



**UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON WATER, POWER AND OCEANS**

“Water Rights Protection Act”

**Statement of the
UTAH FARM BUREAU FEDERATION
Randy N. Parker**

Chairman Lamborn, Ranking Member Huffman & Members of the Subcommittee:

Thank you for calling this important hearing on the Water Rights Protection Act and inviting me to testify on behalf of 30,000 members of the Utah Farm Bureau and the 11 western public lands state Farm Bureaus. In addition, I want to reiterate the long standing support of the American Farm Bureau and nearly 6 million members for the Water Rights Protection Act. My name is Randy Parker. I am the Vice President of National Governmental Affairs at Utah Farm Bureau.

I want to commend Representative Scott Tipton for his leadership and continued support for advancing this important legislation to prevent attempts by federal land management agencies to circumvent long-standing state water law. Trust and a good working relationship is critical in reducing the uncertainty that has plagued ranchers across the western landscape and the rural communities they support.

The U.S. Forest Service (FS) and the Bureau of Land Management (BLM) have been systematically challenging state sovereignty and historic privately held water rights on the public lands. Since pioneer settlement, water rights on the public domain have been developed and beneficially used by ranchers and their livestock. Congress and the courts have a long history of recognizing water is sovereign to the states and ranchers are the owners of highly valued water rights on private lands as well as western public lands.

It should be no surprise to anyone that the FS and BLM have long sought after greater control and ownership of western livestock water rights. The ongoing protests, claims, coercion, and even bullying by agents of the FS and the BLM has created and continues to cause considerable uncertainty for ranching families across the West. The growing conflict in states like Utah, Nevada and Idaho where the federal agencies require an ownership interest in water located on public lands is adversely affecting critical water development, water maintenance efforts and even frustrating range improvement projects valuable for livestock, wildlife including sage grouse and the overall ecosystem.

Anyone reading a newspaper or watching the nightly news understands in the public lands states of the American West, there is a growing distrust of federal land management agencies and policies. Regulatory overreach imposing greater federal command and control over the West's natural resources and the future of the region is crippling sustainable family ranches and the rural communities they support. Rather than scientifically sound management of western public lands, we are seeing policies driven by politics of the day ramping up uncertainty and economic challenges for farmers, ranchers, businesses, communities and the future of the western public lands states. The recently rescinded BLM "Planning 2.0" was an attempt by the agency to gain greater even control and to reduce state and local input.

Access to and development of livestock water rights scattered across public lands grazing allotments in the arid west are of critical importance to sustainable ranching businesses and are literally the foundation western rural economies. But, we continue to see agency policies like the conditioning of water ownership on behalf of the United States before water on the livestock grazing allotments can be developed or improved for better productivity and proactive ecosystem management.

Federal land managers seeking greater control over the public lands are restricting access, terminating or otherwise limiting grazing rights while continuing to seek ownership and control of water associated with conditional use permits, like livestock grazing, on federal lands. These detrimental actions are seemingly without regard for the history, culture and economic realities as required by federal laws including the Federal Land Policy Management Act (FLPMA).

Agency actions adversely impacting the ranching and the western grazing community may be as innocuous as voluntary Animal Unit Months (AUMs) reductions agreed upon during an annual grazing review or as subversive as the introduction of a competing species like the bighorn sheep. The ultimate long term goal being to cut or terminate domestic sheep grazing in a specific geographic area. In either case, the agencies gain greater control as well as gaining de facto livestock water rights.

WESTERN WATER RIGHTS AND LIVESTOCK GRAZING

Economically Viable and Sustainable Livestock Ranching – Sustainable and economically viable family ranches in the west requires a combination of private land and federally administered land. From a general standpoint, the BLM rangelands in the valleys and hillsides while the FS lands are higher elevation grazing lands. Ranchers generally grazing their sheep and cattle during the winter season on BLM rangelands and move their livestock to higher FS grazing pastures during the summer months.

Water and Livestock Grazing Rights - Scarcity of water in the Great Basin and much of the Western United States led to the development of a system of water allocation and water rights that is very different from how water is allocated in regions graced with abundant moisture. Rights to water are based on actual use of the water and its continued use for beneficial purposes as determined by state laws. Water rights across the west are treated similar to property rights, even though the water is the property of the citizens of the states. Water rights can be, and often are, used as collateral on mortgages as well as improvements to land and infrastructure.

The principles of western water law are very different from an eastern riparian interest in water. Western water law determines water rights based on the Doctrine of Prior Appropriation (first in

time, first in right) and beneficial use, not a property relationship with the waterway. However, under either style of appropriation if the federal land management agency asserts control of private water rights, it violates constitutional protections against government takings without due process and just compensation. Livestock water rights are critical to the success and well-being of ranchers across the Western Public Lands States. Water for livestock has been developed across the vast western rangelands since pioneer settlement and before the establishment of either the BLM or the FS.

