

Proposed Revisions to Grazing Regulations for the Public Lands

Final Environmental Impact Statement
FES 04-39



Prepared by
The Department of the Interior
Bureau of Land Management

October 2004



Livestock grazing on BLM lands near Price, Utah. (Jerry Sintz, BLM Utah State Office [retired])

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Prepared by The Department of the Interior • Bureau of Land Management • October 2004



UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240
<http://www.blm.gov>



Dear Concerned Citizen:

Thank you for your contribution to the Bureau of Land Management's (BLM) grazing regulatory initiative, aimed at improving the management and long-term health of America's public rangelands. Your comments and concerns have helped the BLM prepare a final Environmental Impact Statement (EIS) related to the *Proposed Revisions to Grazing Regulations for Public Lands*. The final EIS analyzes the environmental effects of the regulation revisions and management alternatives and includes responses to the comments received on the draft EIS.

These regulation changes will contribute to improving the BLM's working relationships with permittees and lessees; protecting the health of the rangelands; and increasing our agency's administrative effectiveness and efficiency. These revisions, as detailed in the EIS, recognize that grazing is a proud heritage of the West. As trustees of that legacy, Western rural communities continue to rely on public and private rangelands to support local economies, sustain working landscapes, and protect open spaces. Since passage of the Taylor Grazing Act in 1934 and the Federal Land Policy and Management Act of 1976, many improvements in the management and practice of livestock grazing have taken place, and these regulation revisions will advance public rangeland stewardship even further.

Since the beginning of this process in March of 2003, we have met with a variety of groups and individuals to discuss the future of BLM-managed rangelands. The more than 18,000 comments we received on the draft document have helped us to develop a well-rounded, forward-looking approach that seeks to ensure healthy and productive rangelands across the West. I encourage you to share this final Environmental Impact Statement with other concerned citizens as well as to view it on our national Website (www.blm.gov).

Thank you for your valuable time and interest in the management and future of public land grazing. I hope you will continue to be involved in the stewardship of America's public lands.

Sincerely,

Kathleen Clarke
Director

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October 2004

Abstract

Proposed Revisions to Grazing Regulations for the Public Lands

Environmental Impact Statement

Draft () Final (X)

The United States Department of the Interior, Bureau of Land Management (BLM)

1. Type of Action: Administrative (X) Legislative ()
2. Abstract: The BLM is amending the grazing regulations for the public lands, 43 CFR Part 4100, Grazing Administration—Exclusive of Alaska. The grazing regulations govern all public lands that have been identified as suitable for livestock grazing. These lands presently include approximately 160 million acres in the western United States.

This final environmental impact statement (EIS) is a national-level, programmatic EIS that documents the ecological, cultural, social, and economic effects that would result from implementing the proposed regulatory changes. The proposed action (preferred alternative) described in this final EIS is the proposed action (alternative 2) analyzed in the draft EIS with changes as described in this document. Also analyzed in this final EIS are the projected effects of continuing under the existing regulations or the “no action” alternative (alternative 1) and a “modified” alternative (alternative 3) that reflects several modifications to the proposed action.

More than 18,000 public comments, including letters and oral statements at public meetings, were analyzed. Summary comments and responses are provided in this final EIS. Changes in the proposed action and in the analysis as a result of public comments are summarized in this document.

3. For further information, contact: Steven Borchard, Bureau of Land Management, 202-452-0357, or Kenneth Visser, Bureau of Land Management, 775-861-6492.

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Executive Summary

Introduction

The BLM proposes to revise its regulations concerning the administration of livestock grazing on public lands. During the nine years since implementation of the 1995 grazing reforms, a number of discrete concerns have been raised regarding the administration of grazing management. The purpose of this proposed action is to address a variety of these discrete issues related to the current regulatory scheme without altering the fundamental structure of the grazing regulations. In other words, we are adjusting rather than conducting a major overhaul of the grazing regulations. Fundamental changes such as modifications to the grazing fee provisions, the addition of fundamentally new regulatory topics, or the removal of substantial sections of the regulations do not meet this limited purpose.

More than 160 million acres of public lands in the western United States have been determined to be suitable for livestock grazing and are subject to these regulations. The BLM administers its grazing program—excluding Alaska—under 43 CFR 4100 of the Code of Federal Regulations. These regulations implement the laws that govern public land grazing, including the Taylor Grazing Act of 1934 (TGA), the Federal Land Policy and Management Act of 1976 (FLPMA), and the Public Rangelands Improvement Act of 1978 (PRIA). The last major change to these regulations occurred in 1995. These proposed revisions leave intact many of the revisions from 1995—most notably the establishment of Resource Advisory Councils and Rangeland Health Standards and Guidelines.

This Final Environmental Impact Statement (FEIS) is a national-level,

programmatic EIS that documents the ecological, cultural, social, and economic effects that would result from implementing the proposed regulatory changes. When new regulations are under consideration, an EIS may be prepared even if the environmental effects of the rule are not expected to be significant. 40 CFR Section 1502.4(b). This rulemaking is designed to provide limited refinements to the larger grazing reforms made in 1995. The BLM does not anticipate that the proposed changes would have significant environmental effects, but it recognizes that even small changes in the management of public lands can generate a high level of public interest. Given this interest, the BLM decided to prepare an EIS to fully analyze potential effects, consider alternatives, and provide a means for public discussion.

The BLM published an Advance Notice of Proposed Rulemaking (ANPR) and Notice of Intent (NOI) to prepare an EIS in the *Federal Register* on March 3, 2003. The BLM held four public scoping meetings in March, 2003. More than 8,300 comments were received during the scoping period. On the basis of scoping comments and internal reviews, a Proposed Rule was developed and published in the *Federal Register* on December 8, 2003. A notice of availability of the Draft EIS was published in the *Federal Register* on January 2, 2004. Six public meetings were held in late January and early February to take comments on the Proposed Rule and Draft EIS. The comment period for both the Proposed Rule and Draft EIS closed on March 2, 2004. More than 18,000 comments were received. These comments were analyzed and considered in preparing this Final EIS.

Proposed Action and Alternatives

The BLM considers three alternatives in this analysis: a “No Action Alternative,” the “Proposed Action Alternative,” and a “Modified Action Alternative.”

This rulemaking is an attempt to address several distinct issues that have been identified since the 1995 grazing reforms. Each proposed regulatory change is largely independent and may have been triggered by concerns that do not directly apply to the others. The collection of proposed changes has been grouped together into a single Proposed Action Alternative. The Modified Action Alternative is a collection of other possibilities that were worthy of extended analysis. Although the changes have been grouped into broader alternatives, the BLM will continue to maintain a focus on the individual proposals during the decision-making process. It is thus quite possible that the final action may include pieces from all three of the broader alternatives.

No Action Alternative—The No Action Alternative analyzes the effects of continuing to administer the public lands grazing program under the present regulations.

Proposed Action Alternative—Under the Proposed Action Alternative, the BLM proposes to revise regulations to address issues that have surfaced during administration of the grazing program or that were raised during public scoping. The proposed regulatory revisions are organized under three categories.

Improving Working Relations with Grazing Permittees and Lessees—Under this category, the proposed rule would:

- Require BLM to follow a consistent approach in analyzing and documenting the relevant social, economic and cultural

effects of proposed changes in grazing preference and incorporate such analyses into appropriate NEPA documents.

- Require phase-in of changes in grazing use of more than 10 percent over a 5-year period, consistent with relevant law.
- Provide prospectively for joint ownership of range improvements—changes would allow the BLM and a grazing permittee, or other cooperator, to share title to certain permanent structural range improvements, such as fences, wells, or pipelines, which are constructed under a Cooperative Range Improvement Agreement.
- Require BLM to cooperate with Tribal, state, county, and local government-established grazing boards in reviewing range improvements and allotment management plans on public lands.

Protecting the Health of Rangelands—Under this category, the proposed rule would:

- Remove the 3-consecutive-year limit on temporary nonuse of a grazing permit but continue to require the BLM to review nonuse annually to make sure it is still necessary, whether for resource conservation, enhancement, or protection, or for personal or business purposes.
- Require standards assessments and monitoring of resource conditions to support BLM determinations of whether existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve standards and conform with guidelines.
- After a determination that grazing practices or levels of use are significant

factors in failing to achieve standards and conform to guidelines, provide additional time for BLM to formulate, propose and analyze actions; to comply with all applicable laws; and to complete all consultation, cooperation, and coordination requirements before reaching a final decision on appropriate actions.

Increasing Administrative Efficiency and Effectiveness—Under this category, the proposed rule would:

- Eliminate the “conservation use” permit regulatory provisions to comply with the 10th Circuit Court of Appeals decision in *Public Lands Council v. Babbitt*, 167 F.3d 1287 (10th Cir. 1999).
 - Expand the definition of “grazing preference” to include an amount of forage on public lands attached to a rancher’s private base property, which can be land or water. This expanded definition, similar to one that existed from 1978 to 1995, makes clear that grazing preference has a quantitative meaning (forage amounts, measured in Animal Unit Months) as well as a qualitative one (priority of position “in line” for grazing privileges).
 - Modify the definition of “interested public” to ensure that only those individuals and organizations that actually participate in the process are maintained on the list of interested publics. The regulations with respect to the interested public are also revised to improve efficiency in the BLM’s management of public lands grazing by reducing the occasions on which the Bureau is required to involve the interested public. Under the regulatory changes, the BLM could involve the public in such matters as day-to-day grazing administration but would no longer be required to do so. The BLM would continue to require consultation, cooperation, and coordination with the interested public in grazing planning activities such as allotment management planning or range improvement project planning.
- Provide flexibility to the Federal government in decisions relating to livestock water rights by removing the requirement that the BLM acquire, perfect, maintain, and administer water rights in the name of the United States to the extent allowed by state law.
 - Clarify that an applicant for a new permit or lease will be deemed to have a record of satisfactory performance when the applicant has not had any Federal or state grazing permit or lease canceled, in whole or in part, for violation of the permit or lease within the 36 calendar months immediately preceding the date of application, and a court of competent jurisdiction has not barred the applicant or an affiliate from holding a Federal grazing permit or lease.
 - Clarify what is meant by “temporary changes in grazing use within the terms and conditions of the permit or lease.” Under the 1995 regulations, BLM can approve temporary changes in grazing use within the terms and conditions of a permit or lease. The final rule clarifies that “temporary changes in grazing use within the terms and conditions” means temporary changes to livestock number, period of use, or both, that would result in nonuse or in grazing use where forage removal does not exceed the amount

of active use specified in the permit or lease, and such grazing use occurs not earlier than 14 days before the begin date specified on the permit or lease and not later than 14 days after the end date specified on the permit or lease.

- Increase certain service charges to reflect more accurately the cost of grazing administration.
- Clarify that if a grazing permittee or lessee is convicted of violating a Federal, state, or other law, and if the violation occurs while he is engaged in grazing-related activities, the BLM may take action against his grazing permit or lease only if the violation occurred on the BLM-managed allotment where the permittee or lessee is authorized to graze.
- Provide the authority for the BLM to issue an immediately effective decision on nonrenewable grazing permits or leases or on applications for grazing use on designated ephemeral or annual rangelands. Also, clarify how the BLM's grazing decision is affected if a decision on nonrenewable permits or leases or a decision on applications for grazing use on ephemeral or annual rangelands is "stayed" pending administrative appeal. Under the final rule, if a stay on an appeal of such a decision is granted, the decision would be inoperative and, if appropriate considering the specific stay, the livestock may have to be removed from the allotment.
- Clarify how BLM will authorize grazing when OHA stays all or part of a BLM grazing decision affecting a permit or lease. Such decisions may cancel, suspend or change terms and conditions of a permit or lease during its current

term; renew a permit or lease; or grant or deny a permit or lease to a preference transferee. Under the final rule, if OHA stays all or part of such a decision, then the BLM will, with respect to any stayed portions of the decision, authorize grazing use on the allotment(s) or portions of the allotment(s) in question pursuant to terms or conditions that are the same as the permit or lease that immediately preceded BLM's decision, subject to any other provisions of the stay order.

- Clarify that a biological assessment or biological evaluation, prepared in compliance with the Endangered Species Act, is not a decision and therefore is not subject to protest or appeal.

The proposed regulations also include additional regulatory text clarifications and minor modifications.

Modified Action Alternative—The Modified Alternative contains revisions similar to those of the Proposed Action, with the following exceptions:

- Makes the provision that requires phase-in of grazing decreases (and increases) of more than 10 percent over a 5-year period discretionary rather than mandatory.
- Extends the present 3-consecutive-year limit on temporary nonuse of a grazing permit to a 5-consecutive-year limit rather than unlimited consecutive years as proposed.
- Allows for discretion by the BLM manager in deciding what data are necessary to support evaluations of whether an allotment is meeting standards and conforming to guidelines and to make a determination as to whether existing grazing management practices or levels of

grazing use on public lands are significant factors in failure to achieve standards and conform with guidelines.

- Eliminates several Federal or state laws and regulations from the list of prohibited acts identified in the existing regulations including laws and regulations regarding placement of poisonous bait or hazardous devices; application or storage of pesticides, herbicides, or other hazardous materials; alteration or destruction of natural stream courses; pollution of water sources; illegal take, destruction or harassment of wildlife; and illegal removal or destruction of archaeological or cultural resources. The consequence would be that a permittee or lessee who is convicted and penalized for violating these state or Federal laws would not be subject to having his permit or lease withheld from issuance, suspended, or cancelled.
- Adds as a prohibited act, failure to use certified weed seed-free forage, grain, straw, or mulch when required by the authorized officer.

The alternatives are compared and described in Table ES-1 “Comparison of Alternatives.”

Effects of the Proposed Alternative

There are no irreversible or irretrievable commitments of resources directly resulting from the proposed regulation changes nor are there any projected discernable effects from short-term uses on long-term productivity of resources arising from this rulemaking.

Most of the proposed regulatory changes have little or no adverse effects on the human environment. Some short-term adverse effects may not be avoided because of increases in timeframes associated with several components of this proposed rulemaking, including the requirement for a 5-year phase-in of changes in use of over 10 percent, the requirement for monitoring before making a determination that livestock grazing is the causal factor for failure to meet standards and conform to guidelines, and the extension of time allowed before a decision must be made after a determination that livestock grazing is the causal factor for failure to meet standards and conform to guidelines for grazing administration. However, better and more sustainable decisions would be developed by using monitoring data in analyzing achievement of standards; carefully formulating, proposing, and analyzing the appropriate action and ensuring that all legal and consultation requirements are satisfied. In the long-term, it is expected that the effects of these provisions would be beneficial to rangeland health.

To minimize the potential for short-term adverse effects, the BLM could exercise authority under Section 43 CFR 4110.3-3(b) to curtail grazing if resources on the public lands require immediate protection or if continued grazing use poses an imminent likelihood of significant resource damage.

Mitigation measures would be appropriately developed when site-specific NEPA documents are prepared to implement the regulatory provisions.

The effects of each alternative are summarized and compared across alternatives in Table ES-2 “Comparison of Impacts Across the Alternatives.”

Consultation and Coordination

Coordination With Federally Recognized Tribes

The BLM contacted Tribal government representatives for input into the Grazing Rulemaking and Draft EIS. It began with the initiation of the public scoping process. Issues raised by Tribal governments, Tribal entities and Native American individuals during meetings and received in letters were considered in the development of the Draft EIS and Proposed Rulemaking. Once the Draft Environmental Impact Statement and Proposed Rulemaking was ready for release and public review, including review by Tribal governments, more than 300 Tribes west of the Mississippi River, excluding Alaska, were sent a letter soliciting their comments to the Draft EIS and Proposed Rulemaking. Enclosed was a copy of the Draft EIS and Proposed Rulemaking on a compact disk and Web site information for finding the document on the Internet.

Consultation With Fish and Wildlife Service and NOAA, Fisheries

A determination was made that the regulatory changes would have no adverse effects to candidate, proposed, threatened or endangered species, or designated or proposed critical habitat from the proposed regulation changes.

Before grazing permits are issued, the appropriate BLM Office would review the adequacy of existing environmental

analyses and consider if candidate, proposed, threatened or endangered species, or designated or proposed critical habitat within the proposed permit or lease area may be affected. If adverse effects are expected, a formal Section 7 consultation would be performed.

Consultation With the Advisory Council on Historic Preservation

Section 106 of the National Historic Preservation Act requires Federal Agencies to take into account the effects of their undertakings on historic properties. The agency has sent a letter to the Advisory Council on Historic Preservation notifying them of the proposed regulation changes. The letter provides a brief synopsis of the goals and objectives of the regulations changes and information on where to find the current regulations for their review.

Public Participation and Final Rulemaking–EIS Process

After careful consideration of all comments on the Draft EIS and Proposed Rule, the BLM prepared this Final EIS. The Notice of Availability (NOA) for the Final EIS has been published in the *Federal Register*. Thirty days after publication of the Final EIS, the BLM may issue a Final Rule that sets forth the BLM's final decision including all requirements for a Record of Decision under NEPA. The Final Rule will become effective 60 days after its publication in the *Federal Register*. The regulations will then become part of the Code of Federal Regulations.

Table ES-1. Proposed revisions to grazing regulations for the public lands: comparison of alternatives.

<i>Improving Working Relations with Permittees and Lessees</i>			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Social, Economic, and Cultural Considerations in the Decision-Making Process	* No provisions specifically address NEPA documentation of social, economic, and cultural considerations in the regulations regarding changes in permitted use.	* Before changing grazing preference, the BLM would undertake appropriate analysis as required by NEPA. The BLM would analyze and document, if appropriate, the relevant social, economic, and cultural effects of the proposed action.	* Same as Proposed Action
Implementation of Changes in Grazing Use	* The present regulations do not address the timing of implementation of decisions to change grazing use.	* Changes in active use in excess of 10% would be implemented over a 5-year period unless: an agreement is reached with the permittee or lessee to implement the increase or decrease in less than 5 years; or the changes must be made before 5 years to comply with applicable law (e.g., Endangered Species Act).	* Same as proposed action, except that the 5-year phase-in of changes in use would be discretionary , i.e., change in active use in excess of 10% may be implemented over a 5-year period.
Range Improvement Ownership	* The United States holds title to permanent range improvements such as fences, wells, and pipelines authorized after August 21, 1995.	* Title to permanent range improvements such as fences, wells, and pipelines authorized under a cooperative range improvement agreement would be shared among cooperators in proportion to their initial contribution to on-the-ground project development and construction costs.	* Same as Proposed Action

Table ES-1 (continued). Proposed revisions to grazing regulations for the public lands: comparison of alternatives.

<i>Improving Working Relations with Permittees and Lessees (continued)</i>			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Cooperation with Tribal, State, County, or Local Government-Established Grazing Boards	* The BLM is required to cooperate with state, county, and Federal agencies in the administration of laws and regulations relating to livestock diseases, sanitation, and noxious weeds, including state cattle and sheep sanitary or brand boards and county or other weed control districts.	* Tribal agencies would be added to the list of agencies with which BLM would be required to cooperate in the administration of laws and regulations relating to livestock diseases, sanitation, and noxious weeds * In addition, BLM would be required to cooperate with Tribal, state, county, or local government-established grazing boards in reviewing range improvements and allotment management plans on public lands.	* Same as Proposed Action
Review of Biological Assessments and Evaluations	* BLM is required, to the extent practicable, to provide affected permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public an opportunity to review, comment, and give input during the preparation of reports that evaluate monitoring and other data that are used as a basis for making decisions to increase or decrease grazing use, or to change the terms and conditions of a permit or lease. This provision has been interpreted to include biological assessments and biological evaluations as among the body of reports subject to this requirement.	* Same as existing regulations except for some minor edits Note: In the draft EIS, it was proposed to specifically identify biological assessments (BAs) and biological evaluations (BEs) prepared under the Endangered Species Act as reports during the preparation of which BLM would be required to provide affected permittees or lessees, the State, and the interested public an opportunity to review and give input. Based on concerns raised during the review of the draft EIS, it was determined to be inappropriate to highlight BAs and BEs in this fashion; implying that they had greater value or emphasis than other reports such as grazing management evaluations.	* Same as existing regulations

Table ES-1 (continued). Proposed revisions to grazing regulations for the public lands: comparison of alternatives.

<i>Protecting the Health of the Rangelands</i>			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Temporary Nonuse	* Grazing permittees or lessees may submit and the BLM may approve an annual application for temporary nonuse for no more than 3 consecutive years. Reasons for temporary nonuse include but are not limited to financial conditions or annual fluctuations of livestock.	* Grazing permittees or lessees could submit and the BLM could approve nonuse for no longer than 1 year at a time for resource reasons as well as for business or personal needs of the permittee or lessee (i.e., there would be no limit on consecutive years of nonuse allowed).	* Same as Proposed Action except that permittees or lessees could submit and the BLM could annually approve an application for nonuse for no more than 5 consecutive years.
Basis for Rangeland Health Determinations	* The present regulations do not prescribe how the BLM determines that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the rangeland health standards and conform with the guidelines.	* Determinations that existing grazing management practices or levels of grazing use are significant factors in failing to achieve standards and conform with guidelines would be based on standards assessments and monitoring.	* Same as proposed action except that the BLM would not be required to use both assessments and monitoring as basis for determinations, i.e., may be based on assessment or monitoring.

Table ES-1 (continued). Proposed revisions to grazing regulations for the public lands: comparison of alternatives.

<i>Protecting the Health of the Rangelands (continued)</i>			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Timeframe for Taking Action to Meet Rangeland Health Standards	* The BLM is required to take appropriate action as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management needs to be modified to ensure that the fundamentals of rangeland health conditions exist or progress is being made toward achieving the fundamentals of rangeland health	* Where standards and guidelines have not been established , the BLM would take appropriate action as soon as practicable but not later than the start of the next grazing year following completion of relevant and applicable requirements of law, regulations and consultation requirements to ensure <u>fundamentals of rangeland health</u> conditions exist or progress is being made toward achieving rangeland health.	* Same as Proposed Action.
	* Upon determining that existing grazing practices or levels of use are significant factors in failing to achieve standards and conform with guidelines for grazing administration, the authorized officer shall take appropriate action as soon as practicable but not later than the start of the next grazing year.	* Upon determining that existing grazing practices or levels of use are significant factors in failing to achieve standards and guidelines, the BLM would, in compliance with applicable laws and with the consultation requirements, formulate, propose, and analyze appropriate action to address failure to meet standards or conform to guidelines no later than 24 months after determination is made. Upon execution of agreement or documented decision, the BLM would implement appropriate actions as soon as practicable but not later than start of next grazing year. * BLM could extend the deadline when legally required processes that are the responsibility of another agency prevent completion of all legal obligations within the 24 month timeframe.	* Same as Proposed Action.

Table ES-1 (continued). Proposed revisions to grazing regulations for the public lands: comparison of alternatives.

<i>Increasing Administrative Efficiency and Effectiveness</i>			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Conservation Use	* <u>Conservation use</u> is defined, is identified as a component of permitted use, may be authorized for up to 10 years, and is addressed in other provisions. However, no conservation use permits can or have been issued due to the 10 th Circuit Court decision in 1999 that issuance of conservation use permits exceeds the Secretary's authority under the Taylor Grazing Act.	* All references to and provisions on <u>conservation use</u> would be deleted.	* Same as Proposed Action.
Definition of Grazing Preference, Permitted Use, and Active Use	* <u>Grazing preference or preference</u> is defined as a superior or priority position against others for the purpose of receiving a grazing permit or lease. This priority is attached to base property owned or controlled by the permittee or lessee.	* <u>Grazing preference or preference</u> would mean the total number of animal unit months on public lands apportioned and attached to base property owned or controlled by a permittee, lessee or an applicant for a permit or lease. Grazing preference would include active use and use held in suspension. Grazing preference holders would have a superior or priority position against others for the purpose of receiving a grazing permit or lease.	* Same as Proposed Action.
	* <u>Permitted use</u> is defined as the forage allocated by, or under the guidance of, an applicable land use plan for livestock grazing in an allotment under a permit or lease and is expressed in AUMS. The term permitted use encompasses authorized use including livestock use, suspended use and conservation use.	* The term <u>permitted use</u> would be dropped from the regulations and replaced with the term grazing preference, preference or active use , depending upon the context, throughout the regulations.	* Same as Proposed Action.
	* <u>Active use</u> means present authorized use, including livestock grazing and conservation use. Active use may constitute a portion, or all, of permitted use. Active use doesn't include temporary nonuse or suspended use within all or a portion of an allotment.	* <u>Active use</u> would be redefined to mean that portion of the present authorized use that is available for livestock grazing based on livestock carrying capacity and resource conditions in an allotment under a permit or lease and that is not in suspension.	* Same as Proposed Action.

Table ES-1 (continued). Proposed revisions to grazing regulations for the public lands: comparison of alternatives.

<i>Increasing Administrative Efficiency and Effectiveness (continued)</i>			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Definition and Role of Interested Public	* <u>Interested public</u> is defined as an individual, groups or organization that has submitted a written request to the authorized officer to be provided an opportunity to be involved in the decision-making process for the management of livestock grazing on specific allotments or has submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment.	* <u>Interested public</u> would be defined as an individual, group or organization that has: (1) Submitted a written request to BLM to be provided an opportunity to be involved in the decision-making process as to a specific allotment and followed up on that request by commenting on or otherwise participating in the decision-making process on management of a specific allotment; or (2) Submitted written comments to the BLM regarding management of livestock grazing on a specific allotment.	* Same as Proposed Action.
	* The BLM is required to consult, cooperate and coordinate with interested public on the following: <ul style="list-style-type: none"> • Designating/adjusting allotment boundaries. • Apportioning additional forage • Reducing permitted use • Emergency closures or modifications • Development or modification of grazing activity plan. • Planning of the range development or improvement program • Renewing/issuing grazing permit/lease • Modifying a permit/lease • Reviewing/commenting on grazing evaluation reports. • Issuing temporary non-renewable grazing permits. 	* Requirements to consult, cooperate and coordinate with the interested public would be modified as follows: <ul style="list-style-type: none"> • Removed • Retained • Removed • Removed • Retained • Retained • Removed • Removed • Retained (dropped reference to commenting) • Removed 	* Same as Proposed Action.

Table ES-1 (continued). Proposed revisions to grazing regulations for the public lands: comparison of alternatives.

<i>Increasing Administrative Efficiency and Effectiveness (continued)</i>			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Definition and Role of Interested Public (continued)	* BLM is required to send copies of proposed and final decisions to the interested public.	* Same as existing regulations.	* Same as existing regulations.
Water Rights	* Any right acquired on or after 8/21/95 to use water on public land for the purpose of livestock watering shall be acquired, perfected, maintained, and administered under the substantive and procedural laws of the State within which land is located. To the extent allowed by State law, any such water right shall be acquired, perfected, maintained, and administered in the name of the United States.	* The phrase – “on or after 8/21/95” - would be dropped from the first sentence. The second sentence of this provision - stating that, to the extent allowed by State law, any water right would be acquired, perfected, maintained, and administered in the name of the United States - would be removed.	* Same as Proposed Action.
Satisfactory Performance of Permittee or Lessee	* Requirements for satisfactory performance for renewal of permits and leases and for new permits or leases are defined in terms of when the applicant for such permits or leases is deemed not to have a satisfactory record of performance.	* The provisions on satisfactory performance would be moved from the section on “mandatory qualifications” to the section on “filing applications”. Minor editorial changes would be made in the definition of “satisfactory performance” for a new applicant for a permit or lease or for a permit or lease subsequent to a preference transfer – basically changing the definition from a negative (what “is not” satisfactory performance) to a positive (what “is” satisfactory performance).	* Same as Proposed Action.

Table ES-1 (continued). Proposed revisions to grazing regulations for the public lands: comparison of alternatives.

<i>Increasing Administrative Efficiency and Effectiveness (continued)</i>			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Changes in Grazing use Within Terms and Conditions of Permit or Lease	* Changes within the terms and conditions of the permit or lease may be granted by the authorized officer.	* Same as existing regulations.	* Same as existing regulations.
	* The present regulations do not define what is meant by “temporary changes in grazing use within the terms and conditions of the permit or lease.”	* “Temporary changes in grazing use within the terms and conditions of the permit or lease ” would be defined to mean temporary changes to livestock number, period of use, or both that would: (1) Result in temporary nonuse; or (2) Result in forage removal that does not exceed the amount of active use specified in the permit or lease ; and, unless otherwise specified in an allotment management plan, occurs no earlier than 14 days before the begin date specified on the permit or lease, and no later than 14 days after the end date specified on the permit or lease ; or (3) Result in both temporary nonuse and forage removal as defined above.	* Same as Proposed Action.
	* The present regulations do not include consultation requirements for such changes.	*The BLM would consult, cooperate and coordinate with the permittee or lessee on such changes.	* Same as Proposed Action.
Service Charges	* A service charge may be assessed for each crossing permit, transfer of grazing preference, application solely for nonuse and each replacement or supplemental billing notice except for actions initiated by the authorized officer. A specific fee is not identified in the present regulations, however the present fee for these actions is \$10.	* Except where BLM initiates the action, BLM would assess a service charge as shown below: (1) Issuance of crossing permit: \$75; (2) Transfer of grazing preference: \$145; (3) Cancellation and replacement of grazing fee billing: \$50	* Same as Proposed Action.

Table ES-1 (continued). Proposed revisions to grazing regulations for the public lands: comparison of alternatives.

<i>Increasing Administrative Efficiency and Effectiveness (continued)</i>			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Prohibited Acts	* There are three categories of acts that are prohibited on public lands.	* Same as existing regulations.	* Same as existing regulations.
	* The first category provides that permittees or lessees may be subject to civil penalties if they perform any of the 6 prohibited acts listed in this section.	* Same as existing regulations with several minor editorial changes and clarifications.	* Same as Proposed Action.
	* The second category provides that anyone, not just permittees or lessees, shall be subject to civil or criminal penalties if they perform any of the 11 prohibited acts listed in this section. Prohibited acts in this category include actions such as littering, damaging or removing U.S. property without authorization, and failing to reclose any gate or other entry during periods of livestock use.	* Same as existing regulations with some minor editorial changes.	* Same as the Proposed Action plus the following prohibited act would be added to this section: “Failing to comply with the use of certified weed seed free forage, grain, straw or mulch when required by the authorized officer.”
	* The third category provides that permittees or lessees could be subject to civil penalties for performance of acts listed in this section where: public lands are involved or affected; the violation is related to grazing use authorized by BLM; the permittee has been convicted or otherwise found to be in violation of any of these laws or regulations; and no further appeals are outstanding.	* The performance of prohibited acts in the third category of prohibited acts would be further limited to the performance of such acts on an allotment where the permittee or lessee is authorized to graze under a BLM permit or lease. In addition, there would be some minor editorial changes.	* Same as Proposed Action.

Table ES-1 (continued). Proposed revisions to grazing regulations for the public lands: comparison of alternatives.

<i>Increasing Administrative Efficiency and Effectiveness (continued)</i>			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Prohibited Acts (continued)	* The third category consists of three sets of prohibited acts including: <ul style="list-style-type: none"> • Specific laws or regulations (e.g., Endangered Species Act) • Federal or state laws pertaining to natural, environmental, or cultural resources • State laws related to livestock operations 	* Same as existing regulations.	The third category would consist of only 2 sets of prohibited acts including: <ul style="list-style-type: none"> • Specific laws or regulations (e.g., Endangered Species Act) • State laws related to livestock operations * Federal or state laws pertaining to natural, environmental, or cultural resources would be deleted from the prohibited acts list.

Table ES-1 (concluded). Proposed revisions to grazing regulations for the public lands: comparison of alternatives.

<i>Increasing Administrative Efficiency and Effectiveness (continued)</i>			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Grazing Use Pending Resolution of Appeals When Decision Has Been Stayed	* If a decision is stayed, the permittee or lessee will graze in accordance with the authorization issued the previous year.	* If a stay is granted on an appeal to a decision to cancel, suspend, change or renew a term permit or lease or to deny or offer a permit or lease to a preference transferee, then the BLM will authorize grazing under the immediately preceding permit or lease, or the relevant term or condition thereof.	* Same as Proposed Action.
	* If the applicant had no authorized grazing use the previous year or the application is for ephemeral or annual grazing use, then grazing use will be consistent with the final decision pending resolution of the appeal.	* Decisions on ephemeral or annual rangeland grazing use and nonrenewable grazing permits would be effective immediately or on the date specified in the decision. There would be no special provisions for grazing use if a stay is granted on such decisions, therefore if a stay is granted the decision would be inoperative and, if appropriate considering the specific stay, the livestock may have to be removed from the allotment.	
Treatment of Biological Assessments and Evaluations in the Grazing Decision-Making Process	* Present regulations do not specifically address biological assessments or biological evaluations prepared in compliance with the Endangered Species Act. However, in accordance with the IBLA <i>Blake</i> decision, biological assessments are to be treated as decisions subject to protest and appeal.	* A biological assessment or biological evaluation prepared for Endangered Species Act consultation or conference would not be a decision for purposes of protest or appeal.	* Same as Proposed Action.

Table ES-2. Comparison of the effects across alternatives.

Alternative 1	Alternative 2	Alternative 3
<i>Grazing Administration</i>		
<p>*BLM grazing administration would provide some partnership opportunities.</p> <p>*Mechanisms for changing grazing management would be hurried, impractical, inefficient, and discourage partnerships, and may result in decisions of inconsistent quality.</p> <p>*The consideration and documentation of social, economic and cultural effects of grazing decisions would remain inconsistent.</p> <p>*The timeframe for implementing changes in use would be determined on a case-by case basis.</p> <p>*Cooperation with government established grazing boards would be inconsistent.</p> <p>*Decisions on day-to-day operations would cumbersome, inefficient and untimely.</p> <p>*Biological assessments and evaluations could be appealed, creating workloads that would displace other high priority work such as monitoring, and delaying implementation of grazing decisions.</p>	<p>*The regulations would promote greater partnership with grazing permittees, lessees, and grazing advisory boards.</p> <p>*The extended timeframe for developing appropriate action following a determination would yield reasoned, comprehensive and sustainable decisions. This timeframe would delay on-the-ground action in a relatively small number of allotments but would improve cooperation and build partnerships with permittees and lessees.</p> <p>*Ensure greater consistency in the consideration and documentation of relevant social, economic, and cultural impacts.</p> <p>*The requirement to use monitoring data to support determinations on allotments that fail to meet standards because of existing grazing management may result in an additional workload for BLM.</p> <p>*Reprioritizing data collection efforts to conduct monitoring may effect watershed assessment schedules and could delay permit renewal where current monitoring data is not available.</p> <p>*Allowing shared title to permanent structural range improvements may stimulate private investment.</p> <p>*BLM would focus communications with interested public on significant issues occurring on grazing allotments where input would be of the greatest value.</p> <p>*By providing that biological assessments are not subject to appeal, BLM would be able to more efficiently and timely make changes in grazing management.</p>	<p>*Similar to Alternative 2 but with additional overall flexibility at the local level.</p> <p>*Allowing BLM discretionary authority for phase-in period instead of requiring 5-year timeframe could provide additional protection for wildlife or other sensitive resources.</p> <p>*Allowing discretionary use of monitoring data for standards determinations rather than requiring it would allow BLM to flexibility at the local level to prioritize data and information collection.</p> <p>*The provision allowing the requirement to use weed seed free forage, grain, straw or mulch would provide enforcement authority as a preventative measure to reduce the spread of noxious weeds.</p>

Table ES-2 (continued). Comparison of the effects across alternatives.

Alternative 1	Alternative 2	Alternative 3
<i>Vegetation</i>		
<p>*Vegetation would move toward achievement of management objectives. *Timelines for formulating management changes may limit vegetation management alternatives and strain working relationships with permittees or lessees. *Riparian vegetation would remain static or improve slightly.</p>	<p>*Vegetation would move toward achievement of management objectives. *Potential for short-term adverse effects where vegetative conditions are in a downward trend and recovery is delayed. *Additional resources may be invested in improvements due to partnerships and improved working relationships. *Increased flexibility for temporary nonuse may result in greater alignment between forage production and utilization levels. *Increased flexibility to negotiate cooperative water developments may stimulate private investments and assist BLM to achieve vegetation management objectives. *Riparian vegetation would remain static or improve slightly.</p>	<p>*Similar to Alternative 2 but the flexibility in the use of monitoring or standards assessments data for making determinations and the timeframe for implementing management changes would allow BLM to accelerate short-term vegetative recovery. *Weed seed-free forage enforcement authority would result in slower weed expansion rates..</p>
<i>Fire and Fuels</i>		
<p>*A minimal effect on the ability to reach a more historical fire regime.</p>	<p>*A slight improvement in the ability to reestablish historical fire regimes resulting in vegetation improvements.</p>	<p>*Similar to Alternative 2.</p>
<i>Soils</i>		
<p>*Short-term adverse impacts would be minimal except at the local scale. *Would result in maintenance of or slight improvement in conditions in the long term.</p>	<p>*Short-term adverse impacts would be minimal except at the local scale where watershed cover is inadequate. *Maintenance or slight improvement would be expected in the long-term due to maintenance of adequate watershed cover.</p>	<p>*Overall the effects would be neutral to slightly beneficial because of maintenance or slight improvement in watershed cover. * Allowing greater discretion in the phase-in schedule, and choice of data used for making determinations may allow more rapid implementation of changes, accelerating recovery of watershed cover. A weed-seed free forage provision that reduces the spread of weeds might enhance watershed cover.</p>

Table ES-2 (continued). Comparison of the effects across alternatives.

Alternative 1	Alternative 2	Alternative 3
<i>Water Resources</i>		
<p>*The proposed changes would have little or no impact on short-term water resource conditions. *Slow improvement in watershed conditions would be expected for the long term. *Water quality would remain static or improve slowly.</p>	<p>*Similar to Alternative 1.</p>	<p>*Similar to Alternative 1.</p>
<i>Air Quality</i>		
<p>*Air quality would be expected to be maintained or improved and within standards.</p>	<p>*Similar to Alternative 1.</p>	<p>*Similar to Alternative 1.</p>
<i>Wildlife</i>		
<p>*Risks and benefits to wildlife and wildlife habitat, are not expected to change. *Current timeframes for developing grazing management changes would impede adequate analysis and consultation, resulting in less effective and acceptable decisions on wildlife.</p>	<p>*In the long-term, there would be little or no effect on wildlife due to better partnerships with permittees and lessees and longer timeframes for developing effective and acceptable decisions. *Implementation of changes in grazing use and timeframes for taking action could have an adverse effect on wildlife in the short-term in a small number of allotments. *The elimination of the 3 consecutive year limit on temporary non-use could improve opportunities for cooperation to benefit wildlife resources by allowing a longer recovery period. *The extended timeframe would allow formulation of reasoned, comprehensive and sustainable decisions that, in the long term, may benefit wildlife.</p>	<p>*Changes in temporary non-use over current regulations from 3 to 5 consecutive years would slightly benefit wildlife. *Allowing greater discretion for BLM managers to schedule phasing in changes in grazing use would allow more rapid implementation benefiting wildlife. *Allowing greater discretion on the type of data used for making rangeland health determinations would allow more rapid implementation, benefiting wildlife resources. *A weed-seed free forage provision that reduces the spread of weeds would enhance wildlife habitat. *Removal of certain prohibited acts would eliminate a mechanism for protecting wildlife.</p>
<i>Special Status Species</i>		
<p>*Risks and benefits to special status species, are not expected to change *Effects similar to wildlife in Alternative 1.</p>	<p>*No effect on most special status species. *At risk species and those designated by each BLM State Director as BLM-sensitive may be affected in the short-term in a small number of allotments however, in the long-term, there would be little or no effect.</p>	<p>*Similar to wildlife effects in Alternative 3.</p>

Table ES-2 (continued). Comparison of the effects across alternatives.

Alternative 1	Alternative 2	Alternative 3
<i>Wild Horses and Burros</i>		
*Little affect on wild horse and burro populations on public lands.	*Slight long-term beneficial impact from improved condition of the vegetation on habitat areas through an improved decision making process.	*Similar to Alternative 2.
<i>Recreation</i>		
*Minimal impacts to the Recreation Program. *Slight improvement where the vegetation is improved.	*Minimal impacts to the Recreation Program. *Slight improvement where the vegetation is improved. *Effects could be adverse in the short term if corrective actions are delayed.	*Similar impacts to alternative 2. *The reduction of weed expansion would have an additional benefit to recreation interests.
<i>Special Areas</i>		
*Little impact due to existing good conditions and Special Area mandates.	*Little impact due to existing good conditions and Special Area mandates.	*Slight improvement of conditions on the long term due to reduction of weed expansion.
<i>Heritage Resources: Paleontological and Cultural Resources (Properties)</i>		
*Heritage resources are protected through case-by-case, site specific surveys and analysis. *Prohibited act regarding removal or destruction of cultural resources may act as a deterrent.	*There would be little to no effect on heritage resources. * New on-the-ground projects would be analyzed on a case-by-case basis.	* There would be little to no effect on heritage resources. * New on-the-ground projects would be analyzed on a case-by-case basis.
<i>Economic Conditions</i>		
*Local/regional economic effects would be minor. *On-going effects include: 1) low flexibility; 2) lack of incentive to participate in range improvements; 3) lack of time to implement land health determinations; and 4) lack of cost recovery.	*Local/regional economic effects would be minor. *Primary effects would be: 1) Increased flexibility; 2) Increased BLM costs; 3) reduced adverse impacts on ranchers from herd reductions; 4) increased service charges for ranchers and increased cost recovery for BLM.	*Similar to Alternative 2. *Greater discretion for BLM managers in implementing changes in use and using monitoring data for land health determinations could have an adverse economic impact on ranchers.

Table ES-2 (concluded). Comparison of the effects across alternatives.

Alternative 1	Alternative 2	Alternative 3
<i>Social Conditions</i>		
<p>*Ranchers would continue to face increasing stress related to public land grazing.</p> <p>*Ranchers would continue to have difficulty passing ranch on to the next generation.</p> <p>*Ranchers would continue to sell ranches for amenity reasons and subdivision.</p>	<p>*Ranching, environmental and recreation interests perceive the monitoring requirements as being positive and believe this provision would provide beneficial social impacts.</p> <p>*Ranchers would experience beneficial social effects as a result of most provisions – particularly documentation of social, economic, and cultural impacts, phasing in of implementation of changes, required cooperation with grazing boards, focusing stock water rights provision on following state law and providing more time for developing appropriate action following rangeland health determination.</p> <p>*Ranchers would experience adverse social effects from the removal of the limit on consecutive years of nonuse.</p> <p>*Environmental groups would experience adverse social effects from the stock water rights provision change.</p> <p>*Social effects on environmental interests and recreation interests would generally be minimal or neutral for most of the other proposed revisions.</p>	<p>*There could be minimal social effects on ranchers and conservation groups due to BLM having discretion to use monitoring for rangeland health determinations.</p> <p>*Elimination of certain prohibited acts would have an adverse effect on conservation, environmental and recreation groups.</p>
<i>Environmental Justice</i>		
<p>*No disproportionate effects on low-income, minority, or Tribal populations.</p> <p>*Would not result in violation of environmental justice principles.</p>	<p>*No disproportionate effects on low-income, minority, or Tribal populations.</p> <p>*Would not result in violation of environmental justice principles..</p>	<p>*No disproportionate effects on low-income, minority, or Tribal populations.</p> <p>*Would not result in violation of environmental justice principles.</p>

Chapter 1

Introduction



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1.0 Introduction

This final environmental impact statement (EIS) analyzes the Bureau of Land Management (BLM) proposed amendments to the regulations governing livestock grazing on public lands. The existing grazing regulations are found in Title 43 of the Code of Federal Regulations, Part 4100, Grazing Administration—Exclusive of Alaska (43 CFR 4100). A copy of the regulations which includes revisions reflected in the proposed action (Alternative 2) is shown in Appendix A of this document. One copy is shown as Appendix A.1 in a strike-and-replace format to enable the reader to see how the proposed changes differ from the existing regulations. A second copy of the proposed regulations without strike and replace is shown as Appendix A.2.

When new regulations are under consideration, an EIS may be prepared even if the environmental impacts of the rule are not expected to be significant. 40 CFR Section 1502.4(b). This proposed rulemaking is designed to provide limited refinements to the larger grazing reforms made in 1995. The BLM does not anticipate that the proposed changes would have significant environmental effects, but BLM recognizes that even small changes in the management of public lands can generate a high level of public interest. Given this interest, BLM decided to prepare an EIS to fully analyze the potential impacts, consider alternatives, and provide a means of public discussion

A full text final EIS has been prepared and, therefore, contains substantially the same contents as the Draft EIS, with the following exceptions: (1) several appendixes are incorporated by reference rather than reprinted in this document; and (2) responses to substantive comments that were received on the draft are incorporated in this final EIS.

In addition, changes have been made in the EIS as a result of BLM's review and evaluation of comments received on the draft EIS. Some of the changes are purely editorial and do not affect the substance or meaning of the text. These changes are made throughout the document and are not specifically identified or summarized elsewhere in this final EIS. Such changes include:

- Minor editorial changes to correct spelling errors, grammatical errors, and awkward sentence structure, and to eliminate redundant text.
- Minor formatting changes to improve readability. For example, paragraph breaks were added or bullets used to show lists. No substantive changes in text resulted from these minor formatting changes.
- Minor clarifications deemed necessary or appropriate. For example, wherever there were references to the document as a "draft EIS," it was changed to "EIS."

Other more significant or substantive changes in the text are summarized at the beginning of each chapter to this final EIS following the general description of the contents of the chapter.

Chapter 1 of this final EIS contains background information on the livestock grazing program, a discussion of the purpose and need for the regulatory revisions, a brief overview of public participation in this rulemaking, a review of the rulemaking and EIS process and schedule, and a discussion of the relationship of this effort to other policies, programs and plans.

Changes in Chapter 1 based on comments on the draft EIS include the following:

- Clarifications to avoid misunderstanding of intent or meaning:
 - Section 1.0, Introduction—Clarified rationale for doing an EIS.
 - Section 1.1.1, Laws Governing the BLM Grazing Management Program—Minor changes to clarify BLM’s goals in managing public lands.
 - Section 1.1.3, Land Use Plans—Minor changes to clarify purpose of land use plans.
 - Section 1.1.4, Overview of the Livestock Grazing Program—The discussion on the history of grazing privileges on public lands is revised and expanded to clarify the background of grazing preference.
 - Section 1.2.2.4, Cooperation with Grazing Boards Established by state, county, and Local Governments—The section title as well as text is modified to clarify that we are talking about cooperation with grazing boards established by non-federal government entities, Public comments on the draft EIS reflected a misunderstanding of the discussion in Chapter 1 and elsewhere in the draft EIS regarding this issue. Some thought we were talking about BLM established grazing advisory boards and others thought we were talking about non-government grazing boards or groups. This section is also reorganized to improve clarity.
 - Section 1.2.2.5, Review of Biological Assessments and Evaluations—The definitions of “biological assessment” and “biological evaluation” are modified to clarify the difference between the assessments and evaluations. Other minor changes are also made in this section to improve clarity.
- Section 1.2.2.11, Definition and Role of the Interested Public—Clarification that requirements for interested public involvement in grazing program is more extensive than for other BLM programs; also other minor edits.
- Section 1.2.2.13, Satisfactory Performance of Permittee or Lessee—Clarification that satisfactory performance provisions also apply to applicants for a grazing permit or lease subsequent to a preference transfer.
- Section 1.2.2.18, Treatment of Biological Assessments and Evaluations in the Grazing Decision-Making Process—The definitions of “biological assessment” and “biological evaluation” are modified to clarify the difference between the assessments and evaluations. Other minor corrections in this section including correction of citation of Blake v. BLM IBLA case.
- Clarifications to ensure consistency with regulatory language:
 - Section 1.2.2.2—Language is added to clarify that the pre-1995 phase-in requirements were for changes *in excess of 10 percent*.
 - Section 1.2.2.10—Language is added to clarify that grazing preference under the current regulations means a

- “superior or priority position against others for the purpose of receiving a permit or lease.”*
- Changes in text to correct errors or misleading statements made in draft EIS:
 - Section 1.2.2.8, Timeframe for Taking Action to Meet Rangeland Health Standards—Replaced “Archaeological Resources Protection Act” with “National Historic Preservation Act.”
 - Section 1.2.2.12, Water Rights—The text in the draft EIS stated that in 1995, the BLM added a provision that “water rights would be sought solely in the name of the United States under state water law.” This is not correct. The 1995 rule did not state that water rights would be sought “solely” in the name of the United States and, in fact, the preamble to the 1995 rule stated that co-application and joint ownership would be allowed where state law permits it. The word “solely” is dropped from this section in Chapter 1. This issue is also clarified in a new section in Chapter 3. The discussion in Chapter 1 is further clarified by indicating that under the current regulations water rights will be sought in the name of the United States “to the extent allowed” under state law.
 - Corrections in figures:
 - Figure 1.4, EIS and Rulemaking Process—Corrections are made in the figure to make it consistent with the discussion of the rulemaking and EIS process in the text of Section 1.4.
 - Additions to the EIS:
 - Section 1.1.4, Overview of the Livestock Grazing Program—New material is added addressing consultation and other legal requirements that must be completed prior to implementing an appropriate action if livestock grazing practices or levels of grazing use are determined to be a significant factors in failure to achieve standards and conform with guidelines. In addition, information on the number of permits and leases held in 2003 is added to the text in this section.
 - Section 1.3.3., Issuance of Proposed Rule and Draft EIS—A new section is added providing background information on the issuance of the proposed rule and the draft EIS and the public review period for both documents.
 - Other Changes:
 - Section 1.3—The title of this section is changed from “Scoping” to “Overview of Public Participation” to reflect changes in the content.

1.1 Background

A brief summary of the livestock grazing program, including laws, regulations, and program operations, is presented below. This information is provided to assist the reader in understanding the context of the revisions to the regulations.

1.1.1 Laws Governing the BLM Grazing Program

The primary laws that govern grazing on public land are the Taylor Grazing Act

(TGA) of 1934, the Federal Land Policy and Management Act (FLPMA) of 1976, and the Public Rangelands Improvement Act (PRIA) of 1978.

BLM's goal is to manage the public rangelands in a way that maintains or improves their condition. The TGA directs that occupation and use of the range be regulated to preserve the land and its resources from destruction or unnecessary injury, and to provide for the orderly use, improvement, and development of the range. The FLPMA provides authority and direction for managing the public lands on the basis of multiple use and sustained yield and mandates land use planning principles and procedures for the public lands. The PRIA defines rangelands as public lands on which there is domestic livestock grazing or which are determined to be suitable for livestock grazing, establishes a national policy to improve the condition of public rangelands so they will become as productive as feasible for all rangeland values, requires a national inventory of public rangeland conditions and trends, and authorizes funding for range improvement projects.

1.1.2 Grazing Regulations

The BLM administers its grazing program under 43 CFR 4100 of the Code of Federal Regulations (CFR). The regulations carry out the laws enacted by Congress.

Since the first set of grazing regulations was issued after passage of the Taylor Grazing Act in 1934, they have been periodically amended and updated. The last major revision was called Rangeland Reform. Rangeland Reform was proposed in partnership with the Forest Service in the U.S. Department of Agriculture. The broad purpose of Rangeland Reform was to improve ecological conditions while allowing for sustainable development. Changes made

to the grazing rules in 1995 included the following:

1. Revised the term "grazing preference" to mean a priority position against other applicants for receiving a grazing permit, rather than a specified amount of public land forage apportioned and attached to a base property owned or controlled by a permittee or lessee, and added the term "permitted use" to describe forage use amounts authorized by grazing permits or leases;
2. Removed the requirement that one must be engaged in the livestock business to qualify for grazing use on public lands;
3. Required applicants for a new or renewed grazing permit to have a satisfactory record of performance;
4. Provided that BLM could issue a conservation use permit to authorize permittees not to graze their permitted allotments;
5. Limited authorized temporary nonuse to 3 consecutive years;
6. Required grazing fee surcharges for permittees who do not own the cattle that graze under their permits;
7. Provided that title to permanent range improvements authorized under cooperative range improvement agreements, such as fences, wells, and pipelines, be in the name of the United States rather than proportionately sharing title with the cooperators;
8. Required livestock operators and the BLM to use cooperative agreements to authorize new permanent water

- developments, instead of allowing some water developments to be authorized under range improvement permits;
9. Provided that after August 21, 1995, the United States, if allowed by state water laws, would acquire livestock water rights on public lands;
 10. Authorized BLM to approve nonmonetary settlement of nonwillful grazing trespass under certain circumstances;
 11. Expanded the list of prohibited acts applicable to grazing activities;
 12. Established Fundamentals of Rangeland Health; and
 13. Created a process for developing and applying state or regional standards for land health and guidelines for livestock grazing as a yardstick for grazing management performance.

In addition, revisions were made to BLM's regulations at 43 CFR Subpart 1784 on Advisory Committees to establish Resource Advisory Councils (RACs) to allow for increased public participation in and advice to BLM resource management programs. The RACs replaced the BLM grazing advisory boards and district advisory councils, and were set up to represent diverse interests and employ consensus decision making.

Policy and procedural guidance on how to implement the regulations is provided in BLM manuals and handbooks.

1.1.3 Land Use Plans

Under FLPMA, public land must be managed pursuant to land use plans using multiple use and sustained yield concepts and a systematic interdisciplinary approach to

achieve integrated consideration of physical, biological, economic, and other sciences. Additionally, the public land must be managed to recognize the nation's need for domestic sources of minerals, food, timber, and fiber. FLPMA requires that land use plans be prepared to achieve these and other statutory objectives.

Land use plans are designed to set goals for land use and future conditions that BLM and others believe are desirable. The Bureau of Land Management's land use plans provide the basis for every action and approved use that takes place on land the agency manages, and are created with the help of interested individuals and groups from the public and government. Each BLM Field Office is required to be covered by a land use plan and grazing is a resource use where appropriate.

On the basis of present planning guidance, livestock grazing decisions found in land use plans include the identification of lands available or not available for livestock grazing; for those lands available for grazing, identification on an areawide basis of both existing permitted use and future anticipated permitted use with full implementation of the land use plan while maintaining a thriving ecological balance and multiple-use relations; and identification of guidelines and criteria for future allotment-specific adjustments in permitted use, season of use, or other grazing management practices. Standards for rangeland health and guidelines for grazing administration may also be incorporated into land use plans.

FLPMA requires that the public be involved in the development of land use plans. Public participation and collaboration are encouraged throughout the planning process. NEPA also sets forth as policy that Federal agencies shall to the fullest extent possible encourage and facilitate public involvement in decisions which affect the

quality of the human environment. One of the primary functions of NEPA is to disclose to the public the effects on the human environment of proposed actions and alternatives. The BLM uses a process to create or update land use plans that is fully integrated and consistent with the NEPA process and Council on Environmental Quality regulations.

1.1.4 Overview of the Livestock Grazing Program

All allowable uses on BLM lands, such as grazing, are described in land use plans. These plans now provide for about 160 million acres (see Figure 1.1) in the West as available for livestock grazing. The instrument that authorizes grazing use is called a grazing permit or lease. A BLM grazing permit or lease authorizes a permittee or lessee to graze livestock on one or more grazing administrative units called allotments. Permittees or lessees can be individual citizens or business entities such as corporations, associations, and partnerships. Allotments range in size from small (1,000 acres or fewer) to vast (more than a million acres).

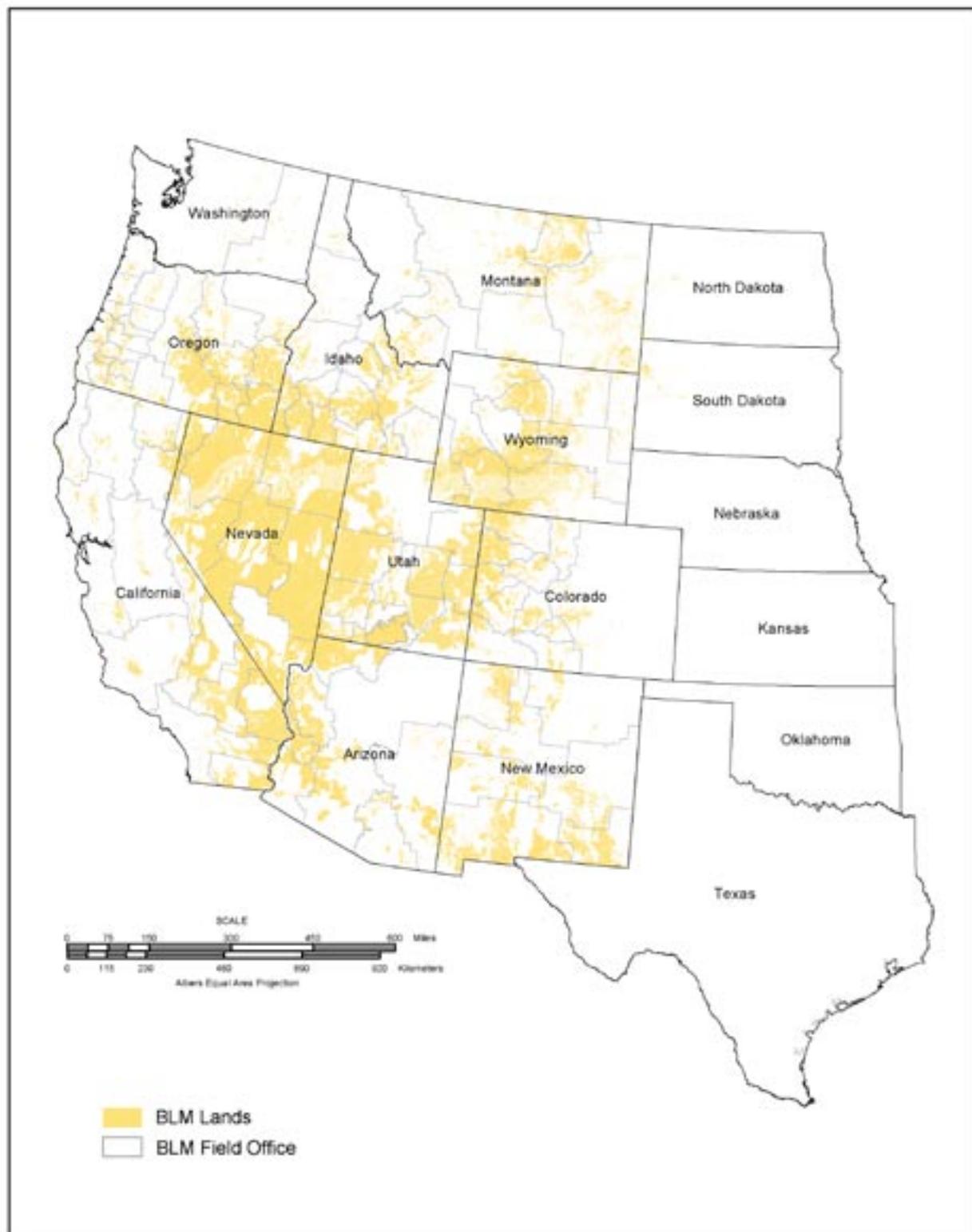
The Taylor Grazing Act of 1934 (TGA) mandates the government to determine, for the western public lands, how much forage is available for livestock grazing, who should get the grazing permits, and how grazing is to occur. The TGA provides that preference for a permit shall be given in the issuance of grazing permits to nearby landowners engaged in the livestock business, settlers, those who owned water or water rights, and other stockowners as necessary to permit the proper use of the privately owned land or water. The TGA also provides that recognized and acknowledged grazing privileges shall be adequately safeguarded, so far as consistent with the purposes of the

TGA. Once this system was established, Congress intended that the grazing privilege was to be safeguarded as long as it comported with sound land management practices. Where FLPMA land use planning has determined that grazing continues to be an appropriate use of the land, permittees or lessees who comply with their permits or leases and other applicable rules and regulations receive first priority for renewal of their expiring permits or leases.

The government developed a system for keeping records regarding who has priority for grazing privileges on public land. In the years immediately following enactment of the Taylor Grazing Act, following the recommendations of locally established Grazing Advisory Boards, the Grazing Service awarded grazing privileges to those applicants who qualified under the Act for public land grazing use. These privileges were expressed as units of forage (e.g. “animal unit months,” “cattle yearlong”) and were “attached” to privately owned land or water, commonly called “base lands” or “base waters.” Once public land grazing privileges were attached to privately owned land, water or water rights, as the case may be, whoever controlled the base property was recognized by the government as having preference to use the public land grazing privileges attached to that property, and upon application were granted a permit that authorized grazing use to the extent of their recognized grazing privileges. This system also allows for grazing preference to be transferred from one property to another.

The amount of forage that a permittee may graze on an allotment each year is called “active use” and the lessee or permittee is obligated to graze livestock at this level unless resource conditions or other considerations warrant taking nonuse. When the owner or lessee of a base property applies

Figure 1-1. Public Lands in the West.



for grazing use, he or she is issued a permit or lease that specifies which allotment(s) are to be used, the number of livestock to be allowed, when they can graze, and other management terms and conditions. In some instances, there is an "Allotment Management Plan" (AMP) that describes in detail how grazing is to occur on a specific allotment, and these plans become part of the grazing permit or lease.

Sometimes operators do not wish to graze all of the active use allowed by their permits or leases. When this happens, BLM can approve nonuse to help conserve resources or for other reasons specified by the permittee or lessee, including financial reasons. In some instances, BLM may temporarily authorize another operator to make grazing use through a nonrenewable permit if the nonuse is not for resource conservation reasons. In a good growth year, forage is temporarily available on the range that exceeds the amount of use permitted. When this happens, BLM may temporarily authorize grazing use that exceeds the established level of permitted use.

The BLM may allow operators to graze livestock owned by another entity on their permitted allotments. When this happens, they must submit a livestock control agreement to BLM and pay an extra fee called a surcharge.

The BLM may cancel a permit or lease and the preference for the permitted use that was attached to the base property for grazing rules violations. This happens in few instances, but when it does, BLM may award the forage to a new applicant.

Permits or leases may be modified as a result of, among other things, implementation of the rangeland health standards and guidelines process in which data (i.e., vegetation, watershed, wildlife, and others) are collected and analyzed by a BLM interdisciplinary team. The team

also considers any other resource and land use plan issues and provides an evaluation report to the BLM authorized officer. The authorized officer then determines if an allotment has met the standards for rangeland health, and if not, identifies the significant causal factors for not meeting the standards.

Upon determining that existing grazing management practices or levels of grazing use are significant factors in failure to achieve the rangeland health standards and conform to the guidelines, the BLM has until the next grazing season to implement appropriate actions that will result in significant progress toward meeting them. If the appropriate actions include a modification to a permit or lease, the BLM must consult, cooperate and coordinate with the affected permittees or lessees, the state having lands or responsibility for managing resources within the area, and the interested public prior to making a decision on the modification. Actions to be implemented must be analyzed through the NEPA process, which normally requires an environmental assessment. After undergoing the NEPA process as well as satisfying any other applicable and relevant legal requirements, the actions are incorporated into the new grazing permit or lease and then the permit or lease is issued. Whether an allotment does or does not meet a standard for rangeland health, the effects of issuing, modifying or renewing a permit or lease are appropriately analyzed under the NEPA.

Another tool for maintaining or improving land conditions is to install rangeland improvement projects, such as water pipelines, reservoirs, or fences.

In 2002, grazing operators held 18,142 BLM grazing permits and leases. These permits and leases allowed for as many as 12.7 million Animal Unit Months (AUMs) of grazing use, with 7.9 million AUMs authorized as active use and 4.8 million

AUMs authorized as temporary nonuse or conservation use. In 2003, grazing operators held 18,021 grazing permits and leases and AUM usage declined to 6.9 million. This decline was the result of decreased forage growth due to extended drought, fire, and other factors. This decrease in forage resulted in ranchers reducing their herds and using less AUMs than allowed under grazing permits and leases.

1.2 The Purpose of and Need for the Proposed Action

The overall purpose and need for revising the regulations, as well as the purpose of and need for revising specific elements of the regulations, are described in this section.

