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Stephanie Lynn Gripne
Research Fellow
Boone and Crockett Wildlife Conservation Program
College of Forestry and Conservation
University of Montana
Missoula, Montana 59812
307-349-4777; Fax 925-891-0146; Email sgripne@wyoming.com;
Website www.compatibleventures.us/grassbank.htm

RH: Communities of Place and Interest • Gripne

**RECONCILING COMMUNITIES OF PLACE WITH COMMUNITIES OF
INTEREST: A CASE STUDY OF GRASSBANKING**

STEPHANIE LYNN GRIPNE, Boone and Crockett Wildlife Conservation Program,
College of Forestry and Conservation, University of Montana, Missoula, MT
59812

Abstract:

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Key words:

“There is consequently a need to reconcile communities of interest with communities of place in ecosystem management in order to address the full range of human concerns” (p. 772, Duane 1997)

In order for collaborative ecosystem management to be effective, the community of place must be reconciled with the community of interest.
Grassbanking provides an opportunity to explore this issue

TRADEMARK

Grassbank was coined and registered as a trademark by the Malpai Borderlands Group in conjunction with the Animas Foundation, which is located along the southern edge of the

New Mexico and Arizona border. The intention of the trademark was to maintain the integrity of the term, not to discourage use of the term.

TAX IMPLICATIONS

FARM BILL – CONSERVATION SECURITY PROGRAM

CSP was appropriated funds in a recently passed omnibus spending bill.

\$41.4. million authorized for 2004 to pay farmers and ranchers to manage working lands for ecological benefits. The program is unique because it sets environmental goals without mandating the processes/practices that must be taken by land managers to meet them. The next step is for USDA rule making.

PUBLIC LANDS GRAZING

CATTLE INDUSTRY

- **No net loss of public allotments**
- **Favor conservation – private land => public land**

NATIONAL GRASSBANK ORGANIZATIONS

- **GRASSBANK Inc and National Grassbank Network**

Most place-based initiatives seek support; wary of drawing resources away; becoming an institution in and of itself.

The Nature Conservancy – contribute 20% of state generated revenue to WO programs
Land Resource Alliance

PUBLIC LAND GRASSBANKS

There are several regulatory and institutional challenges to starting grassbanks on federal land. The Conservation Fund faced several of these challenges in the creation of the Valle Grande Grass Bank. The primary challenge was obtaining a grazing permit from the Forest Service and placing it in “non-use.” Technically, the Conservation Fund was not “using” the permit because it was not running its own cattle on the allotment. Forest Service officials took a risk in granting the permit, even though a Memorandum of Understanding clearly elucidated the goals of the grassbank. In February 2001, an interim directive was approved by the national Forest Service office to officially grant an exception to the permit requirements as long as the allotment is operated as a grassbank.¹⁹ Therefore, the “non-use” challenge is at least temporarily resolved, and may evolve into a permanent change in policy. The “non-use” challenge, however, still lingers in regions where Forest Service officials are not well briefed on the interim directive.

Interim Direction Number 2230-2001-1 effective February 16, 2001 “establishes an exception to the base property and livestock ownership requirements necessary to qualify for a term grazing permit when the applicant agrees to operate the allotment(s) as a grassbank.” The interim directive expires August 16, 2002 at which point it will either be extended or superseded. USDA Forest Service.

INNOVATION AWARD BATTLE/WAR

Current BLM policies do not contain many obstacles for the creation of a grassbank. The BLM allows permit holders to sublease their land to other ranchers. Therefore, grassbanking can simply be established as a sublease. This arrangement incurs additional costs since the BLM requires surcharges for subleases. In some areas, it is easier for the BLM to have a third-party own the grassbank permit. This is especially true in Nevada where the state will not grant water rights to the BLM, but will grant them to permit holders.

TRADEMARK

The Malpai Borderlands Group (MBG) and The Nature Conservancy (TNC) are considering creating “Grassbank, Inc.” as a new non-profit organization. This non-profit organization would own the grassbank trademark and monitor for improper use of the term. MBG and TNC would also like to use this organization as a support mechanism for new and existing grassbanks. Grassbank, Inc. would provide basic and technical information to initiatives, while at the same time pursuing policy changes that would help ease some of the challenges to grassbanking.²⁴ It would be an umbrella organization, like the Land Trust Alliance, providing assistance to grassbank initiatives, providing some level of quality control, and helping legitimize the concept nationwide. Grassbank Inc. might prove to be very helpful in addressing some of the needs listed above, especially informational needs. Caution will be necessary, however, to not suppress the individuality of each initiative through administration of the grassbank trademark. Grassbank initiatives need to be able to adjust to their ecological and community needs by adapting and changing the original concept. Some quality control is needed, though, since some grassbank initiatives are already not stressing conservation *quid pro quos* in the design of their projects.

