

Washington Congressman Introduced Bill to Permanently Retire Public Grazing Land By Caitlin Skulan

On January 30, 2020 Washington Congressman Adam Smith introduced a grazing bill with the potential to devastate grazing in Western states. H.R. 5737 also known as the “Voluntary Grazing Permit Retirement Act” (“the Act”) was introduced on January 30, 2020 in an effort to permanently retire public grazing land. As Congressman Smith explains it, livestock grazing on public land can lead to conflicts with multiple uses and impacts wildlife habitat and recreational opportunities. The Congressman believes that the best way to remedy these conflicts is to “simply remove livestock grazing.”

The Congressman’s breakdown of the act can be found on Congressman Adam Smith’s [website](#).

I. How it Works

The purpose of the “Voluntary Grazing Permit Retirement Act” is to provide a direct method to allow the permanent retirement of grazing permits, a process which is currently not allowed in some places, and unnecessarily difficult, or uncertain in others, according to Congressman Smith. Currently, environmental groups are allowed to purchase grazing permits from ranchers, but they cannot retire them without Congressional authorization.

The Act would allow permit holders on *any* federal lands managed by the Department of Agriculture and Department of Interior in 16 Western States (Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming) the option to voluntarily waive their permits to graze on federal lands in exchange for market value compensation paid by private parties. The federal agency in charge of the associated grazing allotment would then be directed to retire the associated allotment from any further grazing activity. The Act is proposed as a solution that “benefits the environment, wildlife, and ranchers.”

The Act claims to provide permittees and lessees of public grazing land increased flexibility and opportunities when making decisions about the future of their livestock operations. However, according to the Act, any waiver by a permittee or lessee in exchange for monetary compensation by a third party will result in the *permanent* end of livestock grazing on the grazing allotment or portion thereof. If the allotment is covered by multiple grazing permits, then the Secretary responsible for that allotment must permanently reduce the grazing level of the allotment to reflect the retired permit. Thus, if the waiver is exercised by a permittee or lessee, it will result in less opportunities to graze on public land in the future, actually limiting the flexibility and opportunities public lands would offer in ranchers’ future livestock operations.

The Act applies limitations on the number of permits that may be retired in any fiscal year. The Secretaries of Interior and Agriculture are limited to accepting 100 grazing permits aggregate in the 16 Western States with no more than 25 grazing permits for land located in whole or in part in any one state per fiscal year.

The Secretaries must also ensure the permanent retirement of any grazing permit retired prior to the enactment of the Act into law.

The full text of the Act is available at: <https://www.congress.gov/bill/116th-congress/house-bill/5737/text>

II. Support

The Act is endorsed by numerous environmental, conservation, and wildlife groups including: the Sierra Club, Natural Resource Defense Council, Defenders of Wildlife, the Humane Society of the United States, the American Bird Conservancy, Animal Welfare Institute, Center for Biological Diversity, Wilderness Watch, the Lands Council, Southern Utah Wilderness Alliance, Western Watersheds Project, and Oregon Natural Dessert Association. The Act also currently has 10 Democratic cosponsors.

III. Opposition

The National Cattlemen’s Beef Association and Public Lands Council announced their opposition to the Act. Local cattle and ranching associations are sure to follow suit.

IV. Legal Conflicts

The Act calls into question the purpose of the Taylor Grazing Act and the Federal Lands Policy and Management Act. Contrary to Congressman Smith’s assertion that cattle grazing interferes with “multiple use” of public lands, both laws expressly recognize grazing as an intended multiple use. Both laws also expressly state the necessity of safeguarding grazing on federal public land.

While open range grazing was part of the settlement in the west, the concept that cattle grazing was “a valuable use” of public land first appeared in 1916 with the passing of the Stockraising Homestead Act.¹ The first designation of federal public land for grazing occurred in 1917.² The designations of these “stockraising lands” were made by the United States Geological Survey and were based on the capability of the land for supporting livestock or supporting other agricultural practices.³ These designations made up for the land later characterized as chiefly valuable for grazing and were the foundations for the grazing districts established under the Taylor Grazing Act.⁴

The Taylor Grazing Act (TGA), enacted in 1934, gave the Secretary of Interior the Authority to divide the public range lands into grazing district, to specify the amount of grazing permitted in each district, to issue leases or permits to graze livestock, and to charge reasonable fees for the use of the land.⁵ In addition to classifying those federal lands that were valuable for

¹ See 39 Stat. 862 (1916).