1.2.1 General Purpose and Need

During the nine years since implementation of the 1995 grazing reforms, a number of discrete concerns have been raised regarding the administration of grazing management. The purpose of this proposed action is to address a variety of these discrete issues related to the current regulatory scheme without altering the fundamental structure of the grazing regulations. In other words, we are adjusting rather than conducting a major overhaul of the grazing regulations. Fundamental changes such as modifications to the grazing fee provisions; the addition of fundamentally new regulatory topics; or the removal of substantial sections of the regulations do not meet this limited purpose.

1.2.2 Purpose and Need by Topic

There is an ongoing need to improve the working relationships with permittees and lessees, to protect the health of rangelands, and to increase the administrative efficiency

and effectiveness of the BLM grazing management program. These goals are often inter-related. For example, improved relationships with grazers are likely to foster both better management efficiency and healthier rangelands. Likewise steps that may directly improve management efficiency are likely to lessen the bureaucratic frustrations that can harm working relationships and sometimes inhibit the protection of rangeland health.

Based on field experiences, internal comments, and public input, including feedback during the scoping process, the BLM identified 18 issues to be addressed in this rulemaking. We grouped these issues into three categories – those that would primarily contribute to improving working relations with permittees and lessees; those that would primarily contribute to protecting the health of the rangelands; and those that would primarily contribute to increasing administrative efficiency and effectiveness, including resolution of legal issues. The issues are listed below by category.

Improving Working Relations with Permittees and Lessees

- Social, Economic, and Cultural Considerations in the Decision-Making Process
- Implementation of Changes in Grazing Use
- Range Improvement Ownership
- Cooperation with Tribal, state, Local, and county Established Grazing Boards
- Review of Biological Assessments and Biological Evaluations

Protecting the Health of the Rangelands

- Temporary Nonuse

- Basis for Rangeland Health Determinations
- Timeframe for Taking Action to Meet Rangeland Health Standards
- Increasing Administrative Efficiency and Effectiveness, Including Resolution of Legal Issues
- Conservation Use
- Definition of Grazing Preference, Permitted Use, and Active Use
- Definition and Role of Interested Public
- Water Rights
- Satisfactory Performance of Permittee or Lessee
- Changes in Grazing Use Within the Terms and Conditions of Permit or Lease
- Service Charges
- Prohibited Acts
- Grazing Use Pending Resolution of Appeals when Decision has been Stayed
- Treatment of Biological Assessments and Biological Evaluations in the Grazing Decision-Making Process

1.2.2.1 Social, Economic, and Cultural Considerations

NEPA and its implementing regulations require that all Federal agencies use qualified specialists from the various physical and social science disciplines to perform analyses, such as environmental assessments, under this law. In addition to assessing effects on various environmental elements such

as vegetation, wildlife, and water quality, the law and NEPA regulations require the BLM to assess effects on economic, social, and cultural environments. No specific reference to these elements exists in the present BLM grazing regulations. The degree and nature of documentation of social, economic and cultural factors in NEPA documents varies across the BLM. The question remains whether BLM should change its grazing regulations to include language concerning the analysis of economic, social, and cultural effects, thereby enhancing consistency and clarity. Many grazing operators believe that these factors are not adequately considered by BLM and that they should always be part of the written analysis in NEPA documents. This issue is addressed in this EIS.

1.2.2.2 Implementation of Changes in Grazing Use

When BLM implements substantial changes in a permittee's or lessee's active use, this is sometimes done within a timeframe that causes sudden adverse economic effects, affects the ability to make operational adjustments such as pasture rotations, or does not allow enough time for herd size changes. In these instances, the opportunity to monitor and adjust based on increments of change is also foregone. Before the 1995 Rangeland Reform changes, there was a 5-year phase-in period in the regulations for the implementation of changes in active use in excess of 10 percent. To address concerns about this issue, consideration is given in this rulemaking and EIS to the implementation of changes in active use within a timeframe that allows such changes to be absorbed without an unreasonably adverse effect on a permittee or lessee.

1.2.2.3 Range Improvement Ownership

The regulations that went into effect in 1995 provided that title to new permanent range improvements developed under a cooperative range improvement agreement would be held by the United States government, even if a grazing user funded or built them. This change was meant to conform with the common law concept that title to permanent improvements should go to the landowner, which in this case is the Federal government. This change was also implemented to conform to the practice of the Forest Service and to BLM's own practice before rule changes took place in the early 1980s. However, many grazing operators have said that having range improvements jointly owned by the Federal government and the operator contributes to healthy range conditions and allows them to more easily obtain loans for their operations. They have also said that joint ownership would offer an incentive for operators to construct improvements, and that the present situation leaves them with little incentive to invest in improvements if they can't claim the value of their contribution as part of their ranching operation. Grazing users believe that, under present regulations, the fact that range improvements are entirely owned by the Federal government does not adequately reflect their role in purchasing and/or installing those improvements. Consideration of shared ownership of range improvements is, therefore, an issue addressed in this rulemaking and EIS.

1.2.2.4 Cooperation with Grazing Boards Established by Tribal, State, County, or Local Governments

The present grazing regulations provide that the BLM will cooperate with other agencies and units of government that have responsibilities for grazing on public lands,

and specifically state that the BLM will "cooperate with state, county, and Federal agencies in the administration of laws and regulations relating to livestock, livestock diseases, sanitation, and noxious weeds including (a) State cattle and sheep sanitary or brand boards...and (b) County or other local weed control districts...."

In many western States, grazing boards have been established by Tribal, state, county, or local governments to provide them with guidance and advice on grazing management issues. There is no specific provision, however, in the present regulations that requires BLM to cooperate with such grazing boards. In other words, grazing boards established by Tribal, state, county or local governments are not listed in the regulations even though other boards, such as state brand boards, are specifically identified.

Section 401 (b)(1) of FLPMA states that a portion of the grazing fees collected are to be set aside for range betterment, and, after BLM consults with the local user representatives, half the fee amount is to be used in the area where the fees were collected for range rehabilitation, protection, and improvements. Grazing interests and state and local governments have raised concerns that existing grazing advisory boards have not been used effectively by the BLM and are underutilized as a tool for gathering local input for BLM decisions on range improvements as well as allotment management planning which generally address range improvements. For these reasons, the BLM is addressing the issue of cooperation with such grazing boards, where they exist, in this rulemaking and EIS.

1.2.2.5 Review of Biological Assessments and Evaluations

Under the current regulations, the BLM must, to the extent practical, provide

the permittee, the pertinent state, and the interested public an opportunity to review reports that are used to support decisions for making changes in grazing use. Such reports may include biological assessments and biological evaluations which are prepared in compliance with consultation requirements of the Endangered Species Act (ESA). The present regulations do not specifically address the review of biological assessments or biological evaluations.

A biological assessment (BA) is prepared by an agency to determine whether a proposed action is likely to (1) adversely affect listed species or designated critical habitat, (2) jeopardize the continued existence of species that are proposed for listing; or (3) adversely modify critical habitat. BAs must be prepared for “major construction activities.” [50 CFR §402.02; 50 CFR §402.12]. The BA is submitted by the preparing agency to the U.S. Fish and Wildlife Service (FWS) and/or the National Oceanic and Atmospheric Administration, Fisheries (NOAA, Fisheries) as part of the formal Section 7 consultation process in compliance with the ESA.

A biological evaluation (BE) is a documented review of an agency’s programs or activities in sufficient detail to determine how an action or proposed action may affect any threatened, endangered, proposed or sensitive species or proposed or designated critical habitat. BEs are often prepared in the format of a BA. Where listed species are not likely to be adversely affected and formal consultation is not anticipated, the BE provides the basis of evaluation during informal consultation with the FWS and/or NOAA, Fisheries.

When biological assessments or biological evaluations are included within the body of information that is used to support modification of grazing permits, the BLM is required, to the extent practical, to make

these assessments available for comment and review by the affected permittees and lessees, the interested public, and state agency staff. However, BLM has not been consistent in making these assessments or evaluations available. Therefore, a solution is needed to ensure more consistent application of opportunities for public review of biological assessments and biological evaluations based on the nature and purpose of the document. Consideration of this issue is addressed in this rulemaking and EIS.

1.2.2.6 Temporary Nonuse

Before the 1995 regulatory changes, permittees or lessees could apply to not use all or a portion of their active grazing use for purposes of conservation and protection of the public lands because of annual fluctuations of livestock operations, for financial or other reasons beyond the control of the operator, or because of livestock disease or quarantine. There was no restriction on the number of consecutive years a permittee or lessee could apply for nonuse. Such nonuse could be approved each year during the permit if need be.

The 1995 regulations recharacterized BLM’s pre-1995 authority to approve nonuse for reasons of conservation and protection of the public lands as approving “Conservation Use.” Thus the current regulations provide that a permittee or lessee may apply to not use all or a part of the use authorized by their permit for purposes including but *not limited to* personal or business reasons (i.e., nonuse for conservation and protection is also allowed by the present regulations), but the BLM may only approve such nonuse for three consecutive years. The present regulations provide that if a permittee or lessee wishes to take nonuse for longer than 3 consecutive years for purposes of resource conservation or protection, then

the BLM could issue a “Conservation Use” grazing permit. However, a 1999 ruling by the 10th Circuit Court determined that the BLM did not have the authority to issue “Conservation Use” permits. As a result, even if the operator wishes to apply for nonuse for conservation and protection of the public lands for longer than 3 consecutive years, and the BLM believes that the resource would benefit and would like to approve the nonuse, the BLM is prevented by its present rules from approving it. The BLM always has the ability to suspend grazing use to protect resources. However, when both parties agree that nonuse would benefit the resources, it is more efficient and conducive to a climate of cooperation for the BLM to approve an operator application for nonuse than to suspend grazing use using BLM’s grazing decision process.

Therefore, to promote greater flexibility and efficiency as well as enhanced opportunity for cooperation and coordination with the permittee and lessee, the BLM needs to consider changes in the regulations to provide a mechanism to allow longer periods of nonuse as needed to ensure the health of the rangelands. Consideration of allowing the BLM to approve applications for nonuse each year is, therefore, addressed in this rulemaking and EIS.

1.2.2.7 Basis for Rangeland Health Determinations

The present regulations do not identify what data or information is to be used by the BLM to determine that existing grazing management practices or levels of grazing use on public land are significant factors in failing to achieve the rangeland health standards and conform with the guidelines for grazing administration.

The BLM has issued detailed policy and procedural guidance to the field in Manual

Section 4180 and Handbook H-4180-1, Rangeland Health Standards, on how to evaluate rangeland health standards, make determinations, and develop and implement plans to address appropriate actions for achieving or progressing toward achievement of standards or fundamentals of rangeland health conditions. The guidance addresses how to conduct an evaluation and assessment and identifies monitoring data as an important source of information in conducting the evaluation. Where data is not available or not adequate for making the determination, it is recommended that the manager initiate action necessary to gather the information needed to complete the evaluation.

Members of the public, in scoping and ongoing communications with the BLM, have expressed a strong interest in BLM’s monitoring program and, particularly, in ensuring that adequate and sufficient monitoring data are available to support our decisions and determinations. Concerns have been raised about the validity and credibility of basing a determination on a one-time assessment. Multiyear monitoring data are considered by some members of the public as a minimum requirement for making determinations. Consideration of requirements for both assessments and monitoring data as a basis for rangeland health determinations is, therefore, addressed in this rulemaking and EIS.

1.2.2.8 Timeframe for Taking Action to Meet Rangeland Health Standards

The 1995 regulations established the fundamentals of rangeland health and called for the BLM to establish, within geographic regions and in consultation with Resource Advisory Councils, standards and guidelines for grazing administration. Fallback standards and guidelines were also identified to be used in the event that regional standards

and guidelines were not established by a specified date.

Under the regulations, the BLM is required to take appropriate action, as soon as practicable but not later than the start of the next grazing year, upon determining that existing grazing management needs to be modified to ensure that the fundamentals are being met or that existing grazing management practices or levels of use on public lands are significant factors in failing to achieve the standards and conform with the guidelines.

This timeframe has proven to be too short in many instances, especially given that NEPA and other environmental laws such as the Endangered Species Act Section 7 consultation where applicable and the National Historic Preservation Act 106 clearance, must be satisfied before a decision is made on the “appropriate action.” In addition, the BLM must satisfy consultation, cooperation, and coordination requirements before identifying the proposed action. The mandate that the proposed appropriate action be developed and implemented before the start of the next grazing year has often created unreasonable timeframes. For this reason, therefore, consideration is given in this rulemaking and EIS to providing a reasonable timeframe to develop an appropriate action or plan after a determination has been made.

1.2.2.9 Conservation Use

The 1995 regulations authorized the BLM to issue “Conservation Use” permits to groups or individuals for an activity, excluding livestock grazing, for the purposes of protecting the land from destruction or unnecessary injury, improving rangeland conditions, or enhancing resource values, uses, or functions. The authority for BLM to issue conservation use permits was

challenged in court, with the result that in 1999 the Tenth Circuit Court of Appeals held that the Taylor Grazing Act stipulated that the primary purpose of issuing a grazing permit is to permit grazing and that BLM could not issue permits exclusively for conservation purposes (*Public Lands Council v. Babbitt*, 167 F.3d 1287, 1308 (10th Cir. 1999), *aff’d on other grounds*, 529 U.S. 728 (2000)). This aspect of the decision was not appealed to the Supreme Court and thus is the final judicial determination on this issue. The present regulations do not conform with the court’s finding. The removal from the BLM grazing regulations of all references to conservation use and conservation use permits is, therefore, addressed in this rulemaking and EIS.

1.2.2.10 Definition of Preference, Permitted Use, and Active Use

“Grazing preference” has been defined since 1995 as a superior or priority position against others for the purpose of receiving a grazing permit or lease. This priority is attached to base property owned or controlled by the permittee or lessee. Before 1995, grazing preference was defined as the total number of animal unit months (AUMs) of livestock grazing on public lands apportioned and attached to base property owned or controlled by a permittee or lessee.

“Permitted use” was introduced as a term in the 1995 regulations revisions to define an amount of forage allocated by a land use plan for livestock grazing in an allotment. It is expressed in AUMs and includes “active use” and “suspended use.” Thus, in 1995, the term “permitted use” replaced the term “grazing preference” in describing the quantity of forage allocated.

Since 1995, “active use” has meant “current authorized use including livestock grazing and conservation use.” The BLM

must remove conservation use from the definition because of the 1999 10th Circuit Court decision in *Public Lands Council v. Babbitt, supra*. The 1995 definition used the term livestock grazing to distinguish between “active” authorized grazing use and “active” authorized conservation use. Removing conservation use from this definition would eliminate the need for this distinction.

The 1995 regulation revisions, which changed “grazing preference” from a term having a quantitative meaning (number of AUMs) to a qualitative meaning (superior or priority position) and which introduced the new term, “permitted use,” to represent the number of AUMs, have proven to be confusing. Attaching or associating a public land forage allocation to or with base property provides a reliable and predictable way to connect ranch property transactions with the priority for use of the public land grazing privileges that BLM has associated with that property. This has been the foundation of BLM’s system for tracking who has priority for receipt of public land grazing privileges since the enactment of the TGA. To clarify these terms and improve consistency in their application, consideration is being given to a modification of the definitions of grazing preference and active use and deletion of the term permitted use in this rulemaking and EIS.

1.2.2.11 Definition and Role of the Interested Public

The present regulations define “interested public” as an individual, group, or organization that has (a) submitted a written request to the BLM to be provided an opportunity to be involved in the decision-making process for the management of livestock grazing on a specific allotment, or (b) has submitted comments to BLM regarding the management of livestock

grazing on a specific allotment. On the basis of this definition, an individual or organization may be identified as an interested public covering an array of actions without participating in the public process leading to a specific grazing decision. Under the current regulations, someone could remain on the interested public list indefinitely without ever commenting on or otherwise providing input in the decision-making process.

Under the present rules, the BLM is required to consult, coordinate, and cooperate with the interested public before a proposed decision on the following actions:

- Designation or adjustment of allotment boundaries,
- Apportionment of additional forage,
- Reductions in permitted use,
- Emergency closures or modifications,
- Development or modification of grazing activity plans,
- Plans for range development or improvement programs,
- Renewal or issuance of grazing permits or leases,
- Modification of a permit or lease, or
- Issuance of temporary, nonrenewable grazing permits.

The interested public is also provided a copy of all proposed and final decisions.

In addition, the interested public must be provided an opportunity to review, comment, and give input during the preparation of grazing evaluation reports used to support decisions. In some instances, this has led

to confusion and suggestions that reports prepared to support decision processes are decisions themselves, with comment periods.

These requirements for involving the interested public in the development of decisions and plans on almost every level and aspect of the grazing program are more extensive than in other BLM programs, and are considered by some to be excessive, inefficient, or nonproductive. For these reasons, modifying the definition of “interested public,” reducing the level of involvement of the interested public in the day-to-day grazing operation decisions, and refocusing participation on the primary decisions that set management direction are considered in this rulemaking and EIS.

1.2.2.12 Water Rights

In 1995, the BLM added a provision to the regulations that stated that livestock water rights would be sought in the name of the United States to the extent allowed under state water law. This was added because the BLM wanted to (1) clarify its policy, and (2) make its policy consistent with that of the U.S. Forest Service. The BLM explained in the 1995 rulemaking that seeking water rights under state law had been its policy since 1981, and that these regulations would not create any new Federal reserved water rights or affect valid existing rights.

Except for Federal reserved water rights for Public Water Reserves, livestock water rights are not Federal rights. They are state-based rights that require the United States, like any other entity, to comply with state substantive and procedural requirements to obtain them.

The present regulations limit BLM’s flexibility to cooperatively pursue livestock water rights with permittees or lessees. To enhance such flexibility, the BLM

is considering modifications to the water rights provisions in this rulemaking and EIS.

1.2.2.13 Satisfactory Performance of Permittee or Lessee

By regulation, the BLM must determine whether applicants who apply for a new grazing permit or lease or a permit or lease subsequent to a preference transfer have a satisfactory record of past performance. The regulations define under what circumstances operators would be deemed to have an unsatisfactory performance, including:

- having had a Federal grazing permit or lease cancelled for violations within 36 months of their application;
- having had a state permit or lease, for lands within the grazing allotment for which they are applying, cancelled for violations within 36 months of their application; or
- having been barred from holding a Federal grazing permit or lease by order of a court of competent jurisdiction.

Determinations of unsatisfactory performance in cases such as these are complicated by the wording of the present regulations. Although it is clear that if any one of these conditions exist the applicant would be deemed to not have a record of satisfactory performance, it is ambiguous as to what constitutes satisfactory performance. Some have interpreted the existing regulatory language to mean that there may be other conditions that would result in a determination that the applicant’s performance is unsatisfactory. This open-ended definition has created some confusion. For these reasons, the BLM is considering revisions to the regulations

to clarify the definition of satisfactory performance for applicants for a permit or lease in this rulemaking and EIS.

1.2.2.14 Changes in Grazing Use Within the Terms and Conditions of Permit or Lease

The present regulations state that changes in grazing use within the terms and conditions of the permit or lease may be granted by the BLM. There is no regulatory language that defines what is meant by “within the terms and conditions of the permit or lease.” This could lead to inconsistent interpretations and applications of this provision. Clarification and definition of what is meant by “within the terms and conditions” is, therefore, a consideration in this rulemaking and EIS.

1.2.2.15 Service Charges

Regulations allow the BLM to assess a service fee for processing each crossing permit, transfer of grazing preference, and cancellation and replacement of a grazing fee billing. Under the Federal Land Policy and Management Act, these service charges should reflect BLM’s processing costs and should be adjusted periodically as costs change. A \$10 service fee is presently assessed for each of the above actions. This fee does not reflect BLM’s costs to provide these services. Consideration of revisions to the service charges to more adequately cover costs is, therefore, addressed in this rulemaking and EIS.

1.2.2.16 Prohibited Acts

Regulatory changes from 1978 through the 1995 established several prohibited acts that are part of the present regulations. There are three categories of prohibited acts. The third category of prohibited acts identifies generally and specifically a number

of Federal and state laws which, if violated by the permittee or lessee, the permittee or lessee may be subject to civil penalties by the BLM (i.e., withdrawal of issuance, suspension, or cancellation of permit or lease) if:

- public land is involved or affected;
- the violation is related to grazing use authorized by a BLM permit or lease;
- the permittee or lessee has been convicted or otherwise found to be in violation of the laws or regulations; and
- no further appeals are outstanding.

As presently written, it is somewhat unclear as to whether or not the performance of the prohibited act must occur on the allotment for which the permittee or lessee has a BLM permit or lease. In other words, the current regulation does not limit citation under these prohibited acts to a grazing operator’s allotment, i.e., a permittee or lessee can be cited for violating a law or regulation outside the allotment and, if convicted or otherwise found in violation, be subject to civil penalties by the BLM.

Furthermore, there is concern that some of the laws and regulations identified in this category of prohibited acts could result in penalties against permittees and lessees that are unfair because they involve a secondary penalty for violation of a law or regulation. Some opponents of the current rule characterized the prohibited acts provision as a form of “double jeopardy.” Although this is not a frequently applied provision of the regulations, the level of controversy over the issue warrants its consideration in this rulemaking and EIS.

1.2.2.17 Grazing Use Pending Resolution of Appeals When Decision Has Been Stayed

In general, under current regulations, all final BLM grazing decisions are implemented after the appeal period expires unless the decision is appealed and the Office of Hearings and Appeals or the Interior Board of Land Appeals stays the decision in response to a petition for a stay. The current regulations allow a petition for a stay to be filed by a permittee, lessee, or interested member of the public.

The current regulations address grazing use pending resolution of appeals when a decision has been stayed as follows:

- If a decision on an application for a permit or lease is appealed and a stay is granted, an applicant who was granted grazing use in the preceding year may continue at that level of authorized grazing use during the time the decision is stayed, except where grazing use in the preceding year was authorized on a temporary basis. If the applicant had no authorized grazing use the previous year or the application is for ephemeral or annual grazing use, then grazing use will be consistent with the final decision pending resolution of the appeal.
- If a decision to change authorized use is appealed and a stay is granted, the grazing use authorized during the time the decision is stayed will not exceed the permittee's or lessee's authorized use in the last year during which any use was authorized.

An application for a permit or lease made in conjunction with a preference transfer is not specifically addressed in the current rules. Based on the current regulations, if a stay is granted on an appeal of an application by a preference transferee, then grazing use would be authorized consistent with

the final decision pending resolution of the appeal. This issue is addressed in this rulemaking and EIS.

Of additional concern is the issue of when an appellant is considered to have exhausted his administrative remedies and can proceed to court. The judicial review provisions of the Administrative Procedure Act, 5 U.S.C. 701-706, (APA) provide a right of action against agencies and officers of the United States to persons adversely affected or aggrieved by an agency action. However, such action may be sought in a Federal court only when a decision is "final." Generally, a decision becomes "final" only after appellants exhaust administrative remedies. The BLM is attempting through this rulemaking to find a balance between the exhaustion of administrative remedies under the APA and its responsibilities under FLPMA and the TGA.

1.2.2.18 Treatment of Biological Assessments and Evaluations in the Grazing Decision-Making Process

The present regulations do not specifically address biological assessments or biological evaluations prepared in compliance with Section 7 consultation requirements of the Endangered Species Act (ESA) or their treatment in BLM's decision-making process.

.A biological assessment (BA) is prepared by an agency to determine whether a proposed action is likely to: (1) adversely affect listed species or designated critical habitat, (2) jeopardize the continued existence of species that are proposed for listing; or (3) adversely modify critical habitat. BAs must be prepared for "major construction activities." [50 CFR §402.02, 50 FR §402.12] The BA is submitted by the preparing agency to the U.S. Fish and Wildlife Service (FWS) and/or the National

Oceanic and Atmospheric Administration, Fisheries (NOAA, Fisheries) as part of the formal Section 7 consultation process in compliance with the ESA.

A biological evaluation (BE) is a documented review of an agency's programs or activities in sufficient detail to determine how an action or proposed action may affect any threatened, endangered, proposed or sensitive species or proposed or designated critical habitat. BEs are often prepared in the format of a BA. Where listed species are not likely to be adversely affected and formal consultation is not anticipated, the BE provides the basis of evaluation during informal consultation with the FWS and/or the NOAA, Fisheries.

The Interior Board of Land Appeals (IBLA) has ruled that biological assessments should be treated as proposed decisions subject to protest and appeal. Blake v. Bureau of Land Management, 145 IBLA 154(1998), aff'd, 156 IBLA 280 (2002). Treating biological assessments and biological evaluations as decisions would add additional administrative review and process steps beyond those required for a proposed action and could cause considerable delay in reaching a final decision on a proposed action. Due to concerns about such consequences, the BLM is addressing this issue in this rulemaking and EIS.

1.3 Overview of Public Participation

A brief summary of the scoping process, the results of scoping, and the issuance of the proposed rule and draft EIS are presented in this section.

1.3.1 Summary of Scoping Process

The BLM published an Advance Notice of Proposed Rulemaking (ANPR) and Notice

of Intent (NOI) to prepare an EIS in the Federal Register on March 3, 2003. These notices requested public comment to assist BLM in the scoping process for both of these documents. Copies of these two publications were found in Appendix D and Appendix E, respectively, of the draft EIS and are incorporated by reference in this final EIS. The comment period for the ANPR and NOI ended on May 2, 2003.

BLM held four public scoping meetings in March 2003 in Albuquerque, New Mexico; Reno, Nevada; Billings, Montana; and Washington, D.C., to take comments and suggestions for the proposed rule and the draft EIS.

Site	Approximate Attendance	Number of Speakers from the Public
Reno, Nevada	200	25
Billings, Montana	60	23
Albuquerque, New Mexico	50	27
Washington, D.C.	25	5

See Chapter 5 for additional discussion of the scoping process.

1.3.2 Results of Scoping

The BLM received more than 8,300 comments on the ANPR and the NOI. Comments were made orally at the four public meetings and submitted by letter, e-mail, and facsimile. Most of the written comments were form letters; about 35 letters containing substantive comments were received from special interest organizations and state and Federal agencies.

The public comments were extremely useful in the development of the Proposed Rule. The following summarizes some of the major results of scoping with respect to what was included or not included in the Proposed Rule:

- It was stated in the ANPR that consideration was being given to a proposal whereby BLM would be able to authorize the locking of gates on public land to protect private land and improve livestock operations. There was almost universal opposition from all groups to this proposal and it was dropped from further consideration in this rulemaking.
- It was stated in the ANPR that BLM was considering establishing provisions addressing reserve common allotments to be managed as reserve forage areas for use by permittees whose allotments were undergoing restoration treatments and required rest from grazing. Public comments were mixed on this issue, but there were sufficient concerns raised in the public comments that we decided to drop reserve common allotments from further consideration in this rulemaking.
- It was stated in the ANPR that BLM was considering clarifying which nonpermit-related violations we might take into account in penalizing a permittee or lessee. This was a very controversial issue. Although we considered removing several of the identified Federal and state laws and regulations from the list of prohibited acts, we determined that we did not have sufficient justification for making this change in the proposed rule. However it is included in an alternative.
- Although the only reference to monitoring in the ANPR was with

respect to the definition, numerous comments were received from the public regarding the need for monitoring and for basing decisions on monitoring. In particular, there was public support for requiring that monitoring data be used in evaluating and determining if existing grazing management practices or levels of grazing use are significant factors in failing to achieve the standards and conform with the guidelines for grazing administration. For this reason, the proposed action incorporates a requirement for using standards assessment and monitoring in arriving at the determination called for in §4180.2(c). In addition, an alternative is provided which allows discretion by the BLM manager in using assessment and monitoring data in making such determinations.

- It was stated in the ANPR that BLM was considering changes to the definition of grazing preference. Ranchers and livestock industry representatives were strongly in favor of returning to the pre-'95 regulatory definition of "preference" which defined the term as the total number of animal unit months of livestock grazing on public lands apportioned and attached to base property owned or controlled by the permittee or lessee. The BLM adopted this recommendation in the proposed regulation, but maintained the concept from the current regulatory definition that "preference" also means a "superior or priority position against others for the purpose of receiving a grazing permit or lease" (§4100.0-5).

The public provided many thoughtful comments on the other issues raised in the ANPR as well as issues not addressed in

the ANPR. There were many differing opinions about the pros and cons of various regulatory provisions and these comments were seriously considered in this rulemaking. More detailed descriptions and summaries of the public scoping comments are found in Chapter 5 of this EIS.

1.3.3 Issuance of Proposed Rule and Draft EIS

Based on the review and evaluation of the scoping comments, proposed revisions to the grazing regulations were developed and a draft EIS prepared. On December 5, 2003, the Department of the Interior Secretary, Gale Norton, announced the proposed rule at a meeting in New Mexico. On December 8, 2004, the proposed rule was published in the *Federal Register*. The Environmental

Protection Agency notice of availability (NOA) of the draft EIS on the proposed rule was published in the *Federal Register* on January 2, 2004 initiating a 60-day public review period for the draft EIS. The BLM issued its NOA for the draft EIS in the *Federal Register* on January 6, 2004. A subsequent *Federal Register* notice modified the comment period for the proposed rule so that it too ended on March 2, 2004, concurrent with the end of the comment period for the draft EIS.

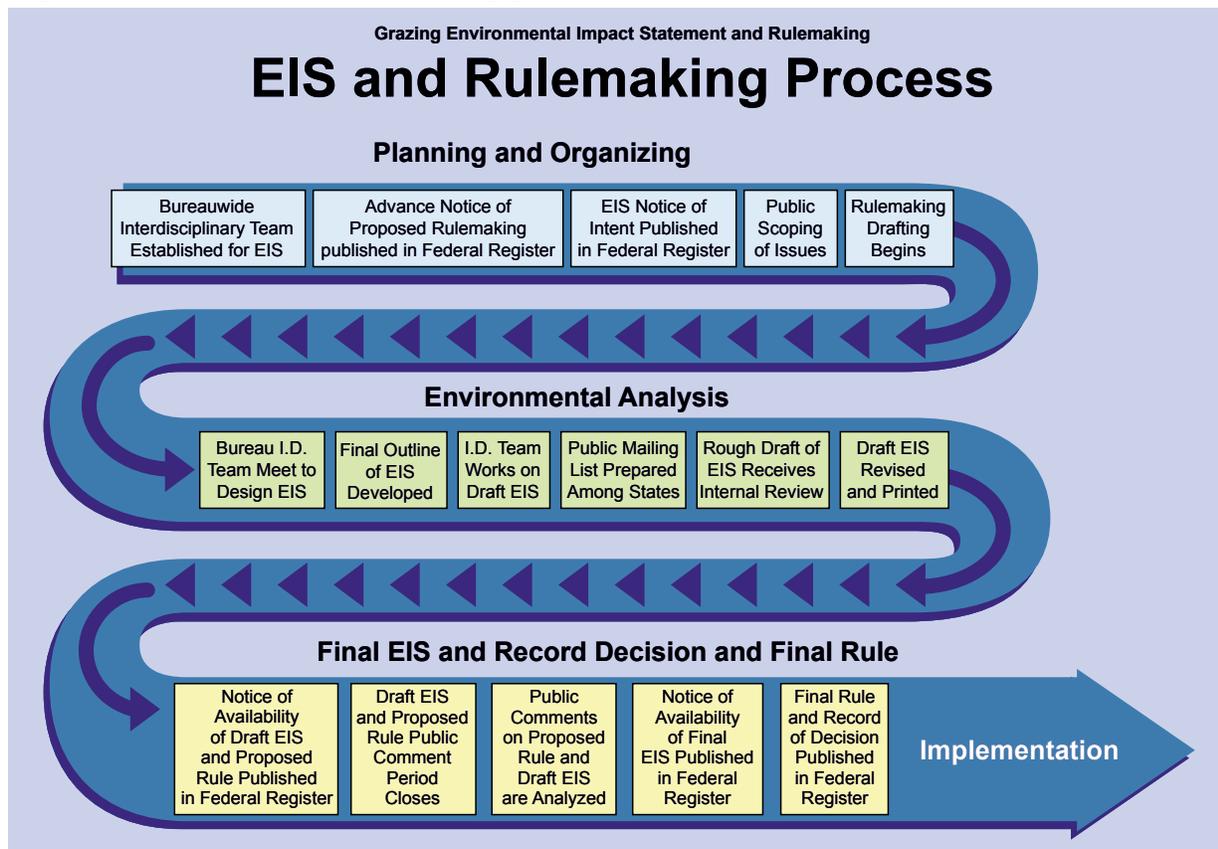
Five public meetings were announced in the NOA. Due to public interest a sixth meeting was added to the schedule. Transcripts of the public meetings are posted on the Internet and may be accessed at www.blm.gov/grazing. The following is a summary of attendance at the public meetings held on the proposed rule and draft EIS:

Site	Date	Approximate Attendance	Number of Speakers
Salt Lake City, Utah	January 27, 2004	90	25
Phoenix, Arizona	January 28, 2004	30	17
Boise, Idaho	January 31, 2004	45	14
Billings, Montana	February 2, 2004	31	19
Cheyenne, Wyoming	February 3, 2004	29	14
Washington, D.C.	February 5, 2004	17	6

The proposed rule and draft EIS were both posted on BLM 's Web site. Approximately 18,000 comment letters or e-mails were received. Comments are posted on the Internet and may be accessed at www.blm.gov/nhp/news/regulatory/index.htm.

Oral and written comments were coded, reviewed and evaluated by the BLM. Because of the volume of comments received, summary comments were developed for similar substantive comments. Responses to the summary comments are found in Chapter 5 of this EIS.

Figure 1-4. The EIS and rulemaking process.



1.4 Rulemaking and EIS Process and Schedule

The general process for a rulemaking is as follows: Federal rulemakings are governed by the Administrative Procedure Act (APA) which, among other things, gives the public, with some exceptions, the right to participate in the rulemaking process by commenting on proposed rules. Agencies may publish an Advance Notice of Proposed Rulemaking (ANPR) as a means of obtaining public comment on issues the agency is considering addressing in a proposed rule. After consideration of any public comments, the agency publishes the proposed rule in the *Federal Register* for a set period of time for the receipt of comments from the public. All comments are considered and changes may be made to the final rule on the

basis of comments received. The final rule is also published in the *Federal Register* with the effective date 30 days, or in the case of a significant rule, 60 days from the publication date. The rulemaking then becomes part of the Code of Federal Regulations.

The preparation of an environmental impact statement (EIS) is governed by the National Environmental Policy Act of 1969 (NEPA) and the Council on Environmental Quality implementing regulations at 40 CFR Parts 1500-1508. When a proposed action, including a proposed regulatory or legislative recommendation, is projected to have a significant effect on the quality of the human environment an EIS must be prepared. An EIS is intended to provide decision makers and the public with a complete and objective evaluation of significant environmental

effects, both beneficial and adverse, resulting from a proposed action and all reasonable alternatives. An EIS is the major vehicle for fulfilling the substantive environmental goals set forth in NEPA. The EIS process begins with the publication of a Notice of Intent (NOI) to prepare an EIS and request for public input. Public scoping meetings are also generally announced in the NOI. This early public process is known as scoping and must be open for a minimum of 30 days. The purpose of scoping, among other things, is to involve the public and affected agencies early in the process and to help identify significant issues to be analyzed, as well as alternatives and potential effects to be addressed. After scoping, the agency prepares a draft EIS. The draft EIS identifies the purpose and need for the proposed action, identifies alternatives, including the proposed action, the no action alternative, and other alternatives that meet the purpose and need; describes the affected environment; identifies the effects of the alternatives on the human environment; and summarizes consultation and coordination accomplished in the preparation of the draft EIS. The draft EIS is then released for public review, at least for 45 days but more typically for 60 days. After public review and consideration of all comments, the agency issues a final EIS in which responses are provided to all comments on the draft and any changes in the EIS are incorporated in the final EIS, including any changes in the proposed action. The final EIS is released for 30 days, after which the agency issues a record of decision (ROD) which sets forth the agency's final decision on the action.

Figure 1.4 graphically displays the EIS and rulemaking process.

1.5 Relation to Other Policies, Programs, and Plans

The BLM initiated or is a partner in the development of a number of policy and program efforts related to the management of grazing on public lands. These efforts are summarized below:

Sustaining Working Landscapes Policy Initiative

On March 25, 2003, the BLM announced the initiation of a public process to gather input on actions the BLM could take to achieve the goals of the Sustaining Working Landscapes Initiative (SWL). The idea was to begin identifying means for improving the long-term health and productivity of the public lands through innovative partnerships with permittees and lessees within the present regulatory framework.

Twenty-three public workshops were held in the West and one was held in Washington, D.C. At those workshops we introduced several concepts for consideration, including Conservation Partnerships, Reserve Common Allotments, Voluntary Allotment Restructuring, Conservation Easements, and Endangered Species Mitigation. The public raised many valuable comments and legitimate concerns. As a result of the workshops, as well as a national meeting of BLM Resource Advisory Council (RAC) representatives held in Washington, D.C., it was decided in April that the BLM would benefit from more involvement and advice from our established advisory councils throughout the West before moving forward with the Sustaining Working Landscapes Initiative.

It was decided not to try to develop policy guidance--even in draft form. Rather, the BLM reviewed the comments from the

workshops and provided responses to many of the questions raised. This information was then provided to the RACs.

The major components considered in the Sustaining Working Landscapes Initiative and reviewed by the RACs are summarized below:

(1) Forming Conservation Partnerships with Grazing Permittees and Lessees-- Authorized under FLPMA, Conservation Partnerships allow permittees and lessees to voluntarily enter into contracts or agreements with the BLM to achieve upland recovery, riparian-wetland restoration, enhanced or improved water quality and quantity, improved wildlife or fisheries habitat, and listed species recovery. In return, conservation partnerships would allow permittees and lessees to seek grants to pay for labor and materials invested in conservation practices or provide increased management flexibility within agreed-on parameters.

(2) Voluntary Allotment Restructuring by Permittees to Improve Range Conditions-- Voluntary allotment restructuring involves merging two or more allotments in which one or more of the permittees or lessees agrees to temporarily not graze their livestock. The other permittees or lessees would then be allowed to graze their herds over the entire area, resulting in lighter grazing use. The goal is to improve range conditions while supporting permittee economic viability.

(3) Establishment of Nonregulatory Policy for Reserve Common Allotments-- Reserve Common Allotments (RCAs) would be managed as reserve forage areas to restore and recover rangeland. The BLM would allow RCAs to be used by permittees and lessees who are engaged in rangeland restoration and recovery activities that require them to rest their customary allotments. By temporarily shifting their livestock to RCAs, permittees and lessees would be able to rest

their allotments while still meeting their economic needs.

(4) Encouraging Creative Ways to Achieve Endangered Species Act Objectives-- The preceding SWL elements all provide options for mitigating effects on listed species resulting from livestock grazing. For example, Conservation Partnerships could be used to restore rangelands, which benefit listed species. RCAs are intended to be grazed intermittently, but not to a degree inconsistent with their long-term conservation objective. Restructured allotments could incorporate forage reserves for grazing. Conservation easements could serve as mitigation for some listed species. Mitigation banks could also be an option under these concepts. They would permanently preserve or create listed species habitat, and then use that habitat as a source of mitigation credits to be sold to other land users to mitigate land development effects on listed species in order to comply with the Endangered Species Act.

The twenty-three (23) affected RACs in the West met throughout the summer and fall of 2003. RAC comments and recommendations were submitted to the BLM State Directors and forwarded to the Director in November 2003. These comments and recommendations will be used, along with feedback from this rulemaking, in any future effort to develop a Sustaining Working Landscapes policy initiative. BLM decided, however, to defer any further consideration of the policy initiative until after the completion of revisions to the grazing regulations.

Healthy Forests Initiative

The Healthy Forests Initiative is a Presidential initiative that aims to reduce unnecessary regulatory obstacles and allows for more effective and timely forest and rangeland health actions. It will reduce the

cost and time required to plan treatments that are designed to improve forest and rangeland health, by expediting Endangered Species Act consultations and streamlining environmental assessments. These measures will help protect forests and grazing lands from devastating wildfires caused by excessive fuel buildup.

The new procedures preserve the principle of partnerships with local communities and interests. Fuels treatment projects carried out under the Healthy Forests Initiative will be collaborative, including all local stakeholders and partners.

National Fire Plan

The Department of the Interior, the Forest Service and states are collaborating on the implementation of the National Fire Plan through guidance provided by the Collaborative Approach for Reducing Wildland Fire Risk for Communities and the Environment Ten Year Comprehensive Strategy (hereinafter referred to as the Ten Year Comprehensive Strategy) and the Ten Year Comprehensive Strategy Implementation Plan. The agencies have installed tracking and reporting mechanisms to provide accountability as accomplishments are made in firefighting, rehabilitation and restoration, hazardous fuels reduction, community assistance, and research. Collaboration with state and local governments is an important component of the Implementation Plan.

The National Fire Plan sets a long-term investment that will help protect communities, natural resources, and the lives of firefighters and the public. It is a long-term commitment based on cooperation and communication among Federal agencies, States, local governments, Tribes, and interested publics.

Like the Healthy Forests Initiative, an integral element of the National Fire Plan is to reduce excess forest and rangeland fuels which contribute to catastrophic fires and can harm adjoining grazing land.

Vegetation Treatment EIS

The BLM is preparing a national programmatic EIS to update four existing EISs for 13 western States, and to analyze vegetative treatments in four other western States and Alaska. The Vegetation Treatment EIS would examine the effects of such treatment as prescribed fire, herbicides and biological control agents, and mechanical and manual extraction.

As part of the EIS, the BLM will also evaluate the potential risks to humans, fish, and wildlife from several new herbicides that were not evaluated in earlier EISs. The BLM will also develop protocols as part of the EIS that will allow it to evaluate risks from chemicals that may be developed in the future.

The Vegetation Treatment EIS would analyze restoration activities such as prescribed fire, understory thinning, forest health treatments, or other activities related to restoring fire-adapted ecosystems.

BLM Sage-Grouse Habitat Conservation Strategy

The BLM is presently working to help reverse the declining populations of the greater sage-grouse, a species under review for federal listing under the ESA, through development of a comprehensive agency habitat conservation strategy. In addition, the BLM is working closely with each of the eleven state wildlife agencies that are completing state-level conservation plans. The BLM's conservation efforts will be

integrated into these state-level conservation plans.

Before the arrival in the West of settlers of European descent, sage-grouse were widely distributed, inhabiting sagebrush habitats across areas that are now portions of at least 12 western States and three provinces in Canada. Sage-grouse have since been extirpated from 1 State and 1 Province. In 1998, a leading sage-grouse researcher estimated that overall distribution of all sage-grouse had decreased by an estimated 50 percent since settlement of the West began, and that the apparent breeding population size had decreased from 45 to 80 percent since the early 1950's, with much of that decrease occurring since 1980. At that time, the rangewide spring population of sage-grouse was estimated at 142,000 birds. This estimate included what in 2000 was recognized as the Gunnison sage-grouse, a new species whose decline in range and numbers far exceeds that of the now greater sage-grouse. There is no single factor responsible for the declines. Rather, it is primarily a combination of the continuing, loss, degradation and fragmentation of the habitats to which they are so closely tied, exacerbated by periodic drought.

Today the BLM manages over 50 percent of the remaining greater sage-grouse habitat.

The BLM Sage-Grouse Habitat Conservation Strategy describes the actions necessary to conserve sage-grouse and their habitats on BLM land. Each BLM state within the range of the sage-grouse will develop a state-level, BLM-specific strategy. Both the BLM national and state strategies are being developed to complement state wildlife agency led conservation efforts.

The Strategy will provide BLM managers in different states with consistent guidance to aid the development of their respective sage-grouse BLM state-level habitat conservation strategies by making recommendations to ensure conservation of sagebrush habitat and sagebrush dependent species. The strategy is a sage-grouse range-wide effort that involves a diverse group of cooperators including multiple Federal, state and Tribal agencies as well as special interest groups and private landowners.

Appropriate and timely conservation measures for sage-grouse are critical to preventing further population declines and ESA listing of the species. Once a species is listed, land management activities and uses become more restrictive. Pro-active conservation measures on BLM's part may be the key to preventing the ESA listing of the sage-grouse.

Chapter 2

Description of the Proposed Action and Alternatives



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2.0 Description of the Proposed Action and Alternatives

Chapter 2 contains detailed descriptions of the grazing regulation alternatives. These alternatives provide an array of options that respond to both the purpose of and need for regulatory changes and the issues and concerns raised in scoping as discussed in Chapter 1.

As indicated in Chapter 1, this rulemaking is relatively narrow in scope and is an attempt to address several distinct issues that have been identified since the 1995 grazing reforms. Each proposed regulatory change is largely independent and may have been triggered by concerns that do not directly apply to the others. The collection of proposed changes has been grouped together into a single Proposed Action Alternative. The modified-action alternative is a collection of other possibilities that were worthy of extended analysis. Although the changes have been grouped into broader alternatives, BLM will continue to maintain a focus on the individual proposals during the decisionmaking process. It is thus quite possible that the final action may include pieces from all three of the broader alternatives.

The alternatives include: Alternative One—No Change in Regulations, which is also known as the “No Action” Alternative (Section 2.1); Alternative Two—the Proposed Action, which presents the BLM’s proposed amendments to the regulations (Section 2.2); and Alternative Three—the Modified Action Alternative, which is similar to the proposed action with some modifications (Section 2.3).

The proposed regulation revisions as reflected in the Proposed Action Alternative address 18 key issues as follows:

- Social, Economic and Cultural Considerations in the Decision-Making Process
- Implementation of Changes in Grazing Use
- Range Improvement Ownership
- Cooperation with state, Local, and County Established Grazing Boards
- Review on Biological Assessments and Evaluations
- Temporary Nonuse
- Basis for Rangeland Health Determinations
- Timeframe for Taking Action to Meet Rangeland Health Standards
- Conservation Use
- Definition of Grazing Preference, Permitted Use, and Active Use
- Definition and Role of the Interested Public
- Water Rights
- Satisfactory Performance of Permittee or Lessee
- Changes in Grazing Use Within Terms and Conditions of Permit or Lease
- Service Charges
- Prohibited Acts

- Grazing Use Pending Resolution of Appeals When Decision Has Been Stayed
- Treatment of Biological Assessments and Evaluations in the Grazing Decision-Making Process

In addition to the key issues identified above, there are some additional regulatory text clarifications and minor modifications being proposed. These latter changes are shown in the strike-and-replace version of the proposed rule in Appendix A.1. A clean version of the proposed regulations without strike-and-replace is shown in Appendix A.2.

Alternatives considered but not analyzed in detail are presented in Section 2.4. These alternatives include some proposals that were initially considered by the BLM as well as recommendations from the public. The rationale for not considering these alternatives is also discussed.

A comparison of all alternatives by key elements is presented in Section 2.5 (Table 2.5) of this Chapter. In Section 2.6 (Table 2.6) a summary comparison of effects across the alternatives is presented.

Changes in Chapter 2 between the draft and final EIS are listed below:

- Changes in proposed action based on comments and review of draft EIS:
 - 2.2.4 Cooperation with Tribal, state, county, or Local Government-Established Grazing Boards – Added Tribal agencies and boards to list of entities with which BLM would cooperate; also added Tribal to title of section and to general provision on cooperation.
 - 2.2.5 Review of Biological Assessments and Evaluations – Removed reference to review of biological assessments and

evaluations as examples of reports subject to review and input by affected permittees or lessees, the state and the interested public.

- 2.2.6 Temporary Nonuse – Changed provision to state that authorized officer “may authorize nonuse” as opposed to “will authorize nonuse”; also clarified that applications for temporary changes in use must be in writing and submitted on or before the date requested for the grazing use to begin.
- 2.2.7 Timeframe for Taking Action to Meet Rangeland Health Standards – Added a provision allowing BLM to extend the timeframe to formulate, propose and analyze an appropriate action to address a failure to meet standards or to conform to guidelines if a legally required process that is beyond the control of the BLM prevented the BLM from meeting the 24 month deadline for making a decision.
- 2.2.10 Definition of Preference, Permitted Use, and Active Use – In the definition of “active use”, we substituted the word “livestock” for “rangeland” in the reference to carrying capacity.
- 2.2.11 Definition and Role of the Interested Public – Modified definition to make it clear that a request to be considered as interested public must identify the specific allotment(s) in which the person or entity is interested; also when the interested public submits comments or otherwise participates they must address the management of a specific allotment.

- 2.2.14 Changes in Grazing Use Within the Terms and Conditions of Permit or Lease – Removed reasons for allowing temporary changes in grazing use; also clarified that applications for temporary changes in use must be in writing and submitted on or before the date requested for the grazing use to begin; provided for more flexibility in period of use if such flexibility was specified in an appropriate allotment management plan.
- 2.2.17 Grazing Use Pending Resolution of Appeals When Decision Has Been Stayed – Added a provision allowing BLM to make full force and effect decisions on nonrenewable grazing permits or leases or on applications for grazing use on annual or designated ephemeral rangelands; removed the special stay provision addressing grazing use if a stay is granted related to an appeal of a decision on nonrenewable permits or leases or ephemeral or annual rangeland grazing use; substituted “immediately preceding permit or lease” for “immediately preceding authorization” in the provision regarding grazing use when a term permit or lease is stayed or when a term permit or lease subsequent to a preference transfer is stayed; added language to clarify that special stay provisions may apply to all or part of a decision on term permits or leases or decisions on those related to preference transfers; separated and clarified the discussion of grazing use when a stay is granted on a term permit or lease from the discussion of grazing use when a stay is granted on a permit or lease subsequent to a preference transfer.
- Additions or changes to improve clarity and provide new information:
 - 2.1.3 Range Improvement Ownership – Added “or other party” to clarify that other parties may cooperate besides permittee or lessee in development and ownership of range improvement under cooperative range improvement agreements
 - 2.1.5 Review of Biological Assessments and Evaluations – Modified definitions of biological assessment and biological evaluation to conform with definitions in regulations and guidance; clarified that BLM is to provide, *to the extent practical*, an opportunity for affected permittees, lessees, states and interested public to review and provide input on reports used as basis for decisions to change grazing permits or leases.
 - 2.1.18 Treatment of Biological Assessments and Evaluations in the Grazing Decision-Making Process – Modified definitions of biological assessment and biological evaluation to conform with definitions in regulations and guidance. Also made some nonsubstantive editorial changes; corrected citation to Blake v. BLM IBLA case.
 - 2.2.4 Cooperation with Tribal, state, county, or Local Government-Established Grazing Boards – Added that cooperation satisfies FLPMA section 401(b)(1) and that it would bring regulations into compliance

- with E.O. 13352 of August 26, 2004, Facilitation of Cooperative Conservation.
- 2.2.7 Basis for Rangeland Health Determinations – Clarified that both assessments and monitoring are required only for determinations that existing grazing management practices or levels of grazing use are significant factors in failing to achieve standards and conform with guidelines.
 - 2.2.8 Timeframe for Taking Action to Meet Rangeland Health Standards – Clarified that BLM would be required to take action to assist in achieving the fundamentals of rangeland health only if the fallback standards and guidelines are in place. Also provided additional rationale for 24 month timeframe.
 - 2.2.12 Water Rights – Clarified description of proposed change in regulation pertaining to water rights; provided additional rationale for removing requirement that, to the extent allowed by state law, livestock water rights must be acquired, perfected, maintained and administered in the name of the United States.
 - 2.2.13 Satisfactory Performance of Permittee or Lessee – Clarified that this provision also addresses applicants for permits or leases subsequent to a preference transfer.
 - 2.2.14 Changes in Grazing Use Within the Terms and conditions of Permit or Lease - Clarified that nonuse is considered a “change in grazing use within the terms and conditions of a permit or lease”; deleted use of the term “range readiness” in discussion of when range is “ready” to be grazed; added text recognizing that allotment management plans could also be used to provide for flexibility in grazing begin and end dates.
 - 2.2.15 Service Charges – Added discussion of basis for service charges as well as added two tables of cost data which was used in helping to arrive at proposed service charge levels.
 - 2.2.18 Treatment of Biological Assessments and Evaluations in the Grazing Decision-Making Process - Modified definitions of biological assessment and biological evaluation to conform with definitions in regulations and guidance; deleted references to provisions on review of biological assessments and evaluations; added rationale and further discussion of the *Blake* decision.
 - 2.3.3 Basis for Rangeland Health Determinations – Clarified that this provision only applies only to those determinations that existing grazing management practices or levels of grazing use are significant factors in failing to achieve standards and conform with guidelines.
 - 2.4 Alternatives Considered But Not Analyzed in Detail – Provided discussion on why additional alternatives were not incorporated regarding (1) the timeframe for taking action to meet rangeland health standards and (2) the implementation of changes in grazing use.

- Table 2.5 Comparison of the Alternatives – Modified to reflect changes in proposed action as described above.
- Table 2.6 Comparison of the Impacts Across Alternatives – Modified to reflect changes in impact analysis as described in Chapter Four.

2.1 Alternative One: No Change in Regulations (No Action)

The regulations that direct the BLM in administering its rangeland management program are found in 43 Code of Federal Regulations (CFR) 4100. The objectives of these regulations are to:

1. Promote healthy, sustainable rangeland ecosystems;
2. Accelerate restoration and improvement of public rangelands to properly functioning conditions;
3. Promote the orderly use, improvement, and development of the public lands;
4. Establish efficient and effective administration of grazing of public rangelands; and
5. Provide for the sustainability of the western livestock industry and communities that are dependent on productive, healthy public rangelands.

Under the “No Action” alternative there would be no change in the regulations and the BLM would continue to operate in accordance with existing regulations and

policies. The following are the key elements of the present regulations that are addressed in this EIS.

2.1.1 Social, Economic, and Cultural Considerations in the Decision-Making Process

Language would not be added to the existing grazing regulations specifically addressing the need for compliance with the National Environmental Policy Act (NEPA) of 1969 (Public Law 91-90; 42 U.S.C. 4321 et seq.) in making decisions on changes in grazing use. All grazing decisions would continue to be subject to compliance with NEPA, including requirements to use a systematic interdisciplinary approach that ensures the integrated use of natural and social sciences in planning and decision-making affecting the human environment. An environmental assessment is prepared for most grazing decisions. Environmental analyses prepared under NEPA would continue to address the effects of proposed actions and alternatives considered, including effects defined under NEPA to include ecological, aesthetic, historic, cultural, economic, social, or health effects, whether direct, indirect, or cumulative (40 CFR 1508.8). If there are no effects in a certain category, for example, on health, the environmental assessment generally does not address that topic. Field interpretation and application of guidelines to analyze social, economic, and cultural considerations would be less consistent in the absence of regulatory emphasis. To minimize paperwork, NEPA documentation is generally limited to those topics involving effects.

2.1.2 Implementation of Changes in Grazing Use

As stated in the present grazing regulations, at §4110.3-3(a), after all

consultation requirements are fulfilled, reductions in grazing use would be implemented through a documented agreement or by decision of the authorized officer. Such decisions must be issued as proposed decisions subject to the provisions of §4160.1, except for the following: (1) when immediate protection of resources or imminent likelihood of significant resource damage necessitates grazing use closures or modifications to be effective upon issuance of or as specified in the final decision (§4110.3-3(b)), and (2) when substantial risk of wildfire or immediate risk of erosion or other damage due to wildfire necessitates rangeland wildfire management decisions, such as fuel reduction projects using fire, mechanical, chemical, or biological thinning methods or projects to stabilize lands affected by wildfire, to be effective immediately or on the date established in the decision (§4190.1). No specific regulatory requirements would be established concerning how decisions to change levels of grazing use are to be implemented.

2.1.3 Range Improvement

Ownership

Range improvement projects are categorized as either “structural” or “nonstructural”. Structural range improvements may be either “permanent” or “temporary.” Examples of permanent structural range improvements include fences, wells, pipelines, guzzlers, and gabions. Examples of temporary structural range improvements include dip tanks, loading chutes, or portable water troughs. Nonstructural range improvements include vegetation treatments (spraying, vegetative seeding, chaining, and others). Either a “Cooperative Range Improvement Agreement” or a “Range Improvement Permit” is used to authorize construction

of range improvement projects on lands administered by the BLM (§4120.3-1).

Under the current regulations (No Action Alternative), title would continue to be held in the name of the United States to all permanent range improvements such as fences, wells, and pipelines authorized under “Cooperative Range Improvement Agreements” after August 21, 1995 (§4120.3-2(b)) regardless of the level of investment by the permittee. All new permanent water developments such as spring developments, wells, reservoirs, stock tanks, and pipelines would continue to be required to be authorized under a “Cooperative Range Improvement Agreement.” “Cooperative Range Improvement Agreements” are used when the BLM and the livestock permittee or lessee or other party cooperatively cost-share the labor, equipment, or materials to build the project (§4120.3-2(a)). In such instances, the “Cooperative Range Improvement Agreement” outlines the costs contributed by each party and responsibilities for building and maintaining the improvement.

Under Range Improvement Permits, used to authorize removable range improvements where all costs of the project are borne by the livestock permittee or lessee (§4120.3-3), permittees or lessees would continue to have the option to hold title to temporary (removable) structural range improvements such as corrals, creep feeders, or portable water troughs placed on public lands under permit (§4120.3-3(c)).

Permittees or lessees would continue to hold a financial interest in proportion to their contribution for permanent structural and nonstructural range improvements even though they do not hold title. If a grazing permit or lease is cancelled in order to devote the public lands to another public purpose, the permittee or lessee shall receive reasonable compensation from the United

States for the adjusted value of their interest in the authorized improvement. Where a range improvement is authorized by a range improvement permit, the livestock operator may elect to salvage material owned by them and perform rehabilitation measures necessitated by that removal rather than be compensated for the adjusted value (§4120.3-6).

As provided in §4120.3-1(e), neither a “Cooperative Range Improvement Agreement” nor “Range Improvement Permit” would convey to the permittee or cooperator any right, title, or interest in any lands or resources held by the United States. Furthermore, range improvement work performed by a cooperator or permittee on the public lands would not confer an exclusive right to use the improvement or the land affected by the range improvement work (§4120.3-2(d)).

2.1.4 Cooperation with State, Local, and County Established Grazing Boards

The BLM would continue to be required to cooperate with involved agencies and governmental entities in managing the grazing program consistent with the present regulations in §4120.5-2. Requirements to cooperate, consistent with applicable laws of the United States, would continue to be limited to (1) agencies and governmental units that have programs and responsibilities involving grazing on public lands; (2) state, county, and Federal agencies administering laws and regulations relating to livestock, livestock diseases, sanitation, and noxious weeds; and 3) state cattle and sheep sanitary or brand boards and county or other local weed control districts.

While it is generally present practice for BLM Field Offices to cooperate with state, county, or local government-established

grazing boards, where they exist, cooperation would not be required by regulation. Contacts with local grazing boards generally include reviewing range improvements and allotment management plans.

2.1.5 Review of Biological Assessments and Evaluations

Present grazing regulations do not specifically mention biological assessments or biological evaluations that are prepared to satisfy consultation requirements of the Endangered Species Act. A biological assessment (BA) is prepared by an agency to determine whether a proposed action is likely to: (1) adversely affect a listed species or designated critical habitat, (2) jeopardize the continued existence of species that are proposed for listing, or (3) adversely modify critical habitat. A biological evaluation (BE) is a documented review of an agency’s programs or activities in sufficient detail to determine how an action or proposed action may affect any threatened, endangered, proposed or sensitive species or proposed or designated critical habitat.

Although the present regulations do not specifically mention any role for the permittee or lessee in the preparation of biological assessments or evaluations, such assessments or evaluations are reports used as a basis for grazing decisions. The BLM is required, to the extent practicable, to provide affected permittees or lessees, as well as States having lands or responsibility for managing resources within the affected area, and the interested public, with an opportunity to review, comment, and give input during the preparation of reports that evaluate monitoring and other data that are used as a basis for making decisions to increase or decrease grazing use or to change the terms and conditions of a permit or lease (§4130.3-3).

Thus, under present regulations, the BLM would continue to provide permittees, lessees, states, and the interested public with an opportunity to comment on and provide input to the preparation of biological assessments or evaluations as reports prepared in support of the decision making process.

2.1.6 Temporary Nonuse

Grazing permittees or lessees would continue to be able to submit an annual application for temporary nonuse under existing regulations at §4130.2(g) for reasons including but not limited to financial conditions or annual fluctuations of livestock. Temporary nonuse is defined as the authorized withholding, on an annual basis, of all or a portion of permitted livestock use at the request of a permittee or lessee. Approval of temporary nonuse by the BLM could continue, on an annual basis, but could not continue for more than 3 consecutive years. The BLM would continue to have authority to annually apportion additional forage temporarily available as a result of authorized nonuse on a nonrenewable basis to qualified applicants (§4130.2(h); §4130.6-2).

2.1.7 Basis for Rangeland Health Determinations

The BLM would continue to manage activities under livestock grazing permits and leases based on standards and guidelines for grazing management developed by BLM State Directors in consultation with affected BLM resource advisory councils (§4180.2(b)). The standards and guidelines developed by State Directors apply the fundamentals of rangeland health set forth in §4180.1 of the grazing regulations. The fundamentals for rangeland health, as defined by BLM, include (1) watersheds that are in or are making significant progress toward

proper functioning physical condition, (2) ecological processes that support or are making significant progress toward attaining healthy biotic populations and communities, (3) water quality that complies with state standards and achieves or is making significant progress toward achieving BLM management objectives, and (4) habitats for Federal threatened and endangered species, Federal Proposed, Category 1 and 2 Federal candidate, and other special status species that are maintained or restored or are making significant progress toward being maintained or restored (43 CFR 4180.1).

The BLM authorized officer would continue to be required to take appropriate action when a “determination” has been made that grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the standards and conform with the guidelines for grazing management (§4180.2(c)). There are no requirements under the present regulations on how those determinations are made.

2.1.8 Timeframe for Taking Action to Meet Rangeland Health Standards

The BLM would continue to be required under current regulations to take appropriate action as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management needs to be modified to ensure that rangeland health conditions exist or progress is being made toward achieving rangeland health as described in §4180.1, Fundamentals of Rangeland Health. Where either Secretarial-approved or fallback standards and guidelines are effective, the BLM would continue to be required to take appropriate action as soon as possible but no later than the start of the next grazing year if existing grazing management practices or

levels of use are determined by the authorized officer to be significant causal factors in failing to achieve standards and conform with guidelines for grazing administration (§4180.2(c)).

This means that once a “determination” has been made, either under §4180.1 or §4180.2(c), the BLM authorized officer must—no later than the start of the next grazing year—consult, cooperate, and coordinate with the permittee or lessee, the state, and the interested public on possible actions to achieve standards; must complete any NEPA analysis requirements and documentation; must comply with any other applicable laws and requirements (e.g., Section 7 consultation under the Endangered Species Act if the proposed action “may affect” a listed species); must issue a proposed and final decision subject to protest and appeal, and must implement the “appropriate action.”

2.1.9 Conservation Use

Though there are provisions in the present regulations, the BLM does not, and would not, issue conservation use permits. No such permits are in place. The existing regulations define conservation use as an activity, excluding livestock grazing, on all or a portion of an allotment for purposes of (1) protecting the land and its resources from destruction or unnecessary injury; (2) improving rangeland conditions; or (3) enhancing resource values, uses, or functions (§4100.0-5). Provisions are included in the existing regulations for authorizing conservation use for as long as 10 years under certain conditions.

The provisions regarding conservation use were included in the 1995 grazing regulation amendments. These rules were challenged and in 1999 the 10th Circuit Court of Appeals upheld the lower court’s ruling that the Secretary of the Interior did not

have the authority to issue conservation use permits.

2.1.10 Definition of Preference, Permitted Use, and Active Use

Grazing administration would continue under definitions in the present regulations.

Grazing preference or preference is defined as a superior or priority position against others for the purpose of receiving a grazing permit or lease. This priority is attached to base property owned or controlled by the permittee or lessee (§4100.0-5).

Permitted use is defined as the forage allocated by, or under the guidance of, an applicable land use plan for livestock grazing in an allotment under a permit or lease and is expressed in AUMS (§4100.0-5). Under present regulations, the term permitted use encompasses active use and suspended use.

Active use means present authorized use, including livestock grazing and conservation use. Because conservation use was determined to be illegal by the 10th Circuit Court of Appeals, active use encompasses only authorized livestock grazing use. Active use may constitute a portion, or all, of permitted use. Active use doesn’t include temporary nonuse or suspended use within all or portion of an allotment (§4100.0-5).

