Len Carpenter

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Western Turf Wars: The Politics of Public Lands Ranching

Although raised on a southern Colorado cattle ranch, Len Carpenter came to devlop a greater interest in wildlife than in domestic animals. Pursuit of that interest led Carpenter to major in wildlife biology at Colorado State University (CSU), and then join the Colorado Division of Wildlife (CDOW) as a research technician. Subsequent research experience motivated Carpenter to further his education in that direction. Upon securing a graduate assistantship through the US Forest Service and CDOW, he then embarked upon doctoral research at CSU in which he studied mule deer and elk winter ranges, and ways to restore those ranges that had been overgrazed by wild and domestic ungulates.

Upon completing his PhD in 1976, Carpenter continued with CDOW as a researcher on the western slope of Colorado where, among other activities, he investigated methods for inventorying wild ungulates. In 1981, he moved to Fort Collins to became the supervisor for all of CDOW's research work involving cervids in Colorado. Upon relocating to CDOW's Denver Office in 1989, Carpenter took charge of all the wildlife programs in the state.

Wishing to concentrate more on conservation than on administration, Carpenter, in 1996, left CDOW to become the Southwest field representative for the Wildlife Management Institute. There he works on a variety of conservation issues in pursuit of science-based on-the-ground management.

Len Carpenter made his remarks on the 3rd of August 2004 in Fort Collins, Colorado.

Chapters

CHAPTER 1

The cowboy myth as political smokescreen

The livestock industry, for the good or the bad, depending on your viewpoint, has always been very astute and plugged in to the political systems in the West. Ranchers have always operated under the image of the "Old West" and the "cowboy." They promote the idea that in the West it really oughta be that way. So they always seem to have political backing from folks that really don't know much about ranching and cowboys, but to whom it just seems that the West is a place where cows ought to be.

These circumstances nurture the culture, the image, of the West along with the tremendous view of independence that ranchers have as their lifestyle. So when you're in opposition to livestock grazing in the West, you're in opposition to all those things. That's why it's been politically very difficult to advance progressive land management on Western rangeland.[1]

CHAPTER 2

Government subsidizes public lands ranching

The livestock industry will never concede that low grazing fees are a subsidy. But if you compare the cost of what grazing is on private land to what grazing fees are on public lands, there's a huge difference.[2] So there obviously is a subsidy.

When it's suggested that it is a subsidy (it's almost like a welfare-type of a program), there is a tremendous backlash from ranchers because from their own background and culture they portray themselves as being independent businessmen who want to get the government off their backs.

Any time that there's been a major effort to raise public land grazing fees, the livestock organizations have fought it back. They argue that they are stewards of the land, and that they have expenses beyond what they would have on private land for their grazing operations. So therefore the fee has to be less.

I'm not convinced that that's a valid argument. It might be that the federal fee could be less than grazing fees on private land, but it sure shouldn't be eight, nine times less. And, if that were a more balanced fee, I think that there would be more appreciation for the condition and value of public lands.

I've had the opportunity to work with individuals in the ranching community that do not have livestock grazing opportunities on public lands. Instead they have to pay for grazing on private lands. There's an unfairness to those folks. And I've always wondered why there wasn't more

1. For additional information about the social and political influence of the cowboy/rancher culture see Debra L. Donahue, "Western Grazing, The Capture of Grass, Ground, and Government," *Environmental Law* 35 (2005): 721–806, http://www.publiclandsranching.org/htmlres/PDF/donahue_public_lands_grazing_capture.pdf (last visited 5 May 2008)

2. The average fee charged for grazing on private lands in 2004 in the eleven Western states was $13.30 per AUM. US Government Accountability Office, *Federal Expenditures and Receipts Vary, Depending on the Agency and the Purpose of the Fee Charged*, GAO-05-869 (Washington, DC: USGAO, September 2005), 44–45, http://www.gao.gov/new.items/d05869.pdf (last visited 5 May 2008). At the same time the grazing fee charged by the BLM and Forest Service in the eleven Western states was $1.43 per AUM. Ibid., 37.

of a backlash from ranchers that do not receive all the benefits of public land grazing fees. I've never been able to get a good answer to that question. But, I think, it goes back to the public lands ranchers being very well organized. They have more control over state and federal legislatures than their numbers would suggest.

