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3010

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La Costa Rickford
Operator's Signature

10/16/03
Date

2003 HOUSE AGRICULTURE

HCR 3010

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Richard Costa
Operator's Signature

10/16/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3010

House Agriculture Committee

☐ Conference Committee

Hearing Date 1---23---03

Tape Number	Side A	Side B	Meter #
ONE		B	4.0 TO 47.7
TWO	A		0.0 TO 30.9
Committee Clerk Signature <i>Edward D. Clayton</i>			

Minutes

VICE CHAIRMAN POLLERT: Committee Members, we will open on HCR 3010.

Representative Gullickson. Would you like to start?

REPRESENTATIVE GULLICKSON: Thank you Vice Chairman Pollert and members of the Committee. I bring forward a Concurrent Resolution urging Congress to require the United States Department of Agriculture Forest Service to implement a management plan that supports the right of North Dakota ranchers to graze livestock in the national grasslands.

Over the last couple of years we have been very concerned about the direction that a proposed management plan has gone. The impact that it will have on our ranchers who have ranching operations with Nation Grass Lands. In North Dakota there are three such associations.

We have a representative from each of those. About the impact. The economic impact it will have to their ranches and communities. We think it is important to get the full weight of North Dakota behind this Resolution. There have been Congressional Hearings. The Governor invited

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House Agriculture Committee
Bill/Resolution Number HCR 3010
Hearing Date 1--23--03

the Forest Service to come here last year. We had a full hearing on the management plan and that what they are doing is not good for North Dakota. We have the support of our Congressional Delegation, our Governor etc. The Forest Service have been very resistant to changes in management. I am going to step back and let the others testify. We have an amendment to this Resolution. We are also going to have a petroleum amendment..

I am also going to pass out a letter from the Congressional National Congressional Delegation.

REPRESENTATIVE Joel Heitkamp. I am a State Senator. Our District has one of these Grass Lands. I am open to the Petroleum Industry in this HRC. If you go on to line five Of page two and really that is what we are getting at. I think the Committee should understand it is not in these guys best interest to mismanage that land. That is how they make there living.

That land was meant for cattle. Buffalo before that. The reality is that if they don't manage that land properly they are not going to have it for their kids or even for themselves a year later. We need to do everything we can to send a strong signal that we stick up for our North Dakota Ranchers. The Federal Government need to take a good look at people living out here on the prairie. Not try to exclude us from the land that surrounds us. That is why I am in support of this HCR.

VICE CHAIRMAN POLLERT: My name is David Drovdal. I am from District 39 from South West North Dakota. Western North Dakota goes back for ever for cattle grazing in North Dakota. It is a land of marriage of land and cattle. The number one obstacle is our own government. What this Resolution dose or says is grazing is a good for National Grass Lands. We would like to work with the US Forest Service and come up with management plan that is workable for ever. Not to revisit every five or ten years. We put our rancher through great

Joel Heitkamp
Operator's Signature

10/6/03
Date

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House Agriculture Committee
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expense to revisit the plan so often. I also have an amendment that I have been asked to offer and I have talked to people involved with the HCR in agreement as to the resolution will pass these amendments out.

VICE CHAIRMAN POLLERT: NEXT.

BEA WALD: I am Bea Wald. I am Vice President of the North Dakota Grazing Association. I am also on the State Board of Township offices association. I am going to basically read a comment. I am speaking on behalf of HCR 3010. Our economy and future depends on this Resolution and our social structure that will be affected by this management plan. This land was purchased by the Federal Government. Under the land utilization project for grazing.

There Congressional Mandate there are Federal Laws that dictate this. There is no one unaffected in the State. Everyone pays property taxes or has a child in the educational system. Presently, approximately \$600.00 dollars per head go into the fund for foundation aid checks for each school districts funding. This will fall under the current plan as written. We the ranchers feel and the North Dakota Economist feel it is going to fall dramatically and who is going to wind up picking up the bill. The rest of North Dakota. The tax payers.

They will cover the shortfall. With the new guide lines management, access and the world transportation system will be affected. It looks like no science was to done to support the environmental impact and no one remembered to read the Federal Law establishing The Federal Land which plainly states is for the economic and social support for North Dakota. North Dakota can't afford this plan. Please support this Resolution:

VICE CHAIRMAN POLLER: Next person in support of HCR 3010.

La Costa Richard
Operator's Signature

10/16/03
Date

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House Agriculture Committee

Bill/Resolution Number HCR 3010

Hearing Date 1--23--03

BRUCE HACKINSON: I am from Mc Cloud, ND. I am the president of the Cheyenne Grazing Association. We are a grazing association in the southeastern part of ND. Of about 72,000 thousand acres. We raise approximately ten thousand cows on these grass lands. We have been arguing with the Forest Service the past several years. This new plan that they are trying to put into place. With there estimates, they say it will only be a ten to fifteen percent cut. With our records and some Doctors out of NDSU . Evaluations saying that we could lose Thirty to sixty percent of our grazing. This is quite concerning to us. All of our overhead stays the same. If we can stay in business. What are trying to do is support viable family units. When you take cuts of 10 or 50 percent. There are several of my neighbors that will not exist. Bigger ranchers will obsorb the smaller ranchers. The younger ranchers that are trying to get into place just won't be able to justify going to their banker asking for a loan. Very few bankers will go with this. After the Forest Service took charge in the early sixties, cuts have come. Fifteen percent, just continually chipping away. What this Bill says is that we can't afford cuts. Main street need our dollars. With the cuts our income tax will go away. We are the last one that want to do any harm to the land. I ask for your support. We feel that the Grass Lands science is flawed.

VICE CHAIRMAN POLLERT: Any one else in support of HCR 3010?

RON NESS: My name is Ron Ness. Executive Director of the North Dakota Petroleum Council. We support the Resolution and the amendments. This has been a struggle for many . The debate continues. {{{{PLEASE SEE NORTH DAKOTA PETROLEUM COUNCIL'S WHITE PAPER WHICH IS ATTACHED}}}}

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Date

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House Agriculture Committee

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Hearing Date 1--23--03

VICE CHAIRMAN POLLERT: Anyone else to testify in favoar of HCR. 3010?

DALE PATTON: My name is Dale Patton. I am the County Commissioner from Mc Clain County. We support HCR 3010. Our county feels very strongly about this Resolution.

VICE CHAIRMAN POLLERT: NEXT.

KETH WINTER: Mr. Chairman, Keth Winter from McKenzie County. President of the Mc Kenzie County Grazing Association. We do support the Resolution.

VICE CHAIRMAN POLLERT: Any additional testimony.

SANDY CLARK: {{{PLEASE SEE ATTACHED TESTIMONY}}}

VICE CHAIRMAN POLLERT: Any additional testimony.

MARK SITZ: We support HCR 3010

VICE CHAIRMAN POLLERT: Any additional testimony in favor of HCR. Any opposition?

ELIXUS GUTHRIE: --no sure of spelling-- My name is Elixus Guthrie of Bismarck.

I don't support this Resolution for a variety of reasons. When I read it, the first thing I saw is that the facts are not correct. There are no rights to graze to on public land. Multa use. All citizens should be able to participate in diversity of use of lands. Management of land is not just for oil-gas and grazing. Just like there are no rights to hunt on private land. I think the HCR Runs counter to multiple use. Multiple is where all citizens have a say in how the land is to be used. I was in Lisbon for the meeting that was held there as to National Grasslands. It was a packed house for a wide diversity of use. Somehow that was lost in the message that was brought before you. I have heard about laws that mandate land for use for livestock. Those laws do not exist. Saying they exist dose not make them exist.

REP. FROELICH: Do you have the facts and the data?

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House Agriculture Committee

Bill/Resolution Number HCR 3010

Hearing Date 1--23--03

ELIXUS There are a lot of facts and data.

REP. FROELICH : Could you provide us with these facts and data?

ELIXUS: No real answer.

REP. ONSTAD : Do you think we are better served by? NDSU or Feds?

ELIXUS: I would not use NDSU as sole information provider.

BOB SCHAIBLE: Bob brought along some proposed amendments to House Concurrent

Resolution No 3010. He also passed out testimony. Which is attached. The facts and figures

are in the testimony. Bob was present in a neutral position. He was representing himself.

Please read amendments. Please consider using my amendments.

VICE CHAIRMAN POLLERT: We will CLOSE ON HCR 3010

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 3010

House Agriculture Committee

☐ Conference Committee

Hearing Date 1--30--03

Tape Number	Side A	Side B	Meter #
THREE	A		11 TO 18.
Committee Clerk Signature <i>Edward D. Clayton</i>			

Minutes:

CHAIRMAN NICHOLAS: We will open on HB 3010. We have lots of amendments for HB 3010. Please see amendments. This Resolution is just for ND.

Conversation was held on the amendments.

CHAIRMAN NICHOLAS: Committee Members, would you be conformable if we adopted the amendments.

REPRESENTATIVE BELTER MADE A MOTION FOR A DO PASS, REP. FROELICH SECONDED THE MOTION. WE HAVE HB 3010 BEFORE US AND

REPRESENTATIVE FROELICH MADE A MOTION FOR A DO PASS AND REP.

KELSH SECONDED THE MOTION. .. DID A VOICE AND IT PASSED THERE WERE NO NO'S.

33026.0101
Title.

Prepared by the Legislative Council staff for
Representative Gulleson
January 23, 2003

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3010

Page 1, line 8, after the second "the" insert "Little"

Page 1, line 12, replace "public" with "federal"

Page 1, line 14, replace "more than" with "approximately"

Page 1, line 15, after the first "the" insert "Little"

Page 1, line 17, replace "190" with "584"

Page 1, line 18, replace "public" with "federal"

Page 1, line 25, replace "potential" with "potentially major" and remove "of 25 percent"

Page 2, line 1, remove "the available", remove "land", after the first "in" insert "the national grasslands located in", after the first "a" insert "devastating", replace "of 99 jobs" with "to the fragile economy of these rural areas of North Dakota", replace the second "a" with "an economic", and replace the second "of" with "to residents of the counties"

Page 2, line 2, remove "\$1.4 million in income to ranchers"

Page 2, line 7, after "graze" insert "their traditional numbers of"

Renumber accordingly

3010
HCP
Date: 1-30-03
Roll Call Vote #:

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House AGRICULTURE COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Motion Made By

WITH Adopted
AS Amended
DO PASS

Seconded By

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN NICHOLAS					
VICE CHAIRMAN POLLERT					
REPRESENTATIVE BELTER					
REPRESENTATIVE BOEHNING					
REPRESENTATIVE KELSCH					
REPRESENTATIVE KINGSBURY					
REPRESENTATIVE KREIDT					
REPRESENTATIVE UGLEM					
REPRESENTATIVE WRANGHAM					
REPRESENTATIVE BOE					
REPRESENTATIVE FROELICH					
REPRESENTATIVE MELLER					
REPRESENTATIVE ONSTAD					

Total (Yes)

No

Absent

Floor Assignment

163010

HERE

Date:
Roll Call Vote #:

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House AGRICULTURE COMMITTEE

☐ Check here for Conference Committee

Voice Vote

Legislative Council Amendment Number _____

Action Taken

DO PASS AS AMENDED

Motion Made By

FROELICH

Seconded By

KELSON

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN NICHOLAS	✓				
VICE CHAIRMAN POLLERT	✓				
REPRESENTATIVE BELTER	✓				
REPRESENTATIVE BOEHNING	✓				
REPRESENTATIVE KELSCH	✓				
REPRESENTATIVE KINGSBURY	✓				
REPRESENTATIVE KREIDT	✓				
REPRESENTATIVE UGLEM	✓				
REPRESENTATIVE WRANGHAM	✓				
REPRESENTATIVE BOE	✓				
REPRESENTATIVE FROELICH	✓				
REPRESENTATIVE MELLER	✓				
REPRESENTATIVE ONSTAD	✓				

Total (Yes)

13

No

0

Absent

0

Floor Assignment

Nicholas

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Operator's Signature La Costa Rickford

Date 10/16/03

REPORT OF STANDING COMMITTEE (410)
February 4, 2003 9:33 a.m.

Module No: HR-21-1588
Carrier: Nicholas
Insert LC: 33026.0103 Title: .0200

REPORT OF STANDING COMMITTEE

HCR 3010, as amended, Agriculture Committee (Rep. Nicholas, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HCR 3010, as amended, was placed on the Sixth order on the calendar.

Page 1, line 3, after "graze" Insert "their traditional numbers of" and after "grasslands" Insert "and that allows the mineral resources within the national grasslands to be developed in a reasonable manner"

Page 1, line 8, after the second "the" Insert "Little"

Page 1, line 10, remove "and is shared"

Page 1, line 11, remove "by North Dakota and South Dakota"

Page 1, line 12, replace "public" with "federal"

Page 1, line 14, replace "more than" with "approximately"

Page 1, line 15, after the first "the" Insert "Little"

Page 1, line 17, replace "190" with "467"

Page 1, line 18, replace "public" with "federal"

Page 1, line 25, replace "potential" with "potentially major" and remove "of 25 percent"

Page 2, line 1, remove "the available", remove "land", after the first "in" Insert "the national grasslands located in", after the first "a" Insert "devastating", replace "of 99 jobs" with "to the fragile economy of these rural areas of North Dakota", replace the second "a" with "an economic", and replace the second "of" with "to residents of the counties; and"

Page 2, line 2, replace "\$1.4 million in income to ranchers" with:

"WHEREAS, 30 percent of North Dakota's oil and gas wells, which produce 36 percent of the crude oil supply for the Tesoro refinery in Mandan, are located within the Little Missouri National Grassland; and

WHEREAS, oil and gas exploration and production and related activities have historically accounted for 58 percent of the economy of the four North Dakota counties comprising the Dakota Prairie Grasslands; and

WHEREAS, the proposed management plan will eliminate or restrict access to 234,460 acres of the 992,870 acres in the grasslands, making 24 percent of the national grasslands virtually off limits for oil and gas exploration and development, resulting in the loss of additional jobs and further damage to the economies of the state as a whole and the local communities"

Page 2, line 7, after "graze" Insert "their traditional numbers of"

Page 2, line 8, after "grasslands" Insert "and that allows the mineral resources within the national grasslands to be developed in a reasonable manner"

Renumber accordingly

2003 SENATE AGRICULTURE

HCR 3010

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10/16/03
Date

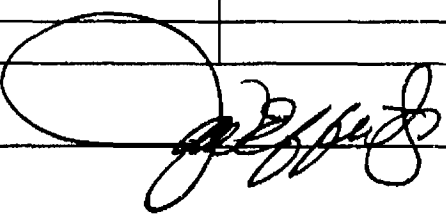
2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3010

Senate Agriculture Committee

☐ Conference Committee

Hearing Date 03/06/03

Tape Number	Side A	Side B	Meter #
1	x		42 - 3860
Committee Clerk Signature 			

Minutes:

Chairman Flakoll opened the hearing on HCR 3010. All members were present.

Representative Gulleson introduced and testified in favor of the resolution. There are representatives from the grazing associations in attendance to explain the importance of the resolution. This discussion has been going on for quite some time. The management plan has been adopted by the Forest Service and severely reduces the allotment of acres for grazing. This will have a devastating impact in terms of economics to cow/calf producers and to future generations. The governor and his office are working closely with the grazing associations on this issue as is the congressional delegation.

Senator Flakoll asked what amendments were made by the house?

Representative Gulleson said Ron Ness will speak to that. The house amendments had to do with oil supply and oil and gas exploration.

Page 2

Senate Agriculture Committee

Bill/Resolution Number HCR 3010

Hearing Date 03/06/03

Senator Flakoll asked approximately lines 6 - 11?

Representative Gulleson said yes.

Representative Drovdal testified in favor of the resolution. They added oil and gas in the house because 30% of our drilling is on the national grasslands, 36% of our crude comes from the national grasslands. Agriculture and grazing are important issues and were an important part of the grasslands when they were established. Its a disaster seeing people in North Dakota trying to produce food and make a living in agriculture and their biggest battles are with the federal government. Oil and gas are an important part of multipurpose use. We have proven we can do oil and gas production and exploration with no environmental impact.

Senator Urlacher asks if this also relates to squeezing out the private land owner on the national grasslands as well by restricting grazing.

Representative Drovdal said that is a very good observation. There is private land within the national grasslands. To protect this land, the national grasslands need to be available for grazing.

Senator Bowman testified in favor of the resolution. (meter # 685) A great portion of the national grasslands are in his district and his place is a part of the national grasslands. The reason the grasslands were started was to bring people back to North Dakota after the devastation of the drought of the thirties to get the grasslands back into production. The grasslands were established with a multiple use concept and special interest groups now want to change that concept. His ranch depends upon the ability to graze cattle in the national grasslands.

