No. 22O160, Original

IN THE

Supreme Court of the United States

STATE OF UTAH,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

ON MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

BRIEF OF UTAH PUBLIC LANDS COUNCIL, UTAH WOOL GROWERS ASSOCIATION, UTAH FARM BUREAU FEDERATION, AND THE COUNTY FARM BUREAUS OF BEAVER, GARFIELD, IRON, KANE, PIUTE, SANPETE, SEVIER, UINTAH AND WASHINGTON COUNTIES, AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFF'S MOTION FOR LEAVE TO FILE BILL OF COMPLAINT

HAYDEN L. BALLARD, ESQ., LL.M.
GREAT WESTERN RESOURCES
216 West Saint George Boulevard,
Suite 200
St. George, UT 84770
(435) 899-1520
info@greatwesternresources.org

Counsel for Amici Curiae

October 22, 2024

120034

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

Page

TABLE OF CONTENTS. i

TABLE OF APPENDICES iii

TABLE OF CITED AUTHORITIES iv

INTEREST OF *AMICI CURIAE* 1

SUMMARY OF ARGUMENT 3

ARGUMENT. 5

I. DISPOSAL OF UTAH'S UNAPPROPRIATED BLM LAND WILL BE CONSISTENT WITH PRE-1976 GRAZING LAW AND CURTAIL FEDERAL GRAZING REDUCTIONS 5

II. DISPOSAL OF UTAH'S UNAPPROPRIATED BLM LAND WILL PROTECT THE ENVIRONMENT AND PROMOTE HEALTHY RANGELANDS AS UTAHNS ARE BETTER SUITED TO MANAGE UTAH'S LANDS 13

Table of Contents

Page

III. DISPOSAL OF UTAH'S UNAPPROPRIATED BLM LAND WILL ENSURE THE ECONOMIC VIABILITY OF UTAH'S RURAL COMMUNITIES AS WELL AS ITS LIVESTOCK INDUSTRY AND HERITAGE. 16

CONCLUSION 22

TABLE OF APPENDICES

Page

MAP OF WESTERN STATES BLM GRAZING ALLOTMENTS ESTABLISHED UNDER SECTION 3 OF THE TAYLOR GRAZING ACT OF 1934 ..... 1a

MAP OF UTAH BLM GRAZING ALLOTMENTS ESTABLISHED UNDER SECTION 3 OF THE TAYLOR GRAZING ACT OF 1934 AND THEIR RESPECTIVE STATUS AS OF 2009 ..... 2a

GRAPH DEPICTING DECLINE OF AUMS ON BLM LANDS IN UTAH FROM 1940 TO 2006 ..... 3a

GRAPH DEPICTING DECLINE OF UTAH'S LIVESTOCK INVENTORY FROM 1920 TO 2005 ..... 4a

TABLE OF CITED AUTHORITIES

Page

Cases

Brooks v. Warren,
5 Utah 118 (Utah 1886) 6, 7

Buford v. Houtz,
133 U.S. 320 (1890). 7

Public Lands Council v. Babbitt,
167 F.3d 1287 (10th Cir. 1999). 16

Constitution and Statutes

U.S. Const. art. I, §8, cl. 17. 3

U.S. Const. art. I, §8, cl. 18 3

U.S. Const. art. IV, §3, cl. 2 3

43 U.S.C. §315(b) 9, 19

43 U.S.C. §1701(a). 3

43 U.S.C. §1713(a) 3

Utah Code §4-20-101 *et seq.* 15

Utah Code §63J-8-105.8 . . . . . .14, 15

Utah Code §63L-8-101 *et seq.*. 14

Cited Authorities

Page

Utah Code §63L-8-404 13

Utah Code §63L-8-602 13

Utah Code §63L-10-103, Utah State Resource Management Plan (2024) 11, 12

Utah Code §63L-11-302(14) 13, 21

Utah House Bill 363 (2024). 13, 21

Act of July 26, 1866, 14 Stat. 251 7

Desert Land Act of 1877, 19 Stat. 377, 43 U.S.C. ch.9 §321 *et seq.* 7

Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 *et seq.* 9

Homestead Act of 1862, 12 Stat. 392 . . . . . .6, 7

Livestock Reservoir Site Act of 1897, 29 Stat. 484 8

Stock Raising Homestead Act of 1916, 39 Stat. 862 8

Page

Taylor Grazing Act of 1934,
48 Stat. 1269, 43 U.S.C. ch.8A §315
et seq. 8, 9, 10, 12, 13

Unlawful Inclosures Act of 1885,
23 Stat. 321 7

Rules and Regulations

43 CFR §4110.1 . . . . . .9, 20

43 CFR §4110.2-3 20

43 CFR §4130.8-1 21

43 CFR §4130.9 19

89 FR 40308 15

89 FR 40321 15

89 FR 40331 15

Bureau of Land Management, *2024 Grazing Fee, Surcharge Rates, and Penalty for Unauthorized Grazing Use Rates*, IM2024-017 (2024) 21

Farm Service Agency, *Handbook 3-FLP (Rev. 2) Amend. 4* at 418(C) (Updated 9/21/2024) 19

Page

Other Authorities

Alan Savory, *Holistic Management: A Commonsense Revolution to Restore our Environment*, 3rd Ed., Island Press, Library of Congress Control No. 2016941253 (2016) 16

Barton Stam *et al*, *Animal Unit Month (AUM) Concepts and Applications for Grazing Rangelands*, University of Wyoming Extension (2018) 10

Bureau of Land Management Form 4130-1a 20

Bureau of Land Management, *Grand Staircase – Escalante National Monument: Livestock Grazing Plan Amendment EIS*, BLM-Utah (2015) 18

Charles S. Peterson, *Grazing in Utah: A Historical Perspective* (Utah Historical Quarterly, Volume 57, Number 4, 1989) 6

Daniel Munch, *Public Lands Grazing Vital to the Rural West*, American Farm Bureau (Jul. 05, 2023) 17

E. Bruce Godfrey, *Livestock Grazing in Utah: History and Status* (Utah State University Extension Dec. 2008) 5, 6

Page

Hayden Ballard and Chris Heaton, *Grazing on National Monuments*, Cowboy Stories (2024) 14