Speaking now for state government, where I have some experience, the committees in charge of all the activities that the state wildlife agency is operating under—their funding and all their basic policies are almost always controlled by people from the ranching industry. It's been that way forever in the West. And, I think, what happens is that folks from the urban areas that might have more interest in other values for the rangelands than livestock grazing, don't participate in those committees. And, almost by default, the ranching community continues to control the committees. So that's one reason ranchers have had an extremely strong influence that goes beyond what would be expected.

Some of the more progressive ranchers are starting to realize that because the number of people is increasing that are recreating on and using the public lands, that if ranching is not seen as a more reasonable use, they are going to be removed from public lands. But, unfortunately, the major organizations that represent the livestock industry still are entrenched in the old idea that if someone from a federal land management agency is trying to decrease their grazing numbers or increase their grazing fees, then they have to band together through the political systems that influence decision making in those agencies.

So I see a bit of a disjoint between the organizations and some of the more progressive ranchers that understand, and are working for better land conservation on their private lands as well as on public lands. But because of the rhetoric of the grazing organizations, usually little progressive management happens.

CHAPTER 3

Public lands management changes over time

In general, the grazing management changes that have occurred over time have resulted in improvement to the land. There is more of a widespread recognition now that there is a problem. But having said that, there seems to be continual setbacks. And one setback that's going on right now is focused on BLM grazing policies. Many of the changes that occurred during the Clinton administration,[3] in terms of livestock management on public lands, were for the better, but the proposed policies will change that. It is important to recognize that livestock grazing is only one of many land uses that go on out there—that it should not dominate. If we can take that attitude, and if professional land managers can operate under that kind of a policy, then we can make some improvements.

Improvement might be a lot slower than it should be, but at least progress is made. And so, over a period of time—ten years, fifteen years—changes occur. And in many places in the West, such as some riparian areas, there have been improvements from where it was, say, in the 1950s and '60s. Or, if you want to really go back to the bad times—the beginning of the 20th century. Obviously there's been some real improvement since then.

3. William J. Clinton, president of the United States (1993–2001).

Has there been enough?

No.

Is there need for a lot of work to be done?

Yes.

But it depends on the will of the people. People need to be motivated and organized. They've got to become politically astute. And it's been my experience that in the arena of public land policy, especially as it relates to livestock grazing, the issues do not get the attention they deserve.

Now, there are instances where it does. There are certain groups that devote their entire efforts to either promoting or detracting from livestock grazing.[4] But, generally, if you take the masses of people that are interested in public lands, livestock grazing is not high on their agenda.

One important consideration is "How economic is livestock grazing?" In this day and age it's not very profitable.[5] And so if it ever gets to the point that public land grazing is not subsidized, I think there is definitely a good possibility public land grazing will go away. Now, if that happens, private lands obviously then will pick up some of the grazing pressure. But the truth is that beef production on the public lands is a small portion of the national production.[6] So other than for maintaining that culture—that lifestyle in the West—I see that there's a good chance, just from the economic point of view, that ranching as we know it on public land is apt to go away.[7] And I would further comment that the influence that environmentalists have on this whole picture will probably be small compared to other things like global economies and competition.

CHAPTER 4

Controlling predators for the benefit of ranchers

Predator control is a basic premise by folks that have livestock. It's an attitude that can be traced back to the days of wolves and all the years with coyotes. There's no doubt that predators do kill

4. Among those organizations that promote livestock grazing include the Public Lands Council (PLC), the National Cattlemen's Beef Association (NCBA) and state chapters, and the Farm Bureau. Organizations whose interests are generally contrary to those of the livestock industry include Western Watersheds Project (WWP), Forest Guardians (currently WildEarth Guardians), Center for Biological Diversity (CBD), Oregon Natural Desert Association (ONDA), and other environmental organizations that focus on the conservation of Western public lands.

5. For investigations into the profitability of contemporary ranching see, for example, J. L. Holechek and J. Hawkes, "Desert and Prairie Ranching Profitability," *Rangelands* 15, no. 3 (June 1993): 104–9; Jerry L. Holechek, "Financial Returns and Range Condition on Southern New Mexico Ranches," *Rangelands* 18, no. 2 (April 1996): 52–56; Jerry L. Holechek and Karl Hess Jr., "Grazing Lands: Prices, Value, and the Future," *Rangelands* 18, no. 3 (June 1996): 102–5.