Representative Amerman testified in favor of the resolution.

Page 3
Senate Agriculture Committee
Bill/Resolution Number HCR 3010
Hearing Date 03/06/03

Senator Heitkamp testified in favor of the resolution. He said the ranchers are under siege from these special interest groups. The land is their future. Why wouldn't they be good stewards of the land? Failure to do so would result in their demise. We want people living in the rural areas.

Ron Ness, North Dakota Petroleum Council, testified in favor of the resolution. (meter #975)

They support the bill as amended. He thinks we are losing the war. Environmentalists and special interest groups are becoming better funded every day. We are up against it with our friends from the counties and the rural areas and the grazing associations. They have fought this thing with every tooth and nail. The special interest groups are from New York and California and other urban areas and send their dollars to North Dakota to fight the oil industry. The oil industry has been in the grasslands since 1952. 54% of the economic base in these counties is from the oil industry. The forest service in North Dakota accounts for 98.5% of the revenue in the entire forest service for oil and gas revenues. Most of the forest service rules passed in Washington are intended for forests. We are managing our grasslands like we manage a California forest and we can't seem to get them to understand this.

Senator Nichols asked what things are changing with the new plan?

Mr. Ness said he had a summation he used in his testimony in the house and he will get the committee a copy. They are using zone management. They say oil and gas still have access but they have ruled there will be no surface occupation requirements on the land. The forest service plan does not recognize how successfully and quickly grasslands can be reclaimed.

Sanuy Clark from the North Dakota Farm Bureau testified in favor of the bill. (written testimony)
(meter # 1352)

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Senate Agriculture Committee
Bill/Resolution Number HCR 3010
Hearing Date 03/06/03

Keith Winter, McKenzie County Grazing Association which includes the Little Missouri

Grasslands, testified in favor of the bill. (meter # 1405) President Roosevelt, in 1933 under the Emergency Relief Act, purchased land to put Americans back to work and to help the counties recover from the economic tough times. The US purchased 11.8 million acres of land of which 3.3 million acres was for agriculture projects, wildlife projects were purchased (Des Lacs, Minnare), 1 million acres was purchased for the Indians and given to them for their needs, 1 million acres was purchased for the Forest Service, land was purchased for some cities and counties across the west. In the 30's zoning was established for the 11.8 million acres. In 1952, the Mineral Leasing Act for Acquired Lands was established and the oil industry came in on the grasslands. Mr. Winter said the management plan recently adopted by the Forest Service is illegal because it ignores the zoning established in the 30's. The counties and grazing associations feel very strongly these lands were purchased for agricultural use. He gave the committee an excellent law review article about North Dakota that covers this history (attached). The public has a misconception regarding the grasslands because they are approximately 50% public and 50% private and the public thinks they are all public. The Forest Service estimates the plan will reduce grazing by 10% but all the analysis done by the grazing associations through the University System, range scientists, and the counties estimate the cuts to be 30 - 70%. Senator Flakoll asked if the opponents would prefer no livestock on the grasslands at all? Mr. Winter said his opponents are the Sierra Club, the National Wildlife Federation and they have a policy they want to eliminate grazing on "public lands in the west". Senator Flakoll asked if grazing deer can also affect grazing land?

Richard Costa
Operator's Signature

10/16/03
Date

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Senate Agriculture Committee
Bill/Resolution Number HCR 3010
Hearing Date 03/06/03

Mr. Winter said grazing is good for the grasslands, it stimulates the plants and growth. He thinks they have enough deer.

Senator Flakoll asked if any grazing animal helps spread seed?

Mr. Winter said absolutely.

Senator Klein asked if there is an opportunity to fight this through the courts?

Mr. Winter said the cost to litigate the government is high. The previous administration signed five plans affecting the grasslands. North Dakota is taking 3 of the plans to court. A congressional solution would be better than going to court.

Senator Erbele asked if the message can be brought to the public that hoof action is good for grasslands?

Mr. Winter said there is a lot of science on their side. They have tried for 20 years to get the message across and it is difficult. In North Dakota they have the support of the public.

Darell Evanson, Sheyenne Valley Grazing Association, testified in favor of the resolution. (meter # 2158) He is an environmentalist. He was a university professor until ten years ago when he had an opportunity to come back to the farm. He depends on the grazing lands for pasture. His son wanted to return to the farm but the controversy on grasslands has forced him to reconsider and he is now in Indianapolis. This is affecting out migration. He would like to come back. He thinks wildlife is great and he enjoys visiting with tourists when they come through. The ranchers accept the tourists but they don't accept the ranchers. It is difficult to get the message out to the public.

Bruce Hakanson, President of the Sheyenne Valley Grazing Association, testified in favor of the bill. (meter # 2562) The grazing numbers were set up in the mid 30's by soil conservation and

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Senate Agriculture Committee
Bill/Resolution Number HCR 3010
Hearing Date 03/06/03

these numbers are still used today. They are currently grazing at 85% of those numbers and the grasslands are in much better condition today than they were in the 30's. The number of blowouts have been decreased dramatically. The numbers should have increased with the improved conditions. Since 1987 they have been at 85% and now they want to cut another 20 - 60%. The deer wouldn't be so plentiful without the private lands that provide shelter and feed. Senator Urlacher asked if fences and other improvements placed on federal lands by ranchers become the property of the federal government?

Mr. Hakanson said that is correct.

Senator Erbele asked if the reclaiming done in the 50's was funded by the government?

Mr. Hakanson said he thinks his grandfather was paid by soil conservation.

Senator Erbele asked why the grazing numbers were reduced in the 80's?

Mr. Hakanson said they were reduced due to drought. They then received normal rain but were told they had to wait for the grasslands to recover. Then they had too much rain, they still didn't get the grazing numbers back. Last year it dried down a little and they still didn't get it back. Its been 14-15 years now.

Senator Urlacher said in the western grasslands there has been the opposite affect. Is it true that policy is set for the grasslands as a whole without consideration for differences in weather and conditions?

Mr. Hakanson said the congressional delegation and the governor are behind them but its tough to fight Washington.

Mark Sitz, North Dakota Farmers Union, said they support the resolution. (meter # 3348)

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Senate Agriculture Committee

Bill/Resolution Number HCR 3010

Hearing Date 03/06/03

Wade Moser, North Dakota Stockman's Association, said they support the resolution. (meter # 3405.

Senator Flakoll closed the hearing on HCR 3010.

Senator Klein said maybe we should find some dollars for this resolution. It is troubling to hear things like this, how do we address it?

Senator Urlacher said every time you start cutting numbers, you will squeeze out the ranchers and that is dangerous. We are talking about private lands and livelihoods. The state better get behind this.

Senator Flakoll said farmers are the original environmentalists.

Senator Klein said this needs to be addressed and possibly funded.

It was moved by Senator Seymour, seconded by Senator Klein and passed on a roll call vote that the Senate Agriculture Committee take a Do Pass action on HCR 3010. Voting yes were Senator Flakoll, Senator Erbele, Senator Klein, Senator Urlacher, Senator Nichols and Senator Seymour.

No negative votes were cast. Senator Seymour will carry the resolution to the floor.

Chairman Flakoll moved on to other business of the committee.

Date: 3/6/03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 3010

Senate	<u>Agriculture</u>	Committee
--------	--------------------	-----------

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. Seymour Seconded By Sen. Klein

[illegible]

Total (Yes) 6 No 0

Absent 0

Floor Assignment Den Seymour

If the vote is on an amendment, briefly indicate intent:

Operator's Signature Jo Costa Richard Date 10/16/03

REPORT OF STANDING COMMITTEE (410)
March 6, 2003 10:06 a.m.

Module No: SR-40-4070
Carrier: Seymour
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HCR 3010, as engrossed: Agriculture Committee (Sen. Flakoll, Chairman) recommends
DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HCR 3010
was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-40-4070

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Richard Costa

10/16/03
Date

2003 TESTIMONY

HCR 3010

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10/16/03
Date

PROPOSED AMENDMENTS TO
HOUSE CONCURRENT RESOLUTION NO. 3010

Bob Schaible

Page 1, line 2, replace "right" with "privilege"

Page 1, line 10, replace "6,700" with "6,717", delete "and is shared by " and after the word "North Dakota" add " and supplies seasonal forage to 12 permittees" and delete "South Dakota"

Page 1, line 14, replace "more than 80" with "83"

Page 1, line 17, replace "190" with "467"

Page 2, line 7, replace "right" with "privilege"

Proposed by Robert Schaible

GRAZING ASSOCIATIONS and GRAZING FEES

Compiled by Robert R Schaible

Last update: 1/20/02

BACKGROUND

In 1935, the Legislature of the state of North Dakota passed a law later codified as Chapter 36-08, NDCC that established Cooperative Grazing Associations. The bill, SB 225, was introduced by Gust Wog of Belfield and John K Brostuen of Alexander/Cartwright. The grazing associations were organized and operate under state laws to plan for group management and use of public and private land. Their purpose was to assist in planning and carrying out county and district agricultural conservation and land use programs.

Section 36-08-01 (1) states: "Animal Unit" means a cow, a bull, or a steer, or five sheep over six months of age on the first day of May of the year in which the age is being determined. Two horses are equivalent to three animal units. Animals not more than six months old on the first day of May of the year in which the age is being determined, and which are the natural increase of the permitted livestock, may not be counted.

Section 36-08-01(3) states: Cooperative grazing association means a corporate or cooperative association mutually operated for the purpose of aiding in the conservation, restoration, improvement, development, and utilization of natural forage resources within any county or counties where a grazing area has been acquired for joint use by its members and for aiding in the restoration, conservation, improvement, development and utilization of lands.

Section 36-08-01 (6) states "grazing area" means any area of land situated in any one or more counties in this state, which has been or may be acquired by purchase, lease, or otherwise by an association for grazing purposes or for the raising of forage crops.

Section 36-08-02 (5) states: Act as agent of, and cooperate with, the federal and state government or any department or agency thereof, in the conservation, restoration, improvement, development, and utilization of the forage resources in this state or for any other purpose, and to accept and use any funds provided by the federal or state government or any department or agency thereof.

Please refer to the 2001 N.D.C.C. Chapter 36-08 for the entire contents of the current statute. Similar grazing association laws were passed in Montana, South Dakota, Wyoming, Nebraska, Colorado and Kansas.

GRAZING YEAR

The grazing year starts on May 1 and ends April 30 the next year.

GRAZING FACTORS

Cattle are allowed on the range depending on a condition called "range readiness."

Ranchers that have USFS grazing privileges vs private grazing

	Private grazing	USFS grazing
McKenzie	346	173
Billings	144 }	163
Golden Valley	107 }	
Slope	132	126
Sioux	111	13
Ransom	192 }	79
Richland	218 }	

NORTH DAKOTA AUTHORIZED GRAZING ASSOCIATIONS

McKenzie Grazing Association: papers filed on August 10, 1937

1996 to 2000 co-operative annual reports in SOS office shows – 198 members
2001 co-operative annual report showed 170 members
2002 co-operative annual report showed 173 members
USFS web site shows 190 ranching operations

Medora Grazing Association: papers filed on December 17, 1937

1996 to 2001 co-operative annual reports in SOS office showed 138 members
2002 co-operative annual report showed 163 members
USFS web site shows 253 allotments in 3 grazing associations. (Medora, Little Missouri, and Horse Creek)

Little Missouri Grazing Association: Papers filed on February 10, 1940

1999 to 2001 co-operative annual reports in SOS office showed 115 members
2002 co-operative annual report showed 126 members

Horse Creek Grazing Association: papers filed on October 11, 1966

1999 to 2001 co-operative annual reports in SOS office showed 6 members
2002 co-operative annual report shows 5 members

Sheyenne Valley Grazing Association: papers filed on April 3, 1941

1999 co-operative annual report in SOS office showed 76 members
2000 co-operative annual report showed 74 members
2001 and 2002 co-operative annual reports showed 79 members
USFS web site show 83 members

Cedar River Grazing Association: papers filed on March 18, 1983

13 members formed the co-operative: Number of current members not known.
1987-last report filed: Dissolved by operation of ND law on March 31, 1994
USFS web site shows 12 permittees in 13 allotments.

SOUTH DAKOTA GRAZING ASSOCIATION

Grand River Cooperative Grazing District

Formed in South Dakota: papers filed on September 3, 1940

USFS web site shows 109 permittees in 61 allotments

(Cooperatives Information from ND and SD Secretary of State Records and USFS website)

GRAZING FEES

Ranchers in the Little Missouri National Grasslands currently pay \$1.54 per animal unit per month (AUM) to the Grazing Associations to use National Grassland pastures. An animal unit is one cow/calf pair, one bull, one steer, or five sheep over six months of age. Two horses are the equivalent to three animal units. Animals not more than six months old on the first day of May of the year in which the age is being determined, and which are the natural increase of the permitted livestock, may not be counted.

The fee is established by Congress and recalculated every year. It was raised in 2002. The fee is used by all federal agencies (BLM, USFS, and others) that rent land to ranchers for grazing purposes. The USFS sets restrictions on the number of animal units allowed on each quarter or other parcel of land, depending on a number of factors including the location of the land, i.e.; River bottom, plains and meadows, gullies or hilly country, carry over forage from the previous year, moisture throughout the year,

The Grazing Associations collect the grazing fee from the ranchers. The Grazing Association, in an agreement called the Conservation Practices Agreement, keeps one half of the grazing fee (\$.72). According to the agreement, generally one half of the fee may be used for conservation practices that must be approved by the USFS ahead of time. That fee could be used for fence repair or fences around woody draws, water lines to water troughs, water trough repair or water development, noxious weed control and other conservation measures. The other half of the fee is used for salaries and benefits, office supplies and expenses, utilities, insurance, building maintenance, telephone, legal and auditing services, postage, mileage and per diem, fire protection, and other minor expenses.

The balance of the grazing fee (\$.74) is divided between the U.S. Forest Service (US Treasury) and counties. Seventy-five percent of the grazing fee (fifty-five cents) goes to the U. S. Treasury and 25% of the 67 cents (18.5 cents) goes to the county.

NDSU Statistics concerning AUMs on grasslands.

According to Kris Ringwall, Director of the Dickinson Research Extension Center, their facility estimates that a cow/calf unit will require between 2.25 and 2.50 acres of pasture per month on the grasslands. There are several variables to this figure including range conditions, grasslands location - creek or river bottom land, rolling plains, hilly buttes, steep inclines, moisture in the grasslands, etc.

Little Missouri National Grasslands

For demonstration purposes, let's use one quarter of grasslands (160 acres) and the 2.25 AUM as a means to establish how many AUMs could be placed on one quarter of land. Take 160 acres divided by 2.25 AUMs (equals 11.85) divided by 6 (months) of the cattle being placed on the federal land. Rounding off, 12 AUMs could be placed on one quarter of land for six months. *See below.*

Now, using the above equation, let's take 2.50 AUM's. Equals 10.66 animals per quarter of land. Finally, let's take 3.00 AUMs. This equals 8.87 animal units per quarter section of land for six months. *See below.*

To calculate how much it costs ranchers to place AUMs on one quarter of land (160 acres) for a season would be as follows:

12 AUMs X 6 months X \$ 1.54 equals \$ 110.88
10 AUMs X 6 months X \$ 1.54 equals \$ 92.40
8 AUMs X 6 months X \$ 1.54 equals \$ 73.92

Sheyenne National Grasslands - information from Bryon Stotts, SNG

In the SNG, between 7 or 8 acres of grasslands is needed per cow/calf for a six month season.

Thus, ranchers can put approximately 20 cow/calves on a quarter section of land (160 acres) for a season.

20 AUMs X 6 months X 1.54 equals \$284.59

PRIVATE PASTURE RENTAL INFORMATION

Ranchers throughout the state pay grazing fees as follows to rent private pasture land.

