

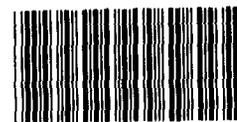
GAO

Report to the Chairman, Subcommittee
on National Parks and Public Lands,
Committee on Interior and Insular
Affairs, House of Representatives

December 1990

RANGELAND MANAGEMENT

BLM Efforts to Prevent Unauthorized Livestock Grazing Need Strengthening



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**Resources, Community, and
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B-240694

December 7, 1990

The Honorable Bruce F. Vento
Chairman, Subcommittee on National
Parks and Public Lands
Committee on Interior and
Insular Affairs
House of Representatives

Dear Mr. Chairman:

This report responds to your February 28, 1989, request that we examine the efforts of the Department of the Interior's Bureau of Land Management (BLM) to detect and deter unauthorized livestock grazing on public rangelands. Unauthorized grazing—referred to by BLM as grazing trespass—can take several forms, including grazing more livestock than allowed by permit, grazing in areas that are closed to livestock, or grazing during unauthorized times of the year.

Results in Brief

An effective trespass enforcement program must offer reasonable assurance that offenders, especially willful ones, (1) will be detected and (2) when detected, will be assessed an appropriate penalty not only to penalize them but also to deter others from trespassing. BLM's trespass enforcement efforts do not meet either of these requirements.

Because many grazing areas are inspected infrequently or not at all during the year, offenders are not likely to be detected. When offenders are detected, BLM frequently exacts no penalties¹ and, for the more serious violations, seldom assesses the minimum penalties its own regulations require. As a result, grazing trespass is not adequately deterred, which can lead to degradation of public rangelands, among other things.

BLM staff attribute the shortfalls in trespass detection and deterrence primarily to insufficient staff resources. While additional staff would undoubtedly enable improved performance, more effective and aggressive detection and deterrent efforts could be made within existing staffing levels.

¹The term "penalties" is used to include both the assessment of damages and costs for violations, as well as civil penalties such as suspension of a grazing permit.

Background

Before 1934, livestock grazing on public rangelands was uncontrolled, and the lands were damaged by decades of overgrazing. With the passage of the Taylor Grazing Act in 1934 (43 U.S.C. 315 et seq.), grazing became a regulated activity. However, because it was assumed that the lands would ultimately be transferred to private ownership, BLM's approach to public lands management was relatively passive or custodial.

In the face of continued rangelands deterioration, the Congress passed the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.). The act established a federal commitment to (1) retain ownership of public lands, (2) improve deteriorated lands, and (3) manage the lands in a manner that would ensure their productive capacity in perpetuity. The Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.) reaffirmed the national policy to manage, maintain, and improve the condition of the public rangelands so that they become as productive as possible for all users.

BLM manages nearly 162 million acres of rangelands in 16 western states and, among other duties, monitors vegetation and land conditions and oversees grazing operations. The rangelands are divided into about 22,000 separate grazing units, generally referred to as allotments. The allotments are largely managed through renewable permits and leases to about 19,600 livestock operators. The permits and leases specify the number and type of livestock allowed on the allotments, the time and duration of use for grazing, and special conditions or use restrictions. BLM issues permits for up to 10 years, but it may alter, suspend, or cancel them if range conditions are being degraded or permit conditions are violated. In 1989, BLM charged operators \$1.81 per animal unit month (AUM)² to graze their livestock on public rangelands, which was considerably less than the commercial value of the forage.³

In its range management guidance, BLM recognizes the importance of protecting against grazing trespass. Its Handbook on Unauthorized Grazing Use states that officials "must give priority to preventing and detecting unauthorized grazing use on the public lands." BLM's grazing regulations (43 C.F.R. 4100), establish three levels of grazing trespass—non-willful, willful, and repeated-willful—with progressively harsher

²An AUM is defined as the amount of forage needed to support a 1,000 pound cow, a horse, or five sheep for 1 month.

³The commercial value for forage is determined annually by the U.S. Department of Agriculture and was established at \$8.49 per AUM for 1989.

penalties for each level. For each non-willful trespass, the offender must pay the commercial value of the forage consumed. For willful trespass, the penalty increases to twice the commercial value of the forage consumed plus charges for any damages to the land and BLM expenses incurred to detect, investigate, and resolve the violation. In addition, for either type of trespass, BLM may suspend or cancel all or portions of the grazing permit. For repeated-willful trespass, the required penalty is three times the commercial value of the forage consumed plus compensation for applicable BLM violation-related expenses. BLM must also suspend or cancel all or portions of the grazing permit.