6. Percentage of American beef produced from federal rangelands is less than 3 percent. Paul Rogers, "Cash Cows," *San Jose Mercury News* (7 November 1999): 1S.

7. Ranch owners wishing to benefit from the demand for housing are developing their private ranchland (even base properties associated with federal grazing permits) in ways that degrade or even destroy wildlife habitat. A discussion of this issue can be found in George Wuerthner, "Subdivisions versus Agriculture," *Conservation Biology* 8, no. 3 (September 1994): 905–8. For an updated version of this article with more emphasis on approaches to maintaining private lands as open space, see George Wuerthner, "Cows or Condos: A False Choice Between Public Lands Ranching and Sprawl," in *Welfare Ranching: The Subsidized Destruction of the American West*, ed., George Wuerthner and Mollie Matteson, 299–302 (Washington, DC: Island Press, 2002).

livestock. But ranchers become almost obsessed with the idea that all their ills are somewhat related to predators. And so they are forever trying to remove predators from the system. But people who have studied ecosystems, and how they operate, know that all animals and plants have interactions that are important, and that there's a place for predators, especially on public lands.[8]

One of the things that the livestock industry has been effective at is convincing the hunter sportsman, and some wildlife groups, that populations of big game species such as pronghorn and mule deer are being significantly reduced by predators. The notion is that if all the predators are removed, there will always be abundant game.

Well, it's not that simple because research has shown that the impact of predators on wildlife populations is a complicated issue. One, the condition of the habitat overall is important. In other words, if there's cover for escape and ample nutrition, then although predation is a factor, it's not a huge factor. In other words, carrying capacity of the habitat is a key element. There are a lot of other things that would govern size of the prey population more so than predation. But in a simplistic world of black and white, which many folks like to make predator management into, if you could get rid of the predators, all your problems would also go away.

That's a belief that goes back to the ancestors of today's ranchers—their fathers and grandfathers spent their lifetimes essentially getting rid of predators. And the wolf is a prime example. Ranchers are saying, "All of a sudden the environmentalists brought these things back. And here my granddad and my father got rid of 'em and life was better. Now life is not so good because the price for our cattle is down, and drought's here. Well, one thing that's probably causing a big part of that is predators."[9]

Predators are also scapegoats for the decline of other species of wildlife. Right now there's a decline in sage-grouse populations. Many of the biologists and land managers have pretty much concluded that the problem stems from the condition of the habitat. The sagebrush ecosystem has been really hammered. It's been fragmented. There's been a lot of agricultural development—wheat fields, housing developments, energy developments, highways. It goes on and on. That has not been good for sage-grouse. Many ranchers still argue that predation is the main reason for the demise of sage-grouse. We must remember that most public land has been grazed by livestock and wild horses and wild ungulates. To be fair in that regard, now there is probably the largest number of elk ever known in the West. All this herbivory, added to factors like drought and sagebrush fragmentation are the major factors in determining the welfare of sage-grouse.

8. The reintroduction of wolves in Yellowstone National Park in the mid-1990s is believed to be the major factor in the regeneration of cottonwood and aspen due to the success of the wolves in disturbing the elk population. See, for example, William J. Ripple and Robert L. Beschta, "Wolf Reintroduction, Predation Risk, and Cottonwood Recovery in Yellowstone National Park," *Forest Recovery and Management* 184 (2003): 299–313; William J. Ripple and Robert L. Beschta, "Willow Thickets Protect Young Aspen From Elk Browsing After Wolf Reintroduction," *Western North American Naturalist* 65, no. 1 (2005): 118–22. For a study showing that greater cougar density results in greater cottonwood recruitment see William J. Ripple and Robert L. Beschta, "Linking a Cougar Decline, Trophic Cascade, and Catastrophic Regime Shift in Zion National Park," *Biological Conservation* 133 (2006): 397–408.

9. Cattle and calf losses in 2005 due to predators in the US (excluding Alaska) accounted for 4.7 percent of the total losses from all causes. See National Agricultural Statistics Service (NASS), *Cattle Death Loss* (5 May 2006), http://usda.mannlib.cornell.edu/MannUsda/viewDocumentInfo.do?documentID=1625 (last visited 1 May 2008). Sheep and lamb death losses in the US in 2004 represented 37.3 percent of all losses. See National Agricultural Statistics Service (NASS), *Sheep and Goats Death Loss* (6 May 2005), http://usda.mannlib.cornell.edu/reports/nassr/livestock/pgg-bbsg/predan05.pdf (last visited 1 May 2008).