² 1918 U.S.G.S. Ann. Rep. 127.

³ 46 I.D. 252 (1917); see also To Provide for the Orderly Use, Improvement, and Development of the Public Range, Hearing on H.R. 6462 Before the Senate Comm. on Public Lands, 73rd Congress., 2d Sess. 49-51 (April 20 to May 2, 1934).

⁴ U.S. Department of Interior. *Authority for the Bureau of Land Management to Consider Requests for Retiring Grazing Permits and Leases on Public Lands*. M-37008. March 13, 2003.

⁵ See 43 U.S.C. § 315.

grazing, the TGA required the Secretary of Interior to adequately safeguard grazing privileges.⁶ Secretary of Interior “shall make provisions for the protection, administration, regulation, and improvement of such [] grazing districts.”⁷ The TGA additionally mandates that half of grazing fees obtained from both grazing permits and grazing leases be used for the rehabilitation, protection, and range improvements on grazing lands.⁸ This includes seeding and reseeding, fence construction, weed control, water development, and fish and wildlife enhancement.

The passing of the Voluntary Grazing Permit Retirement Act would remove the Secretary’s ability to regulate and safeguard BLM rangeland as required by the TGA. The Act would place such power in the hands of private citizens and third parties, likely environmental groups. Additionally, the BLM would lose control of the management of its own lands and would lose future permit fees which help fund public land management.

The Federal Land Policy and Management Act (FLPMA), enacted in 1976, established the multiple-use mandate for federal public lands to serve present *and future* generations. Under FLPMA, it is the executive branch that was given the discretionary authority to dedicate federal lands for specific purposes.⁹ It also stated that management must be on the basis of multiple use¹⁰, which was defined to include rangeland.¹¹ FLPMA further defines “principal and major uses” of federal public land to include livestock grazing.¹² When enacting FLPMA, Congress expressly protected the grazing permit system first contemplated in the TGA.¹³ Implementation of the Voluntary Grazing Permit Retirement Act would be in clear violation of FLPMA by eliminating grazing as an intended and protected multi-use from future generations and by removing establishment of appropriate multi-uses on federal land from the executive branch, in this case, the Department of Interior (BLM) and the Department of Agriculture (Forest Service).

The Act also displays a clear misunderstanding of how grazing permits work. Grazing permittees are generally issued grazing permits for a period of ten years.¹⁴ Grazing permits are by no means a permanent property right nor even a permanent license. Rather, they are akin to a nonexclusive, limited property right, similar to a life estate or termed license, with a future interest reverting to its grantor. Grazing permittees receive nonexclusive, termed and conditioned rights to graze cattle on federal property. The managing agency (BLM or Forest Service) retain a concurrent interest to administer the property for other uses such as recreation and wildlife. The agencies also retain the ability to suspend, cancel, or alter the terms of a grazing permit if the circumstances warrant.¹⁵ At the end of a permit term, the managing agency can then reissue the grazing permit¹⁶, withdraw the land from grazing¹⁷, or issue a new grazing

⁶ See 43 U.S.C. § 315b.

⁷ See 43 U.S.C. § 315a.

⁸ See 43 U.S.C. § 315i; see also 43 U.S.C. § 1751(b); see also 43 C.F.R. § 4120.3-8.

⁹ See 43 U.S.C. § 1701(a)(4)

¹⁰ See 43 U.S.C. § 1701 (a)(7).

¹¹ See 43 U.S.C. § 1702(c).

¹² See 43 U.S.C. § 1702(l).

¹³ See § 701 (a), Pub. L. 94-479 (1976); see also § 701(c), Pub. L. 94-479 (1976).

¹⁴ See 43 C.F.R. § 4130.2(d); see also 36 C.F.R. § 222.3(c)(1).

¹⁵ See 43 U.S.C. § 1752(a); see also 43 C.F.R. § 4100.

¹⁶ See 43 U.S.C. § 1752(c)(1); See also 43 C.F.R. § 4130.2(e)(2).

