The Forage Improvement Act of 1997: An Analysis of H.R. 2493

January 13, 1998

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Summary

This report analyzes most of the provisions of H.R. 2493, which addresses the grazing programs of the Bureau of Land Management (BLM) and the Forest Service (FS). The bill was sponsored by Rep. Bob Smith, chairman of the House Agriculture Committee and others, and was reported by that committee on September 24, 1997 and was reported by the House Resources Committee on October 8 and October 22, 1997. Both committees amended the bill and it was further amended before passage by the House on October 30, 1997.

The bill is considerably shorter than was legislation in the 104th Congress and earlier in the 105th, and addresses primarily monitoring, cooperative management plans, and grazing fees. Under the bill, monitoring would be conducted according to regional or state criteria and protocols selected by the Secretary concerned. The Secretary of the Interior for BLM lands and the Secretary of Agriculture for FS lands could not accept data from monitoring that was not conducted either in accordance with such protocols or by persons who are among the groups listed. Cooperative management plans would be made available to qualifying permittees and could allow greater flexibility as to grazing practices.

The principal change that would be made by the bill is that a new grazing fee formula would be enacted, applicable to the grazing programs of both BLM and FS, but not applicable to the National Grasslands, which are also managed by the FS. The new formula would be based primarily on 12-year gross beef cattle production values and be tied to short-term treasury bill rates for the past 12 years, thereby making the fees more stable and less responsive to yearly fluctuations in beef prices than the current formula. The bill also would count seven sheep or goats as one Animal Unit Month (AUM) rather than the current five, thereby allowing more of such animals to graze for the same fee. The bill does not establish a minimum payment.

Many definitions were eliminated from the bill. Some of these related to aspects of the nature of the grazing privilege that currently are being litigated and were controversial for this reason. The bill also does not address many issues that proved to be controversial in the 104th Congress, such as water rights, application of the National Environmental Policy Act in the grazing context, appeals, access across private lands, or ownership of range improvements. Some provisions are ambiguous in certain respects and this report discusses possible interpretations.

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Background

The grazing programs of the Bureau of Land Management (BLM) in the Department of the Interior and the Forest Service (FS) in the Department of Agriculture have generated controversy over the last several years.[1] New range management regulations for the lands managed by the BLM went into effect in August, 1995. Even before that effective date, legislation was introduced to modify statutorily some of the provisions contained in the regulations. S. 852 in the 104th Congress comprehensively addressed BLM grazing and S. 1459 in that Congress addressed both FS and BLM grazing and would have made the grazing programs of the FS and BLM more consistent.[2] The 105th Congress is again considering legislation that would alter grazing on federal FS and BLM lands and would establish a new grazing fee formula.

H.R. 2493, sponsored by Rep. Bob Smith, chairman of the House Agriculture Committee, was reported by House Agriculture Committee on September 24, 1997[3] and by the House Resources Committee on October 8 and again on October 22, 1997.[4] Both committees amended the bill. The bill was further amended and passed the House on October 30, 1997 by a vote of 242-182.

This report analyzes most of the provisions of H.R. 2493 as it was received in the Senate. The report also discusses some of the provisions that were removed from the bill before passage because some of these provisions addressed issues that might arise again as the bill is considered in the Senate.

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[1] *See*, GRAZING FEES AND RANGELAND MANAGEMENT, IB96006, by Betsy Cody and (name redacted), updated December 22, 1997.

[2] For a discussion of previous bills and more detailed background, see ALD General Distribution Memorandum, *Analysis of Changes Made February 8, 1996 to S. 1459, the Public Rangelands Management Act of 1995*, by (name redacted), March 8, 1996; and for a comparison of FS and BLM regulations and two grazing proposals from the 104th Congress, see ALD General Distribution Memorandum, *Federal Rangeland Management Regulations and Current Legislative Proposals*, by (name redacted) and Betsy Cody, September 6, 1996.

[3] H.Rep. 105-346, Part 1 (October 24, 1997).

[4] H.Rep. 105-346, Part 2 (October 24, 1997).

Both the FS and the BLM administer grazing programs as one of the multiple uses on their respective lands. Different laws pertain to the two agencies and the lands they manage.

