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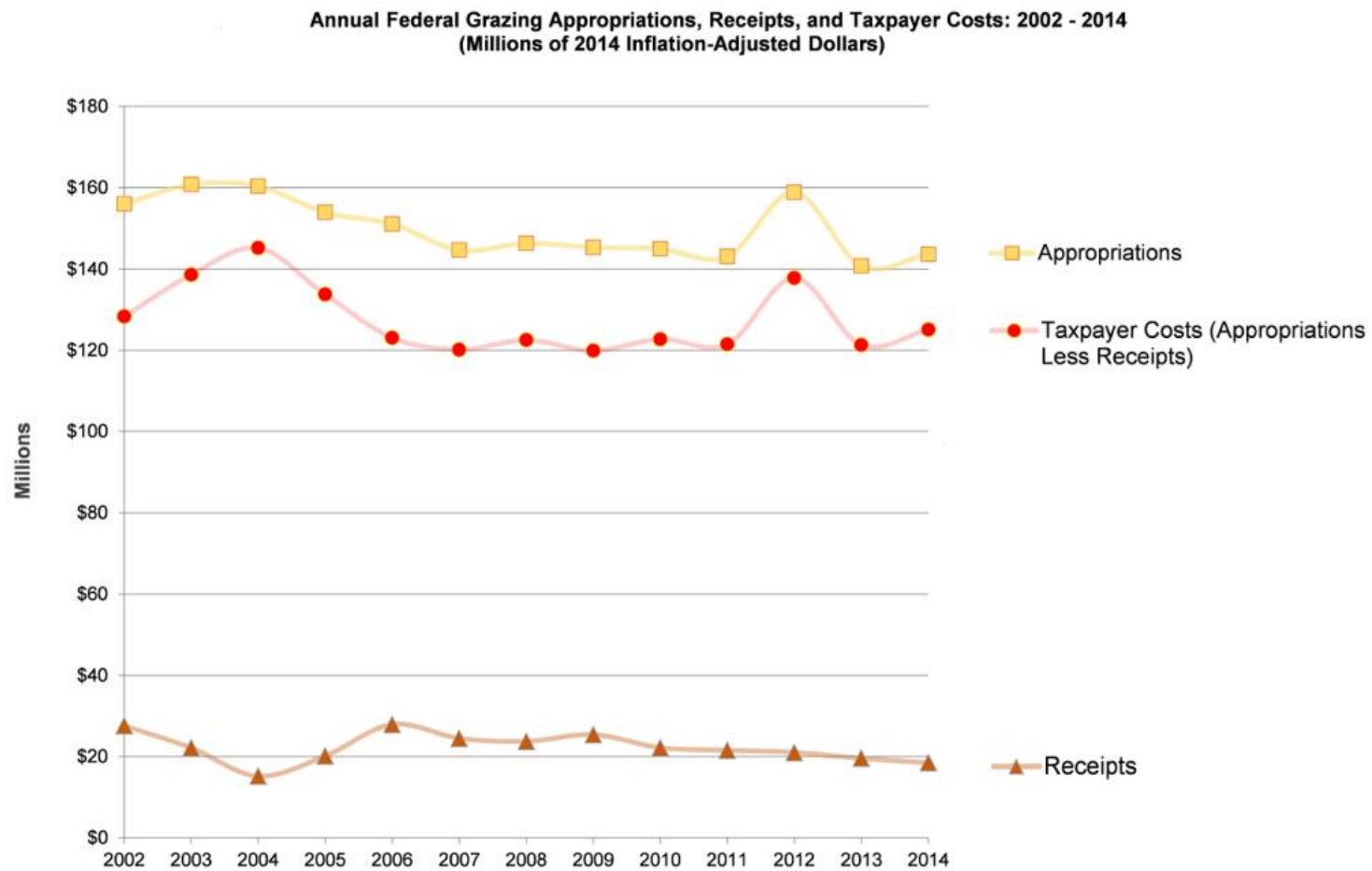
LIVESTOCK GRAZING 101: LAWS, REGULATIONS AND RULES GOVERNING LIVESTOCK GRAZING ON WESTERN PUBLIC LANDS

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CLF Webinar, October 15, 2019

GRAZING ON FEDERAL PUBLIC LANDS

- 173 million acres of BLM Public Lands in Western U.S (excl. AK)
- BLM permits grazing on approx. 155 million acres
- 17,923 grazing permits and leases (2019)
- 12,343,413 Active and 1,980,410 Suspended AUMs (2019)
- Grazing receipts for FY 2018 - \$14,686,966
- Total allocation to States - \$2,438,489
- Cost of Administering BLM's Grazing Program (2014) - \$143,600,000





GRAZING IS PRIVILEGE, NOT A RIGHT

- Taylor Grazing Act – grazing preference “shall not create any right, title, interest, or estate in or to the lands”
- FLPMA – same
- *Omaechevarria v. Idaho*, 246 U.S. 343, 352 (1918); *U.S. v. Fuller*, 409 U.S. 488, 494 (1973); *Swim v. Bergland*, 696 F.2d 712, 719 (9th Cir. 1983); *Osborne v. United States*, 145 F.2d 892, 896 (9th Cir. 1944); *Diamond Bar Cattle Co. v. U.S.A.*, 168 F.3d 1209, 1217 (10th Cir. 1998);





CONGRESS HAS PLENARY AUTHORITY TO REGULATE

“The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.”