Trespass Detection Efforts Are Minimal

Grazing trespass is occurring, but BLM's detection efforts are not sufficient to identify the extent of the problem. Management does not have a systematic method for detecting violations, and it does not allocate resources specifically for trespass detection or categorize detection efforts as a reportable accomplishment for field staff. Consequently, many allotments are rarely or never visited during the year. This situation is made worse by staffing shortfalls. Even though BLM's range staff is too small for the amount of work to be done, we believe that BLM can improve its detection efforts within current staffing levels.

Extent of Grazing Trespass Is Unknown

While the full extent of grazing trespass on BLM grazing allotments is not known, it does occur, and GAO has documented—during this and other reviews—grazing violations that BLM has not detected. For example, in a 1988 report on BLM's management of riparian areas,⁴ we noted several instances of cattle trespass in these ecologically critical zones. During an October 1987 BLM tour of a "showcase" riparian project in Nevada, for example, we noted that a large number of cattle had broken a fence and grazed the area to a "desert-like" condition. This trespass had not been detected by BLM officials until our visit, and the officials stated that such events are common.

We found another example of undetected grazing trespass in BLM files in Oregon. A permittee's grazing-use report indicated a higher grazing level, different dates of use, and different types of livestock than authorized by the permit. However, BLM staff had not compared the grazing-use report with the grazing permit and were unaware of this

⁴Public Rangelands: Some Riparian Areas Restored but Widespread Improvement Will Be Slow (GAO/RCED-88-105, June 30, 1988). Riparian areas are the narrow bands of green vegetation along the banks of rivers and streams and around springs, bogs, lakes, and ponds that are crucial to the overall ecological health of western rangelands.

permit violation until we pointed it out. The BLM range supervisor agreed that grazing trespass had occurred.

Staffing Shortfalls Identified as a Major Obstacle

According to BLM managers, the agency does not have enough range staff to conduct a serious trespass detection program. Between 1981 and 1990, BLM range staff decreased by 25 percent, from 551 to 413. The BLM range management budget for fiscal year 1991 increased nearly \$3.8 million over the previous year. However, at the time of our report, decisions had not been made about how much, if any, of the additional money would be used to increase the number of range management staff. On average, each range staff member is now responsible for 47 permits and 392,000 acres of public rangelands. In our discussions with range staff, we found that at least 26 were responsible for more than 1 million acres each, or an area about the size of Delaware.

Insufficient staffing has been identified as a problem in previous reviews of BLM's rangelands management. A 1986 report by Interior's Inspector General,⁵ as well as several previous GAO reports, have cited the insufficient number of staff as a factor contributing to BLM's difficulties in fulfilling its grazing program objectives. (A list of related GAO reports appears on the last page of this report.) Also, almost 60 percent of the range staff we questioned said that more staff would greatly improve grazing trespass detection.⁶

BLM Has No Systematic Approach for Detecting Grazing Trespass

While additional staff would undoubtedly be helpful, significant resource increases for trespass detection are not likely under today's budget limitations. Most improvements in trespass detection will depend on BLM's more effectively using the resources it already has.

Currently, BLM has no systematic method for detecting grazing trespass, such as visiting randomly selected allotments or targeting operators with a history of noncompliance. Permittees and lessees, therefore, operate essentially under an honor system, with little threat of compliance checks. In many instances, allotments with grazing activity receive few visits during the year or are not visited at all. For example, from

⁵Review of BLM's Grazing Management and Range Improvement Programs, U.S. Department of the Interior, Office of the Inspector General, Mar. 1986.

⁶BLM identified 414 range staff who could have direct responsibility for grazing trespass detection. Our questionnaire was sent to a randomly selected sample of 201 of these staff, responses were received from 200, and 155 said they had direct responsibility for detecting grazing trespass.

our survey of BLM range staff, we estimate that about 319 (+/- 19) range staff have direct responsibility for detecting grazing trespass and about 119 of them did not visit half or more of their grazing allotments during fiscal year 1989. When range staff visit their allotments, it is usually for a different purpose, and they generally make no concerted effort to count the number of livestock or take other specific steps to detect trespass. Given this level of effort devoted to trespass detection, BLM is not in a position to gauge the full extent of trespass activity.