A comprehensive grazing program was authorized by the Taylor Grazing Act of 1934 (TGA) for the public lands now managed by BLM. Initially, the program was administered by the Grazing Service, until the duties of the Grazing Service were merged with those of the General Land Office when BLM was created in 1946. Before enactment of the TGA, the public lands remaining in federal ownership were being grazed freely by all, with the tacit license of the government. By and large, these lands were too arid to be suitable for agriculture and, as a result of the communal use, many rangelands were overgrazed, eroded, and otherwise in poor condition. It was believed that a system under which a permittee would have exclusive rights to graze an allotted area would both improve range conditions and protect individual ranchers. The TGA established such a system Implementing regulations, known as the Range Code, were promulgated beginning in 1938. Current BLM grazing regulations are found in 43 C.F.R. Part 4100.

There was little additional legislation on BLM range management until enactment of the Federal Land Policy and Management Act of 1976 (FLPMA).[5] Title IV of FLPMA addresses range management and applies both to lands managed by the BLM and to lands in national forests. Although FLPMA repealed many previous statutes related to the public lands, the TGA was left in effect. In 1978 Congress enacted the Public Rangelands Improvement Act (PRIA), which also covers both BLM and FS lands, but specifically excludes the National Grasslands, which will be discussed later.[6]

There is less statutory guidance with respect to grazing management by the FS than is true for BLM. Although the original statute[7] governing management of the forest reserves did not expressly mention grazing, that act authorized the Secretary of Agriculture to regulate the occupancy and use of the forests, and grazing has been allowed and regulated in the forest reserves since the early twentieth century. Fees have been charged since 1906.

Grazing on the national forests was recognized and ratified in later enactments. The Granger-Thye Act of 1950 authorized the Secretary to regulate grazing on the national forests and other lands administered by him and to issue permits for the grazing of livestock for periods not exceeding ten years.[8] This act also states that nothing in the act "shall be construed as limiting or restricting any right, title, or interest of the United States in any land or resources." The Multiple-Use Sustained-Yield Act of 1960[9] stated that the national forests "shall be administered for outdoor

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[5] Pub. L. No. 94-579, 90 Stat. 2755, codified at 43 U.S.C. §§ 1701 *et seq.*

[6] Pub. L. No. 95-514, 92 Stat. 1803, codified at 43 U.S.C. §§ 1901 *et seq.*

[7] Act of June 4, 1897, ch. 2, 30 Stat. 34.

[8] Act of April 24, 1950, § 19, ch. 97, 64 Stat. 88.

[9] Act of June 12, 1960, Pub. L. No. 86-517, 74 Stat. 215.

recreation, *range*, timber, watershed, and wildlife and fish purposes," (emphasis added), but did not provide additional details on range management. As noted above, both FLPMA and PRIA applied both to lands managed by BLM and the lands within national forests. PRIA expressly excluded the National Grasslands from its coverage.[10]

Both agencies administer some lands that were acquired by the federal government under the Bankhead-Jones Farm Tenant Act (B/J).[11] Most of the B/J lands managed by the FS are administratively designated as "National Grasslands." In 1974, Congress included the National Grasslands within the National Forest System, to be managed as "one integral system" with the national forests.[12] Yet the National Grasslands also maintain their identity as B/J lands, are currently subject both to the laws governing the National Forest System and to the B/J Act, and have special regulations applicable to them.[13] As a result of a series of Executive Orders, most of BLM's B/J lands were administratively included within grazing districts managed under the Taylor Grazing Act and the Federal Land Policy and Management Act.[14] BLM does not have additional regulations related to the B/J lands it manages.

H.R. 2493 Provisions

General. As discussed, both the FS and BLM manage grazing programs as part of their overall management. There are many similarities between the programs, but each is managed under different laws and each of the two agencies have somewhat different missions and institutional histories. H.R. 2493 attempts to bring about more consistent management of the grazing programs of the two agencies. However, some of the bill provisions that address scope and applicability are ambiguous, especially as to the National Grasslands and as to whether changes beyond grazing are intended.

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[10] 43 U.S.C. § 1907.

[11] Act of July 22, 1937, 50 Stat. 525, codified at 7 U.S.C. §§ 1010, 1011.

[12] See Section 10 of the Forest and Rangeland Renewable Resources Planning Act of 1974, Pub. L. No. 93-379, 88 Stat. 480, (as amended by the National Forest Management Act, Pub. L. No. 94-588, 90 Stat. 2949, 2957), codified at 16 U.S.C. § 1609.

[13] The National Forest System is defined as specifically including the national grasslands and land utilization projects administered under B/J. See 16 U.S.C. § 1609(a). There are special regulations applicable to National Grasslands at 36 C.F.R. §§ 213, 222.52.