2.1.11 Definition and Role of the Interested Public

The BLM would continue to apply the definition of interested public and related requirements for interested public involvement in the grazing decision-making process as specified in the present regulations.

Interested public is defined as an individual, group, or organization that has submitted a written request to the authorized officer to be provided an opportunity to be involved in the decision-making process

for the management of livestock grazing on specific allotments or has submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment (§4100.0-5).

Generally, under present regulations, whenever the BLM is required to consult, cooperate, and coordinate with or seek review and comment from affected permittees or lessees or the state having lands or responsibility for managing resources within the area, present regulations also require doing so with the interested public.

The following summarizes those instances where the BLM is required, under the present regulations, to consult, cooperate, and coordinate with the interested public:

- Designating and adjusting allotment boundaries (§4110.2-4).
- Apportioning additional forage (§4110.3-1(c)).
- Reducing permitted use (§4110.3-3(a)).
- Emergency closures or modifications (§4110.3-3(b)).
- Development or modification of allotment management plans (§4120.2(a) & (e)).
- Planning of the range developments or improvement programs—Consult only (§4120.3-8(c)).
- Issuing or renewing grazing permit or lease (§4130.2(b)).
- Modifying a permit or lease (§4130.3-3).
- Issuing temporary nonrenewable grazing permits (§4130.6-2).

Under the present regulations, the BLM is also required to provide the interested public

an opportunity to review and comment and give input during the preparation of reports that evaluate monitoring and other data used as a basis for making decisions to increase or decrease grazing use or to change terms and conditions of a permit or lease (§4130.3-3).

In addition, under the present regulations, the BLM is required to send copies of proposed and final decisions to the interested public (§4160.1(a) and §4160.3(b)).

2.1.12 Water Rights

Under the present regulations (§4120.3-9), any right acquired on or after August 21, 1995, to use water on public land for the purpose of livestock watering would be acquired, perfected, maintained, and administered under the substantive and procedural laws of the state within which such land is located. To the extent allowed by the law of the state within which the land is located, any such water right would be acquired, perfected, maintained, and administered in the name of the United States.

States have primary authority and responsibility for the allocation of water (water rights) for specified beneficial uses, including livestock watering. Where provided for in state law, the BLM applies for appropriative water rights in conformance with state law and generally protests private applications for water rights on lands administered by the BLM.

2.1.13 Satisfactory Performance of Permittee or Lessee

The BLM would continue to apply present regulations that identify requirements for satisfactory performance that must be met by applicants for renewal of existing or issuance of new permits and leases (§4110.1(b)).

For a renewal, an applicant must be in substantial compliance with the terms and conditions of the existing permit or lease and with the rules and regulations applicable to the permit or lease in order to be deemed to have a satisfactory record of performance. The authorized officer may take into account circumstances beyond the control of the applicant seeking renewal of a permit or lease in making determinations of satisfactory performance (§4110.1(b)(1)).

For a new permit or lease, applicants shall be deemed **not to have** a record of satisfactory performance when:

- they **have had** any Federal grazing permit or lease cancelled for violations of the permit or lease within 36 months of their application;
- they **have had** any state grazing permit or lease, for lands within the grazing allotment for which they are applying, canceled for violations within 36 months of their application; or
- they **are barred** from holding a Federal grazing permit or lease by order of a court (§4110.1(b)(2)).

2.1.14 Changes in Grazing Use Within the Terms and Conditions of Permit or Lease

The BLM would continue to apply present regulations allowing changes in grazing use within the terms and conditions of the permit or lease to be granted by the authorized officer (§4130.4). The regulations identify the following applications for changes covered by this section:

- to activate forage in temporary nonuse or conservation use;

- to place forage in temporary nonuse or conservation use; or
- to use forage that is temporarily available on designated ephemeral or annual ranges.

There are no provisions that define what is meant by “within the terms and conditions of the permit or lease” in the existing regulations.

2.1.15 Service Charges

The BLM would continue to assess a \$10 service charge for each crossing permit, transfer of grazing preference, application solely for nonuse, and replacement or supplemental billing notice (§4130.8-3). Except for actions initiated by the BLM, regulations allow the BLM to assess a service fee for such actions. Pursuant to the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734[a]), the service charge should reflect the BLM’s processing costs and should be adjusted periodically as the processing costs change. The existing regulations do not specify the amount of the service charge.

2.1.16 Prohibited Acts

The BLM would continue to have authority and discretion to apply penalties for specific prohibited acts to both permittees and other public land users. Upon violation of any provision of the grazing regulations by a livestock permittee or lessee, the BLM would be able to (1) withhold issuance of a grazing permit or lease; (2) suspend grazing use authorized under a grazing permit or lease, in whole or in part; or (3) cancel a grazing permit or lease and preference in whole or in part (§4170.1). Some actions could also be subject to the penalty provisions under the Taylor Grazing Act or the Federal Land Policy and Management Act (§4170.2).

In Subpart 4140, the present regulations have several provisions dealing with the consequences of committing certain specified prohibited acts. Some of the prohibited acts apply only to grazing permittees or lessees whereas others apply to anyone who commits those acts while on lands administered by the BLM.

There are three categories of prohibited acts in the present regulations.

The first category is found in §4140.1(a) and states that permittees and lessees who perform the prohibited acts listed under this section may be subject to civil penalties (e.g., withdrawal of issuance, suspension, or cancellation of permit or lease). Six prohibited acts are identified in this section including:

- violations of terms and conditions of permits or leases;
- failing to make substantial grazing use as authorized for 2 consecutive years;
- placing supplemental feed on public lands without authorization;
- failing to comply with terms, conditions, and stipulation of cooperative range improvement agreements or range improvement permits;
- refusing to install, maintain, modify, or remove range improvements when so directed by the BLM; and
- unauthorized leasing or subleasing.

This first category of prohibited acts allows the BLM to address grazing violations and to take direct action against permittees or lessees for committing such violations.

A second category of prohibited acts is found in §4140.1(b). Any person (not only

a permittee or lessee) who performs any of the 11 prohibited acts in this section will be subject to civil and criminal penalties. The prohibited acts identified in this section include:

- allowing livestock or other privately owned or controlled animals to graze on or be driven across public lands without a permit or lease and an annual grazing authorization or in violation of any authorization;
- installing, using, maintaining, modifying, or removing range improvements without authorization;
- cutting, burning, spraying, destroying, or removing vegetation without authorization;
- damaging or removing U.S. property without authorization;
- molesting, harassing, injuring, poisoning, or causing death of livestock authorized to graze on these lands and removing authorized livestock without the owner's consent;
- littering;
- interfering with lawful uses or users including obstructing free transit through or over public lands by force, threat, intimidation, signs, barriers, or locked gates;
- knowingly and willfully making a false statement or representation in base property certifications, grazing applications, range improvement permit applications, cooperative range improvement agreements, actual use reports, or amendments thereto;

- failing to pay any fee required by the authorized officer pursuant to this part, or making payment for grazing use of public lands with insufficiently funded checks on a repeated and willful basis;
- failing to reclaim and repair any lands, property, or resources when required by the authorized officer; and
- failing to reclose any gate or other entry during periods of livestock use.

This second category of prohibited acts allows generally applicable enforcement actions on BLM public lands.

The third category of prohibited acts is found in §4140.1(c). Under this provision, the BLM may take civil action against a grazing permittee or lessee who commits these prohibited acts if the following four conditions are met: (1) public land is involved or affected, (2) the action is related to grazing use authorized by a BLM-issued permit or lease, (3) the permittee or lessee has been convicted or otherwise found to be in violation of any of these laws or regulations by a court or by final determination of any agency charged with the administration of these laws, and (4) no further appeals are outstanding.

For this category of prohibited acts, unlike the first two categories, the primary responsibility for enforcement generally rests with another Federal or state agency, not the BLM. Prohibited acts in this category include:

- Violation of Federal or state laws or regulations pertaining to the:
 - placement of poisonous bait or hazardous devices designed for the destruction of wildlife;

- application or storage of pesticides, herbicides, or other hazardous materials;
- alteration or destruction of natural stream courses without authorization;
- pollution of water sources;
- illegal take, destruction, or harassment, or aiding and abetting in the illegal take, destruction, or harassment of fish and wildlife resources; and
- illegal removal or destruction of archaeological or cultural resources.

- Violation of the:
 - Bald Eagle Protection Act;
 - Endangered Species Act; or
 - the regulations concerning the protection and management of wild horses and burros.
- Violation of state livestock laws or regulations relating to:
 - the branding of livestock;
 - breed, grade, and number of bulls;
 - health and sanitation requirements; and
 - violating state, county, or local laws regarding the stray of livestock to areas that have been formally closed to open range grazing.

Under this category, the BLM-issued permit or lease is not required to be related geographically to the location where the prohibited act occurred.

2.1.17 Grazing Use Pending Resolution of Appeals When Decision Has Been Stayed

The BLM would continue to operate under the administrative remedies regulations set forth in Subpart 4160. Described in detail are the procedures for issuing and protesting proposed decisions (§4160.1 and §4160.2) and issuing and appealing final decisions (§4160.3 and §4160.4). Procedures for requesting a stay of a final decision and allowable grazing use if a final decision is stayed are identified in §4160.3.

When the Office of Hearings and Appeals stays a final decision regarding an application for grazing authorization, an applicant who was granted grazing use in the preceding year may continue at that level of authorized grazing use during the time the decision is stayed. This provision does not apply if the grazing use in the preceding year was authorized on a temporary nonrenewable basis under §4110.3-1(a). Where the applicant had no authorized grazing use during the previous year, or the application is for designated ephemeral or annual rangeland grazing use, the grazing use under the stay is consistent with the final decision pending a final determination on the appeal (§4160.3(d)).

When the Office of Hearings and Appeals stays a final decision to change the authorized grazing use, the grazing use authorized to the permittee or lessee during the time that the decision is stayed shall not exceed the permittee's or lessee's authorized use in the last year during which any use was authorized (§4160.3(e)).

2.1.18 Treatment of Biological Assessments and Evaluations in the Grazing Decision-Making Process

The present regulations do not specifically address biological assessments

or biological evaluations prepared in compliance with consultation requirements of the Endangered Species Act. A biological assessment (BA) is prepared by an agency to determine whether a proposed action is likely to: (1) adversely affect a listed species or designated critical habitat, (2) jeopardize the continued existence of species that are proposed for listing, or (3) adversely modify critical habitat. A biological evaluation (BE) is a documented review of an agency's programs or activities in sufficient detail to determine how an action or proposed action may affect any threatened, endangered, proposed or sensitive species or proposed or designated critical habitat.

The IBLA has ruled that a biological assessment prepared under Section 7 of the Endangered Species Act (ESA) for a proposed action to permit grazing must be treated as a BLM decision subject to protest and appeal. Blake v. Bureau of Land Management, 145 IBLA 154 (1998), aff'd, 156 IBLA 280 (2002).

Thus, under the No Action Alternative, biological assessments and evaluations would be treated as decisions subject to protest and appeal.

2.2 Alternative Two: Proposed Action

Alternative Two is the BLM's Proposed Action, which responds to the purpose and need described in Chapter 1 by changing certain elements of the agency's present grazing regulations. The proposed changes are described below by element. In addition to the key elements, there are several nonsubstantive or editorial changes that would be made under this alternative. Nonsubstantive or editorial changes are shown in the strike-and-replace copy of the proposed regulations in Appendix A.

2.2.1 Social, Economic, and Cultural Considerations

The Proposed Action would add a provision in §4110.3 that would require the BLM to analyze and, if appropriate, document the relevant social, economic, and cultural effects of the proposed action to change grazing preference. Such documentation would be incorporated in the appropriate NEPA document. The regulation would promote consistent treatment of effects when analyzing proposed grazing changes.

2.2.2 Implementation of Changes in Grazing Use

The BLM would modify how changes in active use are implemented through the proposed regulation. This modification to §4110.3-3 would provide that changes in active use of more than 10 percent would be phased in over a 5-year period unless the affected permittee or lessee agrees to a shorter period or the changes must be made before 5 years have passed to comply with applicable law. For example, if a biological opinion issued under Section 7 of the Endangered Species Act (ESA) required immediate implementation of a change in active use, then compliance with ESA would take precedence and there would not be a 5-year phase-in in that instance.

It is anticipated that, in practice, portions of the total change would be applied in years 1, 3, and 5. The 5-year phase-in period for changes in active use would provide time for more gradual operational adjustments by grazing permittees or lessees to lessen sudden adverse economic effects that may arise from a reduction, or to allow time to plan livestock management changes or to adjust herd size. The phase-in period would also allow the BLM to monitor and observe the effects of the changes in increments. This 5-year

phase-in period is similar to the regulations in effect in 1994.

2.2.3 Range Improvement Ownership

Under the proposed action, title to new, permanent, structural grazing-related range improvements such as fences, wells, and pipelines authorized under a Cooperative Range Improvement Agreement and constructed on public lands would be shared between the cooperator(s) and the United States in proportion to their initial contribution to on-the-ground project development and construction costs (§4120.3-2(b)). Cooperators would include any individual or organization that contributes funding, materials, or labor to the construction or development of a range improvement.

Structural improvements include wells, pipelines, or fences constructed on BLM-managed public lands. This would return the provision on how title for improvements constructed under Cooperative Range Improvement Agreements was shared before the 1995 change in regulations. Granting title to a structural improvement on public lands does not grant exclusive right to use the improvement or title to the underlying lands themselves. Cooperative Range Improvement Agreements will continue to include provisions that protect the interests of the United States in its lands and resources. The ownership of existing range improvements would not be affected. This provision is expected to provide an incentive for permittees and lessees to cooperate in the development of range improvements to achieve management or resource condition objectives.

Permittees would continue to own temporary structures such as dip tanks, loading chutes, or portable water troughs

placed on public lands under a Range Improvement Permit. The United States would continue to have title to nonstructural range improvements (e.g., seeding).

2.2.4 Cooperation with Tribal, State, County, or Local Government-Established Grazing Boards

As a result of comments on the draft EIS, the proposed action was modified to include Tribal agencies and grazing boards to the list of entities and boards with which BLM will cooperate. Changes were also made to make it clear that BLM is required to cooperate only with Tribal, state, county or local grazing boards that are established under Tribal or government authority, as opposed to private organizations that assume the title “grazing board.”

The proposed action now calls for amendment of §4120.5-2 to include Tribal agencies in both the title to the section and the list of agencies with which we would routinely cooperate in administering laws and regulations relating to livestock, livestock diseases, sanitation, and noxious weed eradication and control. The proposed action would specifically require that BLM cooperate with Tribal, state, county, or local government-established grazing boards in reviewing range improvements and allotment management plans on public lands. In many States there are Tribal, state, county, or local government-established grazing advisory boards whose function is to provide guidance on grazing administration—generally focusing on range improvements—on public lands. These locally established grazing boards, where they exist, would be a valuable tool for gathering additional local input for BLM’s decision-making processes and would help satisfy the FLPMA Section 401(b)(1) provision that calls for the BLM to consult with local user representatives when

considering range rehabilitation, protection, and improvement actions. The changes would also bring the regulations into compliance with Executive Order 13352 of August 26, 2004 (69 FR 52989), on Facilitation of Cooperative Conservation.

2.2.5 Review of Biological Assessments and Evaluations

Based on the review of the proposed rule in the draft EIS, we decided to delete the references to biological assessments (BAs) and biological evaluations (BEs) in section §4130.3-3 because it is unnecessary to highlight BAs and BEs as examples of reports during the preparation of which BLM seeks input from affected permittees, lessees, states and the interested public. The reason for this change is to avoid implying that BAs and BEs have greater value or emphasis than other reports also used by BLM when evaluating grazing use. It is more efficient and appropriate to use manual and handbook guidance rather than regulations to ensure that BLM field offices are consistently providing an opportunity for affected permittees, lessees, states, and the interested public to review and provide input, to the extent practicable, during preparation of such reports, including BEs and BAs.

The revised proposed action does clarify that, although reports prepared in support of decisions to modify grazing use are subject to review during preparation, the review opportunity does not include a regulatory obligation for comment. Reviewing parties may still elect to provide comments during preparation of such reports, including BAs and BEs.

2.2.6 Temporary Nonuse

Based on comments on the draft EIS, the BLM made some modifications to the proposed action related to temporary nonuse.

We changed the provision from stating the authorized officer “will authorize nonuse” to “may authorize nonuse” to avoid the interpretation that the BLM is required to approve temporary nonuse regardless of the reason offered by the permittee or lessee. We also modified the provision to clarify that applications for temporary changes in use, including nonuse, within the terms and conditions of a permit or lease must be submitted in writing to the BLM on or before the date the permittee or lessee wishes the change in grazing use to begin.

The proposed action includes moving the provisions addressing approval of “temporary nonuse” from §4130.2 to §4130.4 and revising them to allow the BLM to have the discretion to approve applications to temporarily not use all or part of the grazing use authorized by a permit or lease on a year-to-year basis when the nonuse is warranted by rangeland conditions or the personal or business needs of the permittee or lessee. There would be no limit on the number of years of consecutive nonuse allowed under the proposed regulations; however, nonuse would only be approved by the BLM for a legitimate purpose or need to provide for (1) natural resource conservation, enhancement, or protection, including more rapid progress toward meeting resource condition objectives or attainment of rangeland health standards; or (2) the business or personal needs of the permittee or lessee.

Events such as drought, fire, or less than average forage growth typically result in “rangeland conditions” that will prompt the need for temporary nonuse of all or part of the grazing use allowed by the permit or lease. When the BLM, in consultation with the grazing operator, determines rangeland conditions are such that less grazing use would be appropriate, the BLM encourages operators, if they have not already done so, to apply for nonuse for “conservation and

protection of rangeland resources.” This is the simplest way to temporarily reduce use in response to rangeland conditions. In some instances, approval of an application for temporary nonuse also precludes the need for the BLM to issue a decision to temporarily suspend use under §4110.3-3(b), although the BLM retains the discretion to do this. “Personal and business needs” of the grazing operator are actions operators take in the course of managing their business, such as livestock sale, that result in temporary herd size reductions.

2.2.7 Basis for Rangeland Health Determinations

Present policy and procedural guidance recommends that both standards assessments and monitoring data be used as the basis for making determinations. However, use of both assessments and monitoring is not required either by policy or regulation. Under the proposed regulations in §4180.2, determinations that existing grazing management practices or levels of grazing use are significant factors in failing to achieve standards and conform with guidelines would be required to be based on the results of standards assessment and monitoring data. Assessments and monitoring would not both be required as a basis for other determinations.

2.2.8 Timeframe for Taking Action to Meet Rangeland Health Standards

Based on concerns raised during the review of the draft EIS, the proposed action for §4180.2 was revised to allow for more time to formulate, propose, and analyze an appropriate action to address a failure to meet standards or to conform to guidelines for grazing administration if a legally required process that is beyond the control

of the BLM, such as issuance of a biological opinion, prevented us from meeting the proposed 24-month deadline for making a decision. This provision for extension is likely to be used rarely. It recognizes the reality that the BLM is not always able to control timeframes when other agencies are involved.

Under the proposed action, the BLM would, under §4180.1, be required to take action to assist in achieving the fundamentals of rangeland health only if the fallback standards and guidelines are in place. Most BLM states have completed establishment of Secretarial-approved standards and guidelines, therefore this section would have limited applicability under present circumstances. This provision would provide for implementation of appropriate action no later than the start of the next grazing year after completing all consultation requirements and compliance with other laws and requirements.

Changes in timeframes would also be implemented through modifications in §4180.2(c). To allow sufficient time to complete all consultation and other legally mandated requirements, the Proposed Action would require the BLM to formulate, propose, and analyze appropriate actions to address the failure to meet the rangeland health standards or to conform to the guidelines for grazing management no later than 24 months after the determination. The conclusion of this process would be documented by either execution of an applicable and relevant documented agreement or issuance of an applicable final decision. The BLM would be able to extend the deadline for meeting the above timeframe requirements when legally required processes that are the responsibility of another agency prevent completion of all legal obligations within the 24-month timeframe. Upon executing the agreement or in the absence

of a stay of the final decision, the authorized officer will implement the appropriate action as soon as practicable but not later than the start of the next grazing year (§4180.2(c)).

The timeframe adjustments in both §4180.1 and §4180.2(c) are based on the need for providing adequate time for the BLM to complete mandated consultation and other legal requirements prior to taking action. The BLM has certain specific requirements for consultation, cooperation, and coordination prior to issuing any proposed decisions, including those proposed decisions related to changes in active use, renewal, issuance, or modification of grazing permits and leases; changes in allotment boundaries; preparation and modification of allotment management plans and resource activity plans; and plans for range improvements. As part of the planning and decision-making process, the BLM is also required to comply with applicable laws and regulations, including but not limited to the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and the National Historic Preservation Act (NHPA). After a determination has been made that livestock grazing management practices or levels of use are significant factors in the failure to achieve the rangeland health standards or conform with the guidelines for grazing administration, the BLM must comply with the above analysis and consultation requirements mandated by these laws and regulations prior to implementing any decision. It is the BLM's belief that allowing additional time to develop, formulate, and analyze appropriate actions with sufficient opportunity for consultation and satisfaction of legal requirements will result in better and more sustainable decisions.

2.2.9 Conservation Use

Under the Proposed Action, all references to and provisions on "conservation use"

would be deleted from the regulations. This would bring the regulations into conformance with the 1999 10th Circuit Court decision (Public Lands Council v. Babbitt, 929 F.Supp. 1436 (D. Wyo. 1996), rev'd in part and aff'd in part, 167 F.3d 1287 (10th Cir. 1999), aff'd, 529 U.S. 728 (2000)).

2.2.10 Definition of Preference, Permitted Use, and Active Use

The BLM would define “grazing preference” or “preference” as “the total number of animal unit months on public lands apportioned and attached to base property owned or controlled by a permittee, lessee, or an applicant for a permit or lease. Grazing preference includes active use and use held in suspension. Grazing preference holders have a superior or priority position against others for the purpose of receiving a grazing permit or lease.”

This definition is similar to how the term was defined when it first was defined in the grazing regulations in 1978, and to how it was defined before 1995. The concept of grazing preference as it would be defined in this rulemaking includes two elements: (1) a livestock forage allocation on public lands; and (2) that priority for receipt of that allocation is attached base property. Ownership or control of base property gives the owner preference for receipt of a grazing permit or lease authorizing grazing use to the extent of the active preference, as well as priority for receipt of forage that may later be determined to be available for livestock grazing to the extent of any preference that is in suspension.

Under the proposed regulations, the BLM would also remove the term “permitted use” from the definitions (§4100.0-5) and generally replace this term wherever it occurs in the regulations with either “grazing preference” or “preference,” or “active use,” depending on the regulatory context.

With respect to the definition of “active use”, we did make one minor change based on comments on the draft EIS. We substituted the word “livestock” for “rangeland” in the reference to carrying capacity to make the definition consistent with all other references to carrying capacity in the regulations. Under the proposed action, the definition of “active use” would be modified to mean that portion of the grazing preference that is available for livestock grazing use based on livestock carrying capacity and resource conditions in an allotment under a permit or lease, and that is not in suspension (§4100.0-5). This change would remove the term “conservation use” and “livestock use” and make it clear that “active use” refers to a forage amount that it is based on the carrying capacity of, and resource conditions in, an allotment and that it does not refer to forage that had been allocated at some point in the past, but has since been determined to no longer be present and which now is held in suspension.

Although the connection between land use plans and grazing preference would not be stated in the definition of “grazing preference” as it is being proposed, the regulatory text would reflect the relationship between “active use” and land use plans at §4110.2-2 , §4110.3(a)(3), §4110.3-1 and between grazing permits and leases and land use plans at §4130.2.

The forage amount available on public lands that is available for livestock grazing use would continue to fluctuate because of changed resource conditions, or changed administrative or management circumstances. It is well settled that livestock forage allocations made before enactment of the Federal Land Policy and Management Act of 1976 may be adjusted based on BLM land use planning decisions, or the need to change grazing use to meet objectives specified in land use plans (see, for example, Public

Lands Council v. Babbitt, 529 U.S. 728 (2000)).

2.2.11 Definition and Role of the Interested Public

Based on concerns raised during the review of the draft EIS, we modified the proposed definition of interested public to make it clear that a request to be considered as interested public must identify the specific allotments in which the person or entity is interested. We also added language providing that when the interested public submits comments or otherwise participates, they must address the management of a specific allotment.

Under the proposed action, the BLM proposes amending the present definition of “interested public” to mean an individual, group, or organization that has either (1) submitted a written request to the authorized officer to be given an opportunity to be involved in the BLM decision-making process as to the management of a specific allotment and who has followed up on that request by commenting on or otherwise participating in the decision-making process as to the management of a specific allotment; or (2) submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment as part of the process leading to a BLM decision on the management of livestock grazing on the allotment.

Under the proposed rule, the BLM would retain requirements for consultation, cooperation, and coordination with the interested public for the following BLM actions:

1. Apportioning additional forage on BLM-managed lands;

2. Developing or modifying an allotment management plan or grazing activity plan;
3. Planning of the range development or improvement program; and
4. Reviewing and commenting on grazing management evaluation reports.

In addition, the requirement for the authorized officer to provide copies of proposed and final grazing decisions would be retained.

This proposed rule would remove the regulatory requirement that the authorized officer consult, cooperate, and coordinate with the interested public on the following actions:

1. Designating and adjusting allotment boundaries;
2. Changing active use;
3. Issuing emergency closures or modifications;
4. Issuing or renewing a grazing permit or lease;
5. Modifying a grazing permit or lease; and
6. Issuing temporary nonrenewable grazing permits.

Generally, the above actions involve the day-to-day operational aspects of the grazing program. These changes would not remove the BLM’s discretion to consult with the interested public at its option on these actions.

This change would not affect the requirement to consult with the interested public where such input would be of the greatest value in setting management

direction for public lands, such as when planning vegetation management objectives in an allotment management plan, or by providing input to reports evaluating range conditions. The change would allow the authorized officer and the grazing operator the discretion to determine appropriate on-the-ground management actions to achieve plan objectives or respond to variable resource conditions. The BLM would retain the discretion to consult, cooperate, and coordinate on any item if the authorized officer determined that value would be added to grazing management decisions or actions, above and beyond what the regulation requires. Also, this proposed revision will not affect the BLM's practice of making all National Environmental Policy Act (NEPA) documents available to the public in accordance with Council of Environmental Quality regulations. As previously indicated, the interested public will be provided a copy of the proposed decision and associated NEPA documents and will be able to protest proposed decisions. The interested public will also receive a copy of the final decision.

2.2.12 Water Rights

The BLM proposes to amend this section by removing the reference to the effective date of this provision in the first sentence and removing the second sentence. This would remove the provision stating that, to the extent allowed by state law, livestock water rights must be acquired, perfected, maintained, and administered in the name of the United States. The proposed provision would read as follows: Any right acquired by the United States to use water on public land for the purpose of livestock watering shall be acquired, perfected, maintained, and administered under the substantive and procedural laws of the state within which such land is located. Under the revised provision, the BLM would have whatever

flexibility state law provides and would clarify BLM's administrative options, including joint ownership of water rights with permittees and lessees.

2.2.13 Satisfactory Performance of Permittee or Lessee

The BLM would move provisions regarding what constitutes "satisfactory performance" of an applicant for a permit or lease from §4110.1, Mandatory qualifications, to §4130.1-1, Filing applications, to better organize the regulations. The provisions addressing what constitutes satisfactory performance for applicants for new permits and leases would also be revised.

The present rule provides that applicants for renewal of permits and leases would be deemed *to have* a satisfactory record of performance if they have substantially complied with the terms and conditions of the expiring permit or lease and other rules applicable to the permit or lease, whereas applicants for new permits or leases would be deemed *to not have* a satisfactory record if they have had a Federal or state lease canceled within the previous 36 months, or have been legally barred from holding a grazing permit or lease. The existing sentence construction does not specify the circumstances under which the BLM will consider an applicant for a new permit or lease to have a satisfactory record of performance.

The changes proposed would clarify that the scope of the criteria that the BLM would consider when determining whether an applicant for a new permit has a satisfactory record of performance is limited to the criteria stated in the regulations. The proposed rules do this by changing the sentence construction for applicants for new permits or leases to reflect what would be required for an applicant for a new permit or lease *to have* a satisfactory record of

performance. Basically, the regulations would now clearly state that the BLM would deem applicants for new permits or leases and for permits and leases after a preference transfer to have a record of satisfactory performance when the applicant or affiliate has not had any Federal grazing permit or lease canceled for violations of the permit or lease within the 36 months immediately preceding the date of the application; or the applicant or affiliate has not had any state grazing permit or lease, for lands within the grazing allotment for which a Federal permit or lease is sought, canceled for violation of the permit or lease within 36 months of the date of the application; or the applicant or affiliate is not barred from holding a Federal grazing permit or lease by order of a court of competent jurisdiction.

2.2.14 Changes in Grazing Use Within the Terms and Conditions of Permit or Lease

Based on concerns raised during the review of the draft EIS, we made changes in the proposed action addressing changes in grazing use within the terms and conditions of a permit or lease. We removed the reasons listed in the draft for allowing temporary changes in grazing use. In the draft, we indicated that changes could be granted either in response to annual fluctuation in time and amount of forage production or to meet locally established range readiness criteria. Comments objected to the use of range readiness criteria, claiming that it has many interpretations and we would not be able to adequately define it to serve as a regulatory criterion. We were also concerned that, by listing the reasons, we would unnecessarily restrict our management options. We also added language that would allow for greater flexibility in the period of use if specified in the appropriate allotment management plan.

As indicated in the discussion of “temporary nonuse” (see 2.2.6), we also clarified in this section that applications for changes in grazing use within the terms and conditions of a permit or lease had to be made in writing on or before the date they wish the change in grazing use to begin.

Under the revised proposed action the BLM would amend section §4130.4 to indicate what is meant by the phrase “within the terms and conditions of the permit or lease.” The BLM would define “temporary changes within the terms and conditions of the permit or lease,” to mean changes to the number of livestock and period of use, or both, that would:

1. Result in temporary nonuse of all or part of the allotment; or
2. Result in forage removal that does not exceed the amount of “active use” specified by the permit or lease; and that, unless otherwise specified in the appropriate allotment management plan, occurs not earlier than 14 days before the grazing begin date specified by the permit or lease, and not later than 14 days after the grazing end date specified by the permit or lease; or
3. Result in both of the above conditions.

The new provisions would also require that the BLM consult, cooperate, and coordinate with the permittees or lessees regarding their applications for changes within the terms and conditions of their permit or lease.

Livestock periods-of-use established by the grazing permits are based on the anticipated average dates that the range is “ready” to be grazed. The range is considered “ready” when plant growth has reached the stage at which grazing may begin without

doing permanent damage to vegetation or soil. The point where the range is “ready” for grazing use can and does vary from year to year around a long-term average date of readiness. The BLM believes that a 14-day flexibility period on either side of the grazing begin and end dates specified by the permit or lease is a reasonable way to allow for minor adjustments in grazing use in response to these variations.

The BLM would consider applications for changes in grazing use “within the terms and conditions of the permit or lease” on a case-by-case basis. If the BLM approves the change, no formal action other than the issuance and payment of a relevant grazing fee billing would be required. The change would not constitute a formal permit or lease modification. In other words, a temporary change that was allowed in 1 year to respond to the conditions of that year would not be carried forward to the next year. An application for grazing use that falls outside of this flexibility would be not be considered “within the terms and conditions” of the authorizing permit or lease unless a special term or condition was attached to the permit or lease that allowed for greater flexibility. In some cases, allotment management plans identify conditions which would allow for greater flexibility.

Temporary changes in grazing use that are determined to be “within the terms and conditions of the permit or lease” would not typically require additional NEPA analysis because the effects would fall within the scope of those effects analyzed in the existing applicable NEPA document for the permit or lease. Exceptions would only occur if the 14-day period overlapped some critical time periods that were not addressed or were time periods that were required to be avoided in the existing NEPA document (e.g., desert tortoise emergence in spring or fall).

2.2.15 Service Charges

Based on concerns raised during the review of the draft EIS, we incorporated language in the proposed action to provide procedures for periodically adjusting the service charges through publication of a notice in the Federal Register.

Comments on the draft EIS also suggested that we did not provide detailed information on the basis for our changes in the service charges proposed. The BLM does not collect itemized cost data on the specific processing actions addressed in this rulemaking.

Although we do not specifically collect cost data on just crossing permits or billings, we do collect such data in one of the cost categories in our management information system. Data on the costs to process billings and miscellaneous permits are shown by BLM State Office in Table 2.2.15 A. The average Bureauwide unit cost for the items in that cost category was \$339.00 in fiscal year 2003. Based on our professional judgment, we determined that the processing costs of issuing a crossing permit and canceling and replacing a grazing billing fee that more closely reflects our actual costs was a proportionally smaller amount than represented by that subset of costs.

Cost data on the transfer of grazing preference and related actions are also collected by the BLM in our management information system. Those data are shown by BLM State Office in Table 2.2.15 B. The average Bureauwide unit cost for the items in that cost category was \$2,255.00 in fiscal year 2003. We estimated that the actual processing costs for just the preference transfer is substantially less than represented by that cost category. Most of the costs captured in that cost category are for processing the permit or lease issuance following the transfer, including the NEPA

Table 2.2.15-A. BLM costs to process billings and miscellaneous permits, 2003.

Costs associated with issuance of billings, free use permits, exchange of use permits, trailing permits, temporary nonrenewable permits. Includes: 1) Preparing stipulations for the authorization; 2) Data management support of range records and GIS support; 3) Generating the billing; and 4) Collection of the grazing fee.

2003 State	Units	State Direct Cost	State Direct Unit Cost	Bureau's Full Cost	Bureau's Unit Cost
Arizona	775	\$203,044	\$262	\$439,854	\$568
California	657	\$275,013	\$419	\$657,748	\$1,001
Colorado	2359	\$355,784	\$151	\$762,549	\$323
Idaho	2660	\$389,775	\$147	\$790,500	\$297
Montana	4879	\$429,643	\$88	\$956,003	\$196
New Mexico	3137	\$215,507	\$69	\$473,115	\$151
Nevada	1284	\$425,181	\$331	\$839,903	\$654
Oregon	1710	\$442,353	\$259	\$973,603	\$569
Utah	2728	\$510,525	\$187	\$1,115,804	\$409
Wyoming	3788	\$554,581	\$146	\$1,124,855	\$297
Total	23977	\$3,801,406	\$159	\$8,133,935	\$339

Source: BLM Management Information System.

and other legal compliance actions that are labor intensive. The actual processing of the preference transfer is relatively straightforward and quickly accomplished—a small component of that cost category. Again, we based our estimate of the appropriate service charge for preference transfers to more closely reflect our actual costs on our best professional judgment.

Under the proposed regulations at §4130.8-3, the service charge for processing various actions would more closely reflect the actual processing costs. Except when initiated by the BLM, the following service charges would be assessed for the processing of the following actions:

- Issuance of a crossing permit—\$75
- Transfer of grazing preference—\$145

- Cancellation and replacement of a grazing fee billing—\$50

A crossing permit may be issued to any applicant showing a need to cross the public land or the land under BLM control with livestock for proper and lawful purposes. A crossing permit for trailing livestock would contain terms and conditions deemed necessary by the authorized officer for temporary grazing use that would occur (§4130.6-3).

A grazing preference transfer occurs when base property is sold or leased and an application is made to the BLM for the transfer of the grazing preference to the new owner or lessee. A grazing preference may also be transferred from one base property to another.

Table 2.2.15-B BLM Costs to process grazing preference transfers and related actions, 2003.

Costs associated with processing a preference transfer. Includes costs of complying with National Environmental Policy Act, Section 106 of the National Historic Preservation Act, Section 7 of the Endangered Species Act, Land Use Plan and other concerns as appropriate; cost of preparing a Final Decision on transfer of preference; costs associated with processing an appeal and participating in a hearing on the appeal; and costs of data management support of range records and Global Information System.

2003 State	Units	State Direct Cost	State Direct Unit Cost	Bureau's Full Cost	Bureau's Unit Cost
Arizona	50	\$75,947	\$1,519	\$162,632	\$3,253
California	31	\$20,401	\$658	\$47,980	\$1,548
Colorado	93	\$65,748	\$707	\$137,830	\$1,482
Idaho	123	\$71,934	\$585	\$144,269	\$1,173
Montana	242	\$201,307	\$832	\$441,669	\$1,825
New Mexico	113	\$244,320	\$2,162	\$511,458	\$4,526
Nevada	50	\$106,687	\$2,134	\$207,504	\$4,150
Oregon	70	\$68,674	\$981	\$151,266	\$2,161
Utah	99	\$64,132	\$648	\$138,468	\$1,399
Wyoming	194	\$231,317	\$1,192	\$458,880	\$2,365
Total	1065	\$1,150,467	\$1,080	\$2,401,956	\$2,255

The service charge for cancellation and replacement of a grazing fee billing is intended to cover the administrative costs associated with canceling and issuing a new billing when a permittee or lessee requests changes in grazing use after the bill has been issued.

2.2.16 Prohibited Acts

As indicated in the discussion of the No Action Alternative, there are three categories of prohibited acts. Under the proposed change, the third category of prohibited acts found in §4140.1(c) would be changed to clarify that this section would be applicable only when the permittee or lessee

commits a prohibited act on an allotment for which he holds a permit or lease from the BLM. Otherwise, permittees or lessees would be treated similarly to any other individuals committing a similar prohibited act (i.e., other laws or regulations may apply). The effect of this change is to limit applicability of the section to circumstances where there is a geographical connection between the prohibited act and the grazing permit or lease. This change is also intended to ensure that the performance of the prohibited act is related to the operator's permit or lease.

Editorial changes to improve the clarity of the regulations are also incorporated in the proposed changes for this section.

2.1.17 Grazing Use Pending Resolution of Appeals When Decision Has Been Stayed

The BLM would continue to operate under the administrative remedies regulations set forth in Subpart 4160. Described in detail are the procedures for issuing and protesting proposed decisions (§4160.1 and §4160.2) and issuing and appealing final decisions (§4160.3 and §4160.4). Procedures for requesting a stay of a final decision and allowable grazing use if a final decision is stayed are identified in §4160.3.

When the Office of Hearings and Appeals stays a final decision regarding an application for grazing authorization, an applicant who was granted grazing use in the preceding year may continue at that level of authorized grazing use during the time the decision is stayed. This provision does not apply if the grazing use in the preceding year was authorized on a temporary nonrenewable basis under §4110.3-1(a). Where the applicant had no authorized grazing use during the previous year, or the application is for designated ephemeral or annual rangeland grazing use, the grazing use under the stay is consistent with the final decision pending a final determination on the appeal (§4160.3(d)).

When the Office of Hearings and Appeals stays a final decision to change the authorized grazing use, the grazing use authorized to the permittee or lessee during the time that the decision is stayed shall not exceed the permittee's or lessee's authorized use in the last year during which any use was authorized (§4160.3(e)).

2.2.18 Treatment of Biological Assessments and Evaluations in the Grazing Decision-Making Process

The Proposed Rule, at §4160.1(d), would clarify that a biological assessment or

biological evaluation prepared in accordance with Section 7 of the Endangered Species Act would not be a decision for purposes of protest or appeal.

A biological assessment (BA) is prepared by an agency to determine whether a proposed action is likely to: (1) adversely affect a listed species or designated critical habitat; (2) jeopardize the continued existence of species that are proposed for listing; or (3) adversely modify critical habitat. A biological evaluation (BE) is a documented review of an agency's programs or activities in sufficient detail to determine how an action or proposed action may affect any threatened, endangered, proposed or sensitive species, or proposed or designated critical habitat

This regulatory revision would address concerns regarding the *Blake* decision wherein the Interior Board of Land Appeals ruled that BAs were to be treated as decisions subject to the protest and appeals provisions of §4160. *Blake v. Bureau of Land Management*, 145 IBLA 154 (1998), *aff'd on reconsideration*, 156 IBLA 280 (2002). The *Blake* ruling raised concerns about the potential for major delays in the decision-making process as a result of this requirement.

The *Blake* decision has led to a situation where a BLM BA or BE addressing possible grazing changes may trigger the need for *two* final decisions, the first of which cannot be directly implemented. The BLM believes a BA or BE is better viewed as an intermediate step that may later lead to a *single* final decision that can be implemented. This regulatory change is designed to implement that view—a view that formed the basis of BLM actions prior to the *Blake* decisions

2.3 Alternative Three: Modified Action

Alternative Three is essentially the same as Alternative Two (Proposed Action) with modifications to four key elements. Modifications involve the following elements: Implementation of Grazing Decisions, Temporary Nonuse, Basis for Rangeland Health Determinations, and Prohibited Acts.

2.3.1 Implementation of Changes in Grazing Use

This provision is the same as the proposed action, except that the 5-year phase-in of changes in use would be discretionary rather than mandatory. In other words, changes in active use in excess of 10 percent may not have to be implemented over a 5-year period. The BLM-authorized officer may, at his or her discretion, determine that a shorter period is appropriate or no phase-in period is warranted. For example, if a special status species that is not presently covered by the Endangered Species Act is being affected by levels of active use, the BLM could decide to immediately implement a reduction in active use without agreement of the affected permittees, following the required consultations and allowing for protest and appeal of the decision.

2.3.2 Temporary Nonuse

Under this proposal, permittees or lessees could submit and the BLM could approve applications for nonuse for no more than 5 consecutive years. All other provisions related to the authorization of temporary nonuse would be the same as for the Proposed Action.

2.3.3 Basis for Rangeland Health Determinations

This provision would be similar to the proposed action except that the BLM would not be required to use both assessments and monitoring as the basis for determinations that existing grazing management practices or levels of grazing use are significant factors in failing to achieve standards and conform with guidelines; that is, rangeland health determinations such as those could be based on either standards assessments or monitoring data, or both. This would increase BLM manager flexibility and discretion over the proposed action.

2.3.4 Prohibited Acts

Section 4140, Prohibited Acts, would be the same as the proposed action except for changes described below.

The following would be **added** to the second category of prohibited acts (§4140.1(b)): “Failing to comply with the use of certified weed seed free forage, grain, straw or mulch when required by the authorized officer.” This would enable the BLM to enforce weed seed free requirements in states which do not have weed seed free certification programs.

The following would be **deleted** from the third category of prohibited acts (§4140.1(c)): Violation of Federal or state laws or regulations pertaining to the placement of poisonous bait or hazardous devices designed for the destruction of wildlife; application or storage of pesticides, herbicides, or other hazardous materials; alteration or destruction of natural stream courses without authorization; pollution of water sources; illegal take, destruction or harassment, or aiding and abetting in the illegal take, destruction or harassment of fish and wildlife resources; and illegal removal or destruction of archaeological or cultural

resources. Such acts would still be prosecuted by the appropriate Federal or state agency, however, after conviction, the permittee or lessee could not be additionally penalized by having his permit or lease denied, suspended, or canceled.

2.4 Alternatives Considered But Not Analyzed in Detail

Some comments on the draft EIS stated that additional alternatives should have been considered for the timeframe for taking action to meet rangeland health standards and for implementing changes in grazing use. In the draft EIS, we proposed allowing as long as 24 months following the determination on whether or not an allotment met standards or conformed to guidelines to formulate, propose and analyze an appropriate action and complete all legal and consultation requirements. We also proposed a 5-year phase-in of changes in active use in excess of 10 percent.

We believe that we examined an appropriate range of alternatives and we have not added additional ones in this final EIS. When considering time limitations, an infinite array of options is theoretically possible. The alternatives considered here were reasonable given the nature of this rule and sufficiently distinct to allow for meaningful comparisons in the analysis.

With respect to the timeframe for taking action to meet rangeland health standards, the current regulations, in §4180.2(c), provide that corrective action should be taken by the start of the next grazing season when grazing is determined to be a significant factor in the failure to achieve a rangeland health standard. Although the BLM desires to take effective corrective action as quickly as possible, recent experience has demonstrated that complex circumstances

can sometimes require extended periods of time to form effective long-term solutions. Rangeland standards failures have often developed slowly over many years and may take years to remedy completely. Factors complicating the formulation of action plans include the legal requirements of NEPA, NHPA, and ESA; water rights adjudications; and the presence of multiple permittees on an allotment. We determined the proposed action timeframe of 24 months to be the shortest reasonable timeframe that would accommodate the vast majority of corrective actions. The proposed regulation in this final EIS adds language to recognize that, in some instances, even more time may be required due to delays outside the control of the BLM. We initially considered other timeframes, such as 12 or 18 months, but we viewed them as inadequate to deal with the more complicated situations. Removal of any timeframe guidance was also considered, but we determined that a reasonable deadline would be useful to help ensure that BLM actions were not inadvertently delayed.

With respect to the implementation of changes in grazing use, the current regulations, in §4110.3-3, do not include any provisions regarding a phase-in period. We examined two alternatives for active use changes greater than 10 percent in the EIS, in addition to the current regulations. Scoping indicated that permittees and lessees supported a 5-year option to address the financial shocks that can come in the rare instances when large decreases are made in active use. Scoping did not indicate strong support for longer or shorter timeframes. The BLM addressed the impacts associated with mandatory or discretionary phase-in systems. This was a reasonable range of alternatives for this issue.

Many substantive issues and recommendations were also provided by the public during the scoping period. Public

comments were fully considered and many of their recommendations are reflected in the proposed action or in the modified action alternative. Many other issues raised or recommendations made were considered but not analyzed in detail in this EIS, because they are either beyond the scope of the document, did not meet the basic purposes of these proposed changes to the regulations, or the BLM decided it could better address the issues through the development of policy.

The following are alternatives the BLM has considered but has not analyzed in detail in this EIS:

- **Increasing grazing fees or providing for competitive bidding for assignment of permits and leases.** In the Advance Notice of Proposed Rulemaking (ANPR) for proposed amendments to BLM's grazing administration regulations, the BLM stated that grazing fees would not be addressed in this rulemaking. However, several commenters raised the issue of fees and requested changes to the grazing fee system. Some commenters asked the BLM to develop a competitive bidding process to replace the present system for assigning grazing permits and allocating grazing preference and the present grazing fee formula. Modifications to the fees and the method for allocating permits or leases would require legislative action. The BLM determined that such proposals are outside the scope of this rulemaking.
- **Removing Grazing Fee Surcharge Requirements.** Several commenters requested that the BLM consider removing the grazing fee surcharge provisions from the regulations. The grazing fee surcharge was added by the 1995 regulations to address concerns

raised by to the General Accounting Office and Office of the Inspector General regarding the potential for rancher windfall profits arising from the BLM's practice of allowing for the subleasing of public land grazing privileges. Some BLM grazing permittees enter pasturing agreements wherein they take temporary control of a third party's livestock and graze them under their permit or lease. The permittee pays the Federal grazing fee and charges the third party an amount negotiated between them for the forage and care of the livestock. The BLM assesses a fee surcharge in this circumstance that equals 35 percent of the difference between the present Federal grazing fee and the private grazing land lease rate. An exception to the surcharge requirement is provided for children of permittees and lessees. The BLM continues to believe that the surcharge is an equitable way in which to address this issue. In addition, this is a grazing fee issue and, as indicated in the ANPR, the BLM has determined that grazing fees are outside the scope of this rulemaking.

- **Reestablishing BLM Grazing Advisory Boards.** A number of commenters recommended that the BLM reestablish BLM Grazing Advisory Boards to provide local advice and recommendations to BLM on grazing issues. The BLM Grazing Advisory Boards were "sunset" on December 31, 1985, by FLPMA. The 1995 grazing regulation amendments incorporated several requirements for BLM to consult, cooperate, and coordinate with BLM Resource Advisory Councils that were established in 1995 to advise and recommend strategies for managing public lands under the multiple-use mandate. The Resource Advisory

Councils have generally assumed the role of the previous Grazing Advisory Boards, and it would be duplicative and unnecessary to establish another advisory body. Although the BLM does not consider the reestablishment of BLM Grazing Advisory Boards in this rulemaking, it is proposing a provision requiring BLM to cooperate with state, county, or locally established grazing boards in reviewing range improvements and allotment management plans on public lands. This review would supplement the advice of Resource Advisory Councils.

- **Changing management of wild horses and burros.** Some commenters identified the need to change how the BLM manages wild horses and burros as necessary to address rangeland health issues. Any changes to the Wild Horse and Burro Act or management regulations are, however, outside the authority and scope of this rulemaking.
- **Changing Conversion Ratio for Sheep for Billing Purposes.** Counting seven sheep, rather than the present five, as the equivalent of one animal unit for the purposes of calculating grazing fee billings was recommended by commenters during scoping. However, as indicated in the ANPR, matters involving grazing fees are outside the scope of this rulemaking.
- **Establishing “Reserve Common Allotments.”** In the ANPR, the BLM identified that it was considering proposing provisions to define, establish a regulatory framework, and otherwise support the creation of Reserve Common Allotments. The BLM has

decided not to proceed with developing Reserve Common Allotments at this time for several reasons. During the BLM’s public scoping period, many commenters expressed concern about adding special provisions for Reserve Common Allotments in the grazing regulations. Many commenters said they did not think such regulatory provisions were warranted or necessary. Ranching interests indicated they would rather have “normal” allotments, whereas environmental interests questioned whether this would be the best use of the land. After considering the unenthusiastic reception to this concept, the BLM determined it was not in the public interest to proceed with this provision through regulations. The BLM may continue to examine the concept of forage reserves through policy making processes

- **Assigning Burden of Proof.** Several commenters recommended that the BLM consider including a provision in the regulations requiring the BLM to assume the burden of proof in an appeal before the Office of Hearings and Appeals. The Administrative Procedure Act (APA) at 5 U.S.C. 556(d) provides that “except as otherwise provided by statute, the proponent of a rule or order has the burden of proof.” The burden of proof has recently been clarified by the Supreme Court to mean the “burden of persuasion,” which refers to “the notion that if evidence is evenly balanced, the party who bears the burden of persuasion must lose.” (Director, Office of Workers’ Compensation Program v. Greenwich Collieries, 512 U.S. 267, 272 (1994)). Previously, the burden of proof had been confused with the burden of production, which refers to a party’s obligation to come forward

with evidence to support its claim. The burden of proving a fact remains where it started, but once the party with this burden establishes a prima facie case, the burden to produce evidence shifts. The burden of persuasion, on the other hand, does not shift except in the case of affirmative defenses. The APA, as interpreted by the courts, establishes the burden of persuasion and it is not necessary to further treat this issue in these regulations.

- **Monitoring.** Few commenters directly addressed the definition of “monitoring,” although many of the comments the BLM received pertained to procedural matters; that is, recommendations on how the BLM should conduct monitoring. The BLM received many comments from the livestock industry and environmental and conservation groups, asking that the BLM increase monitoring efforts on public lands. The BLM considered including new language regarding monitoring intending to provide explicit direction on the development of allotment-specific resource management objectives and short- and long-term monitoring programs in consultation with the permittee or lessee. The present regulations already allow the BLM to develop resource management objectives and monitoring plans as part of its allotment management plans. The BLM determined that establishing monitoring methodologies and working with permittees and lessees in collecting and interpreting data and developing monitoring reports are more appropriately handled through BLM’s policy guidance in Manuals and Handbooks. The BLM did incorporate a requirement for using monitoring as a basis for rangeland

health determinations (see proposed action).

- **Requiring Applications for Permit or Lease Renewals.** The present regulations do not explicitly state whether or not permittees or lessees must submit an application to BLM when their permit expires. Although there is no explicit requirement for an application when a permit expires, the actions involved in processing a renewal are the same as if there were an application, thus it was determined that the regulations did not have to be changed.
- **Providing for Appeals to the State Director.** During the scoping period, the BLM received comments recommending we consider adding another opportunity for administrative remedy by allowing a protesting party to appeal a BLM field office decision to the BLM State Director. Such a provision would allow the BLM State Director to have authority to stay a decision pending further review. The BLM determined it was not advisable to include this provision in the regulations as it did not meet BLM’s objective of increasing administrative efficiency and effectiveness.
- **Redefining Affected Interest and Interested Public.** Some commenters urged the BLM to remove the definition of interested public from the grazing regulations and incorporate the use of “affected interest” as it was defined in the regulations before 1995. Under such a change, the BLM would consider an “affected interest” to be a party who has expressed an interest in management of a specific allotment and that the BLM has

determined to be an affected interest. This change would require that the BLM focus its limited resources on determining who is, and who is not, an affected interest. The BLM desires that meaningful public involvement in developing grazing-related resource management objectives or actions not be unduly restricted or hindered by BLM processes and procedures. In working with the interested public provisions of these regulations, the BLM has found that there are interested public who express initial interest in management of a grazing allotment but do not maintain meaningful involvement in the process leading to creating allotment resource objectives and strategies to achieve those objectives. The regulations would modify the definition of interested public to provide that once a party becomes an interested public by expressing in writing an interest in management of an allotment, it maintains that status by continued participation in the decision-making process for that allotment. This modification would also narrow the circumstances in which the BLM **must** involve the interested public before taking a management action. The BLM believes that these changes will maintain meaningful public involvement while streamlining BLM processes leading to day-to-day, on-the-ground grazing management decisions.

- **Providing for control of water developments authorized under a range improvement permit.** During the scoping period, the BLM received recommendations that the regulations include provisions explicitly stating that the use of stock ponds, wells, and pipelines authorized under a range improvement permit should be controlled by the permittee or lessee holding the

permit. The present rule does not allow for water developments under a range improvement permit. Other commenters asked that the BLM include in the regulations a provision requiring that the permittee or lessee enter into a Memorandum of Understanding with the BLM to allow the use of improvements by livestock owned or controlled by anyone other than the permit holder. This is an administrative detail that is not appropriate for inclusion in a regulation.

- **Establishing criteria for full force and effect decisions.** Some commenters recommended that the BLM develop criteria for decisions implemented under §4110.3-3 for immediate implementation (i.e., full force and effect). The specific proposal was to use the same criteria as are applied to a request for a stay. The BLM disagrees that such criteria are necessarily relevant to the decision to issue a full force and effect decision to protect resources.
- **Modifying exchange of use agreements provisions.** The BLM received comments requesting that it remove the requirement that private lands offered in exchange of use be located in the same allotment being permitted for grazing to allow for “trade-of-use” arrangements such as that described below. A possible need for a trade-of-use arrangement, for example, is illustrated by the situation where one permittee or lessee owns or controls unfenced intermingled private lands that are not within his allotment, but are within a second permittee’s allotment. Because the first permittee is not authorized to graze in the second permittee’s allotment, the first permittee cannot derive economic gain from the grazing use made on his private lands

by the second permittee, absent action to proactively control use of his land such as through fencing or through sale of the land or assignment of the land lease to the second permittee. The commenter urged that the BLM facilitate the trade-of-use between these permittee's by collecting a grazing fee from the second permittee for grazing use of lands owned by the first permittee but located in the second permittee's allotment, and by crediting the fees collected from the second permittee for these lands to the first permittee's grazing fee billing. The BLM does not agree that this type of arrangement is best handled through the regulation change suggested by the commenter.

- **Nonwillful unauthorized livestock use.** The BLM received comment urging that it modify the regulations to allow the BLM to have unfettered discretion to determine circumstances that would warrant nonmonetary settlement of a nonwillful grazing trespass. The present regulations identify the following four conditions—all of which must be satisfied before the BLM can approve a nonmonetary settlement for nonwillful unauthorized livestock use: evidence shows that the unauthorized use occurred through no fault of the livestock operator; the forage use is insignificant; the public lands have not been damaged; and nonmonetary settlement is in the best interest of the United States. The BLM believes this is a reasonable approach, and therefore has decided not to change this provision.
- **Eliminate Secretarial approval of amendments to regional standards for healthy rangelands.** The BLM received comments urging that it revise the process

for approving standards for rangeland health to allow approval of revisions to the standards by BLM State Directors, Resource Advisory Councils, and other advisory boards established by state or local governments. The BLM believes that the requirement for Secretarial approval of Standards developed by BLM State Directors ensures that the basic components of rangeland health are reflected by the regionally developed standards and is not proposing any changes to the applicable provisions of the regulations.

- **Locked gates.** Commenters were nearly unanimously opposed to the idea of the BLM allowing grazing operators to temporarily lock gates on public lands when necessary to protect private property or livestock. This provision was not considered further.
- **Requiring posting of a bond before filing an appeal.** The BLM received comments asking it to require a bond before a party filed an appeal. The BLM considered the implications and challenges to such a provision and has determined that this provision is not feasible. Therefore, it is not included in either the rulemaking or the EIS.
- **Fundamentals of Rangeland Health.** Some commenters recommended that the BLM move the general requirements related to the fundamentals of rangeland health and the standards and guidelines for grazing administration to BLM's planning regulations at 43 CFR 1610. The BLM did not consider the timing of such an action appropriate and therefore it is not included in either the rulemaking or the EIS.

2.5 Comparison of the Alternatives

Table 2.5. Proposed revisions to grazing regulations for the public lands: comparison of alternatives.

<i>Improving Working Relations with Permittees and Lessees</i>			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Social, Economic, and Cultural Considerations in the Decision-Making Process	* No provisions specifically address NEPA documentation of social, economic, and cultural considerations in the regulations regarding changes in permitted use.	* Before changing grazing preference, the BLM would undertake appropriate analysis as required by NEPA. The BLM would analyze and document, if appropriate, the relevant social, economic, and cultural effects of the proposed action.	* Same as Proposed Action
Implementation of Changes in Grazing Use	* The present regulations do not address the timing of implementation of decisions to change grazing use.	* Changes in active use in excess of 10% would be implemented over a 5-year period unless: an agreement is reached with the permittee or lessee to implement the increase or decrease in less than 5 years; or the changes must be made before 5 years to comply with applicable law (e.g., Endangered Species Act).	*Same as proposed action, except that the 5-year phase-in of changes in use would be discretionary , i.e., change in active use in excess of 10% may be implemented over a 5-year period.
Range Improvement Ownership	* The United States holds title to permanent range improvements such as fences, wells, and pipelines authorized after August 21, 1995.	* Title to permanent range improvements such as fences, wells, and pipelines authorized under a cooperative range improvement agreement would be shared among cooperators in proportion to their initial contribution to on-the-ground project development and construction costs.	* Same as Proposed Action

Table 2.5 (continued). Proposed revisions to grazing regulations for the public lands: comparison of alternatives.

<i>Improving Working Relations with Permittees and Lessees (continued)</i>			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Cooperation with Tribal, State, County, or Local Government-Established Grazing Boards	* The BLM is required to cooperate with state, county, and Federal agencies in the administration of laws and regulations relating to livestock diseases, sanitation, and noxious weeds, including state cattle and sheep sanitary or brand boards and county or other weed control districts.	* Tribal agencies would be added to the list of agencies with which BLM would be required to cooperate in the administration of laws and regulations relating to livestock diseases, sanitation, and noxious weeds * In addition, BLM would be required to cooperate with Tribal, state, county, or local government-established grazing boards in reviewing range improvements and allotment management plans on public lands.	* Same as Proposed Action
Review of Biological Assessments and Evaluations	* BLM is required, to the extent practicable, to provide affected permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public an opportunity to review, comment, and give input during the preparation of reports that evaluate monitoring and other data that are used as a basis for making decisions to increase or decrease grazing use, or to change the terms and conditions of a permit or lease. This provision has been interpreted to include biological assessments and biological evaluations as among the body of reports subject to this requirement.	* Same as existing regulations except for some minor edits Note: In the draft EIS, it was proposed to specifically identify biological assessments (BAs) and biological evaluations (BEs) prepared under the Endangered Species Act as reports during the preparation of which BLM would be required to provide affected permittees or lessees, the State, and the interested public an opportunity to review and give input. Based on concerns raised during the review of the draft EIS, it was determined to be inappropriate to highlight BAs and BEs in this fashion; implying that they had greater value or emphasis than other reports such as grazing management evaluations.	* Same as existing regulations

Table 2.5 (continued). Proposed revisions to grazing regulations for the public lands: comparison of alternatives.

<i>Protecting the Health of the Rangelands</i>			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Temporary Nonuse	* Grazing permittees or lessees may submit and the BLM may approve an annual application for temporary nonuse for no more than 3 consecutive years. Reasons for temporary nonuse include but are not limited to financial conditions or annual fluctuations of livestock.	* Grazing permittees or lessees could submit and the BLM could approve nonuse for no longer than 1 year at a time for resource reasons as well as for business or personal needs of the permittee or lessee (i.e., there would be no limit on consecutive years of nonuse allowed).	* Same as Proposed Action except that permittees or lessees could submit and the BLM could annually approve an application for nonuse for no more than 5 consecutive years.
Basis for Rangeland Health Determinations	* The present regulations do not prescribe how the BLM determines that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the rangeland health standards and conform with the guidelines.	* Determinations that existing grazing management practices or levels of grazing use are significant factors in failing to achieve standards and conform with guidelines would be based on standards assessments and monitoring.	* Same as proposed action except that the BLM would not be required to use both assessments and monitoring as basis for determinations, i.e., may be based on assessment or monitoring.

Table 2.5 (continued). Proposed revisions to grazing regulations for the public lands: comparison of alternatives.

<i>Protecting the Health of the Rangelands (continued)</i>			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Timeframe for Taking Action to Meet Rangeland Health Standards	* The BLM is required to take appropriate action as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management needs to be modified to ensure that the fundamentals of rangeland health conditions exist or progress is being made toward achieving the fundamentals of rangeland health	* Where standards and guidelines have not been established , the BLM would take appropriate action as soon as practicable but not later than the start of the next grazing year following completion of relevant and applicable requirements of law, regulations and consultation requirements to ensure <u>fundamentals of rangeland health</u> conditions exist or progress is being made toward achieving rangeland health.	* Same as Proposed Action.
	* Upon determining that existing grazing practices or levels of use are significant factors in failing to achieve standards and conform with guidelines for grazing administration, the authorized officer shall take appropriate action as soon as practicable but not later than the start of the next grazing year.	* Upon determining that existing grazing practices or levels of use are significant factors in failing to achieve standards and guidelines, the BLM would, in compliance with applicable laws and with the consultation requirements, formulate, propose, and analyze appropriate action to address failure to meet standards or conform to guidelines no later than 24 months after determination is made. Upon execution of agreement or documented decision, the BLM would implement appropriate actions as soon as practicable but not later than start of next grazing year. * BLM could extend the deadline when legally required processes that are the responsibility of another agency prevent completion of all legal obligations within the 24 month timeframe.	* Same as Proposed Action.

Table 2.5 (continued). Proposed revisions to grazing regulations for the public lands: comparison of alternatives.

<i>Increasing Administrative Efficiency and Effectiveness</i>			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Conservation Use	* <u>Conservation use</u> is defined, is identified as a component of permitted use, may be authorized for up to 10 years, and is addressed in other provisions. However, no conservation use permits can or have been issued due to the 10 th Circuit Court decision in 1999 that issuance of conservation use permits exceeds the Secretary's authority under the Taylor Grazing Act.	* All references to and provisions on <u>conservation use</u> would be deleted.	* Same as Proposed Action.
Definition of Grazing Preference, Permitted Use, and Active Use	* <u>Grazing preference or preference</u> is defined as a superior or priority position against others for the purpose of receiving a grazing permit or lease. This priority is attached to base property owned or controlled by the permittee or lessee.	* <u>Grazing preference or preference</u> would mean the total number of animal unit months on public lands apportioned and attached to base property owned or controlled by a permittee, lessee or an applicant for a permit or lease. Grazing preference would include active use and use held in suspension. Grazing preference holders would have a superior or priority position against others for the purpose of receiving a grazing permit or lease.	* Same as Proposed Action.
	* <u>Permitted use</u> is defined as the forage allocated by, or under the guidance of, an applicable land use plan for livestock grazing in an allotment under a permit or lease and is expressed in AUMS. The term permitted use encompasses authorized use including livestock use, suspended use and conservation use.	* The term <u>permitted use</u> would be dropped from the regulations and replaced with the term grazing preference, preference or active use , depending upon the context, throughout the regulations.	* Same as Proposed Action.
	* <u>Active use</u> means present authorized use, including livestock grazing and conservation use. Active use may constitute a portion, or all, of permitted use. Active use doesn't include temporary nonuse or suspended use within all or a portion of an allotment.	* <u>Active use</u> would be redefined to mean that portion of the present authorized use that is available for livestock grazing based on livestock carrying capacity and resource conditions in an allotment under a permit or lease and that is not in suspension.	* Same as Proposed Action.