Growth and opportunity in the public lands states continues to be adversely impacted by federal control of the lands coupled with the aggressive actions of federal agencies on the region's water resources. Legal actions and federal water claims create uncertainty and imperil historic state water laws and private property rights.

Doctrine of Prior Appropriation - The Doctrine of Prior Appropriation, or "first-in-time, first-in-right," establishes that water rights are obtained by diverting water for "beneficial use" as determined by state law. Those uses include irrigation, livestock watering (including water developed and used for livestock watering on the federally owned land), domestic use, municipal use, manufacturing, mining, oil and gas development, power generation and in some cases fish, wildlife and recreation based on state law. The amount of the water right is the amount of water diverted and put to beneficial use. Western states adopted the doctrine of prior appropriation and beneficial use to manage the development and to make sure of the judicious use of state's precious waters.

SYSTEMATIC DISMANTLING OF LIVESTOCK RANCHING

History and Inventory of Livestock Grazing Rights - Historically, grazing AUMs hit a high point across the West in the late 1940s and early 1950s. Utah hit a high point in 1949 at around 5.5 million administered by the BLM and FS. An AUM is the amount of forage required to feed one cow and calf or five sheep grazing on rangeland for 30 days. There were 3,467 ranching families grazing sheep and cattle on Utah public lands in 1949, supporting their rural communities. At its peak, Utah rangelands supported more than 3 million sheep. Today, there are only about 285,000 sheep and lambs – a 90 percent drop!

For Utah, the FS reported in 2012 approximately 840,000 active AUMs, of which 225,000 are in non-use status. BLM reported in 2012, around 1,188,000 active AUMs with 340,000 in suspended use (non-use) status. Of the more than 5.5 million AUMs originally managed by federal agencies in Utah, only 2,028,000 AUMs remain today. But it is important to recognize there are 565,000 of those so-called "active" AUMs that are in non-use status, completely at the discretion of BLM and FS.

Utah livestock ranching families have lost a whopping 3,472,000 grazing AUMs total (including cut and suspended AUMs) or a shocking 74 percent cut. The grazing industry has been heavily impacted by these draconian BLM and FS cuts. In 1949 there were 3,467 Utah ranching families grazing livestock on federal lands. Of the 3,467 ranching families in 1949, only 1,451 ranching families remain today producing beef and lamb and harvesting the forage that renews each year on the public domain. For Utah, more than 2,000 ranching families have given up or have been forced from the multiple-use, sustained yield Congressional mandate.

The outcome of these dramatic federal grazing cuts hits every American in the pocketbook based on the western rancher's contribution to the dinner table. Reduced livestock grazing on the western landscape has dramatically altered the ecosystem. We are seeing expanding

acreages of noxious weeds, while unharvested forage and grasses has led to major increases in catastrophic wildfires.

As water has historically been developed in the west, it was for the production of livestock, crops and clothing. According to the Utah State Engineer, farmers, ranchers and agriculture interests own and control 82 percent of Utah’s developed water. In the Western Public Lands States, it is estimated as much as 50 percent of the water flows from Forest System lands. The Utah State Engineer estimates that as much as 75 percent of Utah’s annual water supply flows from lands controlled by the FS. (See Addendum B) Actions that require a federal ownership interest before undertaking accepted management practices for water and improving the lands makes no sense, challenges state sovereignty and is bullying ranchers out of their private property in violation of the “Takings Clause” of the U.S. Constitution.

Federal land ownership patterns and federal land management agencies in the 11 Western Public Lands States have had a dramatic impact on the success of the livestock ranching industry. Ranching businesses are compelled to develop operations based on private property, privately held water rights and federal rangelands for livestock operations. The guiding multiple use principles that Congress laid down haven’t changed, while the management philosophies of the agencies have. We are seeing a dramatic impact on land management and water rights based on politics of the day, internal agency philosophies, court decrees or settlement agreements.

Ranchers, like any American business, need certainty to make decisions. The federal land management philosophy of the FS and the BLM and their on-the-ground decision-making dictates an uncertain future for public lands ranching. Much of the land currently under federal ownership and management was lands held in common during pioneer settlement and used for the benefit of the community. Those historic grazing rights of pioneer settlers underpinned rural economies then and today. Federal land ownership and management determines the success of livestock ranching in the western public lands states. It is instructive to compare federal land ownership, averaging about 4 percent in the eastern states with the 11 western states:

Eleven Western Public Lands States Federal Ownership:

<u>State</u>	<u>Total Federal Land Acreage</u>	<u>Total Acreage / State</u>	<u>% of State</u>
AZ	30,741,287	72,688,000	42.3
CA	47,797,533	100,206,720	47.7
CO	24,086,075	66,485,760	36.2
ID	32,635,835	52,933,120	61.6
MT	26,921,861	93,271,040	28.9
NV	56,961,778	70,264,320	81.4
NM	27,001,583	77,766,400	34.7
OR	32,665,430	61,598,720	53.0
UT	35,033,603	52,696,960	66.5
WA	12,173,813	42,693,760	28.5
WY	30,043,513	62,343,040	48.2
	<u>356,062,311</u>	<u>752,947,840</u>	<u>47.3</u>

Source: Congressional Research Service 2012

BLM Livestock Grazing Statistics for the 11 Western States - For decades there has been a slow, methodical and systematic attack on multiple use activities like grazing that underpin

successful family livestock ranches in the 11 Western Public Lands States. Access, bullying, adverse agency actions, challenges to livestock water rights, even activities as simple as building corrals and distributing livestock salt have become increasing difficult.