[14] These Executive Orders are interesting in that they make the Taylor Grazing Act the controlling management authority for the B/J lands transferred to BLM. See, *e.g.*, E.O. 10175, 15 Fed. Reg. 7201, October 27, 1950. Section 32(c) of the B/J Act states in part: "The Secretary may recommend to the President other Federal, State, or Territorial agencies to administer such property, together with the conditions of use and administration which will best serve the purposes of a land-conservation and land-utilization program, and the President is authorized to transfer such property to such agencies." Query whether this authority validly included specifying that a different *law* would apply, to the exclusion of B/J. However, a court faced with the question now might uphold the actions because of the breadth of discretion granted in the B/J Act and the decades of Congressional acquiescence.

Section 2 of the bill limits the applicability of the Act, stating, among other things, that nothing *in the Act* should "be construed to affect *grazing* ... in any unit of the National Forest System managed as a National Grassland by the Secretary of Agriculture under the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010 et seq.) ...." As noted above, the National Grasslands currently are a part of the National Forest System. The exclusion of the National Grasslands from application of anything in the Act related to grazing is difficult to interpret since some of the provisions of the Act would also address general management concerns and therefore otherwise would usually apply to the National Grasslands.

Section 3 directs that the Secretaries of Agriculture and of the Interior "provide for consistent and coordinated administration of livestock grazing *and management* of Federal lands ... consistent with the laws governing such lands." (Emphasis added). Section 3 appears to address *both* administration of livestock grazing and "management of Federal lands" generally. Yet, in light of the emphasis of the rest of the bill, it could also be intended to refer only to grazing administration. If, on the other hand, the provision is to be read literally and general management as well as grazing administration is included, then reading sections 2 and 3 together might mean that nothing in the Act related to grazing is meant to apply to the National Grasslands, but anything in the Act that is more general, such as the direction for consistency of management generally, does.

Other aspects of the bill relating to the National Grasslands also are ambiguous. Section 101 states that title I applies to the management of grazing on National Forest System lands managed under enumerated statutes that do not include the Bankhead Jones Act. Section 102 goes on to define "National Forest System" "in that title" as having the meaning it does in 16 U.S.C. § 1609(a), except that it does not include the National Grasslands. This approach to controlling the applicability of the bill in part by excluding National Grasslands from the definition of the "National Forest System," a term that is otherwise defined in law, could produce uncertainty as to when and in exactly what ways the National Grasslands are to be subject to what provisions. The National Grasslands currently are included within the National Forest System for purposes of planning and management consistent with B/J Act and are to be managed as "one integral system" with national forests. It could be argued that the definition of National Forest System in the bill would not alter this basic posture because the definition is changed to exclude the Grasslands only for purposes of the provisions of title I. Therefore, the new provisions of title I on monitoring of grazing allotments, fees, cooperative allotment management plans, etc. would not apply to the National Grasslands. (See the more detailed discussion of fees later in this report.)

The National Grasslands have been treated separately in the past, having been excluded, for example, from the range provisions of title IV of FLPMA and from PRIA and the grazing fee formula it contained. (The same fees have nonetheless been applied to certain of the National Grasslands administratively.) On the other hand, the National Grasslands are currently regarded as subject to the same planning requirements as are grazing lands within national forests. The bill defines land and resource management plans and uses that term in several instances, but the National Grasslands would not be subject to these provisions or to those on monitoring or cooperative management plans. If enacted, the issue would arise as to how the new

provisions are to relate to current direction in 16 U.S.C. §1609 to manage the national forests and National Grasslands "as one integral system." The tension between having the National Grasslands be a part of the National Forest System for some purposes, but not for others may produce problems of interpretation.

Section 101(b) states that the act applies to BLM lands, including those BLM lands managed under the B/J Act. Section 3 directs that "to the maximum extent practicable, the Secretary of Agriculture and the Secretary of the Interior shall provide for consistent and coordinated administration of livestock grazing and management of Federal lands (as defined in section 102) consistent with the laws governing such lands." This seems to result in direction for more consistent grazing management by the two agencies, regardless of the type of lands involved, except that the National Grasslands would not be subject to the new statutory guidance.

Monitoring. The bill as passed by the House contains provisions on monitoring on federal lands within grazing allotments. Section 103 directed that monitoring be performed only by "qualified persons" from the specified groups, which are:

(1) Federal, State, and local government personnel.
(2) Grazing permittees and lessees.
(3) Professional consultants retained by the United States or a permittee or lessee.