See: NDSU Agriculture Statistics Service: 701-239-5306 "2000 North Dakota County Rents and Values, March, 2001"

Private Grazing cash rent costs -Average

	Rental Rates		5 yr Average -	# Reports received	
	1999	2000	2000	1999	2000
Adams County	\$ 9.90	9.40	9.80	31	34
Billings County	\$11.70	11.50	10.60	29	28
Bowman County	\$ 9.70	9.00	8.60	32	25
Dunn County	\$10.30	10.70	10.40	23	32
Golden Valley County	\$ 6.40	7.30	7.40	35	29
Grant County	\$ 9.40	10.30	9.60	36	25
Hettinger County	\$11.10	11.70	11.00	36	34
McKenzie County	\$ 7.80	8.30	7.10	20	25
McLean County	\$ 8.50	9.50	9.10	25	36
Morton County	\$10.20	10.70	10.10	31	20
Ransom County	\$15.40	16.00	14.50	21	28
Sioux County	\$ 7.80	7.80	7.90	33	32
Slope County	\$10.00	9.70	10.00	28	25
Stark County	\$11.10	11.50	11.20	33	28
Williams County	\$ 6.80	8.20	6.70	32	18

Additional Grazing Association Information

- The twenty-year average for AUM'S on the North Dakota grasslands is 434,453.
- The Grazing Associations may charge a "Spread charge" for each AUM for other expenses related to their operations. The spread charge is approved by association members at their annual meetings.
- The Medora Grazing Association charges \$2.60 or \$2.70 per animal unit monthly.
- The Little Missouri Grazing Association charges -
- The Horse Creek Grazing Association charges -
- The Sheyenne Grazing Association charges \$.65 this year and authorized an additional fee of \$1.00 if necessary. It is called a TAP fee. The .65 cents is used for spraying purposes. The Sheyenne Grasslands provides for about 9,000 animals during the year.
- The McKenzie Grazing Association charged \$1.60 in the year 2000. This association has about 20,000 animals on the grasslands a year, depending on the conditions of the grasslands.
- The Cedar River Grazing Association does not charge a spread charge.
- The Grand River Grazing Association charges \$3.65 for spread charges. This is used to pay for salaries, conservation projects, and other improvements. A 6 person crew travels throughout the grasslands to work on improvement projects.

• The Grazing Associations may also assess other one-time charges for special projects according to their by-laws.

As mentioned above, if a member of a grazing association wants improvements to his rented forest service, the rancher may pay a cost share on part of the improvement. Some projects require a 50-50, 75-25, or 90-10 split. In some cases, depending on the project, the rancher may pay nothing at all.

The Grazing Associations are required by the USFS to "police" their members according to "Rules of Management" that have been established and to meet the "Standards and Guides" established in the Grasslands Plan.

GRAZING PRIVILEGES - LEASING

Little Missouri National Grasslands

Ranchers in the Little Missouri National Grasslands lease their grazing privileges on their base property to other cattlemen. In addition, the renter can place grazing units (AUMs) on grasslands that belong to other ranchers.

Sheyenne and Cedar River Grasslands

Cattlemen in the Sheyenne and Cedar River Grasslands areas also sub-lease their lands to other cattlemen.



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Fax: 701-298-2210

State Headquarters:
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P.O. Box 2793
Bismarck, ND 58502
701-224-0330 • 1-800-932-8869
Fax: 701-224-9485

North Dakota Farm Bureau

www.ndfb.org

House Agriculture Committee
January 23, 2003
Testimony by North Dakota Farm Bureau
presented by Sandy Clark, public policy team

Good morning, Mr. Chairman and members of the committee. For the record my name is Sandy Clark and I represent the 26,000 members of North Dakota Farm Bureau.

NDFB policy supports HCR 3010. Many of our members hold permits and graze on the National Grasslands, including the Little Missouri National Grasslands, the Sheyenne National Grasslands and the Cedar River National Grasslands.

North Dakota Farm Bureau has always supported the multiple-use concept of these public lands, including livestock grazing, energy development and recreational uses. We also oppose any plan that inhibits or reduces economic uses of the National Grasslands.

Therefore, North Dakota Farm Bureau urges a yes vote on this resolution. Thank you for your consideration. I would be happy to entertain any questions you might have.

One future. One voice.

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Jo Costa Richardson
Operator's Signature

10/16/03
Date

L

North Dakota Petroleum Council's White Paper
Grassland Management Plan – Record of Decision

August 8, 2002

Record of Decision

There are no shocking changes in the final plan. The number of acres open for development has not changed dramatically from current management status; however the number of restrictions on the land has increased significantly. There are more large blocks of land off-limits to industry or virtually impossible to develop the resources. Nearly 200,000 acres will have increased restrictions from standard lease terms (SLT). These restrictions will negatively impact oil and gas development. The Forest Service (FS) contends in the ROD that this alternative makes 95% of the land available for oil and gas leasing and almost 75% is available for surface occupancy. That may include the other forests covered under this plan where oil and gas is not an issue.

Managed as Wilderness, Backcountry Recreation Nonmotorized, Research Natural Areas, 3.51 & 3.51a Bighorn Sheep, and Scenic Integrity Areas

There are 234,460 acres of the 992,870 acres with leasing decisions that are virtually off-limits to oil and gas exploration and development. This is 24% of the federal acres in the grasslands where the FS contends that the land is open for leasing and development. However, it is unlikely that without surface occupancy these areas will be leased and developed. This has an impact on the county and state tax revenues and certainly impacts the economic potential of western North Dakota and future oil production. Managing these areas with no surface occupancy (NSO) restrictions means that the resources may be developed from adjacent tracts as long as the surface of these areas are not disrupted. Horizontal drilling may be used to continue in-field development along the borders of these large blocks but any exploration is highly unlikely and will significantly increase the costs of doing business. In addition, the FS imposes restrictions on adjacent tracts such as scenic buffers and other stipulations, standards, and guidelines to protect the areas even further.

Bighorn Sheep

Since the last draft, NDOGA has pushed for changes in the bighorn sheep areas and got four of the five areas changed from "not available for leasing" to "leasing under controlled surface use." It's disappointing that one area of 9,500 acres in the heart of oil production will be unavailable for leasing despite the Bighorn herd in that area having the best survival rate in the grasslands. However, this area is already leased and held by production. Oil and gas development will only be impacted if there is an interruption in production and leases expire.

Research Natural Areas

In addition, the FS has changed the leasing status on Research Natural Areas (RNA) from "not available for leasing" to leasing with "no surface occupancy." The acreage in these four areas is 19,075 acres. It appears this was done to reduce the acreage that is unavailable for minerals development and to show more compliance with the National Energy Plan. Once again, NSO is not exactly development friendly but does leave a crack in the window and is a concession for oil and gas.

New Restrictions

46,000 acres not available for leasing (NAA)
208,000 acres of no surface occupancy (NSO)
175,000 acres of controlled surface use (CSU)
225,000 acres of timing limitations (TL)
400,000 acres of standard lease terms (SLT)

Breakdown of New Restrictions by Management Category

Suitable for Wilderness	41,520 acres of NAA
Backcountry Recreation Nonmotorized	69,000 acres of NSO
Special Interest Areas	6,420 acres of mostly NSO
Research Natural Areas	19,320 acres of NSO
Bighorn Sheep restrictions	55,130 acres of (28,900 acres NSO; 26,230 acres)
Black Footed Ferret - various restrictions	29,180 acres

Acreage Impacts Current Restrictions vs New Restrictions

Total acres with leasing decisions = 992,870 subsurface acres managed by Forest Service

NAA	- current 24,940 acres	new 46,590 acres	- increase of 21,650 acres
NSO	- current 209,520 acres	new 207,660 acres	- decrease of 1,860 acres
CSU	- current 77,920 acres	new 175,390 acres	- increase of 97,470 acres
TL	- current 133,630 acres	new 225,910 acres	- increase of 92,280 acres
SLT	- current 589,840 acres	new 407,430 acres	- decrease of 182,000 acres

This does not include restrictions for raptor nests, woody draws, scenic buffers, raptor surveys, archeological, restrictions in 29,000 acres of black footed ferret ground, and many more guidelines and stipulations that impede development.

Valid existing rights will be honored in all these areas. Therefore, if an acre is already leased under previous restrictions, guidelines, or standards the lessee is guaranteed access.

If you want oil and gas development in the grasslands the restrictions are going the wrong direction. Planning for a one-year delay in permitting makes it difficult for an oil and gas company to do business on the grasslands. These problems are driving companies away from North Dakota and more restrictions will likely make the permitting process even more difficult. The Tesoro Refinery in Mandan has concerns about the availability of long-term supply (36% of their daily supply comes from the North Dakota grasslands).

Congress of the United States

Washington, DC 20515

February 13, 2002

Dale Bosworth
Chief
U.S. Forest Service
Sidney R. Yates Federal Building
201 14th Street, SW at Independence Ave.
Washington, DC 20250

Dear Chief Bosworth:

We urge the U.S. Forest Service to redraft the Dakota Prairie Grasslands Plan Revision. Because the plan will affect 1.1 million acres in North Dakota and will establish management standards and guidelines for the next ten to fifteen years, it is essential that the plan be well defined and avoid significant adverse economic impacts. The current plan fails on both counts.

The plan as currently written is unclear and gives overly broad discretion to the Forest Service. Without a clearer delineation of the plan's intended practices, we must consider that it may be implemented in a way that is most restrictive of grazing and energy exploration activities. The potential effects of the tremendous discretion found in the plan are quite troublesome.

Specifically, an independent analysis estimates economic losses of \$83 million to \$108 million per year as compared to the Forest Service's estimate of \$3 million per year. This discrepancy leads to fears that the plan will result in tremendous job and economic loss in areas that can ill afford such an economic hit. These regions are dependent on only a few economic sectors, primarily those in which activity would be curtailed due to implementation of this alternative.

We appreciate the difficult task assigned to the Forest Service and the Northern Great Plains Management Team in developing a plan that is a multi-use compromise. It is apparent that the Forest Service did examine earlier comments on the draft plan and attempted to incorporate these comments into the plan. We are pleased that the Forest Service has attempted to mitigate the economic effects posed by its original preferred alternative. However, we and many of our constituents remain troubled over the potential for long-lasting, detrimental economic impact to our state.

As a result of the questions and concerns surrounding the economic impacts, we believe the Management Plan should more clearly define the management parameters that will be used by your agency. We urge you to work with the stakeholders involved to clarify the plan's intended consequences and build consensus on a new draft.

Sincerely,

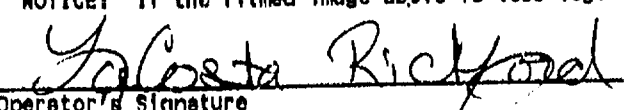

KENT CONRAD
United States Senate


BYRON DORGAN
United States Senate


EARL POMEROY
U.S. House of Representatives

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Operator's Signature

10/16/03
Date

Congress of the United States

Washington, DC 20515

March 21, 2002

The Honorable Ann Veneman
Secretary, U.S. Department of Agriculture
Jamie L. Whitten Building
1400 Independence Avenue, SW
Washington, DC 20250

Dear Secretary Veneman:

We strongly discourage the Forest Service from signing a Record of Decision (RoD) on the Dakota Prairie Grasslands Plan Revision.

As you know, a RoD will allow the Forest Service to implement the Management Plan Revision. The Forest Service apparently will finish processing public comments on the plan by early May, and a RoD could be issued later that month. However, we do not believe that signing a RoD on the current version of the management plan is fair to the people of North Dakota.

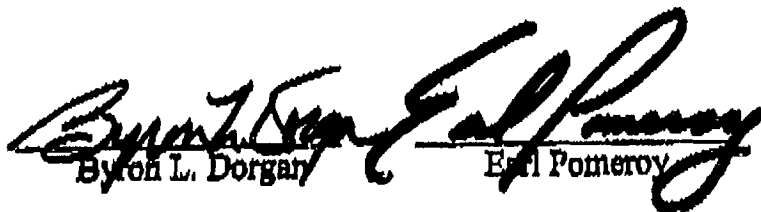
Under the proposed schedule, the Forest Service will not have adequately considered the comments received on the Management Plan Revision. The Forest Service is continuing to receive, and has already received, tens of thousands of comments, many of which highlight the serious negative economic impacts the plan could impose on our state. Therefore, we encourage the Forest Service to more carefully consider the public's input into the Management Plan Revision.

For example, as we outlined in a recent letter to Forest Service Chief Bosworth, an independent analysis estimates economic losses of up to \$108 million per year in North Dakota if the plan, as drafted, is implemented. North Dakota cannot afford to risk the potential economic or employment losses associated with implementing this alternative.

Instead of signing a RoD, we strongly urge the Forest Service to redraft the management plan. We believe that the Forest Service can and should work to build consensus among all stakeholders to develop a plan that does not have such dramatic negative economic impacts. We encourage you to take a leadership role in preventing a RoD from being signed and helping to get the Management Plan redrafted.

Thank you for your attention to this matter of critical importance to the people of North Dakota.

Sincerely,


Byron L. Dorgan


Earl Pomeroy


Kent Conrad

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North Dakota Farm Bureau

www.ndfb.org

Senate Agriculture Committee

March 6, 2003

Testimony by North Dakota Farm Bureau
presented by Sandy Clark, public policy team

Good morning, Mr. Chairman and members of the committee. For the record my name is Sandy Clark and I represent the 26,000 members of North Dakota Farm Bureau.

NDFB policy supports HCR 3010. Many of our members hold permits and graze on the National Grasslands, including the Little Missouri National Grasslands, the Sheyenne National Grasslands and the Cedar River National Grasslands.

North Dakota Farm Bureau has always supported the multiple-use concept of these public lands, including livestock grazing, energy development and recreational uses. We also oppose any plan that inhibits or reduces economic uses of the National Grasslands.

Therefore, North Dakota Farm Bureau urges a yes vote on this resolution. Thank you for your consideration. I would be happy to entertain any questions you might have.

One future. One voice.

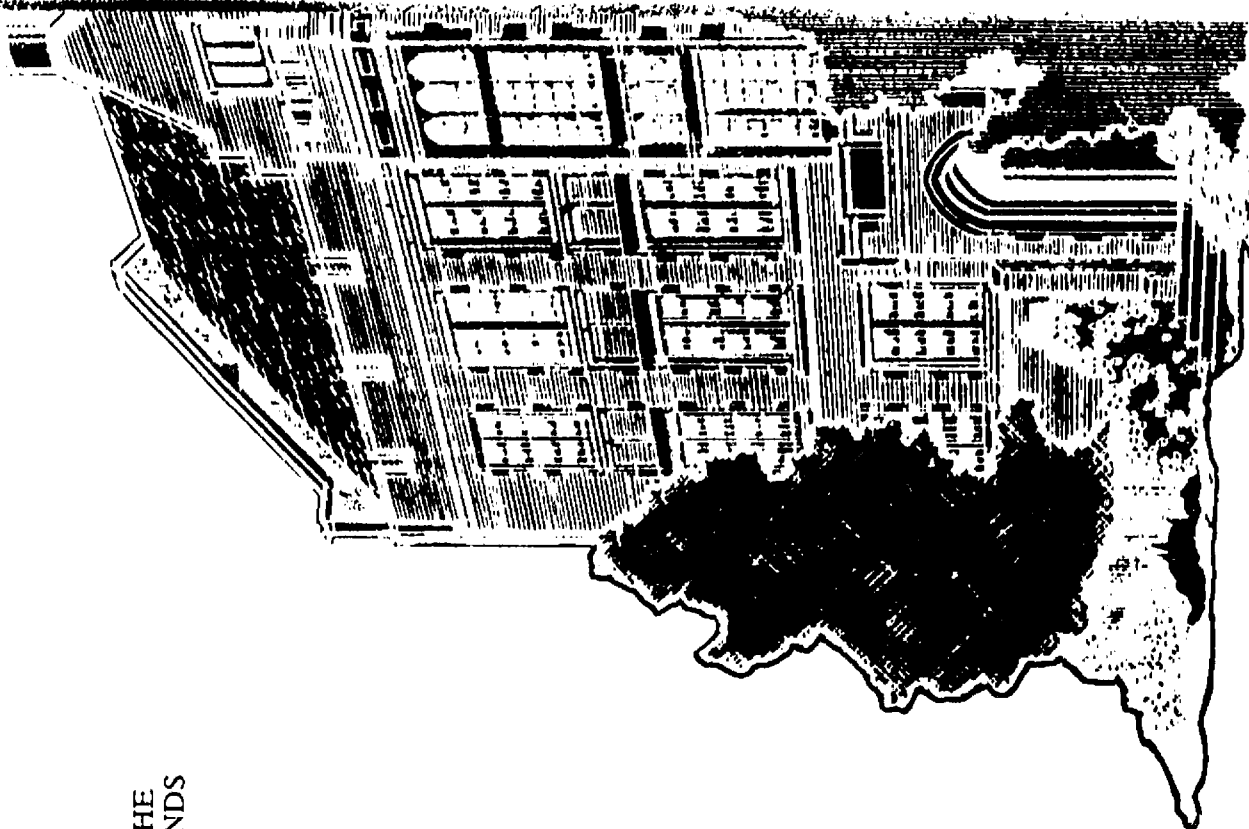
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Sandy Clark
Operator's Signature

10/16/03
Date

NORTH DAKOTA LAW REVIEW

10/27/63



MANAGEMENT OF THE
NATIONAL GRASSLANDS

ELIZABETH HOWARD

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Elizabetta Rickford
Operator's Signature

10/16/63
Date

MANAGEMENT OF THE NATIONAL GRASSLANDS

ELIZABETH HOWARD*

I. INTRODUCTION

The national grasslands cover nearly four million acres of federal lands within the United States.¹ A few national grasslands can be found in the Western states, however, most lie within the Great Plains states.² In fact, lying within the borders of one Great Plains state, North Dakota, is the largest national grassland, the Little Missouri National Grassland.³

The Little Missouri National Grassland's history is representative of the history of many other national grasslands in the Great Plains states. It originated as a land utilization project composed primarily of submarginal lands,⁴ which Congress acquired through emergency relief legislation during the Great Depression.⁵ Immediately following their acquisition, the

* Attorney, Churchill, Leonard, Lodine & Hendrie, LLP, J.D., 2001, Northwestern School of Law of Lewis & Clark College; B.S., Agricultural and Resource Economics, 1998, Oregon State University.