BLM Grazing Statistics (1949 – 2012):

<u>State</u>	<u>Peak AUMs (yr)</u>	<u>2012 Authorized</u>	<u>2012 Non-Use</u>	<u>2012 Active AUMs</u>	<u>AUMs % Lost</u>
AZ	925,460 ('52)	635,522	103,357	532,165	- 42
CA	536,717 ('52)	319,263	73,877	245,386	- 54
CO	985,714 ('49)	589,004	96,074	492,930	- 16
ID	1,639,418 ('54)	1,346,303	201,723	1,144,580	- 30
MT	1,276,217 ('60)	1,271,406	42,532	1,228,874	- 4
NV	3,197,480 ('56)	2,144,237	571,751	1,572,486	- 51
NM	2,292,411 ('52)	1,849,894	88,223	1,761,671	- 23
OR	1,131,548 ('51)	1,022,333	135,381	886,952	- 22
UT	2,775,163 ('49)	1,190,008	311,604	878,404	- 68
WY	2,049,412 ('52)	1,909,315	389,624	1,519,691	- 26
	<u>16,809,440</u>	<u>12,277,285</u>	<u>2,014,146</u>	<u>10,263,139</u>	<u>- 39</u>

*Oregon includes Washington

Source: Annual BLM Grazing Statistics

Ranching Families Grazing on BLM Lands – 60 Year History - The number of ranching families using federal rangelands as a part of their business operation has dropped dramatically between the years identified as Peak AUMs and the 2012 number of active AUMs. The drop in family ranches on public lands, especially Utah and Nevada, is dramatic:

Ranches with BLM Grazing Permits (1949 – 2012):

<u>State</u>	<u>Peak AUM year</u>	<u>2012 Grazing Permits in Force</u>	<u>% Lost</u>
AZ	939	767	- 18
CA	458	526	+ 14
CO	2015	1486	- 26
ID	2903	1852	- 26
MT	3039	3776	+ 24
NV	1161	693	- 40
NM	3618	2271	- 27
*OR	1330	1225	- 8
UT	3467	1445	- 58
**WY	<u>1365</u>	<u>2848</u>	<u>+108</u>
Excluding WY	18,930	14,041	- 26

*Includes Washington

** Includes Kansas/Nebraska Section 15 non-grazing district lands

Source: Public Lands Statistic 2012

Forest Service Livestock Grazing Statistics for the 11 Western States - The history of grazing FS AUMs in the 11 western public lands states has proven impossible to find as a whole or even for individual states. The FS in 2012 released a Grazing Statistical Summary reporting on commercial livestock ranching on system lands. Commercial livestock on all forests in the western states have more than 1.1 million AUMs in non-use status, or 14% of the total:

<u>Permittees</u>	<u>Permitted AUMs</u>	<u>Authorized AUMs / 2012</u>	<u>% Non-Use</u>
6,358	8,161,713	7,011,438	- 14

Source: US Forest Service, Grazing Statistical Summary, FY 2012

Utah Forest Service Administered AUM History Unveiled by Utah State University - In 1940, according to Utah State University research, the FS administered 2,700,000 livestock grazing AUMs in Utah. The FS FY2012 Grazing Statistical Summary reports 840,000 authorized AUMs with 226,000 AUMs in suspended or non-use, leaving just 614,000 livestock grazing AUMs in active use across Forest System administered lands. More than 2 million AUMs have been cut or suspended from use in Utah, or an impressive 74% reduction!

Important Implications - Adverse federal agency actions related to termination and/or suspended use livestock grazing AUMs ultimately provides de facto transfer of privately held livestock water rights to the federal land management agencies. This violates the Takings Clause and right to due process.

The landscape of the west is changing with growing populations and increased demand for limited water resources. Utah is one of the fastest growing states in the nation and must deal with 67 percent of the state owned and controlled by the federal government. Sovereignty and state control of our water resources is critical to sheep and cattle ranching, meeting current growth demands and ultimately our future prosperity.