While BLM's handbook says that preventing and detecting grazing trespass on public rangelands is to be given priority, it receives much less attention than other rangeland tasks and responsibilities. BLM has not established trespass detection as a work-load measure for which field office managers are held accountable, and the results of detection efforts are not categorized as a reportable accomplishment. Consequently, resources are not allocated specifically for grazing trespass detection and range staff have very little incentive to conduct such work.

Penalties Applied by BLM Do Not Serve as an Adequate Deterrent

When detection efforts are or can be expected to be minimal, a strong deterrent can provide incentive for those being regulated to voluntarily comply with regulations. Those who might consider willfully violating rules and regulations must believe that penalties outweigh the benefits of violating grazing requirements. BLM's trespass enforcement program does little to instill such a belief. Most detected grazing trespass goes unpunished and, for the more serious violations, BLM seldom assesses even the minimum penalties required by its regulations. In a 1986 report, Interior's Inspector General concluded that BLM field offices were not diligent in pursuing and recovering all agency costs incurred for trespass cases, as required by BLM regulations. That same year BLM's acting chief for the Division of Rangelands Resources reached the same conclusion.⁷ However, we found this condition still prevalent during our review.

Most Trespass Incidents Are Processed Informally and Without Penalties

In fiscal year 1989, BLM closed 345 formal trespass cases with penalties—259 non-willful, 77 willful, and 9 repeated-willful. However, on the basis of our questionnaire results, we estimate that approximately 1,300 to 1,900 additional trespass incidents occurred in fiscal year 1989

⁷Fiscal Year 86 Alternative Internal Control Review, memorandum to BLM Internal Controls Coordinator from Acting Chief, Division of Rangelands Resources, July 30, 1986.

that were judged to be non-willful and were handled informally by a telephone call or a visit to the trespasser.⁸ Fines were not imposed for any of these incidents. For example, a permittee in Oregon who was grazing more and different types of livestock than authorized by his permit and during unauthorized times of the year was not assessed a penalty. Rather, he was warned that if he was found to be in violation of his permit in the future, a portion of his permit might be suspended.

BLM's regulations do not provide BLM range staff with the flexibility to resolve trespass incidents informally. However, BLM range staff told us that, as a practical matter, the administrative time and expense incurred to formally investigate and process minor non-willful violations would far outweigh any benefits derived from the resulting fines. Additionally, they said that if the violation is minor and non-willful, and the operator is cooperative in correcting the problem, more is gained by maintaining good agency-operator working relationships than by taking punitive action against the offender.

BLM Did Not Assess Required Penalties in the Most Serious Trespass Cases

In addition to informally resolving most trespass incidents it considered minor, BLM did not assess required penalties for the more serious violations that were formally processed. In 71 of the 86 willful and repeated-willful cases where penalties were assessed in fiscal year 1989, we found that BLM did not collect the costs incurred to detect, investigate, and resolve violations, even though its regulations required it to do so.

Lesser penalties can reduce the deterrent value of BLM's enforcement efforts and can lead livestock operators to compare the costs of complying with permit requirements with the penalties likely to be assessed if a violation is detected and then make compliance decisions on the basis of the cheaper alternative. A BLM manager stated that one trespasser in his area paid less in BLM's willful trespass penalties than it would have cost him to buy hay for his livestock.

In addition to monetary penalties, BLM regulations state that a grazing permit may be suspended or cancelled for non-willful and willful trespass events and shall be suspended or cancelled, in whole or in part, for repeated-willful trespass. In fiscal year 1989, BLM did not penalize any of the 77 willful trespassers. Moreover, six of the nine repeated-willful

⁸This figure is based on a projection of responses to a questionnaire sent to BLM's 140 resource area offices. Responses were received from each office. We are 95 percent confident that there were between 1,311 and 1,897 unreported violations during the year. Resource area offices are the primary field locations for public contact and information on the use of BLM lands.

offenders had BLM grazing permits, but only one permit was partially suspended and no permits were cancelled. This partial suspension consisted of a reduction of about 30 percent in the grazing season—the trespasser was required to remove his livestock from public rangelands 6 weeks before the end of the 21-week grazing season. Some BLM range staff told us that they seldom assessed the minimum required penalties because they were not aware of the requirement to collect all reasonable costs incurred; others believed that including such costs, as well as suspending or cancelling the permits of repeated-willful trespassers, was optional or discretionary, rather than mandatory, on their part.