1. U.S. Forest Service, U.S. Dep't of Agriculture, *The National Grasslands Story* at 1, available at <http://www.fs.fed.us/grasslands/text.htm> (last visited Sept. 17, 2002) [hereinafter *The National Grasslands Story*].

2. *Id.* at 4; H. H. WOOTEN, U.S. DEPT OF AGRICULTURE, AGRICULTURAL ECONOMIC REPORT NO. 85, *THE LAND UTILIZATION PROGRAM 1934 TO 1964: ORIGIN, DEVELOPMENT, AND PRESENT STATUS* 76-77 (1965). The Crooked River National Grassland covers 111,348 acres in Oregon; the Curlew National Grassland covers 47,756 acres in Idaho; and the Butte Valley National Grassland covers 18,425 acres in California. ERIC OLSON, OFFICE OF THE GENERAL COUNSEL, U.S. DEPT OF AGRICULTURE, *NATIONAL GRASSLANDS MANAGEMENT—A PRIMER* 5 (1997).

3. U.S. FOREST SERVICE, U.S. DEPT OF AGRICULTURE, DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR THE NORTHERN GREAT PLAINS MANAGEMENT PLANS REVISION 1-3 (July 1999) [hereinafter DRAFT EIS]. The Little Missouri National Grassland incorporates 1,028,051 acres within its boundaries, comprising more than one-quarter of the total national grasslands acreage in the United States. *The National Grasslands Story*, *supra* note 1, at 4.

4. Memorandum for the Secretary Covering the Little Missouri Land Adjustment Project LU-ND-38-1 (Site I) [hereinafter Excerpt I]; Memorandum for the Secretary Covering the Little Missouri Land Adjustment Project (Billings) LU-ND-38-2 (Site II) [hereinafter Excerpt II]. According to a Federal Surplus Relief Corporation (FSRC) resolution dated January 13, 1934, submarginal lands are those "giving a return that is less than is to be properly expected from the labor expended with the result that the owners remain impoverished while working them." PHIL HOOKER, *CHRONOLOGY OF THE LAND UTILIZATION PROGRAM* 4 (1941).

5. See National Industrial Recovery Act of 1933, Pub. L. No. 73-67, § 202, 48 Stat. 200 (1933); see also Emergency Relief Appropriations Act of 1935, Pub. Res. 74-11, 49 Stat. 115 (1935); Emergency Relief Appropriations Act of 1936, Pub. L. No. 74-739, § 689, 49 Stat. 1608 (1936); Bankhead-Jones Farm Tenant Act of 1937, Pub. L. No. 75-210, § 32, 50 Stat. 522 (repealed Sept. 27, 1962) [hereinafter BJTFA]. The Secretary of Agriculture exercised his substantive acquisition authority under these acts pursuant to the procedural requirements set out in the

project lands were managed by a number of federal agencies, each for a very short period.⁶ Then, following the enactment of the Bankhead-Jones Farm Tenant Act (BIFTA),⁷ the law that has guided and directed national grasslands administration since 1937, the Soil Conservation Service (SCS) administered the project lands for approximately sixteen years.⁸

During its administration, the SCS's primary objective was to control use of the grasslands within the land utilization projects and secure soil stability.¹⁰ This led to improved ecological conditions, which in turn created an interest in purchasing these lands for private use. In 1954, the Secretary of Agriculture transferred these lands, along with most of the other land utilization project lands, to the Forest Service in order to facilitate their disposal to private individuals.¹¹ Over time, however, a new policy evolved for the disposal and management of these lands.¹² The Secretary of Agriculture decided to dispose of nearly six million acres of the land utilization project lands to states, colleges, individuals, the National Park System, the Bureau of Land Management, and the Forest Service under the auspices of his BIFTA authority.¹³ As to the remaining acres, the Secretary classified them for retention in the Forest Service and named them the National Grasslands.¹⁴ The lands within the Little Missouri National Grassland fell into this latter category.

Act of August 1, 1888, and the Declarations of Takings Act of 1931, 40 U.S.C. §§ 257, 258(a) (2000).

6. HOOKER, *supra* note 4, at 15-20. Between 1933 and 1960, the national grasslands were managed by the Federal Surplus Relief Corporation (1933-1934); the Federal Emergency Relief Administration through the Submarginal Land Committee and Rural Rehabilitation Division (general conduct of the land program and acquisitions) and the Agriculture Adjustment Division (planning for agriculture projects) (1934-1935); the Resettlement Administration (general Bureau of Agricultural Economics) (1937-1938); the Soil Conservation Service (1938-1954); and the Forest Service (1954-present). *Id.*

7. 7 U.S.C. §§ 1010-1012 (2000).

8. The Soil Conservation Service was renamed the Natural Resources Conservation Service in 1994. See The Department of Agriculture Reorganization Act of 1994, Pub. L. No. 103-354, § 246, 108 Stat. 3723 (1994).

9. CRAIG RUPP, HISTORY OF NATIONAL GRASSLANDS 3 (1975).

10. *Id.*

11. *Management and Disposition of Acquired Lands Under the Bankhead-Jones Act, 1954: Hearing Before the Subcomm. on Public Lands of the House Comm. on Interior and Insular Affairs*, 83d Cong. 2-5 (1954) (statement of Edward C. Crafts, Assistant Chief, United States Forest Service) [hereinafter 1954 Hearing]. In 1954, Congress was considering about half a dozen pending bills that would have disposed of individual tracts of land by giving the Secretary of Agriculture the authority to dispose of all Title III land. *Id.*

12. RUPP, *supra* note 9, at 4.

13. *Id.*

14. *Id.*; Administration of Lands Under Title III of the BIFTA by the Forest Service, 36 C.F.R. § 213.1 (1960).

Beginning with the classification of the national grasslands for permanent retention in 1960, the Forest Service started to apply its policies and laws to the national grasslands.¹⁵ It seemed to reverse this practice somewhat with amendments to its regulations in 1963.¹⁶ However, the reversal did not last. Perhaps as a result of increased pressure for recreational opportunities and environmental preservation,¹⁷ or simply because it did not take time to understand and apply the laws enacted to guide the national grasslands administration,¹⁸ the Forest Service again began to apply national forest laws, which by their plain language did not apply, to the national grasslands.¹⁹ In the 1990s, the Forest Service seemed to fully embrace this approach to national grasslands management, in a National Grasslands Management Primer²⁰ and two other documents that specifically apply to the Dakota Prairie Grasslands, the Forest Service's 1999 Northern Great Plains Management Plans Revision (Revision) and Draft Environmental Impact Statement (Draft EIS).²¹ Altogether, these documents reveal a management approach that dismisses the unique legal status and historical development of the national grasslands and ignores the purposes and uses for which they were acquired.²²

This approach to national grasslands administration has the potential to destabilize agricultural operations dependent on forage from the national grasslands, oil and gas operations within the national grasslands, and local communities that receive revenues from these operations. Under the Forest Service's preferred management approach to the Dakota Prairie

15. Memorandum from Richard R. McArdle, Chief of the Forest Service, to Regional Foresters (Apr. 1, 1960) [hereinafter McArdle].

16. Administration of Lands Under Title III of the BIFTA by the Forest Service, 36 C.F.R. § 213.1.

17. Terry West, USDA Forest Service Management of the National Grasslands, 64 AGRIC. HIST. 86, 88-89 (1990).

18. RUPP, *supra* note 9, at 5, 9.

19. See generally McArdle, *supra* note 15 (stating that the policies and procedures from the Forest Service Manual appear applicable to the national grasslands). A good example of this is the Forest Service Chief's memorandum applying multiple use and sustained yield principles to the national grasslands notwithstanding the fact that the Multiple Use Sustained Yield Act (MUSYA) of 1960 applied to National Forests only. Memorandum from Richard E. McArdle, Chief Forest Service, to Regional Foresters 2 (June 2, 1960); Memorandum from Morris Hankins, Office of General Counsel, to Regional Foresters 33-34 (Oct. 25, 1977) [hereinafter Hankins].

20. OLSON, *supra* note 2, at 1-2.

21. DRAFT EIS, *supra* note 3, at 1-6 to -7.

22. See *infra* Part IV (explaining that when the federal government acquired the national grasslands, it became obligated to manage them pursuant to declarations of taking incorporated into the final judgments and orders created when the grasslands were condemned).

Grasslands,²³ the approach described as "alternative three" of the Forest Service's Draft EIS, the Forest Service says that it plans to reduce grazing by nearly ten percent.²⁴ However, some economists claim the true grazing reduction under this management approach will be much larger.²⁵ Dr. Leistritz and Dr. Bangsund, economists at North Dakota State University, estimate that the Forest Service's management changes could cause up to a seventy percent reduction in livestock grazing on parts of the Dakota Prairie Grasslands.²⁶

In addition to reducing grazing on the Dakota Prairie Grasslands, the Forest Service's proposed management strategy will decrease oil and gas development activities on these grasslands.²⁷ Economists estimate that in North Dakota alone, these changes could reduce basic sector revenues from the energy industry by up to \$51 million annually for ten years following implementation of the Forest Service's new management plan.²⁸

As the opportunity for oil and gas development and the ability to access forage disappear, so will the families who populate the towns and counties within and near the Dakota Prairie Grasslands. With a smaller tax base, local governments will be less able to provide basic utilities and services.

23. The Dakota Prairie Grasslands is a unit of the National Forest System that includes the Cedar River National Grassland, the Grand River National Grassland, the Little Missouri National Grassland, and the Sheyenne National Grassland. DRAFT EIS, *supra* note 3, at 1-1.

24. The 10% figure is derived by comparing the Forest Service's estimated forage consumption on the Dakota Prairie Grasslands of 418,000 animal unit months (AUMs) in 1999 and the approximately 376,000 AUMs allowed under preferred alternative three in the Draft EIS. U.S. Forest Service, U.S. Dep't of Agriculture, *Livestock Grazing*, 4 REVISION REP. 7, 10 (July 1999) [hereinafter REVISION REPORTER]; DRAFT EIS, *supra* note 3, at 2-13. One AUM is the amount of forage necessary to sustain a mature cow (1000 pounds), a cow-calf pair, or five sheep or goats for one month. JERRY L. HOLECHECK ET AL., RANGE MANAGEMENT: PRINCIPLES AND PRACTICE 190 (3d ed. 1998).

25. F. LARRY LEISTRITZ & DEAN A. BANGSUND, REGIONAL ECONOMIC EFFECTS OF PROPOSED REVISED MANAGEMENT PLANS FOR THE NATIONAL GRASSLANDS IN NORTH DAKOTA: A SUMMARY 4-5 (1999).

26. *Id.* at 1. Professors Leistritz and Bangsund believe the Forest Service's preferred alternative could result in a reduction of 64-70% of AUMs on the Sheyenne National Grassland and 36-48% of AUMs on the Little Missouri National Grassland. *Id.*

27. REVISION REPORTER, *supra* note 24, at 10. The Forest Service estimates a mere sixty-acre decrease in lands available for oil and gas leases. *Id.* However, the North Dakota State Industrial Commission estimates a loss of 136,537.8 acres for oil well drilling in the Little Missouri National Grassland alone. Memorandum from John Bluenie, State Geologist, to Members of the N.D. Industrial Commission 4 (Dec. 7, 1999).

28. LEISTRITZ & BANGSUND, *supra* note 25, at iv. According to Professors Leistritz and Bangsund, this reduction has the potential to eliminate up to 68.8 full-time employees per year in occupations directly associated with energy activities. *Id.* Secondary employment, which includes jobs dependent on the existence of energy activities, would drop from 1646 to 869 full-time jobs. *Id.*

including roads and schools.²⁹ These effects would likely force even those who could afford to remain, following implementation of the Forest Service's proposed management scheme, to leave.

The potential economic and social impacts of the management strategy set forth in the Revision and Draft EIS on the communities that rely on the Dakota Prairie and other national grasslands for their livelihood demand a thorough analysis of the Forest Service's proposed management strategy. To assist with that analysis, this paper discusses the legal basis for the Forest Service's development of the Revision and the Draft EIS. It also reconstructs and examines the process by which the federal government established the national grasslands. Finally, this paper analyzes whether the Forest Service's current approach to national grasslands administration comports with Congress's purpose for establishing the national grasslands and complies with federal law as it currently applies to the national grasslands.

II. THE NORTHERN GREAT PLAINS MANAGEMENT PLANS REVISION AND DRAFT ENVIRONMENTAL IMPACT STATEMENT

A. THE NORTHERN GREAT PLAINS MANAGEMENT PLANS REVISION

The 1974 Forest and Rangeland Renewable Resources Planning Act (RPA), as amended by the 1976 National Forest Management Act (NFMA),³⁰ requires the Forest Service to develop and amend³¹ land and resource management plans (LRMPs) for each National Forest System unit.³² In June 1987, the Forest Service implemented an LRMP for the Custer National Forest, a forest system unit that, at the time, included North Dakota's Little Missouri National Grassland.³³ Recently, the Forest Service decided to revise the part of the Custer National Forest LRMP pertaining to the Little Missouri National Grassland.³⁴ The Forest Service conducted this revision in conjunction with a larger project called the Northern Great Plains Management Plans Revision. Altogether the Revision includes

29. The Forest Service must pay local counties 25% of the annual net revenues received from the national grasslands. 7 U.S.C. § 1012 (2000). These revenues support local schools and county roads. *Id.* The loss of this revenue could exacerbate the impact of lowered tax revenues.

30. 16 U.S.C. §§ 1600-1614 (2000).

31. Federal law requires that the Forest Service revise LRMPs every fifteen years. 16 U.S.C. § 1604(f)(5).

32. 16 U.S.C. § 1604(a).

33. DRAFT EIS, *supra* note 3, at 1-1.

34. *Id.* at 1-2.

revised management plans for three national forest system units, two of which include national grasslands.³⁵

B. THE NATIONAL ENVIRONMENTAL POLICY ACT AND ENVIRONMENTAL IMPACT STATEMENTS

The 1969 National Environmental Policy Act (NEPA) requires federal agencies to prepare environmental impact statements (EISs) for "major Federal actions significantly affecting the quality of the human environment."³⁶ An EIS is an agency document that details the environmental impact of a proposed action, including adverse and unavoidable environmental impacts, alternatives to the proposed action, the relationship between short-term uses and long-term productivity of the resources involved, and the potential irreversible and irretrievable commitment of resources involved in the proposed project.³⁷

Notably, NEPA does not include substantive (as opposed to procedural) requirements.³⁸ However, federal agencies frequently modify their proposed actions based on the information obtained while preparing an EIS.³⁹ An agency usually designs and analyzes a spectrum of possible project modifications, each of which has a different environmental impact on the area where the proposed project will occur.⁴⁰ The proposed modifications become alternatives in a project's EIS.⁴¹ Once analysis of these alternatives is complete, the agency will select one of them as its preferred approach to implementing the project.⁴²

The Revision project is a major action for which the Forest Service has completed a Draft EIS.⁴³ The Draft EIS proposes six alternative courses of

35. *Id.* at 1-1. The Northern Great Plains Management Plans Revision is a combined planning revision effort aimed at three National Forest System units: the Dakota Prairie Grasslands Unit, the Medicine Bow-Rout National Forest Unit, and the Nebraska National Forest Unit. *Id.* 36. 42 U.S.C. § 4332(2)(C) (2000).

