Resource Advisory Councils (RAC), whose members represent both livestock and conservation interests, advise the Bureau of Land Management (BLM) on range improvement and grazing management decisions. However, the compromise bill will transfer this advisory role to the Grazing Resource Committees (GRC) which would be dominated by permittees and lessees. Not only is the establishment of the GRC unnecessary, it undermines a successful working relationship between ranchers and conservationists. More importantly, under your bill, a state agency can participate in actual grazing management decisions only when the agency is managing lands within the area covered by the allotment management plan. This restriction unduly limits the ability of state agencies to sustain fish and wildlife populations and restore degraded rangelands, primarily riparian sites.

- ***The authority to appeal a grazing decision should be available to all interested individuals and organizations.*** Appeals exist as a useful tool for suspending a grazing decision until a controversy is resolved. Thus, by limiting the appeal authority to only those individuals with an adversely affected interest non-grazing permit holders cannot adequately influence grazing decisions.

- ***Conservation use permits should be available to conservation organizations for purchase and should exist for a ten year period.*** A majority of the western state fish and wildlife agencies do not have adequate funds to purchase needed conservation use permits. Therefore, exclusion of non-governmental organizations or land trusts from the program minimizes opportunities for resting grazing allotments. Also, current federal grazing legislation allows for a ten year conservation period. The House version cuts that length in half.

- ***Livestock permittees could restrict multiple uses of range improvements.*** Livestock permittees could impact fish and wildlife populations on federal lands via water depravation, for instance through the installment of a stock tank that discriminates against wildlife use. Moreover, if the BLM and U.S. Forest Service change grazing management plans to protect fish and wildlife populations, federal taxpayers might be required to compensate permittees who are asked to remove inappropriate "range improvements."

- ***The compromise still limits application of the National Environmental Protection Act (NEPA).*** Range improvements, grazing permit/lease renewals and seasonal adjustments in stocking rates are not recognized as a major Federal action in this bill. All three activities can directly impact the level of vegetative production, soil fertility and water quality on public rangelands if they are not properly coordinated with multiple use objectives. Hence, these grazing decisions must be under authority of NEPA.

- ***The compromise requires extensive monitoring to modify grazing practices.*** Not all portions of the public rangelands can sustain the same intensity level of livestock grazing. Monitoring is expensive and past monitoring budgets have been inadequate to scientifically determine at what stocking level an allotment can be grazed, if at all. Resource managers need to make stocking level determinations based on available resources and expertise.

Many people are unaware of the distinct differences between healthy and unhealthy rangelands and, therefore, do not recognize a need for restoring western rangelands to a more productive level. Rangelands play a pivotal role in the maintenance of biological diversity and associated recreation and services. Further degradation to these lands via overgrazing and stream-side erosion by livestock will not only damage the viability of rangelands, but it will impact water quality, recreational activities that provide economic benefits to society (e.g., fishing, hunting and wildlife viewing) and even future opportunities in both livestock and wildlife grazing.

The Wildlife Society urges you to conserve America's rangelands by withdrawing legislation that fails to enhance their ecological condition. We urge you to consider The Wildlife Society's position statement on livestock grazing in the Western United States (enclosed). This document identifies many factors that should be considered when developing public policy for western rangelands.

Sincerely,

Thomas M. Franklin
Wildlife Policy Director

Enclosure

properties or can afford to buy them and a number of western states, including Wyoming and New Mexico, oppose their purchase. Organizations like the Rocky Mountain Elk Foundation and The Nature Conservancy that want, and can afford, such permits to restore or protect fish and wildlife would not be authorized to hold them.

The bill blocks implementation of current Interior Dept. regulations designed to allow livestock operators, as well as conservation organizations, state agencies and others, to hold permits for conservation use. See. § 822(b) (reinstating the regulations in place before issuance of Secretary Babbitt's rules). The proposed bill could be read to prohibit even a rancher who *voluntarily* seeks a conservation use permit from obtaining one.

4. Does the bill guarantee full public participation in grazing management decisions?

No way. Like S. 1459, this bill will drastically cut existing opportunities for public involvement in grazing decision-making on National Forests and BLM-managed lands. In particular, it provides *no* opportunity for the public to participate until *after* a proposed decision has been arrived at by the agency working together with the affected permit holder. See § 863(b). And even then, the only opportunity guaranteed is the opportunity to protest. The current right to appeal the decision to an administrative law judge, as well as in court, is by no means preserved.