Property Clause, U.S. Constitution, Art. IV,
§ 3, cl. 2



STATUTES AND REGULATIONS

- Taylor Grazing Act
- FLPMA
- Rangeland Reform Regulations '95
- 2005 Grazing Regulations
- NEPA
- ESA
- BLM's Range Management Regulations

TAYLOR GRAZING ACT

- Stopped era of unregulated livestock grazing and homesteading of western public lands
- Segregated lands into grazing districts
- Requires a grazing permit or lease for lawful livestock grazing



FEDERAL LANDS POLICY AND MANAGEMENT ACT

- Requires valid permit/lease and annual authorization
- Requires all grazing to be consistent with governing resource management plans
- Multiple-Use Sustained yield
 - Requires evaluation of suitability
 - Balance competing needs and resource values
 - Manage public lands in a manner that will best meet the present and future needs of the American people
- Avoid Unnecessary and Undue Degradation and No Permanent Impairment to the Environment



RANGELAND REFORM '95

- Requires BLM to identify and adopt Standards for Rangeland Health and Guidelines for Livestock Grazing Management
- Grazing must not impair Standards and Guidelines - watershed function, riparian habitat, water quality or wildlife habitat.
- Fundamental of Rangeland Health require BLM to take “appropriate action” to revise grazing management “as soon as practicable” upon finding that grazing is causing violations of rangeland health standards and guidelines
- “Appropriate action” – implementing grazing reductions or management changes that will result in significant progress toward fulfillment of S&G
- BLM must incorporate into permits T&C needed to ensure conformance with FRH
- Advocates for the West enforced this requirement throughout southern Idaho and elsewhere – e.g., *W. Watersheds Project v. Guerrero*, Case No. 02-0521 (D. Id. 2002); *W. Watersheds Project v. Bennett*, Case No. 04-0181 (D. Id. 2005); *W. Watersheds Project v. Salazar*, Case No. 08-0435 (D. Id. 2012).





2005 GRAZING REGULATIONS

- Pres. Bush and DOI Sec. Norton sought to roll back '95 Grazing Reform Regulations
 - Weaken FRH
 - Undermine public participation
 - Transfer ownership in range developments
- *W. Watersheds Project v. Kraayenbrink*, 632 F.3d 472 (9th Cir. 2011) – 2005 Regs violated NEPA and ESA – vacated and remanded
- **WARNING:** Find the correct regs – i.e., regulations published in 2005 and not later



NEPA APPLIES TO GRAZING

- NEPA requires all federal agencies to prepare a detailed and thorough description and analysis of environmental consequences of proposed federal actions
- EIS before taking any major federal action, and EA to determine if impacts are significant
- NEPA applies to BLM's issuance of grazing decisions and permits
 - Bookmark Grazing Rider and 2015 National Defense Authorization Act
- BLM usually prepares NEPA when issuing new grazing decisions under grazing regs



ESA APPLIES TO GRAZING

- ESA provides that all federal agencies “shall utilize their authorities. . . by carrying out programs for the conservation of endangered species”
- Each Federal agency shall “insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species.”
- The consultation requirement applies to grazing. *Kraayenbrink; Pacific Rivers Council v. Thomas*, 936 F. Supp. 738, 745 (D. Idaho 1996).
 - Permits vs. Annual Authorizations
 - Discretionary agency decisions - bookmark



RANGE MGMT REGULATIONS

- Qualifications for holding permit/lease
 - Citizen or intent to become citizen
 - Corporation or association authorized to conduct business
- Base Property – land capable of production of crops/forage needed to support authorized use for specific time frame
- Permit and Annual Grazing Authorization
 - Permits – usu. 10 years
 - AGP/AOI – annually before turnout
 - BLM grazing year – March 1-February 28
- 43 CFR part 4100



RANGE MGMT REGULATIONS

Proposed Decisions



Protest



Final Decisions



Appeal to ALJ



Appeal to IBLA



Federal Court

GRAZING RIDERS AND NDAA

- Since 2003-2004, annual appropriations rider that BLM interpreted to require it to re-issue grazing permits for expired, waived or transferred permits
- 2015 National Defense Authorization Act – permanently amended FLPMA to codify waiver – 128 STAT 3762, P.L. 113-291, Section 3023
 - CONTINUATION OF TERMS UNDER NEW PERMIT OR LEASE.—The terms and conditions in a grazing permit or lease that has expired, or was terminated due to a grazing preference transfer, shall be continued under a new permit or lease until the date on which the Secretary concerned completes any environmental analysis and documentation for the permit or lease required under the National Environmental Policy Act . . . and other applicable laws.
- No discretion = No NEPA, FLPMA, ESA, etc.
- Changed grazing landscape



CONCLUSIONS

- NEPA, FLPMA, ESA and other environmental laws apply to livestock grazing – unless they don't
- Once BLM issues a grazing decision under 43 CFR 4160, then all laws apply
- FLPMA – RMP consistency and FRH have provided most traction
- NEPA – BLM needs to take a hard look at direct, indirect and cumulative impacts of livestock grazing decisions
- ESA – If T&E species, BLM must consult with FWS and National Marine Fisheries
- Engage the Process – Protest, Appeal, Federal Court litigation



QUESTIONS?

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