

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 appur-

tenant 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 that "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 (1973)). 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

was well known among the larger community as well. In fact, even the world knew of him, through his company's products. Mr. Sauder was the founder and chairman of the board of Sauder Woodworking. The world's largest manufacturer of ready-to-assemble furniture, Sauder Woodworking employs 3,000 Archbold area residents. Along with two subsidiaries of the company and Mr. Sauder's signature piece, Sauder Farm and Craft Village, his enterprises are the lifeblood of the community. Sauder Farm and Craft Village is a living history of northwest Ohio, a recreation of a pioneer village which brings to life the day-to-day activity of its residents. The village also includes an auditorium, restaurant, and inn, and over two million people visit it each year to get a glimpse of an understanding of life in the 19th century.

A man of faith and deep moral conviction, Erie Sauder was a scholar of the Scriptures and Mennonite Church history. He was an active congregant in four churches, most recently the Pine Grove Mennonite Church. His

work with the church led him to become a founding member of the Mennonite Economic Development Association. Through this organization, he made 18 trips to Paraguay, directing a development project which put to work thousands of indigent Paraguayans. Mr. Sauder looked upon that project as his most satisfactory achievement. His spirituality and civic-mindedness is evident in the other boards on which he served: Sunshine Children's Home—for profoundly disabled children; Ohio Mission Board; Oaklawn Center; Farmers and Merchants State Bank; Goshen College and Defiance College.

A grounded man who never forgot his roots, Erie Sauder received much recognition in his later years. He was honored as Archbold's Citizen of the year in 1969 and the State of Ohio's Senior Citizen of the Year in 1986. He was inducted into the Northwest Ohio Area Office on Aging's Hall of Honor in 1986. He received the Ohio Designer Craftsmen Award in 1987 and the Governor's Award in 1992.

He has also been recognized by the Maumee Valley Girl Scout Council and the Ohio 4-H Foundation for his generous support of the organizations' programs.

A man of considerable fortune who grew up poor on a Fulton County farm, Erie Sauder's charity was legendary. In addition to his contributions to the Sauder Farm and Craft Village, his business, and many other programs, his obituary notes that his good deeds "ranged from donating an organ to his church to donating \$1 million toward the construction of Archbold's new library." His community truly felt his presence and he treated everyone in it as his friend.

Erie Sauder survived his first wife, Leona, their daughter, his sister Mabel and brother Leo. He leaves to this life his wife Orlyss, his sons Delmar, Maynard, and Myrl, stepdaughter Elaine, sisters Lucretia and Herma, nine grandchildren and eleven great-grandchildren. May they find comfort in his memory and in the lasting legacy he left in the form of his entrepreneurship and in living his faith.