Table 2.5 (continued). Proposed revisions to grazing regulations for the public lands: comparison of alternatives.

<i>Increasing Administrative Efficiency and Effectiveness (continued)</i>			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Definition and Role of Interested Public	* <u>Interested public</u> is defined as an individual, groups or organization that has submitted a written request to the authorized officer to be provided an opportunity to be involved in the decision-making process for the management of livestock grazing on specific allotments or has submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment.	* <u>Interested public</u> would be defined as an individual, group or organization that has: (1) Submitted a written request to BLM to be provided an opportunity to be involved in the decision-making process as to a specific allotment and followed up on that request by commenting on or otherwise participating in the decision-making process on management of a specific allotment; or (2) Submitted written comments to the BLM regarding management of livestock grazing on a specific allotment.	* Same as Proposed Action.
	* The BLM is required to consult, cooperate and coordinate with interested public on the following: <ul style="list-style-type: none"> • Designating/adjusting allotment boundaries. • Apportioning additional forage • Reducing permitted use • Emergency closures or modifications • Development or modification of grazing activity plan. • Planning of the range development or improvement program • Renewing/issuing grazing permit/lease • Modifying a permit/lease • Reviewing/commenting on grazing evaluation reports. • Issuing temporary non-renewable grazing permits. 	* Requirements to consult, cooperate and coordinate with the interested public would be modified as follows: <ul style="list-style-type: none"> • Removed • Retained • Removed • Removed • Retained • Retained • Removed • Removed • Retained (dropped reference to commenting) • Removed 	* Same as Proposed Action.

Table 2.5 (continued). Proposed revisions to grazing regulations for the public lands: comparison of alternatives.

<i>Increasing Administrative Efficiency and Effectiveness (continued)</i>			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Definition and Role of Interested Public (continued)	* BLM is required to send copies of proposed and final decisions to the interested public.	* Same as existing regulations.	* Same as existing regulations.
Water Rights	* Any right acquired on or after 8/21/95 to use water on public land for the purpose of livestock watering shall be acquired, perfected, maintained, and administered under the substantive and procedural laws of the State within which land is located. To the extent allowed by State law, any such water right shall be acquired, perfected, maintained, and administered in the name of the United States.	* The phrase – “on or after 8/21/95” - would be dropped from the first sentence. The second sentence of this provision - stating that, to the extent allowed by State law, any water right would be acquired, perfected, maintained, and administered in the name of the United States - would be removed.	* Same as Proposed Action.
Satisfactory Performance of Permittee or Lessee	* Requirements for satisfactory performance for renewal of permits and leases and for new permits or leases are defined in terms of when the applicant for such permits or leases is deemed not to have a satisfactory record of performance.	* The provisions on satisfactory performance would be moved from the section on “mandatory qualifications” to the section on “filing applications”. Minor editorial changes would be made in the definition of “satisfactory performance” for a new applicant for a permit or lease or for a permit or lease subsequent to a preference transfer – basically changing the definition from a negative (what “is not” satisfactory performance) to a positive (what “is” satisfactory performance).	* Same as Proposed Action.

Table 2.5 (continued). Proposed revisions to grazing regulations for the public lands: comparison of alternatives.

<i>Increasing Administrative Efficiency and Effectiveness (continued)</i>			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Changes in Grazing use Within Terms and Conditions of Permit or Lease	* Changes within the terms and conditions of the permit or lease may be granted by the authorized officer.	* Same as existing regulations.	* Same as existing regulations.
	* The present regulations do not define what is meant by “temporary changes in grazing use within the terms and conditions of the permit or lease.”	* “Temporary changes in grazing use within the terms and conditions of the permit or lease ” would be defined to mean temporary changes to livestock number, period of use, or both that would: (1) Result in temporary nonuse; or (2) Result in forage removal that does not exceed the amount of active use specified in the permit or lease ; and, unless otherwise specified in an allotment management plan, occurs no earlier than 14 days before the begin date specified on the permit or lease, and no later than 14 days after the end date specified on the permit or lease ; or (3) Result in both temporary nonuse and forage removal as defined above.	* Same as Proposed Action.
	* The present regulations do not include consultation requirements for such changes.	*The BLM would consult, cooperate and coordinate with the permittee or lessee on such changes.	* Same as Proposed Action.
Service Charges	* A service charge may be assessed for each crossing permit, transfer of grazing preference, application solely for nonuse and each replacement or supplemental billing notice except for actions initiated by the authorized officer. A specific fee is not identified in the present regulations, however the present fee for these actions is \$10.	* Except where BLM initiates the action, BLM would assess a service charge as shown below: (1) Issuance of crossing permit: \$75; (2) Transfer of grazing preference: \$145; (3) Cancellation and replacement of grazing fee billing: \$50	* Same as Proposed Action.

Table 2.5 (continued). Proposed revisions to grazing regulations for the public lands: comparison of alternatives.

<i>Increasing Administrative Efficiency and Effectiveness (continued)</i>			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Prohibited Acts	* There are three categories of acts that are prohibited on public lands.	* Same as existing regulations.	* Same as existing regulations.
	* The first category provides that permittees or lessees may be subject to civil penalties if they perform any of the 6 prohibited acts listed in this section.	* Same as existing regulations with several minor editorial changes and clarifications.	* Same as Proposed Action.
	* The second category provides that anyone, not just permittees or lessees, shall be subject to civil or criminal penalties if they perform any of the 11 prohibited acts listed in this section. Prohibited acts in this category include actions such as littering, damaging or removing U.S. property without authorization, and failing to reclose any gate or other entry during periods of livestock use.	* Same as existing regulations with some minor editorial changes.	* Same as the Proposed Action plus the following prohibited act would be added to this section: “Failing to comply with the use of certified weed seed free forage, grain, straw or mulch when required by the authorized officer.”
	* The third category provides that permittees or lessees could be subject to civil penalties for performance of acts listed in this section where: public lands are involved or affected; the violation is related to grazing use authorized by BLM; the permittee has been convicted or otherwise found to be in violation of any of these laws or regulations; and no further appeals are outstanding.	* The performance of prohibited acts in the third category of prohibited acts would be further limited to the performance of such acts on an allotment where the permittee or lessee is authorized to graze under a BLM permit or lease. In addition, there would be some minor editorial changes.	* Same as Proposed Action.

Table 2.5 (continued). Proposed revisions to grazing regulations for the public lands: comparison of alternatives.

<i>Increasing Administrative Efficiency and Effectiveness (continued)</i>			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Prohibited Acts (continued)	* The third category consists of three sets of prohibited acts including: <ul style="list-style-type: none"> • Specific laws or regulations (e.g., Endangered Species Act) • Federal or state laws pertaining to natural, environmental, or cultural resources • State laws related to livestock operations 	* Same as existing regulations.	The third category would consist of only 2 sets of prohibited acts including: <ul style="list-style-type: none"> • Specific laws or regulations (e.g., Endangered Species Act) • State laws related to livestock operations * Federal or state laws pertaining to natural, environmental, or cultural resources would be deleted from the prohibited acts list.

Table 2.5 (concluded). Proposed revisions to grazing regulations for the public lands: comparison of alternatives.

<i>Increasing Administrative Efficiency and Effectiveness (continued)</i>			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Grazing Use Pending Resolution of Appeals When Decision Has Been Stayed	* If a decision is stayed, the permittee or lessee will graze in accordance with the authorization issued the previous year.	* If a stay is granted on an appeal to a decision to cancel, suspend, change or renew a term permit or lease or to deny or offer a permit or lease to a preference transferee, then the BLM will authorize grazing under the immediately preceding permit or lease, or the relevant term or condition thereof.	* Same as Proposed Action.
	* If the applicant had no authorized grazing use the previous year or the application is for ephemeral or annual grazing use, then grazing use will be consistent with the final decision pending resolution of the appeal.	* Decisions on ephemeral or annual rangeland grazing use and nonrenewable grazing permits would be effective immediately or on the date specified in the decision. There would be no special provisions for grazing use if a stay is granted on such decisions, therefore if a stay is granted the decision would be inoperative and, if appropriate considering the specific stay, the livestock may have to be removed from the allotment.	
Treatment of Biological Assessments and Evaluations in the Grazing Decision-Making Process	* Present regulations do not specifically address biological assessments or biological evaluations prepared in compliance with the Endangered Species Act. However, in accordance with the IBLA <i>Blake</i> decision, biological assessments are to be treated as decisions subject to protest and appeal.	* A biological assessment or biological evaluation prepared for Endangered Species Act consultation or conference would not be a decision for purposes of protest or appeal.	* Same as Proposed Action.

2.6 Comparison of the Effects

Table 2.6. Comparison of the effects across alternatives.

Alternative 1	Alternative 2	Alternative 3
<i>Grazing Administration</i>		
<p>*BLM grazing administration would provide some partnership opportunities.</p> <p>*Mechanisms for changing grazing management would be hurried, impractical, inefficient, and discourage partnerships, and may result in decisions of inconsistent quality.</p> <p>*The consideration and documentation of social, economic and cultural effects of grazing decisions would remain inconsistent.</p> <p>*The timeframe for implementing changes in use would be determined on a case-by case basis.</p> <p>*Cooperation with government established grazing boards would be inconsistent.</p> <p>*Decisions on day-to-day operations would cumbersome, inefficient and untimely.</p> <p>*Biological assessments and evaluations could be appealed, creating workloads that would displace other high priority work such as monitoring, and delaying implementation of grazing decisions.</p>	<p>*The regulations would promote greater partnership with grazing permittees, lessees, and grazing advisory boards.</p> <p>*The extended timeframe for developing appropriate action following a determination would yield reasoned, comprehensive and sustainable decisions. This timeframe would delay on-the-ground action in a relatively small number of allotments but would improve cooperation and build partnerships with permittees and lessees.</p> <p>*Ensure greater consistency in the consideration and documentation of relevant social, economic, and cultural impacts.</p> <p>*The requirement to use monitoring data to support determinations on allotments that fail to meet standards because of existing grazing management may result in an additional workload for BLM.</p> <p>*Reprioritizing data collection efforts to conduct monitoring may effect watershed assessment schedules and could delay permit renewal where current monitoring data is not available.</p> <p>*Allowing shared title to permanent structural range improvements may stimulate private investment.</p> <p>*BLM would focus communications with interested public on significant issues occurring on grazing allotments where input would be of the greatest value.</p> <p>*By providing that biological assessments are not subject to appeal, BLM would be able to more efficiently and timely make changes in grazing management.</p>	<p>*Similar to Alternative 2 but with additional overall flexibility at the local level.</p> <p>*Allowing BLM discretionary authority for phase-in period instead of requiring 5-year timeframe could provide additional protection for wildlife or other sensitive resources.</p> <p>*Allowing discretionary use of monitoring data for standards determinations rather than requiring it would allow BLM to flexibility at the local level to prioritize data and information collection.</p> <p>*The provision allowing the requirement to use weed seed free forage, grain, straw or mulch would provide enforcement authority as a preventative measure to reduce the spread of noxious weeds.</p>

Table 2.6 (continued). Comparison of the effects across alternatives.

Alternative 1	Alternative 2	Alternative 3
<i>Vegetation</i>		
<p>*Vegetation would move toward achievement of management objectives.</p> <p>*Timelines for formulating management changes may limit vegetation management alternatives and strain working relationships with permittees or lessees.</p> <p>*Riparian vegetation would remain static or improve slightly.</p>	<p>*Vegetation would move toward achievement of management objectives.</p> <p>*Potential for short-term adverse effects where vegetative conditions are in a downward trend and recovery is delayed.</p> <p>*Additional resources may be invested in improvements due to partnerships and improved working relationships.</p> <p>*Increased flexibility for temporary nonuse may result in greater alignment between forage production and utilization levels.</p> <p>*Increased flexibility to negotiate cooperative water developments may stimulate private investments and assist BLM to achieve vegetation management objectives.</p> <p>*Riparian vegetation would remain static or improve slightly.</p>	<p>*Similar to Alternative 2 but the flexibility in the use of monitoring or standards assessments data for making determinations and the timeframe for implementing management changes would allow BLM to accelerate short-term vegetative recovery.</p> <p>*Weed seed-free forage enforcement authority would result in slower weed expansion rates..</p>
<i>Fire and Fuels</i>		
<p>*A minimal effect on the ability to reach a more historical fire regime.</p>	<p>*A slight improvement in the ability to reestablish historical fire regimes resulting in vegetation improvements.</p>	<p>*Similar to Alternative 2.</p>
<i>Soils</i>		
<p>*Short-term adverse impacts would be minimal except at the local scale.</p> <p>*Would result in maintenance of or slight improvement in conditions in the long term.</p>	<p>*Short-term adverse impacts would be minimal except at the local scale where watershed cover is inadequate.</p> <p>*Maintenance or slight improvement would be expected in the long-term due to maintenance of adequate watershed cover.</p>	<p>*Overall the effects would be neutral to slightly beneficial because of maintenance or slight improvement in watershed cover.</p> <p>* Allowing greater discretion in the phase-in schedule, and choice of data used for making determinations may allow more rapid implementation of changes, accelerating recovery of watershed cover.</p> <p>A weed-seed free forage provision that reduces the spread of weeds might enhance watershed cover.</p>

Table 2.6 (continued). Comparison of the effects across alternatives.

Alternative 1	Alternative 2	Alternative 3
<i>Water Resources</i>		
*The proposed changes would have little or no impact on short-term water resource conditions. *Slow improvement in watershed conditions would be expected for the long term. *Water quality would remain static or improve slowly.	*Similar to Alternative 1.	*Similar to Alternative 1.
<i>Air Quality</i>		
*Air quality would be expected to be maintained or improved and within standards.	*Similar to Alternative 1.	*Similar to Alternative 1.
<i>Wildlife</i>		
*Risks and benefits to wildlife and wildlife habitat, are not expected to change. *Current timeframes for developing grazing management changes would impede adequate analysis and consultation, resulting in less effective and acceptable decisions on wildlife.	*In the long-term, there would be little or no effect on wildlife due to better partnerships with permittees and lessees and longer timeframes for developing effective and acceptable decisions. *Implementation of changes in grazing use and timeframes for taking action could have an adverse effect on wildlife in the short-term in a small number of allotments. *The elimination of the 3 consecutive year limit on temporary non-use could improve opportunities for cooperation to benefit wildlife resources by allowing a longer recovery period. *The extended timeframe would allow formulation of reasoned, comprehensive and sustainable decisions that, in the long term, may benefit wildlife.	*Changes in temporary non-use over current regulations from 3 to 5 consecutive years would slightly benefit wildlife. *Allowing greater discretion for BLM managers to schedule phasing in changes in grazing use would allow more rapid implementation benefiting wildlife. * Allowing greater discretion on the type of data used for making rangeland health determinations would allow more rapid implementation, benefiting wildlife resources. *A weed-seed free forage provision that reduces the spread of weeds would enhance wildlife habitat. *Removal of certain prohibited acts would eliminate a mechanism for protecting wildlife.
<i>Special Status Species</i>		
* Risks and benefits to special status species, are not expected to change *Effects similar to wildlife in Alternative 1.	*No effect on most special status species. *At risk species and those designated by each BLM State Director as BLM-sensitive may be affected in the short-term in a small number of allotments however, in the long-term, there would be little or no effect.	*Similar to wildlife effects in Alternative 3.

Table 2.6 (continued). Comparison of the effects across alternatives.

Alternative 1	Alternative 2	Alternative 3
<i>Wild Horses and Burros</i>		
*Little affect on wild horse and burro populations on public lands.	*Slight long-term beneficial impact from improved condition of the vegetation on habitat areas through an improved decision making process.	*Similar to Alternative 2.
<i>Recreation</i>		
*Minimal impacts to the Recreation Program. *Slight improvement where the vegetation is improved.	*Minimal impacts to the Recreation Program. *Slight improvement where the vegetation is improved. *Effects could be adverse in the short term if corrective actions are delayed.	*Similar impacts to alternative 2. *The reduction of weed expansion would have an additional benefit to recreation interests.
<i>Special Areas</i>		
*Little impact due to existing good conditions and Special Area mandates.	*Little impact due to existing good conditions and Special Area mandates.	*Slight improvement of conditions on the long term due to reduction of weed expansion.
<i>Heritage Resources: Paleontological and Cultural Resources (Properties)</i>		
*Heritage resources are protected through case-by-case, site specific surveys and analysis. *Prohibited act regarding removal or destruction of cultural resources may act as a deterrent.	*There would be little to no effect on heritage resources. * New on-the-ground projects would be analyzed on a case-by-case basis.	* There would be little to no effect on heritage resources. * New on-the-ground projects would be analyzed on a case-by-case basis.
<i>Economic Conditions</i>		
*Local/regional economic effects would be minor. *On-going effects include: 1) low flexibility; 2) lack of incentive to participate in range improvements; 3) lack of time to implement land health determinations; and 4) lack of cost recovery.	*Local/regional economic effects would be minor. *Primary effects would be: 1) Increased flexibility; 2) Increased BLM costs; 3) reduced adverse impacts on ranchers from herd reductions; 4) increased service charges for ranchers and increased cost recovery for BLM.	*Similar to Alternative 2. *Greater discretion for BLM managers in implementing changes in use and using monitoring data for land health determinations could have an adverse economic impact on ranchers.

Table 2.6 (concluded). Comparison of the effects across alternatives.

Alternative 1	Alternative 2	Alternative 3
<i>Social Conditions</i>		
<p>*Ranchers would continue to face increasing stress related to public land grazing.</p> <p>*Ranchers would continue to have difficulty passing ranch on to the next generation.</p> <p>*Ranchers would continue to sell ranches for amenity reasons and subdivision.</p>	<p>*Ranching, environmental and recreation interests perceive the monitoring requirements as being positive and believe this provision would provide beneficial social impacts.</p> <p>*Ranchers would experience beneficial social effects as a result of most provisions – particularly documentation of social, economic, and cultural impacts, phasing in of implementation of changes, required cooperation with grazing boards, focusing stock water rights provision on following state law and providing more time for developing appropriate action following rangeland health determination.</p> <p>*Ranchers would experience adverse social effects from the removal of the limit on consecutive years of nonuse.</p> <p>*Environmental groups would experience adverse social effects from the stock water rights provision change.</p> <p>*Social effects on environmental interests and recreation interests would generally be minimal or neutral for most of the other proposed revisions.</p>	<p>*There could be minimal social effects on ranchers and conservation groups due to BLM having discretion to use monitoring for rangeland health determinations.</p> <p>*Elimination of certain prohibited acts would have an adverse effect on conservation, environmental and recreation groups.</p>
<i>Environmental Justice</i>		
<p>*No disproportionate effects on low-income, minority, or Tribal populations.</p> <p>*Would not result in violation of environmental justice principles.</p>	<p>*No disproportionate effects on low-income, minority, or Tribal populations.</p> <p>*Would not result in violation of environmental justice principles..</p>	<p>*No disproportionate effects on low-income, minority, or Tribal populations.</p> <p>*Would not result in violation of environmental justice principles.</p>

Chapter 3

Affected Environment



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3.0 Affected Environment

Chapter 3 describes the physical, biological, social, and economic environment of the West that would be affected by the proposed action or alternatives. Prime and unique farmlands, floodplains, and hazardous and solid wastes have been determined as not being affected by the proposed regulation and are not discussed.

Changes in Chapter 3 include the following:

- Clarifications or additions to avoid misunderstanding of intent or meaning, or to elaborate on a particular topic which the public requested further information:
 - Section 3.4, Grazing Administration- Added additional information concerning the responsibilities of the BLM to protect public rangelands.
 - Section 3.4.2, Implementing Changes in Grazing Use- Added a sentence to explain that not all changes in grazing use are due to undesirable resource conditions; some are made due to land use planning.
 - Section 3.4.3, Range Improvements- Text was added in response to the request for explanation of the process used to transfer any interest in range improvement between permittees or lessees.
 - Section 3.6, Fire and Fuels- language was added in response to a request for more information regarding the influence of human activities, including grazing, on the proliferation and spread of exotic annual grasses.
 - Section 3.8.3 and Table 3.8.3 were added to address water rights.
 - Section 3.12, Wild Horses and Burros- Removed reference to the year in the strategic goal of establishing AML. The year is only a strategic goal; however, it caused confusion because it was not consistent with the assumption upon which the EIS is based, and commenters felt it was unrealistic.
 - Section 3.15, Paleontological and Cultural Resources- The title was modified by adding the term “Heritage Resources” to denote that both paleontological and cultural properties are considered heritage resources. The term “properties” was also added to the title to help clear up confusion in the comments regarding physical expressions of culture and the social lifeways that ascribe them significance.
 - Section 3.15.2, Cultural Resources- The first paragraph was modified to remove language that caused confusion of the physical properties of culture and the lifeways which are abstract aspects of a social group.
 - Section 3.15.3, Cultural Resources Through Time- The last paragraph was modified to clear up confusing text regarding cultural properties and social lifeways.
- Changes in text to correct errors or misleading statements made in draft EIS:
 - Section 3.13, Recreation- the text made the incorrect statement that “recreationists from local or rural areas” tend to be less affected by

rangeland conditions. Comments correctly identified this as incorrect and the reference to “recreationists from local or rural areas” was removed.

- Section 3.4.8, Rangeland Health- The acreage corresponding to allotments meeting (58,711,307) and not meeting (32,332,345) standards was removed. The number of acres not meeting rangeland health standards has been inconsistently reported since 1997. Some BLM State offices reported the actual acres not meeting standards when it was determined that an allotment did not meet all standards; other offices reported all acres in an allotment as not meeting standards if a determination was made that the allotment did not meet standards, even if a large proportion of the acres within the allotment met all standards. Therefore, it was determined that the numbers of acres are not reliable for analysis. However, the number of allotments has been consistently reported and is valid data for analysis.
- Changes in Chapter 3 to update information:
 - Section 3.4.1, Issuing, Modifying, or Renewing Permits or Leases- The entire first paragraph has been replaced with a new paragraph which includes updated information and data, as well as language which further explains and clarifies the state of the permit renewal process.

3.1 General Setting

Bureau of Land Management land is grazed by livestock on 160 million acres of land in 15 States in the West, excluding Alaska. The area covered by this action is shown in Figure 1.1.

3.2 Physiographic Setting

The physiographic setting is classified according and directly derived from Robert G. Bailey’s ecoregion division classifications and descriptions for the United States (Bailey 1995, 1997). Bailey delineated ecoregions utilizing a scale based on macroclimates. Through consideration of macroclimatic conditions, in combination with the plant formations produced by the macroclimates, Bailey subdivided the United States into ecoregions composed of three levels of detail.

The broadest level of detail is reflected within the domain level. The two domain levels within the effected environment in the United States are delineated primarily by the related climate, for example, the humid domain versus the dry domain. Within the two domain levels in the affected environment, Bailey further delineated 6 divisions. These divisions are classified according to the seasonality of precipitation or the degree of dryness and cold. Corresponding climate diagrams that assist in explaining the division description can be found in Bailey 1998a and 1998b.

The six divisions are divided further into 13 providences and 6 mountain providences. The providence level provides the greatest level of detail. The organization of providences is mainly concentrated on the uniformity of climate subtypes and corresponding plant formations. Mountain environments that further characterized

providences through altitudinal zonation compromise the mountain providences.

3.2.1 Marine

Situated on the Pacific coast between latitudes 40 ° and 60 ° N is a zone that receives abundant rainfall from maritime polar air masses and has a rather narrow range of temperatures because it borders on the ocean.

Trewartha (1968) classifies the marine west coast climate as Do—temperate and rainy, with warm summers. The average temperature of the warmest month is below 72 ° F (22 ° C), but at least 4 months per year have an average temperature of 50 ° F (10 ° C). The average temperature during the coldest month of the year is above 32 ° F (0 ° C). Precipitation is abundant throughout the year, but is markedly reduced during summer. Although total rainfall is not great by tropical standards, the lower air temperatures here reduce evaporation and produce a very damp, humid climate with much cloud cover. Mild winters and relatively cool summers are typical. Coastal mountain ranges influence precipitation markedly in these middle latitudes. The mountainous coasts of British Columbia and Alaska annually receive 60 to 80 inches (1,530 to 2,040 mm) of precipitation and more. Heavy precipitation greatly contributed to the development of fiords along the coast—heavy snows during the glacial period fed vigorous valley glaciers that descended to the sea, scouring deep troughs that reach below sea level at their lower ends.

Natural vegetation in the Marine Division is needleleaf forest. In the coastal ranges of the Pacific Northwest, Douglas-fir, red cedar, and spruce grow to magnificent heights, forming some of the densest of all coniferous forests with some of the world's largest trees.

Soils are strongly leached, acid Inceptisols and Ultisols. Because of the

region's low temperatures, bacterial activity is slower than in the warm tropics, so vegetative matter is not consumed and forms a heavy surface deposit. Organic acids from decomposing vegetation react with soil compounds, removing such bases as calcium, sodium, and potassium.

3.2.2 Mediterranean

Situated on the Pacific coast between latitudes 30 ° and 45 ° N is a zone subject to alternate wet and dry seasons, the transition zone between the dry west coast desert and the wet west coast.

Trewartha (1968) classifies the climate of these lands as Cs, signifying a temperate, rainy climate with the dry, hot summers indicated by the symbols. The combination of wet winters with dry summers is unique among climate types and produces a distinctive natural vegetation of hardleaved evergreen trees and shrubs called sclerophyll forest. Various forms of sclerophyll woodland and scrub are also typical. Trees and shrubs must withstand the severe summer drought (2 to 4 rainless months) and severe evaporation.

Soils of this Mediterranean climate are not susceptible to simple classification. Alfisols and Mollisols typical of semiarid climates are generally found.

3.2.3 Tropical–Subtropical Steppe

Tropical steppes border the tropical deserts on both the north and south, and in places on the east as well. Locally, because of altitude, plateaus and high plains within what would otherwise be desert have a semiarid steppe climate. Steppes on the poleward fringes of the tropical deserts grade into the Mediterranean climate in many places. In the United States, they are cut off from the Mediterranean climate by coastal mountains that allow tropical deserts to extend farther north.

Trewartha (1968) classifies the climate of tropical–subtropical steppes as BSh, indicating a hot, semiarid climate where potential evaporation exceeds precipitation, and where all months have temperatures above 32 ° F.

Steppes typically are grasslands of short grasses and other herbs, and with locally developed shrub- and woodland. On the Colorado Plateau, for example, there is pinyon–juniper woodland. To the east, in Texas, the grasslands grade into savanna woodland or semideserts composed of xerophytic shrubs and trees, and the climate becomes semiarid–subtropical. Cactus plants are present in some places. Soils are commonly Mollisols and Aridisols, containing some humus.

3.2.4 Tropical-Subtropical Desert

South of the Arizona–New Mexico mountains are the continental desert climates, which are arid with high air and soil temperatures. Direct sun radiation is strong, as is outgoing radiation at night, causing large variations between day and night temperatures and a rare nocturnal frost. Annual precipitation ranges from 4 to 8 inches. These areas have climates that Trewartha (1968) calls BWh.

The region is characterized by dry-desert vegetation, a class of xerophytic plants that are widely dispersed and provide negligible ground cover. In dry periods, visible vegetation is limited to small, hard-leaved or spiny shrubs, cacti, or hard grasses. Many species of small annuals may be present after rains have saturated the soil.

In the Mojave–Sonoran Deserts (American Desert), plants are often so large that some places have a near-woodland appearance. Well known are the treelike saguaro cactus, the prickly pear cactus, the ocotillo, creosote bush, and smoke tree. But much of the desert of the southwestern

United States is in fact scrub, thorn scrub, savanna, or steppe grassland. Parts of this region have no visible plants; they are made up of shifting sand dunes or almost sterile salt flats.

A dominant pedogenic process is salinization, which produces areas of salt crust where only salt-loving (halophytic) plants can survive. Calcification is conspicuous on well-drained uplands, where encrustations and deposits of calcium carbonate (caliche) are common. Humus is lacking and soils are mostly Aridisols and dry Entisols.

3.2.5 Temperate Steppe

Temperate steppes are areas with a semiarid continental climatic regime in which, despite summer rainfall, evaporation usually exceeds precipitation. Trewartha (1968) classifies the climate as BSk; the letter k signifies a cool climate with at least 1 month of average temperatures below 32 ° F (0 ° C). Winters are cold and dry, summers warm to hot. The vegetation is steppe, sometimes called shortgrass prairie, and semidesert. Typical steppe vegetation consists of numerous species of short grasses that usually grow in sparsely distributed bunches. Scattered shrubs and low trees sometimes grow in the steppe; all gradations of cover are present, from semidesert to woodland. Because ground cover is generally sparse, much soil is exposed. Many species of grasses and other herbs occur. Buffalo grass is typical of the American steppe; other typical plants are the sunflower and locoweed.

The semidesert cover is xerophytic shrub vegetation accompanied by a poorly developed herbaceous layer. Trees are generally absent. An example of semidesert cover is the sagebrush vegetation of the middle and southern Rocky Mountain region and the Colorado Plateau.

In this climatic regime, the dominant pedogenic process is calcification, with salinization on poorly drained sites. Soils contain a large excess of precipitated calcium carbonate and are very rich in bases. Mollisols are typical in steppe lands. The soils of the semidesert shrub are Aridisols with little organic content, pedogenic and (occasionally) clay horizons, and (in some places) accumulations of various salts. Humus content is small because the vegetation is so sparse.

3.2.6 Temperate Desert

Temperate deserts of continental regions have low rainfall and strong temperature contrasts between summer and winter. In the intermountain region of the western United States between the Pacific coast and Rocky Mountains, the temperate desert has characteristics of a sagebrush (*Artemisia*) semidesert, with a pronounced drought season and a short humid season. Most precipitation falls in winter, despite a peak in May. Aridity increases markedly in the rain shadow of the Pacific mountain ranges. Even at intermediate elevations, winters are long and cold, with temperatures falling below 32 ° F (0 ° C).

Under the Koppen-Trewartha system, this is true desert, BWk. The letter k signifies that at least 1 month has an average temperature below 32 ° F (0 ° C). These deserts differ from those at lower latitudes chiefly in their far greater annual temperature range and much lower winter temperatures. Unlike the dry climates of the tropics, dry climates in the middle latitudes receive part of their precipitation as snow.

Temperate desert climates support the xerophytic shrub vegetation typical of semidesert. One example is the sagebrush vegetation of the Great Basin and northern Colorado Plateau. Soils of the temperate desert are Aridisols low in humus and high

in calcium carbonate. Poorly drained areas develop saline soils, and dry lake beds are covered with salt deposits.

3.3 Drought

Drought is a temporary component of climate; it differs from aridity, which is restricted to ecosystems where low rainfall is a permanent feature of climate. On the majority of rangelands managed by the BLM, it is not a question of if drought will occur, but rather when it will occur and how long will it persist.

During drought, the quantity of moisture drawn from storage by transpiration increases, reducing soil moisture early in the growing season. This is reflected in lower water levels in shallow wells and in deep wells subject to recharge in the drought area. High temperatures aggravate the situation by increasing transpiration and evaporation requirements.

During drought, low soil moisture levels limit plant growth. Further, root growth is limited, making plants less able to extract scarce soil moisture. Litter, the dead portion of the previous season's plant growth, insulates soils and thus reduces evaporative water loss, which provides more moisture for plant growth.

Many areas of the West have been experiencing mild to severe drought conditions since 1999.

3.4 Grazing Administration

Excluding Alaska, the BLM administers about 160 million acres within grazing allotments. Congressional authority and direction expressed through laws authorize or affect the BLM grazing administration on these allotments. These authorities primarily include the Taylor Grazing Act of June 30,

1934, as amended; the Federal Land Policy and Management Act of 1976; and the Public Rangelands Improvement Act of 1978. The responsibilities of BLM to protect public rangelands include:

- The Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands, Federal Land Policy and Management Act, U.S.C. § 1732(b)}.
- The goal of (public rangeland) management shall be to improve the range conditions so that they become as productive as feasible, Public Rangelands Improvement Act, 43 U.S.C. § 1903(b).
- Do any and all things necessary to stop injury to the public grazing lands by preventing overgrazing and soil deterioration and provide for the orderly use, improvement, and development of the public range, Taylor Grazing Act, 43 U.S.C. § 315a and 48 Stat. 1269.

The Department of Interior Code of Federal Regulations (CFR), BLM manuals and manual handbooks, Instruction Memorandums, Information Bulletins, and the Interior Board of Land Appeal orders and decisions further guide the BLM's grazing administration program. The CFR are the regulations that the Department of Interior establishes to carry out the laws enacted by the legislative branch. The regulations that govern grazing administration (excluding Alaska) are contained within 43 CFR Part 4100 Grazing Administration—Exclusive of Alaska.

The grazing administration program includes the issuing of permits, leases, and annual grazing licenses; billings and collections of grazing fees; inspections to verify that permittees and lessees are in

compliance with the terms and conditions of their permits; leases, authorizations, and Federal regulations; preparing land use and activity plans; identifying and planning rangeland improvement projects; obtaining livestock management agreements; reviewing base property for compliance; conducting vegetative monitoring studies; and evaluating whether grazing management is achieving objectives.

3.4.1 Issuing, Modifying, or Renewing Permits or Leases

Between 1999 and the end of 2003, 12,119 grazing permits expired. BLM has completed the analysis and documentation required by NEPA and any necessary Section 7 ESA consultation on 85 percent (10,234) of those expired permits. In 1999 Congress recognized the difficulty of completing all NEPA and ESA requirements, as well as the new land health standards evaluations that have become part of the renewal process. Consequently, Congress has provided for conditional permit renewal under existing terms and conditions through a series of budget appropriation riders. This relief was provided to allow the backlog of permits that had developed by 1999 to carry over while BLM completes analysis of environmental impacts under NEPA and any necessary Section 7 consultation under ESA. Compliance with analysis requirements of NEPA has only been delayed, not circumvented. Between 2004 and 2009, 9,549 permits will expire. During this same time period 4,662 permits that have been or will be temporarily renewed under Congressional authority will be re-issued with full NEPA analysis and documentation, completely eliminating the backlog.

For each of the permits or leases issued in which there was a change in management (i.e., duration of use, class of livestock, numbers of livestock, or season of use), the

BLM analyzes the effects according to the NEPA process. The critical environmental elements are analyzed to document whether an effect occurred or did not occur to the element. While NEPA guidelines contain the process for analysis, the grazing regulations contain no context to the NEPA requirements for grazing permit or lease actions, or specify any additional critical elements that must be analyzed prior to the issuance of a permit or lease. Changes in grazing management require coordination with the grazing permittee or lessee, the state having lands or responsibility for managing resources within the area, and interested public, and often involve consultation under the Endangered Species Act.

A grazing permit or lease specifies permitted use (subpart 4110.2-2). Permitted use is granted to qualified holders of grazing preference. Permitted use shall include active use, any suspended use, and conservation use. The animal unit months (AUMs) of permitted use are attached to the base property.

3.4.2 Implementing Changes in Grazing Use

The BLM may modify the terms and conditions of the permit or lease (subpart 4130.3) when needed to manage, maintain, or improve rangeland productivity; assist in restoring ecosystems to properly functioning condition; conform with land use plans or activity plans; or comply with the provisions of Subpart 4180 (Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration). These changes are supported by monitoring, field observations, ecological site inventory, or other data acceptable to the authorized officer. Additional forage available on a sustained yield basis may be apportioned to qualified applicants for livestock grazing use consistent with multiple-use management objectives. The authorized officer will

consult, cooperate, and coordinate with the affected permittees or lessees; the state with lands or managing resources within the area; and the interested public (subpart 4110.3-1). When monitoring or field observations show grazing use or patterns of use are not consistent with provisions in subpart 4180, or grazing use is otherwise causing an unacceptable level or pattern of utilization, or when use exceeds the livestock carrying capacity as determined through monitoring, the authorized officer shall reduce use or otherwise modify management practices (subpart 4130.3-2).

After consultation, cooperation, and coordination with the affected permittees or lessees; the state with lands or managing resources within the area; and the interested public; changes to permitted use shall be implemented through a documented agreement or decision (subpart 4110.3-3). Decisions shall be issued as proposed decisions, as described in subpart 4160.1, unless the authorized officer determines that resources on the public lands require immediate protection due to catastrophic events (flood, fire, or insect infestations) or when continued grazing use poses an imminent likelihood of significant resource damage. In this instance, after at least a reasonable attempt to consult with the above-mentioned parties, the authorized officer shall close all or a portion of an allotment or require modification of authorized grazing by issuing a final decision, which becomes effective upon issuance or on a date specified in the decision (subpart 4110.3-3(b)).

Most reductions to permitted use greater than 10 percent were made prior to the late 1980s. Since that time, most changes to grazing use involve changes to season of use or duration, and not livestock numbers. Some changes in grazing use may be made because of a reallocation of resources in a land use

plan rather than because of undesirable resource conditions.

3.4.3 Range Improvements

The BLM cooperates in planning and financial partnership with permittees or lessees in the construction and maintenance of range improvement projects. Range improvements are “authorized physical modifications or treatments...designed to improve production of forage; change vegetation composition; control patterns of use; provide water; stabilize soil and water conditions; restore, protect and improve the condition of rangeland ecosystems to benefit livestock, wild horses and burros, and fish and wildlife.” (43 CFR 4100.0-5). Typical range improvements include fences, wells, reservoirs, seedings, and corrals.

The BLM uses two instruments to authorize range improvements and provide for maintenance of structural improvements; the Cooperative Range Improvement Agreement (CRIA) and the Range Improvement Permit (RIP). The CRIA is used to authorize permanent improvements, and may be used by any person, organization or other government agency to share costs for constructing the improvement. Costs contributed by each party are documented in the CRIA. Title to permanent structural improvements constructed since 1995 is held by the United States. Title to these types of improvements constructed prior to 1995 is held jointly between the cooperators. Title to all nonstructural improvements is held solely by the United States.

The Range Improvement Permit (RIP) allows livestock permittees and lessees to construct or place removable improvements on public land. The permittee or lessee may hold title to the improvement if it is a livestock handling facility such as a corral, creep feeder, loading chute, or temporary

water trough. Prior to 1995, the permittee could also hold title to other removable structures (e.g., fences, corrals) authorized by a RIP.

The three major changes to BLM range improvement construction policy made by the 1995 rules change are:

- All permanent water developments must be authorized under a CRIA
- Title to all permanent structural improvements are in the name of the United States rather than being shared with the cooperator in proportion to their contribution
- The permittee or lessee can hold title to a range improvement authorized by a RIP only if it is a livestock handling facility.

From 1982 to 1994, the BLM authorized 25,280 rangeland improvement projects under a CRIA or RIP; an average of 1,945 improvements per year. From 1995 to 2002, the BLM authorized 9,684 rangeland improvement projects, an average of 1,210 per year. The decrease in the number of range improvements constructed each year is attributable to a number of factors, including decreasing availability of public funds and shifting BLM work priorities. The 1995 change in CRIA title provisions may also have been a factor in the decrease. Table 3.4.3.1 provides the number of rangeland improvement projects by state and year.

The transfer of any interest or obligation in permanent range improvements is provided for in section 4110.2-3(a) (2) and section 4120.3-5. An application to transfer grazing preference must “evidence assignment of interest and obligation in range improvements authorized on public lands...”and “The terms and conditions of the cooperative range improvement agreement

Table 3.4.3.1. Number of rangeland improvement projects by state.

Fiscal Year	AZ	CA	CO	ID	MT	NM	NV	OR	UT	WY	Total
1982	120	125	280	290	410	209	243	318	227	177	2399
1983	180	103	245	333	481	242	191	491	428	211	2905
1984	120	128	192	245	437	161	165	202	232	183	2065
1985	112	173	181	213	332	148	159	209	188	390	2105
1986	110	88	180	232	312	148	181	149	198	135	1733
1987	114	119	216	231	284	113	159	159	246	238	1879
1988	168	120	275	164	255	155	121	146	257	161	1822
1989	155	70	189	214	246	228	117	190	243	196	1848
1990	142	34	179	233	300	183	141	138	183	183	1716
1991	66	64	267	192	328	180	163	228	145	204	1837
1992	56	46	282	156	329	249	102	160	133	217	1730
1993	61	47	286	147	323	300	62	214	119	134	1693
1994	69	46	213	133	286	218	125	197	107	154	1548
1995	67	44	242	116	159	278	70	241	102	181	1500
1996	44	34	172	91	118	106	70	204	125	98	1062
1997	25	35	225	91	211	118	76	161	118	141	1201
1998	20	38	183	104	224	92	82	161	102	102	1108
1999	29	44	178	133	165	99	111	217	86	167	1229
2000	58	55	243	112	209	106	122	244	140	169	1458
2001	31	41	130	133	141	50	132	140	40	138	976
2002	83	49	180	145	283	49	52	114	34	161	1150
Total	1830	1503	4538	3708	5833	3432	2644	4283	3453	3740	34964

Source: (BLM 2002c).

and range improvement permits are binding on the transferee.” Under section 4120.3-5 the authorized officer shall not approve the transfer of grazing preference unless the transferee of existing range improvements as agreed to compensate the transferrer for their interest in authorized range improvements.

3.4.4 Involvement of Interested Publics

The grazing administration regulations include a definition for the involvement

of interested publics in the decision-making process. The regulations define interested publics as an individual, group, or organization that has submitted a written request to the authorized officer to be provided an opportunity to be involved in the decision-making process for the management of livestock grazing on a specific allotment or has submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment (subpart 4100.0-5). Within the present

regulations, the interested public may decline to participate in the preliminary decision making process (i.e., formulation of a proposed grazing decision), but at a later date may become involved in the final decision making process (Appeals, subpart 4160.4). In addition, the grazing regulations specify that the BLM will cooperate, within the applicable laws, with state, county, or Federal agencies in regard to the administration of laws and regulations related to state cattle or sheep sanitary or brand boards and county or other local weed control districts (subpart 4120.5-2).

The BLM is required to consult, cooperate, and coordinate or seek review from the interested publics on the following actions:

1. Designating and adjusting allotment boundaries,
2. Increasing active use,
3. Implementing reductions in permitted active use,
4. Emergency closures or modifications to grazing use,
5. Development or modification of allotment management plans,
6. Planning (NEPA) of the range development or improvements,
7. Issuing grazing permits or leases,
8. Modification of permits or leases,
9. Reviewing or commenting on grazing evaluation reports, and
10. Issuing temporary, nonrenewable grazing permits or leases

3.4.5 Authorizing Temporary Changes in Use

In 2002, there were 18,142 grazing permits or leases on lands administered by the BLM. Grazing permits and leases are normally issued for a 10-year term, but in some circumstances may be issued for less, (e.g., rule of law, estate rules, and base property lease; subpart 4130.2). In 2002, 12.7 million Animal Unit Months (AUMs) were available for use, with 7.9 million AUMs authorized as active use and 4.8 million AUMs authorized as temporary nonuse or conservation use. (Table 3.4.5.1)

Temporary nonuse is typically requested by a permittee or lessee for convenience (such as for personal or financial reasons) and resource management. The permittee or lessee may apply for temporary nonuse for as long as 3 years, and the BLM has the discretion to accept or reject the application for nonuse. However, the BLM may use other methods to provide longer periods of rest from grazing (nonuse), for example, permittee or lessee mutual agreements, allotment closures, suspension through grazing decisions, and others, to achieve a variety of resource or vegetative objectives. This nonuse is not at the request

Table 3.4.5.1. Estimated authorized use and non use.

Fiscal Year	Authorized Use	Nonuse
2002	7,872,819	4,824,362
2001	8,112,008	4,664,361
2000	9,837,588	2,972,899
1999	10,087,988	2,906,895
1998	10,353,032	2,662,271
1997	9,445,482	3,624,694
1996	9,738,638	3,547,697

Source *BLM Public Land Statistics FY96-02* (BLM 2002c)

of the permittee or lessee. Examples of this type of nonuse may be for post-wildfire rehabilitation, drought, prescribed fire management, riparian area recovery, or other reasons.

A permittee or lessee may apply for changes in permitted use that is maintained within the terms and conditions of the permit and the BLM may approve the application. The regulations do not address what is meant by “within the terms and conditions of the permit.” If the application for changes in use is received after the billing notice has been issued, the permittee or lessee would be subject to a service charge.

3.4.6 Prohibited Acts

The authorized officer has the ability to withhold issuance, suspend, or cancel a grazing permit or lease in whole or part, a free-use permit, or any other grazing authorization if a grazing permittee or lessee violates any of the provisions listed in prohibited acts (§4140.1). These prohibited acts are classified under three sections within the grazing regulations.

In general, the first set of prohibited acts states that permittees and lessees who perform the prohibited acts listed under subsection 4140.1(a) may be subject to civil penalties (e.g., cancellation of permit or lease in whole or part). Included in the list of prohibited acts under section (a), for example, are: “violating special terms and conditions incorporated in permits or leases”; “unauthorized leasing or subleasing”; and “failing to comply with the terms, conditions, and stipulations of cooperative range improvement agreements or range improvement permits.” This first section of prohibited acts is a major vehicle used by BLM to address grazing violations or to take direct action against permittees or lessees who are violating terms and conditions or their grazing permit or lease.

The second set of prohibited acts classified under §4140.1(b) applies to any persons (not just permittees or lessees) performing the prohibited acts included in this subsection. Anyone who violates these prohibited acts is subject to civil and criminal penalties. Included in this list are actions such as “allowing livestock....to graze on [BLM-administered] lands...without a permit or lease”; “damaging or removing U.S. property without authorization”; “molesting, harassing, injuring, poisoning, or causing death of livestock authorized to graze on these lands and removing authorized livestock without the owner’s consent”; “littering”; and “interfering with lawful uses or users including obstructing free transit through or over public lands by force, threat, intimidation, signs, barrier or locked gates.”

The third set of prohibited acts is included within §4140.1(c). Performance by a permittee or lessee of any of these prohibited acts is subject to civil penalties. However, there is an important distinction between these prohibited acts and those identified in the first two sets. Violations of these acts are subject to civil penalties if the following four conditions are met:

1. public land is involved or affected,
2. the violation is related to grazing use authorized by a BLM-issued permit or lease,
3. the permittee or lessee has been convicted or otherwise found to be in violation of any of these laws or regulations by a court or by final determination of any agency charged with the administration of these laws, and
4. No further appeals are outstanding.

The BLM has been unable to find an instance in which the BLM has utilized the third set of prohibited acts to take an adverse action against or penalize a BLM permittee or lessee.

3.4.7 Appeals

In order to provide permittees, lessees, and others an opportunity to communicate on BLM's grazing actions, the grazing administrative process contains a decision process that includes opportunities for public input. In general, the BLM issues a proposed grazing decision in which the interested publics and the permittee or lessee have 15 days to protest the proposed decision. If no protests are received by the authorized officer, the proposed grazing decision automatically becomes the final grazing decision. The final decision contains a 30-day appeal period upon receipt.

If the interested public or the permittee or lessee protest the proposed decision, the authorized officer must review the protest and either address or dismiss the protest rationale within the final grazing decision. The interested public or the permittee or lessee may appeal the final decision to the Office of Hearings and Appeals and request a stay of the decision. If a stay is granted, the decision is usually suspended pending the Office of Hearings and Appeals final determination. If a stay is denied, the final grazing decision is in force until the Office of Hearings and Appeals final determination.

This process is used within the permit or lease transfer process. For example, a permittee or lessee appeals a final decision concerning the grazing season on a permit or lease and a stay of the final decision is granted. The permittee or lessee must graze in accordance with the previous permit. If the permittee or lessee is a new applicant for the allotment and therefore has no previous

permit for the allotment, the applicant must graze in accordance with the final decision.

3.4.8 Rangeland Health

Over time, many terms have been used to describe rangeland condition. The term "health" gained acceptance when the National Research Council used the term in the title of its 1994 report, *Rangeland Health—New Methods to Classify, Inventory, and Monitor Rangelands*. Although this was not the first time "health" was used to describe rangeland condition, it was the first time the term was applied in a broad sense and made available for the general public in a book published for non-technical audiences.

In an effort to provide a definition for rangeland health that multiple audiences could understand and accept, a working task force composed of research institutions, Federal agencies, and private organizations met in 1995 to develop standardized definitions for range management terms. The task force defined rangeland health as "the degree to which the integrity of the soil, vegetation, water, and air, as well as the ecological processes of the rangeland ecosystem, are balanced and sustained. Integrity is defined as maintenance of the structure and functional attributes characteristic of a locale, including normal variability" (SRM 1999).

Whereas the soil, vegetation, water, and air are visible components of rangeland health, several essential ecological processes are often overlooked as important factors that contribute to rangeland health. The ecological processes include the water cycle (the capture, storage, and redistribution of precipitation), energy flow (conversion of sunlight to plant and animal matter), and nutrient cycle (the cycle of nutrients through the physical and biotic components of the environment; Pellant 2000). Within normal variation, these ecological processes will

enable a rangeland to support a specific plant community. Maintenance of stable ecological processes within plant communities contributes to overall rangeland health. Once one of the ecological processes has deteriorated past the point of self-repair, the rangeland no longer meets the definition of a healthy rangeland. Since plant communities depend on ecological processes, management now focuses on ecological processes to evaluate if rangeland is healthy. (Pellant 2000; Stringham 2003).

The grazing regulation changes in 1995 initiated assessment of allotments for conformance to the standards for rangeland health. In general, these regulations specify that allotments must meet certain standards for rangeland health. The determination of whether an allotment meets or does not meet the standards for rangeland health is formulated through an allotment assessment and, if available, historical monitoring data.

When an allotment does not meet one of the standards for rangeland health and livestock grazing is a significant factor for the standard not being met or for non-conformance with a guideline, the grazing regulation directs the authorized officer to ensure that some type of action (e.g., grazing plan, noxious weed treatment, or another action) is implemented before the start of the next grazing season.

The BLM had assessed 7,437 allotments comprising 58,711,307 acres by the conclusion of fiscal year 2002 (BLM 2002). The BLM concluded that 5,671 allotments met all the standards for rangeland health. The remaining 1,766 allotments did not meet one or more of the standards. Existing grazing management practices or levels of grazing use were determined to be a significant factor in failing to achieve the standards and conform with the guidelines on 1,213 of these 1,766 allotments.

Expressed as a percent for additional perspective; 35 percent of all 21,273 BLM grazing allotments had been evaluated by the end of fiscal year 2002. This represents evaluation of more than 36 percent of all BLM land in allotments (BLM 2002). Of these assessed allotments, 76 percent were meeting all standards, 8 percent were not meeting all standards for reasons other than livestock grazing, and current livestock grazing management practices or levels of grazing use were determined to be a significant factor in the failure of the remaining 16 percent of all allotments assessed to achieve the standards and conform to the guidelines.

3.5 Vegetation

The dominant vegetation within the affected environment exists on a type of land that is referred to as rangeland. Rangeland is classified as an area where the natural vegetation is dominated by grasses, forbs, and shrubs and the land is managed as a natural ecosystem (SRM 1999). In addition to providing forage for livestock and wildlife, rangelands also provide clean air, high quality water, habitat for native plant species, open space, and recreational opportunities.

Vegetation Types

The classification of vegetation types within the affected environment are displayed in Table 3.5.1. The map units in Figure 3.5.1 represent the subclass level of Table 3.5.1. These vegetation types were selected due to their consistency with the Federal Geographic Data Committee and the National Vegetation Classification Standard. The plant communities contained within the 14 vegetation types are listed in Table 3.5.2.

Figure 3.5.1. Vegetation classification: subclass.

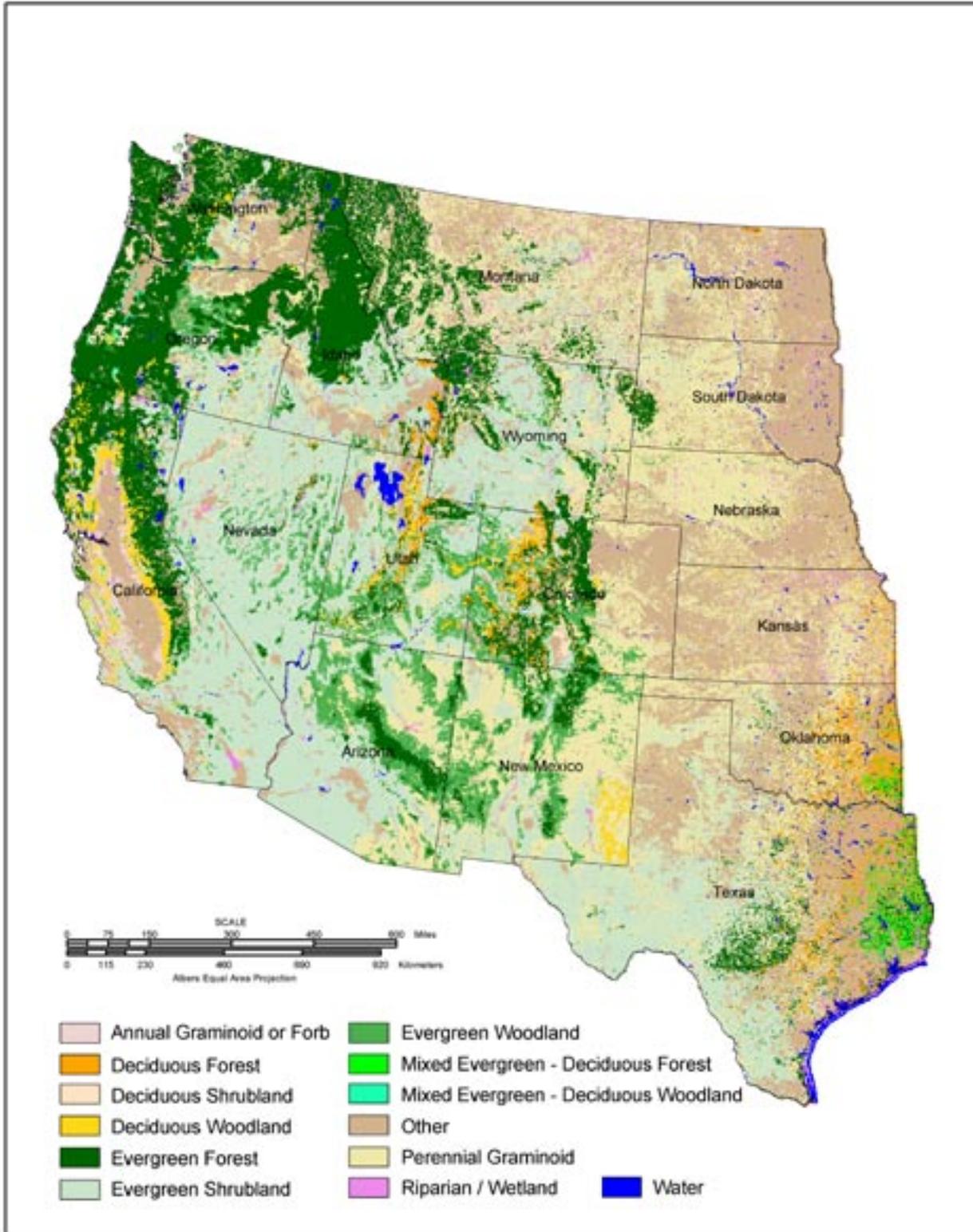


Table 3.5.1. Vegetation classification noting the division, order, and subclass of vegetation.

Division	Order	Class	Subclass
Vegetated	Tree Dominated	Closed Canopy	Evergreen Forest
			Deciduous Forest
			Mixed Evergreen–Deciduous Forest
		Open Tree Canopy	Evergreen Woodland
			Deciduous Woodland
			Mixed Evergreen–Deciduous Woodland
	Shrub Dominated	Shrubland	Evergreen Shrubland
			Deciduous Shrubland
			Evergreen Dwarf–Shrubland
			Deciduous Dwarf–Shrubland
	Herb Dominated	Herbaceous Vegetation	Perennial Graminoid
			Annual Graminoid or Forb
			Perennial Forb
	Not included in National Vegetation Classification Standard		

Table 3.5.2. Plant communities depicted within each of the 14 vegetation types.

Vegetation State	Plant Communities within Vegetative State
Evergreen Forest	Subalpine Spruce Fir–Mountain Hemlock, Red Fir, Mixed Sugar Pine, Ponderosa Pine, Ponderosa Pine/Shrub, Ponderosa Pine/Oak–Juniper–Pinyon, Jeffery Pine, Monterey Pine, Bishop Pine, Lodgepole Pine–Douglas Fir, White Fir–Douglas Fir, White Fir–Douglas Fir/Shrub, Douglas Fir–White Fir–Blue Spruce, Coastal Lodgepole Pine, California Bay, Eucalyptus, Inland Douglas Fir, Inland Douglas Fir–Western Red Cedar, Inland Western Red Cedar–Western Hemlock, Douglas Fir–Tanoak–Pacific Madrone, Douglas Fir–Sugar Pine–Ponderosa Pine, Douglas Fir–Ponderosa Pine–Incense Cedar, Pacific Silver Fir, Sitka Spruce, Ponderosa Pine–Lodgepole Pine, Colorado Mixed Forest, Western Larch–Grand Fir, Western White Pine, Grand Fir–Douglas Fir, Western Larch–Douglas Fir, Westside Western Hemlock–Western Red Cedar, Westside Douglas Fir–Western Hemlock, Westside Douglas Fir, Mountain Shrub/Clearcut, Coastal Redwood
Deciduous Forests	Aspen, Aspen–Conifer, Bur Oak, Cypress, Ash, Maple, Russian Olive

Table 3.5.2 (continued). Plant communities depicted within each of the 14 vegetation types.

Vegetation State	Plant Communities within Vegetative State
Mixed Evergreen–Deciduous Forest	Combinations of the Evergreen and Deciduous Forest Types
Evergreen Woodland	Subalpine Fir, Knobcone Pine, Limber Pine, Manrean Pine, California Foothill Pine, Juniper, Pinyon Pine, Pinyon–Juniper, Chihuahua–Apache Pine, Madrean Pinyon Juniper
Deciduous Forest	Oregon White Oak, California Oak, Mixed Oak, Mesquite
Mixed Evergreen–Deciduous Woodland	Oregon White Oak–Conifer, California Oak–Conifer
Evergreen Shrubland	Southern Rockies Oak–Mahogany Shrub, Southern Rockies Oak–Manzanita Scrub, Bitterbrush, Interior Chaparral, California Chaparral, Mountain Mohogany, Sagebrush, Sagebrush/Perennial Grass, Rabbitbrush, Salt Desert Shrub, Blackbrush, Creosote–Bursage, Mojave Mixed Scrub, Great Basin Mormon Tea, Joshua Tree, Great Basin Saltbush Scrub, Mojave Creosotebush–Yucca, Shadscale–Mixed Grass–Mixed Scrub, Paloverde–Mixed Cacti–Scrub, Crucifixon Thorn Chihuahuan Creosotebush Scrub, Costal Dune Scrub, Costal Sage, Costal Scrub, Sandsage Shrubland
Deciduous Shrubland	Mesic Upland Shrub/Hardwoods, Warm Mesic Shrub, Greasewood, Hopsage, Catclaw Acacia, Smoketree, Scotch Broom
Evergreen Dwarf Shrubland	No examples on BLM Lands
Deciduous Dwarf Shrubland	Alaska and not within the affected environment of this EIS
Perennial Graminoid	Introduced Wheatgrass (e.g. Crested Wheatgrass, Intermediate Wheatgrass), Meadow, Forest Meadow, Alpine/Subalpine Meadows, Great Basin Grassland California Native Perennial Grassland, Foothills Grassland, Shortgrass Prairie Midgrass Prairie, Tallgrass Prairie, Desert Grassland, Semidesert Tobosa Grass–Scrub, Semidesert Mixed Grass, Chihuahuan Grassland

Table 3.5.2 (concluded). Plant communities depicted within each of the 14 vegetation types.

Vegetation State	Plant Communities within Vegetative State
Annual Graminoid or Forb	California Disturbed Grassland (the annual plant dominated Central Valley portion of California), Cheatgrass/Mustard, Medusahead, Red Brome, Japanese Brome Ventenata, Diffused Knapweed (annual or perennial), Yellow Starthistle
Perennial Forb	Spotted Knapweed, Russian Knapweed, Squarrose Knapweed, Rush Skeletonweed, Canada Thistle, Scotch Thistle (biennial), Whitetop (<i>Cardaria</i> spp.), Leafy Spurge, Mediterranean Sage, Purple Loosestrife, Dalmatian Toadflax
Riparian–Wetland	Wet Graminoid, Wet Forb

Evergreen Forests

Evergreen forests are a tree dominated landscape. The canopy of the trees has overlapping crowns generally forming 60 to 100 percent of the vegetative cover. In the evergreen forests subclass the evergreen species contribute greater than 75 percent of the total tree cover.

Deciduous Forest

Deciduous forests are a tree dominated landscape. The canopy of the trees has overlapping crowns generally forming 60 to 100 percent of the vegetative cover. In the deciduous forests subclass the deciduous species contribute greater than 75 percent of the total tree cover.

Mixed Evergreen–Deciduous Forests

Mixed evergreen–deciduous forests are a tree dominated landscape. The evergreen and deciduous species each generally contribute 25 to 75 percent of the total tree cover. This would include semideciduous, semievergreen, mixed evergreen–deciduous

xeromorphic and mixed needle-leaved evergreen-cold deciduous woody vegetation.

Evergreen Woodland

Evergreen woodland is a tree dominated landscape. The area is classified as open stands of trees with crowns not usually touching. The trees generally form 25 to 60 percent of the vegetative cover. There are instances when tree cover may be less than 25 percent in cases when the cover of each of the other life forms present (i.e. shrub, dwarf shrub, herb, nonvascular) is less than 25 percent and tree cover exceeds the cover of the other life forms. Evergreen species contribute greater than 75 percent of the total tree cover.

Deciduous Woodland

Deciduous woodland is a tree dominated landscape. The area is classified as open stands of trees with crowns not usually touching. The trees generally form 25 to 60 percent of the vegetative cover. There are instances when tree cover may be less than

25 percent in cases when the cover of each of the other life forms present (i.e. shrub, dwarf shrub, herb, nonvascular) is less than 25 percent and tree cover exceeds the cover of the other life forms. Deciduous species contribute greater than 75 percent of the total tree cover.

Mixed Evergreen–Deciduous Woodland

Mixed evergreen–deciduous woodland is a tree dominated landscape. The area is classified as open stands of trees with crowns not usually touching. The trees generally form 25 to 60 percent of the vegetative cover. There are instances when tree cover may be less than 25 percent in cases when the cover of each of the other life forms present (i.e., shrub, dwarf shrub, herb, nonvascular) is less than 25 percent and tree cover exceeds the cover of the other life forms. Evergreen and deciduous species contribute 25 to 75 percent of the total tree cover. This would include semideciduous, semievergreen, mixed evergreen–deciduous xeromorphic and mixed needle-leaved evergreen-cold deciduous woody vegetation.

Evergreen Shrubland

Evergreen shrubland is a shrub dominated landscape. The shrubland classification has shrubs greater than 0.5 meters tall with individuals or clumps not touching to overlapping. The shrub component generally forms greater than 25 percent of the canopy cover. The tree cover is generally less than 25 percent. Shrub cover may be less than 25 percent in cases where each of the other life forms present is less than 25 percent and the shrub cover exceeds the other life forms. The evergreen shrub species contribute greater than 75 percent of the total shrub cover.

Deciduous Shrubland

Deciduous shrubland is a shrub dominated landscape. The shrubland classification has shrubs greater than 0.5 meters tall with individuals or clumps not touching to overlapping. The shrub component generally forms greater than 25 percent of the canopy cover. The tree cover is generally less than 25 percent. Shrub cover may be less than 25 percent in cases where each of the other life forms present is less than 25 percent and the shrub cover exceeds the other life forms. The evergreen shrub species contribute greater than 75 percent of the total shrub cover.

Evergreen Dwarf Shrubland

There are no examples of evergreen dwarf shrublands on BLM lands.

Deciduous Dwarf Shrubland

Vegetation types included within the deciduous shrubland subclass are located in Alaska and are not within the affected environment.