37. *Id.* § 4332(2)(C)(i)-(v).

38. "If the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs." Methow Valley Citizens v. Robertson, 490 U.S. 332, 351 (1989); see also Stryke's Bay Neighborhood Council, Inc. v. Karlen, 444 U.S. 223, 227-28 (1980) (stating NEPA was designed to insure a fully informed and well-considered decision, but does not require agencies to make a particular decision).

39. See *Methow Valley*, 490 U.S. at 350-52 (stating NEPA's requirement that agencies take a "hard look" at environmental consequences is almost certain to affect the agency's substantive decision, even though NEPA does not require any particular action).

40. 40 C.F.R. §§ 1502.15-16 (1995).

41. *Id.* § 1502.14.

42. *Id.* § 1502.14(e).

43. See USDA Forest Service, *Proposed Land and Resource Management Plan for the Dakota Prairie Grasslands, Northern Region 1999* available at <http://www.fs.fed.us/nep> (last

action.⁴⁴ Each is a distinct approach to national grassland management, with varying environmental, social, and economic impacts. Out of the six alternatives, the Forest Service designated alternative three as its preferred approach to national grasslands management.⁴⁵ Alternative three reduces traditional and legally authorized grassland uses, supplanting them with special area designations, and increases recreational opportunities.⁴⁶ Under alternative three, approximately 49,000 acres of the Dakota Prairie Grasslands are set aside for special area designations.⁴⁷ In addition, parts of the Dakota Prairie Grasslands are designated for special wildlife habitats, ecosystem restoration, and other management activities purported to balance ecological values and human occupancy.⁴⁸ Unfortunately, not only does the Forest Service lack clear legal authority to make these designations,⁴⁹ but these designations are contrary to the historical purposes for which the national grasslands were acquired and the laws under which the Forest Service must administer them.⁵⁰

visited Oct. 5, 2002) (providing guidance for resource management of the Dakota Prairie Grasslands); DRAFT EIS, *supra* note 3, at 1-1.

44. DRAFT EIS, *supra* note 3, at 2-1, 2-5. A Final EIS has now been provided by the Forest Service and can be viewed at <http://www.fs.fed.us/r2/whiteriver/rfp/EIS/FEIS.htm>.

45. *Id.* at 2-5 to -6.

46. *Id.* at 2-5.

47. *Id.* at 2-43.

48. *Id.* at 2-39 to -43.

49. In the Draft EIS, the Forest Service bases its authority to create special interest areas on NEPA and 36 C.F.R. § 294.1 (2001). *Id.* at 3-269. Although NEPA describes the responsibility of federal agencies to preserve important historic, cultural, and natural aspects of our national heritage, NEPA is a procedural statute and does not give the Forest Service authority to designate special interest areas on the national grasslands. See *supra* note 38. In addition, 36 C.F.R. § 294.1 provides that areas within the National Forest System that should be managed principally for recreation may be specially classified. 36 C.F.R. § 294.1. This regulation does not give the Forest Service authority to "protect or enhance areas with unusual characteristics, such as scenic, historical, geological, botanical, zoological, paleontological or others," the purpose for which special interest areas are created according to the Draft EIS. DRAFT EIS, *supra* note 3, at 3-269.

Also, in the Draft EIS, the Forest Service claims the designation of Research Natural Areas (RNAs) is authorized under the Organic Administration Act of 1897, 16 U.S.C. § 551 (2000). *Id.* at 3-237; FOREST SERVICE MANUAL § 4063.01 (1990). However, this law and therefore this authority only extends to the national forests. 16 U.S.C. § 551 (2000). Therefore, the Secretary is exceeding the scope of his authority to the extent that he provided the Forest Service authority to designate RNAs on the national grasslands.

Similarly, wilderness designations may only incorporate lands within national forests, national parks, monuments, national wildlife refuges, and game ranges. 16 U.S.C. §§ 1131-1132 (2000); CONSTANCE E. BROOKS, HISTORICAL ANALYSIS OF NATIONAL GRASSLANDS: REBUTTAL TO U.S. FOREST SERVICE MANAGEMENT POLICY 27 (2000). Therefore, a recommendation for wilderness designations on the national grasslands is also outside the scope of the Secretary of Agriculture's and the Forest Service's delegated authority.

50. See *infra* Parts III-IV.

III. THE FORMATION AND MANAGEMENT OF THE NATIONAL GRASSLANDS

A. SETTLEMENT AND DECLINE OF THE GREAT PLAINS

During the nineteenth and early twentieth century, the United States focused on "getting the lands into the hands of the pioneer, the individual farmer seeking a new life on the frontier."⁵¹ In the 1841 Preemption Act⁵² and again in the 1862 Homestead Act,⁵³ Congress provided settlers with a relatively cost-free means to obtain title to public lands. Although these Acts encouraged quick settlement of the United States' vast land base, they were based on unrealistic expectations for land productivity and, as evidenced by the Dust Bowl, ultimately resulted in the reduced productivity of many lands.⁵⁴

The environmental and economic impact of the homesteading laws was particularly evident in the Great Plains. Coupled with a few years of substantial rainfall, these laws encouraged overly dense settlement in the Great Plains.⁵⁵ The homesteaders profited for a time, but when the economy soured in the 1920s, low prices, high taxes, and declining crop yields led to significant property devaluation, crop failure, and tax delinquency.⁵⁶ These dismal economic conditions caused some population decline, but not in numbers sufficient to stabilize the poor economic and environmental conditions on the Great Plains.⁵⁷

During the early 1930s, the combined effects of prolonged drought, economic depression, and technological developments, which provided more opportunities to plow and develop the land, further aggravated the situation for small landowners continuing to farm in the Great Plains and elsewhere.⁵⁸ By 1935, approximately 454,000 of the farms in the United States were "on land so poor that operators [had] practically no chance [to

51. GEORGE C. COGGINS, *FEDERAL PUBLIC LAND AND RESOURCE LAW* 79 (3d ed. 1993).

52. Preemption Act of 1841 §§ 2257-2281, 5 Stat. 453 (repealed 1891).

53. Homestead Act of 1862 §§ 161-162, 42 U.S.C. §§ 161-284 (repealed 1974).

54. Keith A. Argow, *Our National Grasslands: Dustland to Grassland* 3, reprinted from AM. FORESTS, Jan. 1962.

55. LOYD GLOVER, AGRICULTURAL ECONOMICS DEPARTMENT, AGRICULTURAL EXPERIMENT STATION, SOUTH DAKOTA, *THE FUTURE OF LAND USE PURCHASE PROJECTS IN SOUTH DAKOTA* 6 (1957). During this time, counties incurred large debts to build the infrastructure necessary to support public facilities, roads, and schools in these overpopulated areas. *Id.*

56. *Id.*

57. *Id.* The population decline failed to ease debts acquired by school districts and counties. *Id.* at 6-7. Instead, their debts rose as property values fell and the tax base shrank. *Id.*

58. *Id.* at 6.

secure] a decent living."⁵⁹ and submarginal farms covered nearly seventy-five million acres, twenty million of which were in crops.⁶⁰ These conditions created strong support for the submarginal land purchase program proposed and implemented in the 1930s.⁶¹

B. INITIAL DEVELOPMENT OF THE LAND PROGRAM

Congress's initial response to the increasing number of submarginal lands was to pass the 1929 Agricultural Marketing Act (AMA).⁶² This Act provided the Federal Farm Board with the authority to investigate the possible reduction of marginal acres in cultivation.⁶³ Three years after the AMA became law, Secretary of Agriculture Arthur M. Hyde responded to mounting distress among submarginal farmers by arranging a National Conference on Land Utilization.⁶⁴ "The Conference adopted a series of resolutions, many of which [ultimately became] guidelines" for the federal land utilization program.⁶⁵

Then, early in 1933, President Hoover personally requested that Congress implement a recommendation from Secretary Hyde that the government lease submarginal lands in order to convert them to other uses.⁶⁶ Soon thereafter, the National Land Use Planning Committee,⁶⁷ a by-product of Secretary Hyde's National Conference on Land Utilization, released a report addressing the public acquisition, retention, and management of submarginal lands.⁶⁸ These events culminated in the enactment of the 1933 National Industrial Recovery Act (NIRA),⁶⁹ which provided the President with the authority to create an official land program.⁷⁰

59. M. L. Wilson, Assistant Secretary of Agriculture, *The Report on Land of the National Resources Board*, 17 J. FARM ECON. 41, 44 (1935).

60. *Id.*

61. GLOVER, *supra* note 55, at 8.

62. WOOTEN, *supra* note 2, at 4.

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. The National Land Use Planning Committee included representatives from federal bureaus and land grant colleges. *Id.*

68. *Id.* The National Land Use Planning Committee proposed "retirement of 75,345,000 acres of land where physical and economic conditions are so unfavorable that the lands should be retired from arable farming and devoted to other uses." HOOKER, *supra* note 4, at 1.

69. National Industrial Recovery Act of 1933, Pub. L. No. 73-67, § 202, 48 Stat. 201 (1933).

70. It is Congress, not the Executive, who holds the power to acquire lands. U.S. CONST. amend. V. However, in this instance, Congress delegated its power to condemn private property to the President. Interestingly, this delegation was not explicit. Title II, § 202(c) of the NIRA authorized the Federal Emergency Administration of Public Works to "make such expenditures . . . as are necessary to carry out the provisions of this title." National Industrial Recovery Act of

Following passage of the NIRA, the Special Board of Public Works (the Board) authorized and approved the land program, also denoted as the "land utilization program," which was to be administered by the Federal Surplus Relief Corporation (FSRC).⁷¹ The Board allotted \$25 million to the land program from the Fourth Deficiency Act, an Act passed for the purpose of currying the provisions of the NIRA into effect.⁷²

Soon after acquiring administrative responsibility for the land utilization program, the FSRC issued a resolution describing three goals for the land program: "(1) The purchase of lands; (2) The conversion of land purchased to a use beneficial to the people of the United States; and (3) The permanent rehabilitation of the population at present living on land purchased."⁷³ Lands acquired under the program had to be in cultivation and growing crops at a submarginal rate of production.⁷⁴ The lands also had to be "available or suitable for development as forests, or as parks or recreation spaces, or as grazing ranges, or as bird or game refuges."⁷⁵ Once the government acquired the lands, the FSRC designated agencies to create development plans for the lands. Those plans were to indicate the specific

1933, Pub. L. No. 73-67, § 202, 48 Stat. 20, (1933). Another provision in Title II required that the President establish "a comprehensive program of public works, which shall include among other things . . . conservation and development of natural resources, including control, utilization, and purification of waters, prevention of soil or coastal erosion." *Id.* Together these provisions might lead one to imply that the funds required to acquire the national grasslands were expenditures necessary to carry out the comprehensive plan provided for under the NIRA. However, these provisions did not give the President or federal agencies explicit authority to acquire lands. Notwithstanding this fact, on March 6, 1935, President Roosevelt decided to "authorize and designate the Federal Emergency Relief Administrator, and Director of the Land Program as he may be authorized by the Administrator, to acquire by purchase or by the exercise of the power of eminent domain any real or personal property or any interest therein." *HOOKER, supra note 4, at 13* (citing Exec. Order No. 6983 (Mar. 6, 1935)).

71. *HOOKER, supra note 4, at 3.*

72. *Id.* Following enactment of the NIRA, Congress enacted the Emergency Relief Appropriations Acts of 1935 and 1936. These acts continued appropriations for "rural rehabilitation and relief in stricken agricultural areas," and "rural rehabilitation, loans and relief to farmers and livestock growers," respectively. Emergency Relief Appropriations Act of 1935, Pub. Res. 74-11, 49 Stat. 115 (1935); Emergency Relief Appropriations Act of 1936, Pub. L. No. 74-739, § 689, 49 Stat. 1608 (1936). Funds available to acquire lands under these laws expired June 30, 1939. *GLOVER, supra note 55, at 10.* By that time, the United States Department of Agriculture (USDA) had purchased 9,091,570 acres at the cost of \$46,277,273. *Id.*

73. Edward G. Grest, Chief, Division of Land Utilization Projects, U.S. Forest Service, *Brief History of the Land Utilization Program 2* (Sept. 21, 1954) [hereinafter *Grest, Brief History*].

74. *HOOKER, supra note 4, at 4.* Later policy instructions allowed the federal government to acquire intervening or adjacent unoccupied lands and lands not in cultivation to facilitate the efficient operation and conservation of the land utilization project areas. Memorandum from L. C. Gray, Assistant Chief, Bureau of Land Utilization, to Divisional Leaders, Regional Directors and Officials Acting in Charge of Regions, Land Utilization Program 2 (June 2, 1938) [hereinafter *Gray*].

75. *HOOKER, supra note 4, at 5.*

public work activities, including "the type of planting, such as forest or ground cover, for erosion control, and . . . the use, such as range on the public domain or for Indian reservations," to be undertaken on the acquired lands.⁷⁶

In February 1934, the Board transferred the FSRC's funds for land purchases to the Federal Emergency Relief Administration (FERA).⁷⁷ At that time, administration of the land program became the general responsibility of the Directors of the FSRC and Submarginal Land Committee, a group composed of representatives from the Department of Agriculture, the Department of the Interior, the FERA, and the FSRC.⁷⁸ During its administrative oversight of the land program, the Submarginal Land Committee created four types of land utilization projects: agricultural adjustment projects, Indian lands, reclamation projects, and wildlife refuges.⁷⁹ Following the FSRC's example, the Committee delegated administration of each type of land utilization project to a particular agency for planning and development. The Land Policy Section of the Agricultural Adjustment Administration (AAA) received authority to administer and plan the agricultural adjustment projects, the precursors to the national grasslands.⁸⁰

C. PURPOSES FOR CREATING THE LAND UTILIZATION PROGRAM

The overall objective of the land program was to purchase lands to prevent the cultivation of lands ill-suited for farming.⁸¹ Other reasons for purchasing these lands included concerns about the poverty and distress of the landowners, the strong potential for continued misuse of the lands, the need to control use of the lands until their productivity could be restored.

76. *Id.*

77. *Id.* at 4. Although the FSRC transferred these funds to the Federal Emergency Relief Administration (FERA) in February 1934, the President did not give FERA authority to acquire submarginal lands until March 6, 1935. Exec. Order No. 6983 (Mar. 6, 1935). However, it is clear that FERA did not wait until March 1935 to acquire lands. The government had set up many of the land utilization projects and had taken a number of options on lands within the projects by the time the President transferred the land program to the Resettlement Administration in 1935. *HOOKER, supra note 4, at 20.* These facts lead one to speculate whether the true purpose of Exec. Order No. 6983 was to quell public criticism that FERA was acquiring lands without legal authority to do so. See *supra note 70.*

78. *HOOKER, supra note 4, at 6.*

79. *WOLTER, supra note 2, at 5.*

80. *Id.* at 5-6. Administration of and planning for Indian land projects was the immediate responsibility of the Bureau of Indian Affairs; administration of and planning for park (recreation) projects was the immediate responsibility of the National Park Service; and administration of and planning for wildlife areas was the immediate responsibility of the Department of Biological Survey (now called the United States Fish and Wildlife Service). *Id.*

81. Edward G. Grest, *The Range Story of Land Utilization Projects*, 6 J. RANGE MGMT. 44, 44-45 (Jan. 1953) [hereinafter *Grest, The Range Story*].

and the need to remove and resettle part of the population living on submarginal lands.⁸² In addition, the federal government purchased land for its "demonstrational value."⁸³ The government hoped farming practices modeled on acquired lands would spread to private lands as the benefits of improved management practices came to fruition.⁸⁴

The AAA emphasized specific aspects of these goals in the agriculture adjustment projects. Its primary goal was to shift submarginal land from cultivation to other agricultural uses for which the land was better suited.⁸⁵ To accomplish this goal in the Great Plains, where the federal government purchased the largest quantity of land,⁸⁶ the AAA worked to eliminate wheat or other arable farming and replace it with grazing uses.⁸⁷ In some cases, the AAA encouraged families to enlarge their farms to accommodate these grazing uses, but because it faced a fixed land supply, the AAA also "resettled" many families in areas outside the Great Plains where they would no longer be dependent on arid land unfit for cultivation.⁸⁸ This accomplished a second goal of the land program—reducing the population dependent on submarginal lands for their livelihood.⁸⁹

During the AAA's oversight of the agriculture projects, the federal government created two agriculture projects in North Dakota, the Land Utilization-North Dakota-1 (LU-ND-1) project and the Land Utilization-North Dakota-2 (LU-ND-2) project.⁹⁰ Like other agricultural projects in the Great Plains, these projects provided "the means for stabilization of land use . . . through the purchase of submarginal operating units and the subsequent leasing of the purchased acreage to the remaining resident operators to aid in building up satisfactory operating units."⁹¹ Through these projects, a system was created under which the individuals who remained on the grasslands retained private land for their ranch headquarters

82. GLOVER, *supra* note 55, at 9-10.

83. *Id.* at 10.