¹⁷ See 43 U.S.C. § 1714(a).

permit with the same or altered terms to the former permittee or a new permittee as the circumstances warrant.¹⁸

Congressman Smith claims that the Voluntary Grazing Permit Retirement Act would provide a direct method of grazing retirement and eliminate the current and “unnecessarily difficult” retirement process. However, the grazing retirement process is intentionally “unnecessarily difficult.” The process and its reasons are best described in this Office of the Solicitor’s Opinion: <https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/M-37008.pdf>.

Under longstanding law and traditions of the United States, grazing is an important and protected use of federal public land. Any administrative action resulting in the retirement of grazing land must not be contrary to the purposes of the TGA. Any such decision is considered temporary absent an act of Congress, because it was Congress’s intent in enacting the TGA and FLPMA that grazing on public lands remain safeguarded. This Act, as proposed, is contrary to those safeguards.

The passing of the Voluntary Grazing Permit Retirement Act would take all administrative decision making regarding subject grazing permits away from the managing agency and Congress. It would place that decision making in the hands of a permittee with a limited interest in the allotment and a third party seeking to purchase the retirement of the permit. As drafted, the Act would also compensate the holder of the permit, a temporary interest, rather than the owner and manager of the land, the managing agency and federal government. The Act ignores the safeguards mandated in the TGA and FLPMA and seeks to overturn a long standing and valuable use of federal land.

V. Industry Conflicts

Contrary to statements by Congressman Smith misconstruing the importance of public land use to beef production¹⁹, public land grazing is integral to the American Beef Industry. Livestock grazing occurs on well over one quarter of a billion acres of federal land, ten times the size of Pennsylvania. Nearly all these lands are in the Western States identified in the Act. Domestic livestock grazing occurs on about 60% of national forest lands and about 90% of the BLM managed lands in the lower 48 states, pursuant to over 25,000 grazing permits encompassing over 22 million “animal unit months” (AUMS)²⁰ for forage harvesting.

While only approximately 3% of the cattle in the beef industry may be present on public grazing lands, the Act shows a severe misconception of how the American Beef Industry operates. Almost all beef cattle in the Western United States spend some portion of their life on public lands. In fact, most cow/calf operations, or those operations which breed herds of female

¹⁸ See 43 U.S.C. § 1752(c)(1); See also 43 C.F.R. § 4130.2(e)(2).

¹⁹ Congressman Smith justifies retirement of Public Grazing Lands by stating that Public land grazers are a minority of livestock producers in the West and the Country with only 3% of the beef produced in the County utilizing public lands. <https://adamsmith.house.gov/cache/files/5/b/5bc21976-da9e-4214-9e8e-e41b12e493d6/C6A591068E2A8117A31D4FF242A54437.voluntary-grazing-permit-retirement-fact-sheet.pdf>

²⁰ An AUM is generally defined as the amount of forage eaten by one cow or five sheep/goats in one month. For purposes of cattle operations, one AUM also includes a mother cow and calf pair.

cows and rear calves that will become part of the beef market are dependent in whole or in part on Public Land Grazing Permits.

Some Western States are more dependent on Federal Land than others. In Nevada, for example, 85% of the land is owned by the federal government and nearly all ranchers graze their livestock, at least in part on public land. BLM alone administers 668 grazing authorizations on 797 grazing allotments in Nevada.²¹ The ability to permanently retire 25 grazing permits in Nevada per year could devastate the Nevada cattle industry and eradicate the long-standing tradition of cattle ranching in Nevada in as little as 27 years.

VI. Environmental Conflicts

While the Voluntary Grazing Permit Retirement Act claims to be for the benefit of the environment, as is also evident from its general support by many environmental organizations, the act fails to recognize the ecological benefits of grazing on Western ecosystems, especially Western grasslands.

A. Fire Fuel Management

Federal land grazing is an important, often underutilized tool to manage wildfires. An article by the University of California Cooperative Extension outlines many of the ecological benefits of livestock grazing related to wildfires.²² For instances, livestock grazing reduces fire fuels more effectively than most mechanical methods. Further, grasslands that have not been subject to grazing have higher levels of fine fire fuels and shrub coverage, which create a higher fire hazard.