Greater BLM Oversight Needed for Trespass Enforcement Program

BLM's management philosophy emphasizes decentralized control, with as much authority and responsibility as possible delegated to lower operating levels. Under this philosophy, large numbers of geographically dispersed managers must interpret and implement agency regulations and policies; for grazing trespass, 140 resource area managers are involved. A system for effective internal controls and oversight must be in place to assure management that the program is operating as intended. In 1986, Interior's Inspector General concluded that BLM did not have an effective program to detect and prevent grazing trespass. In the same year, BLM identified its rangelands program as an area for potential fraud, waste, and abuse. During our review, we found that BLM's trespass enforcement program still contains serious weaknesses that require greater management oversight. For internal controls and oversight to be effective, BLM managers must have more comprehensive and timely information about all known or suspected trespass cases.

Adequate Management Information System Is Not in Place

BLM's reporting systems do not provide its top management with comprehensive data by which to judge the effectiveness of trespass enforcement by field offices. Currently, BLM's summary data include only closed trespass cases where penalties were collected. Data are not routinely collected, analyzed, and reported to provide information on cases that are (1) handled informally, (2) open or being appealed, or (3) dismissed or closed without penalty. Moreover, information is not compiled on the level of grazing trespass (non-willful, willful, and repeated-willful), or whether the violator was or was not a permittee. Finally, summary data are not compiled for permits that are suspended or cancelled or for penalties that are assessed for resource damage. BLM managers need timely and reliable information on grazing trespass detection and penalty assessment to evaluate trespass activity from year to year and make appropriate staffing or program adjustments.

Trespass Case Files Are Not Adequately Documented

Proper documentation of enforcement actions is crucial to determining patterns of abuse—which is necessary for identifying repeated-willful trespass. According to our review of agency permit files and discussions with range staff at selected BLM resource area offices, detected trespass incidents are not consistently documented. Moreover, trespass incidents deemed relatively minor by BLM staff and handled informally by a telephone call or a visit to the trespasser are generally not recorded in the trespass record and are not documented in the permittee's file. Without a record of these incidents, BLM staff cannot demonstrate a historical pattern of violations, and BLM management does not have an accurate picture of trespass activity.

Conclusions

BLM has no systematic method for detecting grazing trespass. The relatively low priority accorded grazing trespass detection is evidenced by several management actions: detection has not been established as a work-load measure for field office managers, results of detection efforts are not categorized as reportable accomplishments, resources are not allocated specifically for detection, and range staff are not asked to routinely visit grazing allotments for detection purposes or target operators with a history of noncompliance. Permittees and lessees operate essentially under an honor system with little threat of compliance checks by BLM.

Moreover, penalties for violations are rarely assessed. Even though BLM regulations do not provide the flexibility to resolve trespass incidents informally, an estimated 84 to 88 percent of non-willful incidents were handled informally in fiscal year 1989. BLM range staff told us they do not consider it an efficient use of resources to incur the expenses associated with detecting, investigating, and resolving most minor, non-willful violations. In addition, BLM did not assess penalties required by its regulations for most of the willful and repeated-willful trespass violations detected during fiscal year 1989. BLM range staff did not adhere to existing BLM regulations in assessing penalties for these offenses.

BLM's reporting systems do not provide its top management with comprehensive data they can use to judge the effectiveness of trespass enforcement by field offices. As a result, BLM management does not know how often grazing trespass is searched for, identified, handled, or resolved.