Jim Nesbitt, *Environmentalists Battle with Ranchers, Bankers; Loans Tied to Grazing are Blasted*, New Orleans Times-Picayune at A16 (Nov. 5, 1995).....20

Public Lands Council, *About*, publiclandscouncil.org (2024) 3

Sofia Jeremias, *Utah lost 20% of its farmland. Will the state try to protect what's left?*, Salt Lake Tribune (2024) 11

The Rangelands Partnership, *Animal Unit Equivalents*, Rangelands Gateway (2024) 10

United States Department of the Interior, *Solicitor's Opinion Clarification of M-37008* (2003) 10

United States Department of the Interior, *Solicitor's Opinion M-37008* (2002).....10

United States Department of the Interior, *The Colorado River Region and John Wesley Powell*, Geological Survey Professional Paper 669 (1969) ...6

US Census of Agriculture, *Market Value of Agricultural Products Sold including Landlord's Share, Food Marketing Practices, and Value Added Products*, Utah, Table 2 (2022) 17

Cited Authorities

Page

Utah Department of Agriculture and Food, *History of Grazing in Utah* (2019) 12, 18

Utah Department of Agriculture and Food, *Utah Grazing Improvement Program* (2024) 15

Vallentine, J.F. 1990. Grazing Management. Academic Press, San Diego, CA (1990). 10-11

Vytas Babusis, *Preference in Public Land Grazing Rights,* Public Lands Council (2015) . .19, 20

Western AgCredit, *Meet Director Klynt Heaton*, Fence Lines, Vol. 23 Issue 3 (2020) 18

INTEREST OF *AMICI CURIAE*

Pursuant to Supreme Court Rule 37, the following Utah agriculture industry groups respectfully submit this brief as *amici curiae* in support of the Plaintiff, the State of Utah.[1] The industry groups are: Utah Public Lands Council, Utah Wool Growers Association, Utah Farm Bureau Federation, Beaver County Farm Bureau, Garfield County Farm Bureau, Iron County Farm Bureau, Kane County Farm Bureau, Piute County Farm Bureau, Sanpete County Farm Bureau, Sevier County Farm Bureau, Uintah County Farm Bureau, and Washington County Farm Bureau (together hereinafter referred to as the "*amici curiae*" or the "Agriculture Industry Groups").

The Utah Public Lands Council ("UPLC") is a state-level affiliate of the Public Lands Council ("PLC"). The UPLC is an active participant in local, state and national advocacy efforts on behalf of Utah's public lands ranchers (both cattle and sheep).

The Utah Woolgrowers Association ("UWGA") works to represent Utah sheep producers on local, state, and national policies/issues, while offering educational and networking opportunities. The UWGA has a voting representative in UPLC.

---

1. This amicus brief is filed under Supreme Court Rule 37, and all counsel of record received timely notice of the intent to file under Rule 37.2. Please note pursuant to Supreme Court Rule 37.6, that no part of this brief was authored by counsel for any party, and no person or entity other than the "Agriculture Industry Groups" – or members of the same – made any monetary contribution to the preparation or submission of the brief.

The Utah Farm Bureau Federation ("UFBF") is a state-level affiliate of the American Farm Bureau Federation ("AFBF"). The UFBF's activities include policy and legislative advocacy, leadership development, and public education. The UFBF has a voting representative in UPLC.

The County Farm Bureaus of Beaver County, Garfield County, Iron County, Kane County, Piute County, Sanpete County, Sevier County, Uintah County, and Washington County, Utah, are all county-level affiliates of the UFBF. The UFBF and the county affiliates together advocate for all sectors of Utah agriculture, including federal land grazing.

The State of Utah outlines the legal reasoning as to why this Court should grant its Motion for Leave to file its Bill of Complaint. The *amici curiae* emphatically agree. However, for the Agriculture Industry Groups, this case goes deeper than clarifying precedent and resolving questions of federal law – particularly Section 102(a)1) of the Federal Land Policy and Management Act of 1976 ("FLPMA"). If the Plaintiff is successful here, the outcome will help thousands of Utah's current and future public lands ranchers remain economically viable, better manage their rangelands and be alleviated of federal regulatory burden that ignores their local interests.

All the Agriculture Industry Groups have members who actively graze cattle, sheep, or other livestock on unappropriated (and appropriated) Bureau of Land Management lands in Utah. Accordingly, the *amici curiae* have a strong interest in protecting the economic success and culture/heritage of these public lands ranchers.

SUMMARY OF ARGUMENT

Utah seeks relief to make right decades of wrong. In so doing, the Plaintiff has asked this court to "declare that the United States' policy and practice of indefinitely retaining its unappropriated lands in Utah over Utah's objection is unconstitutional." Plaintiff's *Bill of Complaint* at 28. This official policy has been codified at 43 U.S.C. §1701(a)(1) and 43 U.S.C. §1713(a). The allegations in the Bill of Complaint raise important Constitutional issues under the Enclave Clause (U.S. Const. art. I, §8, cl. 17), the Necessary and Proper Clause (U.S. Const. art. I, §8, cl. 18), and the Property Clause (U.S. Const. art. IV, §3, cl. 2).

Across the western United States, "approximately 22,000 ranchers own nearly 120 million acres of private land and hold grazing permits on more than 250 million acres managed by the U.S. Forest Service ("USFS") and Bureau of Land Management ("BLM"). Nearly 40% of the western cattle herd and about 50% of the nation's sheep herd spend time on public lands." Public Lands Council, *About*, publiclandscouncil.org (2024).[2]

The consequence of the federal land estate's extensiveness in Utah is that Utah's ranching and livestock industry is inseparably tied to federal land management policies, particularly on BLM land. The BLM plays an oversized role in the overall decline or success of livestock grazing in Utah. Over a century of grazing and land disposal legal precedent points to a clear intent of ensuring the arid lands of the west, including Utah, remain available to fortify the life-sustaining livestock

2. https://publiclandscouncil.org/about-2/#.

industry and heritage. Yet, with FLPMA's enactment in 1976, a course change now suffocates the very stewards of the land – the ranchers – that the law was intended to ensure a place for.