Perennial Graminoid

A perennial graminoid area is dominated by at least 25 percent of the total vegetative cover formed of perennial graminoids. Trees, shrubs, and dwarf-shrubs form less than 25 percent of the total vegetative cover. Perennial graminoid cover may be less than 25 percent of the total vegetative cover, but it will still exceed the total vegetative cover of other life forms.

Annual Graminoid or Forb

An annual graminoid or forb area is dominated by at least 25 percent of the total vegetative cover formed of annual graminoid or forb. Trees, shrubs, and dwarf-shrubs form less than 25 percent of the

total vegetative cover. Annual graminoid or forb cover may be less than 25 percent of the total vegetative cover, but it will still exceed the total vegetative cover of other life forms. Vegetation types included within the annual graminoid or forb subclass are:

Perennial Forb

A perennial forb area is dominated by at least 25 percent of the total vegetative cover formed of perennial forb. Trees, shrubs, and dwarf-shrubs form less than 25 percent of the total vegetative cover. Perennial forb cover may be less than 25 percent of the total vegetative cover, but it will still exceed the total vegetative cover of other life forms. Vegetation types included within the perennial forb subclass are

Riparian–Wetland

Various definitions of riparian–wetlands exist in the publications. In general, the riparian–wetland subclass is highly influenced by the presence of water in the form of flowing rivers, streams, creeks, groundwater or in the form of standing water as in reservoirs, bogs, and pits. Vegetation types within riparian–wetland areas would include wet graminoids and wet forbs.

Other

Other is largely classified as private farm lands and is not within the affected environment.

BLM Vegetation Management

BLM's goal is to manage the public lands on a multiple-use and sustained yield basis. Among the uses and values of the vegetation are forage for livestock and wildlife. Land use plans may provide broad vegetation management objectives. More specific management objectives are found in activity

plans. For example, grazing allotment management plans generally contain vegetation management objectives.

In this document, the rangeland vegetation is divided into upland and riparian sections.

3.5.1 Upland Vegetation

Vegetation on the public lands can be described and evaluated in many ways. In the early 1900s, the rangeland management field was undergoing a formation of theories for the understanding of how vegetation responds to introduced activities, such as livestock grazing, and natural disturbances, such as fire. In 1916 Clements introduced the theory that rangeland has a single persistent state, "the climax" (Clements 1916). This theory is referred to as the Clementsian theory of range succession and became widely embraced within the ecological field.

The Clementsian theory provides a linear nature of vegetation succession. According to Stoddard, Smith, and Box (1975), "retrogression may be caused by drought, fire, or grazing. If this action is temporary, a succession leading back to climax follows." In other words, once a disturbance such as grazing was removed from an area, that area would return to the vegetative community that existed before the disturbance.

In 1949, Dyksterhuis utilized the principles of the Clementsian theory to classify the condition of rangeland. This rangeland condition classification and succession process relied on comparing the present vegetation of an area to the vegetation that was thought to be original to the site, referred to as the "climax vegetation" (Dyksterhuis 1949). Using the climax vegetation at the pristine condition, Dyksterhuis proposed classifying rangeland as excellent (climax vegetation), good, fair, or poor.

The Dyksterhuis range succession model was adopted worldwide to provide the framework for the management of rangelands. But over time researchers and land managers recognized that the Clementsian theory and the Dyksterhuis range condition model did not adequately describe the ecological situation that exists in arid and semiarid rangelands. These arid and semiarid rangelands were not returning to the original vegetative community once a disturbance was removed from the system.

Westoby et al. (1989) introduced the state-and-transition model that provided the framework for modeling the vegetative changes occurring on arid and semiarid regions. The main departure from the Clementsian theory was that arid or semiarid rangelands may never return to the original vegetative community once a disturbance is removed. The framework they provided allowed for “states” and “transitions”. A state is “an abstraction encompassing a certain amount of variation in space and time”; a transition is “the movement between states”.

Freidel (1991) added to the state-and-transition model by envisioning that once a threshold is crossed a new state is formed. Without intensive inputs, a return to the original state is not possible. Additional research and comments (Laycock 1991; Tauch et al. 1993; Iglesias and Kothmann 1997; Stringham 2003; and Bestelmeyer 2003) provided additional refinement and illustrated applications of the state-and-transition model.

A state-and-transition model for arid and semiarid rangeland contains state, transitions, and threshold definitions:

- State—A variety of vegetative communities that are a function of the soil complex and the vegetative community that inhabits the complex (Stringham et al. 2003).

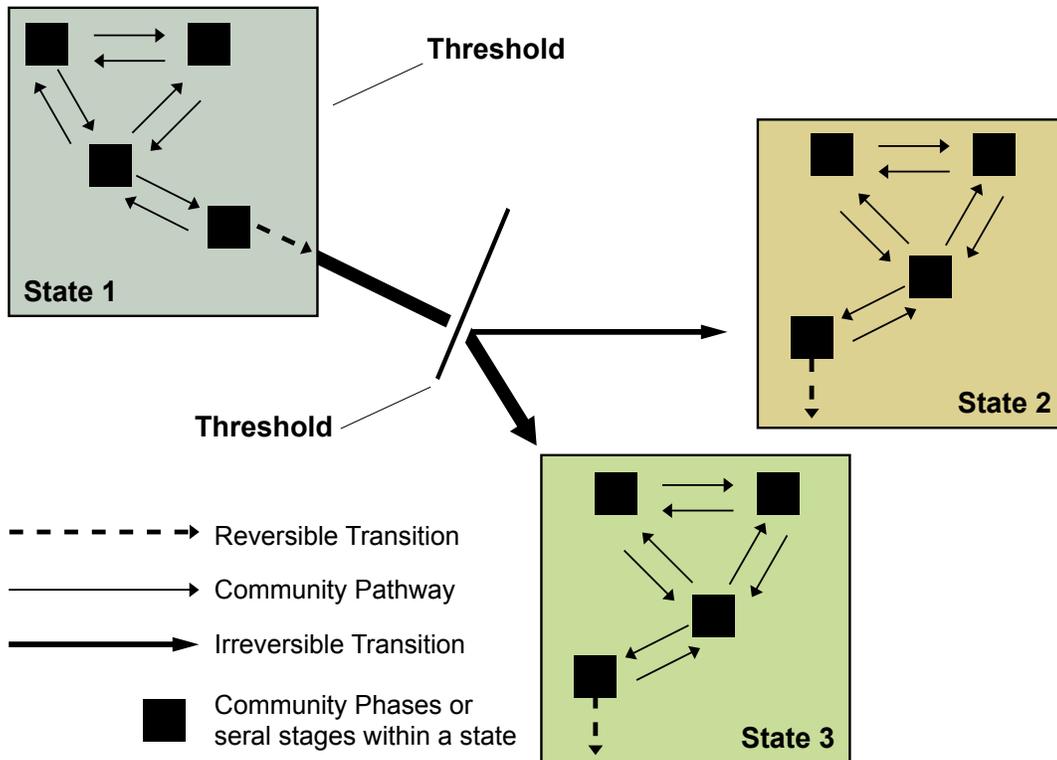
- Transition—A change from the present stable state that is triggered by natural events, management actions, or both (Stringham et al. 2003). A transition can be:
 - Reversible if it occurs within the state and it is possible to return the existing vegetative community back to the original vegetative community without large inputs and is in managerial timeframe
 - Irreversible if the transition crosses a threshold where it is impossible to return to the original vegetative community without large inputs of energy.
- Threshold—A point in space and time at which a state is no longer able to maintain its present condition. Once this threshold is crossed a new state is formed and it is not possible to revert back to original state without significant inputs.

With the incorporation of the additional information, state-and-transition models continue to be refined to provide an accurate description of how upland vegetation responds to management activities or natural disturbances. Figure 3.5.1.1 illustrates how a state-and-transition model would be applied to upland vegetation.

Condition and Trends

The vegetation on the public lands is a dynamic, living system that changes over time. As mentioned above, methods to assess the condition of vegetation has also changed over time. However, since 1934 the public lands have had managed livestock grazing and conditions have continued to improve. Although conditions have improved, there are still a number of acres that are dominated by invasive or exotic species and have not returned to the potential natural community.

Figure 3.5.1.1. State-and-transition model incorporating the concepts of community pathways between plant community phases within states, reversible transitions, multiple thresholds, irreversible transitions, multiple pathways of change, and multiple steady states (Stringham et al. 2003).



The BLM National Rangeland Inventory reporting system is based on a vegetative condition rating by comparing percent composition, by weight and species, of the existing vegetation to the potential natural plant community that the site can produce. The 2002 National Rangeland Inventory reflects the following:

- Potential Natural Community—6%
- Late Seral—31%
- Mid Seral—34%
- Early Seral—12%
- Unknown or Unclassified—17%

Monitoring and data collection used to determine upland conditions are also used to formulate trend for upland vegetation.

Trend is classified as up, static, down, or undetermined. An “up” trend rating is correlated with the upland vegetation progressing toward the potential natural community. A downward trend is correlated with the upland vegetation moving away from the potential natural community. Static trend is classified as the vegetation not moving away from or toward the potential natural community for the upland vegetative communities. The national trend from the 2002 National Rangeland Inventory for vegetation is:

- Up—21%
- Static—51%
- Down—12%
- Undetermined—16%

3.5.2 Riparian and Wetland Vegetation

Riparian areas are highly productive and unique wetland environments that are found adjacent to rivers and streams. Riparian communities are often referred to as “ribbons of green” in the arid western United States. Though estimates vary, it is generally agreed that riparian ecosystems comprise less than 1 percent of the surface area in the 11 western States (Cooperrider et al. 1986; Ohmart 1996). Riparian communities in the western United States are the most productive habitats in North America (Johnson et al. 1977), and provide important wildlife habitat for breeding, wintering, and migration. An estimated 75 percent of the vertebrate species in Arizona and New Mexico depend on riparian habitat for some portion of their life history (Johnson et al. 1977).

Riparian areas combine the presence of water, increased vegetation, shade, and a favorable microclimate to create the most biologically diverse habitat found on BLM lands. Riparian areas are highly prized for their recreation, fish and wildlife, water supply, and cultural and historic values, as well as for their economic values related to livestock production, timber harvest, and mineral extraction (BLM 1998). In the semiarid West, healthy functioning riparian areas perform several critical functions:

- Improve water quality through filtering and sediment removal
- Stabilize streambanks
- Soil retention
- Dissipate stream energy during high flow events (reduced flood damage)
- Provide water, forage, and shade for wildlife and livestock

- Act as migration corridors for wildlife and birds
- Create opportunities for recreation (fishing, camping, picnicking, hiking)
- Maintain in-stream flows and restore perennial flow
- Maintain aquatic habitat for healthy fish populations
- Raise and maintain the water table
- Increase habitat diversity for wildlife and plants
- Enhance aesthetics

Problems with riparian function generally occur in four ways:

- Alterations in streamside vegetation and soil conditions,
- Changes in channel morphology (water velocity, water table, width-to-depth ratio, substrate composition),
- Altered water temperatures, nutrient loads, sediment loads, bacterial counts, or
- Degradation and erosion of streambanks (Platts 1989; Johnson 1992).

Grazing effects on vegetation and streambank vegetation are important to riparian function (Elmore and Beschta 1987; Platts 1989; Johnson 1992). A range of livestock management strategies that are compatible with riparian restoration are available including timing, duration, and frequency of grazing use or livestock exclusion (Elmore and Kaufman 1994; Platts 1990; Kovalchik and Elmore 1991; and Johnson 1992). A number of successful

approaches have relied on applying grazing management in cooperation with the grazing operator, sometimes on both public and private lands.

Riparian areas were greatly altered by early grazing practices prior to the Taylor Grazing Act of 1934 which established control over livestock grazing practices on the public domain (Leopold 1946). Riparian restoration is becoming more widespread and common in every region of the country (Natural Resources Law Center, 1996). The Government Accounting Office review of 22 stream restoration efforts in the West (1988) concluded that there were “no major technical impediments” to riparian restoration. In fact, stream classification systems and assessment tools are well developed (Kenna et al. 1999). Successful restoration efforts consider the complex relations of riparian function and the role of vegetation, which again suggests the importance of grazing management (Elmore and Beschta 1990; Elmore and Kaufman 1994).

Multiple factors, including livestock grazing, often affect riparian systems, indicating the need for careful analysis of contributing factors and management options (Elmore and Kaufman 1994; Adams and Fitch 1995; Hunter 1991; Reeves et al 1991; Robbins and Wolf 1994; Todd and Elmore 1997; Furniss et al 1991). But the primary focus is restoring streamside vegetation (Elmore and Beschta 1987). While livestock exclusion can be a solution (Elmore and Kaufman 1994), changes in livestock management can often also be effective without the expenditures for enclosure fences (Elmore and Beschta 1987; Kinch 1989). Strategies for riparian restoration involving timing, duration and frequency of grazing use have been addressed by Elmore and Kaufman (1994), Platts (1990) Kovalchik and Elmore (1991), and Johnson (1992). Some of the most prominent, large-scale riparian

restoration successes, such as Bear Creek drainage and Trout Creek Mountains in Oregon, have relied on cooperation to create long-term, sustainable restoration and grazing management actions (Kenna et al. 1999).

The potential for long-term restoration results through a cooperative effort are probably best illustrated by the changes implemented on Bear Creek in Oregon, initiated under a 1973 watershed plan. Based primarily on changes in grazing management (timing and duration), the riparian plant community increased by 76 percent, eroding and damaged banks decreased by 90 percent, and 17 percent to 26 percent increases occurred in the grass-sedge-rush community between 1978 and 1994 (Rasmussen 1995; Chaney et al. 1990), at the same time available livestock forage increased. Bear Creek and other case studies suggest that reliance on reducing numbers of livestock, while it may produce changes in upland vegetation, may be less important to riparian improvement than other factors (Platts 1990; Kenna et al. 1999).

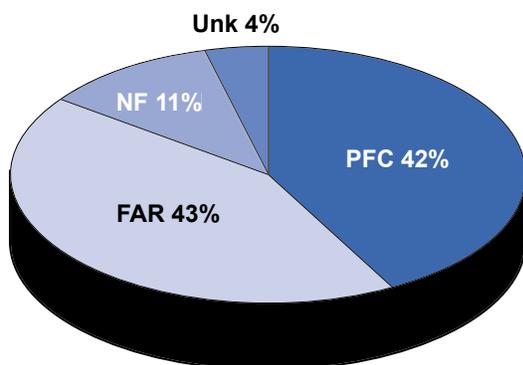
The response to restoration practices may vary according to riparian area characteristics or conditions. Clary et al. (1996) suggested that past grazing practices at their study site in eastern Oregon probably altered conditions, such that a wide range of grazing treatments (including no grazing) for a period of 7 years resulted in few differential responses by plants or animals. In some cases, recovery of native riparian vegetation may be very slow due to deterioration of stream condition (downcutting, widening), dominance of non-native annuals within the riparian area, or loss of native seed sources (Clary et al. 1996).

In 1993, the BLM adopted the Process for Assessing Proper Functioning Condition (PFC; BLM 1993) as its standard methodology for determining the condition

on riparian resources on public lands. The BLM has aggressively undertaken the task of conducting PFC assessments on its lands, resulting in a decrease of sites classified as Unknown from 55 percent in 1993 to only 4 percent in 2001. As a result of its commitment to the standardized PFC assessment technique, the BLM has compiled several years of information on the status and trends of riparian conditions on lands under its management.

Riparian habitat on BLM lands in the lower 48 States includes 34,137 miles adjacent to flowing water (lotic systems) and 328,660 acres of riparian habitat associated with standing water (lentic systems). As of October 2001, the condition of approximately 96 percent of lotic riparian areas on BLM lands in the lower 48 States had been assessed using the Proper Functioning Condition (PFC) assessment technique (BLM 2002). Overall, 42 percent were classified as being in Proper Functioning Condition, 43 percent as Functioning-At-Risk (FAR), 11 percent as Non-Functional, and 4 percent as Unknown (see Figure 3.5.2.1; BLM 2002). Of the miles in the FAR category, 36 percent were in an upward trend, indicating that the condition is improving and no changes in management are immediately needed. In September 1990, the BLM published its

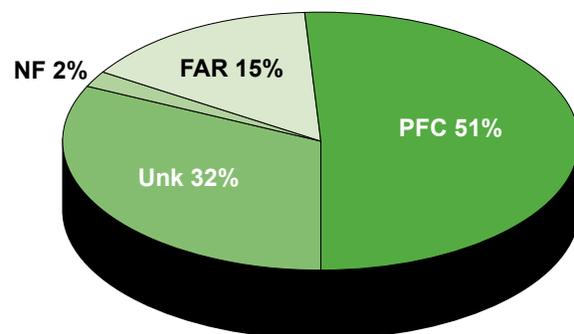
Figure 3.5.2.1. Condition of lotic riparian areas on BLM lands (lower 48 states), 2001.



Riparian-Wetland Initiative for the 1990s (BLM 1990). The Initiative set the goal of restoring or maintaining riparian-wetland areas so that 75 percent or more would be in PFC by 1997. The fact that only 42 percent of BLM's lotic riparian areas were classified as PFC in 2001 illustrates riparian systems have not responded as quickly as desired.

As of October 2001, the condition of approximately 67 percent of lentic riparian areas on BLM lands in the lower 48 States had been assessed using the PFC assessment technique (BLM 2002). Overall, 51 percent were found to be in PFC, 15 percent in FAR, 2 percent in Non-Functional, and 32 percent were Unknown (BLM 2002; see Figure 3.5.2.2). Over the past 15–20 years, the BLM has focused a great deal of its restoration efforts on riparian areas. Riparian areas typically respond quickly to management changes, and in some instances recovery has been dramatic. Many of the restoration efforts have been in highly visible areas, providing opportunities to increase public exposure to, and understanding of, riparian function. While the apparent trend based on the percentage in Properly Functioning Condition shows improvement from 36 percent to 42 percent in miles of stream, and from 41 percent to 51 percent in wetland acres, these percentages are affected by shifts of

Figure 3.5.2.2. Condition of lentic riparian areas on BLM lands (lower 48 states), 2001.



16 percent and 12 percent percent out of the unknown classification, reflecting the BLM's effort to develop a more complete inventory of the condition of riparian resources (see Table 3.5.2.1 and Table 3.5.2.2). In future years, the aggregate condition trend for streams should be more readily apparent with the relatively low mileage (4%) in the unknown classification.

3.6 Fire and Fuels

Recurring fires are often an essential part of the natural environment—as natural as the rain, snow, or wind (Hardy et al. 2001). Evidence of past fires can be found in charcoal layers of lakes, in fire scars

on trees, and adaptations of many plants. Many ecosystems in North America are fire dependant (Heiselman 1978).

Before European settlement, fire was the most common influence on the landscape in the Intermountain West (Gruell 1983), and in most of the Southwest (Wright 1990). In the drier parts of the West, the significance of the effects of fire on vegetation is difficult to separate from the effects of drought (Wright 1990). Woody species have become dominant in areas where frequent fires used to inhibit them. A loss of species diversity and site degradation has occurred from human intervention in fire regimes. This has correlated into larger and more severe fires in the last few decades.

Table 3.5.2.1. Comparison of condition of lotic riparian habitat on BLM lands, 1998 vs. 2001.

Condition of Riparian Area	1998		2001		Change (%)
	Total Miles in Lower 48 States	(%)	Total Miles in Lower 48 States	(%)	
Proper Functioning Condition	13,230	36%	14,314	42%	+6%
Functioning-At-Risk	12,900	35%	14,657	43%	+8%
Non-Functional	3,251	9%	3,688	11%	+2%
Unknown	7,310	20%	1,478	4%	-16%

Source: BLM 2002c

Table 3.5.2.2. Comparison of lentic riparian–wetland habitat on BLM lands, 1998 vs. 2001.

Condition of Riparian Area	1998		2001		Change (%)
	Total Acres in Lower 48 States	(%)	Total Acres in Lower 48 States	(%)	
Proper Functioning Condition	147,923	41%	166,796	51%	+10%
Functioning-At-Risk	45,135	13%	48,320	15%	+2%
Non-Functional	7,557	2%	6,409	2%	0%
Unknown	166,819	44%	107,135	32%	-12%

After Europeans settled the West, grazing and cultivation reduced fuels and organized fire suppression began. Thus the number and size of fires was drastically decreased (Gruell 1983; Swetnam 1990). Fire exclusion has had the greatest affect on ecotones where naturally occurring fires previously removed woody species. Ferry and others (1995) concluded that altered fire regimes are the principal agent of change affecting the vegetative structure, composition, and biological diversity in five major plant communities totaling over 350 million acres in the United States. Leenhouts (1998) compared the estimated land area burned 200–400 years ago (preindustrial) to data in the contemporary contiguous United States. The result suggests that ten times more acreage burned annually in the preindustrial era than does in modern times.

For more than 50 years the fire policy of fire exclusion has had major effects on ecosystem health. The problems have been foreseen for some time. Sixty years ago Weaver (1943) reported that the “complete prevention of forest fires in the ponderosa pine region of California, Oregon, Washington, northern Idaho, and western Montana has certain undesirable ecological and silvicultural effects [and that]...conditions are already deplorable and are becoming increasingly serious over large areas.” Also, Cooper (1961) stated, “...fire has played a major role in shaping the world’s grassland and forests. Attempts to eliminate it have introduced problems fully as serious as those created by accidental conflagrations.” Recently, concerns about the loss of biodiversity have surfaced as a result of the suppression of fire.

In 2000, the fire season was one of the worst on record and thus prompted then President Clinton to ask the Secretaries of Agriculture and Interior to prepare a report, known as the National Fire Plan, which

recommended how best to respond to the year’s severe wildfires, reduce the effects of those fires on rural communities, and ensure sufficient firefighting resources in the future. This report, prepared by the Department of the Interior and the Department of Agriculture in collaboration with the National Association of State Foresters, has shaped the role of fire management for the past few years. In August 2001, the Federal Land Management Agencies published the Ten-Year Comprehensive Strategy, thus setting the stage for fire management practices for the next 10 years. In this document, one of the five key goals is to restore fire-adapted ecosystems. Under this goal are the driving forces of fire and fuels treatments that are to enhance ecological health.

In August of 2002, President Bush visited the Squires fire in Oregon and announced his Forest and Rangeland Health Initiative. This Initiative is meant to help the Federal Land Management agencies conduct fuels projects more efficiently.

Another major factor affecting ecosystem health and fire frequency is the spread of flammable exotic annual grasses such as cheatgrass. The proliferation and spread of exotic annual grasses can largely be attributed to human activities such as farming, railroad activities, road production and fire after European settlement. Since the early 1900’s, these annual grasses have spread across the West, occupying the open interspaces between the native grass, forb, shrub, and tree species. According to Young and Allen 1997 one cheatgrass plant per m² can produce as many seeds as 10,000 m². This is the significance of a few cheatgrass plants being able to establish and persist in high ecological condition perennial grass conditions. Young also states that most native perennial plants have irregular seed production, complex dormancies and/or low

viability. This aids in the aggressive spread of cheatgrass. Once established, these highly flammable annual grasses provide a fuel source for uncharacteristically frequent fires. As fire frequency increases so do the annual grasses, which are more competitive for the limited moisture in the arid portions of the West than are the native grasses. Cheatgrass has the ability to take advantage of the post-fire nitrogen enriched soil conditions. With the increase in fire frequency and the increased competition from these flammable exotic grasses, more and more native rangeland converts to a more exotic dominated landscape. Fire frequency changes from a more historic 25–75 year cycle to a 3–5 year cycle. Once converted to an exotic annual vegetation type, these landscapes require major rehabilitation efforts of spraying the exotic annuals and reseeding to desirable perennial plant species to convert them to a fire regime that more closely resembles what occurred historically. Grazing did play a role in the initial dispersal of cheatgrass but its perpetuation has been aided by the human activities mentioned above. The increase of human caused ignitions over the last 50 years combined with cheatgrass' phonological ability to capitalize on fire events has contributed to its rapid rate of spread over the last three decades.

3.6.1 Fire Regimes

There are many different fire regimes throughout the West. These range from frequent, low-intensity fires to long fire return intervals with stand replacement fires. Fire regimes are classified as understory, mixed, and stand replacement.

3.6.2 Understory Fire Regimes

Fires were frequent and of low intensity. Light surface fires burned at intervals averaging less than 10 years and as often as

every 2 years (Weaver 1951; Dieterich 1980). All material was consumed on the forest floor during a fire. Trees were not usually killed and the damage was highly variable (Paysen et al. 2000).

Over the past 100 years, the structural and compositional changes in ponderosa pine have been repeatedly documented (Cooper 1960; Biswell et al. 1973; Brown and Davis 1973). What was once an open, parklike ecosystem maintained by frequent, low-intensity fires is now a crowded, stagnated forest. In addition to stand changes, general fire absence has lead to uncharacteristically large accumulations of surface and ground fuels (Kallender 1969).

Pre-1900 and early 1900s photos document that ponderosa pine stands were much more open. Explorers, soldiers, and scientists described a forest quite different from that seen today. The open presettlement stands, characterized by well-spaced older trees and sparse pockets of younger trees, had vigorous and abundant herbaceous vegetation (Cooper 1960; Biswell et al. 1973; Brown and Davis 1973). Frequent, naturally occurring fires maintained this situation. Large woody fuels in the form of branches or tree boles, which fall infrequently, rarely accumulated over a large area. When they were present, subsequent fires generally consumed them, reducing grass competition and creating mineral soil seedbeds, which favored ponderosa pine seedling establishment (Cooper 1960).

In the early 1900s, forest practices and reduced incidence of fire led indirectly to stagnation of naturally regenerated stands and unprecedented fuel accumulation (Biswell et al. 1973). Stand stagnation occurs on tens of thousands of acres throughout the southwest (Cooper 1960; Schubert 1974) and still exists where mechanical treatments or fire have not taken place.

A combination of heavy forest floor fuels and dense sapling thickets acting as ladder fuels, coupled with drought conditions, frequent lightning, and human-caused ignitions, has resulted in a drastic increase in high-severity wildfires in recent years.

3.6.3 Mixed Fire Regimes

The pinyon–juniper woodlands cover about 47 million acres in the western United States (Evans 1988). Pinon–juniper woodlands in the United States are commonly divided into the Southwestern and the Great Basin woodland ecosystems on the basis of species composition (Paysen et al. 2000). True pinyon is common in the Southwest and is usually associated with one or several species of junipers, including one-seed, Utah, alligator, and Rocky Mountain junipers. Singleleaf pinyon is identified with the Great Basin and is generally associated with Utah juniper. Other species of pinyon occur in southern California, Arizona, south of the Mogollon Rim, along the United States–Mexico border, and in Texas (Bailey and Hawksworth 1988). Long-term fire frequencies for pinyon–juniper woodlands have not been clearly defined and are the topic of continuing study and discussion. However, there is an agreement that fire was the most important natural disturbance before the introduction of livestock, particularly the large herds of the nineteenth century (Gottfried et al. 1995). It is suspected that before the introduction of livestock use, large areas of savanna and woodland periodically burned. These fires could have occurring during dry years that followed wet years when substantial herbaceous growth developed (Rogers and Vint 1987; Swetnam and Baisan 1996).

In the Intermountain West, presettlement mean fire intervals of less than 15 years were documented in the sagebrush steppe where western juniper now dominates (Miller and

Rose 1999). In three sample areas in New Mexico, pinyon trees have mean fire return intervals of 28 years with a range of 10–49 (Wilkins 1997). In areas of low productivity, fire return intervals could be greater than 100 years, and occurred more frequently in extreme conditions. However, where grass cover was more continuous, fire return intervals were more frequent (10 years; Paysen et al. 2000). In the Great Basin, fire susceptibility depends on the stage of stand development (Meeuwig et al. 1990). In young stands, ground cover may be sufficient to carry a fire, but in older stands ground cover is sparser and may not be sufficient to carry a fire.

In western oak forest, the fire regimes have historically been classified as frequent low intensity; however, in more recent times these have become more intense with longer return intervals.

3.6.4 Stand Replacement Fire Regimes

Vegetation types with this fire regime are varied. Broadly speaking, they include grassland and shrubland vegetation types. Shrublands consist of desert shrublands and the chaparral mountain shrub type.

Fire frequencies cannot be measured precisely, but most likely occurred every 4 to 20 years (Gruell 1985a). Lightning was probably more important in valleys surrounded by forests than in the grasslands (Gruell 1985b). Fires would burn over large areas in the grasslands, with only natural barriers or weather changes to stop them. These fires would sometimes cover hundreds of square miles (Paysen et al. 2000).

In Wyoming, big sage fire intervals ranged from 10 to 70 years (Young and Evans 1981; Vincent 1992). In arid land, fire history reports fire intervals between 5 and 100 years (Wright 1986). Griffiths (1910) and Leopold (1924) reported that before

1880, desert grasslands produced more grass and fire recurred at approximately 10-year intervals.

In chaparral, fire intervals for large fires (more than 5,000 acres) typically ranged from 20 to 40 years (Wright and Bailey 1982).

3.7 Soils

3.7.1 Upland Soils

Soils in the analysis area are highly diverse, reflecting the enormous range in environmental conditions found on public lands in the West. Soil development and formation are controlled by five, soil-forming factors:

1. climate, especially temperature and precipitation;
2. living organisms, such as native vegetation, microorganisms, and animals;
3. parent material properties, such as chemical and mineralogical composition, grain size, and resistance to weathering;
4. topographic variables such as slope steepness and shape, aspect, position on the landscape, and drainage pattern; and
5. the relative time soils are subject to the soil forming processes (Jenny 1961).

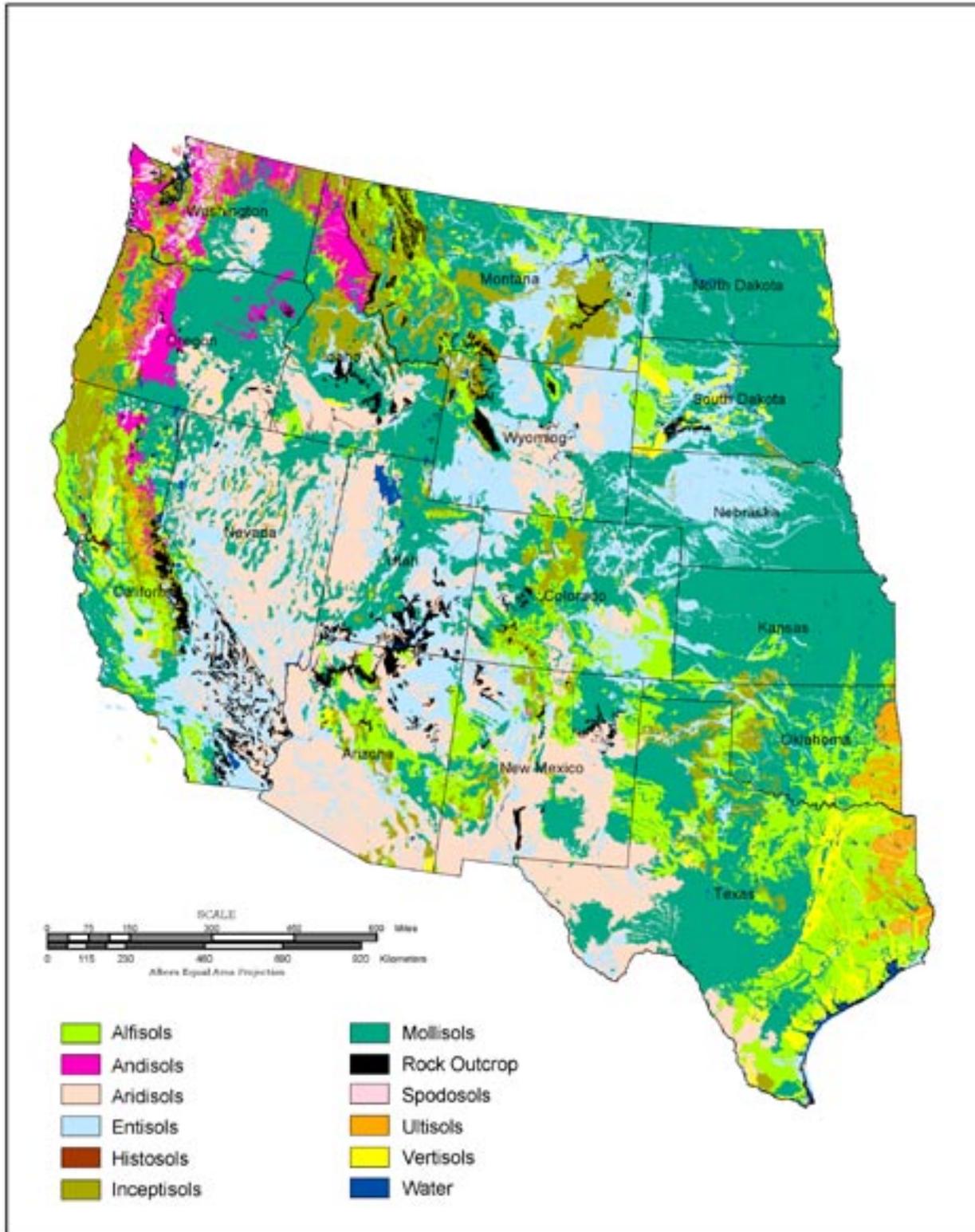
These soil-forming factors have combined in the development of seven major soil orders common on public lands in the West. The soils represented by these soil orders have unique properties that greatly influence the productivity, ability to respond to management, and susceptibility to degradation of the public lands of the West (Figure 3.7.1.1).

Alfisols are moderately leached forest soils that occur in cool, moist regions. They are moderately well developed soils that contain an appreciable clay accumulation in their subsoil. Alfisols are common in the coniferous and deciduous forests and mountain shrub communities at higher elevations, and areas influenced by moist maritime weather patterns in the West. These soils are relatively productive and respond favorably to improved land management practices.

Andisols are soils that formed in volcanic ash or other volcanic ejecta. The poorly crystalline volcanic glass composition give them unique chemical and physical properties, including high water-holding capacity and the ability to make large quantities of phosphorus unavailable to plants. These soils are mainly concentrated in forested mountains of the Marine and Temperate Steppe Divisions. They are highly productive and respond favorably to improved land management practices.

Aridisols are soils that developed in very dry conditions. They are light colored; low in organic matter; and may contain accumulations of calcium carbonate, soluble salts, sodium, or gypsum. Aridisols are extensively found in the Temperate Desert and Tropical-Subtropical Desert Divisions and drier regions of the Temperate Steppe and Tropical-Subtropical Steppe Divisions. They support millions of acres of rangeland vegetation communities such as desert shrub, sagebrush, and pinyon-juniper. Their dry moisture status much of the year and low organic matter content reduce their productivity. This results in a slower or decreased ability to respond favorably to improved land management practices. The typically harsh environmental conditions can also make them more susceptible to degradation from poor land management practices.

Figure 3.7.1.1. Generalized soil map.



Entisols are soils with weakly developed profiles and are considered young in terms of soil forming processes. They often occur in recently deposited material or on steep, highly erosive topographic positions. Entisols are very extensive on public lands in the West and are most common in the Temperate Desert and Tropical–Subtropical Desert Divisions arid and semiarid environments supporting desert shrub and sagebrush communities. These soils may respond more slowly to improved land management practices and are often susceptible to degradation from poor land management practices.

Inceptisols have more well-developed profiles than Entisols but are still considered young soils with weakly developed profiles. They are widely distributed and occur under a wide range of ecological settings, including steep slopes, young geomorphic surfaces, and resistant parent materials. Inceptisols are common in the coniferous and deciduous forests of mountainous portions of the Marine and Temperate Steppe Divisions, are fairly productive when provided adequate moisture, and respond well to improved land management practices.

Mollisols are characterized by a thick, dark surface horizon with high organic matter content. These fertile soils are extensive in the grasslands of the Temperate Steppe, Mediterranean, Temperate Desert and Tropical–Subtropical Steppe Divisions. Mollisols support the plains grassland, chaparral–mountain shrub, mountain and plateau grasslands, higher precipitation sagebrush steppe, and coniferous–deciduous forest community types with an appreciable grass understory. These soils are highly productive and respond well to improved land management practices.

Vertisols are soils very high in clay content that have extreme shrink–swell properties. These soils are found on minor

acreage in the Mediterranean, Tropical–Subtropical Steppe, and Temperate Steppe Divisions. Vertisols support a variety of grassland and shrubland vegetation communities. These soils present considerable engineering problems, including fence building. Depending upon available rainfall, Vertisols can be productive and respond well to improved land management practices.

The long-term productivity and health of the soil depends on maintaining the soil’s physical, chemical, and biological properties in a favorable condition. Water and wind erosion are influenced by climate, topography, soil properties and condition, watershed cover, and land use. Cover is especially important in protecting the soil from the erosive forces of water and wind. Live plant cover and litter intercept precipitation, reducing raindrop impact and overland flow, and allowing more infiltration and less runoff and erosion. Cover and soil surface roughness also reduce wind speed, thus minimizing wind erosion.

Upland rangeland water erosion processes include sheet–rill erosion, gully erosion, and landslides. Sheet–rill erosion is less noticeable but is very widespread and can slowly reduce the productivity of rangeland soils. Gully erosion is more noticeable and can alter the hydrology of the landscape. Uplands on many rangeland landscapes have an extensive gully network, replacing former grass-covered swales. This has altered water flow patterns, resulting in increases in size and frequency of runoff, and sediment yield to streams. Landslides mainly occur on very steep slopes with enough precipitation to saturate the soil to a restrictive layer and are not prevalent on the majority of rangelands.

Soil compaction can result from persistent trampling or vehicle traffic during periods when the soil is moist and least able to resist structural degradation. Soil compaction can

reduce water infiltration, water movement through the soil profile, water availability to plants, and soil aeration, and it can increase runoff.

Soil organisms have a profound effect on the maintenance of soil productivity and health. Biological soil crusts play a critical role in carbon and nitrogen fixation, soil surface stability, and reduction of annual grass invasion in many rangeland ecosystems. They can also influence infiltration, runoff, and soil moisture retention depending on crust structural characteristics, soil surface texture, and other factors. Many rangeland shrubs and bunchgrasses depend on mycorrhizal fungi to help them obtain water and nutrients. Soil bacteria are important in nitrogen fixation and formation of stable soil aggregates on rangelands. Bacteria are capable of filtering and degrading a large variety of human-made pollutants in the soil and groundwater so that they are no longer toxic. Soil arthropods and other soil animals create large soil pores essential for infiltration and soil water movement. They also help mix soil layers and incorporate soil organic matter into the soil. These and other soil organisms help maintain the soil food web that is essential for cycling of nutrients and other vital functions on rangelands. As much as 90 percent of rangeland productivity occurs in the soil (Coupland and Van Dyne 1979). Soil organisms depend on soil organic matter to survive. Any activities that permanently reduce soil organic matter content will have a profound effect on rangeland health and long-term productivity.

3.7.2 Riparian Soils

Riparian soils are formed by sediment eroded from adjacent uplands and deposited in the valley bottoms, stream sediment deposition during overbank flooding, lateral deposition of sediment from stream meander

migration, and sediment deposition on lake bottoms and shores. The pedogenic properties of riparian soils dominantly result from repeated periods of saturation, flooding, or ponding. Saturation combined with anaerobic (without oxygen), microbial activity often causes a depletion of oxygen in the soil. This process can result in the accumulation of organic matter and the reduction, translocation, or accumulation of iron, manganese, sulfur, or other reducible elements (USDA, Natural Resources Conservation Service 1998). These processes create complex patterns of soil characteristics, such as texture, age, and degree of formation, over relatively small areas in riparian systems.

Riparian soils are vitally important for capturing, storing, and releasing water in riparian areas, supporting productive vegetation communities, groundwater recharge, perching groundwater, streambank formation, storing nutrients, filtering pollutants, streambank erosion protection, and determination of sediment characteristics. Disturbances that result in reduction of plant cover or deep rooting characteristics, streambank sloughing, accelerated erosion, compaction, loss of the capability to perch water, or other soil characteristics can degrade the functional integrity of a riparian area.

3.8 Water Resources

3.8.1 Riparian Hydrology

The interaction between flowing water, the stream channel, hydrologic processes, riparian vegetation, and aquatic life is complex and interdependent. Vegetation overhanging streambanks helps regulate water temperature, indirectly maintaining dissolved oxygen levels needed for aquatic life. Streambank and floodplain

vegetation slow runoff, stabilize stream banks, trap sediment, filter pollutants and allow groundwater to recharge. The alluvial floodplain stores winter runoff as groundwater, then releases the water into the stream during dry season, thereby extending perennial flow even during extended droughts.

Alluvial stream channel structure and stability are influenced by the adjacent riparian vegetation and soil characteristics. Channels respond to the energy of flowing water by adjusting channel features, including width and depth, streambed slope, and the roughness of the channel bed and banks. (Features such as vegetation, bed materials, and gravel bars cause roughness.) Soil characteristics such as texture or rock fragment content influence erodibility of streambanks and channel migration. Streams functioning in a state of dynamic equilibrium, in which there is a balance between erosion and deposition, experience no net loss or gain in sediment load. As flow and sediment supply vary, channel features adjust in an attempt to achieve a new balance. Stream channel adjustments are related to the dissipation or conservation of energy, and to the distribution of energy expenditure (Leopold 1994). Stream channels and riparian areas are resilient and naturally dynamic landforms, constantly adjusting to natural disturbances resulting from floods or changes to landscapes upstream such as fire.

Stream channels and riparian communities may be degraded as a result of local or off-site disturbance. Sensitive hydrologic interrelations exist between the condition of uplands and their associated riparian communities. Uplands in nonfunctioning condition often experience accelerated surface runoff, higher sediment yields, and increased erosion within the channel systems (DeBano and Schmidt 1989). Changes in the vegetative cover

of floodplains and streambanks influence the function and stability of the riparian community.

Stream-riparian systems that experience increases in runoff and sediment from upland sources or increased susceptibility to erosion from direct disturbance often cannot adjust their channel features to achieve equilibrium. If sediment increases beyond the stream's ability to carry it, channels tend to aggrade and form multiple, interwoven braided channels. In another type of stream system, where channel erodibility or streamflow is increased, with relatively low sediment production, channels may erode. Streams with coarse-textured substrates and fine-textured banks tend to laterally erode, becoming shallower and wider, often creating braided conditions. Stream channels with fine-textured substrates, common at lower elevations, usually erode vertically, forming gullies.

When disturbance factors are managed, most stream-riparian systems begin a relatively rapid recovery. Incised or laterally widened streams, however, with low sediment yields, with or without fluctuating flow patterns, recover slowly.

3.8.2 Water Quality

The primary water quality issues related to livestock grazing on Federal lands have been associated with nonpoint-sources of sediment, fecal coliform bacteria (used as an indicator for other fecal-borne pathogens), nutrients, and salinity. The leading causes of nonpoint-source water quality impairment are siltation (sediment), nutrients, bacteria, metals (primarily mercury), and oxygen-depleting substances.

The Water Quality Act of 1987 (P.L. 100-4) sets forth agency responsibility for nonpoint-source water quality management on public lands (Section 313).

It is recognized that Best Management Practices (BMPs) are the primary mechanism for enabling the achievement of water quality standards. The BLM strategy by which nonpoint source controls, including BMPs, are selected to achieve water quality standards includes the following iterative process: (1) design of BMPs based on site-specific conditions; technical, economic, and institutional feasibility; and the water quality standards of those waters potentially effected; (2) monitoring to ensure that practices are correctly designed and applied; (3) monitoring to determine a) the effectiveness of practices in meeting water quality standards, and b) the appropriateness of water quality criteria in reasonably assuring protection of beneficial uses; and (4) the adjustment of BMPs when it is found that water quality standards are not being protected to a desired level, or the possible adjustments of water quality standards on the basis of considerations in 40 CFR 131.

The Clean Water Act section 305(b) reports to the Environmental Protection Agency (EPA) in 2000 provide information concerning state assessments of water quality within their boundaries (EPA 2000). The state reports provide detailed information and are available from each state, or through links from the EPA online summary (EPA 2000). Assessment data from the 11 western States reports that stream water quality ranges from 15 percent of rivers and streams in good condition for aquatic life to 93 percent of rivers and streams in good condition for aquatic life (EPA 2000). However, this data is not comparable because the states do not use comparable criteria and monitoring strategies to measure water quality (EPA 2000). Nonpoint-sources of pollution from urban and agricultural lands are reported as the leading source of water quality impairment. Siltation, pathogens, nutrients, and metals are all frequently cited as being the primary

contaminants.

The BLM participates in a Federal program directed by the Colorado River Salinity Control Act (PL 98-569) to reduce salt loading in the Colorado River. Salt concentrations on Federal lands are highest in marine shale geologic settings, where annual precipitation averages less than 12 inches.

It has been estimated that Federal land contributes 8 percent of the total salt load of the Upper Colorado River Basin from nonpoint-sources (BLM 1980). Salinity from nonpoint-sources increases with sediment yield. Vegetation cover is the most important management variable influencing runoff and sediment yields (BLM 1987). Salinity and vegetation management are a consideration in all projects initiated in the Colorado River Basin.

3.8.3 Water Rights

Each state is responsible for granting, adjudicating and administering appropriate water rights. All decisions regarding the qualifications of the applicant, what constitutes beneficial use, and quantity and place of use are addressed through state procedural and substantive law. The Federal Land Policy and Management Act of 1976 mandates that the public lands administered by the BLM be managed for multiple use benefits. Under the current grazing regulations the BLM applies for water rights from the states for multiple use benefits including livestock, wildlife, fisheries, wild horses and burros, riparian, and recreation where permitted by state law. The regulations include a provision that was part of the 1995 rulemaking directing the BLM to acquire stock water rights in the name of the United States to the extent allowed by state law. The preamble to the final rule in 1995 noted that “co-application or joint ownership of the water right [by the United States and

Table 3.8.3. Ownership of livestock water rights (by state).

State	Is Joint Ownership Allowed?	Can the BLM Own Livestock Water Rights?	Notes
Arizona	No	Yes; see Notes	The BLM can retain stockwater rights already in BLM's name, or transferred to BLM in a land transaction. Whether the BLM can apply for new stockwater rights has been pending in Arizona Superior Court since 1995.
California	Yes	Yes	California statute requires landowner permission prior to issuance of a stockwater permit.
Colorado	Yes	Yes	The state does not require co-holders to be land owners.
Idaho	Yes	Yes	The state allows for joint ownership, but the BLM usually seeks the water right in the name of the United States.
Montana	Yes	Yes	There has been no test of what would happen should either owner attempt to sever his or her portion of the water right from the property or transfer it to another location. Montana has Exempt Stockwater Permit Filings. ¹
Nevada	Yes; see Notes	No	Nevada allows individuals to have joint ownership, but not with BLM. A recent law prohibits the BLM from owning stockwater rights. The rationale is that the BLM does not own the cattle so they cannot put the water to beneficial use.
New Mexico	Yes	Yes	Co-applicant (grazing permittee) must include proof of access to the property in the water right application.
North Dakota	Yes	Yes	
Oregon	Yes; see Notes	Yes	Individuals have filed and hold water rights in their names on BLM land. The BLM also owns stockwater rights. Joint ownership is allowed by the state, but there have not been many joint applications. Oregon statute requires landowner permission prior to issuance of a stockwater permit. There is an adjudication involving BOR that may be relevant when settled. ²
South Dakota	Yes	Yes	
Utah	Yes; see Notes	Yes	Permittees can hold livestock water rights acquired in the past in their own names. Today, the state would not grant joint ownership if the BLM protested. The BLM would hold the water right in the name of the United States. However, co-ownership would be allowed if it was at BLM's request.

Table 3.8.3 (concluded). Ownership of livestock water rights (by state).

State	Is Joint Ownership Allowed?	Can BLM Own Livestock Water Rights?	Notes
Wyoming	Yes	Yes;see Notes	BLM normally does not want to have a co-applicant, but the state allows it. The state has an MOU with BLM - if the point of use is on BLM land they automatically add BLM as a co-applicant.

¹ Montana’s exempt stockwater permit Filings (Montana form 605) allows for the construction of a stockwater impoundment of not more than 15 acre-feet capacity (30 acre-feet per year water right) prior to receiving a permit to appropriate water from the state. These impoundments may be constructed on a minimum 40-acre parcel and must be on land owned by or under the control of the applicant. The state of Montana considers a BLM grazing lease to be sufficient control of the lands to meet the requirements of the statute. This has resulted in the unauthorized construction of several reservoirs on public lands for which a private party holds the water right.

² There is a dispute over who owns the water rights in Klamath Lake—the Bureau of Reclamation or the irrigators who put it to beneficial use. If decided in favor of the irrigators, it potentially could lead to a policy similar to Nevada’s regarding stockwater rights.

the grazing permittee] will be allowed where state policy permits it...” Table 3.8.3 summarizes the states’ current rules for federal ownership and co-ownership of water rights.

Water rights are property rights of use conferred by the state. The current regulations directed BLM to apply for the water rights on public land in the name of the United States, because ownership of the appurtenant water, when available, gave public land managers and permittees flexibility in putting the land to use.

The regulations refer only to state appropriative water rights. Federal reserved water rights differ from state appropriative rights and are not addressed by the grazing regulations. Federal reserved water rights are granted by legislation or Executive Order(s) for a use on federal land by the designated federal agency. These water rights are limited to the amount of water needed to fulfill the purpose of the order or the act.

3.9 Air Quality

The Clean Air Act of 1990 (P.L. 101-549) required the EPA to develop standards for the maximum concentration of certain pollutants that should appear in healthy ambient air. These standards are called National Ambient Air Quality Standards (NAAQS). The EPA reevaluates the NAAQS periodically to ensure the limits accurately reflect the most up-to-date health data for air pollution.

Regions are required to monitor ambient area for compliance with NAAQS standards. If a region exceeds a standard for a pollutant, the EPA can designate the area as a nonattainment area. Nonattainment areas then must submit plans to EPA called State Implementation Plans (SIPs) that show the limits and regulations the region will impose, as well as modeling data to show EPA the SIP will bring the area into compliance with the NAAQS standard.

Attainment regions are regulated by Prevention of Significant Deterioration

(PSD) requirements. To ensure that the levels of pollutants in clean air areas do not rise unnecessarily, the Clean Air Act separates areas into PSD Classes I, II, and III designations, depending on the need for significant protection.

PSD Class I areas, predominantly National Parks and certain wilderness areas, have the greatest limitations. Virtually any degradation would be significant. Areas where moderate, controlled growth can occur are designated PSD Class II. PSD Class III areas allow the greatest degree of effects. All BLM-administered lands are classified as PSD Class II.

The air quality above most western Federal lands cannot be easily described, since monitoring data have not been gathered for most pollutants outside urban areas. In less-developed portions of the West, ambient pollutant levels are expected to be near or below the measurable limits. Air quality on public lands is directly affected by the protection of soil by vegetation. Where soil is exposed, there is a possibility for air quality problems as a result of dust caused by wind over exposed soil. Vegetative cover of soil is affected by many factors including, drought, fire, grazing by livestock and wildlife, disease, and insects.

3.10 Wildlife

3.10.1 Terrestrial

The Bureau of Land Management administers more than 262,000,000 acres of terrestrial wildlife habitat on the public lands in the western States. 160 million of these acres outside of Alaska are grazed by domestic livestock. These public lands sustain a nationally significant, rich heritage of diverse fish and wildlife by providing seasonal or permanent habitat for more than 3,000 species of mammals, birds,

reptiles, amphibians, and fish that are significant for their aesthetic, recreational, and scientific values.

Increasing human populations in the West place ever-increasing consumptive and nonconsumptive demands on the wildlife and habitat. The settlement of the West has had a widespread and significant influence on wildlife habitats and species on the public and private lands. Urbanization, agriculture, roads, livestock grazing, and noxious weeds have been major factors affecting habitat for wildlife species. Grazing, when improperly managed, (such as during the uncontrolled grazing in the late 1800s through the mid-1930s), has had negative effects on the arid rangelands of the West and has reduced the quality of wildlife habitats.

Temperate Desert

The Temperate Desert generally occurs within the Columbia Plateau–Great Basin. This large, complex region is relatively arid due to its position in the rain shadow of the adjacent western mountain ranges (Cascade and Sierra Nevada Mountains). The vegetation complexes are dominated by sagebrush, pinyon–juniper woodlands, mountain shrub, ponderosa pine, lodgepole pine–subalpine fir forests, grasslands, and some very significant wetlands. Mammals typical of this region include pygmy rabbit (*Brachylagus idahoensis*), mule deer (*Odocoileus hemionus*), Rocky Mountain elk (*Cervus canadensis*), pronghorn (*Antilocapra americana*), bighorn sheep (*Ovis canadensis*), mountain lion (*Felis concolor*), bobcat (*Lynx rufus*), coyote (*Canis latrans*), kit fox (*Vulpes velox*), and numerous species of squirrels and voles. Reptiles and amphibians typical of the region include sagebrush lizard (*Sceloporus graciosus*) and western rattlesnake (*Crotalus viridis*).

Temperate Steppe

The temperate steppe, generally occurring within the Colorado Plateau–Wyoming Basin, is a complex of mountain ranges dominated by a variety of coniferous forest types, interspersed with aspen communities, pinyon–juniper woodlands, and separated by the tablelands of the Colorado Plateau. The Colorado Plateau–Wyoming Basin is also occupied by mule deer, Rocky Mountain elk, and pronghorn.

Tropical–Subtropical Steppe

The Tropical–Subtropical Steppe in the rainshadow of the Rocky Mountains is characterized by shortgrass prairie with its greatly reduced vegetation stature and diversity, and the significant playa lakes shorebird and waterfowl wintering areas. Precipitation increases from west to east and temperature increases from north to south. These climatic gradients have created the lush, tallgrass prairie east of the 100th Meridian, midgrass prairie in the northwestern plains, and shortgrass prairie in the west-central plains (Bailey 1978). Improper livestock grazing, through consumption of fire fuels, has encouraged woody plant invasions by reducing the natural frequency and intensity of wildfires (Bock et al. 1993). Historically, American bison (*Bos bison*) played a significant role in the ecosystem that favored shortgrass-preferring species such as mountain plover (*Charadrius montanus*) and burrowing owl (*Athene cunicularia*). The shortgrass prairie was also home to the wolf (*Canis lupus*), as well as elk.

Tropical–Subtropical Deserts (Mojave, Sonoran, and Chihuahuan)

The Tropical–Subtropical Deserts include the Mojave, Sonoran, and Chihuahuan

deserts that are composed of arid scrublands and grasslands at the lower elevations, and oak–juniper woodlands and coniferous forests in the higher elevations. While grazing by native ungulates tended to be widely scattered and of low intensity, historical improper livestock grazing was heavier and degraded many grasslands into permanent desert scrub (Schlesinger et al. 1990). Historically, pronghorn occurred in all of the major valleys; wild turkey (*Meleagris gallopavo*) and grizzly bears (*Ursus arctos*) occurred in all major riparian areas; and wild turkey and black bear (*Ursus americanus*) in all mountain ranges. Reptiles include the desert tortoise (*Gopherus agassizii*).

3.10.2 Migratory Birds

Executive Order 13186 (Responsibilities of Federal Agencies to Protect Migratory Birds) recognized that migratory birds are of great ecological and economic value to the United States and many other countries. Migratory birds bring tremendous enjoyment to millions of Americans who study, watch, feed, or hunt these birds. The United States has recognized the critical importance of this shared resource by ratifying international, bilateral conventions for the conservation of migratory birds. Such conventions include the Convention for the Protection of Migratory Birds with Great Britain on behalf of Canada 1916, the Convention for the Protection of Migratory Birds and Game Mammals—Mexico 1936, the Convention for the Protection of Birds and Their Environment—Japan 1972, and the Convention for the Conservation of Migratory Birds and Their Environment—Union of Soviet Socialist Republics 1978. These migratory bird conventions impose substantive obligations on the United States for the conservation of migratory birds and their habitats. Through the Migratory Bird Treaty Act, the United

States has implemented these migratory bird conventions with respect to the United States.

Birds are particularly affected by changes in their physical environment (i.e., nesting and foraging habitat; Cody 1985). When improper livestock grazing results in physical changes in the environment, such as conversion of grassland habitats to shrublands, native avian populations may be adversely affected. Table 3.10.2.1 is a list of the U.S. Fish and Wildlife Service (FWS) Western Regions (FWS Regions 1,

2, and 6) Birds of Conservation Concern 2002 (BCC 2002). The BCC 2002 is a result of the 1988 amendment to the Fish and Wildlife Conservation Act mandate to “identify species, subspecies, and populations of all migratory nongame birds that, without additional conservation actions, are likely to become candidates for listing under the Endangered Species Act of 1973.” The BCC 2002 is primarily derived from assessment scores from three major bird conservation plans: Partners in Flight, the United States

Table 3.10.2.1. U.S. Fish and Wildlife Service birds of conservation concern 2002.

Region 1 (Pacific Region)	Region 2 (Southwest Region)	Region 6 (Mountain-Prairie Region)
Black-footed Albatross	Reddish Egret	Northern Harrier
Ashy Storm-Petrel	Swallow-tailed Kite	Swainson’s Hawk
Swainson’s Hawk	Northern Harrier	Ferruginous Hawk
Peregrine Falcon	Gray Hawk	Golden Eagle
Prairie Falcon	Common Black-Hawk	Peregrine Falcon
Greater Sage-Grouse (Columbia Basin population only)	White-tailed Hawk	Prairie Falcon
Yellow Rail	Ferruginous Hawk	Gunnison Sage-Grouse
Black Rail	Peregrine Falcon	Lesser Prairie-Chicken
Snowy Plover (except where Endangered)	Lesser Prairie-Chicken	Yellow Rail
Mountain Plover	Yellow Rail	Black Rail
Black Oystercatcher	Black Rail	American Golden-Plover
Whimbrel	American Golden-Plover	Snowy Plover
Long-billed Curlew	Snowy Plover	Mountain Plover
Marbled Godwit	Wilson’s Plover	Solitary Sandpiper
Black Turnstone	Mountain Plover	Upland Sandpiper
Red Knot	American Oystercatcher	Long-billed Curlew
Short-billed Dowitcher	Long-billed Curlew	Marbled Godwit
Gull-billed Tern	Hudsonian Godwit	Buff-breasted Sandpiper
Elegant Tern	Red Knot	Wilson’s Phalarope

Table 3.10.2.1 (continued). U.S. Fish and Wildlife Service birds of conservation concern 2002.

Region 1 (Pacific Region)	Region 2 (Southwest Region)	Region 6 (Mountain-Prairie Region)
Black Skimmer	Stilt Sandpiper	Black-billed Cuckoo
Xantus's Murrelet	Buff-breasted Sandpiper	Flammulated Owl
Yellow-billed Cuckoo	Gull-billed Tern	Burrowing Owl
Flammulated Owl	Least Tern (except where Endangered)	Short-eared Owl
Burrowing Owl	Black Skimmer	Lewis's Woodpecker
Black Swift	Red-billed Pigeon	Red-headed Woodpecker
Lewis's Woodpecker	Yellow-billed Cuckoo (western BCRs only)	Williamson's Sapsucker
Williamson's Sapsucker	Flammulated Owl	Red-naped Sapsucker
Red-naped Sapsucker	Whiskered Screech-Owl	White-headed Woodpecker
White-headed Woodpecker	Ferruginous Pygmy-Owl (Texas only)	Loggerhead Shrike
Olive-sided Flycatcher	Elf Owl	Bell's Vireo
Loggerhead Shrike (except where Endangered)	Burrowing Owl	Gray Vireo
Gray Vireo	Broad-billed Hummingbird	Bewick's Wren
Elepaio (except where Endangered)	Buff-bellied Hummingbird	Sprague's Pipit
Horned Lark (strigata ssp. only)	Lucifer Hummingbird	Virginia's Warbler
Crissal Thrasher	Elegant Trogon	Cassin's Sparrow
Le Conte's Thrasher	Lewis's Woodpecker	Brewer's Sparrow
Brewer's Sparrow	Red-headed Woodpecker	Grasshopper Sparrow
Tricolored Blackbird	Arizona Woodpecker	Baird's Sparrow
Lawrence's Goldfinch	Gilded Flicker	Henslow's Sparrow
	Northern Beardless-Tyrannulet	Le Conte's Sparrow
	Greater Pewee	Nelson's Sharp-tailed Sparrow
	Buff-breasted Flycatcher	McCown's Longspur
	Scissor-tailed Flycatcher	Chestnut-collared Longspur
	Rose-throated Becard	Dickcissel
	Loggerhead Shrike	Bobolink

Table 3.10.2.1 (continued). U.S. Fish and Wildlife Service birds of conservation concern 2002.

Region 1 (Pacific Region)	Region 2 (Southwest Region)	Region 6 (Mountain-Prairie Region)
	Bell's Vireo	
	Gray Vireo	
	Brown-headed Nuthatch	
	Sedge Wren	
	Bendire's Thrasher	
	Crissal Thrasher	
	Le Conte's Thrasher	
	Sprague's Pipit	
	Olive Warbler	
	Colima Warbler	
	Tropical Parula	
	Black-throated Gray Warbler	
	Grace's Warbler	
	Prairie Warbler	
	Cerulean Warbler	
	Prothonotary Warbler	
	Worm-eating Warbler	
	Swainson's Warbler	
	Louisiana Waterthrush	
	Kentucky Warbler	
	Red-faced Warbler	
	Rufous-winged Sparrow	
	Cassin's Sparrow	
	Bachman's Sparrow	
	Botteri's Sparrow	
	Black-chinned Sparrow	
	Sage Sparrow	
	Lark Bunting	
	Baird's Sparrow	
	Henslow's Sparrow	
	Le Conte's Sparrow	
	Nelson's Sharp-tailed Sparrow	

Table 3.10.2.1 (concluded). U.S. Fish and Wildlife Service birds of conservation concern 2002.

Region 1 (Pacific Region)	Region 2 (Southwest Region)	Region 6 (Mountain-Prairie Region)
	Seaside Sparrow	
	Harris's Sparrow	
	McCown's Longspur	
	Smith's Longspur	
	Chestnut-collared Longspur	
	Varied Bunting	
	Painted Bunting	
	Hooded Oriole	
	Altamira Oriole	
	Audubon's Oriole	

Shorebird Conservation Plan, and the North American Waterbird Conservation Plan.

Temperate Steppe and Temperate Desert

Birds typical of this region include greater sage-grouse (*Centrocercus urophasianus*), Gunnison sage-grouse (*Centrocercus minimus*), sage thrasher (*Oreoscoptes montanus*), sage sparrow (*Amphispiza belli*), loggerhead shrike, and Brewer's sparrow (*Spizella breweri*) in the terrestrial environment and American white pelican (*Pelecanus erythrorhynchos*), cinnamon teal (*Anas cyanoptera*), gray vireo (*Vireo vicinior*), northern pintail (*Anas acuta*), tundra swan (*Cygnus columbianus*), American avocet (*Recurvirostra americana*), black-necked stilt (*Himantopus mexicanus*), willet (*Catoptrophorus semipalmatus*), Wilson's phalarope, eared grebe (*Podiceps nigricollis*), mountain plover, snowy plover (*Charadrius alexandrinus*), white-faced ibis (*Plegadis chihi*), and California gull (*Larus californicus*) in the wetlands.

The response to grazing depends on the avian species. Among the species

that respond positively to grazing are the golden eagle (*Aquila chrysaetos*), brown-headed cowbird (*Molothrus ater*), and sage sparrow. Species such as the northern harrier (*Circus cyaneus*), swainson hawk (*Buteo swainsoni*), savannah sparrow (*Passerculus sandwichensis*), grasshopper sparrow (*Ammodramus savannarum*), white crowned sparrow (*Zonotrichia leucophrys*), Brewer's sparrow, vesper sparrow (*Pooecetes gramineus*), ferruginous hawk (*Buteo regalis*), burrowing owl, short-eared owl (*Asio flammeus*), western (*Sturnella neglecta*) and eastern (*S. magna*) meadowlarks respond adversely to improper grazing (Bock et al. 1993).

