

Federally Funded Grazing Permit Retirement

By Mark Salvo and Andy Kerr, 2011

Capitol Reef National Park, Utah • Livestock grazing in Capitol Reef National Park had been controversial even since before the park was established in 1971.¹ Disputes over the phase-out of existing grazing permits helped ignite the “sagebrush rebellion” and prompted Congress to continue to authorize grazing in the park for decades. A succession of legislation guaranteed current permit holders grazing privileges inside the park, first for the remaining term of their permit,² and then another ten years,³ and later for the lifetime of the current permit holders and their children.⁴ Permittees were allowed to graze, trail and/or water their livestock throughout much of the park, regardless of conflicts with recreation or conservation of park resources.⁵ At one point Congress requested the National Academy of Sciences to conduct a study of grazing impacts in the park,⁶ only to cancel the study five years later.⁷ After decades of conflict—and sixteen years after the Park Service first recommended ending grazing inside the park—grazing permittees finally agreed to sell, and the Park Service agreed to buy and retire, grazing permits for allotments inside the park. The Utah Congressional delegation supported the National Park Service initiative to compensate ranchers and retire the grazing permits⁸ (the Senate Committee on Appropriations memorialized the deal in 1988⁹). The Park Service retired seventy percent of the grazed area inside the park over the next several years.¹⁰ However, as the value of grazing permits increased, the Park Service was gradually priced out of the market (the agency was limited to a maximum payout of \$52/AUM). In 1998/1999 two permits for the 11,688 acre Cathedral Allotment, the last active allotment in the northern third of the park, were offered for sale. Unable to meet the asking price for the Cathedral permits, the Service approached the Grand Canyon Trust about paying the permittee the difference between his asking price and what the Service could legally pay. The Trust agreed. With the retirement of the Cathedral permits, only two permits for grazing in the park remain.

Juniper Butte Bombing Range, Idaho • Congress expanded the Juniper Butte Bombing Range onto Bureau of Land Management (BLM) lands in the Owyhee Canyonlands in Idaho in 1988.

¹ Frye, B. J. 1998. From Barrier to Crossroads: An Administrative History of Capitol Reef National Park, Utah. Vol. II, chap. 12. Cultural Resources Selections. National Park Service, Intermountain Region. Denver, CO (available at www.nps.gov/archive/care/resources/admin%20history/adhit.htm).

² 16 U.S.C. §§ 273b-c (1971).

³ *Id.*

⁴ 16 U.S.C.A. § 2736 nt., Pub. Law 97-341 (1988).

⁵ Frye (1998); 16 U.S.C. §§ 273b-c.

⁶ Pub. Law 97-341 (1982).

⁷ Pub. Law 100-446 (1988).

⁸ Frye (1998).

⁹ DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS BILL, 1989. Sen. Rept. 100-410 (100th Cong., 2nd Sess.) (July 6, 1988): 26 (“The Committee is aware of an agreement in 1987 between the National Park Service and the Utah congressional delegation which allowed the Park Service to use existing funds to purchase, on a willing-seller basis, those grazing permits which the Park Service believes are environmentally disruptive to park resources. Subsequently, the Committee has learned that grazing permit holders in those environmentally sensitive areas have agreed to sell their permits and eliminate grazing. * * * The Committee supports the compromise between the National Park Service and the Utah delegation and believes it constitutes a solution which will allow the Park Service to better utilize appropriated funds in the future as a result.”).

¹⁰ Frye (1998).

Congress directed the Secretary of the Air Force to “conclude and implement agreements” with grazing permittees with grazing permits in the expanded bombing range “to provide appropriate consideration, including future grazing arrangements” for their lost public lands grazing privileges.¹¹

Responding to the Congressional directive, the Air Force first paid Rancher A \$650,000 for 1,252 permitted animal unit months (AUMs) on the BLM’s Juniper Draw Allotment that became part of the expanded Juniper Butte Bombing Range, which amounts to \$519.17/permitted AUM. Second, the Air Force paid Rancher B \$325,000 to vacate 780 permitted AUMs on the BLM’s Clover Crossing Allotment (outside the bombing range), which is \$416.67/permitted AUM. Rancher A was then given use of the 780/permitted AUMs on the Clover Crossing Allotment that Rancher B was paid to relinquish. Thus, in fact, Rancher A only “lost” the use of 472 permitted AUMs with the expansion of the bombing range, for which he received \$650,000, which is actually \$1,377.12/permitted AUM. Since that time, the Air Force, purportedly to reduce the threat of wildfire, has authorized Rancher A to again graze the Juniper Draw allotment inside the bombing range—and has authorized a higher level of grazing than when the allotment was administered by BLM.¹²

Taylor Grazing Act Department of Defense Grazing Permit Buyout • Since 1948 federal law has mandated that the government compensate federal grazing permittees when their grazing privileges are reduced or eliminated for military purposes.

*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.*¹³

Endangered Species Mitigation • In addition, in recent years the Department of Defense has purchased and retired multiple federal grazing permits in the Mojave Desert as mitigation for military activities that affect the threatened Mojave desert tortoise. The military has retired permits both on lands that were previously public, but have since become military reservations (see above), and also on nearby public lands within the range of the imperiled tortoise.

¹¹ P.L. 105-261 § 2907.

¹² Nokkentved, N. S. “Air Force compensates Bracket: Agreement worth nearly \$1 million.” *Times-News* (Twin Falls, ID) (October 6, 1998); and N. S. Nokkentved, “Air Force won’t say how it calculated compensation.” *Times-News* (Twin Falls, ID) (October 11, 1998).

¹³ 43 U.S.C. § 315q.