84. *Id.*

85. *Id.* at 4.

86. *Id.*

87. *Id.*

88. *Id.* at 6.

89. *Id.*

90. E. H. AICHER & S. M. LINGE, U.S. DEPT. OF AGRICULTURE, INSTITUTIONAL ADJUSTMENTS SURVEY, LAND UTILIZATION PROJECT MCKENZIE COUNTY, NORTH DAKOTA, LU-ND-1 (1941); SOIL CONSERVATION SERVICE, UNITED STATES DEPARTMENT OF AGRICULTURE, STATEMENT OF ADJUSTMENTS, PROJECTS LU-ND-1 AND LU-ND-2, MCKENZIE, BILLINGS, AND GOLDEN VALLEY COUNTIES, NORTH DAKOTA 2 (1934). These two projects were established in 1934.

91. AICHER & LINGE, *supra* note 90, at 30. The operation units were better known as ranches. *Id.* at 26-29.

and to grow supplemental feed, but relied on the government-owned grasslands to supply much of the forage necessary to feed their livestock.⁹²

D. TRANSFER OF THE LAND UTILIZATION PROGRAM PRIOR TO THE 1937 BANKHEAD-JONES FARM TENANT ACT

By 1935, the Submarginal Land Committee had established a large number of land utilization projects and taken purchase options on a considerable percentage of the lands within these projects.⁹³ As a result, the President transferred the projects and the land program to the newly created Resettlement Administration (RA) in order to place more emphasis on resettling families located on the acquired lands.⁹⁴ Under the RA's administration, the President separated the resettlement operations from the land utilization project activities, the latter of which were placed in the RA's Land Utilization Division.⁹⁵ Dr. L.C. Gray, former Chief of the Land Policy Section in the AAA, directed this Division.⁹⁶ He applied nearly the same policies as those applied by the Submarginal Land Committee to the acquired lands.⁹⁷

E. THE BANKHEAD-JONES FARM TENANT ACT OF 1937

Congress enacted the BJFTA to establish "a more permanent status for the land utilization program" as it existed under the administration of the Resettlement Administration,⁹⁸ "promote more secure occupancy of farms and farm homes," and "correct the economic instability resulting from some present forms of farm tenancy."⁹⁹ To carry out these purposes, Title III of the BJFTA authorized and directed the Secretary of Agriculture to "develop

92. Grest, *The Range Story*, *supra* note 81, at 47. The federal government recognized many years ago that unless individual operators on the national grasslands have "the use of sufficient land resources to make an adequate living . . . there would be the urge to use it too intensively. This would eventually result in a distressed condition for both the land and the people and be detrimental to a sound permanent agricultural economy." *Id.* As a result, the federal government took specific actions to help families headquartered on privately-owned lands in the national grasslands secure grazing permits for an area of land sufficient to make an adequate living under average conditions. *Id.*

93. HOOKER, *supra* note 4, at 20.

94. *Id.* at 15-17; Exec. Order No. 7027 (Apr. 30, 1935); Exec. Order No. 7028 (Apr. 30, 1935).

95. Grest, *Brief History*, *supra* note 73, at 2.

96. HOOKER, *supra* note 4, at 18.

97. Grest, *Brief History*, *supra* note 73, at 2. The President transferred the RA to the Department of Agriculture on December 31, 1936. Exec. Order 7530 (Dec. 31, 1936); Grest, *Brief History*, *supra* note 73, at 2.

98. WOOTEN, *supra* note 2, at 12.

99. BJFTA of 1937, U.S. Stat. Pub. L. No. 75-210, § 517, 50 Stat. 522 (1937).

a program of land conservation and land utilization.¹⁰⁰ It also directed the Secretary to protect lands acquired under the BJFTA and to adapt them to their best use.¹⁰¹

The BJFTA did not change the basic structure of the existing land program, but it did narrow its scope. New projects developed under the BJFTA were limited to agricultural projects, isolated settler projects, and water conservation projects.¹⁰² In reality, however, "[n]early all new projects [established under the BJFTA] were similar to the agricultural adjustment projects established prior to fiscal year 1938."¹⁰³ This was due in part to the fact that during fiscal year 1938, the Secretary of Agriculture allocated approximately eighty percent of the money available under the BJFTA to the Great Plains area for agricultural projects planned and options taken during the two preceding years.¹⁰⁴ The Secretary used the remaining twenty percent to lock in existing projects in other parts of the country and to complete projects that had already begun.¹⁰⁵

The BJFTA did not explicitly apply to lands acquired before 1937. However, in 1938 the President directed the Secretary of Agriculture to administer all lands acquired, or in the process of acquisition, as part of the land utilization projects under Title III and the relevant parts of Title IV of the BJFTA.¹⁰⁶

100. 7 U.S.C. § 1010 (2000).

101. 7 U.S.C. § 1011(b) (2000).

102. Gray, *supra* note 74, at 2. Agricultural projects provided for the purchase and improvement of submarginal land as a means of developing an economically sound pattern of land use for a maximum number of families. WOOTEN, *supra* note 2, at 12. They were not established for forestry, wildlife, or recreation uses. Gray, *supra* note 74, at 2. Isolated settler projects allowed the agency to purchase scattered farms on submarginal lands to permit "the effectuation of certain economies in public administration and adjustment to some better adapted use such as forestry, game conservation, grazing, recreation, or a combination of such uses." WOOTEN, *supra* note 2, at 12. Finally, water conservation projects provided for the purchase of land and the construction of water developments in areas where conservation of water was essential to proper land use. *Id.*

103. WOOTEN, *supra* note 2, at 13. In all, 2.6 million acres, or 22% of the land utilization acres, were acquired under the BJFTA. *Id.* at 14. Most of these acres were within projects established before 1937. *Id.* However, the Secretary of Agriculture did establish several new projects and made large additions to old projects in the Great Plains. *Id.* at 13-14.

104. *Id.* at 13.

105. *Id.* The BJFTA provided \$10 million for the fiscal year ending June 30, 1938, and \$20 million for each of the following two fiscal years. BJFTA of 1937, Pub. L. No. 75-210, § 34, 50 Stat. 526 (1937). However, funding for the two later fiscal years was cut to \$5 million. WOOTEN, *supra* note 2, at 12.

106. Exec. Order No. 7906 (June 9, 1938), 3 Fed. Reg. 1358 (1938). Congress provided the President with authority to make this instruction in Title IV of the BJFTA. BJFTA of 1937, Pub. L. No. 75-210, § 45, 50 Stat. 530 (1937), *repealed by* Pub. L. No. 87-128, § 341, 75 Stat. 318 (1961).

F. AGENCY TRANSFERS FOLLOWING ENACTMENT OF THE BJFTA

On September 1, 1937, Secretary of Agriculture Wallace changed the name of the Resettlement Administration to the Farm Security Administration (FSA), and vested the FSA with authority to administer Titles I, II, and IV of the BJFTA.¹⁰⁷ The same day, the Secretary transferred the land utilization program and authority to administer Title III of the BJFTA to the Bureau of Agricultural Economics (BAE).¹⁰⁸

During the BAE's oversight, Dr. Gray, then the Assistant Chief of the BAE, and the Secretary of Agriculture sought to "conserve the land resources of the project area[s] and . . . [to] [u]tilize the land to furnish a maximum number of families with an improved basis for making a living."¹⁰⁹ Working in harmony with these themes, the Assistant Chief and Secretary also required that developments adapt land resources to the program of use required in individual land utilization projects.¹¹⁰

G. THE SOIL CONSERVATION SERVICE'S ADMINISTRATION OF THE LAND PROGRAM

By October 1938, the Secretary of Agriculture and the BAE had transferred most of the non-agriculture projects to other federal departments.¹¹¹ As a result, when the Secretary transferred the land program to the SCS in November 1938, the SCS obtained responsibility for administration of 7.1 million acres of project lands, the use of which was "closely associated with the operation of farms or ranches."¹¹² The SCS also received plans for the acquisition of an additional 2.2 million acres, mainly in the Great Plains states, that had been approved under Title III of the BJFTA.¹¹³

The SCS administered these land utilization projects and acquired lands for sixteen years. During this time, it made significant efforts to implement the BJFTA in accordance with congressional intent.

107. Titles I and II established farm finance programs. BJFTA of 1937, Pub. L. No. 75-210, §§ 1-23, 50 Stat. 527-33 (1937). Title IV created the Farmers' Home Corporation and provided and reaffirmed the Secretary's general powers under the BJFTA. *Id.* §§ 40-55, 50 Stat. 522-25.

108. HOOKER, *supra* note 4, at 33. The BAE received 131 projects that included more than eight million acres altogether. WOOTEN, *supra* note 2, at 13. Twenty-five projects were non-agricultural adjustment projects scheduled for transfer to other agencies on June 30, 1938. *Id.*

109. Gray, *supra* note 74, at 2.

110. *Id.* at 4.

111. WOOTEN, *supra* note 2, at 13.

112. SOIL CONSERVATION SERVICE, POLICIES REGARDING CONSERVATION AND DEVELOPMENT OF LAND UTILIZATION PROJECT LANDS 1 (1952) [hereinafter POLICIES]; WOOTEN, *supra* note 2, at 13.

113. WOOTEN, *supra* note 2, at 13.

Congress designed the land program codified in the BJFTA for the purpose of restoring and applying the acquired lands to their most beneficial use.¹¹⁴ It also intended "implementation of the BJFTA land program to 'reestablish livestock, farm, and ranch enterprises on a secure land tenure base.'"¹¹⁵ To accomplish these purposes, the SCS developed "important objectives for grassland management, which included the following: (1) 'graze the land within its capacity in order to produce forage and maintain productive capacity,' and (2) maximize use of the land to contribute to a 'sound, permanent agriculture economy for the area.'"¹¹⁶

Working within the parameters of these objectives, the SCS strove to restore entire national grassland ecosystems, including those parts of the grassland ecosystem that existed on state, county, and private lands. It implemented a practice of cooperative land management that allowed grazing associations, created under state enabling acts,¹¹⁷ to administer grazing programs on project lands so long as they allowed the SCS to proscribe management requirements for all lands acquired or leased by grazing associations.¹¹⁸ This practice recognized the obvious: Sound land management requires planning for land use based on resource location and terrain, not on the arbitrary and artificial boundaries of land ownership.

H. TRANSFER TO THE FOREST SERVICE

As a result of a departmental reorganization, in 1954 the Secretary of Agriculture transferred the project lands from the SCS to the Forest Service.¹¹⁹ The intent at that time was to dispose of these lands to private individuals.¹²⁰ Although the Forest Service attempted to obtain authority to sell the project lands to private individuals, it could not do so.¹²¹ As a result,

114. 7 U.S.C. § 1011(b) (2000).

115. POLICIES, *supra* note 112, at 1.

116. *Grest. The Range Story*, *supra* note 81, at 46. These objectives were also articulated as a goal of helping ranchers reclaim and conserve their permitted grazing lands and achieve economic and social stability for their communities. KARL HESS, JR., VISIONS UPON THE LAND: MAN AND NATURE ON THE WESTERN RANGE 88 (1992).

117. *Grest. The Range Story*, *supra* note 81, at 47.

118. Grazing associations lease state, county, and private lands. GLOVER, *supra* note 55, at 17. Therefore, under the SCS's cooperative management program, federal controls extended to the broad, grassland ecosystem. *Id.*

119. RUPP, *supra* note 9, at 4; Secretary of Agriculture Administrative Order (Dec. 24, 1953, effective January 2, 1954); West, *supra* note 17, at 88-89; 1954 Hearing, *supra* note 11, at 19-20. The Forest Service had control over nearly nine million acres of utilization project lands following the 1954 transfer. WOOTEN, *supra* note 2, at 29.

120. RUPP, *supra* note 9, at 4; West, *supra* note 17, at 88-89; 1954 Hearing, *supra* note 11, at 4-12.

121. 1954 Hearing, *supra* note 11, at 19.

the Secretary turned to his limited authority under Title III of the BJFTA, which allowed the transfer of Title III lands to federal and state agencies,¹²² and transferred many project lands to public agencies outside the Department of Agriculture.¹²³ The Secretary transferred eighteen utilization projects imposed of 2,464,000 acres to the Bureau of Land Management, Department of the Interior in 1958.¹²⁴ He also transferred about one million acres to state and local agencies between 1954 and 1961.¹²⁵ The Secretary retained approximately four million acres of the project lands, renaming them the "National Grasslands"¹²⁶ and requiring that they be permanently retained under Forest Service administration.¹²⁷

Retention of the national grasslands created significant internal confusion in the Forest Service.¹²⁸ Some Forest Service administrators believed that the national grasslands should be managed like national forests, some thought they should manage them as big cattle pastures, and others simply wanted to continue efforts to dispose of them.¹²⁹ Some of the Forest Service administrators were also very reluctant to work with grazing associations and districts even though the associations had successfully administered grazing practices, including issuing permits, collecting fees, controlling trespass, and fighting fires on the national grasslands for over fifteen years.¹³⁰ Other Forest Service administrators recognized the benefits of continuing the SCS's policies and practices.

In the end, the transfer of SCS employees to the Forest Service led to the acceptance and continued application of the SCS's management practices on the national grasslands.¹³¹ In 1962, the Forest Service incorporated the SCS's grazing policies into the Forest Service manual.¹³²

122. 7 U.S.C. § 1011(c) (2000).

123. WOOTEN, *supra* note 2, at 29.

124. *Id.* at 33; Exec. Order No. 10787, 23 Fed. Reg. 8717 (Nov. 6, 1958).

125. WOOTEN, *supra* note 2, at 34.

126. *Id.* at 29; 36 C.F.R. § 213.1 (1960).

127. WOOTEN, *supra* note 2, at 29.

128. West, *supra* note 17, at 89.

129. *Id.* (citing RUPP, *supra* note 9, at 5).

130. *Id.* at 90. Grazing associations are incorporated under state law for the purpose of managing livestock grazing on a mix of state, county, and federal land. See, e.g., N.D. CENT. CODE § 36-08-02 (1987). The BJFTA authorizes the Secretary of Agriculture to lease federal lands managed under the BJFTA directly to grazing associations. 7 U.S.C. § 1011(c) (2000). Forest Service rules require the grazing associations to adopt and enforce rules of management for the members who lease their lands; plan, approve, contract for, and complete various land conservation and improvement projects on lands administered by the association; and collect fees for use of the federal and other leased lands within the association's boundaries. FOREST SERVICE MANUAL § 2209.13 (1990).

131. West, *supra* note 17, at 90.

132. WILLIAM D. ROWLEY, UNITED STATES FOREST SERVICE GRAZING & RANGELANDS: A HISTORY 228 (1985).

Then, in 1963 the Secretary of Agriculture amended Forest Service regulations in order to reinforce the original mission of the land utilization projects, to promote grassland agriculture and sustained yield management while demonstrating sound land use practices to adjacent landowners.¹³³ Local Forest Service rangers and grazing associations implemented these policies with relatively few problems until the early 1970s.¹³⁴

L. AN UNCLEAR COURSE

During the 1970s, it became increasingly apparent that the Forest Service no longer had a clear picture of how it should manage the national grasslands.¹³⁵ This, along with increased public scrutiny of the national grasslands administration and a heightened interest in recreation and environmental conservation, may explain the Forest Service's decision to place increased emphasis on wildlife, watershed, and recreation within national grasslands.¹³⁶ It may also explain the Forest Service's decreased emphasis on the original purposes for which the national grasslands were acquired.¹³⁷

Following enactment of the NFMA in 1976, the Forest Service combined grazing regulations for the national grasslands with those designed for the national forests.¹³⁸ After this, the Forest Service continued, for a few years, to administer the national grasslands under distinct management

133. West, *supra* note 17, at 90.

134. *Id.* at 91. During this time, however, some grassland employees continued to harbor extremely negative attitudes toward the grazing associations. *Id.* Partly because of these attitudes, by the 1970s the grazing associations in New Mexico, Oklahoma, and Texas had dissolved. Individual grazing permits were issued in their stead. *Id.* Although some thought this change was a "logical adaptation to the region's ecology and land use patterns," it did not necessarily provide for better national grasslands management. *Id.* Without the forum of the grazing associations, the Forest Service's grassland employees found themselves having "to preach the message [of conservation] to each individual rancher." *Id.* Because of this difficulty, some grassland managers abandoned efforts to extend conservation to adjacent private land and dismissed efforts to maintain a holistic approach to grassland management. *Id.* The grazing associations did not disappear from the Great Plains states where the larger national grasslands were located. In fact, grazing associations continue to play a vital role in the Great Plains national grasslands management today.

