INTRODUCTION OF THE ELECTRICITY CLEAN COMPETITION ACT OF 1997

HON. FRANK PALLONE, JR.

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Friday, November 7, 1997

Mr. PALLONE. Mr. Speaker, today, on behalf of myself, and my colleagues Mr. CAMPBELL, Mr. FRANKS of New Jersey, Mr. PAYNE, other members of the New Jersey delegation, and Mr. WAXMAN, rise to offer legislation that all of us concerned about fair competition and the environment should support—the Electricity Clean Competition Act of 1997. Our legislation is offered in recognition of the fact that environmental regulation is a competitive issue that must be addressed as the Congress considers the restructuring of the electricity industry.

As many of my colleagues are aware, I have been skeptical that the Congress needs to take the lead in introducing the retail competition to the electricity industry. I have been an advocate for recognizing the unique role of States in ensuring the availability of this commodity to all our citizens in a manner that reflects the need for continued reliability of service, recovery of stranded costs, and continued consumer protection for residential customers.

At the same time, I have been concerned that States might find it difficult to develop a framework that would protect other vital interests of the American public, including: preventing the exercise of market power; establishing a reciprocal regime prohibiting States from gaining competitive advantages resulting from uneven application of deregulation; and most importantly, preventing market distortion and air quality degradation due to inconsistent environmental regulation that resulted from past Federal decisions made under a different set of regulatory circumstances.

As I have listened to the testimony presented before the House Subcommittee on Energy and Power, it appears that a number of principles are emerging that can form the basis for a consensus bill. While I am still uncertain as to the exact timing of mandated universal direct access by all consumers, I believe that a date certain might well be a useful backstop to the efforts of the States and to ensure that the benefits of competition reach all our citizens within a reasonable timeframe.

However, I could not support restructuring legislation if it did not also: provide for reciprocity of access during the time preceding the implementation of universal access—ensuring that some suppliers could not retain captive customers under state regulation and compete for new customers in other jurisdictions; respect reasoned State decisions on utility recovery of investments in assets that become uneconomic in the new competitive environment; establish a regime favorable to the development of environmentally friendly, and competitive renewable technologies; and most importantly, address the need for comparable environmental standards applicable to all generating assets.

It is of this last point that our legislation is directed. I think that it is time we recognized that when the Congress adopted the Clean Air Act Amendments of 1977, many old, dirty facilities that were expected to close down were granted exemptions to the strict air pollution control requirements that we applied to new facilities. Yet, 20 years later these grandfathered facilities continue to operate and would, in the absence of our legislation, enjoy an even greater unfair competitive economic advantage over electricity generators that have installed state-of-the-art pollution control technologies or that generate electricity using cleaner fuels or renewable resources.

In order to remedy this problem, the proposed legislation establishes national emissions caps and a credit trading system for nitrogen oxides [NO_x] and sulfur fine particulates. The national generation performance standard that would apply to existing facilities would be based on Federal new source performance standards, ensuring that all generation facilities would have to meet the same environmental requirements. Trading in emission credits ensures the lowest possible compliance costs.

Federal restructuring legislation represents the last, best chance to achieve the goals of the Clean Air Act and level the playing field for all competitors in the electric generation market. I hope that if Congress proceeds with consideration of restructuring proposals, my colleagues and I who support Electric Clean Competition Act of 1997 can work with the Commerce Committee to craft consensus legislation that will protect consumers, ensure a fair competitive environment and improve air quality.

TRIBUTE TO SYLVIA LEVIN

HON. HENRY A. WAXMAN

OF CALIFORNIA

HON. HOWARD L. BERMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, November 7, 1997

Mr. WAXMAN. Mr. Speaker, Mr. BERMAN and I ask our colleagues to join us in honoring Sylvia Levin for her remarkable achievements in voter registration.

Sylvia became a deputy registrar with the Los Angeles County Registrar-Recorder's office in 1973 and has enthusiastically registered an estimated 35,000 voters since then. She has done more to increase voter participation than virtually anyone we know.

For nearly 25 years, Sylvia has walked or bicycled to her post with an indefatigable determination to get as many eligible voters registered as possible. Nothing—not even a broken arm—has slowed the pace of her work.

Sylvia's generous contribution to our community has received wide recognition. She has been honored for her work by the Los Angeles County Board of Supervisors, nominated to the California Secretary of State's Voter Outreach Hall of Fame, and selected as an ''Unsung Hero'' by NBC News in Los Angeles.

Our community owes a great debt of gratitude to Sylvia, and Mr. BERMAN and I ask our Congressional colleagues to join us in saluting her extraordinary contribution to our democratic system. We warmly congratulate her and wish her every happiness in the future.

H.R. 2493, THE FORAGE IMPROVEMENT ACT OF 1997

SPEECH OF

HON. ROBERT SMITH

OF OREGON

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 30, 1997

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 2493) to establish a mechanism by which the Secretary of Agriculture and the Secretary of the Interior can provide for uniform management of livestock grazing on Federal lands:

Mr. SMITH of Oregon. Mr. Chairman, allow me to provide a little historical reference and explain why we in the Congress should once and for all enact long-overdue legislative resolutions to management of livestock on public lands. This is not a new issue, but it is a delicate one, and the proposal that we have crafted and the method suggested to achieve this goal is different than prior efforts by Congress.