Tropical-Subtropical Steppe

Birds typical of this region include mountain plover, McCown's longspur (*Calcarius mccownii*), long-billed curlew, ferruginous hawk, burrowing owl, and lesser prairie-chicken (*Tympanuchus pallidicinctus*). Playa lakes in this region are significant for a myriad of wintering ducks, sandhill cranes, and shorebirds, as well as breeding habitat for

snowy plover (*Charadrius alexandrinus*).

Livestock grazing has resulted in varied responses by neotropical migratory birds who breed and winter in the Tropical–Subtropical Steppe region. Species such as killdeer (*Charadrius vociferans*), mountain plover, burrowing owl, common nighthawk (*Chordeiles minor*), horned lark (*Eremophila alpestris*), northern mockingbird (*Mimus polyglottos*), lark sparrow (*Chondestes grammacus*), black-throated sparrow (*Amphispiza bilineata*), and McCown’s longspur may often respond positively. Among the species that usually respond adversely to improper grazing are northern harrier, short-eared owl, Botteri’s sparrow (*Aimophila botterri*), Cassin’s sparrow (*Aimophila cassinii*), savannah sparrow, Baird’s sparrow (*Ammodramus bairdii*), Henslow’s sparrow (*Ammodramus henslowii*). Species such as the sandpiper (*Bartramia longicauda*), Sprague’s pipit (*Anthus spragueii*) dickcissel (*Spiza Americana*), lark bunting (*Calamospiza malanocorys*), grasshopper sparrow, chestnut collard longspur (*Calcarius ornatus*), bobolink (*Dolichonix oryzivorus*), red-winged blackbird (*Agelaius phoeniceus*), and eastern and western meadowlarks respond negatively to heavy grazing (Bock et al. 1993).

Tropical–Subtropical Deserts (Mojave, Sonoran, and Chihuahuan)

Birds typical of this region include Gambel’s quail (*Callipepla gambelii*), scaled quail (*Callipepla squamata*), Montezuma quail (*Cyrtonyx montezumae*), Swainson’s and ferruginous hawks, lesser nighthawk (*Chordeiles acutipennis*), Chihuahuan raven (*Corvus cryptoleucus*), verdin (*Auriparus flaviceps*), cactus wren (*Campylorhynchus brunneicapillus*), pyrrhuloxia (*Cardinalis sinuatus*), and crissal (*Toxostoma crissale*),

Le Conte’s (*Toxostoma lecontei*), and curve-billed (*Toxostoma curvirostre*) thrashers.

Riparian–Wetlands Birds

Riparian–wetland areas, with a broad mixture of grass, forb, and sedge species, support the most diverse native plant and animal populations of any region. Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands) recognize the importance of these areas and direct the BLM to avoid, to the extent possible, both short- and long-term adverse effects associated with the destruction or modification of wetlands and riparian areas.

While riparian–wetland ecosystems have always been a relatively minor component of the landscape in the West, Chaney et al. (1990) reported that riparian habitats are also the most modified land type in the West. Agricultural and urban development have been responsible for the decline of more than 80 percent of the riparian–wetland ecosystems in the West. Improper livestock grazing, and the fragmentation frequently associated with it, is of great concern to the conservation of riparian–wetlands due to their vulnerability to disturbance and high wildlife value (Thomas et al. 1979; Knopf et al. 1988). In the San Pedro National Conservation Area, Arizona, when livestock were excluded from a study area, changes in avian populations were demonstrated: 42 species increased, 26 significantly; and 19 species decreased, 8 significantly (Table 3.10.2.2).

Conservation of neotropical migratory birds in the West depends very much on the protection and eventual restoration of riparian ecosystems. Southwestern riparian habitats host the highest breeding densities in all of North America (Carothers and Johnson 1975; Ohmart and Anderson 1982; Rice et al.

Table 3.10.2.2. Species with increasing and decreasing trends during the breeding season on the San Pedro Riparian National Conservation Area, Arizona, before and after removal of cattle in late 1987, sorted by significance level of the trend.

Trend and species	Detections per kilometer					Annual change ^a
	1986	1987	1988	1989	1990	
Increasing Species						
Cassin's Sparrow (<i>Aimophila cassinii</i>)	0.06	0.92	5.19	5.15	2.15	2.42
Dusky-capped Flycatcher (<i>Myiarchus tuberculifer</i>)	0.03	0.07	0.09	0.32	0.31	1.93
N. Beardless-Tyrannulet (<i>Camptostoma imberbe</i>)	0.06	0.04	0.17	0.25	0.46	1.82
Yellow Warbler (<i>Dendroica petechia</i>)	3.21	6.05	8.77	17.68	16.71	1.55
Western Wood-Pewee (<i>Contopus sordidulus</i>)	1.51	1.62	2.18	3.23	4.17	1.31
Summer Tanager (<i>Piranga rubra</i>)	3.73	5.91	5.81	10.61	10.13	1.29
Abert's Towhee (<i>Pipilo aberti</i>)	6.14	7.28	8.63	13.11	15.43	1.28
Great Blue Heron (<i>Ardea herodias</i>)	0.24	0.65	0.42	0.43	0.97	1.27
Mallard (<i>Anas platyrhynchos</i>)	0.80	0.61	1.07	0.92	1.81	1.23
Blue Grosbeak (<i>Guiraca caerulea</i>)	2.92	5.20	4.46	6.19	7.22	1.22
Ash-throated Flycatcher (<i>Myiarchus cinerascens</i>)	1.81	2.36	2.41	3.66	3.74	1.21
Cassin's Kingbird (<i>Tyrannus vociferans</i>)	3.46	3.93	3.06	6.07	5.54	1.15
Common Yellowthroat (<i>Geothlypis trichas</i>)	1.27	3.24	5.36	12.95	14.71	1.87
Brown-headed Cowbird (<i>Molothrus ater</i>)	3.47	5.03	5.58	6.21	8.11	1.21
Vermilion Flycatcher (<i>Pyrocephalus rubinus</i>)	2.35	3.22	3.40	5.40	7.30	1.32
White-winged Dove (<i>Zenaida asiatica</i>)	1.93	2.69	3.37	7.54	10.78	1.56
Bewick's Wren (<i>Thryomanes bewickii</i>)	10.87	10.85	9.82	14.34	14.97	1.10
Yellow-breasted Chat (<i>Icteria virens</i>)	5.35	6.60	7.94	17.17	20.58	1.44
Lesser Goldfinch (<i>Carduelis psaltria</i>)	5.08	5.17	3.73	7.00	6.13	1.07
Gray Hawk (<i>Asturina nitida</i>)	0.57	0.92	0.54	0.84	1.15	1.14
Hooded Oriole (<i>Icterus cucullatus</i>)	0.00	0.17	0.21	0.20	0.41	1.86
Brown-crested Flycatcher (<i>Myiarchus tyrannulus</i>)	2.07	2.32	2.43	3.34	3.54	1.16
Mourning Dove (<i>Zenaida macroura</i>)	1.05	1.41	1.80	5.30	4.09	1.50
Common Raven (<i>Corvus corax</i>)	0.02	0.01	0.17	0.13	0.24	2.18
House Finch (<i>Carpodacus mexicanus</i>)	2.17	1.39	1.71	2.80	3.12	1.15

Table 3.10.2.2 (continued). Species with increasing and decreasing trends during the breeding season on the San Pedro Riparian National Conservation Area, Arizona, before and after removal of cattle in late 1987, sorted by significance level of the trend.

Trend and species	Detections per kilometer					Annual change ^a
	1986	1987	1988	1989	1990	
Increasing Species (continued)						
Black Phoebe (<i>Sayornis nigricans</i>)	0.27	0.15	0.10	0.51	0.92	1.44
Black-chinned Hummingbird (<i>Archilochus alexandri</i>)	0.57	0.57	0.50	0.71	1.63	1.26
Indigo Bunting (<i>Passerina cyanea</i>)	0.02	0.02	0.27	0.54	0.58	2.73
Lucy's Warbler (<i>Vermivora luciae</i>)	13.80	14.68	13.76	16.03	20.81	1.10
Bell's Vireo (<i>Vireo bellii</i>)	0.91	1.50	1.22	1.89	2.69	1.27
Phainopepla (<i>Phainopepla nitens</i>)	0.11	0.10	0.78	0.16	0.64	1.47
Yellow-billed Cuckoo (<i>Coccyzus americanus</i>)	0.43	0.63	0.78	0.96	1.19	1.28
Common Ground-Dove (<i>Columbina passerina</i>)	0.08	0.18	0.07	0.54	0.41	1.57
Red-winged Blackbird (<i>Agelaius phoeniceus</i>)	0.08	0.01	0.16	0.12	0.31	1.71
Song Sparrow (<i>Melospiza melodia</i>)	1.09	0.80	1.39	3.00	4.18	1.49
Turkey Vulture (<i>Cathartes aura</i>)	0.51	0.00	3.68	1.37	0.85	1.40
Ladder-backed Woodpecker (<i>Picoides scalaris</i>)	1.52	1.67	1.62	1.59	2.10	1.06
Gila Woodpecker (<i>Melanerpes uropygialis</i>)	2.63	2.41	2.47	3.07	2.79	1.04
Bullock's Oriole (<i>Iceterus bullockii</i>)	1.55	1.67	1.56	2.21	1.69	1.05
Botteri's Sparrow (<i>Aimophila botterii</i>)	1.83	2.61	1.47	4.21	2.40	1.11
White-breasted Nuthatch (<i>Sitta carolinensis</i>)	1.24	1.72	1.30	1.66	1.50	1.03
Decreasing Species						
Great Horned Owl (<i>Bubo virginianus</i>)	0.43	0.42	0.21	0.47	0.33	0.96
Northern Cardinal (<i>Cardinalis cardinalis</i>)	0.46	0.20	0.25	0.43	0.25	0.95
Killdeer (<i>Charadrius vociferus</i>)	1.43	0.67	0.57	0.56	0.50	0.80
European Starling (<i>Sturnus vulgaris</i>)	0.64	0.72	0.70	0.55	0.21	0.78
House Sparrow (<i>Passer domesticus</i>)	0.34	0.49	0.38	0.09	0.00	0.51
Greater Roadrunner (<i>Geococcyx californianus</i>)	0.72	0.43	0.33	0.21	0.26	0.76

Table 3.10.2.2 (concluded). Species with increasing and decreasing trends during the breeding season on the San Pedro Riparian National Conservation Area, Arizona, before and after removal of cattle in late 1987, sorted by significance level of the trend.

Trend and species	Detections per kilometer					Annual change ^a
	1986	1987	1988	1989	1990	
Decreasing Species (continued)						
Black-throated Sparrow (<i>Amphispiza bilineata</i>)	1.86	0.91	0.89	0.64	0.76	0.81
Verdin (<i>Auriparus flaviceps</i>)	0.69	0.79	0.33	0.10	0.34	0.71
Red-tailed Hawk (<i>Buteo jamaicensis</i>)	0.22	0.17	0.16	0.20	0.09	0.84
Cactus Wren (<i>Campylorhynchus brunneicapillus</i>)	0.53	0.55	0.40	0.39	0.18	0.78
Crissal Thrasher (<i>Toxostoma crissale</i>)	0.93	0.44	0.60	0.68	0.44	0.90
Cooper's Hawk (<i>Accipiter cooperii</i>)	0.26	0.10	0.07	0.16	0.14	0.92
Bushtit (<i>Psaltriparus minimus</i>)	2.16	1.23	1.85	1.89	1.31	0.94
Gambel's Quail (<i>Callipepla gambelii</i>)	3.12	2.52	1.28	2.64	1.79	0.90
Northern Mockingbird (<i>Mimus polyglottos</i>)	1.72	1.34	1.28	1.17	1.05	0.89
Western Kingbird (<i>Tyrannus verticalis</i>)	2.08	1.52	1.56	1.61	1.70	0.97
Northern Flicker (<i>Colaptes auratus</i>)	1.83	1.85	1.45	1.77	1.66	0.98
Canyon Towhee (<i>Pipilo fuscus</i>)	0.52	0.39	0.37	0.51	0.36	0.96

(Source: Krueper et al. 2003)

1983). In Idaho, 60 percent of all breeding neotropical migratory birds are found in riparian habitats (Saab and Groves 1992). In Colorado, 82 percent of all nesting species use riparian areas (Knopf 1985).

As in the Tropical-Subtropical Steppe region, avian species utilizing riparian-wetland regions vary in their response to livestock grazing. Species such as killdeer, Lewis' woodpecker (*Melanerpes lewis*), house wren (*Troglodytes aedon*), mountain bluebird (*Sialia currucoides*), American robin (*Turdus migratorius*), Brewer's blackbird (*Euphagus cyanocephalus*), pine siskin (*Carduelis pinus*), and brown-headed cowbird usually responded positively to grazing while species such as the Calliope

hummingbird (*Stellula calliope*), willow flycatcher (*Empidonax traillii*), cedar waxwing (*Bombycilla cedrorum*), yellow-rumped warbler (*Dendroica coronata*), MacGillivray's warbler (*Oporornis tolmiei*), savannah sparrow, chipping sparrow (*Spizella passerine*), Lincoln's sparrow (*Melospiza lincolni*), Wilson's warbler (*Wilsonia pusilla*), Bullock's oriole (*Icterus bullockii*), and Cassin's sparrow responded adversely to grazing (Bock et al. 1993).

3.10.3 Riparian, Wetland, and Aquatic Communities

Riparian ecosystems are extremely productive and offer a unique combination

of habitat niches critical to fish and wildlife. Riparian communities provide abundant food, cover, nesting sites, and water and are used extensively by wildlife at all stages of their life history. Riparian ecosystems are important for a wide range of physical and biological features, including:

- Dense vegetation cover for shelter, shade, nesting, and resting
- Presence of surface water and abundant soil moisture
- Diverse vegetation structure which provides a range of habitat types
- Linear nature which provides protected pathways for wildlife migration

Because of their importance to a wide range of both terrestrial and aquatic species, riparian ecosystems serve as repositories for biodiversity throughout the West. In the arid West, riparian habitats comprise less than 1 percent of the total acreage of public lands, but are utilized by approximately 72 percent, 77 percent, 80 percent, and 90 percent of all reptiles, amphibians, mammals, and bird species, respectively. Approximately 30 percent of the bird species in the region use wetlands and other aquatic areas exclusively. Riparian areas attract a disproportionate number of migrating birds and provide primary habitat for waterfowl and shorebirds (BLM 1994).

Riparian areas are critical to a wide variety of species, including many special status species. For example, wet meadow areas and riparian zones serve as critical feeding and watering sources for sage grouse (Hockett 2002). Larger vertebrate species depend on riparian areas. Mule deer and elk use riparian areas for food and cover and for travel and migration corridors (Thomas et al. 1979). Pronghorn use riparian areas

extensively in summer (Cooperrider et al. 1986). Invertebrate species such as the springsnails, species that occur primarily as relict populations of formerly widespread species, also rely on riparian ecosystems (BLM 2001).

3.10.3.1 Cold Water Fisheries

Fish populations are directly affected by changes in riparian habitat. Numerous studies document reduced trout populations as a result of habitat loss and degradation caused by improper livestock grazing (Platts 1991; Behnke 1992). The native cutthroat trout population in Huff Creek, Wyoming, increased from 36 fish per mile to 444 fish per mile in response to livestock exclusion followed by improved livestock management (Chaney et al. 1990). Measurements showed that Huff Creek's channel narrowed by about one-third and doubled in depth, and water temperatures declined in response to changes in livestock management (Chaney et al. 1990). Studies have shown that improper livestock grazing that causes changes in riparian and aquatic habitat, such as increased sediment loads and higher summer water temperatures resulting from riparian degradation, may give exotic, introduced trout species a competitive advantage over native trout (Griffith 1988; Stefferud 1988).

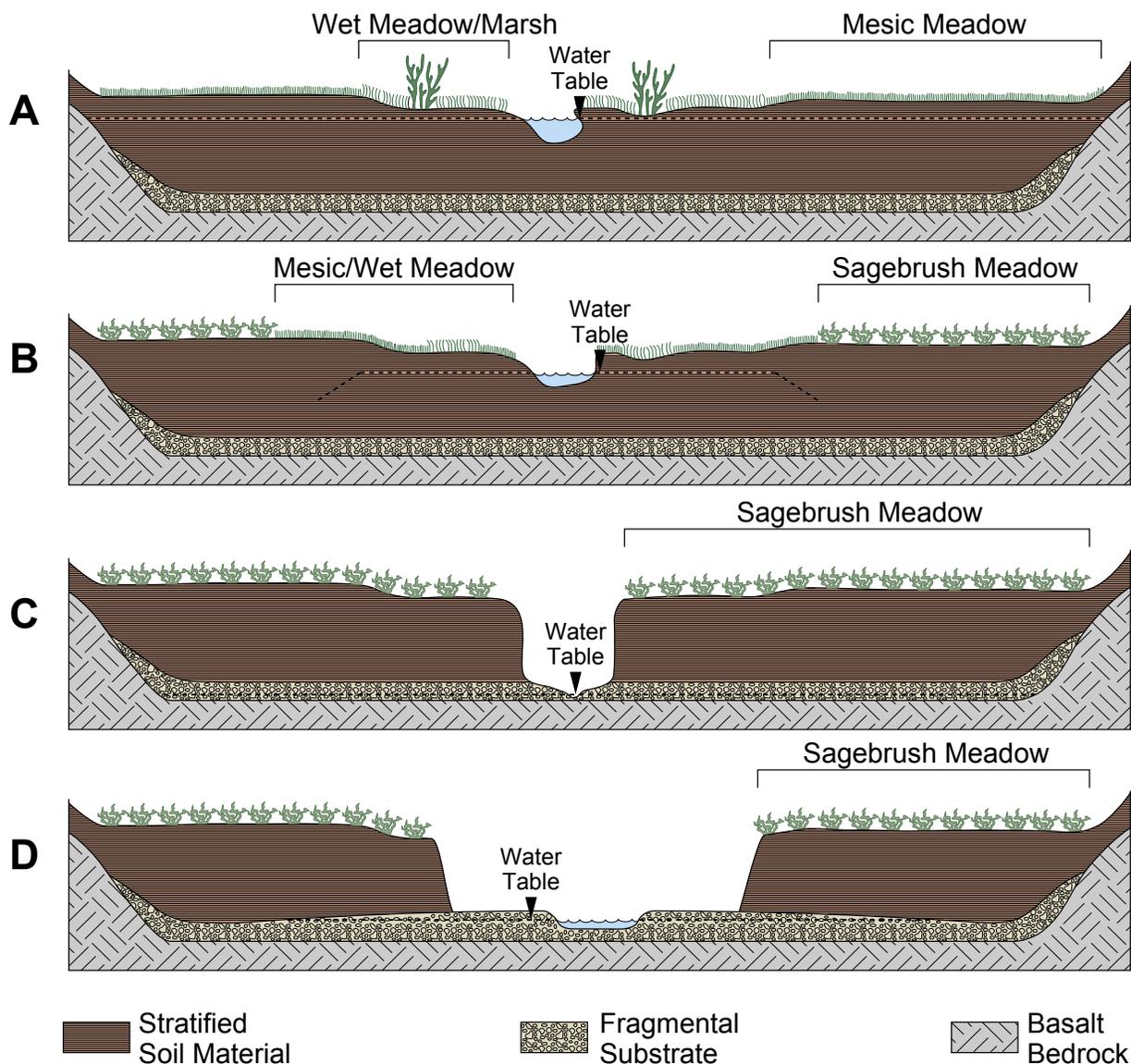
Excessive improper streamside grazing may remove vegetation, leading to higher water temperatures due to loss of shade, and higher levels of sediment in the stream as a result of increased soil erosion. Increased sediment can smother fish eggs in spawning areas, decreasing the abundance of young fish. Further, improper livestock grazing can remove vegetative cover and compact soils, slowing the rate of water percolation and infiltration and resulting in unnaturally high and frequent run-off. The increased erosion and subsequent frequent flooding can, in turn,

alter cold-water fish habitat by filling pools and substrate with silt, uprooting riparian vegetation, widening stream channels, and lowering water tables (Bock et al. 1992). There is a clear and documented connection between the health of upland vegetation and the health of riparian communities and aquatic habitat. Chaney et al. (1993) noted that accelerated runoff from uplands triggers downcutting of soft substrate streams. The

downcutting lowers both the streambed and water table, desiccates the riparian area, destabilizes streambanks, increases erosion, and further accelerates runoff. Downcutting may in turn lead to fish passage problems if the downcutting works its way to a grade control, such as bedrock or a culvert, often resulting in an impasse to migration.

Figure 3.10.3.1.1 shows the sequential degrading of a stream channel and its

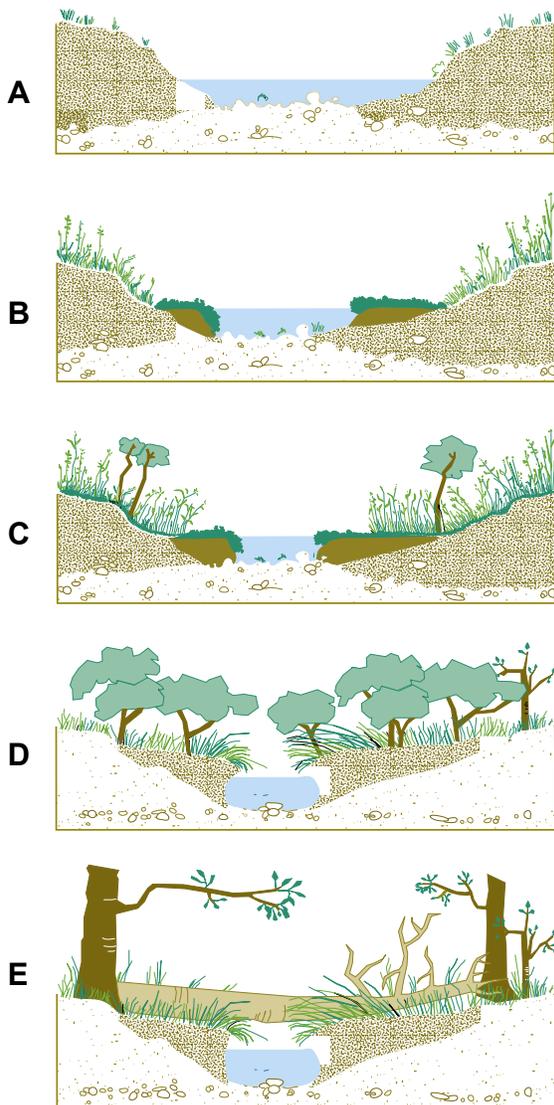
Figure 3.10.3.1.1. Sequential degrading of a stream channel and its associated riparian community (BLM 1993).



associated riparian community (BLM 1993). A healthy riparian community protects streambanks from erosion and maintains a high water table and productive habitat for fish and aquatic invertebrates (State A in Figure 3.10.3.1.1). As the stream channel erodes, the wet meadow areas become disconnected from the water table and dry out (State B in Figure 3.10.3.1.1). Sagebrush and rabbitbrush encroach on the site, resulting in a reduction in the amount and quality of

forage. In the absence of protective riparian vegetation, the stream channel is likely to become incised and form a new base level (State C in Figure 3.10.3.1.1). Once the channel becomes incised, it is classified as nonfunctional. Over time, the incised channel widens and a new floodplain begins to develop at the new base level (State D in Figure 3.10.3.1.1). Figure 3.10.3.1.2 shows the stages in the recovery of a stream-associated riparian area.

Figure 3.10.3.1.2. Stages in the recovery of a stream-associated riparian area.



Source: BLM 1993g

3.11 Special Status Species

Even though it is preferable to manage native plant and animal communities or ecosystems, the ESA necessitates that threatened and endangered species be managed by the BLM, species by species. Species that are considered special status species include species that are officially listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) as threatened or endangered; are proposed for listing or are candidates for listing as threatened or endangered under the provisions of the Endangered Species Act (ESA); listed by a state in a category such as threatened or endangered, implying potential endangerment or extinction; and those designated by each BLM State Director as BLM-sensitive. Appendix B provides the most up-to-date list of BLM special status species in each western state. The species included in Appendix B may change at any time according to changes in the listings by the FWS, updated data from recent investigations, and further verification of a species presence on public land.

The BLM Special Status Species Management Policy (Manual 6840) provides policy and guidance, consistent with appropriate laws, for special status species conservation with two primary policies: conserving listed species and

the ecosystems on which they depend and ensuring that actions authorized or approved by the BLM do not contribute to the need to list further special status species as threatened or endangered. To this end, the 6840 manual provides that it is policy of the BLM to conserve federally listed species and designated critical habitat using existing authorities. It is also the policy of the BLM that candidate species be managed so that no action authorized or funded by the BLM contributes to the need to list the species.

Improper livestock grazing has the potential to directly and indirectly affect special status species. The effects of improper livestock grazing on native plant and animal communities depend on the particular plant or animal. Factors which are important to management of livestock grazing for protection of special status species are grazing intensity, season of use, and long-term weather patterns (Milchunas et al. 1988). Direct grazing effects include livestock consumption of palatable special status plants and direct trampling of special status species. Indirect grazing effects may result from removing palatable forage and affecting nesting areas and cover for species such as desert tortoise and sage-grouse.

Animals

BLM management of the public lands is becoming increasingly complex because of the listing of additional species as threatened or endangered under the ESA in the West. With the last decade's dramatic increase (more than 200%) in ESA-listed species on BLM lands, the BLM is now responsible for managing more than 300 federally proposed or listed species and large tracts of other species' habitat, such as greater than 50 percent of the sage-grouse's remaining habitat. Once listing

occurs, land management processes become more cumbersome and land uses become more restricted and the resulting restrictions affect the land manager, permittees or lessees, and other public land users. Appropriate and timely conservation measures for candidate species and other species of concern are critical for preventing decline of at-risk populations to the level where listing is necessary. Of special concern is the ability to make timely and effective grazing decisions with respect to Gunnison and greater sage-grouse, pygmy rabbits, mountain plover, and mountain quail. These species may be affected by improper grazing practices across their range and are all being considered for listing in the future. The BLM is presently in the draft stage of developing a "Sage Grouse Habitat Conservation Strategy." This strategy will be closely tied in to all grazing activities.

The mountain plover (*Charadrius montanus*) provides a recent example of the significance of proactive conservation. On September 9, 2003, the U.S. Fish and Wildlife Service (FWS) published a Federal Register notice withdrawing their proposal to list the mountain plover as threatened. The species had been proposed for listing in 1999 and 2002 because the best data available at the time indicated that breeding populations were declining due to the loss of appropriate habitat from grassland conversion, prairie dog declines, and agricultural practices. After collecting additional data for 4 years, the FWS determined that listing the mountain plover under the Endangered Species Act (ESA) was not warranted. The five listing factors that must be considered in the determination of threatened or endangered status are (1) present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3)

disease or predation; (4) inadequacy of existing regulatory mechanisms; and (5) other natural or human-caused factors affecting the species' continued existence. A key factor to the "not warranted" listing determination was the greater involvement in mountain plover management on the part of the Federal land management agencies, state and county governments, and the private sector.

The BLM carefully coordinates with other Federal agencies, land managers, and interested public to implement appropriate special status species management. When grazing permits are issued, BLM offices are required to review the adequacy of existing environmental analyses. At this time, if it is determined that federally listed threatened or endangered species may be affected, a Section 7 consultation is performed. All interested parties, to the extent practical, have the opportunity to review, comment, and give input on Biological Assessments. Timely implementation of effective grazing decisions for correcting environmental damage may benefit wildlife and result in healthier ecosystems. If a species becomes federally listed after the issuance of a grazing permit, additional conservation measures may be added.

3.12 Wild Horses and Burros

The Wild and Free Roaming Horse and Burro Act of 1971, as amended, states that wild horse and burros are living symbols of the historic West and as such contribute to diversity of life forms within the Nation. It is the policy of Congress that wild and free-roaming horses and burros shall be protected and managed for a thriving natural ecological balance within areas they were found in 1971. These Herd Management Areas (HMAs) are found in 10 western States—Arizona, California, Colorado, Idaho,

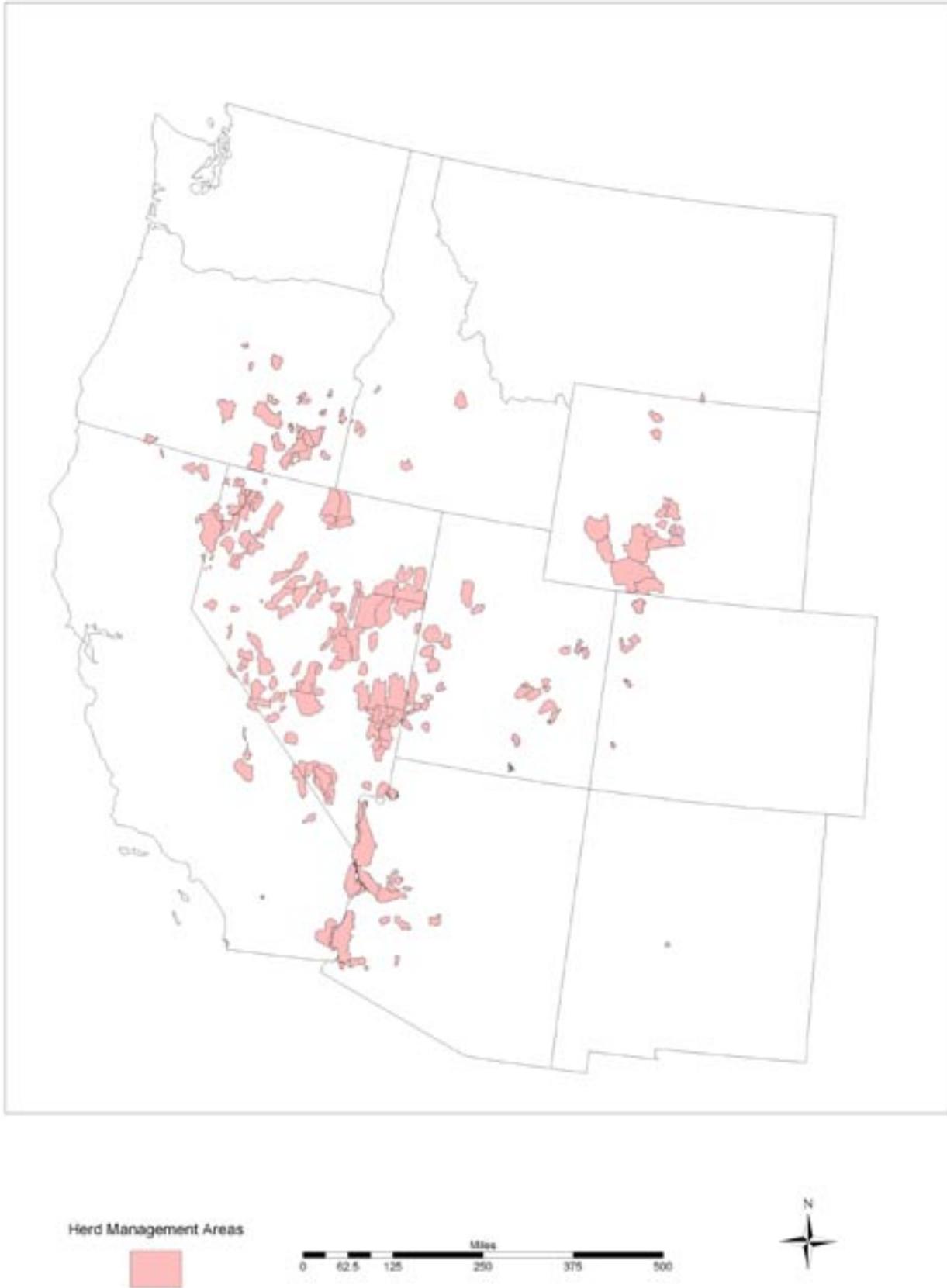
Montana, Nevada, New Mexico, Oregon, Utah, and Wyoming. BLM's strategic goal is to establish Appropriate Management Levels (AMLs) for all Herd Management Areas. The estimated AML for the Bureau is 25,732 horses and 3,117 burros. Removals are conducted on HMAs that exceed appropriate levels, and excess animals are either adopted to qualified publics or transported to long-term holding facilities in the Midwest to live out their lives. Management on the range to reduce and maintain viable populations consists of selective removals, fertility control, population modeling, gathering genetics information, and research applications.

At the end of the 2002–2003 gather season (July to February), there were 32,145 horses and 5,041 burros occupying 206 HMAs. Horses are not removed during the foaling season, March through June. Burros are not removed during peak summer months (July through August) because of the heat.

Wild horses use the same forage species—usually grasses and forbs—and water sources as domestic livestock. Wild horses and burros range significant distances from water to graze. Burros tend to be browsers, using shrubs, forbs, and some grasses. Wild horses normally move in bands, with numbers ranging from 2 to 40 animals. Burros are more solitary, but will form small bands of jennies and their offspring. Within an HMA, wild horses move into the higher country in the summer (because temperature and insects) and lower country in the winter (to avoid snow). Most of the burros are located in southern California, southern Nevada, and Arizona. Their movements are temperature-related, mostly looking for shade in the summer. During the rainy season they will disperse in search of available forage.

Wild horses and burros will affect upland and riparian areas when their numbers

Figure 3.12.1. Herd management area.



are not kept in balance with the available resources. Achieving and maintaining AML is an important component of any management system. A map of the herd management areas managed by the BLM is shown in Figure 3.12.1.

3.13 Recreation

Public lands managed by the BLM provide important recreational opportunities in the western United States in the form of camping, sightseeing, hiking, horseback riding, off-highway vehicle activities, water activities, hunting, fishing, snow activities, and other specialized or newly emerging interests. The recreational setting varies from primitive, nonmotorized access onto the public lands to dispersed motorized activities and to highly developed access on paved scenic drives and overlooks. Most recreational uses depend on the natural qualities of the land and some facilities to aid in use or access. Some recreational activity includes use of livestock for riding or packing and may include grazing of those animals on the public lands.

The effect rangeland conditions have on recreation activities varies as widely as the activities vary. More highly developed recreational activities tend to be less affected by rangeland conditions. More dispersed recreational activities tend to be more affected by rangeland conditions. Studies suggest that recreationists perceive that grazing detracts from, or is compatible with, their activity on the public lands in roughly equal numbers.

The availability of the public lands for recreation contributes to many regional economies in the West. In 2002, recreational use on BLM-administered lands exceeded 67 million visitor use days. Demand for new developed sites and facilities and greater

general availability of public lands for dispersed recreational activities is increasing in some areas. Increasing demand is most evident in regions near urban areas and where populations are rapidly growing.

Concentrated recreation occurs at approximately 2,700 developed sites. Less than 1 percent of BLM-administered rangeland contains developed recreation sites and facilities. More than half of all recreational visits to the public lands are dispersed visits. Dispersed recreation depends on open landscapes, with few developments, that allow for self-initiated exploration and discovery. Most areas providing dispersed recreation opportunities are used for livestock grazing. Where water and adjacent riparian areas exist, recreational use occurs during all or a portion of many visits. Riparian areas account for approximately 1 percent of BLM-administered rangeland.

Recreational use permits are issued for competitive and commercial activities. These include off-highway vehicle races, outfitter and guide services, equestrian races, sightseeing tours, and festivals. Recreational use permits are also issued for individuals and groups at many developed sites, high-use areas, and environmentally sensitive areas. Permits may limit the number of visitors to an area at any one time. Recreation permits usually require a fee and, in 2002, brought revenues of more than \$9 million to BLM.

Public lands administered by the BLM contain diverse scenic and visual resources. In many areas, expansive views, steep terrain, colorful and varied geology, or appealing plant communities create highly scenic settings. In areas where scenery may be plain, openness and limited development create a pleasing aesthetic. These qualities attract visitors for the purpose of sightseeing, as well as to form the backdrop for many outdoor recreation activities.

3.14 Special Areas

The Bureau of Land Management (BLM) provides special management consideration for public lands possessing unique and important historical, anthropological, ecological, biological, geological, and paleontological features. These lands include undisturbed wilderness tracts, critical habitat, natural environments, open spaces, scenic landscapes, historic locations, cultural landmarks, and paleontologically rich regions. Management designations for public lands containing special features are created by Congress, presidential proclamation, or established under BLM administrative procedures. The BLM manages these special areas to preserve, protect, and evaluate significant components of our national heritage.

3.14.1 National Landscape Conservation System

The Bureau of Land Management (BLM) provides special management consideration for public lands possessing unique and important historical, anthropological, ecological, biological, geological, and paleontological features. These lands include undisturbed wilderness tracts, critical habitat, natural environments, open spaces, scenic landscapes, historic locations, cultural landmarks, and paleontologically rich regions. Management designations for public lands containing special features are created by Congress, presidential proclamation, or established under BLM administrative procedures. The BLM manages these special areas to preserve, protect, and evaluate significant components of our national heritage.

The National Landscape Conservation System (NLCS), established in June 2000 by the BLM, provides guidance,

organization, and leadership for protecting many of the Nation's most remarkable and beneficial working landscapes (Figure 3.14.1). The NLCS consists of National Monuments, designated by the President, and congressionally designated National Conservation Areas, National Wilderness Areas, Wilderness Study Areas (also designated by agency), National Wild and Scenic Rivers, and National Scenic and Historic Trails (descriptions follow). The NLCS contains 828 units totaling approximately 15 percent (42 million acres) of BLM-managed public land—an area larger than the State of Florida. These NLCS units provide preservation, protection, conservation, and enhancement of open space; solitude; recreation opportunities; and scientific, cultural, educational, and ecological values, while allowing compatible resource uses.

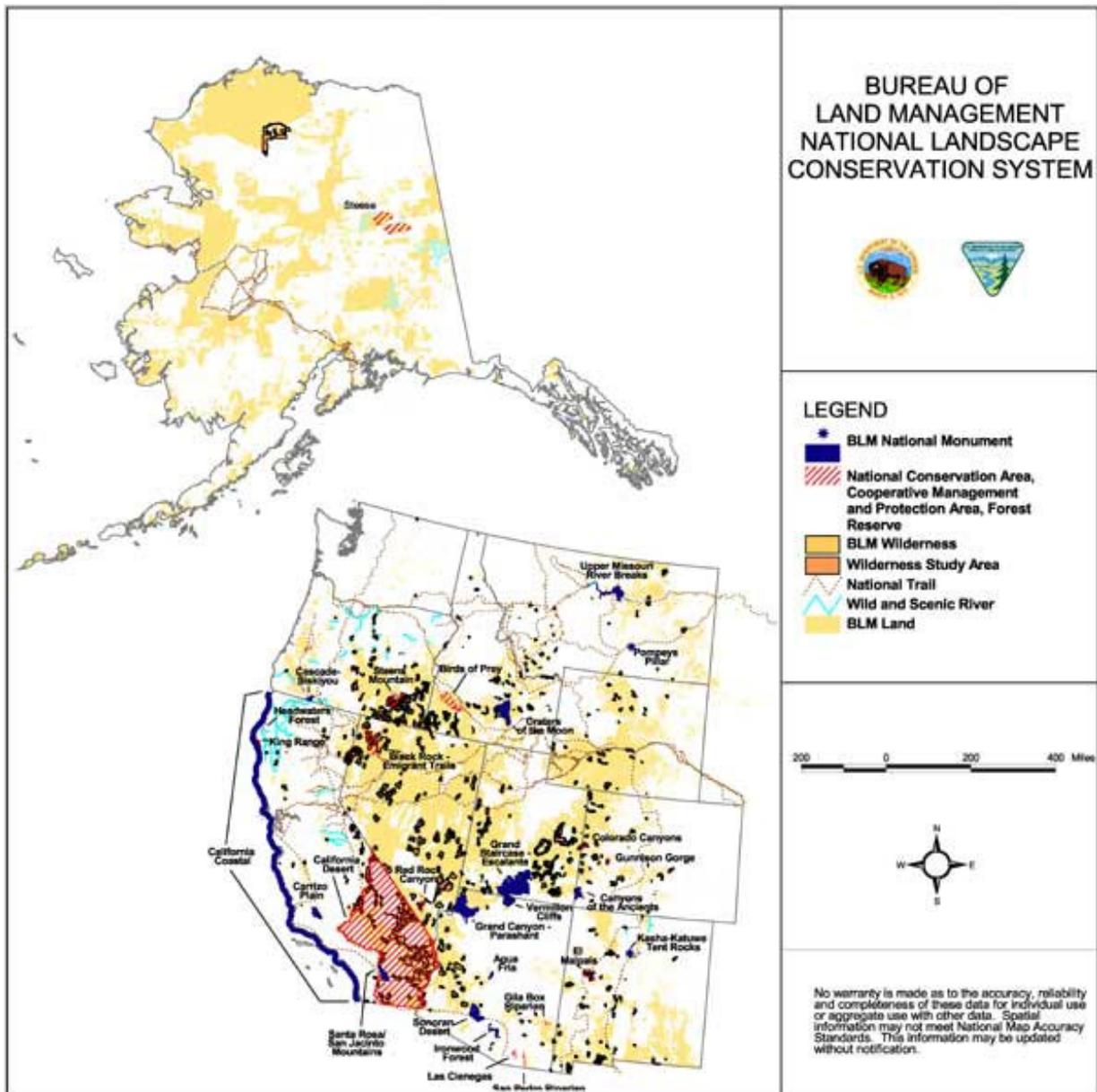
NLCS remote wildlands and working landscapes, managed within the BLM multiple-use framework, provide sources of livelihood as well as havens of solitude and peacefulness. Specifically, livestock grazing, an authorized activity within the NLCS, is managed through existing applicable law, regulation, and proclamation.

The following definitions briefly describe the NLCS units:

National Monument: An area designated by the President, under the authority of the Antiquities Act of 1906, to protect objects of scientific and historical interest that are located on Federal lands.

National Conservation Area: An area designated by Congress to provide for the conservation, use, enjoyment, and enhancement of certain natural, recreational, paleontological, and other resources, including fish and wildlife habitat. The BLM presently manages 13 National Conservation Areas encompassing a total of nearly 4 million acres.

Figure 3.14.1. Bueau of Land Management National Landscape Conservation System.



Wilderness: An area designated by Congress and defined by the Wilderness Act of 1964 as a place “where the earth and its community of life are untrammled by man, where man himself is a visitor who does not remain.” Designation is aimed at ensuring that these lands are preserved and protected in their natural condition. Wilderness areas, which are generally at least 5,000 acres or

more, offer outstanding opportunities for solitude or a primitive and unconfined type of recreation; such areas may also contain ecological, geological, or other features that have scientific, scenic, or historical value. The BLM manages 148 Wilderness Areas encompassing 6.3 million acres.

Wilderness Study Area: An area designated by a Federal land management

agency (Bureau of Land Management, Forest Service, National Park Service, or the Fish and Wildlife Service) as having wilderness characteristics, thus making it worthy of consideration by Congress for wilderness designation. While Congress considers whether to designate a Wilderness Study Area (WSA) as permanent wilderness, the Federal agency managing the WSA does so in such a way as to prevent impairment of the area's suitability for wilderness designation. The BLM manages 604 WSAs encompassing 17.2 million acres.

Wild and Scenic River: A river or river section designated by Congress or the Secretary of the Interior, under the authority of the Wild and Scenic Rivers Act of 1968, to protect outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values and to preserve the river or river section in its free-flowing condition. The law recognizes three classes of rivers—wild, scenic, and recreational. The BLM manages 36 Wild and Scenic Rivers (20 percent of the national system) amounting to 2,056 miles of river, equaling about 1 million acres.

National Scenic Trail: A trail designated by Congress under the National Trails System Act of 1968 as an extended trail that offers maximum outdoor recreation potential and provides enjoyment of the various qualities—scenic, historical, natural, and cultural—of the areas through which the trail passes. The BLM manages portions of the Continental Divide and Pacific Crest National Scenic Trails, amounting to 641 miles of trail.

National Historic Trail: A trail designated by Congress under the National Trails System Act as an extended trail that follows as closely as possible the original trails or routes of travel with national historical significance. Designation identifies and protects historical routes and their historical remnants and artifacts for public use and

enjoyment. A designated trail must meet certain criteria, including having a significant potential for public recreational use or interest based on historical interpretation and appreciation. The BLM manages nine National Historic Trails totaling 3,623 miles, including the Iditarod, Juan Bautista De Anza, California Immigrant, Nez Perce, Lewis and Clark, Oregon, Mormon Pioneer, Pony Express, and the El Camino Real de Tierra Adentro.

The BLM manages other special designation areas outside of the NLCS, including Areas of Critical Environmental Concern, Research Natural Areas, National Natural Landmarks, and National Recreation Trails.

3.14.2 Areas of Critical Environmental Concern

Areas of Critical Environmental Concern (ACEC) are BLM designations meant to highlight public lands where special consideration is warranted. The BLM establishes and manages ACECs to protect and prevent irreparable damage to historical, cultural, and scenic values; fish or wildlife resources; as well as other natural systems or processes. ACECs can also be established to protect human life and provide safety from natural hazards. The designation recognizes that an area has significant values, and that those values will be protected through planned special management measures. ACEC resources and values must be accommodated as directed through their designation documents when planning for future management actions and land use proposals.

3.14.3 Research Natural Areas

Research Natural Areas (RNAs) contain important ecological and scientific values and are managed for minimum human

disturbance. RNAs are primarily used for nonmanipulative research and baseline data gathering on relatively unaltered community types. Since natural processes are allowed to dominate, RNAs also make excellent controls for similar communities that are being actively managed. In addition, RNAs provide an essential network of diverse habitat types that will be preserved in their natural state for future generations. The BLM manages 152 RNAs containing more than 300,000 acres.

3.14.4 National Natural Landmarks

The BLM cooperates with the National Park Service to implement the National Natural Landmarks Program. The program recognizes and encourages the conservation of outstanding examples of natural history. Landmarks are designated by the Secretary of the Interior and are the best examples of biological and geological features in both public and private ownership. The program includes 45 landmarks comprising more than 4,000,000 acres.

3.14.5 National Recreation Trails

The Recreational Trails Program provides funds for developing and maintaining recreational trails and trail-related facilities. The program supports both nonmotorized and motorized recreational trail pursuits.

3.15 Heritage Resources: Paleontological and Cultural Resources (Properties)

3.15.1 Paleontological Resources

Paleontological resources are the remains of plants and animals preserved in soils and sedimentary rocks. They are important for understanding past environments, environmental change, and the evolution of life. Federal legislation (e.g., Federal Land

Policy and Management Act) directs agencies to manage paleontological resources to preserve them for scientific and public uses.

The BLM has more than 25 million acres of sensitive, fossil-bearing geological deposits on western BLM-administered land. The fossils range in age from the Precambrian (more than 500 million years ago) to the recent (the last 10,000 years) and include examples of all extinct and living phyla.

Paleontological remains range from mammoths associated with the Ice Ages about 10,000 years ago to the microorganisms associated with the earliest evidence of life some 2.8 billion years ago. Paleontological items discovered on Federal land include dinosaur remains in Nevada, Utah, Colorado, Wyoming, California, and Montana; fossil fish deposits from the Green River Formation; insect and plant fossils found in Nevada; and large petrified trees in Arizona and Nevada.

Paleontological resources can be found in any sedimentary formation or soil deposition context, but badlands shale, sandstone, limestone outcrops, fault scarps, and eroded lands have a high potential for containing fossils.

3.15.2 Cultural Resources

Cultural resources (cultural properties) are definite locations of human activity, occupation, or use which include archaeological, historic, or architectural sites, structures, or places with important public and scientific uses. Cultural resources may include definite locations (sites or places) of traditional cultural or religious importance to specified social and/or cultural groups. Traditional values are a social or cultural group's traditional systems of religious belief, cultural practice, or social interaction, and may represent abstract, nonmaterial, ascribed ideas that may only be discovered through

discussion with members of the group. Traditional values frequently provide the context for the interpretation and evaluation of cultural resources, but are not the same thing as cultural resources. Traditional values are further discussed in the sections on social conditions (e.g. Section 3.17).

About 15,475,300 acres of the 264,200,000 acres of BLM-administered lands have had cultural resource inventories. The results of cultural resource inventories are shown in Table 3.15.2.1 and significant areas are listed by designation in Table 3.15.2.2.

Cultural resources are managed through several legal authorities, but mainly through the Section 106 (National Historic Preservation Act) compliance process. Other legal authorities include the Antiquities Act of 1906, Recreation and Public Purposes Act of 1926, Historic Sites Act of 1935, Executive Order 11593 (“Protection and Enhancement of the Cultural Environment”), American Indian Religious Freedom Act of 1978, Archaeological Resources Protection Act of 1979, Native American Graves Protection and Repatriation Act of 1990, Executive Order 13007 (“Indian Sacred Sites”), and Executive Order 13287 (“Preserve America”). Before authorizing surface disturbance, the BLM must identify cultural properties eligible for inclusion on the National Register of Historic Places and consider the effects of the proposed undertaking through the consultation process in Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended. This process is implemented in accordance with 36 CFR 800. In many States, procedures for adapting the process to local needs have been developed through programmatic agreements between the BLM, the State Historic Preservation Officer, and the Advisory Council on Historic Preservation.

Table 3.15.2.1. Bureau of Land Management cultural resource inventory data.

Total BLM-administered lands (acres)	264,200,000
Total acres inventoried	15,475,300
Percentage of lands inventoried	5.9%
Number of cultural properties recorded	255,252
Number of cultural properties eligible for the National Register of Historic Places	13,952

From “Public Land Statistics 2001”

Table 3.15.2.2. Bureau of Land Management significant cultural resource areas.

Designation	Number
National Historic Trails	9 (total mileage: 3,650 miles)
Properties listed on the National Register of Historic Places	4,247
National Historic Landmarks	21

Source: BLM Cultural and Fossil Resources and Tribal Consultation Group.

Section 106 of NHPA does not prohibit disturbing cultural resources. In fact, an authorized officer may permit activities that damage or destroy them. In addition, mitigation is required only if disturbance would affect a property’s attributes that make it eligible for the National Register.

In recent years, with an awareness and appreciation of cultural properties, the

inventory, protection, stabilization, and enhancement of cultural resources have become integral parts of BLM management practices and planning initiatives.

3.15.3 Cultural Resources Through Time

Cultural resources in the United States extend back to the earliest human migrations to the Western Hemisphere, some 15,000 years ago. These resources range from isolated artifacts, to small-scale habitation sites, to complex agricultural villages and densely populated pueblos, to natural landscape features of special significance. Prehistoric human occupations were rarely uniform over large areas, particularly where there were significant ecological changes over short distances. Consequently, site types, sizes, and densities are extremely variable.

Across the western region, however, water was (and continues to be) one of the most important factors affecting human settlement and survival. As such, many prehistoric, historic, and modern era cultural properties are located near or around water sources.

Prehistoric cultural resources have been organized into early, middle, and late periods, with the early period commonly referred to as Paleoindian (15,000–8,000 years ago), the middle period as Archaic (8,000–2,000 years ago), and the final period as Late Prehistoric (2,000–200 years ago).

Cultural resources from the Paleoindian period are found in high-elevation coniferous and deciduous forests as well as lower elevation plains grasslands and in areas of the desert Southwest, mainly near water sources and in alluvial and colluvial soil deposits. People surviving during this period often hunted megafauna, such as mammoth and giant bison, that are now extinct.

Prehistoric cultural resources from the Archaic period reflect a shift from an exploitation of megafauna to an emphasis on hunting and collecting a variety of resources, such as fish, large and small game, and edible plants and nuts. Hunting sites, plant gathering sites, and temporary camps are probably scattered in most western ecosystems.

Beginning about 2,000 years ago, the Archaic period phased into the Late Prehistoric period with the introduction of agriculture, ceramics, the bow and arrow, and sedentary lifeways as major adaptive elements. In general, site types and patterns were similar during archaic times except where lifeways shifted to an agricultural base.

The Prehistoric era began blending into the Historic era in 1492 when Europeans started migrating to and settling in the Americas; however, the Historic era did not start at the same time everywhere across the West. In the Southwest, the historic period began in the 1500s with the Spanish *entrada*. In the Pacific Northwest and the Great Basin, significant Euro-American migrations did not begin before the middle of the 1800s; in the Rocky Mountains and Plains the Historic era did not begin until the exploitation of the region by the fur trade in the late 1700s and early 1800s. As many Euro-Americans moved north and west, they took with them a lifeway emphasizing livestock ranching; in the Southwest, ranching began as early as the 1600s, whereas in the northern areas it began in the 1850s. The identity of many small towns and communities in the West is associated with this tradition.

Cultural properties related to the Historic era continue to include indigenous remains such as Indian agency buildings and missions. A majority of historic resources in the West, however, are artifacts, sites,

and landscapes associated with early Euro-American exploration, the fur trade, mining, logging, ranching, farming, transportation, manufacturing, and early urban development.

Beginning about 1900, the Historic era merged into modern times. At the turn of the century, the picture of the “Wild West” was changing; the people and places that characterized the “western frontier”—the cowboys, outlaws, Indians, prospecting miners, and military cavalry—were all fading into memory as stories and icons of a bygone era. American society began to shift from a largely rural society to a more urban society. People moved off of farms and ranches into the big cities with increasing industrialization. Native Americans were settled onto reservations with a government policy of assimilation and acculturation. Many mining towns boomed only to become busted ghost towns within a few decades.

These recent changes can be seen in an array of cultural resources and traditional cultural properties. Depression and later era mining camps, abandoned rural hamlets and post offices, World War II bases and installations, artifacts and objects left behind by migrant sheep herders, Civilian Conservation Corps construction works and camps, or even the Interstate Highway System, all document the changing West.

Despite attempts at assimilation and settlement, many Native American tribes have held onto their traditional lifeways and beliefs. They have continued to use their environment to gather native plants, animals, and minerals for use in religious ceremonies, folk medicine, subsistence, and crafts. They have maintained treaty rights into the Modern era to exploit traditional plant gathering and hunting areas. For Native American tribes and individuals, any environment can contain specific places that are significant for spiritual purposes. Those sacred places embodying

spiritual values are often associated with indigenous rock art, medicine wheels, rock cairns and effigy figures, spirit trails and spirit gates, caves, rock formations, and springs or lakes. Contemporary use areas are associated with traditional plant and mineral collection locales, vision quest sites, sun dance grounds, shrines, and traditional trails.

Notwithstanding the radical and sometimes rapid changes undergone in the West in the twentieth century, the western ranching way of life has carried forward a significant part of the world’s image of America and America’s image of itself. Modern western ranching communities have traditional activities, social behaviors, and values that are part of the Nation’s historical and cultural heritage. This way of life is represented on the landscape through numerous cultural resources, including developed springs, wells and watering tanks, fence lines, wild horse traps, corrals, ranch houses, sheep herding camps, shearing pens, loading chutes, grange halls, and one-room school houses.

3.16 Economic Conditions

General Economic Conditions and Trends

The population of the western United States has been growing faster than any other region of the country in both urban and rural areas. During the 1990s, the rural West grew by 20 percent—twice the national average. Moderate climates, scenic features, and other natural amenities spurred much of this growth, especially rural growth in the Rocky Mountain West (USDA Economic Research Service 2003).

This population growth has been accompanied by economic growth and diversification of western States’ economies. The agriculture industry in general, and livestock production in particular, has declined in relation to the growth of other

industries in the region (USDA ERS 2000). However, livestock production remains an important contributor to many rural economies of the West, particularly in areas where population growth has not occurred or where populations continue to decline.

While agriculture has declined in relative importance, other industries have increased their importance to rural and urban areas of the West. With respect to economic uses of public lands, outdoor recreation in particular has increased in importance (USDA ERS 2002). Outdoor recreation of all types, including hunting, fishing, wildlife viewing, OHV use, mountain biking, hiking, camping, have been contributing to significant increases in spending and employment. Many of the multiple-use management conflicts occurring on public lands in recent years are due to increased recreation use in relation to other activities such as livestock grazing.

Livestock Grazing on Public Lands

BLM grazing statistics for 2002 show there were 18,142 permits and leases for livestock grazing with a total of about 12.7 million active AUMs (PLS 2002) in the 15 western States. Most of these permits and AUMs are located in the 11 western-most States, while Nebraska, North Dakota, Oklahoma, and South Dakota have relatively few permits and leases. Because many livestock operators hold more than one permit, the total number of operators is less than the number of permits. About 95 percent of the operators graze cattle, 8 percent graze sheep and goats, and another 7 percent graze horses and burros (PLS 2002). These percentages do not add to 100 percent because many operators run more than one kind of livestock. Table 3.16.1 shows, by state for 2002, the number of permits or leases and AUMs.

Table 3.16.1. Permits, leases, and authorized use, 2002.

State	Permits or Leases	Active AUMs	Billed AUMs	Nonuse AUMs	Percent Nonuse
Arizona	770	684,270	369,164	315,106	46%
California	608	375,246	178,879	196,367	52%
Colorado	1,603	643,520	341,751	301,769	47%
Idaho	1,939	1,317,041	843,937	473,104	36%
Montana	4,297	1,370,028	1,053,142	316,886	23%
Nevada	2,312	1,865,779	1,321,494	544,285	29%
New Mexico	642	2,162,719	1,131,608	1,031,111	48%
Oregon	1,624	1,067,465	711,816	355,649	33%
Utah	1,557	1,237,940	746,236	491,704	40%
Wyoming	2,790	1,973,173	1,174,792	798,381	40%
Total	18,142	12,697,181	7,872,819	4,824,362	38%

Note: Montana includes North and South Dakota, New Mexico includes Oklahoma, Oregon includes Washington, and Wyoming includes Nebraska. Source: PLS 2002.

Source: BLM 2002c.

Table 3.16.2. Number of permits or leases and active or nonuse AUMs since 1996.

Year	Permits or Leases	Active AUMs	Billed AUMs	Nonuse AUMs	Percent Nonuse
1996	18,795	13,086,335	9,738,638	3,347,697	26%
1997	18,769	13,070,176	9,445,482	3,624,694	28%
1998	18,698	13,015,303	10,353,032	2,662,271	20%
1999	18,468	12,994,883	10,087,988	2,906,895	22%
2000	18,393	12,810,487	9,837,588	2,972,899	23%
2001	18,382	12,776,369	8,112,008	4,664,361	37%
2002	18,142	12,697,181	7,872,819	4,824,362	38%

Source: BLM 2002c.

Of the 12.7 million active AUMs in 2002, about 4.8 million were in nonuse, for a westwide average of 38 percent. Nonuse ranged from 23 percent in Montana to 52 percent in California. Many factors contribute to operators' reasons to take nonuse, but drought and financial conditions are among the most important. Table 3.16.2 shows the trend since 1996 of the number of permits or leases, active AUMs, and nonuse AUMs.

Table 3.16.3 shows a downward trend in numbers of permits or leases and active use, as well as an increase in nonuse. The downward trend in numbers of permits or

leases and active use reflects the continuation of a decades-long trend both for public lands livestock operators as well as the livestock industry as a whole. The industry as a whole continues to experience consolidation and a trend toward fewer but larger operations.

The livestock-raising subsector of the agriculture industry in the western United States still depends on public lands in a variety of ways, including local economic activity, types of animals grazed on public lands, rancher dependence on Federal forage, and size of ranch operations with Federal permits.

Table 3.16.3. Percent Dependency of Counties in Eleven Western States on Federal Forage

Dependency Level	Number of Counties	Percentage of Total	Cumulative Percentage of Total
0-0%	258	62%	62%
10-30%	82	20%	82%
30-50%	36	9%	91%
50-80%	27	6%	97%
80-100%	13	3%	100%
Total	416	100%	100%

Source: USDA ERS 2002

In a recent study of public lands and western communities, the Economic Research Service grouped 416 Counties in the 11 western States according to the share of total countywide AUMs estimated to come from Federal lands, including both BLM and Forest Service (USDA ERS 2002). That analysis shows that about 9 percent of all Counties are 50–100 percent dependent on public lands, whereas 91 percent were less than 50 percent dependent on public lands (see Table 3.16.3). Counties showing more than 50 percent dependence on Federal lands tend to be among the least densely populated Counties.

The importance of Federal rangelands also varies by the type of animal grazed. In a 1989 study of forage demand by cattle, Federal lands (including both BLM and Forest Service) were estimated to make up about 7 percent of beef cattle forage and about 2 percent of the total feed consumed by beef cattle in the lower 48 States (Joyce 1989). In the 11 western States, Federal land grazing was estimated to make up about 25 percent of beef cattle forage. About a third of beef cattle in the West graze at least part of the year on Federal rangelands. In a 1991 study of forage demand by sheep, Federal lands grazing was estimated to make up less than 20 percent of forage demand (Shapouri 1991).

Rancher dependency on Federal forage is another measure of the importance of Federal rangelands. Average dependency of permittees on Federal forage is highest in Arizona (60 percent) because of the large amount of Federal land in relation to private lands, the availability of yearlong grazing, and the relatively high number of operators with both BLM and Forest Service permits. Montana has the lowest average dependency (11 percent) because it has seasonal grazing and more private than Federal forage. Table 3.16.4 shows average dependency for

operators in each of the 11 western States. Note that these are statewide averages; individual rancher dependency within each state would vary substantially.

Characteristics and Profitability of Livestock Operations on Public Lands

Public land ranches are highly individualized operations, but there are also some similarities from which general characteristics can be drawn. Ranches in the western United States, where BLM public lands ranchers are located, tend to be larger than operations in other regions of the country. The majority are cow–calf operations that operate seasonally on public lands, although operations in some areas are

Table 3.16.4. Average Dependency Level for Cattle and Sheep by State for the 11 Western States (includes both BLM and Forest Service rangelands).

State	Average Cattle Dependency	Average Sheep Dependency
Arizona	60%	¹
California	15%	24%
Colorado	25%	37%
Idaho	23%	35%
Montana	11%	35%
Nevada	36%	43%
New Mexico	44%	49%
Oregon	23%	27%
Utah	35%	47%
Washington	13%	¹
Wyoming	23%	29%

¹ Sheep budgets were not prepared since few sheep graze on Federal land in these States.
Source: Forest Service and BLM 1992.

year-round. The average size of cow-calf operations in the West is 146 bred cows and 132 weaned calves. The region with the next highest average size, the Southern Plains, had an average herd size of 79 bred cows and 60 weaned calves. Although 10 percent of the nation's cow-calf operations are in the western United States, they produce 20 percent of the weaned calves (Short 2001).

An earlier study of cow-calf production costs made a further distinction between operations with Federal permits versus those without permits (USDA ERS 1991). In general, permittees were found to have lower per-cow cash receipts than nonpermittees, but they also had lower per-cow cash expenses and lower capital expenses. Overall net cash returns were higher for permittees, on average, than for nonpermittees. The more recent study of cow-calf production costs (Short 2001) shows that cow-calf operations in the West generally have some significant cost advantages over operators in other regions, though these data are not broken out for permittees and nonpermittees.

Ranching tends to be a low- or negative-profit enterprise, and public land ranchers are no exception. Recent cow-calf production costs and returns data show that operations in all regions had, on average, negative returns above operating and ownership costs (i.e., all costs), but in the West, these negative returns were lower than for other regions (Short 2001). Considering strictly returns above operating costs (i.e., not including ownership costs), the western United States had, on average, higher positive returns than all other regions.

Others have studied profit motives of ranchers, and public lands ranchers in particular. Van Tassell et.al. (2001) found that profitability is one among several issues considered by ranchers with public lands grazing permits. Torell et.al. (2001), found that in many instances, profit ranks

behind such things as family, tradition, and a desirable way of life as factors in ranch purchase decisions. Torell notes that studies have shown that western ranches will not "pencil out," and that there seem to be many reasons other than profit that motivate ranchers to stay in business.

Tanaka and Gentner (2001) surveyed public lands ranchers and gauged their responses to three policy questions related to public land grazing. They grouped the respondents into eight categories based on specific characteristics and noted each group's response to potential policy changes to see if they differed according to each group's motivations for holding Federal grazing permits (see Social Conditions section of the DEIS for further discussion of these groups, or "clusters"). One interesting finding was that for all eight groups, the objectives of "owning land and ranch is consistent with my family's tradition, culture, and values," and a "ranch is a good place to raise a family" ranked first or second as the most important reasons for continuing in ranching, ahead of the profit motive.

In summary, it seems that profit is one of many reasons that ranchers may continue to hold Federal grazing permits, and that the importance of profit varies by type of operation.