135. *Id.* at 96.

136. *Id.*

137. *Id.* at 96-97.

138. Brooks, *supra* note 49, at 11. The only official of the national grasslands made by Congress in the language and extensive legislative history of NFMA is that which is now codified, 16 U.S.C. § 1609(a) (2000) (stating "[t]he 'National Forest System' shall include all national forest lands . . . the national grasslands and land utilization projects administered under Title III of the Bankhead-Jones Farm Tenant Act"). This language clearly did not give the Forest Service authority to modify the national grasslands management to a scheme other than one that promotes grassland agriculture as the most beneficial use of these acquired lands. See *infra* Part IV.D.2.

objectives, as required by their unique legal history.¹³⁹ However, eventually the Forest Service began to manage the national grasslands pursuant to the same principles and objectives it applied to the other lands it administered. Acceptance of this management approach grew throughout the 1990s, and is clearly reflected in the Revision and the Draft EIS.

IV. LEGAL MANAGEMENT OF THE NATIONAL GRASSLANDS

A. PURPOSES FOR ACQUIRING THE NATIONAL GRASSLANDS

The Fifth Amendment to the United States Constitution gives Congress the power and authority to condemn private property for a public purpose.¹⁴⁰ Use of this power rests wholly within the Legislature's discretion.¹⁴¹ However, Congress may delegate its authority to condemn and acquire private lands to the executive and administrative branch of the federal government.¹⁴² When Congress makes this type of delegation, federal officers must exercise their acquisition authority in accordance with congressional intent and only to the extent that it is necessary or advantageous to do so.¹⁴³

Between 1933 and 1936, Congress delegated authority to acquire land by means of multiple Emergency Relief Acts.¹⁴⁴ The Secretary of Agriculture relied on this authority to condemn large areas of land for land utilization projects.¹⁴⁵ In 1937, Congress again provided the Secretary with power to acquire lands under Title III of the BIFTA.¹⁴⁶ The Secretary acquired land primarily for agricultural uses, under this authority as well.¹⁴⁷

The 1931 Declaration of Takings Act (DTA) played an important role in these land condemnation processes. The DTA recommended that federal

139. See, e.g., FOREST SERVICE MANUAL § 2203.2 (1980) (indicating that national grasslands were not required to conform with grazing policies established for national forests).

140. U.S. CONST. amend. V.

141. *Shoemaker v. United States*, 147 U.S. 282, 298 (1893); *United States v. Forbes*, 259 F. 583, 589 (D.C. Ala. 1919). This discretion is subject to the condition that Congress justify compensable private landowners for property taken. U.S. CONST. amend. V.

142. *Chappell v. United States*, 160 U.S. 499, 510 (1896); *Kohl v. United States*, 91 U.S. 367, 374 (1876); *United States v. Certain Lands in Narragansett, R.I.*, 145 F. 654, 656 (D.R.I. 1906).

143. 40 U.S.C. § 257 (2000) (originally enacted as Act of August 1, 1888, ch. 728, § 1, 25 Stat. 357).

144. See *supra* note 5; Exec. Order No. 7345 (Apr. 15, 1936) (authorizing the purchase or rental of land for emergency conservation work).

145. *Grest, Brief History*, *supra* note 73, at 4.

146. BIFTA of 1937, Pub. L. No. 75-210, § 32(a), 50 Stat. 522 (1937) (repealed by Pub. L. No. 87-703, § 102(b), 76 Stat. 607 (1962)).

147. See *supra* Part III.E.

officials who exercised their acquisition authority include specific information about a proposed acquisition in a formal "declaration of taking" and file it with the initial condemnation pleadings.¹⁴⁸ This declaration of taking stated the legal authority and the public use for which the federal government was condemning the lands at issue.¹⁴⁹ It also described the lands to be condemned and stated the specific estate or interest in the lands the federal government planned to condemn.¹⁵⁰ Furthermore, a declaration of taking included an estimate of just compensation for the land to be condemned.¹⁵¹

Like other national grassland condemnation proceedings, the initial condemnation pleadings for the Little Missouri National Grassland included declarations of takings.¹⁵² The declaration of taking for 17,463 acres of land in McKenzie County, North Dakota is an example of these documents.¹⁵³ It included the following language:

[T]he Secretary of Agriculture has duly selected for acquisition by the United States the lands hereinafter described, for use in connection with [the Little Missouri Land Adjustment Projects]. . . and . . . the said lands are necessary in his opinion: To provide for the prevention and control of soil erosion; conservation and development of water resources; establishment of a demonstrational area for the proper grazing of livestock; control of the destructive animal life; and relief of unemployment by providing useful work in the reseeded, terracing and fencing of said land and the construction thereon of roads and structures necessary and appropriate to said project.¹⁵⁴

This language, which was duplicated in final orders condemning these lands, demonstrates a clear intent for the use of these national grasslands.¹⁵⁵

148. 40 U.S.C. § 258(a) (2000).

149. *Id.*

150. *Id.*

151. *Id.*

152. The general principles of this section apply to all national grasslands. However, in order to give them context, the principles are specifically applied to North Dakota's Little Missouri National Grassland, a grassland whose history has been well researched and documented.

153. United States v. 17,463.13 Acres of Land, More or Less, in McKenzie County, North Dakota, At Large No. 1002, at 2-3 (D.N.D. 1937).

154. *Id.*

155. *See, e.g.,* United States v. 10,683 Acres of Land, More or Less, in McKenzie County, N.D. Judgment No. 1030 At Law, at 8 (D.N.D. 1939). This judgment stated

[t]hat the use to which the said lands are being acquired by the United States of America, the said petitioner, is a proper public use, to-wit: to provide for the prevention and control of soil erosion; conservation and development of water resources; establishment of a demonstrational area for the proper grazing of livestock; control of

Because the federal government acquired national grasslands in North Dakota for use in connection with the Little Missouri Land Adjustment Projects, the United States' purpose for acquiring these lands may be further illuminated by examining the Secretary of Agriculture's directions for the Little Missouri Land Adjustment Projects, LU-ND-1 and LU-ND-2, and their supplements, LU-ND-38-1 and LU-ND-38-2 (collectively, Little Missouri Projects).¹⁵⁶ The Secretary designed the Little Missouri Projects to stabilize agriculture in the projects' areas.¹⁵⁷ This purpose was to be accomplished by "correcting serious maladjustments in land use and effecting readjustments which will prevent their recurrence."¹⁵⁸ The focus of these readjustments was to return acquired submarginal lands to grazing purposes, the "very best use to which these lands can be put,"¹⁵⁹ and to change the farm economy of the area from one based on crop production to one emphasizing the production of livestock.¹⁶⁰ In addition to adjusting grazing and other land uses in the Little Missouri Projects' areas, the federal government established the Little Missouri Projects to demonstrate improved methods of land management to ranchers using the Little Missouri Projects' lands.¹⁶¹ The government hoped that as the land management techniques demonstrated on federal lands resulted in improved production, neighboring ranchers would employ the techniques on their private lands.¹⁶²

In sum, the federal government acquired the grasslands within the Little Missouri National Grassland to prevent and control soil erosion, conserve and develop water resources, demonstrate proper grazing techniques, control destructive animal life, provide relief for unemployment, and stabilize agriculture by returning the land to grazing uses. These purposes

destructive animal life, and relief of unemployment by providing useful work in the reseeded, terracing and fencing of said land and the construction thereon of roads and structures necessary and appropriate to said projects.

Id.

156. *See supra* note 4 and accompanying text. Unless the declaration is ambiguous, the court will not apply a meaning that is contrary to the plain meaning of the declaration's words. 29A CJS Eminent Domain § 211(a) (1992); United States v. 21.54 Acres, 491 F.2d 301, 305-06 (4th Cir. 1973); United States v. Pinson, 331 F.2d 759, 760-61 (5th Cir. 1964); *Bumpus v. United States*, 325 F.2d 264, 266-67 (10th Cir. 1963); United States v. 76,208 Acres of Land, 580 F. Supp. 1007, 1010 (E.D. Penn. 1983). However, in construing a declaration, the intention of the United States as author of the declaration should be gathered from the language of the entire declaration and its surrounding circumstances. 29A CJS Eminent Domain § 211(a); 21.54 Acres, 491 F.2d at 305-06; *Pinson*, 331 F.2d at 760-61; *Bumpus*, 325 F.2d at 266-67; 76,208 Acres of Land, 580 F. Supp. at 1010.

157. Excerpt I, *supra* note 4, at 1; Excerpt II, *supra* note 4, at 1.

158. Excerpt I, *supra* note 4, at 1; Excerpt II, *supra* note 4, at 1.

159. AICHER & LUNGE, *supra* note 90, at 21.

160. Excerpt I, *supra* note 4, at 1; Excerpt II, *supra* note 4, at 1.

161. Excerpt I, *supra* note 4, at 2; Excerpt II, *supra* note 4, at 2.

162. Excerpt I, *supra* note 4, at 2; Excerpt II, *supra* note 4, at 2.

are important to consider when evaluating the Forest Service's management of the lands.

B. FEDERAL LAW REQUIRES THE FOREST SERVICE TO ADMINISTER THE NATIONAL GRASSLANDS FOR THE PURPOSES FOR WHICH THEY WERE ACQUIRED

When the federal government acquires land for a particular public purpose, only Congress has the power to change that purpose or dispose of the acquired land.¹⁶³ As a result, federal agencies must manage and administer acquired lands according to the purpose for which the federal government acquired them, unless Congress has authorized otherwise.¹⁶⁴ This principle prohibits Forest Service management practices that deviate from the original purposes for acquiring the national grasslands.

In *Rawson v. United States*,¹⁶⁵ the Ninth Circuit recognized that the national grasslands, which were "reacquired by the United States are not by mere force of the reacquisition restored to the public domain. Absent legislation or authoritative directions to the contrary, they remain in the class of lands acquired for special uses, such as parks, national monuments, and the like."¹⁶⁶ The Ninth Circuit also denied the President, and by implication any federal agency, the authority to impute uses to the acquired national grasslands other than those for which the federal government acquired the lands.¹⁶⁷

In *United States v. Three Parcels of Land*,¹⁶⁸ the Ninth Circuit reaffirmed the principle espoused in *Rawson*.¹⁶⁹ The Postmaster conveyed property acquired for postal uses to the Alaska Housing Authority for a purpose other than that anticipated by the United States when it acquired the property.¹⁷⁰ However, the Ninth Circuit upheld the Postmaster's action because he acted pursuant to a statute that gave him express authority to

163. *Reichelderfer v. Quinn*, 287 U.S. 315, 318-20 (1932).

164. *Id.*; see also *United States v. Three Parcels of Land*, 224 F. Supp. 873, 876 (D. Alaska 1963) (determining that the court is without authority to revert title to premises once vested in the United States, and the matter is entrusted by Congress to the discretion of the Attorney General under the Declaration of Takings Act, 40 U.S.C. § 258(f)); *United States v. 10.47 Acres of Land*, 218 F. Supp. 730, 733 (D.N.H. 1962) (stating that title to acquired property vested in the United States cannot be returned to original landowners without congressional authorization).

165. *Rawson*, 225 F.2d at 858. Three of the twenty national grasslands are included within the Ninth Circuit: Oregon's Crooked River Grassland (the subject of *Rawson*), Idaho's Curlew National Grassland, and California's Butte Valley National Grassland. See *supra* note 2.

166. 224 F. Supp. 873 (D. Alaska 1963).

167. *Rawson*, 225 F.2d at 858.

168. *Three Parcels of Land*, 224 F. Supp. at 877.

170. *Id.* at 876.

dispose of real property acquired for postal purposes under such terms as he deemed in the best interest of the United States.¹⁷¹

The Sixth Circuit endorsed the same principle in *Higginson v. United States*.¹⁷² The court upheld the Secretary of the Army's decision to abandon property acquired for a military camp and transform it into surplus property because the Secretary acted pursuant to a law that specifically authorized him to modify the use of acquired military lands.¹⁷³ In contrast, in *Forbes v. United States*,¹⁷⁴ an Alabama federal district court overturned the Secretary of War's decision to dispose of real estate acquired by the United States for military purposes because the Secretary lacked express power to dispose of such property.¹⁷⁵ In its decision, the Alabama court stated: "It is not within the province of the court to say what shall be done with the land or to what use it shall be put. This is reserved to the Congress, which, of course can act, or authorize the Secretary of War to act."¹⁷⁶

Altogether, these decisions affirmed the principle that federal agencies cannot act to modify the purposes for which lands were acquired without express congressional authorization to do so. As demonstrated in the following sections, at one time Congress authorized the Secretary of Agriculture to dispose of or apply the national grasslands for purposes other than those for which they were acquired. However, the Secretary failed to act before Congress repealed that authority and now has no authority to use the national grasslands for purposes other than those for which they were acquired. Therefore, the Forest Service must administer the national grasslands solely for the purposes for which they were acquired.¹⁷⁷

171. *Id.* at 876-77.

172. 384 F.2d 504 (6th Cir. 1967).

173. *Higginson*, 384 F.2d at 507.

174. 259 F. 585 (D.C. Ala. 1919).

175. *Forbes*, 259 F. at 592.

176. Congress had authorized the Secretary of War to transfer property "not required by the War Department, as may be required by the public health service." *Id.* However, the Secretary of War did not seek to transfer the property, but to dispose of it. *Id.* Because the Secretary was not authorized to dispose of the land, his action was beyond the scope of his delegated authority and offended the separation of powers doctrine. *Id.*

177. *Id.*

177. In parts of the national grasslands, the Secretary of Agriculture condemned less than a fee simple interest in the land. For example, in pursuing "friendly condemnations" against North Dakota counties, the United States agreed the counties should receive a 6.25% fee simple interest in the minerals on the acquired federal grasslands. *McKenzie County v. Hodel*, 467 N.W.2d 701, 702 (N.D. 1991); *McKenzie County v. Hodel*, Civil No. A4-87-211 (D.N.D. June 24, 1991). When the federal government acquires less than a fee simple interest, "use of the property taken must be for and in accordance with the purposes which justified its taking and which was the basis for assessing damages." *United States v. Burnmaster*, 172 F.2d 478, 480 (10th Cir. 1949). As a result, the Forest Service must administer all national grasslands, whether they were acquired as fee simple or as less than a fee simple, for the purposes they were acquired.

C. THE BJFTA AND NATIONAL GRASSLAND ADMINISTRATION

1. *The Preamble*

The preamble to the BJFTA states that Congress enacted the law to "create the Farmers' Home Corporation, to promote more secure occupancy of farms and farm homes, to correct the economic instability resulting from some present forms of farm tenancy, and other purposes."¹⁷⁸ Although preambles are not operative parts of statutes and do not confer or enlarge powers of administrative agencies or their officers, "[a] preamble no doubt contributes to a general understanding of a statute."¹⁷⁹ Therefore, in construing the meaning of the BJFTA, a court may look to the preamble to resolve ambiguity arising from the meaning of particular words or from the general scope of the BJFTA.¹⁸⁰ Here, the preamble's directive to promote more secure farm occupancy and to correct instability confirms the general understanding set forth in the agricultural land use project documents, namely that the Secretary of Agriculture must administer these lands in a way that promotes grassland agriculture and provides stability for communities dependent on these lands.

2. *The Old and New Project Lands*

Title III of the BJFTA authorizes and directed the Secretary of Agriculture to develop a program of land conservation and land utilization, which was to be accomplished through the retirement of submarginal lands and correction of maladjustments in land use.¹⁸¹ To accomplish this program, Congress provided the Secretary with power to acquire submarginal lands and protect, improve, develop, administer, and construct structures on such lands in order to adapt them to their most beneficial use.¹⁸² The lands acquired under these provisions became known as the "new project lands." The "old project lands" acquired prior to the BJFTA, became a part of the BJFTA's program of land conservation and land utilization pursuant to Presidential transfer eleven months after Congress enacted the BJFTA.¹⁸³

178. BJFTA of 1937, Preamble, Pub. L. No. 75-210, § 517, 50 Stat. 522 (1937).

179. *Ass'n of Am. R.R.s v. Costle*, 562 F.2d 1310, 1316 (D.C. Cir. 1977).