Livestock permittees, in contrast, not only get to participate in the development of decisions (§ 858(b)), they get their own single-interest grazing councils to advise the agencies on critical management decisions involving grazing on the public lands. See § 872.

5. Does the bill limit the public's access to public lands for recreational purposes?

For sure. The bill prohibits the agencies from *ever* making access by members of the public to *their* lands a condition of a grazing permit unless the federal government agrees to pay the permittee "adequate" compensation. See § 858(a)(3). Even voluntary agreements would be precluded. Giving grazing permittees this brand new right to federal tax dollars when federal land management budgets are getting ever tighter would effectively mean the public will have no recreational access to millions of acres of national forests and other public lands that are surrounded by private lands.

6. Does the bill grant title to so-called range "improvements" to grazing permit holders?

Absolutely. The bill gives private ranchers title to fences, water troughs, and other projects done on the public's lands to make them more productive for livestock. See § 852(b)(4). Giving ranchers such title places federal taxpayers at risk of expensive "takings" claims whenever federal agencies act to limit grazing to protect fish and wildlife habitats or other environmental values of the public's lands. In short, if the bill

NRDC

The Only Thing the "New" Grazing Bill Compromises is the Environment

At the request of Speaker Gingrich, Rep. Boehlert (R-NY) has negotiated a "new" grazing bill with western Republicans and the livestock industry. The Speaker has promised to bring the bill to the House floor for a vote in September. While the bill is not as bad as what the Republicans started with, it is still very bad – both for the environment and the taxpayers. Rather than a step forward toward responsible grazing reform, the new bill simply represents a slightly smaller step backward than the bill (S. 1459) passed by the Senate and the House Resources Committee.

Don't be fooled into thinking this bill is good for the environment. Take a look at what it *really* does.

1. **Does the bill exempt grazing decisions from existing environmental review requirements?**

Absolutely. The bill's plain language explicitly exempts key on-the-ground management decisions, such as seasonal adjustments in livestock numbers and how much poison to use to kill vegetation livestock don't like to eat, from requirements of the National Environmental Policy Act (NEPA). See §§ 852(e), 855(c), 858(c). By exempting these decisions from the definition of "major federal action" under NEPA, the new grazing bill frees land managers from the need to analyze the environmental impacts of such decisions in order to demonstrate that they will not have significant adverse effects on the environment. Thus, no matter what effects these actions have, managers will be able to avoid preparing any environmental analysis. As a result, livestock are certain to cause additional damage to the fish, wildlife, watersheds and other public values of our National Forest and BLM-managed lands.

2. **Have the grazing fee provisions – which guarantee that grazing fees will be well below market value – been changed from the Senate bill?**

Not at all. This bill simply incorporates S. 1459's fee provisions. See § 859. As a result, taxpayers would continue to underwrite the costs of private grazing on the public's lands to the tune of millions of dollars annually.

3. **Does the bill encourage conservation use of the public's lands?**

Barely. It would allow a state that owns "base property" to obtain permits for "conservation use" for a fraction of the total grazing use in the state, if non-use is provided for in the land use plan for the area. See § 842. However, few states own such

is passed, taxpayers could be forced to pay permittees to *stop* harming the public's resources.

7. Does the bill preserve public ownership of water rights on federal lands?

Not really. The bill clarifies that the United States may apply for water rights on federal lands, but only in accordance with state laws. Equally important -- and far worse for the environment -- the range improvements the bill gives livestock operators title to include water developments. And, along with title, the bill explicitly gives livestock operators the right to control access to that water. See §§ 834(19), 852(b)(5). With these rights, permittees could demand tax dollars whenever federal land managers limit livestock access to "their" water in order to protect the public's lands or resources.

8. Does the bill establish a process for identifying which public lands are suitable for grazing and which are not?

Definitely not. The absence of such a process is the single biggest flaw of the current federal grazing program. Not all public lands are capable of sustaining livestock grazing over time; still others should not be grazed because of the significance or sensitivity of their non-livestock uses such as for recreation and wildlife habitat. This bill not only fails to provide for such a process, it will make it far harder than it already is to reduce livestock grazing that is harming publicly-owned resources.

9. Does the bill establish strong, environmentally responsible national standards to govern grazing management decisions?