3.17 Social Conditions

Demographic Trends

The West is the fastest growing region in the United States. Table 3.17.1 indicates that the populations of all but two of the States in the West grew at rates greater than the nation as a whole from 1990 to 2000. The populations of five States grew faster than 25 percent during this period, with Nevada growing by more than 66 percent. In addition, the West as a region grew faster than other regions in the country. While the nation as

Table 3.17.1. State and regional population change in the West, 1990 to 2000.

State	Population 1990	Population 2000	Change 1990 to 2000 (%)
Nevada	1,201,833	1,998,257	66.3
Arizona	3,665,228	5,130,632	40.0
Colorado	3,294,394	4,301,261	30.6
Utah	1,722,850	2,233,169	29.6
Idaho	1,006,749	1,293,953	28.5
Washington	4,866,692	5,894,121	21.1
Oregon	2,842,321	3,421,399	20.4
New Mexico	1,515,069	1,819,046	20.1
California	29,760,021	33,871,648	13.8
Montana	799,065	902,195	12.9
Wyoming	453,588	493,782	8.9

Regions and Nation	Population 1990	Population 2000	Change 1990 to 2000 (%)
West	52,786,082	63,197,932	19.7
South	85,445,930	100,236,820	17.3
Midwest	59,668,632	64,392,776	7.9
Northeast	50,809,229	53,594,378	5.5
Nation	248,709,873	281,421,906	13.2

Source: United States Census Bureau 2003

a whole grew about 13 percent, the West grew more than 19 percent, far outpacing the Northeast and Midwest in population growth.

As a region, the West is the most urbanized area in the United States. Urbanization is the proportion of a population that lives in urban areas. Table 3.17.2 shows that more than 88 percent of the population of the West lived in urban areas in 2000. This proportion is even greater than the heavily urbanized northeastern region. Nationally, 79 percent of the population lived in urban areas in 2000. Seven States in the West exceeded the national urban proportion, with six States having more than an 80 percent urban population. This proportion grew rapidly for some western States. Urban populations in Idaho and Oregon grew at 9 percent and 8 percent, respectively, between

1990 and 2000. Where growth occurs will significantly determine its effect on uses of and involvement in the politics of public lands. Growing pressure to use public lands for recreation and solitude will continue to come from population growth in both urban centers and rural places.

A relevant trend is the relation between the amount of public land and population growth in western Counties. In creating a typology of rural Counties, the Economic Research Service (ERS) of the U.S. Department of Agriculture designated a county as a “Federal Lands County” if federally owned lands made up 30 percent or more of a County’s land area in 1987. In the eleven western States in 1994, ERS classified 89 Counties as metropolitan Counties; 128 as nonmetropolitan, nonpublic land Counties;

Table 3.17.2. Rural and urban populations in the West, 1990 and 2000.

State	Urban 1990 (%)	Rural 1990 (%)	Urban 2000 (%)	Rural 2000 (%)	Urban change 1990 to 2000 (%)
California	92.6	7.4	94.4	5.6	1.8
Nevada	88.3	11.7	91.5	8.5	3.2
Utah	87.0	13.0	88.2	11.8	1.2
Arizona	87.5	12.5	88.2	11.8	0.7
Colorado	82.4	17.6	84.5	15.5	2.0
Washington	76.4	23.6	82.0	18.0	5.6
Oregon	70.5	29.5	78.7	21.3	8.3
New Mexico	73.0	27.0	75.0	25.0	2.0
Idaho	57.4	42.6	66.4	33.6	9.0
Wyoming	65.0	35.0	65.1	34.9	0.1
Montana	52.5	47.5	54.1	45.9	1.5

Nation by region	Urban 1990 (%)	Rural 1990 (%)	Urban 2000 (%)	Rural 2000 (%)	Urban change 1990 to 2000 (%)
West	86.3	13.7	88.6	11.4	2.4
Northeast	78.9	21.1	84.4	15.6	5.5
Midwest	71.7	28.3	74.7	25.3	3.0
South	68.6	31.4	72.8	27.2	4.2
Nation	75.2	24.8	79.0	21.0	3.8

Source: United States Census Bureau 2003

Table 3.17.3. Metropolitan, nonmetropolitan, and public land county population change in western States, 1990 to 2000.¹

County type	Population 1990	Population 2000	Proportion of population 1990 (%)	Proportion of population 2000 (%)	Population change 1990 to 2000 (%)
Nonmetropolitan, nonpublic land counties	2,728,251	3,139,775	5.3	5.1	15.1
Metropolitan counties	44,476,002	53,251,277	86.9	86.8	19.7
Nonmetropolitan public land counties	3,974,974	4,968,411	7.8	8.1	25.0

¹ Totals do not include Hawaii and Alaska. Source: United States Census Bureau 2003 (Cook and Mizer 1994).

and 194 as nonmetropolitan, public land Counties (Cook and Mizer 1994). Population growth rates from 1990 to 2000 differed for these three categories of Counties. Table 3.17.3 displays population change during this period for metropolitan, nonmetropolitan, and nonmetropolitan public land Counties in the West. The proportion of the population in western States accounted for by metropolitan Counties was stable at about 87 percent from 1990 to 2000. However, nonmetropolitan public land Counties grew by 25 percent more than the period, much faster than the other two types of Counties. While the West was growing rapidly as a region, public land Counties were growing faster as a group than other Counties. Such growth is changing the social context of ranching throughout the West (Sheridan 2001).

Ranchers

These population trends, their cause and numerous arguments concerning their effect on communities are well documented. Migration is clearly the major force underlying this population growth (Nord and Cromartie 1997; McGranahan 1999). In addition, the role of physical amenities, quality of life, proximity to designated wilderness, and other arguments are frequently forwarded as both a cause of migration to public land Counties and as a policy goal (Clark and Murphy 1996; Duffy-Deno 1998; McGranahan 1999; Deller et al. 2001; Hansen et al 2002; Lorah and Southwick 2003).

The effect of these population changes on ranches is difficult to generalize because ranchers and ranch operations in the West present a very heterogeneous population. The local and regional variations in terrain, climate, and ecological systems are almost matched by local and regional differences in the social, economic, and institutional

contexts within which ranches operate (Gentner and Tanaka 2002). Each ranch has a unique economic structure, participates in a certain type of regional economy, has a particular type of family relationship to the business, and maintains certain types of ties to a local community and a larger regional, possibly urban, area (Darden et al. 2001). Ranchers make decisions in different ways for different reasons, and will therefore experience differing social effects from changes in their economic, social, and institutional relations. This heterogeneity must be accounted for to understand potential social effects on ranchers, their operations, and their communities.

Gentner and Tanaka (2002) provide a comprehensive classification of public land grazing permittees. A random sample of 2,000 ranchers was drawn from more than 21,000 Bureau of Land Management (BLM) and U.S. Forest Service (USFS) permittees and evaluated by using a mail survey. A set of rancher attributes was used to capture goals and objectives of ranchers, educational attainment, business organization, number of livestock, sources of labor, income by source, debt load and financial stress, and other social and economic indicators. Cluster analysis identified eight groups of ranchers on the basis of these attributes. Two general groups emerged—hobby ranchers (50.5 percent) and dependent ranchers (49.5 percent). The two main groups are differentiated most notably by their dependence on ranch income for their livelihoods: the hobby group received less than 22 percent of their family income from the ranch, whereas the dependent group received more than 72 percent of their income from the ranch (see Table 3.17.4). This detachment of the ranch operation from the majority of household income for more than half of this sample has social ramifications. Part-time and hobby ranchers may retain attitudes and local social ties

Table 3.17.4. Ranch income by source.¹

Rancher type	Ranch Income by Source		
	Ranch (%)	Other Agriculture/Forestry (%)	All Other (%)
Dependent Family Rancher	84.7	6.0	9.2
Sheep Rancher	80.8	2.1	17.0
Diversified Family Rancher	74.9	10.4	14.4
Corporate Rancher	71.9	9.2	18.8
Retired Hobbyist	21.5	21.4	56.3
Trophy Rancher	21.1	7.7	70.6
Working Hobbyist	18.2	2.3	79.5
Small Hobbyist	13	5	84

¹ Totals may not sum due to rounding. Source: (Gentner and Tanaka 2000).

similar to full-time ranchers and be relatively immune to the economic fluctuations of ranching. The motivation and ability of these ranchers to remain in ranching even under difficult economic circumstances may actually be higher than those relying directly on the ranch for their livelihood.

The general characteristics and percentage of the Gentner and Tanaka (2002) sample for each group are as follows:

- Small Hobbyist (11%): Small operations, small herds, lowest dependence on ranch income, high dependence on off-ranch income, highly educated, slightly lower dependence on Federal forage.
- Retired Hobbyist (18%): Older, small operations, higher dependence on ranch income, very high dependence on retirement income, slightly lower dependence on Federal forage.
- Working Hobbyist (15%): Highest dependence on off-ranch income, youngest, small operations, ranching the longest, highest dependence on Federal forage among hobbyists.
- Trophy Hobby Rancher (6%): Large operations, large deeded acreage, highest use of hired labor among hobbyists, highest reliance on corporate organizations among hobbyists, highly educated.
- Diversified Family Rancher (13%): Dependent on ranch income, more diversified into other nonranching income sources, smallest herd size among professional ranches, relative dependence on family labor, highest reliance on sole proprietorship as business organization, higher reliance on Federal forage.
- Dependent Family Rancher (19%): Highest dependence on ranch income, lowest diversification into other income sources, least educated, highest debt load, highest reliance on formal partnerships for ranch business organization, higher reliance on Federal forage.
- Corporate Rancher (13%): High reliance on ranch income, largest herd size, large deeded acreage, lowest reliance on Federal forage among professional

ranches, high reliance on corporations as business organization.

- **Sheep Herder Rancher (4%):** Depend on sheep for primary ranching operations, large herds, large deeded acreage, highest use of hired labor, highly dependent on ranch income, highest dependence on Federal forage.

Clearly, permittees have very different attributes, motivations, and goals. An important question concerns whether ranchers seek to maximize profit or whether other factors as important or even primary in explaining why ranchers continue in a difficult environment. Many studies lead to a firm conclusion that most ranchers do not hold maximizing profit as their sole, or even primary, goal in ranching (Smith and Martin

1972; Harper and Eastman 1980; Bartlett, et al. 1989; Torell et al. 2001; Rowe et al. 2001). Smith and Martin (1972) used such terms as “farm fundamentalism” to describe social motivations for ranching when economic returns were consistently poor. Bartlett et al. (1989) found that an ethic of the land and the role ranching plays in family life were important to Colorado ranchers. Rowe et al. (2001) provided a confirmation that rural ways of life coupled with family concerns were more important to ranchers in two Colorado Counties than profit alone.

Gentner and Tanaka (2002) found that professional ranchers valued family tradition, ranching as a good way to raise a family, living closer to friends and families, desire to pass the ranch on to children, and return on investment more than did hobby ranchers (See Table 3.17.5). Maintaining a

Table 3.17.5. Goals and objectives for ranching.¹

Rancher type	Family Tradition	Raise Family	Close to Friends	Pass to Children	Profit	Lack Skills	Environmental Purposes
Hobbyists							
Small Hobbyist	3.7	3.7	2.8	1.5	2.6	1.5	2.4
Retired Hobbyist	4.6	4.6	3.9	4.3	3.7	2.3	2.2
Working Hobbyist	4.5	4.6	3.5	4.2	3.6	1.8	2.3
Trophy Rancher	3.4	3.3	2.1	4.0	2.6	1.3	2.1
Professionals							
Diversified Family Rancher	4.1	4.2	2.9	2.3	3.7	2.0	1.9
Dependent Family Rancher	4.9	4.9	4.4	4.8	4.2	3.3	2.3
Corporate Rancher	4.5	4.5	3.5	4.1	3.6	2.3	2.0
Sheep Rancher	4.4	4.5	3.2	3.8	3.5	2.3	2.0
<i>P</i> - value	ns	0.0001	0.001	ns	0.0001	0.001	0.001

¹ Average on a scale of 1 = low to 5 = high. Source: (Gentner and Tanaka 2002).

family tradition and passing the ranch on to children were the most highly ranked goals for both categories of ranchers, resulting in no significant statistical difference between categories. Other goals did show significant differences. Professional ranchers strongly believed that ranches were a good place to raise a family, to stay near friends and family, as well as to pursue profit. Hobby ranchers did not hold these goals as strongly.

Significant family labor is required for some of the ranchers in this sample. Table 3.17.6 shows that most of the professional ranchers require from 20 to 27 months of family labor to run the ranch. This is mixed with very different levels of hired labor. Diversified and dependent professional ranchers use little hired labor in relation to use by corporate and trophy ranchers. The nature of sheep ranching requires significant hired labor in addition to the two full-time family laborers required to run a modern operation.

Table 3.17.6. Months of labor required to run the ranch (Gentner and Tanaka 2000).

Rancher type	Family laborer (months)	Hired laborer (months)
Sheep Rancher	27.5	45.3
Corporate Rancher	26.7	32.0
Dependent Family Rancher	24.6	3.6
Diversified Family Rancher	20.7	4.3
Retired Hobbyist	17.2	4.8
Working Hobbyist	14.9	2.3
Trophy Rancher	13.5	28.2
Small Hobbyist	10.5	4.5

Source: (Gentner and Tanaka 2002).

The social environment of ranching therefore has multiple dimensions. With the exception of the trophy hobbyists, the permittees in the Gentner and Tanaka survey had family tenure on their ranches of well over 20 years, with most having tenure of 30 years or more. Most of these permittees have ranched as Federal grazing permittees for decades and are familiar with the growing complexities and stress associated with being a public land grazer.

This willingness to accept low economic returns to meet other goals is also reflected in the economics of ranch real estate. Torell and Bailey (2000) estimated that only 27% of the value of New Mexico ranches is related to their livestock productivity. Thus, recent buyers of New Mexico ranches are motivated not by their value to produce livestock, but rather by a host of other values commonly associated with ranches. Torell and Bailey found wildlife amenities, proximity to a population center, and type of terrain were more important determinants of ranch sale prices than cattle operations. These new ranchers, along with new residents, bring different demands for space as an amenity (Huntsinger et al. 1997; Bastian et al. 2002; Inman et al. 2002). Even in this environment, many ranches continue to operate with the knowledge that the ranch can be sold at a significant premium to people with other interests in the land.

Communities

As mentioned previously, populations in the rural West have grown dramatically over the last decade. Population growth complicates any assessments of how changes in public land policy might affect ranches and the communities in which they operate. To understand the broader implications range policy changes may have for a community, a discussion of four general social forces

affecting communities is necessary. These four community social organization processes occur within and are affected by the social interactions in rural communities, their social and economic histories, and other factors.

Differentiation is the process of expanding the range of values and interests represented in a community. In the West, this is presently influenced by population growth and the decreasing reliance on traditional resource industries for employment. As population increases, social diversity increases and brings about differentiation in the needs, demands, and expectations people have of their community. Economic and employment changes can result in greater differentiation of occupational characteristics in the community, along with shifts between interest groups that enter into community interaction. This process often produces short-run social conflict as those seeking some ideal about their rural community clash with those who lives are not compatible with that ideal (Walker 2003). In addition, conflict over how to view “nature,” ranching, and landscapes in general seems to be inherent in the process of differentiation (Chilson 1997; Eisenhauer et al. 2000; Hull et al. 2001; Sheridan 2001; Paolisso 2002; Bieling and Plieninger 2003).

Extra-local linkage is a process through which resources and demands flow back and forth between communities and the larger society. This is best viewed as the extent to which local institutions, economies, and decision makers are influenced by people and social processes outside of the community, and the extent to which they might call upon those resources for support. Issues like public land management are highly visible and increase local linkages to extra-local social units. In this sense, public land controversy engenders a higher degree of extra-local linkages to outside groups. Population growth stemming from the conscious

choice to move to a public land community implies that people will bring their extra-local social networks with them, complete with values, attitudes, and beliefs. Further, the very nature of the Federal public land management process engenders significant extra-local involvement in decisions affecting local communities. The opportunities of many different groups, local and extra-local, to become directly involved in decisions affecting even small changes in management is much greater in this arena than are opportunities to affect private land decisions.

Stratification refers to the differential distribution of access to resources for meeting needs among populations. This is one of the most important processes—perhaps the most important process. It has wide-ranging implications for local populations. A primary social process affected by public land policies is the distribution of access to local economic opportunity. As traditional resource industries (timber, mining, ranching) are supplanted by the new resource industries (commodification of nature and its amenities), the economic opportunity structure, family status, and arrangements of social power in communities change as well. For example, ranching communities have historically been stratified by access to and control of property (Stinchcombe 1961). Ranchers continue to hold property in greater proportion to most local people, but many landowners now have significant access to land, wealth, and political power, both local and extra-local. In addition, this change is accompanied by a shift in the nature of the local economy. This shift puts significant pressure on ranchers and other residents: “The irony of the New West is that newcomers attracted to diverse imaginaries of rural lifestyles often make real rural livelihoods unavailable” (Walker 2003; see also Jobes 1987). Thus, significant dimensions of stratification now include

access to employment that allows families to live well and remain in the community.

Integration is the process by which relations among people in a community are coordinated and interconnected. This is the most complex and rich aspect of social organization, for it focuses on the process of organizing and focusing the activities of various elements of a community. Cohesion, attachment, density of acquaintanceship, social capital, and sense of place are all examples of social relations either derived from or dependent on social integration. Increased differentiation and extra-local linkages present specific challenges for integration, but also carry the potential for new forms of integration to emerge. The degree of integration in a community before the implementation of a policy determines, to a great degree, the ability of that community to take any actions necessary to manage change (Harp et al. 2001). Sufficient community integration is a necessary condition for communities to take action to mitigate social and economic effects of policy decisions (Wilkinson 1970, 1991). Low levels of integration are often associated with community discussions and decisions being dominated by small groups whose interests may not be attributable to the community as a whole. This is historically the situation in rural communities dominated by one industry, such as timber. However, the question is less one of dominance than it is one of the generalized legitimacy of the decisions being made. Hence, a small group may make a decision and the community as a whole generally agrees with both the process and the outcome of the decision. Thus, social integration plays a part in the legitimization of the decisions.

These organization processes overlap and interact, sometimes working in concert and other times not. Examples of their application to ranching communities are presented

in Table 3.17.7. Few empirical studies of how these processes play out in ranching communities are available. These processes and their relations to local economic processes in ranching are reviewed in Harp et al. (1998).

One related example is a study that examined the relations between social network ties and community cohesion, integration, and attachment in Owyhee County, Idaho (Harp et al. 2001). Seven communities were examined and survey methods were used to estimate the importance of social networks and to construct scales of community cohesion, community integration, and community attachment. Cohesion is high when social relations between people produce a sense of belonging to a group with shared beliefs and common behavioral assumptions, and a feeling of recognition as members of that group (Buckner 1988; Jensen 1998; McClure and Broughton 2000; Rajulton, et al. 2003). In essence, people come to see themselves as part of a larger social group that shares their own beliefs and actions. Integration is high when people do not feel isolated or anonymous in their community, and can participate actively in community life (Brown et al. 1989). Activities that are evidence of integration include visiting, and borrowing and lending between neighbors. When integration is high, people are more willing to trust their neighbors in both a social and material fashion (Brown 1993; Cowell and Green 1994). Attachment is high when people feel a strong sense of social connection to their community that makes them reluctant to leave or withdraw from social relations (Kasarda and Janowitz 1974; Goudy 1990; Brown 1993; Liu et al. 1998).

Social networks are patterns of repeated relations between social actors. They have a number of conceptually useful attributes, such as the number or strength of social ties

Table 3.17.7. Example of social organization process in ranching communities.

Social Organization Process			
Differentiation	Extra-Local Ties	Stratification	Integration
Dilutes local economic and social power of ranchers and their values	Globalization of industry reduces value of local economic ties	Stratification becomes an actionable value, e.g. ranchers criticism of new economy	Highly capable of incorporating community-oriented values into actions
Differentiation goes up, web of affiliation for ranchers can narrow or expand—often has community focus	Extra-local ties can increase value of local social networks	Equitable stratification reduces utility of status or creates social leveling	High integration facilitates community-oriented actions by ranchers
Reduces value of group membership; can extend to rancher unwillingness to see community as locus of support	Extra-local ties include increased conflict between ranchers and nonlocal groups	New dimensions of stratification reduce community as source of mutual support for ranching	Degree of integration affects extent and density of local social networks

to family and friends. The standard measure of “density of acquaintanceship” was applied. This is the most empirically important single network measure used in community research. It is measured simply by the proportion of close friends a respondent has living in his or her community. The higher the proportion, the more “dense” the local social network for an individual. In other words, the more friends you have where you live, the more likely you will be to see your community in a positive light and choose to interact with people there (Goudy 1990; Stinner et al 1990; O’Brien and Hassinger 1992; Beggs et al. 1996; Sharp 2001). In addition, respondents were asked whether they had a friend in the ranching business or one who ran a local business. This tied these economic activities to local social networks.

Having more of your friends living in the

same community as you, having ranchers and local business owners in your social network, being White, and which community you live in all increased respondents’ beliefs that theirs was a cohesive and highly integrated community. The significant indicators of attachment attitudes were the size of community the respondent resided in until age 18, respondent’s community, density of acquaintanceship, close friends having a business, and how far they drove to work. Hence, the positive social role of ranching was to raise the attitude that the community is a cohesive and integrated place, though not for non-Whites. This is not surprising in the West, given that Latino and Hispanic people are generally stratified into a lower visibility rank with little social or political power. Moreover, this would not be a surprising result even if ethnic groups were themselves

ranchers (Raish and McSweeney 2001). Finally, ranching had little effect on the degree to which respondents felt attached to their communities.

There is little doubt that public land ranching and its relation to the land is a social process (Huntsinger and Hopkinson 1996). The relation between social, economic, and ecological issues has been recognized for many years (Adams 1916; Simpson 1975; Abruzzi 1995; Raymond 2002). In many small communities, ranchers play an important social role as decision makers, volunteers, elected officials, and as socially relevant commodity interests. As populations grow, ranches change hands, and this generation of ranchers fades, this role will change. However, the need to recognize community social organization in making management decisions remains important (Curtin 2002).

National Attitudes

National attitudes toward ranching in general tap into social and political institutions that may affect public land grazing management. Three studies of attitudes toward grazing are pertinent, although only one is national.

Brunson and Steel (1996) used a national sample and two Oregon samples to examine how attitudes toward Federal rangeland management vary across the country. First, they split the national sample into eastern and western groups. They found slight differences in regional variations of attitudes and concluded that "...differences in support were slight, and never did one region support a policy that the other rejected."

Second, they used the two samples from Oregon to create comparisons among the Nation, western Oregon, and eastern Oregon. This allowed for comparisons between urbanized areas in general and rural regions

where rangelands are more prominent in the landscape and in the local economy. They concluded, "In all cases, residents of the grazing-dependent region of eastern Oregon were more supportive than the national or statewide samples of statements advocating traditional or utilitarian uses, and less supportive of statements urging greater protection of non-forage resources."

Finally, Brunson and Steel concluded that attitudes toward range management are frequently simplistic, consisting of dichotomies of good and bad. Thus, entire sets of attitudes were reduced to a "...poorly developed cognitive structure rooted in simplistic, value-based ideas about the goodness or badness of range practices and conditions." Part of this finding is related to a lack of specific knowledge of rangelands on the part of many people. This produces a disconnection between their attitudes and what they actually know about the issue (Lybecker et al. 2002).

Brunson and Gilbert (2003) studied visitor attitudes toward grazing in the Grand Staircase-Escalante National Monument, Utah. They looked at the relations between visitors' personal characteristics and their reports of how livestock grazing and multiple-use management affect recreation experiences. Hunters saw more effects from grazing but were not put off by them, whereas hikers saw fewer effects but were more likely to say that their experience was degraded by seeing evidence of livestock grazing. Designation of the area as a monument was seen to have little direct effect on attitudes.

Mitchell et al. (1996) found that almost equal proportions of visitors to a Colorado national forest believed that the presence of grazing enhanced their visit (34%) or detracted from it (33%). Local residents, rural residents, and campers at developed

campsites were more tolerant of grazing than those using more remote areas.

Finally, many organized public interest groups apply pressure to remove grazing from public land. This debate is certainly polarized (Knight et al. 2002; Wuerthner and Matteson 2002). Nonetheless, this has an effect on local areas in that national, regional, and local groups seeking to reduce or end grazing on BLM and U.S. Forest Service lands are involved routinely in political and legal processes down to the allotment level. The effect of these activities on ranching communities is difficult to quantify, although they may be anecdotally cited by local ranchers as a source of personal and family stress.

Many advocates for the end of public land grazing argue that ranchers often have social and political clout greatly out of proportion to their numbers (Fennemore and Nelson 2001). There is a general assumption that agencies, particularly the BLM, are “captured agents” of the livestock industry and have been since their inception (Cawley 1993; Klyza 1994; Wilkinson 1994). This approach assumes that the agencies were set up to protect livestock industries and that they continue to do so. Though this attitude still prevails, it has recently been challenged with evidence from the creation of the BLM (Welsh 2002).

All of these diverse attitudes compel various national, regional, and local groups to become involved with public land grazing and the ranching industry in many ways. In general, they have significantly raised the level of scrutiny characterizing grazing decisions. It is fair to generalize a conclusion that these attitudes and activities have an effect on ranchers, communities, and larger social institutions, but that this effect is difficult to discern or estimate.

Case Study of a Small Community: Leadore, Idaho

Many permittees and a few others comment frequently about the role ranching and public land grazing play in the economic and social stability of their communities. This short case study of Leadore, Idaho, is intended to illustrate how the social process discussed in this section can be applied to a very ranch-dependent community in a concrete fashion.

Leadore, Idaho, is situated in the southern reaches of the Lemhi River valley in Lemhi County. The Lemhi Mountains sit to the west of Leadore and the Continental Divide and Montana border it to the east. It is a fairly isolated area about 45 miles south of the county seat in Salmon and about 120 miles north of Idaho Falls. The terrain consists generally of river bottoms, sage steppe and forested slopes at higher elevations. The Bureau of Land Management and U.S. Forest Service manage the majority of the land in the area. Leadore’s mining heritage is long gone, and the geography remains dominated by cattle ranching.

Idaho’s population growth of recent years has not affected Leadore to the extent it has the remainder of Lemhi County. While Lemhi County as a whole grew 13 percent from 1990 to 2000, Leadore’s growth was slower, at 7 percent. The Patterson area of the county is even more remote than Leadore, yet its population grew even faster, at 27 percent. Growth, even at low levels, will increase social differentiation within the community. People moving to Leadore include retirees and the wealthy. These groups bring potentially differing perspectives and ideas to the community.

The economic and social influence of ranching in this area is significant. It is the primary axis defining stratification in the

community. According to the 1997 Census of Agriculture, 36 of the 40 farms (90%) in the Leadore postal code area sold cattle and calves; for 22 of the farms (55%), these sales exceeded \$50,000. Few agricultural products other than cattle and sheep are sold from this area, with the possible exception of buying or selling hay. Total agricultural sales were greater than \$100,000 for 30 percent of the farms.

In 1991, ranching was estimated to constitute 85 percent of the direct and induced earnings in the Tendoy-Leadore area, and 77 percent of direct and indirect employment (Robison 1997; Harp et al. 2000). More than 70 percent of the jobs held in the area by residents were related directly or indirectly to agriculture. Retail, restaurants, and some small manufacturing augment the Federal, state and local government employment in the area.

Interviews reported in that research confirmed that almost all commercial agricultural activity derived from cattle ranching. Direct interviews with producers and others estimated the production cow herd to be just more than 14,500 head in the Leadore Census subdivision in 1992 (Harp et al. 2000). At that time, dependence on

Federal forage was estimated at 28 percent. This was split almost evenly between BLM and U.S. Forest Service permits. Since that time, a considerable number of ranches have been consolidated. Recent interviews indicate that one person has purchased all or part of six ranches in the last decade and consolidated them into one operation. Another consolidation in the area combined four ranches. Many of the previous owners and their families are no longer in the community. This is changing the nature of economic stratification in the community.

This focus on ranching has an effect on extra-local ties. Many of the challenges to BLM and Forest Service grazing come from conservation and environmental groups well outside of the local area. In addition, ranchers have social and economic ties that take them well outside of the community in the process of doing business.

Community integration processes such as cohesion and community actions are identifiable as well. One of the dominant social features of Leadore is its social commitment to support a K-12 school district, Southern Lemhi District 292. This is a small, rural district with a predominantly agricultural tax base. Table 3.17.8 displays

Table 3.17.8. Recent population change in census subdivisions, Lemhi County, Idaho.

Census Subdivision	Population		
	1990	2000	% Change
Forney	67	53	-20.9%
Leadore	594	638	7.4%
Patterson	387	493	27.4%
Salmon	5,851	6,622	13.2%
Lemhi County Total	6,899	7,806	13.1%

Source: U.S. Census 2003

enrollment, graduates, and local tax support for the South Lemhi and Salmon Districts of Lemhi County, and for the State of Idaho as a whole. School enrollments fluctuated from a low of 115 to a high of 171. Similarly, the number of graduates ranged from 7 to 23 over the period. This district has two elementary schools and a high school, with a total of 16 teachers and 1 administrator. In addition, it is not a wealthy district. Table 3.17.9 shows that local taxes per average daily attendance (ADA) are well below the state average for Idaho. Although low in relation to the state, local taxes are roughly equivalent to the other major district in the county in Salmon. Leadore's enrollment is very low in relation to its tax base, with \$421,148 of base per ADA, whereas Salmon (a much larger community) has \$340,254 per ADA.

The seasons of ranching and those of the school are primary points of social organization in this community. The

dominance of ranches, both economically and socially, fosters a common social view that the entire community's social future is tied to the fate of ranchers. For example, everyone feels exhausted during calving and its progress dominates discussion at school athletic events. Even for those who own no cattle, social discourse can often consist of talking about cattle. Grappling with the challenges of ranching becomes a social event that fosters a sense of integration and ultimately a sense of community. The social fate of the school district is also seen as being tied to ranching. This is not a fiscal issue. Someone will own the land and pay the taxes to the district. Rather, people in Leadore credit ranchers with a willingness to volunteer for many roles in the schools, including service on the school board. People find the resources to support sports teams and other activities. The reality of social cohesion is apparent in the willingness of the community to act to maintain its social

Table 3.17.9. Attendance, graduates, and local taxes per ADA, 1995 to 2002.

	School Year						
	2001–2002	2000–2001	1999–2000	1998–1999	1997–1998	1996–1997	1995–1996
Average Daily Attendance	115	146	147	166	171	156	138
High School Graduates	7	23	9	15	6	8	8
Adjusted Local Taxes Per ADA¹							
South Lemhi District	\$ 1,233	\$ 1,119	\$ 1,100	\$ 1,001	\$ 899	\$ 901	\$ 1,020
Salmon District	\$ 1,101	\$ 1,100	\$ 1,118	\$ 997	\$ 947	\$ 811	\$ 810
State of Idaho	\$ 1,644	\$ 1,627	\$ 1,561	\$ 1,482	\$ 1,416	\$ 1,250	\$ 1,256

¹ 1996 = 100.

Source: Idaho Department of Education.

relations regarding the school and the ranching industry.

Both ranchers and other community members firmly believe that the combination of ranch families, community cohesion, and a social commitment to Leadore as a ranch community provide the social organization necessary to maintain the school district. The view held by many permittees is that ranching is a source, if not the source, of social and economic stability for their

communities. The ability of ranches to keep paying the taxes and contributing time and other resources to keep a small school district functioning reinforces this view. They also firmly believe that the economic loss of the ranches might keep the local tax base intact but that the school itself will not survive. Put another way, the social stability of the community depends on who is operating the ranch rather than on who owns the ranch.

Chapter 4

Environmental Consequences



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4.0 Environmental Consequences

Chapter 4 describes the effects on the human environment of the Proposed Action and alternatives described in Chapter 2. The human environment is interpreted comprehensively to include the natural and physical environment and the relationship of people within that environment. Environmental consequences are usually described as being direct or indirect. Direct effects are caused by the action and occur at the same time and place. Indirect effects are caused by the action, and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may be induced changes. Effects include ecological, aesthetic, historic, cultural, economic, social, or health. Effects include both beneficial and adverse effects.

Many of the proposed changes are largely administrative and would have little direct or indirect effect on the environment. They are intended to improve agency administrative efficiency and effectiveness, improve consistency across the BLM or meet other non-environmental objectives. This should result in management decisions that have greater support and sustainability. They may, however, result in indirect effects on the physical, biological, social, or economic aspects of the environment.

Because these are regulatory proposals, the BLM does not have site-specific information relating to their application on the ground. As a result, the impact analyses are necessarily general and programmatic. The BLM has an obligation to consider all relevant impacts related to proposals made subsequent to this rulemaking. If a key element as listed in Chapter 2 is not addressed, then it has been determined that it has no direct or indirect effect.

Changes in Chapter 4 based on comments on the draft EIS or BLM's further review and analysis include the following:

- Clarifications or additions to avoid misunderstanding of intent or meaning or to provide greater detail or further explanation:
 - Section 4.0, Environmental Consequences- text added to highlight the BLM's obligation to consider relevant impacts related to proposals made subsequent to this rulemaking.
 - Section 4.1, Assumptions- time periods which equate with short-term and long-term more adequately delineated. Short-term changed from "5 years" to "5 years or less"; Long-term changed from "20 years" to "5 to 20 years."
 - Section 4.2.1, Grazing Administration- Language added to provide greater detail and further explanation of the current situation with regard to the timeframe for taking appropriate action when a failed rangeland health determination is made; and language added to explain that no improvement in cost recovery is indicated if the existing service charges were continued.
 - Section 4.2.2, Vegetation- greater detail was provided concerning the effect of current regulations on vegetative resources.
 - Section 4.2.12, Paleontological and Cultural Resources- The term "Cultural" in the title of the section was replaced with the term "Heritage"

- because comments found the term confusing given some discussions in the EIS of cultural lifeways. Statements were added to clarify the overall effects, and the relationship of the no-action alternative to Tribal consultation.
- Section 4.3.1, Grazing Administration- Additional information pertaining to quantification of the scope of the affect of some of the changes was added. Also additional explanation of service changes was inserted.
 - Section 4.3.12, Paleontological and Cultural Resources- replaced the term “Cultural” in the title with “Heritage” in order to clarify the resources analyzed. This was done because of comments expressing confusion due to discussions in the EIS concerning cultural lifeways. Also, the final paragraph in this section was entirely replaced with text which provides greater detail and further explanation.
 - Section 4.3.14, Social Conditions- The text under the sub-heading *Social, Economic, and Cultural Considerations* was highly modified in order to provide the additional detail requested by comments. This additional detail examines the affect of the rulemaking on certain groups in particular. This additional detail resulted in new analysis and modification detailed below.
 - 4.4.12, Paleontological and Cultural Resources- replaced the term “Cultural” in the title with “Heritage” in order to clarify the resources analyzed. This was done because of comments expressing confusion due to discussions in the EIS concerning cultural lifeways. Also, a paragraph was added to this section which provides greater detail and further explanation.
- The term “brush” was removed in several places within the chapter where it had been used to describe vegetation which had invaded a rangeland site. Comments felt that BLM was demonstrating a bias against woody plants because they are not generally the primary forage of livestock. BLM has no such bias, but we removed the term and utilized “invasive species” as a general term that would not single out any particular plant life-form.
- Changes in text to correct errors or misleading statements made in draft EIS:
 - Section 4.2.1, Grazing Administration- The number of rangeland improvements being developed on an annual basis has decreased by 38% since 1995, not 25% as was originally stated in the draft EIS. The number has been changed to rectify this error.
 - Section 4.2.2, Vegetation- The statement “Under this alternative, substantial rancher participation in land treatment projects would not be expected” was removed. The proposed regulation makes no changes pertaining to incentives for involvement in land treatment projects. Both the current regulations and the proposed regulations contain the same language concerning land treatments: “The United States shall have title to nonstructural range improvements such as seeding,

- spraying, and chaining.” 43
CFR 4120.3-2 (c). Therefore, the deleted statement was removed because it may have fostered the false impression that the proposed regulations may be different than the current regulations in some manner calculated to stimulate substantial rancher participation in land treatment projects.
- Section 4.2.10, Recreation- Text modified to remove the misleading statement that highly developed recreational activities may not be affected by rangeland health. The statement was modified to reflect the correct assertion that highly developed recreational activities would experience no or minimal effects under existing management.
 - Section 4.3.1, Grazing Administration- Text relating to the basis for rangeland health determinations was added and modified to clarify that only determinations that existing grazing management practices or levels of grazing use are significant factors in failing to achieve standards or conform with guidelines are required to be based upon assessment of standards and monitoring data. The original language made it seem as though all determinations would be required to be based upon both assessment and monitoring.
 - Section 4.3.2, Vegetation- Removed the statement “for all determinations” which erroneously characterized which determinations would require monitoring data with regard to the basis for rangeland health determinations.
 - Section 4.3.2.1, Riparian and Wetland Vegetation- The text was modified to clarify when both assessment and monitoring data are required.
 - Section 4.3.5, Water Resources- The text was modified to clarify when both assessment and monitoring data are required.
 - Section 4.3.6, Air Quality- The text was modified to clarify when both assessment and monitoring data are required.
 - Section 4.3.7, Wildlife- the possible adverse effects were quantified through the addition of the the information that adverse effects would be short-term. Also, the reference to plants was removed to avoid confusion, as this section does not directly evaluate vegetation; it only evaluates the effects of the proposed action on vegetation as reflected by effects to wildlife.
 - Section 4.3.10, Recreation- modified the text to correct the misleading statement that highly developed recreational activities are not affected by rangeland condition and reflect the proper statement that highly developed recreational activities are not affected by any changes to rangeland conditions expected under the rulemaking.
 - Section 4.3.13, Economic Conditions- The text “or to simply continue livestock grazing activities at existing levels” was removed. The removed text was misleading and incorrect; the expectation is that changes will be phased during years 1, 3, and 5. Regardless, livestock grazing

activities will not be allowed to continue at existing levels beyond 5 years. Additionally, this section incorrectly characterized the possible adverse effects of the rulemaking, specifically the implementation of changes in grazing use, on rangeland conditions as long-term. This section analyses economic conditions, not rangeland conditions. The sections which characterize rangeland conditions as affected by the implementation of changes in grazing use in the rulemaking determined that adverse effects would only occur in the short-term. Therefore, the text in this section was modified to accurately reflect the analysis of effects to rangeland conditions as short-term. Subsequent analysis based on this change is described below.

- Section 4.4.1, Grazing Administration- The text under the subheading *Basis for Rangeland Health Determinations* has been modified to correct the mischaracterization of for which determinations the authorized officer must use either assessments or monitoring.
- Section 4.4.2, Vegetation- The text under the subheading *Basis for Rangeland Health Determinations* has been modified to correct the mischaracterization of for which determinations the authorized officer must use either assessments or monitoring.
- Section 4.4.7, Wildlife- The text under the subheading *Basis for Rangeland Health Determinations* has been modified to correct the mischaracterization of for which

determinations the authorized officer must use either assessments or monitoring.

- Section 4.4.8, Special Status Species- The text under the subheading *Basis for Rangeland Health Determinations* has been modified to correct the mischaracterization of for which determinations the authorized officer must use either assessments or monitoring.
- Section 4.4.13, Economic Conditions- The text under the subheading *Basis for Rangeland Health Determinations* has been modified to correct the mischaracterization of for which determinations the authorized officer must use either assessments or monitoring.
- Clarifications or Additions or Deletions which reflect new analysis or information:
 - Section 4.3.4.1, Upland Soils- Text was modified to indicate the proposed action would have the net long term effects of maintaining or slowly improving the upland soil resource. This analysis updates the draft EIS assertion that both net short-and long term effect would be to maintain the present condition. Text was also added to reflect the new analysis that short-term adverse effects are possible where watershed cover is not adequate due to livestock management, and determination and implementation of management changes is extended due to the rulemaking.
 - Section 4.3.4.2, Riparian Soils- text was added to reflect the analysis that short- and long-term consequences

- would be similar to those of upland soils except for the possibility of accelerated improvements in response to improved management practices. Additionally, text was added to reflect the analysis that short-term adverse effects are possible if conducting both assessment and monitoring postponed determination and implementation of management changes on soils with poor vegetative cover due to current management.
- Section 4.3.8, Special Status Species- Text was modified to reflect updated analysis.
 - Section 4.3.10, Recreation- “short-term” added to denote quantification of the possible negative effects from delayed implementation.
 - Section 4.3.13, Economic Conditions- New analysis of the permittee’s economic viability, based on the correct quantification of the possible adverse affect of the rulemaking on rangeland conditions due to implementation of changes in grazing use, found possible short-term adverse effects. Therefore, the text reporting long-term effects was modified to reflect the short-term effects as determined by the new analysis.
 - Section 4.3.14, Social Conditions- comments requesting additional details concerning certain groups spurred a more detailed analysis which determined the following changes were appropriate. The effects of the rulemaking are not minimal for all groups and that text has been stricken. The rulemaking will have a minor beneficial effect upon
- permittees and that statement has been added.
- The provision *Cooperation with State, County, and Locally Established Grazing Boards* was modified to reflect new analysis. The title now reads *Cooperation with State, Tribal, County, and Local Government- Established Grazing Boards* and the content is reflective of the change as well.
 - The provision *Review of Biological Assessments and Evaluations* was removed to reflect the decision not to adopt the proposed changes it analyzed.
- Changes to Tables
 - Table 4.3.14.1, Social Effects of the Proposed Action. The direct impact on Permittees to the Social, Economic and Cultural Element was changed to minor beneficial due to new analysis after public comments.

4.1 Assumptions

The following general assumptions were made for purposes of analysis of direct and indirect effects of the changes to the regulations and alternatives. Many of these assumptions represent general trends and are not intended to be precise forecasts of the future.

- The time periods for analysis are
 - Short-term— 5 years or less
 - Long-term— 5 to 20 years
- BLM budgets will be flat over the 20-year analysis period.

- There will be no change or a slight decline in demand for forage for livestock over the analysis period.
- There will be continued population growth and pressure on public lands for multiple uses.
- Recreation use on public lands will continue to increase.
- Water demands will exceed supplies and there will be continued drawdowns.
- There will be periods of drought.
- The number of species listed under the Endangered Species act will continue to increase.
- Invasive species will continue to spread.
- Wildfire risk and frequency will increase.
- Public interest in archaeological sites and in heritage tourism will continue to increase.
- BLM will achieve “appropriate management level” in the wild horse and burro program by 2007.
- There will be no significant changes in the laws governing public lands.
- PM10 air quality problems will continue to increase in the West.
- There will be continued increases in energy–mineral development (regionally significant in some areas).

4.2 Alternative One: No Change in Regulations (No Action)

The direct and indirect effects on the human environment of the continuation of existing grazing regulations as outlined in Section 2.1 is presented in this section.

4.2.1 Grazing Administration

The present grazing regulations provide some opportunities for cooperative stewardship of public land resources. However, some of the administrative mechanisms for changing grazing management to achieve desired conditions on public rangelands are neither practical nor efficient and, as a result, do not encourage the development of partnerships. Some elements of the present regulations, such as the provisions on range improvement ownership and the 3-consecutive-year limit on nonuse, discourage or impede cooperative working relations with the permittees or lessees. Consideration of economic and social issues in the National Environmental Policy Act of 1969 (NEPA) document associated with changes in grazing use is not prescribed or consistently applied. There are also inconsistencies in other processes including cooperation with State, Tribal, county or local government- established grazing boards and data used to support rangeland health determinations. Also, the present regulations do not conform to the 10th Circuit Court decision regarding conservation use. *Public Lands Council v. Babbitt*, 929 F.Supp. 1436(D. Wyo. 1996), rev'd in part and aff'd in part, 167 F.3d 1287 (10th Cir. 1999), aff'd, 529 U.S. 728 (2000).

The BLM would continue to use an interdisciplinary team approach to identify and analyze the effects of proposed

actions and alternatives on the human environment. Critical elements of the human environment identified in NEPA would be addressed in all environmental assessments or environmental impact statements. If a critical element is not affected, a statement of no effect would be included in the NEPA document. Critical elements include air quality, areas of environmental concern, cultural resources, farm lands both prime and unique, floodplains, Native American religious concerns, threatened or endangered species, hazardous or solid wastes, drinking and groundwater quality, wetland or riparian zones, wild and scenic rivers, and wilderness. If there is no effect on an element not on the critical element list, such as social, economic, and cultural considerations, then the NEPA document would generally be silent on that particular issue.

Changes in grazing use, either a suspension or an increase of permitted use, would continue to be authorized within the existing regulations. 43 CFR §4110.3 et seq. (2003). The level of change would be established through a grazing decision or a documented agreement with the permittee or lessee. 43 CFR §4110.3-3(a). The timeframe for implementing a change in grazing use would be determined on a case-by-case basis, and the BLM would use the grazing decision or agreement to establish the timeline for the change.

Title to new, permanent rangeland improvements developed under Cooperative Range Improvement Agreements (CRIAs) would be maintained solely in the name of the United States. 43 CFR §4120.3-2 (b) (2003). Range improvements developed before 1995 that are jointly titled between permittees or lessees and the United States would continue to be jointly titled. The number of rangeland improvements being developed on an annual basis has

decreased by 38% since 1995, when regulations were changed to require that title to cooperative range improvements would be solely in the United States, rather than shared with a cooperator (see Table 3.4.3.1, DEIS). The decrease in the number of range improvements is attributable to a number of factors; including decreasing availability of public funds and shifting BLM work priorities. The 1995 change in the CRIA title provisions may also have been a factor in the decrease. It is projected that there would be approximately 1,200 new rangeland improvement projects developed each year over the next 5 years.

The present regulations do not contain language specifically requiring cooperation with State, Tribal, county, or local government-established grazing boards. However, the regulations do include a general requirement that the BLM cooperate with state, county, and Federal agencies in the administration of laws and regulations relating to livestock, livestock diseases, sanitation, and noxious weeds. Many BLM field offices would continue to cooperate and coordinate with local government-established grazing boards based on this general provision; however, the level of cooperation would be variable, depending on the individual field office.

Permittees or lessees could apply for, and the BLM could approve, temporary nonuse for as long as 3 consecutive years. After the 3-year period has elapsed, the permittee would be required to make full use of the grazing permit or lease. If the BLM determines that additional nonuse would benefit achieving resource objectives, then the authorized officer would issue a grazing decision or enter into an agreement with the permittee or lessee to suspend the permitted use in whole or part. However, this presents a possible deterrence from a permittee's or lessee's standpoint for requesting nonuse and

detracts from cooperative management. In addition, the grazing decision or agreement process would create additional workload on the grazing administration and a delayed timeframe for addressing needed changes to grazing management.

The assessment and evaluation of standards of rangeland health would continue in accordance with the present regulations. 43 CFR §4180 et seq. (2003). A determination of achievement (or non-achievement) and identification of significant causal factors for non-achievement would continue to be based on available inventory, monitoring, or assessment data and information. Determinations would continue to be made using assessment information where monitoring data are not available. The credibility of determinations made solely on the basis of assessment information would continue to be challenged through administrative or judicial processes on some allotments and watersheds. The BLM would continue to invest time responding to these administrative and legal challenges at the expense of other responsibilities.

The timeframe for taking appropriate action when existing grazing management is determined to be a significant factor in failing to achieve rangeland health standards and conform with guidelines is no later than the start of the next grazing year. 43 CFR §4180.2 (c). This timeframe can create severe limits on effective communication, cooperation, and consultation with Federal, State, and local governments; Tribes, permittees, and interested publics; for conducting Endangered Species Act (ESA) consultation; and developing appropriate alternatives for NEPA analysis. Because of this, decisions to change grazing use to achieve standards of rangeland health are often subject to appeals and litigation, which results in labor and dollars being diverted to a hearings process rather than

developing and implementing a workable plan in the first place. At the end of fiscal year 2002, about 5% of grazing decisions (or about 450) had been appealed. Under this restricted timeframe, some grazing decisions have produced management actions that are impractical or difficult to implement and have damaged working relationships with permittees and lessees. If a common allotment with several permittees or lessees fails to meet a standard, and numerous public land users wish to participate in the formulation of management actions, the timeframe for reaching consensus may be lengthy. In these instances it is very difficult to develop and implement appropriate action before the next grazing year. These challenges create significant costs to the BLM, causing diversion of resources from other high-priority tasks.

In accordance with *Public Lands Council v. Babbitt*, conservation use would not be authorized. 167 F.3d 1287. Language in the existing rule is inconsistent with this ruling.

Grazing preference would continue to refer to the superior or priority position against others for the purpose of receiving a grazing permit or lease and would not include the total number of animal unit months (AUMs) on public land apportioned and attached to the base property. Permitted use would remain defined as the forage (expressed as AUMs) allocated under the guidance of a land use plan, with active use continuing to be the present authorized use. These definitions have and continue to cause confusion and inconsistent use of terminology.

The interested publics would be required to inform the authorized officer in writing that they wish to be involved in the decision-making process for management of livestock grazing on an allotment. When an interested public has completed the notification process, the BLM would include that entity on the

mailing list of interested publics. This inclusion would be for an indefinite period of time and the entity would be maintained on the mailing list and provided with documents and invitations to participate until he or she requested that his or her name be removed. This could result in additional administrative costs for maintaining the mailing list and for sending out mailings, regardless of the involvement by the interested publics in the consultation process.

The BLM would notify all interested publics on the mailing list of any proposed actions that require consultation, cooperation, and coordination. The interested public may decline to be involved in developing a plan for an action or activity requiring a decision. After a decision is issued, the party still has standing to appeal the decision, even though they declined to be involved in the development of the proposed action. The lack of involvement early in the process would increase the administrative costs of providing materials when it is not desired, and of responding to appeals by those who decline to be involved in development processes.

The BLM would continue to consult, cooperate, and coordinate or seek review from the interested publics on actions that relate to day-to-day business activities such as designating and adjusting allotment boundaries; increasing active use; implementing reductions in permitted active use; emergency closures or modifications to grazing use; reissuing grazing permits or leases; modifying permits or leases; and issuing temporary, nonrenewable grazing permits or leases. This requirement could affect the BLM's ability to make timely decisions, such as reduction of use or emergency closure decisions for protection of resources.

The BLM would continue to consult, cooperate, and coordinate or seek review from the interested publics on actions that

relate to activities that are not within the day-to-day operations of the BLM. These actions would include apportioning additional forage, developing or modifying grazing activity plans, planning the range development or improvement program, and reviewing grazing evaluation reports.

To the extent allowed by the law of the State in which public land is located, stock water rights acquired for the purpose of livestock watering on public land would be acquired and maintained in the name of the United States. When the United States acquires the water right under these circumstances in an allotment used by a number of permittees, or in an allotment with a new permittee resulting from a transfer of preference, the BLM would manage the water right on behalf of the current and future permittee or permittees rather than have the water right controlled by a third party.

The present definition of "satisfactory performance" would remain in the negative form, referring to "what is not satisfactory performance" rather than "what is satisfactory performance." Retaining the negative statement form would have a minimal effect on grazing administration.

Changes in permitted use could be authorized by the BLM as long as the changes are maintained within the terms and conditions of the permit. The regulations contain no text regarding what is meant for "within the terms and conditions of the permit." Therefore, the approval of the applications would be subject to definition by the authorized officer. This would create the potential for inconsistent application within the grazing administration program.

The present regulation provides that the BLM may calculate service charges reflecting processing costs, and may adjust the charges as costs change. The BLM presently assesses a \$10 service charge for crossing permits, transfers of preference, and replacement or

supplemental billings that are not initiated by the authorized officer. The BLM would not recover processing costs based on the existing service charges. It is projected that the service charge would remain indefinitely at \$10 under the No Action Alternative. Available data indicate no improvement in cost recovery if the existing service charges were continued (Table 4.2.13.1).

All three sets of prohibited acts would be maintained within the grazing regulations. The first and second set of prohibited acts would be utilized by the BLM in the administration of grazing allotments. The third set, regarding prohibited acts related to violations of Federal or State laws or regulations, would also be maintained, but as judged by the historical trend, this set would infrequently be used for administration of grazing permits.

The appeal process would continue as outlined within the present regulations. A proposed grazing decision would be issued, and in the absence of a protest or comments, the proposed grazing decision would become the final grazing decision. If an appeal is filed on a decision to modify or renew a grazing permit or lease, and a stay is requested and granted, then the grazing activity would continue at the previous year's level of authorized grazing use pending resolution of the appeal. If the permittee or lessee is an applicant who did not have authorized use the previous year, including a grazing preference transferee, then the grazing activity would be authorized according to the final decision.

If a stay is not requested, or is requested and not granted, then the final decision would be implemented pending resolution of the appeal.

In a 1998 decision, the Interior Board of Land Appeals (IBLA) ruled that the BLM was to treat biological assessments as decisions for the purposes of protest

and appeal. This requirement to treat all biological assessments related to grazing actions as grazing decisions would lengthen the consultation process under the ESA and would delay making implementation of grazing decisions, including changes in grazing management practices which may be required to achieve rangeland health standards.

4.2.2 Vegetation

The vegetation communities on the public lands would continue to change over the next 20 years. Wildfire, prescribed burning, and precipitation patterns would continue to be major factors influencing vegetation community composition. Vegetation cover would be expected to slowly increase.

Vegetation communities that are dominated by invasive species are not expected to improve except where the BLM has land treatment or weed control programs.

The BLM would continue to evaluate the conditions of the public lands with respect to the fundamentals of rangeland health and the standards and guidelines for grazing administration. 43 CFR §4180 et seq. (2003). Appropriate action would be taken as soon as practicable, but not later than the start of the next grazing season, where the BLM determines that existing grazing management practices or levels of grazing use are significant factors in failing to achieve the standards and conform with the guidelines. 43 CFR §4180.2 (c). The short timeframe for developing and implementing appropriate action has resulted in, and would continue to result in, analysis and deliberation that is occasionally insufficient, leading to expedient rather than effective decisions (see section 4.2.1, FEIS). This could be evident in situations where adequate time was not provided to formulate a comprehensive plan for addressing the vegetative concerns.

The BLM would continue to make determinations that existing grazing management practices or levels of grazing use are significant factors in failing to achieve the standards and conform with the guidelines without any regulatory requirements as to the type of data which may be utilized as the basis for such determinations. Consequently, subsequent “appropriate” actions may be based upon insufficient data, or data which only reflects conditions at a single point in time. Therefore, “appropriate” actions may not be the actions which will best improve the condition and health of the vegetation.

4.2.2.1 Riparian and Wetland Vegetation

Present trends in riparian condition and restoration are discussed in Section 3.5.2 of this FEIS. Although the apparent trend in riparian condition at the national level is positive, long-term trends are not yet clear, as judged by data from 1998 to 2001. Recent success in applying grazing management to achieve riparian improvement objectives has been documented and almost always involves cooperation with the livestock operator. Under present regulations, overall riparian conditions would remain static or improve from present conditions in most locations over the long term. Some regions would show noticeable improvements in riparian conditions, while other regions would show little change. Assuming the trend in riparian conditions observed from 1998 to 2001 is representative, improvement of riparian areas classified as “properly functioning” would continue to occur at a rate of 1.5% annually. If improvements in “functioning at risk- trend upward” were included, the rate of improvement would be 3.5% per year.

Improvements in riparian and aquatic habitat would result from the continuing implementation of rangeland health standards and grazing guidelines. Where changes in

management are necessary, they are expected to include combinations of segregation of riparian pastures from uplands, changes to the season of livestock use, changes in the duration (or amount) of use, changes in the overall amounts of use in riparian pastures, and livestock exclusion at some sites.

The present regulations establish a framework within which individual management plans for riparian areas are developed through close coordination with permittees or lessees and interested publics. Frequently, time and energy are diverted into routine administration issues rather than addressing long-term management direction.

Management changes prescribed for riparian restoration most often rely on changes in the timing, duration, and season of use. Present regulations allow flexibility in the rate of implementation of new management strategies.

The 3-consecutive-year limit for nonuse would continue to limit cooperative options with the operator that benefit riparian and aquatic resources. The BLM could continue to address longer periods of rest, by decision or agreement, but temporary nonuse beyond 3 years would not be available.

The present regulations offer the ability to make a determination that existing livestock grazing management practices or levels of grazing use are significant factors in failing to achieve standards of rangeland health or conform to guidelines without utilizing assessment information or monitoring data. 43 CFR §4180.2 (c) (2003). While this feature allows flexibility to rank the importance of monitoring expenditures, it does not set a minimum standard for decision making. The absence of the monitoring data requirement can lead to quicker decisions. However, the risk is that the quality of decisions may be

affected, and inappropriate or unnecessary management may be applied.

Riparian vegetation would benefit from quick decisions and management responses where the strategies applied are effective. However, present regulations don't always provide a timeframe that allows for adequate coordination, consultation, and cooperation to fully analyze and develop multiple management alternatives, as well as complete required administrative processes.

4.2.3 Fire and Fuels

Overall, the present grazing regulations have a minimal affect on the ability to reach a more historic fire regime.

The existing grazing regulations provide the necessary tools to allow the resting of pastures from livestock use so that vegetation manipulation treatments can be conducted on the public lands. 43 CFR §§4110.3-2 (a), 4130.3-2 (f). Provisions are available to negotiate with affected permittees or lessees and to provide the necessary rest following treatment to allow rehabilitation objectives to be met. Id. (see also Emergency Fire Rehabilitation, H-1742-1).

The limiting factors for conducting treatments would be tied more closely to funding levels, the ability of the permittee or lessee to be able to withstand the resting of a pasture or allotment from livestock grazing, and legal challenges to vegetation manipulation decisions.

Interested public participation could lead to delays in implementation of treatments.

4.2.4 Soils

4.2.4.1 Upland Soils

Short-term environmental consequences of present regulations are minimal except on a local scale. Natural disturbance regimes such as wildfire or high-intensity rainfall potentially adversely affect local upland

watershed conditions by increasing erosion, sedimentation, and runoff. Restoration projects such as prescribed burning and seeding potentially benefit local conditions by improving watershed cover. Climatic events, such as drought, have greater short-term effects on upland watershed conditions than present management in the analysis area.

Long-term environmental consequences of present management are maintenance or a slow improvement of upland soil and watershed conditions due to implementation of rangeland health standards and guidelines and restoration efforts. These beneficial effects derive from improved vegetation and plant litter that provides watershed cover and decreases soil compaction. This results in reduced erosion, sedimentation, and runoff; healing of gullies; greater soil water availability for plants; improved soil aeration; improved biological soil crust cover; and greater soil macro- and microorganism activity. The beneficial impacts would be most pronounced in the higher elevation, moister portions of the analysis area. Beneficial impacts would be slowest and most difficult to achieve in the drier portions of the Tropical-Subtropical and Temperate Desert divisions.

The adverse effect of a long-term drought could partly limit the enhancement of upland soil and watershed conditions depending on the severity of the drought. The increased acreage of rangeland ecosystems dominated by exotic annual grasses and noxious weeds would result in reduction or alteration of important components of the soil biological community on affected acres, which would make restoration more difficult. Long-term erosion, sedimentation, and runoff would also be increased on acreage dominated by exotic annual grasses because of increased wildfire risk and reduced plant cover during severe drought years. Cheatgrass die-off has

occurred on more than two hundred thousand acres in Nevada in 2003, leaving these sites exposed to severely accelerated erosion and loss of long-term sustainability. The cause and long-term implications of this die-off are unknown.

4.2.4.2 Riparian Soils

Short- and long-term environmental consequences of the present regulations are similar to those of upland soils except that the high moisture content of riparian soils could accelerate responses to improved management practices. Improved riparian area management would help stabilize lotic and lentic riparian areas where the water or sediment supplies are out of balance and promote the growth of deep-rooted, riparian vegetation that helps dissipate stream energy, armors streambanks, and filters sediment from the stream. Displacement of desirable, deep-rooted riparian vegetation by invasive, exotic riparian plants would potentially reduce streambank protection and reduce groundwater available for maintenance of healthy riparian conditions on invaded acreage.

4.2.5 Water Resources

Water quality will remain highly variable, remaining static or improving slightly, with improvement in vegetative cover on uplands. Nonpoint source pollutants generated by livestock grazing, including sediment yields and other pollutants (bacteria, salinity, and nutrients), would slightly decline. Nonpoint source salinity in the Colorado River basin would decline less than in other desert shrub communities, because of the slow vegetative response to management.

In the short term, climatic variation would have more effect on upland watershed conditions than would present management. Cover, runoff, and accelerated

erosion would only slightly change, and the upland watershed conditions would not improve in the short term.

In the long term, improved upland watershed condition would result from implementation of rangeland health standards and guidelines. 43 CFR §4180 et seq. Climate, soils, and livestock management strategies are key considerations in the implementation of management plans to improve upland watershed condition. Though tempered by site and climatic variability, gradual improvement to upland vegetation and ground cover may occur. Improvement in vegetative cover could, over time, improve the precipitation infiltration rates, reducing surface runoff and erosion.

Continued efforts to improve and maintain vegetative cover may move upland drainage networks toward proper functioning condition over an extended period of time. In the short term, the frequency and size of runoff events would not change. The overall hydrologic function of riparian stream systems would remain static or improve slowly. Soil erosion and sediment discharge caused by streambank trampling in riparian areas would remain static or decrease slightly over the long term. Thus, the beneficial hydrologic function of these riparian areas (floodplain storage and flood peak reduction, water quality maintenance, and groundwater recharge) would remain static or improve slowly.

4.2.6 Air Quality

Overall, air quality is expected to be within standards as the existing grazing regulations have maintained or improved the vegetative cover on the soils in the West.

The existing regulations require meeting rangeland health standards, which include protecting watershed function. 43 CFR §4180 et seq. (2003). Watershed function and rangeland health are related to the vegetative

resources that protect the watershed and cover the soil. Air quality on public lands is directly affected by the protection of soil by vegetation. Where soil is exposed, there is a possibility for air quality problems as a result of dust caused by wind over exposed soil. The standards for rangeland health help protect air quality by ensuring that vegetation is adequate to provide soil cover for proper watershed function, which in turn protects soil from wind erosion.

4.2.7 Wildlife

This environmental impact analysis focuses on how the proposed livestock grazing regulations changes may affect wildlife and the habitat they require on the more than 160 million acres of public lands grazed by domestic livestock in the western United States. Under Alternative One, the No Action Alternative, risks and benefits to wildlife and wildlife habitat are not expected to change.

Presently, rangeland standards and guidelines continue to be applied (43 CFR §4180 et seq. (2003)), phase-in of increases or decreases in active use is optional (§4110.3 et seq.), rangeland health assessments may be made with or without monitoring data (§4180.2 (c)), and applications for nonuse could not be approved beyond 3 years (§4130.2 (g) (2)).

The BLM may impose civil penalties against a permittee or lessee after the individual has been convicted or otherwise found to be in violation of certain Federal or State laws or regulations, if the act which constitutes the violation involves or affects BLM public land and the violation is related to grazing use authorized by the BLM.. 43 CFR §4140.1(c) (2003). This provision may have some beneficial effect on wildlife by discouraging grazing permittees from violating these laws. However, this section of the regulation is rarely applicable.

The time presently allowed for taking appropriate action under the rangeland health standards may be too short to allow proper coordination for implementing sound, sustainable decisions. 43 CFR §4180.2 (c) (2003). Therefore, actions that would help improve upland and riparian wildlife habitat are sometimes delayed either by the implementation of unsound decisions or by litigation. However, there are also times that wildlife species may benefit from the discretionary rapid implementation of changes in grazing use that BLM managers can presently implement.

4.2.8 Special Status Species

This environmental impact analysis focuses on how the proposed livestock grazing regulatory changes may affect special status species and the habitat they require on the more than 160 million acres of public lands grazed by domestic livestock in the western United States. Under Alternative One, the No Action Alternative, risks and benefits to special status species and their habitats are not expected to change and are the same effects as for wildlife (section 4.2.7, FEIS).

4.2.9 Wild Horses and Burros

This environmental impact analysis focuses on existing regulations for livestock grazing as they affect wild horse and burro populations and their herd management areas on the 34 million acres grazed by both domestic livestock and wild horses and burros in the western United States. Under the present regulations, there would be little change in wild horse and burro populations on public lands.