180. *Coosaw Mining Co. v. South Carolina*, 144 U.S. 550, 563 (1892).

181. 7 U.S.C. § 1010 (2000).

182. 7 U.S.C. § 1011(b) (2000).

183. Exec. Order No. 7908, 3 Fed. Reg. 1389 (June 9, 1938); see also Gress, *Brief History*, *supra* note 73, at 4. This transfer was authorized by Congress in Title IV of the BJFTA. BJFTA of 1937, Pub. L. No. 75-210, § 45, 50 Stat. 530 (1937).

3. *The BJFTA Required the Secretary of Agriculture to Adapt Newly Acquired Project Lands to Their Most Beneficial Use*

The land utilization and conservation program set out in the BJFTA was intended to assist in controlling soil erosion, preserving natural resources, protecting fish and wildlife, developing and protecting recreational facilities, and accomplishing many other objectives.¹⁸⁴ Congress did not, however, expect that each project undertaken by the Secretary as part of the land utilization and conservation program would accomplish each of these environmental objectives. Rather, Congress required the Secretary to adapt land acquired under the BJFTA to its most beneficial use.¹⁸⁵ This directive implicitly limited environmental improvements on acquired lands to those that complemented the lands' most beneficial use.

For example, in North Dakota, the SCS adapted new lands acquired within the Little Missouri Projects to grazing, which was stated to be those lands' most beneficial use.¹⁸⁶ The SCS built stock watering facilities and fences and undertook specific conservation measures such as reseeding and building structures to prevent soil erosion to promote this use.¹⁸⁷ Not surprisingly, such measures not only provided improved grazing use, but conserved natural resources, enhanced wildlife habitat,¹⁸⁸ and created opportunities for recreation on the national grasslands.¹⁸⁹ Although these enhancements were not the intended consequences of the adaptation of the lands within the Little Missouri Projects or other projects, they complemented the SCS's efforts to adapt the land to its most beneficial use.

Once the Secretary of Agriculture acquired the new lands and adapted them to their most beneficial use, the BJFTA did not provide authority for the Secretary to modify them to another use so long as the lands remained under his control.¹⁹⁰ For a time, the Secretary could recommend sale, lease, or exchange of lands acquired under the BJFTA to state and federal public agencies.¹⁹¹ However, these actions are now precluded by laws that require the Secretary to retain the national grasslands permanently under his

184. 7 U.S.C. § 1010.

185. *Id.* § 1011(b).

186. Excerpt I, *supra* note 4, at 6; Excerpt II, *supra* note 4, at 6.

187. Excerpt I, *supra* note 4, at 6-7; Excerpt II, *supra* note 4, at 6-7.

188. RUPP, *supra* note 9, at 6.

189. Argow, *supra* note 54, at 4.

190. 7 U.S.C. § 1011.

191. 7 U.S.C. § 1011(c).

administration.¹⁹² As a result, the Secretary has a legal duty to ensure the national grasslands acquired under the BJFTA are permanently retained within the Department of Agriculture and managed for the purposes for which they were acquired.

4. *Old Project Lands Under Title IV of the BJFTA Must Be Administered for the Purposes for Which They Were Acquired*

The President transferred the old project lands to the Secretary of Agriculture so the lands could be administered under Title III and Title IV of the BJFTA. In contrast to Title III, the sole title under which the new lands were administered, Title IV authorized the Secretary to use and dispose of the old project lands in such manner as would best carry out the objectives of the BJFTA.¹⁹³ These provisions could be interpreted as authorizing a change in use of the national grasslands.¹⁹⁴

However, at the time the Secretary transferred the old and new project lands to the Forest Service, he apparently was not aware of his authority to administer the old project lands under Title IV of the BJFTA.¹⁹⁵ In 1954, the Forest Service, with the President's support, backed numerous proposals and made statements before Congress requesting legislative authority to dispose of all project lands, including the old project lands, to individuals and private organizations.¹⁹⁶ This request was quite surprising in light of the fact that Title IV remained good law and specifically authorized the Secretary to dispose of the old project lands in any manner the President saw fit, which ostensibly would have included disposal to private individuals.¹⁹⁷

Before the Secretary realized the scope of his authority, Congress repealed Title IV of the BJFTA in 1961, removing any opportunity for the Secretary to modify the uses or the terms and conditions of use for the old projects lands, which had become part of the national grasslands.¹⁹⁸ As a

192. See NEPA of 1976, 16 U.S.C. § 1609 (2000) (preventing the Secretary of Agriculture from returning land in the National Forest System, which includes the national grasslands, to the public domain).

193. BJFTA of 1937, Pub. L. No. 75-210, § 45, 50 Stat. 530 (1937).

194. *Id.*

195. *Id.*; 1954 Hearing, *supra* note 11, at 3.

196. 1954 Hearing, *supra* note 11, at 3.

197. BJFTA of 1937, Pub. L. No. 75-210, § 45, 50 Stat. 530 (1937).

198. Pub. L. No. 87-128, § 341, 75 Stat. 318 (1961). Arguably, the Secretary's 1960 regulations requiring the Forest Service to administer the national grasslands for outdoor recreation, range, timber, watershed, and wildlife and fish purposes could have modified the administration of the national grasslands. MUSYA, 36 C.F.R. § 213.1(c) (1960). However, the regulations only allowed development of multiple uses on the national grasslands if those uses promoted grassland

result, the Secretary has no authority under the BJFTA to administer the national grasslands for purposes other than those for which they were acquired, namely to promote grassland agriculture and to stabilize local grassland-dependent communities.

D. APPLICATION OF NATIONAL FOREST SYSTEM LEGISLATION: THE MULTIPLE USE SUSTAINED YIELD ACT AND THE NATIONAL FOREST MANAGEMENT ACT

1. *The Multiple Use Sustained Yield Act of 1960 Did Not Provide Legal Authority to Modify National Grasslands Administration*

Six years after the Secretary of Agriculture transferred the national grasslands to the Forest Service, Congress enacted the Multiple Use Sustained Yield Act of 1960 (MUSYA).¹⁹⁹ The MUSYA requires the Forest Service to manage *national forests* for five uses: grazing, timber, recreation, watershed, and wildlife and fish resources.²⁰⁰ Regulations promulgated soon after the MUSYA became law directed the Forest Service Chief to apply multiple use principles to the national grasslands.²⁰¹ However, because the MUSYA did not provide legal authority for the application of multiple use principles to the national grasslands, those regulations do not appear to be legally enforceable.²⁰²

The lack of authority to promulgate these regulations may explain the conditional language employed by the Secretary in the regulations, which approved the Forest Service's implementation of multiple uses, but only to

agriculture. 36 C.F.R. § 213.1(d). This limiting factor suggests that the multiple uses, if developed at all, would have had to be secondary to the dominant use of grassland agriculture.

More importantly, the regulations were adopted under the authority of Title III, not Title IV. *Id.* The Forest Service has no authority under Title III to modify the purposes for acquiring the old project lands. In fact, the only authority the Secretary of Agriculture has under Title III with respect to old project lands was that enumerated in Public Law Number 75-210, § 32(d): The Secretary may make dedications or grants of these lands for any public purpose, and may grant licenses and easements on the lands under such terms as he deems reasonable. Pub. L. No. 75-210, § 32(d), 50 Stat. 526 (1937). Because the Secretary did not have the authority to change the purpose of the national grasslands under Title III of the BJFTA, the 1960 regulations could not have legally modified the purposes of the national grasslands. The regulations also cite to the Multiple Use Sustained Yield Act (MUSYA) as authority for their promulgation. However, as discussed in Part IV.D., the MUSYA did not give the Forest Service authority to promulgate the regulations.

199. 16 U.S.C. §§ 528-531 (2000).

200. *Id.* § 528.

201. MUSYA, 36 C.F.R. § 213.1 (1960).

202. 16 U.S.C. § 528; Hankins, *supra* note 19, at 4. Title III of the BJFTA was also cited as legal authority for the promulgation of the 1963 regulations. However, Title III does not support application of multiple use principles to the national grasslands. See *supra* text accompanying note 190.

the extent it would not interfere with the purposes for which the federal government created the national grasslands.²⁰³ The regulations also required the Forest Service to promote the development of grassland agriculture,²⁰⁴ thereby restricting multiple uses to the extent they did not promote grassland agriculture on the national grasslands.

When the Secretary amended the regulations in 1963, he stressed that the Forest Service should implement demonstrations of sound and practical principles of land use on national grasslands.²⁰⁵ He also required the Forest Service to manage the national grasslands in such a way as to exert a favorable influence over associated public and private lands.²⁰⁶ Noticeably, these requirements were purposes for which the government had acquired the national grasslands, but were clearly unrelated to the multiple use principles espoused in the MUSYA. Thus, this amendment would seem to support the understanding, which for some reason was clearer at that time than now, that the MUSYA does not apply to the national grasslands.

In summary, any attempt to rely on the MUSYA to modify management of the national grasslands was and remains legally ineffective because the MUSYA did not authorize the Forest Service to implement multiple use management on the national grasslands. The Forest Service must administer the national grasslands for the purposes they were originally acquired—to promote grassland agriculture and stabilize local grassland-dependent communities.

2. *The National Forest Management Act of 1976 Did Not Provide Legal Authority to Modify National Grasslands Uses*

In 1974, Congress incorporated the national grasslands into the National Forest System.²⁰⁷ The outstanding purpose of this action was to simply declare that the diverse lands administered by the Forest Service were part of a unitary system.²⁰⁸ Nevertheless, one former Forest Service attorney claimed that integrating the national grasslands into the National

203. MUSYA, 36 C.F.R. § 213.1.

204. *Id.*

205. 28 Fed. Reg. 6268 (June 19, 1963); 36 C.F.R. § 213.1 (1960).

206. *Id.*; WOOTEN, *supra* note 2, at 33.

207. 16 U.S.C. § 1609(a) (2000). The 1976 National Forest Management Act amended the 1974 Renewable Resource and Planning Act in which Congress officially added the national grasslands to the national forest system. 16 U.S.C. §§ 1601-1676.

208. See S. Rep. No. 686 (1974), reprinted in 1974 U.S.C.C.A.N. 4060, 4080. Interestingly, including the national grasslands in the National Forest System was not a new concept for the Forest Service. The Forest Service had been administering the national grasslands as part of the National Forest System since 1960, nearly fifteen years before Congress enacted the NFMA. See 25 Fed. Reg. 5845 (June 24, 1960), 36 C.F.R. § 213.1 (1960) (stating that the national grasslands shall be a part of the National Forest System).

Forest System also subjected the national grasslands to a number of laws that have historically been applied to National Forest System lands, but not to the national grasslands.²⁰⁹ This assertion is unfounded for at least two reasons. First, these laws specifically do not apply to the national grasslands,²¹⁰ and second, the phrase used in the NFMA to incorporate the national grasslands into the National Forest System states that the national grasslands are administered under the BJFTA.²¹¹ Therefore, the NFMA did not modify the purposes and uses for which the national grasslands are to be administered.

A by-product of including the national grasslands in the National Forest System was to subject them to the same planning process used on the national forests and other lands administered by the Forest Service.²¹² During the planning process, the Secretary of Agriculture must "take such action as will assure that the development and administration of the renewable resources of the National Forest System are in full accord with the concepts for multiple use and sustained yield of products and services."²¹³ This language requires the Forest Service to provide for the five multiple uses listed in the MUSYA throughout the National Forest System; however,

209. OLSON, *supra* note 2, at 21.

210. See, e.g., Organic Administration Act, 16 U.S.C. §§ 473-539k (2000) (applying its provisions to the national forests only). Over the years, Congress has repeatedly recognized the unique legal status of the national grasslands and excluded them from laws applicable to other National Forest System lands. As noted previously, even though the Secretary of Agriculture transferred the national grasslands to the Forest Service in 1954, Congress did not apply the sweeping requirements of the MUSYA to the national grasslands. The MUSYA only applied to national forests. 16 U.S.C. §§ 528-539k. Congress also recognized the unique nature of the national grasslands by including the national forests but excluding the national grasslands from the broad rangeland and grazing provisions of the 1976 Federal Land Policy and Management Act (FLPMA) and the Public Rangelands Improvement Act, which supplemented FLPMA. 43 U.S.C. §§ 1751-1753 (2000). This is especially important in light of the fact that the national grasslands are some of the most productive rangelands in the country. HOLECHECK ET AL., *supra* note 24, at 75, 81-83.

Finally, as recent as October 30, 2000, Congress excluded the national grasslands from a law that made payments to counties from all other National Forest System lands more stable and predictable. Pub. L. No. 106-393, § 3(1)(A) (Oct. 3, 2000). As Congress has repeatedly treated the national grasslands as separate and distinct from other National Forest System lands, it has memorialized the unique legal status of the national grasslands. No matter how the Forest Service might try to justify its actions, the plain language of the NFMA does not give the Forest Service the legal authority to act contrary to congressional intent and modify the unique purposes and distinct management requirements of the national grasslands.

211. 16 U.S.C. § 1609(a). The NFMA states that the "National Forest System shall include . . . the national grasslands and land utilization projects administered under title III of the Bankhead-Jones Farm Tenant Act." 16 U.S.C. § 1609(a) (emphasis added). Thus language directly contradicts the Forest Service's claim that it can administer the national grasslands under a panoply of laws enacted to govern the national forests. See OLSON, *supra* note 2, at 21.

212. 16 U.S.C. §§ 1609-1676; see also *supra* Part II.A.

213. 16 U.S.C. § 1607.

it does not require the Forest Service to implement each of these multiple uses on every parcel of land within the National Forest System.²¹⁴

As a result, adding the national grasslands to the National Forest System and including them in NFMA's planning process did not modify the purpose for which the individual national grasslands were acquired. It simply incorporated these lands into the National Forest System and allowed them to contribute their unique uses to the range of uses developed on lands within the National Forest System. Doing more than incorporating these lands in a broad scheme of multiple use applied to the entirety of the National Forest System would fly in the face of the BJFTA requirement that the national grasslands be adapted to their single, most beneficial use. It would be disturbing to see the Forest Service rely on the NMFA's planning provisions, which do not require a change in the uses of the national grasslands, to act in direct contradiction of the BJFTA, which the NFMA explicitly recognized as being the law under which the national grasslands are to be administered. Because the NFMA does not require the Forest Service to convert the national grasslands to new uses and the NFMA's planning provisions do not require the Forest Service to manage for more MUSYA uses on the national grasslands than those uses (or that one use) for which they were acquired, the Forest Service must continue to administer the national grasslands for the purposes they were acquired.

To summarize, case law has prohibited the Forest Service from modifying uses of the national grasslands to uses other than those for which they were originally acquired. As to the new and old project lands that became national grasslands, the BJFTA, MUSYA, and NFMA did not provide the Forest Service with authority to modify the purposes for which the national grasslands were acquired. In addition, although the BJFTA provided the Secretary of Agriculture with authority to make use modifications for a limited time on old project lands, he failed to make any such modifications. As a result, the Forest Service must also manage all project lands that became national grasslands for the original purposes for which they were acquired, namely to promote grassland agriculture and stabilize local national grasslands communities.

²¹⁴ See H.R. Rep. No. 1551, reprinted in 1960 U.S.C.C.A.N. 2371, 2379 (supporting this application of multiple use principles). A recent federal decision that the Forest Service cannot comply with the MUSYA or the NFMA without planning on an ecosystems basis also supports this interpretation of the NFMA. See *Seattle Audubon Soc'y v. Lyons*, 871 F. Supp. 1291, 1311 (W.D. Wash. 1994).

V. CONCLUSION

Because the Secretary of Agriculture lacks authority to modify the original purposes for which the federal government acquired the national grasslands, the Forest Service must administer national grasslands for the purposes they were acquired. Unfortunately, the Forest Service is failing to administer the Little Missouri National Grassland in accordance with this well-established legal principle. By implementing alternative three, or for that matter any other specific alternatives set forth in the Draft EIS accompanying the proposed Revisions, the Forest Service will unlawfully divert the Little Missouri National Grassland to uses other than those for which it was originally acquired. Specifically, implementation of alternative three will interfere with efforts to demonstrate the proper grazing of livestock and to maintain a stable agriculture economy through grazing uses, which are purposes for which the Little Missouri National Grassland was acquired.

Although the Forest Service may espouse eloquent and lofty reasons for its proposed modifications, the stark reality is that implementation of the Forest Service's proposed management strategy on the Little Missouri National Grassland would be a clear violation of federal law. The Forest Service must manage the Little Missouri National Grassland for the purposes it was originally acquired. The law simply allows no other alternative.