The facts are clear. The family ranchers who rely on access to public lands in the West suffer from great insecurity. For a number of years now they have been subjected to a litany of confusing and often-contradictory agency regulations. This fact was further exacerbated when Interior Secretary Bruce Babbitt implemented additional far-reaching regulations known as ''Rangeland Reform.'' The vast majority of ranchers in the West are good stewards of public land, yet they are forced to comply with a host of counter-productive regulations that should be aimed for the occasional wayward rancher—the exception to the rule—and not applied across the board in punitive fashion as they are today.

Many of you remember very well the efforts of the 104th Congress to enact reforms to the current regulatory structure for management of livestock on public lands. This well-intentioned goal failed to materialize in the closing days of last session, but the pressing needs of the West are still very present. Failed public policy deserves our attention, and that is why we are undertaking this effort.

For the past four months I have met with numerous Senators and Representatives who represent both ends of the philosophical divide to determine if there is a will to address a short, focused list of issues that will provide the western rancher small measures of needed security and are achievable in this Congress. With few exceptions, I have received very positive feedback. We have the consensus to engage such an effort.

After consultation with these Members of Congress and numerous interest groups, I developed a moderate list of issues that were addressed by the last Congress and would provide meaningful measures of security in the West while leaving the more contentious issues to be addressed another day. After meeting with key Senators and agreeing on this list of issues, in July I drafted them in legislative form, distributed them across the West, to environmental organizations, and throughout the Congress. I solicited input on this draft and, using these comments, recently drafted a new bill that reflects concerns raised by both ranchers and the environmental community. This bill has since passed both the House Committee on Agriculture and the House Committee on Resources with broad, bipartisan support.

The reasons for and benefits of this legislation are pretty simple. Right now we have no clear direction from Congress regarding how 270+; million acres of rangeland and grassland in the western States are to be managed. This lack of clear direction and morass of conflicting agency regulations cries out to be resolved. There are still many rangeland and grassland management issues that deserve legislative resolve, but those addressed in this Act are a solid start and appeal to concerns of all interests.

As I have said for a number of months now, I remain committed to bridging gaps between the ranching and environmental communities, as well as between Members of Congress from different parts of the country, to produce meaningful legislation that serves a handful of legitimate needs of the western family ranchers while at the same time encourages the continued health of the range.

Although this issue remains one of the more controversial public policy matters before Congress, I believe we should be able to work together to make strides that achieve a very necessary goal. Until such time, the rural West will continue to wither with little security and flawed public policy will rule the day.

The process of providing relief for western ranchers, however, is not a job for one man. It requires an abundance of legal, scientific, and practical expertise to craft a piece of legislation that meets the stringent substantive and political criteria required by the U.S. House of Representatives. Fortunately, I had the benefit of such expertise, and I would like to recognize those individuals for their hard work.

Dr. John M. Fowler, a professor of agricultural economics at New Mexico State University, and Dr. Fred Obermiller, a professor of agricultural economics at Oregon State University, are two of the nation's leading experts on our public rangelands. The success of H.R. 2493 is due in large part to their insight into the implications of proposed policy changes, their thorough understanding of the history of public lands, and their willingness to work on short, congressional timelines.

Dr. Fowler is responsible for compiling extensive data and fine tuning the new simplified fee formula in H.R. 2493, a fee that will undoubtedly bring greater stability to western ranchers and provide a fair return to the Federal Treasury. Without his specific analysis and explanation of the economic effect of this new fee, it would have been impossible to show its many benefits. New Mexico State University, and the nation as a whole, should be proud to have Dr. Fowler working on their behalf.

My fellow Oregonian, Dr. Obermiller has been a highly valued adviser of mine for a number of years. As has been the case on other legislative endeavors throughout my congressional career, his assistance on H.R. 2493 was critical to its development. Any newly-introduced legislation in the U.S. House of Representatives must address the inconsistencies and unfairness of current law, but must do so with a proper deference to the history of such issues. When it comes to ensuring that current proposals are accurately framed in an historical context, Dr. Obermiller has few equals. Both of these gentlemen are to be commended for the excellence they have achieved in their field.

In addition, it is essential that a legal analysis of any legislative proposal be performed so that the intent of the author is attained. This analysis must be completed by an attorney who is broadly respected, imparts prudent interpretations based on actual statute and case law, and reads with a critical eye for the needs of the western rancher. Bill Myers, who I heavily relied upon to serve this function, is such a person. Bill, who has served as an Administration official, counsel in the United States Senate, and as the Executive Director of the Public Lands Council, is now in private practice in the State of Idaho. Nevertheless, he took time out of his own workload to provide his advice about the language in the bill and review criticisms that were being levied against it. Without his assistance, it would have been difficult to move forward with any degree of certainty as amendments were being offered to broaden support for the bill.