CHAPTER 5

Fences harm wildlife

One ranching practice that has had a bigger impact on wildlife than most people realize is fencing, which can have a large impact on migratory wildlife, especially on winter ranges. And that impact was worse in previous years when sheep grazing was so much more dominant than it is today because many of those fences were hog wire type fences,[10] not just barbed wire. And that really did pose a significant barrier to all animals, including pronghorn. Pronghorn like to go under fences. And, of course, with a hog wire type fence they can't do that. So that was a tremendous problem for migratory populations.[11]

There is no doubt that you can build a good, solid wire fence that keeps livestock in, but does not significantly hinder the movement of elk, deer, or pronghorn.[12] But apparently because of tradition it's very hard to achieve, even though, in many cases, it would be no more expensive. In fact, in some cases it would be less expensive. But because of tradition and perception that a fence needs to be "bully tough" the design does not change much. Unfortunately, a lot of those fences exist on public lands. With all the other developments that are occurring on private lands in the West that are blocking migrations, fences on public lands should not add to the problem.

CHAPTER 6

Herbicides benefit ranchers but harm wildlife

Another impact on wildlife that's not so prevalent today, but was back in the 1960s and '70s, is the use of herbicide to kill sagebrush, or other shrubby vegetation, for the benefit of livestock. When you kill sagebrush you take the overstory away, and the understory, primarily grasses, then responds. So you can significantly enhance the grazing capacity for livestock with herbicide treatment. But when you do that, you lose the shrubs, and you lose a lot of the forbs—the small weedy plants that are so important to sage-grouse, mule deer, pronghorn, and other animals.

The sand dune areas of southeastern New Mexico are an example where currently there is an issue with the control of shinnery oak.[13] Lesser prairie chickens[14] depend on that shinnery oak

10. A hog wire fence consists of wires arranged in a 2-inch (or so) mesh.

11. For additional information regarding the impact of fences on the movement of pronghorn, see J. J. Spillett, "The Effects of Livestock Fences on Pronghorn Antelope Movements" (master's thesis, Utah State University, Logan, 1965); Habitat Partnership Program (Grand Junction, Colorado), "Fencing with Wildlife in Mind: Understanding the Impact of Wildlife When Fencing Your Property," http://wildlife.state.co.us/NR/rdonlyres/B0D65D61-6CB0-4746-94F1-6EE194E1C230/0/fencing.pdf (last visited 2 May 2008).

12. As pronghorn prefer to go under wire fences rather than to jump over them, the bottom strand of wire should be smooth, rather than barbed, and at least 16 inches above the ground. J. D. Yoakum, B. W. O'Gara, and V. W. Howard Jr., "Pronghorn on Western Rangelands," in *Rangeland Wildlife*, ed. Paul R. Krausman, 222 (Denver, CO: Society for Range Management, 1996).

13. Sand shinnery oak (*Quercus havardii*) is a deciduous rhizomatous shrub that dominates vegetation by forming uninterrupted expanses of ground cover. Native to western Texas, western Oklahoma, and eastern New Mexico.

14. Lesser prairie-chicken (*Tympanuchus pallidicinctus*).

for cover, which is especially important during the heat of summer. But livestock operators like to kill the oak because then they get a grass response.

There's always been a long-term interaction about impacts of livestock grazing on lesser prairie-chicken populations. Lesser prairie-chickens need a certain amount of residual cover remaining in the spring for successful nesting. Overuse by cows can remove that residual cover. Couple this with the shinnery oak issue and the on-going drought in the Southwest, and it is clear why there is concern about livestock grazing and the well-being of lesser prairie-chickens.[15] Consequently they're a candidate for listing under the Endangered Species Act.[16]

CHAPTER 7

Impacts of cattle on mule deer populations

Mule deer are very different from elk and from cows because they have a very small rumen, which is where they process their food. As a consequence of being a smaller ruminant, they have to eat higher quality forage than elk. And by higher quality that's usually a forb—a weed many people would call it—along with leaves and small stems of shrubs, which are higher in protein and have higher digestibility. Elk can eat lower quality forage. In other words, grass—large amounts of even dry grass, and do very well. Then with livestock grazing, or any other activity that impacts diversity of vegetation, there will be a larger impact on mule deer than on elk. And the main thing about mule deer in the Intermountain West, at least, is that they need to be in the best condition possible going into the winter because almost all the winter ranges are deficient in nutrition.