CONGRESS GRANTS , SCOTUS UNDERSCORES STATE WATER SOVEREIGNTY

To effectively and efficiently deal with water issues, settlers in the arid west developed their own customs, laws and judicial determinations to deal with mining, agriculture, domestic and other competing uses recognizing the Doctrine of Prior Appropriation or first in time, first in right. Out of this grew a fairly uniform body of laws and rights across the western states. The federal government was original sovereign and owner of the land and water. Congressional actions for more than 150 years granted water ownership to the sovereign states and ultimately acquiesced to the states on all matters of adjudication. Congress has deferred to the western states recognizing state laws, local customs and judicial decisions including:

Act of July 26, 1866 - The United States Congress passed the Act of July 26, 1866 [subsequently referred to as the Mining Act or Ditch Act of 1866] that became the foundation for what today is referred to "Western Water Law." The Act recognized the common-law practices that were already in place as settlers made their way to the western territories including Utah. Congress declared:

"Whenever, by priority of possession, rights to the use of water for mining, agriculture, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws and decisions of courts, the possessors and owners of such vested rights shall be maintained and protected"
(43 USC Section 661)

This Act of Congress obligated the federal government to recognize the rights of the individual possessors of water. But as important, the Act recognized "local customs, laws and the decisions of the state courts."

The Desert Land Act of 1877:

"All surplus water over and above such actual appropriation and use....shall remain and be held free for appropriation and use of the public for irrigation, mining and manufacturing..."

The Taylor Grazing Act of 1934:

“nothing in this Act shall be construed or administered in a way to diminish or impair any right to the possession and use of water for mining, agriculture, manufacturing and other purposes...”

The McCarran Amendment of 1952 - Congress established a unified method to allocate the use of water between federal and non-federal users in the McCarran Amendment. (43 USC Section 666) The McCarran Amendment waives the sovereign immunity of the United States for adjudications for all rights to use water:

“waives the sovereign immunity of the United States for adjudications for all rights to use water.”

The 1976 Federal Land Policy Management Act:

“All actions by the Secretary concerned under this act shall be subject to valid existing rights.”

Congress has granted and continues to recognize the sovereign rights of the states to regulate, manage and adjudicate its waters and is explicit in the limits it places on the United States Forest Service and other land management agencies.

United States Supreme Court - In *Tarrant Regional Water District vs. Hermann* (2013) the U.S. Supreme Court (SCOTUS) concurred with Congress on the matter water and the sovereign rights of the states. SCOTUS said:

“The power to control public uses of water is an essential attribute of [state] authority.”

Gifford Pinchot - In 1907, Gifford Pinchot, “father” of the United States Forest Service and the First Chief Forester explicitly reassured western interests in the agency’s “use book” noting that water is the sovereign right of the state. Pinchot declared:

“The creation of the National Forest has no effect whatever on the laws which govern the appropriation of water. This is a matter governed entirely by State and Territorial law.”

UTAH LIVESTOCK WATER RIGHTS ACT

In 2008, moving to secure the sovereign interests of the state and with the Idaho Supreme Court decree in *Joyce Livestock Company vs United States* (2007), the Utah Legislature passed and the Governor signed into law the Utah Livestock Water Rights Act (UCA 73-3-31) and as amended in 2014 providing for:

- 1) Denial of “joint ownership” with the federal land management agencies.
- 2) Defining the beneficial user as the livestock permittee with ownership of the livestock.
- 3) That any unused livestock water, based on an adverse agency action or retirement of a grazing interest, reduced grazing AUMs or denial of access, said stockwater becomes the property of the State to be reallocated to a bonafide rancher.
- 4) It is important to note that the amended Act continues to assure Utah livestock water rights are appurtenant to the grazing allotment.

IDAHO STOCKWATER RIGHTS ACT

In 2017, referencing the landmark case of *Joyce Livestock Company vs. United States* (2007), the Idaho Legislature passed and the Governor signed into law the Idaho Stockwater Rights Act (Chapter 5, Title 42) providing:

- 1) No agency of the federal government, nor any agent acting on its behalf, shall acquire a stockwater right unless the agency owns the livestock and puts the water to beneficial use.

- 2) If an agency of the federal government acquires a livestock water right, that stockwater right shall never be utilized for any other purpose than watering of livestock.
- 3) Any application for change of ownership proposing to change the nature of a stockwater right shall be denied.

FOREST SERVICE INTERMOUNTAIN REGION WATER POLICY

Forest Service “Water Clause” - Expansion of the “Water Clause” as it relates to ski areas and ownership claims by the FS on historic livestock water rights was the catalyst initially for introducing the Water Rights Protection Act in 2013. According to David Whittekiend, Forest Supervisor on the Unita-Wasatch-Cache National Forest in testimony before the Utah Water Development Commission on September 20, 2016, the FS has withdrawn the Water Clause as it pertains to ski areas. He notes: “On January 29, 2016 the FS issued a final directive related to ski area water rights. Again, it is important to note this policy only pertains to ski area water rights.” He further states, “There is no direction in this policy, or any other FS policy that requires the joint ownership interest of water rights. And none of these policies requires any water right owner to relinquish or convey their perfected water rights to the United States.”