Most of the unappropriated BLM land in Utah is rangeland currently grazed by Utah's ranchers under a system of "grazing allotments" established in 1934. These rangelands provide necessary forage to sustain Utah's working ranch families and the rural communities they live in. Without them, this important segment of Utah's economy and culture falters.

Over the past several decades, *amici curiae* have seen a willingness on the part of the BLM to restrict access to, and availability of, these crucial lands for grazing. Similar to a ratchet gear that only spins one way, it seems that grazing losses on BLM lands seem to ratchet slowly downward, year after year in terms of the slow churning loss of AUMs ("Animal Unit Months" described in depth *infra*) and available grazing allotments since FLPMA's passage. This trend is unsustainable.

Here, the *amici curiae* are in concert – this abuseful trend must stop. The future viability of Utah's livestock sector now depends on a disposal of all unappropriated BLM land, as required by law before FLPMA's change of course. The federal laws in place pre-1976 ensured the prosperity of Utah's livestock producers, and since that time, that trend has continually done anything but. It's time to right this wrong. It's time for the federal government to honor its promises to dispose of the unappropriated land in Utah.

This case presents a "once-in-a-generation" opportunity to answer in finality a question that has long plagued western rangelands – whether the federal government may hold millions of acres of unappropriated land in perpetuity without it serving an enumerated purpose. This singular question is of paramount public importance that warrants this Court's attention. Leaving this question unanswered will result in further decline of Utah's rangeland and ranching industry/heritage.

The Agriculture Industry Groups submit this brief to stress the groundbreaking importance of this case and to accent the positive impacts an affirmative decision for the Plaintiff will have on Utah's livestock-raising families and communities.

ARGUMENT

I. DISPOSAL OF UTAH'S UNAPPROPRIATED BLM LAND WILL BE CONSISTENT WITH PRE-1976 GRAZING LAW AND CURTAIL FEDERAL GRAZING REDUCTIONS.

Throughout the *Plaintiff's Motion for Leave to File Bill of Complaint* and *Bill of Complaint*, the State of Utah outlines the United States' extensive land disposal history throughout her founding and western expansion. Livestock grazing's foundation in the Western United States and Utah has just as rich a history (and one that is inseparably intertwined with the former).

Utah's livestock grazing beginnings stretch as far back as her settlement itself and increased rapidly after the arrival of the Mormon pioneers in 1847. E. Bruce

Godfrey, *Livestock Grazing in Utah: History and Status* at 3 (2008).[3] In fact, "Utah's grazing practices and institutions were shaped by the Mormon penchant for cooperation and group life. Most Saints lived in towns from which they worked small general farms. Almost all kept a few head of cattle and sheep." Charles S. Peterson, *Grazing in Utah: A Historical Perspective* at 302-303 (1989).[4] While the early days of grazing in Utah were dominated by "livestock pools" ran in common on public land, as time went on the territorial legislature granted prime grazing areas to individuals and groups. *Id.*

In those early days, there were few laws to govern grazing on the public domain. Of course, the Homestead Act of 1862, 12 Stat. 392, granted 160 acres to "actual settlers" who "cultivated" the land – *i.e.*, crops. However, in Utah's arid landscape with limited rainfall, 160 acres is simply not enough to raise cattle sufficient to provide for one's family. United States Department of the Interior, *The Colorado River Region and John Wesley Powell*, Geological Survey Professional Paper 669 at 9-10 (1969).[5]

Given these limitations, cattle and sheep ranchers established widespread claims to the public domain's rangeland. For example, in *Brooks v. Warren*, 5 Utah 118

---

3. https://extension.usu.edu/apec/files/uploads/environment-and-natural-resources/public-lands/Grazing-Final-Report.pdf

4. https://issuu.com/utah10/docs/uhq_volume57_1989_number4/s/157706#:~:text=Far%20from%20being%20an%20offshoot,head%20of%20cattle%20and%20sheep

5. https://pubs.usgs.gov/pp/0669/report.pdf (In 1875 Major John Wesley Powell suggested that a suitable farm unit size in Utah would have been 2,560 acres and tied to a water source).

(Utah 1886), the Utah Supreme Court heard a dispute regarding ownership of a homestead cabin. At one point, testimony was provided pertaining to the possession of the house " . . . that would explain something. Near the house, within 40 or 50 feet, *is a spring which is very valuable. That spring controls thousands of acres of land. It is cattle land*." *Id.*

This customary practice of controlling vast swaths of unsettled, public lands by claiming water rights or strategically homesteaded private parcels, became common. In *Buford v. Houtz*, 133 U.S. 320 (1890), this Court heard an appeal from the Supreme Court of the Territory of Utah, wherein the plaintiffs attempted control of some 921,000 acres of rangeland for exclusive grazing, while asserting title to only 350,000 of those total acres. *Id.* at 325. While disagreeing with the Plaintiffs' attempts, at that time this Court found:

> " . . . there is an implied license, growing out of the custom of nearly a hundred years, that the public lands of the United States, especially those in which the native grasses are adapted to the growth and fattening of domestic animals, shall be free to the people who seek to use them . . . " *Id.* at 326.

Later, various federal laws were passed attempting to bring regulation to the range and provide for the orderly disposal of it. This list includes, but is not limited to, the Homestead Act of 1862, 12 Stat. 392, the Act of July 26, 1866 (R.S. 2477), 14 Stat. 251, the Desert Land Act of 1877, 19 Stat. 377; 43 U.S.C. Ch. 9 §321 *et seq.*, the Unlawful Inclosures Act of 1885, 23 Stat. 321, the

Livestock Reservoir Site Act of 1897, 29 Stat. 484, and the Stock Raising Homestead Act of 1916, 39 Stat. 862.

