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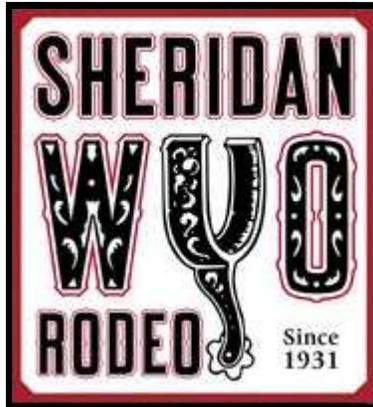
# Guardians of the Range

*Dedicated to the Multiple Use of Public Lands & the American Way of Life*

Newsletter No. 88

August 2011

## Guardians Parade Winners in Sheridan



Thanks to the efforts of Guardian member Rafter Star Ranch and D. J. Marosok of Sheridan our entry in the Sheridan WyoRodeo parade on July 15,

was the winner of the Heavy Harness category.

This was our first time in this parade, but we are looking forward to entering again next year. Thank you to all at Rafter Star Ranch and D. J. Morosok for your enthusiasm and effectiveness in having the Guardians share in this wonderful weekend!

## Highlights of Guardian Interests Represented:

Field trip in the Buffalo area on trail extension that will affect Guardian member

Guardian entry in the Sheridan Wyo. Rodeo parade

Government Affairs Committee – Cody Chamber

Field trip on BNF on trend data

Meetings between agencies and individual member permittees

## Forest Service Fantasy Land

~ Mike Crouse, Publisher  
 Loggers World Publications

The U.S. Forest Service (FS) has taken a lot of flack from all sides over the past 30 years - some of it deserved, some not. The central issue affecting the agency was created from five conflicting federal laws that effectively make any mission all but impossible to achieve.

Certainly, some within the FS have their own agenda that has little to do with the vision of the management team. Overall, however, there are many in the Service doing their best within the statutory confines of poorly-written and poorly-executed laws passed by Congress. These laws scream for revision and modernization to set a clear course of managing the resources – a mission that’s been absent for decades.

Unfortunately, over the past 30 years, Congress has not had the will, vision or courage to take on the old-dog environmental industry. As a result, the legal industry has found and mined this litigation ‘pot of gold’, at the expense of rural America, and ultimately the at the expense of the public forest’s health.

No one seeking public office wants the firestorm that would surely rain on them, were they to take on this issue, which screams for attention in a large vacuum of cowardice. And thus the issue joins others in the “kick the can down the road” mentality that feeds future disasters for future generations.

*Please see **Fantasy** on page 2*

**“A government that robs Peter to pay Paul can always depend on the support of Paul.” ~ George Bernard Shaw, dramatist (1856-1950)**

***Fantasy*** continued from page 1

We'd like to think the FS leadership would speak to this issue, as past Chief Jack Ward Thomas did after his retirement some years ago. He encouraged Congress to rewrite the public lands management laws to unify them into a cohesive and clear vision for management, and define a mission statement.

Unfortunately, any presentation from the FS typically mirrors the message of planning, planning, and more planning. This is followed by assurances of supply, forest health, and timber targets - none of which are secure enough (with the exception of Stewardship Contracting) for private industry to risk capital on.

Recently, we came upon a presentation made by FS Associate Chief Mary Wagner during a reception at the Rural Voices for Conservation Coalition. Certainly it's incumbent on Wagner to deliver the company line, which she did in good faith within the constraints of law placed on the FS, but the message would be better titled as being from the 'Forest Service Fantasy Land'.

We've not met Associate Chief Wagner, and while she had been in the Pacific Northwest, it's hard to imagine she could have lived here, visited our rural communities, and concluded that, in some sense, the FS is benefiting rural communities. This is beyond delusional, even if someone has never ventured from Washington D.C. - and a total line of happy horse crap if, in fact, they have been to rural America, even within the past few decades.

The fix for the FS is beyond meetings, collaboration (and planning). Nothing is going to change without Congress revamping and modernizing the laws that relate to public land management. (We could hope that action) may finally give the FS - or whatever entity the FS evolves into - a clear vision, with local management and accountability that comes from actually having to live with the benefits or consequences of those decisions.