As a reminder, the Water Clause said:

*“This permit does not confer any water rights on the holder. Water rights must be acquired by the holder under state law. After June 2004, any right to divert water from the permitted NFS land where the use of such water is on the same permitted NFS land shall be applied for and **held in the name of the United States and the holder (hereinafter called the “joint water rights”)**. This provision shall not apply to water rights that are acquired by the permit holder from a source off of the permitted NFS land and transferred to a point of diversion or storage on the permitted NFS land. During the term of the permit and any reissuance thereafter, the permit holder shall be responsible for maintaining such joint water rights, and shall have the right to make any applications or other filings as may be necessary to maintain and protect such joint water rights. In the event of **revocation of this permit, the United States shall succeed to the sole ownership of such joint water rights.**”*

However, the goal of the “Water Clause” continues today in FS policy on livestock water rights.

Region 4 Guidance - August 15, 2008 - National and Intermountain Region Forest Service policies authorize and instruct agency personnel on the “establishment of water rights in the name of the United States” and provide guidance with “State Specific Considerations” outlining the steps to obtain livestock water rights.

In an August 15, 2008 Briefing Paper, Regional Forester Harv Forsgren explained the “United States, through the Forest Service, has filed thousands of claims for livestock water on federal lands. The Forest Service in the Intermountain Region has filed on or holds in excess of 38,000 stock water rights...” The briefing paper continues, “In recent years, ranchers and community leaders have contested ownership of livestock water rights. Some ranchers believe that they should hold the water rights because their livestock actually use the water. Land management agencies, such as the US Forest Service, have argued that water sources used to water livestock on Federal Lands are integral to the land where the livestock grazing occurs, therefore the United States should hold the water rights.” When addressing water development on Forest System lands, Regional Forester Forsgren said:

“The Intermountain Region will not invest in livestock water improvements, nor will the agency authorize water improvements to be constructed or reconstructed with private funds where the water right is held **SOLELY** by the livestock owner.”

An Intermountain Region guidance document dated August 29, 2008 provides important insights into the agency's legal strategy on Forest Service water claims: "The United States may claim water rights for livestock use based on historic use of the water. Until a court issues a decree accepting these claims, it is not known whether or not these claims will be recognized as water rights."

Region 4 Congressional Testimony - This aggressive policy asserting federal ownership over the state's sovereign waters continues as Forsgren presented in testimony before the House Subcommittee on National Parks, Forests and Public Lands on March 12, 2012. He pointed out the Nevada legislation precludes the United States from holding livestock water rights: "The Forest Service believes water sources used to water permitted livestock on federal land are integral to the land where the livestock grazing occurs; therefore the United States should hold the water rights for current and future grazing."

Forest Service Manual - defines a possessory claim to water rights in the name of the United States and directs personnel to:

"Claim water rights for water used by permittees, contractors and other authorized users of the National Forest System, to carry out activities related to multiple use objectives. Make these claims if both water use and water development are on the National Forest System..."

Forest Service Diligence Claims - The aggressive posture of the FS in claiming western water rights is highlighted in its filing of more than 16,000 diligence claims on livestock water rights scattered across the Utah landscape. Many of these livestock water rights were established and vested before statehood by sheep and cattle ranching families. Those rights were vested and in place before the FS or the BLM were established and agencies of the federal government.

The FS claims that since the United States controls the federal land and owns the grazing permits awarded to the livestock ranchers, the water rights belong to the United States. This decades old strategy of filing diligence claims was defended by now retired Regional Forester Forsgren who argued in 2012 testimony before Congress "these diligence claims are made on behalf of the United States, which was the owner of the land where livestock grazed prior to statehood and livestock watering took place, which action established the federal government's claim to water rights." Claiming diligence water rights is continuing. On Utah's Fishlake National Forest, in late 2016, the Forest Supervisor filed a claim consolidating 204 diligence claims on 114 acre feet of stockwater rights. (See Addendum A for details)

A "Right of Diligence" or "Diligence Claim" under Utah law is a claim based on use of surface water where the use was validated based on use prior to 1903. Prior to 1903, the method for obtaining the right to use water was simply to show use. The claimant has the burden of proving beneficial use. The FS and BLM continue to argue livestock water use prior to statehood on land belonging to the US, validates their ownership claim. These claims will ultimately require a judicial determination or by the State Engineer under the guidance of the Utah Legislature.

BLM WATER POLICY

The BLM established its water policy as relates to livestock grazing on the agency administered lands in 1984. The BLM policy states in 7240 – Water Rights (3-19-1984):

- #4 Acquire and/or Perfect Water Rights – Acquire and perfect water rights necessary to carry out public land management purposes through state law and administrative claims

procedures unless a federal reserved water right is otherwise available, and a determination is made that the primary purpose of the reservation can be served more effectively through assertion of the available federal reserved water right.”