As passed, there is no express requirement that the persons actually performing monitoring be approved by the relevant Secretary, as had been required in the bill as reported. Perhaps the Secretaries could impose such a requirement as part of general regulations on monitoring in general or regulations on what constitutes "qualified persons." Absent such approval, because permittees or consultants retained by them are statutorily approved generally to conduct monitoring, arguably the federal managers could be put in the position of having to use or contest possibly unreliable monitoring data.

Under subsection (b), monitoring would be conducted "according to regional or state criteria and protocols selected by the Secretary concerned." It is not clear whether "state criteria" refers to criteria developed by states or to criteria developed by the Secretaries on a state-wide basis. If criteria developed by states is the intended meaning, it is not clear what range of discretion the Secretaries might have to modify those monitoring criteria and protocols. Also, the relationship of the new monitoring requirements to management decisions is not clear — to what extent could managers make decisions, for example to reduce active use, based on conditions developing in any one grazing season?

Subsection (c)(2) states that "The Secretary concerned shall not accept monitoring data that does not meet the requirements of subsection (a) **or** (b)." This use of "or" rather than "and" may be interpreted to mean that *either* monitoring conducted in accordance with the protocols **or** monitoring conducted by persons within the categories listed under subsection (a) can, and possibly must, be accepted. If this is the intended reading, permittees could submit monitoring data regardless of whether it conformed to the protocols and arguably the Secretary might have to accept it.

Subsection (d) requires reasonable notice of monitoring to affected permittees, including prior notice to the extent practicable of not less than 48 hours.

It is not clear how the monitoring requirements, which require that the data collected from "such monitoring" shall be used to evaluate changes and management action on resources "over time, relate to the ability of federal managers to take prompt action if circumstances in any one year warrant; e.g. to reduce active use in a drought year. Arguably, the authority of the managers to do so is independent of the monitoring requirements, but Congress might wish to clarify this point.

Subleasing. Section 104 addresses subleasing and simply states that a permittee may not "enter into an agreement with another person to allow grazing on the Federal lands covered by the grazing permit or lease by livestock that are neither owned nor controlled by the person issued the grazing permit or lease." This language is similar to that in current 43 C.F.R. § 4130.7(a). Other provisions on subleasing were dropped from the bill before passage. These would have authorized the Secretary concerned to approve subleasing under listed circumstances, including hardship instances, under a cooperative agreement, or if a permit is issued to a grazing association whose members have exclusive rights to graze livestock on the federal lands allotted to the grazing association. Other provisions removed from the bill would have allowed livestock owned by certain relatives to graze without that grazing being considered as subleasing. Another eliminated provision would have mandated transfer of a permit to a new person controlling all or part of the base property. Some questioned any statutory expansion of subleasing and these provisions were dropped in favor of current regulations as they might be affected by ongoing litigation. Another provision would have encouraged the use of coordinated resource management practices under cooperative management agreements and exempted such practices and agreements from the Federal Advisory Committee Act.

Cooperative allotment management plans. Section 105 addresses "cooperative allotment management plans." Although this is no longer a defined term in the bill as passed, § 105 allows agreements between a permittee or a group of qualified grazing permittees and federal personnel such that "outcome-based standards, rather than prescriptive terms and conditions" will govern grazing activities in a specified geographic area. A qualified permittee is one who has met or exceeded forage and rangeland goals in applicable land use plans and in that person's grazing permit or lease for the previous five-year period. Agreements under the section would be required to contain measurable performance goals, and all laws that apply to allotment management plans and grazing permits would continue to apply to these agreements. Presumably, the goals and provisions of these agreements would be derived from these laws. This section appears to allow for greater flexibility of management for qualifying permittees.

One point could be noted about the cooperative allotment management plans. The last sentence of § 105(a) states: "[a]t the request of a qualified grazing permittee or lessee, the Secretary concerned shall consider including such a written agreement in an allotment management plan or a grazing permit or lease." This language may have been intended to mean that a permittee could request an agreement under the section and if one is executed, it shall be a part of an allotment management plan or a grazing permit. However, the current syntax is such that the sentence could be read

as meaning agreements under the section could be executed and may, at the request of a permittee, be made a part of an allotment management plan or a grazing permit.