We've kept notes from conferences where we've heard FS speakers over the past 23 years. The message delivered today is essentially identical to that of two decades ago - a lot of wishful thinking and cheerful talk of the future, but precious little occurring on the ground. Meanwhile, the communities established with the financial backbone of the public lands resource wither because the FS has no clear mandate to do anything short of feeding the legal community and a burgeoning bureaucracy.

This presentation is a sham in a charade that promises more of the same. It's easy to find the FS, not because they're in a community, but because theirs is the only structure and staff which appears financially stable within rural communities - and with good reason.

Please see ***Fantasy*** on page 4

## Leveling the Playing Field: Support for the Grazing Improvement Act of 2011

~ by Karen Budd Falen  
Budd-Falen Law Offices, LLC

If jobs and the economy are the #1 concern for America, why are rural communities and ranchers under attack by radical environmental groups and overzealous federal regulators? America depends upon the hundred of products that livestock provide, yet radical groups and oppressive regulations make it almost impossible for ranchers to stay in business. Opposition to these jobs comes in the form of litigation by radical environmental groups to eliminate grazing on public lands, radical environment group pressure to force "voluntary" grazing permit buy-outs from "willing sellers," and holding permittees hostage to the court deference given to regulatory "experts." The playing field is not level and the rancher is on the losing side. The Grazing Improvement of 2011 will level the playing field. I urge your support.

The Grazing Improvement Act of 2011 does the following:

**1. Term of Grazing Leases and Permits.** Both BLM and Forest Service (FS) term grazing permits are for a 10-year term. This bill extends that term to 20 years. This extension does not affect either the BLM's or FS's ability to make interim management decisions based upon resource or other needs, nor does it impact the preference right of renewal for term grazing permits or leases.

**2. Renewal, Transfer and Reissuance of Grazing Leases and Permits.** This section codifies the various appropriation riders for the BLM and FS requiring permits being reissued, renewed or transferred continue to follow the existing terms and conditions until the paperwork is complete. Thus, the rancher is not held hostage to the ability of the agency to get its job done - a job that is admittedly harder because of radical environmental appeals, litigation and FOIA requests.

This bill also codifies the ability of the BLM and FS to "categorically exclude" grazing permit renewal, reissuance or transfer from the paperwork requirements under NEPA if the permit or lease continues current grazing management on the allotment. Minor modifications to a permit or lease can also be categorically excluded from NEPA if monitoring indicates that the current grazing management has met or is moving toward rangeland and riparian objectives and there are no "extraordinary circumstances." Finally, this section allows the BLM and FS to continue to set their priority and timing for permit renewal or reissuance.

**3. Applicability of Administrative Procedure Act.**

This provision is really what levels the playing field for the rancher, against the environmental “willing buyer” and the arbitrary decisions of the governmental regulator. First, this provision applies a real decision making process, with an independent hearing officer or judge, to FS administrative appeals. Currently, legal challenges to FS decisions are heard by the “next higher FS line officer.” There have long been allegations that this system is significantly skewed so the FS decision maker is “almost always right.” For example, out of the 28 decisions that were administratively appealed in FS Regions 2 (Wyoming, Colorado, Kansas, Nebraska & South Dakota) from 2009 to present, only two were rejected as being legally or factually wrong. In the same time period in California, out of 78 appeals, only 13 decisions were either rejected or withdrawn. In Arizona and New Mexico, the FS “independent review by the next higher line officer” only found 15 out of 83 decisions were deficient. In other words, just considering these three FS regions, the agency found itself right 85% of the time. In a fair and equal system, no one is right that many times!

This provision would change that pattern so that FS grazing permittees would appeal the decisions they believed were legally, factually or scientifically wrong to an independent law judge and the FS would have to show why its decisions is right, rather than the permittee having to show why the decision is wrong. The permittee would also be able to cross-examine FS “experts” on the reasons for the decision and the agency would have to supply some justification for its decision. It is critical that FS permittees have the ability to protect themselves from arbitrary decisions; and ability they do not have now.