The culmination of these attempts was the Taylor Grazing Act of 1934 ("TGA"). 48 Stat. 1269; 43 U.S.C. ch. 8A §315 *et seq.* The TGA's purpose was "to stop injury to the public grazing lands by preventing overgrazing and soil deterioration, to provide for their orderly use, improvement, and development, to stabilize the livestock industry dependent upon the public range . . . " 48 Stat. 1269. The TGA continues:

> " . . . in order to promote the highest use of the public lands ***pending its final disposal***, the Secretary of the Interior is authorized . . . to establish grazing districts or additions thereto and/or to modify the boundaries thereof, not exceeding in the aggregate an area of eighty million acres of vacant, **unappropriated**, and unreserved lands from any part of the public domain of the United States . . . which are not in national forests, national parks and monuments, Indian reservations . . . and which in his opinion are **chiefly valuable for grazing** and raising forage crops" (emphasis added). 43 U.S.C. §315.

This statutory language highlights several important facts. The TGA was intended to promote the highest use of the public lands ***pending its final disposal***. *Id.* The TGA never asserts a permanent retention of **unappropriated** lands, only interim management of them for the highest use. Further, almost the entirety of the unappropriated federal estate in the western United States was divided into "grazing districts" and smaller units called "grazing

allotments." *Id.* Inclusion in a Taylor Grazing District required a Secretary of the Interior determination that those lands were "**chiefly valuable for grazing**." *Id.*

The grazing permitting requirements are mainly found in Section 3 of the TGA. One such requirement is that to obtain "preference" for a grazing permit, one must be a landowner or holder of water rights, 43 U.S.C. §315b, – similar to the customary practice of controlling water sources and/or strategically located parcels of private land, and thereby the appurtenant rangeland. As such, today regulations require that ranchers own "base property" to hold a grazing permit. 43 CFR §4110.1.

Roughly 40 years after the TGA, Congress passed FLPMA, which among other things, adopted the federal land retention policy in Section 102 at issue in this case – reversing a century of land disposal precedent. FLPMA repealed all the previous homestead and grazing laws, with several notable exceptions. Among the exceptions, most of the TGA grazing provisions were "grandfathered in" and remain the bedrock of federal grazing law today, while the TGA disposal sections were repealed. 43 U.S.C. 1701 *et seq.*

The amount of BLM land encompassed in TGA grazing allotments across the west today is goliath in scale. *See* Appendix 1. Looking to Utah specific TGA grazing allotments in Appendix 2, much of the unappropriated land at issue in this case is currently grazed under the TGA system of permits, allotments, and grazing districts. Almost all the lands labeled "unappropriated" in this case have existing grazing allotments and livestock water rights thereon. They are "unappropriated", but far from empty.

The TGA grazing allotments were to be managed for grazing "pending its final disposal" or a determination that they were no longer "chiefly valuable for grazing." United States Department of the Interior, *Solicitor's Opinion M-37008* (2002);[6] *see also* United States Department of the Interior, *Solicitor's Opinion Clarification of M-37008* (2003).[7] Despite this statutory directive, BLM policy has sent livestock grazing on unappropriated BLM land down a metaphorical "black diamond" slope over the past century.

Quantifying this decrease requires understanding of a common rangeland management metric – the Animal Unit Month ("AUM"). The prevailing definition of an AUM is "*the amount of air-dry forage a 1,000-pound cow and her un-weaned calf will consume in one month*" and is the "*equivalent to 750 pounds of dry forage*." Barton Stam *et al*, *Animal Unit Month (AUM) Concepts and Applications for Grazing Rangelands*, University of Wyoming Extension (2018).[8] AUMs are converted between different grazing species utilizing what is known as "Animal Units" ("AUs") and "Animal Unit Equivalents" ("AUEs"). *E.g.*, one mature cow is equivalent to one AU, while a mature sheep is equivalent to 0.2 AUs. The Rangelands Partnership, *Animal Unit Equivalents*, Rangelands Gateway (2024);[9] *citing* Vallentine, J.F. 1990.

---

6. https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/M-37008.pdf

7. https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/M-37008.pdf

8. https://wyoextension.org/publications/html/B1320/

9. https://rangelandsgateway.org/inventorymonitoring/

Grazing Management. Academic Press. San Diego, CA. pp 278-280. For quantification of livestock grazing's decrease on Utah BLM land, the AUM is the most useful measure.

Utah faces an agricultural land availability problem on two fronts. On the first front, urbanization continually swallows private agricultural land at a break-neck pace. In the past six decades alone, Utah lost 20% of its total private farmland (about 2.7 million acres) to development. Sofia Jeremias, *Utah lost 20% of its farmland. Will the state try to protect what's left?*, the Salt Lake Tribune (2024).[10]

On the second front, with private grazing land disappearing, public land grazing becomes increasingly important. Of the 45 million acres of grazing lands within Utah, 73 percent is federally owned, 9 percent is state-owned, and 18 percent is privately owned. Of the federal land that permits grazing, 67 percent is managed by the BLM." Utah Public Lands Policy Coordinating Office, *Utah State Resource Management Plan* at 22 (2024);[11] Utah Code §63L-10-103. However, "grazing has declined on BLM lands by more than 66 percent" in the past century. *Id.*

---

unitequivalents (*E.g.*, if a pasture has a carrying capacity of 100 AUMs, it could sustain either 100 cows for one month, or 10 cows for 10 months. Relatedly, it could sustain 500 sheep for one month or 50 sheep for 10 months).

10. https://www.sltrib.com/news/environment/2024/06/20/utah-lost-20-its-farmland-will/

11. https://tinyurl.com/Utah-State-RMP-2024

Putting this into perspective, on Utah BLM lands, "***AUM's have declined from 2,749,000 in 1940 to less than 675,000 AUMs in 2009***." Utah Department of Agriculture and Food, *History of Grazing in Utah* (2019).[12] This represents a net-loss of 2,074,000 available AUMs from 1940 to 2009. This loss is visualized in Appendix 3, which strikingly corresponds with the reduction of livestock inventory in the State over the same time period, visualized in Appendix 4.

To stem these losses, the State of Utah has adopted a policy of "no-net-loss" of AUMs on federal land. This policy requires that "AUMs within the state remain at or above current levels unless a scientific need for temporary reduction is demonstrated to the satisfaction of state officials." Utah State Resource Management Plan at 105 (2024);[13] Utah Code §63L-10-103. The continual loss of AUMs state-wide is an affront to this policy.