Grazing fees. A major aspect of the bill as passed is that § 106 would provide a new grazing fee formula. A grazing fee formula had been provided by the Public Rangeland Improvement Act of 1978 (PRIA), but expired in 1985. The PRIA formula was extended and a minimum fee of $1.35 per Animal Unit Month (AUM) was established by Executive Order 12548 and has remained applicable to date. An AUM is currently defined as the amount of forage needed to sustain one animal unit for one month. An animal unit is currently defined as one cow and calf, one horse, or five sheep or goats. The PRIA formula reflects changes in private grazing rates, the price of beef cattle, and the costs of livestock production. The National Grasslands were not subject to PRIA, and E.O. 12548 applied only to the same lands as did PRIA. By administrative action, the fees that were applied in the national forests were also applied to National Grasslands in California, Idaho, and Oregon. By regulation, grazing fees for the National Grasslands are to be "established under concepts and principles similar to those for the national forests and "Land Utilization Projects" (which are the rest of the lands managed by the FS under the Bankhead Jones Act).[15] However, for the rest of the National Grasslands, a modified PRIA formula is used and certain credits are allowed.

The new formula in H.R. 2493 would be based primarily on historical (12-year) gross beef cattle production values (including production costs and revenues) and tied to short-term treasury bill rates for the past 12 years, making it more stable and less dependent on yearly fluctuations in beef prices than the PRIA formula. The bill also would count seven sheep or goats as one AUM rather than the current five, thereby allowing more of such animals to graze for the same fee. There is no minimum payment established under the bill.

Amendments to charge fees comparable to those on state-owned grazing lands, to charge higher fees for larger producers, and to strike the provision allowing seven sheep or goats to be counted for billing purposes were defeated. However an amendment to charge foreign grazers different fees was adopted. Section 106(a)(2) provides that in the case of a grazing permit or lease *held or controlled in whole or in part* by a foreign corporation or a foreign individual, the fee shall be the higher of either the average grazing fee charged by the state in which the grazing lands lie for grazing on state lands or the average grazing fee charged for grazing on private lands in the relevant state. This calculation is almost certain to result in higher fees. It is not clear how extensive foreign participation in federal grazing is and hence how much grazing this provision would likely affect. The provision may violate the terms of NAFTA and other trade agreements of the United States.[16]

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[15] 36 C. F. R. § 222.52.

[16] *E.g.,* § 1102 of the North American Free Trade Agreement requires a party to the agreement to treat foreign investors no less favorably than it treats its own investors with respect the "establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investment." Higher fees would appear to affect the management and operation of grazing by a foreign individual or a corporation with foreign shareholders.
(continued...)

Eliminated provisions

Several provisions were eliminated from H.R. 2493 before passage by the House. Because these provisions addressed issues that might come up again as the bill is considered in the Senate, some of them are discussed here.

Definitions. Past proposals for changing definitions related to grazing have proven controversial, in part because some perceive the proposals as changing current law or as making applicable to one agency's grazing program, elements of the other agency's program that are viewed as objectionable.

Some definitions in H.R. 1493 proved controversial and were removed from the bill before passage by the House, but may be reconsidered by the Senate. "Allotment" had been defined as "an area of Federal land subject to an adjudicated or apportioned grazing preference that is appurtenant to a commensurate base property." This definition raised several issues. It used language relevant to grazing administered by the BLM under the Taylor Grazing Act and would have made that language applicable to grazing administered by the FS. Depending on how the courts ultimately decide issues addressing the nature of a grazing preference under the TGA, an issue currently being litigated,[17] because of the consistency requirement in § 3, the proposed definition might have produced changes in the nature of FS grazing. Absent the definition change, § 3 might otherwise necessitate some changes in FS grazing to make that agency's grazing consistent with that of BLM, to the extent "consistent with the laws governing such lands." However, new enacted definitions would be new law applicable to both FS and BLM lands and therefore, arguably more changes to FS administration could have been possible and possibly mandated as consistent with the laws governing both agency's lands. This result could be desirable or not, depending on one's point of view.