Second, the Act would level the playing field for BLM permittees. Like the FS provisions discussed above, the bill “changes” the current appeals system by requiring the BLM to prove its decision is legally and scientifically correct; rather than forcing the permittee to prove why the decision is legally and scientifically wrong. Additionally, the OHA has determined that when the BLM issues a decision adversely affecting a permittee’s grazing privileges, the BLM decision can still be upheld, even if the BLM did not comply with all of the grazing regulations.

**Executive Director**

Executive Director will be unavailable:  
August 26 ~ September 2, and  
September 13 ~ 18th.

**Clay Gibbons**

Clay Gibbons, Board Member is recovering at home from a heart attack in July. If you’d like to encourage his recovery, contact him at:  
1552 Lane 17, Worland, WY 82401  
Cell phone:307-388-3145

In short, under the current appeals system, the permittee’s experts have to show why the BLM experts are wrong (a burden that is very hard to carry) and the BLM decisions can still be held as correct even if the BLM only substantially complied with its regulations. This is not a level playing field - it’s a problem that needs corrected.

Finally, this sections also returns to the law the “automatic stay” provisions eliminated by the Bruce Babbitt “Range Reform ‘94” regulations, except for decisions of a temporary nature and except in emergency situations.

In truth, this bill is more than technical changes to erroneous agency regulations, it gives some very real protection to the permittees. For example, the Ruby Pipeline “donation” to Western Watersheds Project to purchase grazing preferences on a “willing seller” basis only works if the permittee is honestly “willing to sell.” However, if the permittee is always behind the curve in protecting his grazing permit and the only way he can “win” is by “voluntarily selling” his permit for pennies on the dollar, the word “willing” is truly compulsion.

*Please see **Improvement** on page 4*

**CRAIG THOMAS GUARDIANS OF THE RANGE ENDOWMENT**

Supporting this endowment is a wonderful tax exempt way to show your support for the Guardians’ effort, or to honor a family member or friend. We want to have a sustainable financial resource base to achieve our goals and objectives.

For more details, please contact a board member or Kathleen Jachowski (307)587-3723 or [guardians@hughes.net](mailto:guardians@hughes.net).

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### **Improvement** continued from page 3

And, in the case of the FS, the current administrative appeals process is like asking your father to change the decision of your mother, when your mother and father agreed on the decision before it was dictated to you.

Finally, this bill reverses the U.S. Justice Department capitulations to environmental groups during the course of recent litigation. These "settlements" have significantly restricted the BLM and FS's ability to legitimately use categorical exclusions to renew grazing permits. Neither the Justice Department nor the federal bureaucrats should be allowed to make Congressional policy without the Congressional branch of government.

Make no mistake - this is not just a public lands rancher's bill; this bill will help preserve family ranches, rural communities and the American beef supply. This is an American jobs bill!

I urge your support, and ask that you request your Congressional representatives support this bill. ★

*The Guardians would be interested in your opinion of this proposed legislation. Please let us hear from you at: [guardians@hughes.net](mailto:guardians@hughes.net). Thank you!*

### **Fantasy** continued from page 2

They have a guaranteed income from the national treasury, while the communities they historically served are left with fine speeches and promises the FS has no ability, interest, or statutory authority in actually delivering.

At least some of the FS field people grasp reality through being a bit embarrassed at their situation. However, the further they get from rural America, their leadership continues to peddle this nonsense of 'helping' rural America. It reminds us of our 'helping' the Native Americans by infecting them with smallpox.

Some within the FS are doing their best, given public policy realities, and I applaud their efforts. They, at least, are accomplishing something.

The leadership painting this delusional picture needs to pull up their pants, take a deep breath, and paint the accurate picture of a bureaucracy rendered impotent by public land laws wreaking havoc on the landscape, increased urban sprawl though economically destroying opportunity in rural America, and unraveling the American dream.

Shame on Congress and the American media for allowing this farce to continue. ★