Recommendations to the Secretary of the Interior

To improve the effectiveness of BLM's grazing trespass detection and deterrence efforts, we recommend that the Secretary of the Interior direct the Director of BLM to

- develop a grazing trespass detection strategy that will (1) establish detection as a work-load measure and a reportable accomplishment for which managers are held accountable, (2) use visits to randomly selected allotments to provide systematic compliance coverage, and (3) target additional follow-up visits for those livestock operators who have a history of repeated violations;
- either (1) ensure that penalties are assessed for all non-willful trespass violations as provided for in BLM regulations or (2) amend BLM regulations to establish a procedure for the informal resolution of non-willful trespass violations at the local level;
- require that all trespass incidents—including those now handled informally—be documented and made part of the permanent trespass file;
- ensure that field staff impose the penalties required under BLM regulations for willful and repeated-willful grazing trespass; and
- develop a management information system to provide timely, reliable, and adequate information on such things as (1) the number of compliance visits conducted, (2) the number and level of violations identified, and (3) how each violation is resolved, including those resolved informally.

Agency Comments

In its written comments on a draft of this report, the Department of the Interior stated that it agreed with the report's recommendations. These comments are included in appendix I.

Scope and Methodology

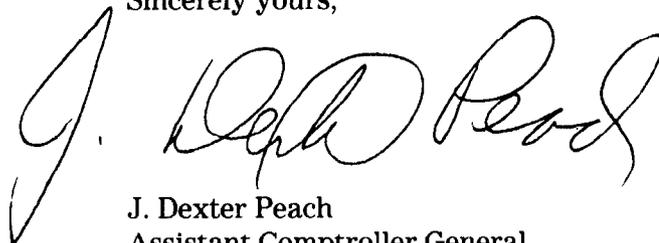
In conducting this review, we found that summary data were not available on the extent of grazing trespass occurring throughout BLM rangelands. Therefore, we asked BLM's 140 resource area offices to provide information on grazing trespass cases closed in fiscal year 1989. In addition, we sent a questionnaire to 201 of 414 randomly selected range staff directly responsible for detecting grazing trespass on BLM rangelands. We asked for their views on detecting and recording livestock trespass. As with all sample surveys, the two surveys for this review are subject to sampling errors. Sampling errors define the upper and lower limits of the estimates made from the survey. Sampling errors for the estimates in this report were calculated at the 95 percent confidence level.

We also interviewed and obtained information from officials at BLM headquarters and visited ten resource area offices in four states where public land grazing is widespread (Arizona, Idaho, Oregon, and Wyoming) to examine BLM's procedures and practices for identifying and pursuing grazing trespass. We (1) examined allotment, permit, and trespass records and files and (2) interviewed BLM officials who administer the grazing program. We conducted our review between June 1989 and October 1990 in accordance with generally accepted government auditing standards.

Unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies to the appropriate congressional committees; the Director, BLM; and the Secretary of the Interior. We will also make copies available to others upon request.

This work was performed under the direction of James Duffus III, Director for Natural Resources Management Issues, who can be reached at (202) 275-7756. Other major contributors are listed in appendix II.

Sincerely yours,



J. Dexter Peach
Assistant Comptroller General

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Abbreviations

AUM	animal unit month
BLM	Bureau of Land Management

Comments From the Department of the Interior



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

OCT 29 1990

Honorable James Duffus III
Director, Natural Resources
Management Issues
General Accounting Office
Washington, D.C. 20548

Dear Mr. Duffus:

Thank you for the opportunity to review and comment on the draft proposed report entitled Rangeland Management: BLM Efforts to Prevent Unauthorized Livestock Grazing Need Strengthening (GAO/RCED-91-17).

After reviewing the report, we agree with the General Accounting Office's recommendations for improving the effectiveness of the Bureau of Land Management's unauthorized grazing detection and deterrent efforts.

Sincerely,

A handwritten signature in black ink, appearing to read "David C. O'Neal", written over a horizontal line.

FOR David C. O'Neal
Assistant Secretary, Land and
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Related GAO Products

California Desert: Planned Wildlife Protection and Enhancement Objectives Not Achieved (GAO/RCED-89-171, June 23, 1989).

Public Rangelands: Some Riparian Areas Restored but Widespread Improvement Will Be Slow (GAO/RCED-88-105, June 30, 1988).

Rangelands Management: More Emphasis Needed on Declining and Overstocked Grazing Allotments (GAO/RCED-88-80, June 10, 1988).

Changes in Public Land Management Required to Achieve Congressional Expectations (CED-80-82, July 16, 1980).

Public Rangelands Continue to Deteriorate (CED-77-88, July 12, 1977).

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