UTAH BLM RESPONSE TO UTAH LIVESTOCK WATER RIGHTS ACT:

Following enactment in 2008 and 2014 amendments (Senate Bill 274) to the Utah law, the BLM issued a “Response to Utah Senate Bill 274.” The BLM noted the result of SB 274 has no effect on existing BLM rights and no effect on other BLM uses including fire, wild horses, recreation and wildlife. And the permittee consent required to make changes doesn't create a permittee interest in right. It further states that SB 274 does not apply to diligence claims, which confirm historic pre-statutory waters.

Conditioning Water Developments and Range Improvements - The policy of the BLM “must have a water right before funding and authorizing Water Developments.”

- BLM Utah will not provide funding for new developments that are not supported by a BLM water right.
- BLM Utah will not authorize Cooperative Range Improvement Projects that are not supported by a BLM water right.

The internal BLM Strategy instructs agency personnel:

- Change application on BLM right in another location.
- Change application on BLM right that doesn't include livestock use.
- Acquire a water right in a land tenure adjustment, then change to livestock use.
- File an application for another beneficial use of the development: wildlife, wild horses, recreation, etc.

The Agency identifies other options to gain water rights:

- Permittee can elect to deed part of the private right to BLM (**voluntary joint ownership**)
- If a permittee wants to entirely fund a development where water will be primarily for benefit of private lands, then BLM may issue a right of way grant.

The BLM Instruction Memorandum (IM 2015-19) directs agency staff:

- Regular and careful review of applications filed by third parties.
- Each Field Office should have designated person review notices on a weekly basis.
- **Protest any individual permittee applications for livestock rights on public lands.**
- Permittee may not be aware of new law or new BLM policy.
- Permittees may make incorrect land ownership statements.

Why does BLM Protest Private Applications?

- **BLM seeks to hold water rights for grazing allotments into perpetuity.** If water rights are in private hands, BLM can't guarantee water availability for future permittees.
- **Privately held water rights create an administrative headache** if permit is transferred in the future.
- **Permittees may attempt to use privately owned water rights to get leverage in allotment management decisions.**
- **Do not expend funds on a range improvement project prior to receiving approval of the water right application or change of use application.**

NOTE: Utah Livestock Water Rights Act declares livestock water rights on federal lands are appurtenant to the grazing allotments, both Forest and BLM.

CONSTITUTIONAL PROTECTIONS FROM TAKINGS

The United States Constitution and the Utah Constitution protects citizens from the government taking private property without just compensation and without due process. The Utah Constitution provides further protections. It not only protects against uncompensated government takings, it protects against actions that diminish value of private property without just compensation.

The actions and policies of both the FS and the BLM in requiring “an ownership interest” or “voluntary joint ownership” are a taking or diminishment of value without due process. The conditioning of an interest in water before allowing access, development, and/or maintenance of livestock water rights on the public domain adversely affects the rancher’s property rights in the water. Joint ownership is without a doubt taking and diminishment of value. This conversion or de facto taking of livestock water rights upon the cancellation of the conditional use permit (grazing permit) is a government taking protected by the United States Constitution and the Utah Constitution. These actions by federal land management agents provide compelling arguments for the passage of the Water Rights Protection Act of 2017.

CONGRESSIONAL OVERSIGHT

The Congress of the United States not only has the right, but has the obligation to determine the reach of federal regulatory agencies including the United States Forest Service and Bureau of Land Management. Congress must maintain the historic federal/state framework as it relates to the sovereign waters of the states and private property rights.

Passage of the Water Rights Protection Act is critical to providing certainty to ranching families across the Western United States and to allow the sovereign states to determine their futures as sovereign equals based on the Federalism Doctrine.

ADDENDUM A

RANCHER CONFLICTS

Joyce Livestock vs. United States / Idaho Supreme Court 2007(Opinion No. 23) - In *Joyce Livestock Company vs. United States*, the U.S. over-filed on stock water rights of a cattle ranching operation dating back to 1898. The United States could not show that Joyce or any of its predecessors were acting as its agents. On appeal, the Idaho Supreme Court found: The United States is unable to demonstrate ownership of the livestock therefore: “the United States did not actually apply the water to a beneficial use” and cannot put the water to beneficial use.

Tooele County Utah Grazing Association - The Water Rights Protection Act specifically addresses conflicts and potential misunderstanding between agencies and ranchers as happened in 2012 in Tooele County Utah. Ranchers were confronted by the FS requiring them to sign a “change application” allowing the agency greater control of livestock water. When ranchers expressed concerns, they were told if they didn’t comply, it could adversely affect their “turn-out” or release of livestock onto FS grazing allotments.

Private Cattle Water Rights / Otero County, New Mexico – Cattle ranchers, during a recent drought, were fenced off private livestock water rights by the FS citing a vital wetland habitat. Otero County Commissioners issued a cease and desist order in an attempt to protect the sovereign waters of the state and the rancher’s historic water rights. The conflict escalated to the county threatening to arrest federal agents who stopped the cattle from drinking.