These "cuts" can come as outright eliminations of available AUMs, designating allotments unavailable, or agency overregulation making it difficult to improve the land. The TGA shows a clear purpose of furthering agricultural uses of the unappropriated public domain, pending its final disposal. However, beginning with FLPMA, the federal government with reckless abandon veered from that course and now pursues a path of land retention, alongside erasure of over 100 years of grazing tradition, culture and legal protections. If this Court finds that the unappropriated BLM lands must be disposed of,

---

12. https://ag.utah.gov/utah-grazing-improvement-program/history-of-grazing-in-utah/

13. https://tinyurl.com/Utah-State-RMP-2024

said disposal would be consistent with the grazing laws pre-1976 and would eliminate the potential for continued federal grazing losses. Otherwise, the viability of Utah's ranching industry and culture is severely threatened.

In 2024, the Utah Legislature adopted amendments to the Utah Public Land Management Act ("UPLMA"), said Act becoming effective when at least 250,000 acres of federal public lands are disposed of to the state. Utah Code §63L-8-602. The UPLMA as amended now recognizes a federal grazing allotment as a "valid existing right, when certain requirements are met." Utah Code §63L-11-302(14); Utah H.B. 363 (2024). Many of these "valid existing right" requirements are mirror images of the permit and land determination requirements originally found in the TGA. Utah Code §63L-8-404.

The UPLMA is congruent with the pre-1976 grazing and disposal laws, and the *amici curiae* urge this Court to direct the BLM to dispose of all unappropriated land within Utah, so that under the UPLMA the ranchers' interests in these grazing allotments will finally be recognized for what they are in Utah – a valid existing right.

II. DISPOSAL OF UTAH'S UNAPPROPRIATED BLM LAND WILL PROTECT THE ENVIRONMENT AND PROMOTE HEALTHY RANGELANDS AS UTAHNS ARE BETTER SUITED TO MANAGE UTAH'S LANDS.

By retaining unappropriated land indefinitely, the federal government presumes only it cares about the environment. Nothing could be more erroneous. This

paternalistic view ignores local interests, and stunts proper, locally led rangeland management.

Utah's ranchers have vested interests in a healthy environment: they live, work, recreate, and raise families here. No one has more interest in Utah's environment than Utahns and especially Utah ranchers. It could truly be said, "ranchers are the original environmentalists." Hayden Ballard & Chris Heaton, *Grazing on National Monuments*, Cowboy Stories (2024).[14] Ranchers are the stewards of the lands, and many grazing allotments have been in the same family for generations. Not only is it in ranchers' economic interest to ensure proper management of the land, but for those who wish to see their legacy continue, it behooves them to sustain these rangelands that the grazing allotments might be inherited by their families.

Utahns have a proven track record of properly caring for and managing their rangelands. For example, the UPLMA cited *supra*, contains a myriad of immediately effective management directives and policies to manage these grazing lands once disposed of. Utah Code §63L-8-101 *et seq.* Further, Utah has codified "Agricultural Commodity Zones" targeting grazing on federal lands, with management and land use priorities described for each zone. Utah Code §63J-8-105.8. Of Utah's 29 counties, 11 of them have at least one such "grazing zone." *Id.* at (a) – (c). Many of these zones overlap the unappropriated BLM land at issue with management directives at the ready to ensure the "responsible restoration, reclamation, preservation, enhancement, and development of forage

14. https://podcasters.spotify.com/pod/show/cowboy-stories

and watering resources for grazing and wildlife" within them. *Id.*

The Utah Grazing Improvement Program ("UGIP"), within the Utah Department of Agriculture and Food ("UDAF"), provides thousands of dollars in cost-sharing grants to public and private land ranchers for rangeland improvement projects that enhance the environment, promote sustainability, and benefit both Utah's livestock and wildlife. Utah Department of Agriculture and Food, *Utah Grazing Improvement Program* (2024).[15] UGIP's three-prong purpose is to strengthen Utah's livestock industry, improve rural economies and enhance the environment. *Id.* Regional grazing districts, a UGIP Advisory Board, and extensive funding mechanisms support UGIP's success. Utah Code §4-20-101 *et seq.* To say Utahns are ill-equipped to manage their own rangelands, despite these successes, is just not true.

While Utahns develop proactive approaches to ensuring land health, the BLM seems intent on a hands-off approach to land management. *E.g.*, the BLM's recently implemented Conservation Rule (*i.e.*, the Public Lands Rule) has attempted to redefine what is a "use" under FLPMA and to include "conservation" as a "use." 89 FR 40308. In furtherance of this arguably *ultra vires* attempt at statutory redefinition, the BLM now allows for Restoration and Mitigation Leases. 89 FR 40321. The BLM asserts this rule will not displace existing grazing, 89 FR 40331, but this assertion's authenticity remains to be seen. Attempting to insert "non-use" into "multiple-use" management ultimately threatens ranching's viability in

15. https://ag.utah.gov/utah-grazing-improvement-program/

Utah, and arguably runs afoul of the precedent in *PLC v. Babbitt*, wherein the Tenth Circuit held the BLM could not issue a grazing lease solely for "conservation." *Public Lands Council v. Babbitt*, 167 F.3d 1287, 1308 (10th Cir. 1999).

While the BLM seems intent on managing for conservation (*i.e.*, "non-use") a growing body of research shows in arid landscapes, removing all ruminants (*i.e.* cattle and sheep) will actually increase desertification, rather than stem its spread, while proper grazing will heal and restore brittle environments. *See generally* Alan Savory, *Holistic Management: A Commonsense Revolution to Restore our Environment*, Third Edition, Island Press, Library of Congress Control Number 2016941253 (2016). In opposite to a hands-off approach, Utahns can manage the rangeland with multiple-use principles, ensuring thriving ecosystems, while maintaining the livestock economy so crucial to rural Utah.

Utahns are truly suited to care for Utah's unappropriated BLM rangelands. Utahns have laws in place to do so, and a track record of success in maintaining healthy rangelands and ecosystems. Disposal of the unappropriated lands within Utah's border would only make it easier for Utah's ranchers to improve upon these successes.