The definition of allotment eliminated before passage also would have stated that the federal lands in an allotment would be "appurtenant to a commensurate base property." Base property is non-federal property that is used as the basis under the TGA for determining that an applicant for a grazing permit may be entitled to a preference for a grazing permit. The eliminated definition of "base property" also would have referred to the federal allotment being "appurtenant" to private base property. Some argued that using the term appurtenant would lend support to assertions that a grazing permit is more than a mere privilege or license, but rather being more in the nature of a right, thereby making adjustments in grazing permits and active use more difficult to achieve and possibly resulting in compensation being owed when the federal managers made such changes. The TGA states expressly that

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[16](...continued)

[17] Public Lands Council v. Babbitt, 929 F. Supp. 1436 (D. Wyo. 1996). This case is currently on appeal. The district court struck down the new BLM regulations that separated "grazing preference" (a priority to receive a permit) from "permitted use" (actual AUMs allowed on an allotment), finding that the Secretary failed to "adequately safeguard adjudicated grazing preferences" and that the regulations lacked a reasoned basis in this regard.

issuance of a grazing permit "shall not create any right, title, interest, or estate in or to the lands."[18] Black's Law Dictionary (6th ed.) indicates that the terms "appurtenance" and "appurtenant" connote a relationship of two things, one of which is subservient to the other; one thing that is incident to the other, which is the principal. However, the examples given in Black's to illustrate the concept are property interests (rights of way, easements, etc.) and this is the most common way in which the terms are used. Even if the terms can be used in connection with things that are not property interests, the fact that the terms usually are used in that context could be seen as connoting a greater status for grazing privileges. Also, it would be more correct to say that a *grazing preference* might be appurtenant to base property, rather than federal lands themselves being appurtenant, since lands cannot be appurtenant to other lands. In any event, these are terms currently used only in the TGA; the new statutory language would also be applicable to FS grazing permits.

Another definition dropped during consideration was "consultation, cooperation, and coordination," that was defined as engaging in "good faith efforts to fully communicate and provide for a mutually supported action to achieve a mutually agreed purpose." There was some concern that this language could potentially give a veto power over federal decisions, especially in those situations where only grazing permittees would be interacting with federal managers, as for example in §103, which would have referred to terms and conditions of grazing permits arrived at "by the authorized officer in consultation, cooperation, and coordination with the permittee or lessee."

The eliminated term "coordinated resource management" would have been defined as voluntary management activities that involve consultation, cooperation, and coordination of FS or BLM managers with "affected State or Federal agencies, private land owners, and users of Federal lands." The use of the phrase involving "mutually agreed upon" actions and purposes appears quite appropriate when non-federal lands and activities are involved, but the same objection to the potential for a veto power with respect to users of the federal lands could be raised.

The eliminated term "cooperative management agreement" would have been defined as an agreement between the Secretary and a permittee that would be consistent with and incorporate by reference relevant provisions of existing land use plans, but would allow flexibility "beyond the limits of an allotment management plan or a grazing permit or lease." See §105 of the bill as passed.

Resource Advisory Councils. The provisions in earlier versions of H.R. 2493 that related to the Resource Advisory Councils (RACs) were also removed from the bill. RACs were established under the new Department of the Interior grazing regulations applicable to BLM lands; including them in the bill would have made the Councils applicable to FS lands as well. The RAC provisions in H.R. 2493 differed from current regulations in several respects. Under H.R. 2493, as reported, a RAC by a simple majority vote could seek Secretarial review of instances where it felt its advice on a BLM decision was arbitrarily disregarded. The prospect of Secretarial review could be daunting to range managers and other decision-makers facing the

[18] 43 U.S.C. § 315b.

opposition of a relevant RAC on issues. Under current regulations, a RAC may only seek Secretarial review upon the unanimous vote of its members.

In addition, before the RAC provisions were dropped, H.R. 2493 required RACs to include "balanced and broad representation" of various interest groups similar to those mentioned under current regulations, but with some differences. For example, the reference to environmental participants was to representatives of "local" environmental organizations, thereby arguably precluding representatives of national environmental groups from participating on a RAC. (There also was a requirement that RAC members be local residents.) Also, the members would not have been grouped as they are under current regulations and the voting provisions of the bill would have made the RACs function less as consensus bodies than is true under the regulations. Current regulations stipulate that RAC membership be divided into three general groupings: 1) grazing permittees and commercial user groups; 2) environmental, recreational, archeological, and historical groups; and 3) tribal, state or local elected officials, state natural resources managers, academicians, and the affected public at large. Under each of the three models for RACs available under the regulations, no actions may be taken by the RAC unless the majority of the representatives of each of the three groups concurs. This structure protects the viewpoint of each of the three categories of members. As originally written, in H.R. 2493, all voting would have been by simple majority vote, lessening the protection for minority points of view. This difference in RAC decision-making could have resulted in very different outcomes.

The bill as passed is silent on many issues that proved controversial in the 104th Congress, such as: water rights, application of the National Environmental Policy Act in the grazing context, appeals, access to federal lands across private lands, and ownership of range improvements.