United States vs. Wayne Hage / Nevada Federal District Court – The ongoing and seemingly never-ending saga of Wayne Hage establishes the lengths to which the federal government will go to win its case. At issue are water rights of the Hage family established in 1865. Through a constant barrage of bullying and legal actions the family’s water rights, grazing rights and private base property have been compromised. In the process, federal employees were found guilty of “prevaricating”, trespassing and in contempt of court. The ongoing details of the case are troubling and reveal the FS and BLM attitude of win at any cost to acquire the Hage’s water rights.

Tombstone, Arizona Experience - For more than 130 years Tombstone piped its privately held water rights some 30 miles from the Huachuca Mountains. In 1984, the Huachuca’s were declared a federal wilderness area. Even after the designation, Tombstone was allowed to maintain its springs and delivery system on a long established access road. The FS began overfiling on the city’s springs and stopped all mechanized maintenance. Following major flooding, the city was denied access, except wheelbarrows and shovels to make critical repairs to infrastructure, jeopardizing the city’s water needs including culinary and fire protection.

Pearson Ranch / Iron County, Utah – The Pearson Ranch owns a quarter-section of base property within their BLM grazing allotment. In 2016, Iron County Commissioner Tammy Pearson and her family filed for livestock water rights their cattle had been using since the 1970s. Because water from the flowing well ran off the property onto BLM land, the agency, as directed by policy protested. The State Engineer denied the application for a water right on private land based on the BLM protest.

Idaho Basin 92 / FS files 36 claims for In-Stream Stockwater – August, 2014, the FS filed 36 claims for in-stream stockwater rights. The State of Idaho, Department of Water Resources Adjudication Section citing the Joyce Decision, required the FS to provide evidence the United

States, or its agent, actually applied the water it claimed to beneficial use. Evidence was never provided and the claim was dismissed.

Matt Wood – Iron County, Utah – The Wood family has been running cattle on BLM allotments since 1922. They have been beneficially using the stock water as prescribed by Utah law. The filing was protested by the BLM as directed by policy. The State Engineer denied the filing based on the BLM protest that would supplant the livestock water rights of the United States. Under state law, the BLM is not the owner of the livestock and therefore cannot put the water to beneficial use as required. The Water Rights Protection Act would provide the Utah State Engineer with clear direction in protecting the state's beneficial use statutes and livestock water rights on the public domain.

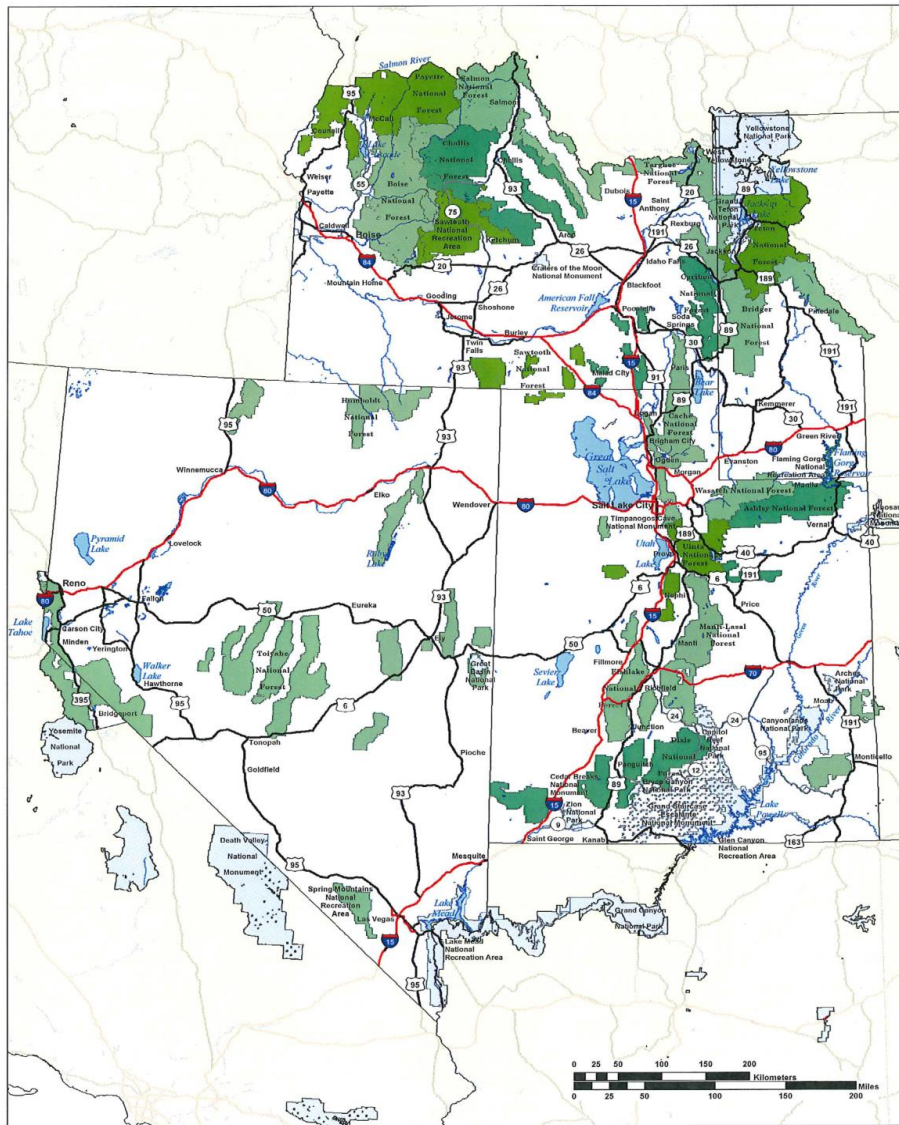
Wayne County, Utah Diligence Claims - As recent as August 3, 2016, the Forest Supervisor on the Fishlake National Forest filed a consolidation of diligence claims on livestock watering in Wayne County, Utah. The FS is consolidating 204 diligence claims on 114.54 acre feet adequate stockwater for 8,114 Equivalent Livestock Units (ELU). Based on Region 4 policy, their continues to be an expectation of federal ownership of livestock water rights in Utah, that are being put to beneficial use by Utah ranchers.