Oregon State University Professor, Steve Sharrow studied the effects of targeted grazing for coniferous forest management in Western North Africa. The study was in response to the public concern in the United States for using chemical or mechanic techniques to manage federal forest lands.²³ Among the observed uses of grazing were removal of biomass to prepare a site for planting seedlings, reduction of competition for young trees, removal of shrubs, reduction of slash, and removal of forest floor and ladder fuels to reduce wild fire risk or to create fire breaks. The reduction of vegetative biomass and ladder fuels through grazing can help minimize the risk of destructive wildfires and protect forests as well as adjacent residential areas. Professor Sharrow additionally provides a long list of other successful uses of grazing on forests in the US and internationally.

B. Invasive Species Management

Another widely recognized benefit of grazing, is for invasive species management. Federal and State agencies as well as many universities in the United States have studied or are studying grazing as a management for various invasive and undesirable species such as leafy

²¹ See <https://www.blm.gov/programs/natural-resources/rangeland-and-grazing/rangeland-health/nevada>

²² See <https://ucanr.edu/sites/fire/PrePost/Treatment/Grazing/>

²³ See <https://ucanr.edu/sites/fire/files/288015.pdf>.

spurge in Nebraska; bedstraw, goldenrod, Canada thistle, spotted knapweed, milkweed, and wild chervil in Vermont; and buckthorn in Minnesota.²⁴

States also recognize grazing as a management tool for invasive species on state owned lands. New York utilizes grazing on degraded ecosystems to manage invasive plants and increase soil health. It was the first state to implement an Intensive Rotation Targeting Grazing system on state lands for these purposes.²⁵ Federal agencies such as the U.S. Fish and Wildlife Service also use grazing to target invasive plant species a time when plants are vulnerable. This puts invasive plants at a competitive disadvantage to native species.²⁶

In Western states, the USDA recognizes and uses grazing as a biological control of invasive cheatgrass.²⁷ Cheatgrass is an invasive plant common in the Western United States. It grows in forest, woodlands, rangeland and deserts. Cheatgrass is known for rapid growth and reproduction and alteration of the fire pattern in vegetated areas when it becomes dense and dominant. Cheatgrass thrives after wildfires, allowing it to outcompete native species. Cheatgrass can also diminish recreation opportunities, reduce available forage for domestic and wild animals, and degrade wildlife density and habitat. However, cheatgrass provides good quality forage for cattle for 6 to 8 weeks early in the spring season. This is also the optimal time for its removal. Grazing of cheatgrass during the early spring and late summer/early fall when new growth emerges helps control the spreading of the invasive species in addition to reducing the fire fuel level. The use of cattle grazing on cheatgrass not only reduced the density and occurrence of the invasive species, it can return the fire pattern to normal, improve wildlife forage and habitat, and remove any hinderance to recreation. Thus, grazing to manage cheatgrass is a true multi-use that encourages and supports other multi-uses of federal land.

VII. Conclusion

The Voluntary Grazing Permit Retirement Act has many shortfalls, including a clear misunderstanding of the cattle industry, the grazing permitting system, and the beneficial ecological effects of grazing on federal public lands. The Act also ignored the intended multiple uses of federal land under the TGA and FLPMA, which include grazing. Lastly, the act proposes the removal of the Congressionally delegated control and management of federal lands from executive agencies such as the BLM and Forest Service in favor of grazing permittees and third parties with their own agenda. The enactment of this Act has the potential to devastate the grazing industry in Western States as well as negatively impact the management of public land by removing an important management tool and future funding of public land management from permit fees.

²⁴ McGrane, Grazing Goats Help Control Invasive Weed Species, NRCS https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs142p2_029102.pdf; University of Vermont, Using Livestock to Control Invasive Plants, <https://www.uvm.edu/extension/sustainableagriculture/using-livestock-control-invasive-plants>; University of Minnesota, Understanding the Benefits and Limitations of Using Goats for Invasive Plant Control, <https://mitppc.umn.edu/project/goat-grazing-invasive-plant-control>.

²⁵ See <https://www.dec.ny.gov/lands/86641.html>; see also <https://www.dec.ny.gov/lands/86664.html>.

²⁶ U.S. Fish and Wildlife Service, Prescribed Grazing in Practice, <https://www.fws.gov/invasives/staffTrainingModule/methods/grazing/practice.html>

²⁷ USDA, Field Guide for Managing Cheatgrass in the Southwest, 4 (2014). https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5410110.pdf