Absolutely not. At best, this bill provides for development of standards at the state or local level. See § 835(a). It also directs that these standards must comply with the new objectives which differ significantly from the statutory objectives that currently apply to the federal grazing programs. As a result, the bill ensures that the standards developed pursuant to Secretary Babbitt's new grazing regulations will have to be junked, notwithstanding all the time and effort that private ranchers, members of the public, agency employees and others devoted to their development.

What's more, the bill's new objectives are designed to subordinate the needs of fish and wildlife to providing "stability to the [public land] livestock industry," and the "safeguard[ing]" of current grazing levels. See § 831(a)(4) . Consequently, the new standards will do nothing to halt ongoing grazing abuse of the public's lands -- let alone assure their rehabilitation and protection in the future.

For more information contact: Johanna Wald in NRDC's SF office at 415-777-0220 or Sharon Buccino in NRDC's DC office at 202-289-6868.

8/19/96

BLM Analysis

PUBLIC RANGELAND MANAGEMENT ACT: EFFECTS ON MULTIPLE USE MANAGEMENT OF PUBLIC LANDS

	SECTION
Severely limits public involvement in public land management	
• The vast majority of those who use and care for publicly owned rangelands may only become involved by protesting proposed grazing decisions and then only if they identify themselves in writing as "affected interests" for that allotment. Even state fish and game agencies would need to identify themselves as "affected interests" and then protest a proposed decision in order to have a voice in wildlife management on public rangelands.	864
• Specifies that only those who protest a proposed decision and are "adversely affected" by a final decision may appeal. All other citizens are excluded from taking an active role in the appeals process; leaving no recourse except litigation.	866(a)
• Unclear wording virtually assures litigation. Could be interpreted to relieve BLM of any obligation under the National Environmental Policy Act to analyze the effects of most grazing actions in a public forum.	(Sec. 852(e)(1), 855(c)(1), 858(c)(1))
Limits the ability of resource professionals to protect the environment	
• Would require inordinate amounts of cost-prohibitive monitoring, rangeland studies, and consultation before management actions designed to protect the environment could be implemented.	834(18) (20), 837(c), 853(c)
• Makes it nearly impossible for BLM to manage livestock that are subleased by a permittee to another rancher. Since permittees would not be required to own or control subleased livestock, BLM would have no way of ensuring that they comply with the terms and conditions of a permit.	856
• Would require that detailed decisions such as amount of grazing use, numbers of animal unit months, available seasonal forage be made within land use plans (which cover between 2-5 million acres). Land use plans would be amended continually; virtually guaranteeing needless delay, excessive costs, and litigation.	836(b)(2)
Moves public land management away from principles of multiple use	
• Allows permittees to own permanent range improvements on public lands. In contrast to commonly accepted tenant-landlord law this provision could grant permittees a private property right on public lands.	852(3)
• Regardless of other multiple uses or values, the definition of livestock "carrying capacity" would allow the "maximum seasonal stocking rate that is possible without inducing long-term damage to vegetation or related resources."	834(17)
• Creates hundreds of costly grazing advisory councils and mandates that 50% of the members are permittees/lessees. These duplicate Resource Advisory Councils and provide ranchers with a special forum that no other public land users enjoy.	872
• Broadly exempts livestock grazing from the oversight, appeal, and enforcement requirements that apply to other public land users. For example, with few exceptions all appeals automatically "stay" a decision pending action on the appeal.	866(b), 852, 857(b), 858, 852(b)
• Allows permittees to reap high profits by subleasing grazing privileges to other ranchers without any return to taxpayers.	856

Questions? Contact:

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TWS

To: tws-l post
From: tws@wildlife.org (The Wildlife Society)
Subject: grazing bill analysis

Congressman Boehlert (R-NY) is circulating a draft Public Rangeland Management bill that is intended to be a compromise of S. 1459 (S. Rpt. 104-181), which the Senate passed on 21 March. On 25 April the House Resources Committee approved a bill very similar to S. 1459 (H. Rpt. 104-674). These bills would effectively overturn Secretary Babbitt's Rangeland Reform rules that currently are in effect.

The Boehlert compromise grazing bill is supported by the Speaker of the House and may receive a floor vote as early as 11 September. It is not yet clear whether the bill will be addressed as stand alone legislation or if it will be attached to the Omnibus Parks bill (H.R. 1296) that is in conference committee.