ADDENDUM B



U.S. Forest Service

Importance of National Forest System Lands in the Intermountain West Water Supply

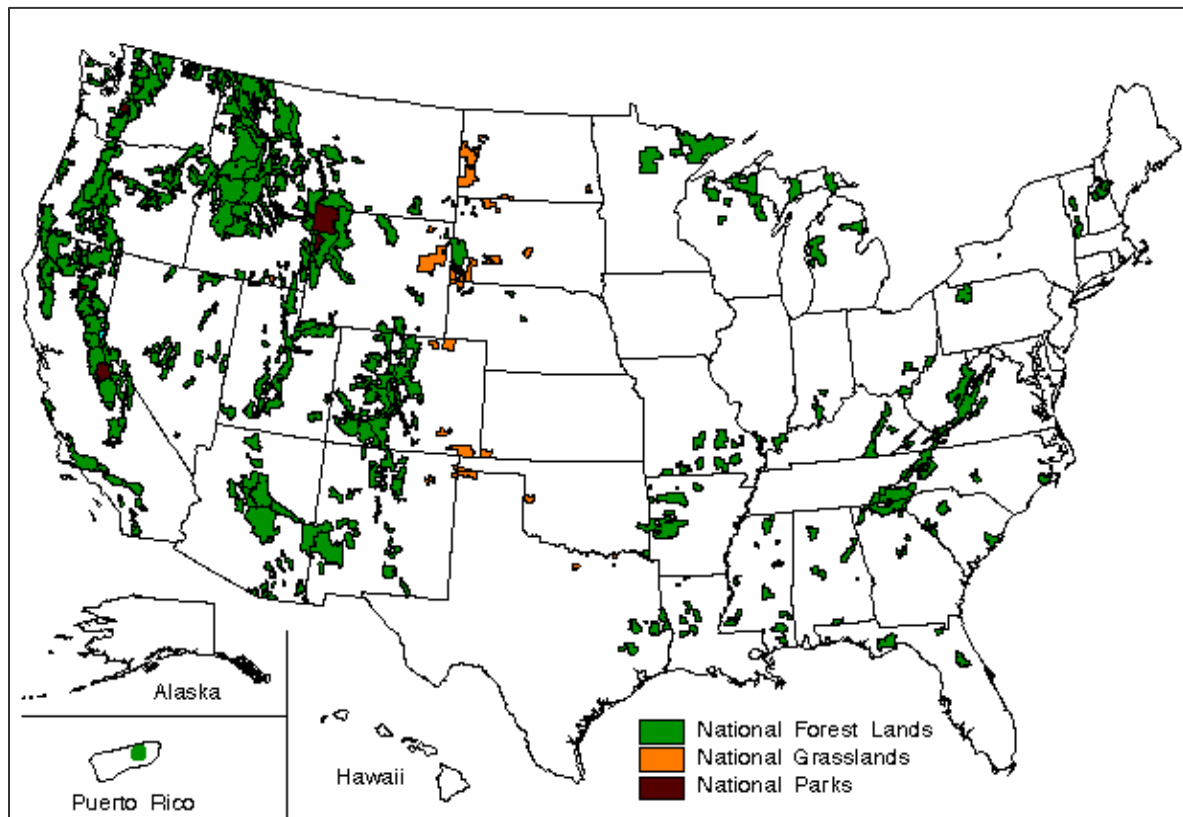


According to the Utah State Engineer, as much as 75 percent of Utah's available water supply originates on Forest System lands.



U.S. Forest Service

Importance of National Forest System Lands in the U.S. Continental Water Supply



National Forest System Lands are the largest single source of water in the continental United States, over 14% of available supply.

Water originating on National Forest System Lands provides a much greater portion of the water supply in the western public lands than those east of Denver Colorado – estimated as much as 50%.