The term “grassbank” has become a buzzword across the West. It is being used to describe a variety of grazing projects, including restoration projects, swing allotments and pasture rotation. However, despite its wide and varied use, the term “grassbank” is a registered trademark with specific meaning¹. In the simplest of definitions, grassbanking is the exchange of grass for conservation work. Unstocked grassland is made available to livestock from other areas in order to advance conservation goals on home ranges. Conservation goals range from the protection of open space to ecological rehabilitation.

- **Intention**
- **Lack of enforcing body**
- **Perception**

TAX INCENTIVE

A final policy dilemma that may arise in grassbank transactions relates to the inability of the landowner to claim a charitable contribution deduction for the value of the standing grass. Under current tax law, an individual can donate cut grass in the form of baled hay to a non profit organization and deduct the value of the hay as a charitable donation. Until the tax law is changed, however, a donation cannot be claimed for the very same grass if it is in a standing condition. Efforts are being made in Congress to revise this tax anomaly. Until such changes are made however, landowners should be encouraged to resolve this issue with their own legal and tax advisors.

PRIVATE INURMENT

The emergence of grassbank transactions and institutions poses unique challenges for existing tax rules and public policies created for a broad range of other tax-exempt activities and institutions. However, if grassbanks are to succeed and flourish as a legitimate conservation tool, grassbanks will need to ensure that certain basic tax and policy issues are addressed. One of the biggest areas of potential concern stems from the fact that grassbanks are generally organized as tax-exempt charitable entities under the US tax laws (so-called "501(c)(3) organizations") and as such, must comply with operating rules established to ensure that such organizations actually are operated for the

charitable and public purposes for which they are established. A key test to determine if this operating standard is met requires that the assets of the charitable organization be used in such a way as to avoid having them inure to the benefit of private individuals. This test of "private inurement" requires that transactions between the organization and those who have a close relationship to the organization, such as employees, founders, directors, officers, and their family members be carefully scrutinized to ensure that there is no improper influence or control of the organization's assets for private gain or purpose. In addition, any transaction that such organization engages in with private parties, regardless of their connection to or influence over the organization, must ensure that there is no "private benefit." This term has been defined to mean that the transaction itself must result in the organization's charitable purposes being served or achieved and that equal value must be obtained by the charity in exchange for its assets or resources given up to the other private party in the transaction, the so-called "quid pro quo" rule.

Thus, since a grassbank transaction is based on the concept of an exchange of forage that it controls for valuable and specific conservation benefits from the private landowner, the grassbank must ensure that the value of the conservation benefits that are obtained are at least equal to and hopefully greater than the value of the forage that is exchanged. Thus, if the nonprofit grassbank organization is involved with leasing forage at a discounted rate to a rancher, it must demonstrate that the economic value of the conservation benefit achieved by the rancher equals or exceeds the lease of the discounted forage. The

nonprofit grassbank organization should, therefore, perform a market and/or non-market valuation study of the conservation benefits that are being obtained in the transaction (i.e., the ability to deploy a program of prescribed fire, the reduced threat of habitat fragmentation from the development rights that would be given up) in order to demonstrate that the economic values in the transaction are roughly equal in order to be able to defend such transaction if scrutinized by the Internal Revenue Service. To the extent that those rights that are obtained from the landowner in the transaction also provide an economic benefit to the landowner (i.e., if, by resting the landowner's grass or by implementing a program of fire, certain invasive or exotic species are removed and result in an overall upgrade in the quality of the landowner's grass) adjustments must be made to the determination of economic value to account for those benefits.

CONFLICT OF INTEREST

Moreover, many non-profit grassbank organizations are created, managed and/or governed by members of the local community within which they operate. Since some of those very same people may be potential participants in a grassbank transaction, grassbank organizations must be careful to ensure that the grassbank transactions with employees, founders, directors, officers, and their family members or others who are involved in or who could have influence over the grassbank organization itself are conducted to meet the highest operating standards for conservation and charitable organizations.