Elk and cows are similar in the way they graze. And so it's been proposed that because of livestock grazing in the summer, and large numbers of elk grazing in the winter on mule deer winter ranges, that it has increased the impact on mule deer.[17]

CHAPTER 8

Managing cattle during drought

In the West during the last several years it has been very dry. During years of drought, and especially during consecutive years of drought, are when the impacts of livestock grazing become significant. Typically, numbers of livestock are not reduced concomitantly with the severity of

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15. The population of lesser prairie-chicken has declined an estimated 97 percent since the 1800s, mainly due to the alteration of its habitat for ranching and agriculture. Remaining birds are found in fragmented pockets of habitat in Colorado, Kansas, New Mexico, Oklahoma, and Texas. Cited from http://audubon2.org/webapp/watchlist/viewSpecies.jsp?id=122 (last visited 10 September 2006).

16. The lesser prairie-chicken has been a candidate for listing under the US Endangered Species Act since 1998.

17. Len Carpenter in e-mail to author (11 October 2006) cites F. G. Lindzey, W. G. Hepworth, T. A. Mattson, and A. F. Reese. "Potential for Competitive Interactions Between Mule Deer and Elk in the Western United States and Canada: A Review" (unpublished report, Wyoming Cooperative Fisheries and Wildlife Research Unit, Laramie, Wyoming, 1997). Note especially pp. 26–27.

the drought and thus in dry times overuse by livestock is exacerbated. One recent example was that a number of elk, some 300 head or so died in Wyoming during the winter of 2004 from eating a small ground lichen (*Parmelia*) that is abundant in desert soil in the sagebrush habitats.[18] Researchers that are studying the matter believe that drought, and the resulting absence of other forage items, is what led the elk to start eating that particular lichen, which turns out to be quite poisonous.

And so, that's a specific example of how excessive herbivory on rangelands can indirectly harm wildlife. For livestock grazing to be properly managed, there should be the option, in very dry years, to cut back from the standard numbers that are permitted on public lands before the grazing season begins. Hardly ever does that happen. One of the biggest hurdles concerning public land grazing today occurs because there is not the flexibility built into permits to allow that. Actually, there is more flexibility than most managers acknowledge. The issue of altering numbers of AUMs year by year relative to drought is a very difficult issue for a public land manager and thus rarely used. Most of the time the enforcing of a reduction occurs later in the year after the impacts of overgrazing have occurred.

One approach that I continually promote when commenting on allotment management plans is that there should be built into every plan the opportunity for professional allotment managers to cut back in times of drought. When droughts occur, they're usually in two- or three-year intervals, at least. So they could cut back according to some type of a mathematical formula based on the percentage of normal moisture that has been received in the past year, or two years, or whatever. That's the sort of thing that ought to be done to make those decisions more realistic. But they're not. So the whole business about livestock grazing, in my mind, is that it's not so much about "no grazing" or "all grazing." Grazing can be done, but it needs to be managed in a way that allows for more flexibility on issues like drought management.

Let's say a rancher has a permit for five hundred AUMs. If he has to run only three hundred AUMs, there is a decrease in his potential return. However, the money that you get on your return of livestock is primarily on weight gains—weight gains of all your animals, but primarily with your young calf crop. There have been a number of studies that have shown that lighter, or moderate, grazing will result in greater productivity of your animals.[19] Therefore, even though you have fewer animals, you have more weight per animal. So it's not like you've lost two hundred AUMs. It's not a direct one-to-one loss.

This message is not well understood and championed like it should be. Again, the more progressive ranchers understand that by having their land and grass in better condition, that they are better able to produce higher weight gains. And not only that, but in times of drought, if they're at a moderate grazing level they will do much better.