III. DISPOSAL OF UTAH'S UNAPPROPRIATED BLM LAND WILL ENSURE THE ECONOMIC VIABILITY OF UTAH'S RURAL COMMUNITIES AS WELL AS ITS LIVESTOCK INDUSTRY AND HERITAGE

Despite the losses of available private and public land for grazing, the sale of livestock products remains

an intrinsic part of Utah's overall agricultural economy. According to the USDA's 2022 Census of Agriculture, the market value from "cattle and calves" sold in Utah was $427,502,000, equating 18.3% of the total Market Value of Agricultural Products Sold in the state, while "sheep, goats, wool, mohair and milk" added another $41,703,000, or 1.8% of the total. US Census of Agriculture, Utah, Table 2, *Market Value of Agricultural Products Sold including Landlord's Share, Food Marketing Practices, and Value-Added Products* (2022).[16] The total amount of cattle, sheep and goat sales that directly benefitted from public lands grazing in Utah (in 2023) was $83.39 million. Daniel Munch, *Public Lands Grazing Vital to the Rural West*, American Farm Bureau (Jul. 05, 2023).

A decision by this Court directing the disposal of all unappropriated BLM land within Utah would do much to ensure the economic viability of Utah's rural communities, and livestock industry/heritage – as shown below.

In Southern Utah, the Grand Staircase-Escalante National Monument ("GSENM") encompasses roughly 1.87 million acres spanning two counties – Kane and Garfield. In 2015, the BLM conducted a GSENM livestock grazing Environmental Impact Statement ("EIS"), and a Socioeconomic Baseline Report. The EIS acknowledged:

> " . . . that through multiplier effects, **each AUM permitted for use in the region generates approximately $100 in economic activity**

16. https://www.nass.usda.gov/Publications/AgCensus/2022/Full_Report/Volume_1,_Chapter_1_State_Level/Utah/st49_1_002_002.pdf

> within Kane and Garfield Counties. Ranchers hire workers, make payments on bank loans, buy supplies and engage in other types of commercial activity, stimulating economic ripple effects within the community . . . " (emphasis added). Bureau of Land Management, *Grand Staircase-Escalante National Monument: Livestock Grazing Plan Amendment EIS*, BLM-Utah (2015).[17]

As highlighted, each AUM in rural Southern Utah generates $100 in economic activity. Assuming that number to be somewhat consistent across the state, recall on BLM lands in Utah, "AUM's have declined from 2,749,000 in 1940 to less than 675,000 AUMs in 2009." Utah Department of Agriculture and Food, *History of Grazing in Utah* (2019).[18] Multiplying the net-loss of 2,074,000 available AUMs by the $100/AUM economic impact each AUM represents, produces stunningly harmful economic blows to already disadvantaged rural communities.

Utah ranchers buy and sell BLM grazing allotments. Western AgCredit, *Meet Director Klynt Heaton*, FenceLine, (2020).[19] The purchase value is, generally speaking, tied to the private real estate (*e.g.* land and/or water rights) serving as "base property", the rangeland

17. https://eplanning.blm.gov/public_projects/lup/69026/89783/107365/2015_07_30_SocioeconomicBaselineStudyFINAL_508.pdf

18. https://ag.utah.gov/utah-grazing-improvement-program/history-of-grazing-in-utah/

19. https://www.westernagcredit.com/files/fencelines/pdfs/Summer_2020.pdf (describing how a Southern Utah ranch family purchased the Kanab Creek allotment).

improvements and/or livestock and the the carrying capacity of that allotment. *See generally* Vytas Babusis, *Preference in Public Land Grazing Rights*, Public Lands Council (2015).[20] Typically, ranchers must finance these purchases, often utilizing the entire federal grazing unit as collateral to secure the loan, as acknowledged by federal law. 43 CFR §4130.9; 43 U.S.C. §315b.

Grazing privileges are accepted as security by private and federal agricultural lenders, including the USDA's Farm Service Agency ("FSA"). The FSA's handbook on Direct Loan Making contains a short directive on "*Perfecting a Lien on Milkbase and Grazing Permits*" which states that the "[State Executive Director] will issue a State supplement about **perfecting a security interest when** milkbase or **grazing permits are financed or taken as security**" (emphasis added). Farm Service Agency, Handbook 3-FLP (Rev. 2) Amend. 4 at 418(C) (Updated 9/21/2024). The state supplement regarding milkbase or grazing permits financed or taken as security contains "[f] orms to use, directions for completion, acknowledgement by the payor, and correct way to make the form a matter of public record." *Id.* at Exhibit 4, P. 3. This FSA handbook clearly acknowledges that "grazing permits" can be, and are, encumbered as security by the FSA.

Other private agricultural lenders such as Western AgCredit, ACA, a federally chartered credit institution within the Farm Credit System ("Western AgCredit") do the same. According to Western AgCredit lending procedures, BLM grazing privileges and AUMs are

20. https://publiclandscouncil.org/wp-content/uploads/2015/07/Preference-for-Grazing-CAPSTONE.pdf

treated as "general intangibles" under Article 9 of the Uniform Commercial Code ("UCC"). To perfect a lien on "grazing privileges" the lender will include in the legal description of the base property to be secured, language that includes "All U.S. Bureau of Land Management Grazing Privileges within the <NAME> Allotment." The lender may also file with the state central filing system a UCC statement under UCC Article 9 containing the same language, and provide a direct written notice to the BLM. The lender also requests that the BLM area manager acknowledge the lien via a countersignature on the letter, which is returned to the lender for its records.

According to some sources, based on market area surveys, appraisals and private agricultural sales data, the current fair market value in the Utah region per AUM is approximately between $200 and $350 on the low end, up to $500 on the high end.

Once a purchase is closed, the buyer will apply for a "preference transfer" to the existing permit, with the seller's approval. 43 CFR 4110.2-3; BLM Form 4130-1a. If all eligibility criteria are met, the BLM will issue a new permit to the buyer. 43 CFR 4110.1.