We offer you the following comparative analysis of the grazing bills for your information. Wildlife professionals are contacting Rep. Boehlert, Speaker Gingrich and President Clinton through letters that express their concerns about the compromise bill.

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Washington, D.C. 20515-3223

The Honorable Newt Gingrich
Speaker of the House
2428 Rayburn House Office Building
Washington, D.C. 20515-1006

President William J. Clinton
The White House
1600 Pennsylvania Ave.
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COMPARATIVE ANALYSIS OF THE SENATE AND HOUSE GRAZING BILLS

Senator Domenici's version (S. 1459):

1) Allows only ranchers to officially protest grazing decisions, and appeals are most likely restricted to ranchers as well.

2) Prohibits the purchase of grazing permits for conservation use purposes. Also, it is not clear whether it will authorize conservation use for ranchers at all, but the bill does threaten to revoke permits if ranchers rest their allotments longer than two years.

3) Appears to restrict the purchase of grazing permits for the purpose of range improvements only to ranchers.

4) Completely exempts grazing permit decisions from National Environmental Protection Act (NEPA). Only if the rangeland manager finds it necessary will NEPA be allowed to conduct an environmental assessment for a grazing decision.

5) Does not make it a condition for livestock operators to relinquish their water rights to another party, including the Federal government, when receiving a grazing permit or range improvement permit.

6) Does not make public access across private lands a condition of a lease.

7) Will establish a new and separate but undefined system for managing the national grasslands under Title II--most of the grasslands occur within the Dakotas and lie under the authority of the U.S. Forest Service (USFS).

Congressman Boehlert's compromise version:

1) Allows individuals and organizations with an affected interest to protest grazing decisions but limits appeals to only those with an adversely affected interest (permittees).

2) Allows ranchers and states, but not conservation organizations, to purchase a grazing permit for conservation purposes. In reference to state agency participation, conservation use or non-grazing use must be provided for in the land-use plan. Also, allowed conservation use would be extended from two years to five years but current regulations allow for a ten year period.

3) Permits non-ranchers to purchase grazing permits for the purpose of making range improvements.

4) Makes inconspicuous exemptions from NEPA--range improvements, grazing permit/lease renewals and seasonal adjustments in stocking rates are not considered as a major Federal action under NEPA.

5) Makes clear that the Federal government does have water rights and, in accordance with state law, can defend them in court.

6) Makes clear that public access across private lands can be a condition of a lease if the Federal government provides monetary compensation to the lessee.

7) Removes all references to national grasslands by eliminating Title II.

Both Senate and House compromise versions:

1) Reduce the initial federal grazing fee of $1.80/AUM to $1.63/AUM. This is 1/4 to 1/3 less than comparable state and private grazing fees and also less than the historically low federal grazing fees implemented between 1986 and 1994. The fee will change each year based on a formula calculation that incoporates the production values of beef cattle over a 3-year period.

2) Define grazing as "the number of animal unit months of livestock grazing on Federal land...attached to base property owned or controlled by a permittee or lessee."

3) Restricts organizations and non-grazing permit holders from participating in allotment-level grazing decisions. State fish and wildlife agencies can participate but only when the state manages lands within the area covered by the allotment management plan. Presently, federal grazing regulations allows non-grazing permit holders participate in decisions affecting permit reviews and modifications.

4) Will establish Grazing Resource Committees (GAC) that will advise the Bureau of Land Management (BLM) and USFS on range improvement objectives, the development and implementation of grazing management programs, and range management decisions and action at the allotment-level. Half the membership will include permittees or lessees; half will represent other interests, provided that one county or state officer is included and all members are knowledgeable about grazing management and range improvement practices. The existing Resource Advisory Council (RAC) members represent both livestock and conservation interests. Establishment of GAC will negate the effectiveness of RACs.

5) Gives livestock permittees title to "range improvements," such as the installment of water troughs or tanks and fences. If federal agencies alter grazing management plans to protect fish and wildlife, the permittees can claim their grazing loss as a takings issue and receive monetary compensation from taxpayers.

6) Requires land managers to perform extensive monitoring under guidelines not yet determined before they can modify harmful grazing practices.

7) Requires monitoring data to documetn changes in grazing management decisions.

8) No system would be established to identify which public lands are suitable for livestock grazing.