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18. For more information about the winter 2004–05 elk die-off from consuming *Parmelia* in Wyoming, Len Carpenter in e-mail to author (11 October 2006) suggests the following references: Anonymous, "Elk Die off on Red Rim, Southeastern Wyoming," *Wyoming State Veterinary Laboratory Newsletter* (April 2004); G. L. Doster, "Wyoming Elk Mortality," *Southeastern Cooperative Wildlife Disease Study Briefs* 20 (2004): 1–2.

19. See, for example, Jerry L. Holechek, "Carrying Capacity on Arid Rangelands," Agricultural Experiment Station, Cooperative Extension Service, College of Agriculture and Home Economics, and the New Mexico Cattle Growers' Association (24 March 1994).

So those are standard kinds of lessons that are well known in the range science arena but, from my perspective, are still not understood, discussed, or implemented to the extent they should be.

CHAPTER 9

Rangeland monitoring is a low priority at management agencies

Public land management agencies have been deficient in monitoring and measuring what's going on for a whole lot of reasons. Some of them are technical—it's difficult and expensive to measure vegetation and document changes in the vegetation. Typically, all that exists is a rating done by a professional manager that indicates if the trend of the range is stable, improving, or down-grading. Many times when questions come up about grazing capacity on an allotment there is a real debate because there is simply no data, only opinions.

The livestock industry has forever pointed fingers, and said, "What's your basis for making this decision? How do you know that we've got too many livestock? You don't really have the monitoring to show that." Often that's true.

There have been a number of organizations, especially groups like the Society for Range Management, which has worked hard to find monitoring techniques and methods that could be applied at the allotment level, which are efficient and economical, and are still scientifically valid. But those methods are hard to come by. As a consequence, with the cutbacks that have occurred in all the federal agencies in personnel and in funding, there's very little monitoring going on.

As I said, professional range managers can look at the land and conclude that it's degraded, but when you get into a debate in a court of law there must be some basis (data) for decision making. And in many cases this is a real weakness on public land grazing allotments. And often results in less than professional management decisions.

CHAPTER 10

Budgetary restrictions decrease the quality of management decisions affecting wildlife

Over the past several years I have participated with a number of groups, including representatives from the livestock industry, and a number of wildlife conservation organizations, in requesting more funding from Congress for rangeland monitoring. So both groups, in that sense, are asking for more monitoring, probably for different reasons, of course. But everybody agrees that one weakness is the ability to determine the status of the range condition. And even though the BLM and the Forest Service will report that the condition of a certain percentage of their lands is "poor" or "good" or "improving," the basis for those kinds of decisions is pretty weak. So the problem with lack of funding, or lack of personnel, is that it causes us to just deal in the world of opinion and rhetoric, and not so much in what's really happening on the ground. And again, there's plenty of blame to go around.

Babbitt's[20] work of Rangeland Reform in 1995[21] put in place the need for every state, on BLM lands at least, to develop guidelines and criteria for determining range condition, and making sure they were meeting them. That was a good starting point with some basic guidelines that had to be met on the land to allow grazing to go forth. And if these conditions were not met, then changes in the grazing regime had to be made to bring the condition of the land back to meet those guidelines.

CHAPTER 11

The BLM's proposed policy changes (2004)

Right at this moment, there is a proposal within the administration,[22] actually within the BLM, regarding some changes that they are proposing be made for public land grazing.[23] So as we sit here today, and given all the things I've talked about, there still seems to be this very organized backlash from the grazing industry toward what I would call good land stewardship.

Under historic grazing regulations, if a permittee installed any kind of improvement on the public land, it still remained property of the federal government. This has always been a sore point with the livestock industry. They say that if they put their money into improvements, watering facilities, or whatever it might be, that it should be their property. Well, many folks obviously disagree with that because it still is public land. Public land grazing is a privilege. It's not a right.[24] But there still remains those folks that argue that grazing is a God given right. And so that's the basis for this argument that the improvements should be private. Well, on public land I don't think that they should be. So that's one issue with the proposed grazing regulations that's of some real concern.

Another proposed major change is about the control of water rights on public land. Should the livestock grazier have control over the water rights? They're trying to get it more to a state control versus the federal government. And again, we're talking about federal public lands—things that should remain totally federal issues. Not privatized, nor in control of the state.[25]

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20. Bruce Babbitt, secretary of the Interior (1993–2001).

21. The final reformed regulations were published as "Final Rule, 43 CFR Parts 1780 and 4100" in the Federal Register, 22 February 1995. The Interior Department then implemented new range management regulations in August 1995.