Now, "[w]hether a rancher's grazing permits are formally put up as collateral or merely included in a banker's cold-eyed calculation of a rancher's financial health, they are necessary to ensure the fiscal stability of Western cattle interests, which has long been a stated goal of government officials. *Babusis* at 13; *citing* Jim Nesbitt, *Environmentalists Battle with Ranchers, Bankers; Loans Tied to Grazing are Blasted*, New Orleans Times-Picayune, Nov. 5, 1995, at A16.

In short, a new rancher on BLM land must first "buyout" the existing rancher at a negotiated price, often with financing on the grazing unit itself. Additionally, the BLM charges an annual grazing fee at a rate of $1.35 per AUM. 43 CFR 4130.8-1; BLM, *2024 Grazing Fee, Surcharge Rates, and Penalty for Unauthorized Grazing Use Rates*, IM2024-017 (2024).[21]

All these values associated with the AUM – the economic impact ($100/AUM), the fair market value ($200 to $500/AUM), and the grazing fee ($1.35/AUM) – are important to understanding the oversized economic impact federal lands grazing has on rural communities. When the BLM unilaterally restricts, reduces or eliminates AUMs, the rancher loses the investment, the lender loses the security, and local communities lose the economic impact of each AUM.

As discussed *supra*, in 2024 the Utah Legislature amended the UPLA to "recognize a federal grazing allotment as a valid existing right in range management." Utah H.B. 363 (2024); *see also* Utah Code §63L-11-302(14). Given the oversized impact BLM land grazing has on the health of Utah's livestock economy, it's important to accentuate that while FLPMA Section 701(h) provides that actions under FLPMA are "subject to valid existing rights" the BLM does not recognize grazing as a valid existing right – yet, the State of Utah does.

---

21. https://www.blm.gov/policy/im2024-017#:~:text=The%20fee%20for%20livestock%20grazing,animal%20unit%20month%20(AUM).

Given the heavy implications of this recognition, and the significant economic impacts discussed, the Agriculture Industry Groups urge this Court to grant the Plaintiff's prayers for relief. If Utah's unappropriated lands are disposed of, arguably the economic losses will halt, and the ranchers will have some assurance that their valid existing right in these generationally held grazing allotments will not be unilaterally eliminated. This gives some degree of confidence in investing in grazing allotments that can provide a "living" today, to be inherited by future generations tomorrow.

CONCLUSION

This Court should grant the Plaintiff's Motion for Leave to File Bill of Complaint.

Respectfully submitted,

HAYDEN L. BALLARD, ESQ., LL.M.
GREAT WESTERN RESOURCES
216 West Saint George Boulevard,
Suite 200
St. George, UT 84770
(435) 899-1520
info@greatwesternresources.org

Counsel for Amici Curiae

October 22, 2024

APPENDIX

TABLE OF APPENDICES

Page

MAP OF WESTERN STATES BLM GRAZING ALLOTMENTS ESTABLISHED UNDER SECTION 3 OF THE TAYLOR GRAZING ACT OF 1934 ..... 1a

MAP OF UTAH BLM GRAZING ALLOTMENTS ESTABLISHED UNDER SECTION 3 OF THE TAYLOR GRAZING ACT OF 1934 AND THEIR RESPECTIVE STATUS AS OF 2009 ..... 2a

GRAPH DEPICTING DECLINE OF AUMS ON BLM LANDS IN UTAH FROM 1940 TO 2006 ..... 3a

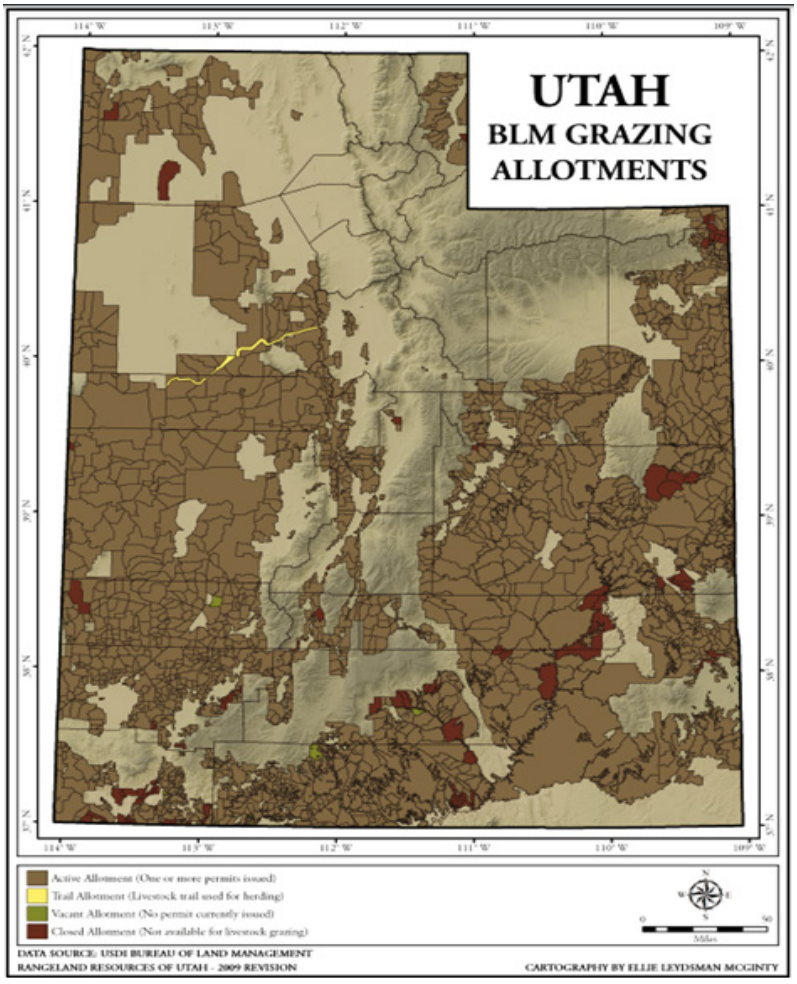
GRAPH DEPICTING DECLINE OF UTAH'S LIVESTOCK INVENTORY FROM 1920 TO 2005 ..... 4a