When all is said and done, and the opinions of the scientists, economists, and attorneys are stripped away, H.R. 2493 is nothing more than a law under which men must live. Therefore, without the wisdom of ranchers themselves, this bill would be little more than a collection of legal terms and scientific formulas. As a life-long resident of Oregon, it should be a surprise to no one that when I need opinions about rangeland policy, I consult with old friends who I trust—friends like Bob Skinner of Jordan Valley, OR. Bob is a steady and thoughtful voice for a community that experiences too much instability. Although this instability is caused mainly by external forces, too often it comes from the ranchers themselves. Through all the disagreements and disputes, however, Bob has demonstrated a unique quality: an ability to see the big picture. This has served him well over the years and is a big reason why I value his opinion.

Finally, I would like to thank my good friend Rep. DON YOUNG, Chairman of the House Resources Committee, for his leadership on this issue. He and his staffer, Tod Hull, provided a much-needed push for the bill when we needed to get it through his Committee and on to the floor. The momentum that the bill enjoyed as it proceeded along the legislative process is in large part due to their hard work.

The extraordinary efforts of these gentlemen were extremely helpful in taking H.R. 2493 from a bill that faced little chance of passage in the U.S. House of Representatives to one that enjoyed broad, bi-partisan support. I look forward to working with all of them as we continue to address the important issue of stability for western ranchers in the next session of Congress.

[MEMORANDUM—OCTOBER 29, 1997]

Re: Status of Property Rights on Federal Lands.

To: Congressman Bob Smith.

From: William G. Myers III, Esq.

I am informed that H.R. 2493, the Forage Improvement Act of 1997, as reported by the House Resources Committee, may be subject to several amendments during floor consideration today. Specifically, I understand that the definition of ''base property'' will be changed so that it means private or other non-federal land, water, or water rights owned or controlled by a permittee or lessee to which a federal allotment is associated. The question is whether substitution of the word ''associated'' for the word ''appurtenant,'' as contained in the bill as reported by the House Resources Committee, is of legal significance.

In essence, the question is whether it is preferable that a federal allotment is appurtenant to base property or associated with base property. Proponents of the word ''appurtenant'' prefer that term over ''associated'' on the basis that it may provide greater leverage in asserting that ranchers have a property right in their federal grazing permits.

Federal statutes and case law are consistent in their discussion of the status of grazing permits. The Taylor Grazing Act (43 U.S.C. §315b) states tndat ''the issuance of a permit pursuant to the provisions of this Act shall not create any right, title, interest, or estate in or to the lands.'' The Supreme Court has interpreted this provision and held that Congress did not intend that an compensable property right be created in permit lands themselves as the result of the issuance of a permit. *See United States* v. *Fuller,* (409 U.S. 488 (1073)). Additionally, the Federal Land Policy and Management Act (42 U.S.C. §1752(h)) states that ''nothing in this Act shall be construed as modifying in any way law existing on the date of approval of this Act with respect to the creation of right, title, interest or estate in or to public lands or land in National Forests by issuance of grazing permits or leases.''

Several recent decisions have added to the jurisprudence on this issue. The federal court in *Public Lands Council, et al.* v. *Babbitt,* (929 F. Supp. 1436, 1440 (D. Wyo. 1996)) provided a valuable historical review and held that a ''grazing preference'' represents ''an adjudicated right to place livestock on public lands.'' The court also held that ''the grazing preference attached to the base property, and followed the base property if it was transferred.'' It is the grazing preference which permits the permittee to place livestock on the federal land in the case of Bureau of Land Management lands. As noted above, the preference ''attaches'' to the base property. The use of the word ''associated'' in the definition of base property in H.R. 2493 is consistent with the notion of attachment. If there is any question, this should be clarified during debate on the House floor. I recommend that an amendment be offered to delete the word ''appurtenant,'' and that the word ''attached'' be inserted in its place.

This would be consistent as well with the court's ruling in *Hage* v. *United States* (35 Fed. Cl. 147 (1996)). The court held that a ''grazing permit has the traditional characteristics and language of a revocable license, not a contract.'' The court went on to state that ''[A] license creates a personal or revocable privilege allowing a specific party to utilize the land of another for specific purpose but does not vest any title or interest in such property in the licensee.''

In conclusion, if Congress wishes to make a grazing permit a property right, it should do so *explicitly.* An attempt to establish a property right by the use of the word ''appurtenant'' in the definition of base property, without more, is unlikely to overcome existing statutes and case law cited above.

TRIBUTE TO ERIE SAUDER

HON. MARCY KAPTUR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Friday, November 7, 1997

Ms. KAPTUR. Mr. Speaker, I take this opportunity to remark upon the passing of an extraordinary man of my district. Erie Sauder of Archbold, OH died June 29, 1997 at the age of 92 years.

Erie Sauder was a visionary, an entrepreneur, and a deeply spiritual man. A living legend in his own community of Archbold, he