TESTIMONY

OF

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BEFORE THE

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

PUBLIC LANDS AND FORESTS SUBCOMMITTEE

S. 1129

GRAZING IMPROVEMENT ACT OF 2011

WASHINGTON, DC

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Chairman Wyden, Ranking Minority Member Barrasso and Members of the Subcommittee:

I am Jim Magagna, Executive Vice President of the Wyoming Stock Growers Association, the 140-year-old voice of the Wyoming cattle industry. I am also a lifelong sheep producer and former president of the American Sheep Industry Association (ASI) and the national Public Lands Council (PLC). I appreciate the opportunity to appear before you today to share the western livestock industry perspective on S. 1129, the "Grazing Improvement Act of 2011".

Today I am representing both the Wyoming Stock Growers Association (WSGA) and PLC. WSGA has approximately 1000 members, of which over fifty percent graze livestock on Bureau of Land Management (BLM) or U.S. Forest Service lands. Affiliates of PLC include the National Cattlemen's Beef Association (NCBA), the American Sheep Industry Association (ASI), the American National Grasslands Association (ANG) and sheep and cattle organizations from thirteen western states.

Livestock grazing represents the earliest use of federally managed lands (public lands) as our nation expanded westward. Today it continues to represent a multiple use that is essential to the livestock industry, wildlife habitat, open space and the rural economies of many western communities. While grazing was historically viewed only as a "use" of the public lands, today it has also come to be recognized as an important "tool" for the management of these lands.

The latest available data show that there were over 8.7 million animal unit months (AUMs) of grazing authorized on BLM lands in fiscal year (FY) 2010. This grazing was administered through 17,740 permits and leases.[1] The Forest Service in the fifteen western states permitted 6.1 million AUMs on National Forests and an additional 2.2 million of National Grasslands.[2] While data is often cited showing the relatively small amount of beef or lamb that is produced on public lands, such statements ignore the importance of these lands in an integrated ranching operation. Approximately 40% of beef cattle in the West and half of the nation's sheep spend some time on federal lands. Without public land grazing, grazing use of significant portions of state and private lands would necessarily cease, and the cattle and sheep industries would be dramatically downsized, threatening infrastructure and the entire market structure.

The public land livestock industry seeks and supports the essential legislative changes incorporated into S. 1129 for one primary reason—they are essential steps in restoring a stable business environment to our industry.

Today's public land livestock industry is not the industry of the early 20th century. Private ranchland values in the West have skyrocketed based on competing uses—primarily rural

[1] Fact Sheet on BLM Management of Livestock Grazing, September 2011, Table 3-8c, Table 3-9c. Fiscal Year 2010-
[2] USDA – Forest Service, Annual Grazing Statistical Report, Grazing Season 2009

subdivision development. Increasing land values render the estate tax—from which we have failed to secure permanent relief—a bigger threat than ever, making succession planning an ominous prospect for future generations of ranching families. Enhanced livestock genetics and current market prices for sheep and cattle have combined with the rising land prices to dramatically increase the need for operating capital. Burgeoning government regulation demands ever-greater investment of both financial and human resources. Agricultural lenders are demanding greater long-term certainty that the operation, including public land grazing permits, will be kept intact. Altogether, these and other factors create a business environment that is less promising and less certain than ever.

Long-term certainty of grazing permits is also at the foundation of the evolving science of rangeland management. Over the past forty years, livestock have become recognized as an important tool for rangeland management on both public and private lands. While appropriate levels of utilization remain important, timing and intensity of grazing have become key management tools. Sophisticated analytical systems allow livestock grazing to be utilized to bring about significant changes in forage composition over long periods of time. One example of such a system is the State and Transition Model (STM), which has been embraced in recent years by both BLM and Forest Service. These approaches demand a long-term commitment to a grazing system.

When I began my career in ranching in the 1960s, renewal of my term grazing permits every ten years on both BLM and National Forests was little more than an administrative exercise. The permit renewal routinely arrived in the mail. I signed and returned it and shortly thereafter received a signed copy for my files. Any on-the-ground issues regarding management were addressed during the many opportunities that the agency range personnel and I had to spend time together in the field.

Today my permit renewals are subject to compatibility with a Resource Management Plan or Forest Plan, prior environmental analysis under the National Environmental Protection Act (NEPA), a potential need for consultation under Section 7 of the Endangered Species Act and the likely appeal by an anti-grazing organization that has been granted "interested public" status by the agency and standing by the courts. The opportunities that I once appreciated to spend time in the field with range personnel have become scarce as agency personnel are inundated by process, Freedom of Information Act requests and appeals. The NEPA analysis now deemed necessary is seldom completed in a timely manner. As a result, the public land rancher has, for the past ten years, been at the mercy of the annual congressional appropriations rider to allow permits to be renewed in a timely manner. It just makes sense to codify language that has been approved annually by Congress for over a decade.

From the perspective of livestock production, modern range science and land agency work load, a longer-term approach to the permitting of public land grazing is needed today. Section 2 of the Grazing Improvement Act of 2011 directly meets this need by extending term permits to 20 years. This critical change will bring needed certainty, improved range management and greater agency efficiency.