APPENDIX — MAPS AND GRAPHS

Source: Joseph E. Taylor *et al, Taylor Grazing Act Section 3 Payments*, Stanford University (2014).[22]

22. https://web.stanford.edu/group/spatialhistory/FollowTheMoney//pages/BLM_Grz_3.html

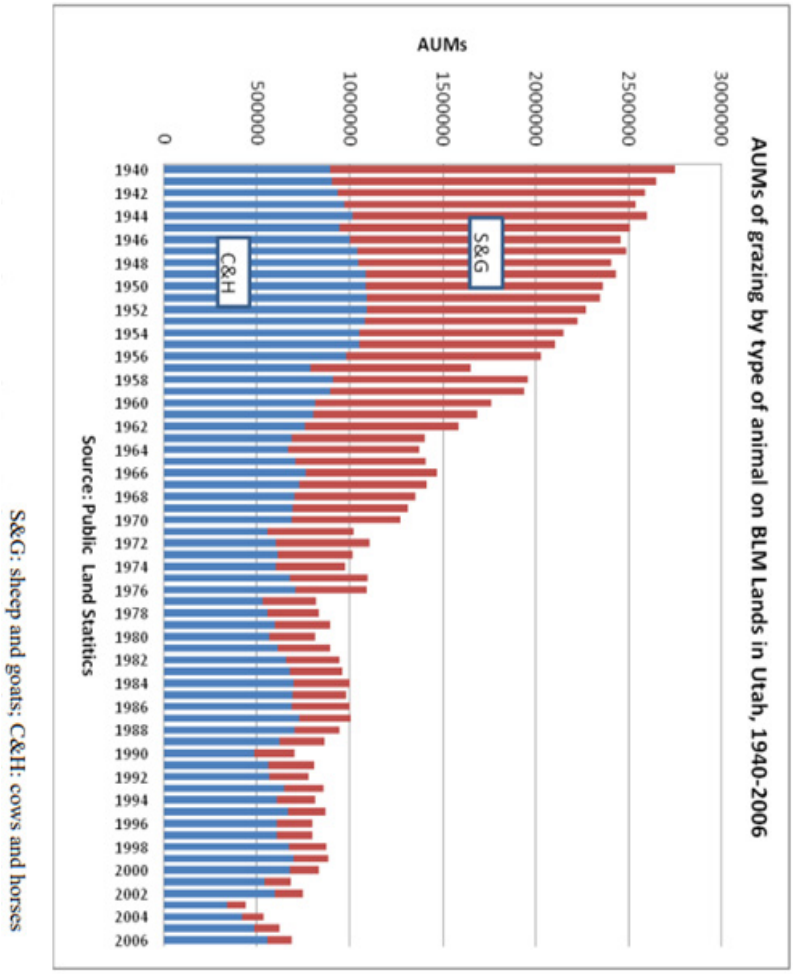
Appendix



Source: Roger E. Banner, *Status of Utah Rangelands: Livestock Grazing in Utah*, Utah State University Extension (2009).[23]

23. https://extension.usu.edu/range-lands/files/RRU_Section_Eight_Livestock.pdf

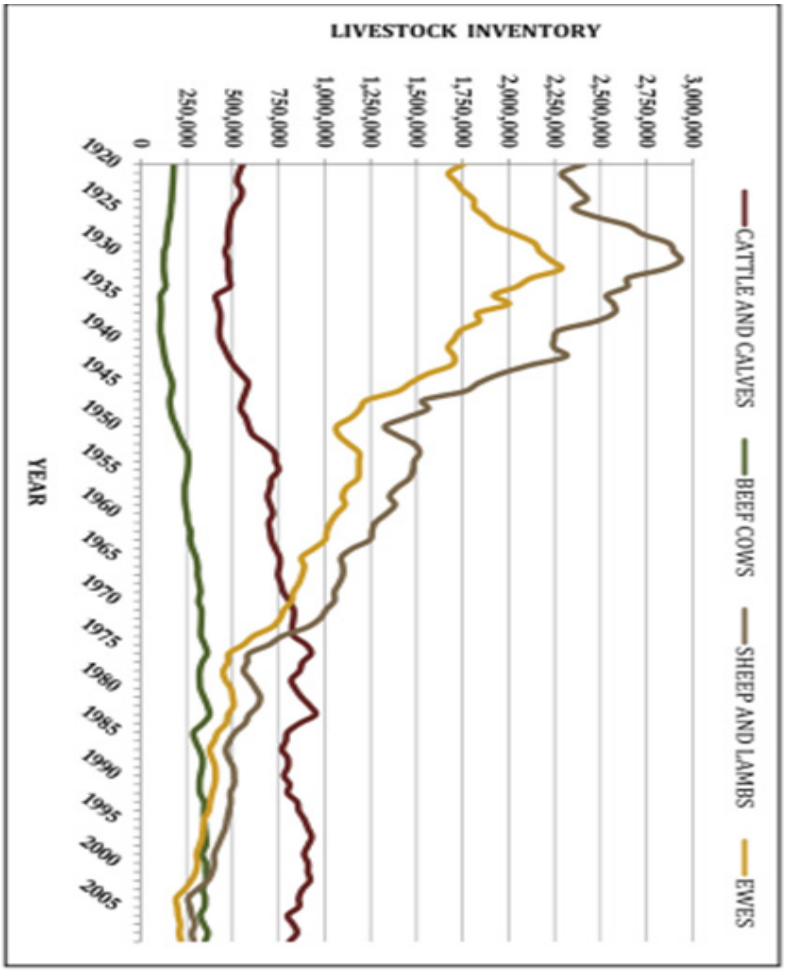
Appendix



Source: E. Bruce Godfrey, *Livestock Grazing in Utah: History and Status* at 18 (2008).[24]

24. https://extension.usu.edu/apec/files/uploads/environment-and-natural-resources/public-lands/Grazing-Final-Report.pdf

Appendix



Source: Roger E. Banner, *Status of Utah Rangelands: Livestock Grazing in Utah*, Utah State University Extension (2009).[25]

25. https://extension.usu.edu/range-lands/files/RRU_Section_Eight_Livestock.pdf