22. Carpenter refers to the presidential administration of George W. Bush.

23. The proposed changes in BLM grazing regulations to which Carpenter refers were finally released on 12 July 2006.

24. See, for example, *Diamond Bar and Laney v. United States*, United States Court of Appeals, 10th Circuit, 97-2140, 23 February 1999. Available online at http://www.kscourts.org/ca10/cases/1999/02/97-2140.htm (last visited 2 May 2008).

25. In announcing its new grazing regulations, the BLM described changes regarding water rights as "provides flexibility to the Federal government in decisions relating to livestock water rights by removing the requirement that the BLM seek ownership of these rights to the maximum extent allowed by state law." "Factsheet on the BLM's New Grazing Regulations," Bureau of Land Management, US Department of the Interior (12 July 2006), http://www.blm.gov/nhp/news/releases/pages/2006/pr060712_July2006_GrazingFactSheet.pdf#search=%22factsheet%20%22New%20grazing%20regulations%22%22 (last visited 2 May 2008).

My concern with the water rights issue is that I view this as just another step towards more privatization of public land resources. Water rights in the West (and elsewhere) will be the biggest issue faced in public land management in the next twenty-five years. I do not think now is the time to be reducing federal ownership rights to limited public land water resources.

Another example is that they are trying to cut back on public involvement in various decisions regarding grazing administration on public lands. That's obviously not the way to go in this day and age of increased public interest in our public lands. Yes, you can go too far with public involvement. For instance, if you never get anything done but planning because of on-going public input processes. But still, there ought to be a timeline and the opportunity for anyone to comment that has an interest.

In the proposed changes they're trying to re-define what an "interested party" is. And their definition of an "interested party" is fairly limited.[26]

So those are some of the key issues involved in the on-going debate over public land grazing regulations. I think it's critical that efforts be made to keep these changes from happening, which, in my opinion, would move us back to where we were in the 1960s and '70s.[27]

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26. In the Final Rule and Record of Decision issued by BLM on 12 July 2006, the concept of "interested publics" was modified. Under the old definition, an individual or group that submitted a written request to the BLM to be involved in the decision-making process of a specific grazing allotment would be put on a list of "interested publics" and would receive notice of issues concerning that allotment—including notice of day-to-day management issues. Under the new rule, the individual or group would be dropped from the list if it received notice but did not comment. Furthermore, the new rule no longer requires the BLM to "consult, cooperate, and coordinate" with the interested public on the following decisions: 1) adjustments to allotment boundaries, 2) changes in active use, 3) emergency allotment closures, 4) issuance or renewal of individual permits or leases, and 5) issuance of nonrenewable grazing permits and leases.

27. In response to the Final Rule and Record of Decision issued by BLM on 12 July 2006, environmental advocates filed two lawsuits seeking to prevent the implementation of provisions contained therein. *Western Watersheds Project v. Kraayenbrink*, Civ. No. 05-297-E-BLW (D. Idaho) contained one motion alleging a violation of the National Environmental Policy Act (NEPA) and one motion alleging a violation of the Endangered Species Act (ESA). *Maughan v. Rosenkrance*, Civ. No. 06-275-E-BLW (D. Idaho) contained one motion alleging a violation of NEPA and the Federal Land Policy and Management Act (FLPMA). On 11 August 2006, the Federal District Court for the District of Idaho (Judge Lynn B. Winmill) issued a preliminary injunction blocking BLM from implementing any reduction in public involvement contained in its new regulations in the administration of livestock grazing until resolution of the litigation brought by Western Watersheds Project (WWP). In response to a new injunction motion filed by WWP on 21 August 2006, the court on 25 September 2006 issued a second order that 1) stopped the BLM from using what it calls "fundamentals of rangeland health" as criteria for judging grazing allotment condition, and 2) halted paperwork that would transfer rancher-built range improvements into joint ownership between BLM and a permittee. The final blow to the BLM's implementation of its 12 July 2006 Rule came on 8 June 2007 when Judge Winmill issued a *Memorandum Decision and Order* that decided in favor of the plaintiffs. Read the judge's entire 52-page decision (Case 4:05-cv-00297-BLW) at http://www.law.indiana.edu/publicland/files/winmill_grazing_decision.pdf (last visited 3 May 2008).