In the context of this change to a 20 year permit, it is important to note that the ability of the agency to make needed management adjustments through the annual authorization to graze (BLM) or annual operating plan (Forest Service) is not diminished. In addition, the agencies retain the authority to issue shorter term permits under special conditions.

Section 3 of S. 1129 takes an additional important step in providing certainty and stability to the industry by incorporating into statute language that makes permanent the protection that has been provided by the appropriations rider on permit renewal. It recognizes that the renewal, reissuance or transfer of a permit does not, per se, have a resource impact so long as there is no change in the grazing management. By categorically excluding these actions from the requirement to prepare an environmental analysis, this section restores the role of environmental analysis to its proper function—an analysis of the potential impacts of a commitment of resources (changes to an RMP or Forest Plan) or a new on-the-ground activity. This section also takes a practical approach by properly acknowledging that minor modifications to renewed, reissued or transferred permits are acceptable, so long as they do not interfere with the achievement of or progress toward land and resource management plan objectives, and so long as extraordinary circumstances do not indicate a need for further analysis.

Over the past ten years, the agencies have operated under pressure to produce environmental analyses on permit renewals either under a schedule imposed by Congress, or under self-imposed schedules. These timelines have seldom been met. Nevertheless, the time pressures have led to NEPA analysis that is frequently either substantively or procedurally inadequate and is therefore subject to successful administrative and judicial challenge. Reducing the requirement for perfunctory environmental analysis will enable the agencies to be more thorough when analyzing actions that actually impact the resource. It will also help reduce the opportunity for litigation by extreme anti-grazing groups who, by virtue of fee-shifting statutes such as the Equal Access to Justice Act, have made a cottage industry out of process-based litigation, draining agency budgets and reaping taxpayer dollars to the tune of hundreds of thousands, annually.

Taken together, Sections 2 and 3 represent a major step toward returning the focus of public land grazing to on-the-ground activities including management plans and range improvements.

The resource, the land agencies and the grazing permittees all stand to benefit from these adjustments.

The stability of individual ranching operations will be further assured by the passage of Section 4 of S. 1129, which requires that all appeals of grazing permit decisions be conducted "on the record" in accordance with the fundamental principles of the Administrative Procedures Act (APA). This is a particularly critical provision as applied to the Forest Service. The Forest Service currently lacks an independent body to hear administrative appeals similar to the Interior Board of Land Appeals (IBLA) that adjudicates BLM appeals. As a result, permit appeals within the Forest Service are decided by the next level line officer. Most often the deciding officer is the immediate supervisor of the author of the decision being appealed. It is understandable that research shows 85% of appeals under this structure are upheld. Frankly, I most often advise Forest Service permittees that an administrative appeal of a permit decision is little more than a necessary procedural step to set the stage for a judicial appeal.

While BLM appeals are conducted through a less prejudiced system, these permittee appeals nevertheless place a tremendous burden on the appellant. Strict adherence to the APA will properly place the burden of proof on both federal agencies to show that their decisions are correct in law and in fact. Because there is no current provision for a stay of a decision pending appeal, the permittee can be faced with making significant and costly adjustments to the ranching operation based on a decision that may be overturned through the administrative appeal. Section 4 will assure that the decision is suspended and that current grazing is allowed to continue until the appeal is resolved. There is, appropriately, an exception where failure to implement the decision would result in an immediate deterioration of the resource.

To this point I have focused my discussion on the benefits to the ranching industry, the resource and the agencies that would accrue from passage of the Grazing Improvement Act of 2011. I will now turn my attention to the benefits that will be derived by the public.

All but the most ardent of opponents of public land grazing acknowledge that the continuation of grazing on public lands is essential to maintaining the integrity of landscapes in the West. Given the mosaic pattern of land ownership in most public land areas, a majority of ranches in these areas are not economically viable ranching operations without access to forage on public lands. These associated intermingled private lands will often readily find a market as rural subdivisions. The resulting land fragmentation results in a loss of wildlife habitat, open space and scenic vistas, and public access. This can diminish the value of the public lands themselves for recreational use. Keeping ranchers in business is good policy for conservation of both private and public land.

Most public land ranchers do not want to develop their private lands. It is not in the public interest to drive them to do so by increasing the uncertainly that they face in continuing public land ranching. Over ten years ago, WSGA established the Wyoming Stock Growers Land Trust. Our sole reason for doing so was to provide another tool to keep private ranchlands in ranching. To date, we have succeeded in placing over 160,000 acres of Wyoming lands under conservation easements. However, as we visit with public land ranchers, we often hear, "I would be very interested in placing an easement on my private land if my grazing permit were more secure. If I lose the permit, I will have little choice but to subdivide my land."

There are certain times when small steps can produce large results. In S. 1129, Senator Barrasso takes those small steps. The results will include greater stability for the livestock industry, a renewed focus on long-term resource management, enhanced agency efficiency and continuation of the broad public benefits provided by both public and private lands in the West. On behalf of the Wyoming Stock Growers Association, Public Lands Council and its affiliates and, most significantly, the over 22,000 families dependent on public land grazing, I urge your support for this legislation.

Thank you for your consideration of my testimony.

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