4.2.10 Recreation

Many recreational activities are enhanced or diminished by the natural condition of

the lands on which they are located. Under the present management on the majority of public lands, recreational experiences would be maintained or, where land health standards are not yet attained, improved as upland and riparian conditions improve through actions taken to attain rangeland health standards. Effects to public lands under existing management would continue to be greatest in higher and moister areas where grazing use is greatest, and least in the driest areas that improve at slower rates.

As vegetation cover increases, recreation uses—including sightseeing, wildlife watching, and enjoyment of naturalness—are maintained or improved. Many dispersed recreational activities would be expected to improve as the vegetation condition in which they are set improves.

Fishing and hunting opportunities and success rates would be expected to improve or diminish as range health improves or diminishes. Many recreational activities, although not directly focused on pursuits such as sightseeing or enjoyment of naturalness, benefit from aesthetic land qualities that form the background for the overall experience. The experience enjoyed by more highly developed recreational activities (such as use of off highway vehicles [OHVs] or developed campsites) experience no, or minimal effects under existing management. Both commercial and noncommercial activities would be similarly affected. Revenues from types of commercial recreation that rely on healthy ecosystems could be increased or decreased as range health improves or deteriorates. Revenues from some commercial recreation activities (for example, races) would generally be unaffected by rangeland health.

4.2.11 Special Areas

The existing grazing regulations mostly allow for the protection of special area

values from inappropriate livestock grazing use. However, in application, delays to the implementation of actions for improving conditions in special areas could occur as a result of the lack of time to ensure good, sustainable decisions that would result in long-term improvement in rangeland health. Requiring changes in livestock grazing use by the start of the next grazing season would not allow sufficient time to coordinate with permittees or lessees and interested publics. As a result, the decisions could be less comprehensive and effective. This is deemed a minor effect in most special areas, as significant livestock grazing issues are not typical. Other key elements of the existing regulations would not have significant effects on special areas.

4.2.12 Heritage Resources: Paleontological and Cultural Resources (Properties)

Overall, the local and regional effects from the present regulations upon heritage resources are minimal. Review of a Federal undertaking by a cultural resource specialist is required during specific project planning or implementation at the local level, land use planning initiatives at the State or regional level, or for regulation revision at the national level.

Of the present regulations, the timeframe for taking action to meet rangeland health standards could have the potential to affect on-the-ground actions, which consequently can affect heritage resources. Under the present regulations, a very short timeframe is specified for implementing appropriate action when livestock grazing has been determined to be a significant factor in not achieving standards or conforming to guidelines for grazing administration. This timeframe may not be sufficient for completing adequate cultural resource

surveys and, if necessary, developing mitigation or protection strategies in compliance with legal mandates. Additionally, the timeframe is not sufficient to complete adequate Tribal consultation and coordination on projects or planning efforts as mandated in several laws, regulations and executive orders.

New project developments have been and will continue to be analyzed for effects on heritage resources on a case-by-case basis. Cultural resource surveys precede management actions that could damage cultural resources (BLM Manual 8100, Cultural Resource Management). Historic and prehistoric archaeological sites found during these surveys would be protected in accordance with the National Historic Preservation Act of 1966 (revised) and other laws or executive orders as stated in the Code of Federal Regulations (36 CFR §800). Additionally, Tribal consultation would begin in any case where it appears likely that the nature and/or location of the activity could affect Native American interests or concerns.

The present regulations allow grazing permits to be canceled following a conviction of a violation of a law or regulation related to the “illegal removal or destruction of archaeological or cultural resources.” This clause, which has never been used, could give protection to fragile and nonrenewable resources that may be important to regional and national heritage.

4.2.13 Economic Conditions

Overall, the local and regional economic effects of the No Action Alternative would be minor. Effects would come primarily from the continuation of some effects that may be ongoing, such as:

1. lower management flexibility for permittees and the BLM,

2. potential lack of incentive for permittees to participate in range improvements,
3. potential economic effects on permittees due to the time constraints associated with making rangeland health determinations and implementing grazing decisions, and
4. continued lack of cost recovery for BLM for undertaking specific actions.

The following are the primary source of potential ongoing effects, although none of the provisions, either individually or cumulatively, is considered noteworthy:

- The present regulations do not specify a phase-in period for changes in active use. Consequently, changes in use (primarily reductions) greater than 10 percent can be implemented immediately, which may have an adverse effect on permittees in that they would have little time to make alternative arrangements. However, there are no restrictions on phasing in changes in use, so grazing decisions can now, at the discretion of the decision maker, be phased in over a period of time.
- Statistics on range improvements and range improvement funding show there was a decline in numbers of projects, starting in 1996, after implementation of the 1995 regulations, and that over the past few years there has been somewhat of an increase, although this fluctuates annually. However, the statistics also show that there has been an overall decline in the annual number of range improvements since the 1980s. Consequently, it isn't clear how extensive the effect of the 1995 regulations on range improvement ownership has been.

- Maintaining the 3-consecutive-year limit on nonuse may pose a hardship for permittees who may otherwise want or need to take nonuse for longer periods, either for resource-related or financial reasons. If a longer period of nonuse were to create improved rangeland conditions, then the 3-year limitation may forestall longer term economic benefits that could result from improved conditions.
- The BLM would retain flexibility in the methods it could use to make rangeland health determinations. However, once a determination is made that existing grazing management needs to be modified; the BLM is required to take action no later than the start of the next grazing year, which has put a strain on the agency’s resources and has limited BLM’s flexibility in managing workloads. For permittees, this relatively compressed timeframe could adversely affect their operations if potential changes in use are made more quickly than permittees could efficiently alter their operations. However, the requirement to take action before the start of the next grazing season could have a beneficial effect on long-term productivity if rangeland resources begin recovery sooner rather than later.
- Service charges do not presently cover the costs incurred by the BLM (and,

consequently, the public) so there would be a continued lack of cost recovery. Table 4.2.13.1 shows net cost recovery for grazing permit transfers, crossing permits, and supplemental grazing bills. Maintaining the present service charges would be beneficial for permittees.

4.2.14 Social Conditions

Under the present management, ranches would continue to face a difficult social climate. Drought, livestock price fluctuations, rising costs, and other factors will continue to make ranching an economic challenge. The number of smaller or “hobby” operators will remain stable. Outside sources of income will, to a certain extent, buffer them from many of the ranch economic forces, but their numbers are constrained by the limited availability of small allotments. Other operators more dependent on the ranch for family income will be directly subjected to economic and social stress associated with public land ranching. Many feel strongly about passing the ranch on to children, but this is increasingly difficult. The levels of personal and family stress associated with uncertainty stemming directly from public land grazing management will continue to grow, though slowly.

The tenure of ranching will continue to change as well. Ranches change hands for a variety of reasons. Consolidation of commercially viable ranches will continue

Table 4.2.13.1. Cost recovery under current service charges.

Action	Current Service Charge	Average Unit Cost to Complete Action	Net Cost Recovery
Transfer Grazing Preference	\$10	\$2,255	-\$2,245
Crossing Permit	\$10	\$339	-\$329
Supplemental Grazing Billing	\$10	\$339	-\$329

Source: BLM *Management Information System 2003* (BLM 2003).

as the herd size necessary for retaining a family ranch continues to rise. In most areas, this will contribute to a decline in the number of commercial ranches, and operations will grow larger. The other ranch tenure issue concerns the nature of the new owners. Many ranches are being purchased for amenity reasons or subdivision. This trend is frequently related to difficulty in passing on a ranch to children. In other situations it is simply an expression of economic reality. In either situation, potential (though not certain) social effects include the removal of ranchers from local social networks, changes to social integration processes, a diminished role for ranchers in the local power structure and a potential loss of open space to subdivision.

Population change in ranching communities will continue. Much of the change is growth, while some communities are experiencing losses in certain populations and gains in others. An example would be losses to mining jobs where miners move out and retirees move into the community. While the economic importance of ranching overall will continue to decline, it will maintain important social dimensions. Ranchers buy inputs no matter how their industry is fairing. This provides a stable underpinning to some economic sectors such as fuel and groceries. The contribution may be small relative to the nonranching population, but it fluctuates little. This produces a belief on the part of ranchers and some local businesses that ranching provides a certain level of local economic stability. This is frequently cited as a good reason to keep ranchers in business.

A similar relation holds for social organization of communities. Ranchers will continue to have a high profile in their communities. Many community members view ranchers as a social constant in a growing community. As communities become more differentiated, ranchers fill a

commonly held social role as reminders of the rural life newcomers and locals seek to retain. Ranchers will continue to receive some of the benefits from community stratification, but those relations will change as population growth brings a different universe of economic relations to the community. Extra-local ties will continue to grow along with population. Finally, community integration will still rely on long-standing social networks in which ranchers play a prominent role. These networks are competing with a growing set of networks that are tied to larger social contexts outside of the community.

Recreation will continue to play a large and growing role in public land management from both individuals and organized groups. People remain in and migrate to both urban and rural areas of the West to enjoy the proximity of extensive recreation opportunities. They will retain strong attitudes about public land management for recreation and will continue to be readily involved in the management process as it pertains to grazing and other issues. Urban and rural growth throughout the region will supply more people each year with a wide variety of recreational interests. These interests will often clash among recreation groups. Primary conflicts will continue to revolve around the role of motorized vehicles on public lands, designation of special management areas that foster certain recreational activities and prohibit others, and the management of areas for recreational values instead of livestock. The primary concern of all recreation groups will continue to be access to public lands throughout the year for a wide variety of uses.

Under present management, conservation and environmental groups play a role in public land management that ranges from community-based conservation efforts to litigation. These efforts will continue.

Many locally based groups are pursuing cooperative management strategies for grazing areas deemed to be important for their values, in addition to livestock forage. Such efforts continue to require much more time and resources than traditional organizing efforts for such groups. Local communities and ranchers will continue to have mixed opinions about such efforts, even as successful efforts outline how to best approach such situations. In addition, groups that started out as “local” are expanding and opening offices in other areas and States. This growth will increase the “watch-dog” orientation of these groups. Most such groups include educated participants who are generally opposed to public land grazing and will continue to provide a sharp challenge to management decisions concerning grazing.

4.2.15 Environmental Justice

Environmental justice is defined as the “fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people, including racial, ethnic, or socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of Federal, state, local, and Tribal programs and policies” (BLM 2002a).

Describing the baseline situation from an environmental justice perspective involves demarcating the potentially affected area and identifying the low-income, minority, and Tribal populations within that area. In a programmatic EIS of national scope, this is not feasible.

In the context of regulations governing grazing on public lands, environmental

justice implications—if any—are likely to be driven by social and economic effects. For the No Action Alternative, the analyses of social and economic effects do not suggest any basis for identifying disproportionate effects on low-income, minority, or Tribal populations.

4.3 Alternative Two: Proposed Action

The direct and indirect effects on the human environment of implementing the proposed regulatory amendments as described in Section 2.2 are presented in this section.

4.3.1 Grazing Administration

Overall, the amendments to the regulations are anticipated to improve the efficiency and effectiveness of several of the grazing administration processes. The proposed regulations would assist BLM in accomplishing its multiple use mission in a manner that works well in the social and economic environment of affected communities. The amendments to the grazing regulations would highlight practical ways for permittees, lessees, affected State and local officials, Tribes and the interested public to engage with BLM as partners to improve watersheds, and habitat conditions. The amendments would improve cooperation with directly affected permittees and landowners; promote utilization of monitoring data for decisions regarding protection of rangelands; and enhance administrative efficiency and effectiveness, including addressing legal issues that need clarification.

Although efficiency and effectiveness should improve for all allotments, three amended provisions may delay administrative actions on a relatively small number of

allotments. These three provisions address implementation of changes in grazing use, the basis for rangeland health determinations, and the timeframe for taking action to meet rangeland health standards. The second and third provisions would only delay actions on those allotments for which BLM determines that existing grazing management practices or levels of grazing use are significant factors in failing to achieve the standards for rangeland health and conform with the guidelines. The majority of actions taken under the first provision are expected to be in the same category. Therefore, quantification of the potential effects of these provisions is directly related to the number of allotments that will fail to meet standards where livestock grazing is a significant factor in the future. It is estimated that a small number of allotments would be affected; based on the results of evaluations of 58 million acres.

At the close of fiscal year 2002, the BLM had evaluated 7,437 allotments comprising 58,711,307 acres of public land for conformance to rangeland health standards (BLM 2002). This represents 35 percent of all allotments and 36 percent of the BLM-administered land contained in allotments. The BLM determined that 1,213 (16 percent) of the allotments evaluated failed to meet the standards and guidelines for rangeland health due to existing livestock grazing practices or levels of grazing use. These evaluations focused on high priority allotments, which BLM policy illustrates as follows: "In setting priorities for land health assessments and evaluations, areas with land health issues take precedence" and "Assign high priority to areas believed to be at risk—in degraded condition or downward trend and in danger of losing capability"(BLM 2001).

Therefore, the past 5 years of assessment and evaluation experience indicates that at most approximately 16 percent of allotments evaluated in the future may fail to meet

standards due to current livestock grazing practices. It is likely the percentage may be even less considering the allotments already evaluated should have been those in the most degraded condition or obviously in downward trend. This analysis provides a basis upon which to estimate the number of allotments which may be affected by the specific changes in the regulations.

Social, Economic, and Cultural Considerations in the Decision-Making Process: This regulatory change is expected to result in greater consistency in the analysis of impacts to the social, economic and cultural elements considered in a NEPA document. Documenting consideration of impacts of proposed changes to grazing preference on relevant social, economic and cultural factors would make decisions or agreements resulting from NEPA analysis more sustainable. Clearly documenting consideration of these factors in addition to those required critical elements in NEPA would improve communication and cooperation with permittees or lessees. This would result in a higher likelihood of permittees or lessees participating in grazing management planning and implementation. Additionally, it can be anticipated that decisions or agreements that implement changes in grazing preference would be more comprehensive; thus more likely to be realistic, practical, and achievable.

Implementation of Changes in Grazing Use: A change in active use, either an increase or a decrease, would be accomplished through the grazing decision process or a documented agreement with the permittee or lessee. If the change is greater than 10 percent of the total active use, implementing the change would occur over a five year period unless a shorter time period is negotiated by agreement with the permittee or lessee. Typically, adjustments would be implemented during the first, third

and fifth years. During this time, additional monitoring and assessments could be conducted to determine if changes in active use are resulting in a movement towards achieving rangeland standards or land use plan objectives. This phase-in period allows the permittee or lessee greater opportunity to make economic and management adjustments to his operation in order to lessen any adverse impacts. This often results in improved cooperative relations and management between BLM and the permittee or lessee. The total number of allotments affected by this provision would be small because only 16 percent of the allotments evaluated during the last 5 years needed adjustments in current livestock grazing management. Since most of the changes are not reductions of 10 percent or more, the proportion of allotments affected by this provision would be much lower than 16 percent.

The 5-year timeframe would not be followed in cases where the permittee or lessee agrees to a shorter timeframe, or a shorter timeframe is required in order to comply with applicable law (i.e., Endangered Species Act). If a change in active use of greater than 10 percent is determined to be required, but it is also determined that soil, vegetation, or other resources require immediate protection, or continued grazing use poses an imminent likelihood of significant resource damage, then the change, including total or partial closure from grazing, could occur with the issuance of a final decision that could be implemented immediately (43 CFR §4110.3-3(b)).

A 5-year phase-in of changes to active use and the requirement to collect monitoring data to assess changes in resource conditions may result in an additional workload to the BLM. To accommodate the shift in workload associated with required monitoring, the BLM would need to find alternative means

of collecting monitoring data and would reprioritize other tasks.

Range Improvement Ownership: Cooperative Agreements for new, permanent structural range improvements would reflect a shared title between the United States and the cooperators in proportion to their financial or labor contribution toward the project's development and construction. Title to existing range improvements that are held solely in the name of the United States would continue to be held solely in the name of the United States. Allowing the cooperators to hold title to structural range improvements in which they have an investment may stimulate an increase in private investments for the construction of range improvements.

Cooperation with State, Tribal, County, and Local Government-Established Grazing Boards: Adding the requirement to cooperate with State, Tribal, county, or local government-established grazing boards in reviewing range improvements and allotment management plans would ensure a consistent community-based decision-making process throughout the BLM. Field level range improvement and allotment planning programs would also benefit from the additional perspective that locally established grazing advisory boards could provide.

Temporary Nonuse: The present regulations limit the BLM's ability to extend temporary nonuse for more than 3 consecutive years; the proposed changes eliminate the 3-year limitation. The BLM would be able to annually approve temporary nonuse for conservation and protection of rangeland resources beyond the present 3-consecutive-year limit. There would be no limit on the number of consecutive years that nonuse could be approved. This is the simplest way to achieve temporary reduced use to respond to rangeland condition needs. In some instances, approval of an application

for temporary nonuse precludes the need for BLM to issue a decision to temporarily suspend use. Temporary nonuse can also be approved for the personal and business needs of permittees or lessees, which would allow them to better manage their businesses, such as livestock sales that result in temporary herd size reductions. There is no additional administrative workload associated with this proposed rule. The rule allows cooperation between the BLM and the permittee without requiring a separate administrative process to provide more than 3 consecutive years of temporary nonuse.

Basis for Rangeland Health

Determinations: Under the regulation, determinations that existing grazing management practices or levels of grazing use are significant factors in failing to achieve standards and conform to guidelines would be based on the results of standards assessment and monitoring data. Although this is often done where existing monitoring data is available, this requirement would provide for a consistent approach to making such determinations. Acquiring and communicating the monitoring data and supporting rationale used to make a change in grazing management would result in improved cooperation and sustainable agreements or grazing decisions. The total number of allotments affected by this provision would be small because only 16 percent of the allotments evaluated during the last 5 years failed to achieve standards and conform to guidelines because of existing grazing management practices or levels of grazing use. This new requirement for using monitoring data and assessment information to make such determinations may increase the data collection workload within the grazing program. This workload increase would be addressed by reprioritizing work, finding alternative means to collect monitoring data or focusing on high priority

areas at risk of not achieving land health standards because of existing livestock grazing.

Refocusing data collection priorities may impede the schedule states have established for completing watershed assessments. In addition, the monitoring requirement may delay the permit renewal process in areas where current monitoring data is not readily available. Under projected budgets, we expect to have appropriate monitoring data to support our determinations, regardless of whether they lead to a finding of failure to meet standards due to existing livestock grazing management.

Timeframe for Taking Action to Meet Rangeland Health Standards: The regulation recognizes the need for adequate time to formulate, propose, and analyze actions in an environment of consultation, cooperation and coordination. Providing up to 24 months (except in those cases where completing legal obligation that are beyond BLM's responsibility require additional time) to develop a proposal, complete any required ESA Section 7 consultation, complete the NEPA process, including preparation of a rational analysis of alternatives, would result in reasoned comprehensive and sustainable grazing decisions. We expect that extra time taken to develop a meaningful action would provide greater long term benefits to other resources and an overall improvement in rangeland condition. For example, just reducing the level of use in a riparian area, rather than developing a management system that considers timing of use, is not likely to improve the riparian area condition. Taking the additional time to develop an appropriate action may actually decrease the amount of time taken to implement a decision, particularly if the decision is not appealed. Under the rule, the BLM field manager has discretion as to whether to allow 24 months for BLM to address failure to meet rangeland

health standards. There is no language in the rule that precludes a shorter deadline, once BLM meets its consultation, cooperation, and coordination requirements.

Conservation Use: In accordance with *Public Lands Council v. Babbitt*, conservation use would be deleted from the regulations. Because BLM would not be issuing conservation use permits under any alternative, the deletion of these provisions would have no impact on BLM's grazing administration program.

Definitions of Preference, Permitted Use and Active Use: The new definition of grazing preference includes active use and use held in suspension. Grazing preference holders have a superior or priority position for the purpose of receiving a grazing permit and lease. Grazing preference includes livestock forage allocation on public lands and priority for receipt of that allocation, as determined through ownership or control of base property. Attaching or associating a public land forage allocation to or with base property provides a reliable and predictable way to connect ranch property transactions with the priority for use of the public land grazing privileges. This has been the basis for BLM's system of tracking who has priority for receipt of public land grazing privileges since the enactment of the Taylor Grazing Act. This change would ensure that the term "preference" is used consistently.

Definition and Role of the Interested Public: The interested public would continue to be required to inform the authorized officer that they wish to be involved with an allotment or make comments on an allotment in order to participate in the decision making process. However, if a member of the interested public is not responsive or declines to participate in consultation, cooperation and coordination opportunities, then they would be dropped from the list of interested publics and would no longer be notified

of such opportunities. Former members of the interested public may regain status by written request or by submitting comments during formal public comment periods. This modification of the definition would result in some minor administrative cost savings associated with maintaining the interested public mail list and in mailing costs.

The specific actions requiring consultation, cooperation, and coordination or review and input from the interested public would be: (1) Apportioning additional forage; (2) Developing or modifying grazing activity plans (i.e., allotment management plans); (3) Planning range development or improvement programs; and (4) Reviewing/providing input on reports used as a basis for BLM decisions.

Day to day management activities that would no longer require the consultation, cooperation, and coordination with interested publics would be: (1) Designating and adjusting allotment boundaries; (2) Reducing permitted use; (3) Issuing emergency closures or modifications; (4) Renewing/issuing grazing permit or lease; (5) Modifying a permit/lease; and (6) Issuing temporary non-renewable grazing permits. The change does not prohibit BLM from including the interested public in these activities.

The clarity of the definition of the interested public and the reduction of actions that would require interested public involvement would enable the BLM to focus communication efforts on those interested publics who are involved in the significant issues occurring on grazing allotments. This narrowed focus would increase the efficiency of grazing management through the reduction of communication to individuals, groups, or organizations that are not providing input supporting the decision making process on an allotment. The regulation still requires that

proposed and final decisions are sent to the interested public.

The proposed regulations would require consultation with the interested public where such input would be of the greatest value, such as determining vegetation management objectives in an allotment management plan, or preparing reports evaluating range condition. This should allow the BLM to take responsive, timely, and efficient management action without being required to first undertake mandatory consultation. The proposed regulation would foster increased administrative efficiency by focusing the role of the interested public on planning decisions and reports that influence daily management, rather than on daily management decisions themselves. All proposed and final grazing decisions and associated NEPA documents, such as environmental assessments and reports that provide the basis for decisions, would still be available to the public under the rulemaking.

Water Rights: The proposed regulation would remove the requirement that new stock water rights be acquired, perfected, maintained and administered in the name of the United States in states where federal ownership of the water right is allowed. This does not mean that BLM will never apply for a state appropriative water right. BLM will apply for these rights of use on public land, in accordance with state laws, when such water rights ownership benefit public land management, and contribute to meeting the goals and objectives of BLM land use planning. However, the proposed amendment would give the BLM greater discretion to apply or not to apply for water rights in the name of the United States, or to apply jointly with the permittee on new water sources for livestock use. Since states assign water rights under different state laws, mandates, regulations, and policies, this rule would provide greater flexibility in

negotiating arrangements, within the scope of state processes, for construction of watering facilities in states where the United States is allowed to hold a livestock water right.

Satisfactory Performance of Permittee or Lessee: Under the proposed regulations, BLM would limit the number of possible infractions that it would take into account for determining whether an applicant for a new permit has a satisfactory record of performance. Primarily, the proposed regulation changes the definition of “satisfactory performance” from a negative (what is not satisfactory performance) to a positive (what is satisfactory performance). Also, the provision is moved from the Mandatory Qualifications section to the Applications section. Implementing this change would have minimal impact on grazing administration.

Changes in Grazing Use Within the Terms and Conditions of the Permit: The action would provide additional detail on what is meant by the phrase “temporary changes in grazing use within the terms and conditions of the permit or lease.” The proposed change to “temporary changes in grazing use within the terms and conditions of the permit or lease” defines the allowable variation in the number of livestock, period of use, or both that BLM may authorize in any one grazing year. This would provide sufficient flexibility to BLM managers and permittees or lessees to address seasonal and annual changes, thereby supporting efficient and responsive management of public lands. The new definition would clarify the amount of flexibility BLM authorized officers would have when considering temporary changes and help ensure consistent application across the BLM.

Service Charges: The changes in service charges will allow BLM to improve its recovery of costs associated with transferring grazing permits, processing applications for

crossing permits, and issuing supplemental grazing billings. Available data show that the costs of these actions exceed the relatively modest increases in service charges. (Table 4.2.13.1 and 4.3.13.1). The large negative cost recovery for transferring grazing preferences reflects the inclusion of costs for which recovery is not sought via service charges.

Prohibited Acts: In the first set of prohibited acts it is proposed to clarify the provision which prohibits the placement of supplemental feed on public lands without authorization by adding “or contrary to the terms and conditions of the permit or lease.” This will clarify the intent of this section to ensure strict compliance with the terms and conditions of the permit or lease.

In the second set of prohibited acts it is proposed to clarify that a violation of any of the prohibited acts in that section must occur on BLM administered lands to be considered a violation. In addition, it is proposed in order to clarify the relationship between the document that authorizes grazing, the permit or lease, and the requirement to pay grazing fees. The intent is to clarify that the grazing permit or lease is the document that authorizes grazing use on public lands not the annual grazing fee bill. Also, the rule clarifies that grazing fees must be paid in a timely manner to avoid violating these regulations. Thus, this section provides, among other things, useful authority to encourage timely payment of grazing fees.

In the third set of prohibited acts it is proposed to clarify and limit BLM’s enforcement authority by limiting its application to prohibited acts performed by a permittee or lessee on his allotment where he is authorized to graze under a BLM permit or lease. This change is intended to further ensure that the performance of the prohibited act is related to the permit or lease under which the violator is operating.

Grazing Use Pending Resolution of Appeals When Decision Has Been Stayed:
Decisions on ephemeral or annual rangeland grazing use and nonrenewable permits.

A new provision would be added at 43 CFR §4130.6-2(b) that provides authority to issue immediately effective decisions that issue a temporary nonrenewable grazing permit or lease (TNR), or that affect an application for grazing use on annual or designated ephemeral range. Decisions issued under this authority may be appealed and a stay of the decision may be sought, however the act of filing a notice of appeal and petition for a stay will not immediately stop the action. This provision allows agency decisions to authorize TNR, annual, or ephemeral range use to go into effect reasonably quickly, but allows the appellant to obtain a stay of such decisions upon demonstrating the likelihood of success on the merits of the petition and other requirements under 43 CFR §4.21(b)(1).

Decisions associated with changes to a term permit or lease or grazing preference transfers.

The provision at 43 CFR§4160.4 would be amended to clarify the effect of an administrative stay on a BLM grazing decision associated with (1) changes made to a term permit or lease, or (2) grazing preference transfers. The rule would clarify that BLM would continue to authorize grazing under prior terms when a stay is issued for a decision that (1) cancels or suspends a permit or lease, (2) changes the terms or conditions of a permit or lease during its current term, or (3) renews a permit or lease with changed terms or conditions. When a decision on a preference transferee’s application is stayed, the BLM would issue a temporary permit that contains the same terms and conditions as the permit previously applicable to the area in question,

subject to any relevant provisions in the stay order itself. The permit would be in effect until the Office of Hearings and Appeals (OHA) resolves the administrative appeal. This change would increase administrative efficiency and ensure that decisions for which a stay has been granted are rendered inoperative pending resolution of an administrative appeal thus complying with the Administrative Procedure Act. This provision would ensure, in the event a BLM decision is stayed, the maintenance of status quo while the appeal is considered.

These provisions would improve BLM's ability to regulate the occupancy and use of rangelands, safeguard grazing privileges and provide for the orderly use, improvement, and development of the range.

Treatment of Biological Assessments and Evaluations in the Grazing Decision-Making Process: Biological evaluations prepared for purposes of ESA Section 7 consultation identify what actions an agency is considering, so that the U.S. Fish and Wildlife Service (FWS) or the National Oceanic and Atmospheric Agency (NOAA) Fisheries can determine how the agency actions may affect a listed species or habitat. The biological assessment is a tool that the FWS and NOAA Fisheries use to determine whether a proposed action is likely to adversely affect or jeopardize the existence of a species or adversely affect critical habitat. Neither document is a proposed grazing decision and, therefore, neither document may be protested to BLM or is a final grazing decision appealable to the Office of Hearings and Appeals under the proposed rule. If the formal consultation occurs and a biological opinion is issued which requires a change in the terms and conditions of a grazing permit or lease, then BLM will issue a grazing decision subject to protest and appeal. By providing that a biological assessment is not subject to protest and appeal, and through

consultation with affected grazing permittees and lessees, FWS and NOAA Fisheries, BLM would be able to more efficiently and timely make changes in grazing management.

4.3.2 Vegetation

The proposed regulations are expected to help the BLM achieve vegetation resource management objectives. Improved cooperation with all interested parties is expected to lead to additional resources for public land improvements. Additionally, as BLM's administrative efficiency improves, the rate of achieving vegetation management objectives would accelerate.

The speed of achieving vegetation management objectives for specific sites would be governed by site-specific climatic conditions, management practices applied, and present state of the site.

Sites that are presently in stable-state vegetative communities are not expected to transition into another state as a result of changing grazing practices alone. Additional practices such as vegetation treatment would be required to achieve noteworthy changes in vegetation composition. These practices are much more likely to occur with the additional resources made available through partnerships.

While the overall long-term effect of the proposed regulations would accelerate achievement of public land vegetation objectives, there may be short-term adverse effects in allotments where vegetation is presently in a downward trend and vegetation recovery is delayed because of an extended implementation timeframe. However, as discussed in section 4.3.1 the amount of public lands potentially adversely affected is small. The following key elements of Chapter 2 have been specifically assessed:

Social, Economic, and Cultural Considerations in the Decision-Making Process: The regulations are expected to lead

to improved cooperation and coordination in making necessary adjustments in grazing management. Cooperative grazing management will result in more rapid achievement of management objectives.

Implementation of Changes in Grazing Use: The changes to the time provided for making changes in grazing use in excess of 10 percent are expected to lead to greater mutual understanding of vegetation goals and the mechanisms for achieving these goals.

Changes in active use of 10 percent or more, both increases and decreases, have been limited in recent years.

Where a reduction in grazing use is not urgent, a phased-in reduction over 5 years will not have substantially different effects than a shorter implementation period. The 5-year timeframe would not be followed in cases where the permittee or lessee agrees to a shorter timeframe, or a shorter timeframe is required in order to comply with applicable law (e.g., Endangered Species Act). Where resource damage is imminent and vegetation resources require immediate protection, the authorized officer may use authority under 43 CFR §4110.3-3(b) to make immediate adjustments in grazing use.

The total number of allotments affected by this change is expected to be small because only 16 percent of the allotments evaluated during the last 5 years needed adjustments in current livestock grazing management. The proportion of allotments affected by this provision will be much lower than 16 percent considering most of the changes to grazing management practices are not reductions of 10 percent or more.

Where BLM is proposing to increase the grazing levels, the 5-year period would allow for on-the-ground testing of the higher levels before full implementation. The BLM could monitor the adjustments each year and avoid increasing livestock grazing above the capacity of the public lands.

Range Improvement Ownership: This change would provide increased incentive for cooperator investment in range improvements, improving livestock grazing management designed to achieve land use plan and activity plan objectives.

Cooperation with State, Tribal, County, and Local Government-Established Grazing Boards: Improved communication and coordination with these boards would stimulate greater support for BLM resource management plans and activity plans. Vegetation management success may improve with the inclusion of local expert knowledge and experience in the planning process. Weed management and control can often be coordinated between BLM and private landowners through these boards, leading to more effective use of resources.

Temporary Nonuse: The regulations should increase the flexibility of both the permittee and the BLM manager to react to fluctuations in forage availability, climate, and economics, and may stimulate greater support for short-term adjustments in livestock grazing levels, resulting in greater alignment between forage production and utilization levels.

Basis for Rangeland Health Determinations: The requirement to use standards assessment and monitoring data to support a determination that existing grazing management or levels of use are significant factors in the failure to meet standards or conform to guidelines would improve working relations with permittees and lessees because determinations on the causes of failure to meet a standard will be based on monitoring and assessment data, thus helping to ensure comprehensive and sustainable decisions. Over the last 5 years about 16 percent of the allotments evaluated failed to meet a standard because of existing grazing management. Based on this experience, as explained in section 4.3.1, it is reasonable

to project that this provision would require monitoring data to support determinations on a maximum of 16 percent of the future allotment evaluations. Since our assessments have been focused on high priority allotments with at-risk resources, the proportion of determinations requiring monitoring in the future is likely to be lower. This provision may create an additional workload and would require focusing monitoring on high priority allotments where BLM suspects existing grazing management inhibits achievement of standards, a management strategy which parallels existing policy.

Timeframe for Taking Action to Meet Rangeland Health Standards: Extending the timeline for taking appropriate action, where present livestock grazing practices are the cause of a failure to meet standards for rangeland health, provides additional time for designing and implementing a more comprehensive plan. Developing a comprehensive grazing management plan has a greater probability of correctly addressing the vegetative concerns with a higher probability of success. This provision may result in short term adverse impacts to vegetation if it delays implementation of appropriate actions in allotments with a downward trend.

Definition of Grazing, Preference, Permitted Use, and Active Use: Changes in these definitions would provide greater consistency and understanding for grazing administration, but would have little effect on vegetation resources.

Definition and Role of the Interested Public: This adjustment should allow the BLM to make more timely decisions. Thus, it would have a beneficial effect on vegetation resources.

Water Rights: This provision would increase flexibility to negotiate better cooperative agreements, resulting in improved cooperation between BLM, States

and permittees and lessees. This capability may stimulate greater permittee and lessee support for the development of additional water resources on public land. New water developments may assist in meeting BLM vegetation resource management plans and activity plans, contributing to an overall beneficial effect on vegetation resources.

Changes in Grazing Use Within Terms and Conditions of Permit or Lease: This provision provides for more consistent application of flexibility across BLM to make short-term adjustments in livestock grazing. Grazing use would be more closely aligned with fluctuations in forage production and range readiness and may result in a beneficial effect on vegetation resource conditions.

Treatment of Biological Assessments and Evaluations in the Grazing Decision-Making Process: This adjustment may accelerate the process of consultation, allowing more timely implementation of decisions. Threatened and endangered species would benefit directly from timely decisions and cooperative management.

4.3.2.1 Riparian and Wetland Vegetation

Under the proposed regulations, trends for riparian and wetland resources would improve with the implementation of some actions under consideration. Present trends in riparian condition and restoration are discussed in Section 3.5.2. While the apparent trend in riparian condition at the national level is positive, long-term trends are not yet clear on the basis of data from 1998 to 2001. Success in applying grazing management to achieve riparian improvement objectives has been documented and almost always involves cooperation with the livestock operator. The effects on riparian conditions that may occur as a result of

the regulations are improved cooperation resulting in sustainable management changes.

Under the proposed regulations, overall riparian conditions would remain static or improve slightly. Some areas would show noticeable improvements in riparian conditions, while other areas would change little. Assuming the trend in riparian conditions observed from 1998 to 2001 is representative, improvement of riparian areas classified as “properly functioning” would occur at a rate of 1.5 percent annually. If improvements in “functioning-at-risk with an upward trend” were included, the rate of improvement would be 3.5 percent per year. The regulations is expected to promote improvement at higher rates, with the range of 1.5 to 3.5 percent per year, based primarily on the additional emphasis on communication, consultation, and coordination.

Improvements in riparian and aquatic habitat would result from the continuing implementation of rangeland health standards and livestock grazing guidelines. Most changes in management are expected to include combinations of segregation of riparian pastures from uplands, changes to the season of livestock use, changes in duration of use (or amount of utilization), changes in the overall amounts of use in riparian pastures, and livestock exclusion at some sites.

Since individual management plans for riparian areas are developed through close coordination with permittees and interested publics, improvement in communication, consultation, and cooperation would promote more sustainable decisions. The regulations would change the focus of communication, consultation, and cooperation efforts to emphasize those processes where long-term management direction is developed. While opportunities for consultation in these important processes are

presently available, public dialogue, time, and energy are now frequently diverted into routine administration issues rather than addressing long-term management direction.

Implementation of Changes in Grazing Use: Since management changes prescribed for riparian restoration most often rely on changes in the timing, duration, and season of use, the rule change requiring a 5-year phase-in would not apply to most riparian management plans. Increasing grazing use in a phased-in approach is likely to avoid unanticipated adverse effects by making adjustments on the basis of the observation of effects on riparian resources. Regardless of the timing of the use and the characteristics of the site, riparian resources would benefit from a progressive, monitored approach to changes in the level of grazing use.

Use of a phased-in approach for large grazing decreases avoids some risk to riparian resources to the extent it maintains cooperation and public support for changes in management. Because sites do not always respond in the short term to changes in grazing, including livestock exclusion or changes in the amount of grazing (Elmore and Betchta 1987; Clary et al. 1996), large changes without phase-in risk loss of user support if expected results are not achieved. In most instances, a cautious and progressively implemented management strategy that produces the intended results creates public support and understanding.

Temporary Nonuse: Eliminating the 3-consecutive-year limit for temporary nonuse would positively benefit riparian and aquatic resources. Removing the limit would increase flexibility and extend the timeframe available for riparian recovery.

Basis for Rangeland Health Determinations: The regulations would require the use of monitoring data in making determinations that existing grazing management practices or levels of

grazing use are significant factors in failing to achieve standards and conform with guidelines. Over the last 5 years about 16 percent of the allotments evaluated failed to meet a standard because of existing grazing management. Based on this experience, as explained in section 4.3.1, it is reasonable to project that this provision would require monitoring data to support determinations on a maximum of 16 percent of the future allotment evaluations. Since our assessments have been focused on high priority allotments with at-risk resources, the proportion of determinations requiring monitoring in the future is likely to be lower. This provision may create an additional workload and would require focusing monitoring on high priority allotments where BLM suspects existing grazing management inhibits achievement of standards. Although this feature limits flexibility in prioritizing monitoring, it establishes a minimum standard for decision making. The result may be improved quality and sustainability of grazing decisions.

Timeframe for Taking Action to Meet Rangeland Health Standards: Riparian vegetation would benefit from carefully considered and designed management responses. The regulations would provide adequate time for coordination, consultation, and cooperation to evaluate and develop reasonable management options, as well as complete required processes. This approach would require careful management in riparian areas that are functioning-at-risk with a downward trend, where improper grazing use combined with a high stream-flow event could cause the system to become nonfunctional. Depending on the stream system and nature of degradation resulting from such circumstances, recovery could be either short or long term.

4.3.3 Fire and Fuels

Fire is a variable, dynamic force with diverse responses and effects. Understanding these processes and interactions is important in determining the role of wildland fire and its effects on the environment. Understanding fire as an ecological process and how it interacts with the environment is critical for developing land management objectives and sustaining rangeland health. The National Fire Plan has resulted in a higher priority being placed on treatment actions and more resources being provided to the fire program to increase treatment acres.

Overall, the proposed regulation slightly improves the ability to move toward vegetation management objectives because these regulation changes will aid in the reestablishment of fire regimes that more closely resemble that which occurred historically. This is due to the increased time available to coordinate with permittees or lessees during the decision-making process of implementing actions to meet rangeland health standards. Additional time for coordination may result in consensus on vegetation treatment objectives and the actions needed to achieve them.

4.3.4 Soils

4.3.4.1 Upland Soils

The net long-term effect of the regulations would be to maintain or slowly improve the present condition of the upland soil resource through maintenance of adequate watershed cover. Short-term adverse effects are possible where watershed cover is not adequate due to current livestock management. Where the effect on the upland soil resources on an individual allotment has the potential to be adverse, the BLM retains authority under 43 CFR §4110.3-3(b) to curtail grazing.

Implementation of Changes in Grazing Use: Phase-in of changes in active use over a 5-year period would have minimal effects overall but could have an adverse effect on an individual allotment where vegetation conditions fail to provide adequate protection from erosion. As described in section 4.3.1, management changes where active use is reduced by 10 percent or more is only applied to a small proportion of the 16 percent of allotments that failed standards due to existing grazing management. Therefore, the number of allotments where short-term adverse impacts may occur due to delayed implementation, is small.

Temporary Nonuse: Removal of the limit on consecutive years of nonuse could have a beneficial effect on upland soil resources in allotments where greater natural recovery of watershed cover is desirable. This regulation could also potentially increase BLM's flexibility to rest allotments affected by drought or restoration treatments and thus improve watershed vegetation cover and soil physical characteristics such as compaction. The improvements would be most pronounced in higher elevation, moister portions of the analysis area. Improvements would be slower and most difficult to achieve in the drier portions of the Tropical–Subtropical and Temperate Desert divisions.

Basis for Rangeland Health Determinations: Requiring the use of both standards assessment and monitoring data to determine if existing grazing management practices or levels of grazing use are significant factors in failing to achieve standards and conform to guidelines would have no long-term adverse effect on upland soil resources. A short-term adverse effect would be possible if determination and implementation of management changes are delayed. However, as described in section 4.3.1, only 16 percent of the allotments evaluated failed standards due to existing

grazing management. Therefore, the number of allotments that could be subject to degradation as a result of delays to collect data is small.

Timeframe for Taking Action to Meet Rangeland Health Standards: Allowing the BLM as long as 24 months to formulate, propose, and analyze the appropriate action for addressing failure to meet rangeland health standards would have little or no adverse short-term effect on the upland soil resources. The long-term effect on upland soil resources of this rule change could be positive if it allows more time for developing a comprehensive plan that would help improve watershed cover.

4.3.4.2 Riparian Soils

The regulations would have no long-term adverse effect on riparian soil resources. Short- and long-term environmental consequences of the proposed management alternative would be similar to those of upland soils except that the high moisture content of riparian soils could accelerate responses to improved management practices.

Implementation of Changes in Grazing Use: Phase-in of changes in active use over a 5-year period would not have any effects on riparian soils because reducing livestock numbers is seldom used as a restorative management tool in riparian area management.

Temporary Nonuse: Removal of the limit on consecutive years of nonuse could have a beneficial effect on riparian soil resources in riparian areas where greater natural recovery of desirable riparian vegetation has occurred. This and other rule changes that enhance desirable riparian vegetation density and vigor would improve riparian stability and increase growth of deep-rooted, riparian vegetation that helps dissipate stream energy, protects streambanks, and filters sediment

and pollutants from the stream. This rule change could also potentially increase the Bureau's flexibility to rest allotments affected by drought or restoration treatments, and thus could improve riparian vegetation cover and soil physical characteristics such as compaction.

Basis for Rangeland Health

Determinations: Requiring the use of both assessment and monitoring data to determine if existing grazing management practices or levels of grazing use are significant factors in failing to achieve rangeland health standards may have a short-term adverse effect on riparian soil resources but no long-term adverse effects. Short-term adverse effects could occur if conducting assessment and monitoring postponed determination and management changes on riparian soils with poor vegetative cover, due to current management, which are at risk of erosion during infrequent flooding. However, as described in section 4.3.1, only 16 percent of the allotments evaluated failed standards due to existing grazing management. Therefore, the number of allotments that could be subject to degradation as a result of delays to collect data is small. Finally, the BLM retains authority under 43 CFR §4110.3-3(b) to curtail grazing to prevent significant resource damage.

Timeframe for Taking Action to Meet Rangeland Health Standards: Allowing the BLM as long as 24 months to formulate, propose, and analyze appropriate action for addressing failure to meet rangeland health standards would have no adverse long-term effects on riparian soil resources. The long-term effect on riparian soil resources of that regulation could be positive if it allows more time for developing a comprehensive plans that help improve protective riparian vegetation density and vigor.

4.3.5 Water Resources

The proposed regulations would have little or no effect on present water resource conditions. Streams that now meet State water quality standards and are part of properly functioning riparian ecosystems would remain in their present condition. Water bodies that fail to meet State water quality standards and streams that are functioning at risk or in nonfunctional condition will remain static until management changes are implemented, after which slow improvement would occur.

Implementation of Changes in Grazing Use: Many rangeland watersheds throughout the western United States are presently stressed as a result of ongoing drought. Drought conditions pose a barrier to prompt and effective implementation of restorative actions. Extended timeframes for implementation of changes in management may delay short-term watershed recovery but would not affect long-term watershed recovery. As described in section 4.3.1, management changes where active use is reduced by 10 percent or more is only applied to a small proportion of the 16 percent of allotments that failed standards due to existing grazing management. Therefore, the number of allotments where the implementation timeframe could be delayed due to phasing in changes is small.

Temporary Nonuse: Granting approval of nonuse for extended periods would have a beneficial effect on watersheds that are stressed by short-term climatic variation or cumulative effects from long-term grazing.

Basis for Rangeland Health

Determinations: The proposed regulation requires assessment and monitoring data when making determinations that existing grazing management or levels of grazing use are significant factors in failing to achieve rangeland health standards and conform with grazing management

guidelines. In allotments with degraded channel morphology (function) and water quality that fails to meet State standards, those resource conditions would remain static until management designed to achieve desired vegetative cover is implemented. Implementation would initiate a gradual recovery process. Extended timeframes for monitoring would delay implementation of management changes; however, this would create opportunity for development of more effective management and accelerated recovery. Since 16 percent of the allotments evaluated failed standards due to existing grazing management, the number of allotments that may degrade as a result of delays to collect data is small.

Water Rights: The proposed water right policy changes would have no effect on water resources as long as the water resources remain available for use on public land.

4.3.6 Air Quality

Overall, the proposed regulation is expected to potentially improve air quality slightly when compared with the existing situation because of the improvement in vegetative cover as a result of implementation of better and more sustainable decisions. These actions would facilitate a move toward meeting rangeland health standards. The key elements of the proposed regulation that would have the most beneficial effect are as follows:

Basis for Rangeland Health Determinations—The use of assessments and monitoring would provide better and more accurate information for use in making determinations that existing grazing management or levels of grazing use are significant factors in failing to achieve rangeland health standards and conform with grazing management guidelines.

Timeframe for Taking Action to Meet Rangeland Health Standards—which

extends the timeframe for implementation of the actions and therefore allows for better coordinated efforts.

4.3.7 Wildlife

This environmental impact analysis focuses on policy and regulation changes for livestock grazing as they affect wildlife populations and their habitats on the more than 160 million acres grazed by domestic livestock in the western United States. Most of the changes under the rulemaking are expected to have little or no effect on wildlife, as the changes largely provide clarification of the existing regulations or bring the regulations into compliance with court orders. Other concerns will be addressed when this EIS is tiered to the local level, for example, BLM Offices are required to review the adequacy of existing environmental analyses when grazing permits are issued,

The potential concerns for wildlife species from changes in the grazing regulation are outlined here. Ramifications of changes to special status species are discussed in the next section.

Implementation of Changes in Grazing Use: Allowing the adjustment in active use in excess of 10 percent to be implemented over a 5-year period has the potential to negatively affect wildlife in the short-term. However, the number of allotments affected is likely to be smaller than 16 percent because changes in active grazing use in excess of 10 percent are infrequent (see Section 4.3.1). Much more common is a change in season of use or location of use. With the cooperation of the permittee or lessee, changes can be made immediately. Further, under 43 CFR §4110.3-3 (b), if the BLM determines that there is an imminent likelihood of significant resource damage, immediate changes can be made.

Temporary Nonuse: This alternative allows BLM to approve nonuse for longer than 3 consecutive years. This requirement may benefit wildlife by allowing a longer time period for habitat to recover from rehabilitation or other effects through application for annual temporary nonuse by the permittee or lessee in cooperation with BLM. However, BLM still reserves the ability to close areas to grazing if conditions warrant.

Timeframe for Taking Action to Meet Rangeland Health Standards: Providing the BLM time, up to 24 months, to develop, formulate and analyze the appropriate action as well as complete consultation requirements and compliance with other laws such as NEPA and ESA has the potential for adversely affecting wildlife in the short term by delaying actions that may benefit wildlife species. As in the earlier discussion of “*Implementation of Changes in Grazing Use,*” such impacts could be reduced if the BLM works cooperatively with the permittee or lessee to efficiently complete all planning and analysis in a timely fashion. It is anticipated that the extended timeframe would allow for the formulation of better and more sustainable decisions that would result in better resource conditions in the long term. Thus in the long run, wildlife may benefit from this provision.

4.3.8 Special Status Species

This analysis focuses on policy and regulation changes for livestock grazing as they affect special status species and their habitats. The changes under the proposed regulations are expected to have no effect on special status species, as the changes largely provide clarification of the existing regulations or bring the regulations into compliance with court rulings. Concerns about specific species will be addressed when this EIS is offered at the local level. When

grazing permits are issued, BLM Offices are required to review the adequacy of existing environmental analyses. At that time, if it is determined that federally listed/proposed threatened or endangered species may be affected or federally designated/proposed Critical Habitat may be adversely modified; a Section 7 consultation will be conducted. When species become federally listed after the issuance of a grazing permit, consultation will be initiated. The potential concerns for special status species from changes under the proposed regulations are outlined below.

The Endangered Species Act (ESA) requires the agency to manage threatened and endangered species and the habitats they depend upon. The BLM special status species as those that are officially listed under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) as threatened or endangered; are proposed for listing, or are candidates under the provisions of the ESA; listed by a State in a category such as threatened or endangered; and those designated by each BLM State Director as BLM-sensitive. Appendix B provides the most up-to-date list of BLM special status species in each State. While this list is BLM’s most up-to-date list of special status species, the list may change at any time according to changes in the listings by the FWS; more current data from recent investigations; and further verification of a species presence on public land.

Implementation of Changes in Grazing Use: The 5-year phase-in provision does not apply to those species that are officially listed under the ESA as threatened or endangered; are proposed for listing, or are candidates for listing as threatened or endangered under the provisions of the ESA; or listed by a State in a category such as threatened or endangered. Furthermore, the provision does not apply to designated or proposed Critical Habitat covered by ESA. Section 4110.3-3(a)(ii) provides an exception to the 5-year phase-

in “where changes must be made before 5 years have passed in order to comply with applicable law.” Under this provision, reductions in active use of more than 10 percent would be implemented immediately in order to comply with “applicable law”. However, at risk species such as the sage-grouse, pygmy rabbit, mountain plover, and mountain quail; and those designated by each BLM State Director as BLM-sensitive may be affected in the short-term if the livestock grazing stocking rate is affecting their decline. The need for changing livestock stocking rates is relatively uncommon and changes in active grazing in excess of 10 percent are very infrequent. Much more common are changes in the time or duration of grazing use, the season of use or location of use - all of which may be implemented without a phase-in period.

There are several ways to avoid impacting special status species. If the BLM manager determines that natural resources require immediate protection because of conditions such as drought, fire, flood or insect infestation or that continued grazing use poses an imminent likelihood of significant damage to natural resources, then the BLM manager is required to close all or a portion of the allotment to livestock grazing or otherwise modify grazing use under 43 CFR §4110.3-3(b). Such decisions may be issued as final decisions effective upon issuance or on the date specified in the decision and are not subject to the phase-in requirement. Another method for avoiding impacts to special status species is for the BLM to work cooperatively with the permittee or lessee to implement the action immediately without any phase-in period.

Table 3.10.2.1 shows the FWS (Western Regions—Regions 1, 2, and 6) Birds of Conservation Concern (BCC) 2002. The BCC 2002 shows the nongame avian species

that are likely to become candidates for listing under the ESA. There are 39, 87, and 45 avian species on the BCC 2002 in the Pacific Region, Southwest Region, and Mountain-Prairie Region, respectively.

Temporary Nonuse: This provision, which enables the BLM to approve nonuse for longer than 3 consecutive years, allows BLM more flexibility in allowing habitat to recover. This requirement should benefit special status species by allowing a longer timeframe for habitat to recover from rehabilitation or other impacts. However, the BLM still retains the ability to close areas to grazing if conditions warrant closure.

4.3.9 Wild Horses and Burros

The environmental impact analysis focuses on the proposed regulations for livestock grazing as they would affect wild horse and burro populations and their herd management areas on the 34 million acres grazed by both domestic livestock and wild horses and burros in the western United States.

Overall, the proposed regulations would slightly improve vegetative conditions over the long-term through better and more sustainable decisions, as a result of having more time to provide effective coordination. Wild horses and burros should benefit from any improvement in rangeland health. However, in the short term, the effect of the rulemaking which allows changes in active use in excess of 10 percent to be phased in over 5 years, could have minor adverse effects on some herd management areas (HMA). Those HMAs occupied by wild horses and burros where livestock grazing stocking rates need adjustments greater than 10 percent could experience short-term minor adverse effects. However, the number of allotments would be small given the fraction of allotments where reductions in active use would be greater than

10 percent (see Section 4.3.1). There are no other noteworthy effects from the rulemaking to wild horses and burros.

4.3.10 Recreation

Overall, the proposed regulation would have minimal effects on the recreation program. The highest potential for an effect occurs on recreational activities which are enhanced or diminished by the natural condition of the lands on which they are located, such as hiking, hunting, fishing, sightseeing, and enjoying naturalness. The effects could be adverse in the short-term for such activities on a small number of allotments (16 percent of the allotments not yet evaluated for rangeland health, see Section 4.3.1) if the implementation of corrective actions to improve rangeland health is delayed, and the allotment is in a downward trend.

The least effect on recreation opportunities would occur at highly developed recreation areas where grazing may be restricted and where recreationists tend to be less sensitive to evidence of grazing. Highly developed recreational activities, such as use of off-highway vehicles (OHV) or developed campsites, would not be affected by any changes in rangeland conditions expected under the proposed regulations.

Effects both positive and negative would be greatest in higher and moister areas where more grazing use occurs, and least in the driest areas that improve at slower rates. Both commercial and noncommercial activities would be similarly affected. Revenues from commercial recreation that rely on healthy ecosystems could remain static or decline somewhat in the short term, but would generally be unaffected by this proposal in the long term.

Under some circumstances, where rangeland health standards are not attained, improvement of conditions could either be delayed or accelerated under the proposed action. Delays may occur as a result of acquisition of additional monitoring data, additional time for the development of management actions, or a 5-year phase-in implementation period. The effect of these delays would vary according to site-specific circumstances and conditions. Accelerated improvement of resource conditions may occur as a result of better decisions from the use of monitoring data and an adequate timeframe for developing management actions that are sustainable. There are no substantial effects to recreation from the other key elements in the proposed regulations.

4.3.11 Special Areas

Overall assumptions for *all Alternatives*: Special Areas would base determinations and decisions resulting from the proposed regulations with full application of the originating proclamations and laws and policies—whichever is appropriate—to determine implementation suitability. Special Area mandates—including the preservation, protection, conservation, and enhancement of resources, as well as other values and uses—must take priority over subordinate purposes.

Implementation of the proposed regulations would have minimal effects on special areas in comparison with the existing situation. Special areas are normally in healthy rangeland condition, and would not normally be in need of livestock reductions. Therefore, the differences between the proposed regulations and the existing situation would not have measurable effects on these areas in the short term or long term.

4.3.12 Heritage Resources: Paleontological and Cultural Resources (Properties)

The majority of the proposed regulation changes, clarifications, and additions will have no effect on heritage resources, whether for on-the-ground actions or for the process and requirements of cultural resource management.

Implementation of Changes in Grazing Use: The 5-year phase-in provision could have both beneficial and adverse effects on heritage resources. In the case of decreasing use, heritage resources could be subject to continued effects before the decision is fully implemented; alternatively, in the case of increasing use, the delay could allow extra time to provide protection or data recovery of sites that may be affected by the change.

Basis for Rangeland Health Determinations: Changes to the provision of rangeland health determinations could indirectly affect heritage resources by increasing workload due to site or locality monitoring data requirements, which could delay implementation of grazing related actions.

New project developments will continue to be analyzed for effects on heritage resources on a case-by-case basis; for field office or district area wide planning efforts, the BLM addresses livestock grazing impacts at the land use planning or allotment management planning level. Cultural resource surveys precede management actions that could damage heritage resources (BLM Manual 8100, The Foundations for Managing Cultural Resources). Historic and prehistoric archaeological sites found during surveys would be protected in accordance with the National Historic Preservation Act of 1966 (revised) and other laws or executive orders as stated in the Code of Federal Regulations (36 CFR §800). Additionally,

Tribal consultation begins as soon as possible in any case where it appears likely that the nature and/or location of the activity could affect Native American interests or concerns.

4.3.13 Economic Conditions

Overall, the local and regional economic effects of the proposed regulations would be minor. The primary effects would be:

1. increased management flexibility for both permittees and the BLM,
2. increased administrative costs to the BLM,
3. reduced potential adverse economic effects to permittees by increasing the amount of time to make rangeland health determinations and implement grazing decisions,
4. increased service charges to permittees undertaking specific actions, and
5. increased cost recovery to BLM for certain permittee-initiated grazing actions.

The following provisions have the greatest likelihood of creating economic or administrative effects, though none of the provisions, either individually or cumulatively, is considered significant.

Social, Economic, and Cultural Considerations in the Decision-Making Process: The primary effect of this provision would be to increase BLM administrative costs, and perhaps time, to complete NEPA analysis of changes in permitted use. NEPA already requires federal agencies to consider the effects on the human environment in all of its analyses, including social, economic, and cultural factors. The BLM does consider social, economic, and cultural factors in

its decision making but, in some instances, those considerations may not be documented. Where offices are already documenting these considerations, there will likely be no additional workload. However, in some offices, more documentation will increase the workload.

An additional economic effect of this provision may be that, to the extent that social, economic, and cultural factors were not previously documented, decisions on changes in permitted use may change. This could either benefit or harm the permittee, depending on how the decision might change. Likewise, it could benefit or harm other general economic conditions.

Implementation of Changes in Grazing Use: Decreases or increases in active use exceeding 10 percent of the existing permit would be phased in over a five-year period unless the permittee agrees to a shorter period or there is need to comply with applicable law (e.g., the Endangered Species Act). A 5-year phase-in of decreases in active use would mitigate the potential economic effect on permittees by allowing ranchers additional time to make alternative arrangements. However, it may also delay needed improvements in rangeland conditions for the short-term; which may in turn delay the achievement of sustainability of range conditions and the permittee's economic viability for the short-term. Phasing in increases in use would also allow permittees to better plan future use to the extent that additional time may be needed to increase herd size or adjust seasons of use.

Range Improvement Ownership: Shared title of range improvements could potentially improve permittees' financial condition to the extent that title may increase the value of their operations or increase their ability to obtain financing. However, permittees presently do have shared financial interest in range improvements and are compensated

for the contribution they made under a cooperative agreement in the event the permit changes ownership, so it is not clear what the net effect of this provision might be. From 1982 to 1995, ownership of range improvements was held jointly by the U.S. government and permittees. Since 1995, the Federal government has held sole title. In some States, there was a noticeable decrease in range improvements from 1995 to 1996, but following 1996 the trends are more erratic. Also, there was an overall declining trend in the numbers of range improvements since 1982 for all States combined. Thus, the data on numbers of range improvements before 1995 and after 1995 do not reveal whether permittees became permanently more reluctant to participate in range improvements, or what the effect may have been on the value of their operations.

Temporary Nonuse: This provision would increase the number of years permittees could take nonuse. Presently, permittees may only take up to 3 consecutive years of nonuse and this provision would eliminate that three consecutive year limitation. This would be a beneficial economic effect to permittees. Also, it would increase flexibility for both permittees and BLM, since there are a variety of financial and resource condition reasons for taking nonuse beyond 3 years.

Basis for Rangeland Health Determinations: Rangeland health determinations would need to be based on standards assessments and monitoring before proposing possible changes in permitted use. This may delay some determinations and increase costs to the BLM to address additional monitoring requirements. The effect on permittees would be that initiation of proposals for changes in permitted use would be delayed and thus any potential changes in their operations would be delayed. This may be a beneficial effect to permittees, depending on whether resource

conditions on their allotments can sustain delays in improvement.

Definition of Grazing Preference, Permitted Use, and Active Use: Deleting the term “permitted use” and changing the definition of “grazing preference” to include the total number of Animal Unit Months (AUMs) apportioned and attached to base property would have no economic effect. This change reflects essentially a return to the pre-1995 grazing regulations. The 1995 regulations changed the definition of grazing preference to the superior or priority position against others for the purpose of receiving a grazing permit or lease. The priority is attached to base property owned or controlled by the permittee. In addition, the 1995 regulations added the term “permitted use” to mean the forage allocated by, or under the guidance of, an applicable land use plan; it is expressed in AUMs. There was no economic effect from changing the regulations in 1995 and, likewise, there would be no economic effect from returning to the earlier definitions.

Timeframe for Taking Action to Meet Rangeland Health Standards: The effects would be similar to those from the rangeland health determinations in that BLM would have a longer time, as long as 24 months after determination, to analyze any proposed changes to address resource conditions. This delay could potentially benefit permittees in the same way as the rangeland health determination provision above, assuming that delays in proposed changes to permitted use do not cause continued deterioration in range conditions and thus the economic viability of the permittee’s operation.

Definition and Role of the Interested Public: This provision could result in reductions in costs for the BLM, but these cost savings would be minor. There are still requirements for consultation, cooperation, and coordination with permittees or lessees

and the State. And the interested public would still be afforded the opportunity for public involvement for various actions including those that affect long term grazing management direction at the allotment level. However, there would be agency actions taken that BLM would not be *required* to consult with the interested public. This provision could have an adverse effect on BLM management because it may be viewed as excluding the public from decisions where public input was previously required.

Changes in Grazing Use Within the Terms and Conditions of the Permit or Lease: This provision could increase management flexibility for both the BLM and permittees but would probably have little economic effect because overall forage utilization could not exceed the amount of active use specified in the permit. For example, if resource conditions indicated forage availability earlier than the authorized turn-out date on the permit, the BLM could authorize temporary changes in grazing use to allow an earlier turn-out date, as long as total use does not exceed the amount of active use authorized by the permit. Without this provision, the BLM would have to issue a temporary, nonrenewable (TNR) authorization to allow use that begins before or ends after the dates specified in the permit. A process that is more time-consuming and costly than simply basing authorization on the existing permit or lease. This provision could not only increase management flexibility, but could lower BLM’s costs. It could also result in more efficient utilization of forage because it allows permittees and the BLM to respond to annual fluctuations in timing and amount of forage production. However, in some BLM States, the range staff already authorizes temporary changes in use with no problems because the terms and conditions of the permit are flexibly written.

Service Charges: Increasing service charges for certain actions is essentially a cost-recovery measure for the U.S. Treasury. The primary effect of increasing service charges for certain actions would be to transfer some costs from the public (i.e., the BLM) to permittees. The present fee is \$10; under the proposed action, fees would increase to the following:

1. Issuance of crossing permit (\$75)
2. Transfer of grazing preference (\$145)
3. Cancellation and replacement of grazing fee billing (\$50)

Table 4.3.13.1 shows the net cost recovery for each of these three permittee-initiated actions.

4.3.14 Social Conditions

Basis for Rangeland Health

Determinations: The proposed regulations would have minor beneficial direct social effects on permittees stemming from the required combination of assessment and

monitoring for determinations that existing livestock grazing practices or levels of grazing use are significant factors in failing to achieve standards of rangeland health or comply with guidelines. Permittees believe that their relation to the decision process is strengthened when valid monitoring data are available for use. Environmental, conservation, and recreation groups will experience minor beneficial social effects for similar reasons. Monitoring data are seen by all groups as strengthening the basis for decisions and, therefore, enhancing the resource. Over the long term, the proposed regulations would have a cumulative positive effect because long-term data would be available to all groups to more accurately assess the condition of the resource and to provide a foundation for range improvements and projects (Table 4.3.14.1).

Changes in Grazing Use Within the Terms and Conditions of the Permit or Lease: Permittees will experience minimal social effects due to the specification of reasons for changes to grazing use. Effects on other groups are also minimal.

Table 4.3.13.1. Cost recovery under proposed service charges.

Action	Proposed Service Charge	Current Service Charge	Difference (i.e. increase in cost recovery)	Average Unit Cost to Complete Action	Net Cost Recovery
Transfer Grazing Preference	\$145	\$10	\$135	\$2,255	-\$2,110
Crossing Permit	\$75	\$10	\$65	\$339	-\$264
Supplemental Grazing Billing	\$50	\$10	\$40	\$339	-\$289

Source: BLM Management Information System 2003 (BLM 2003).

Table 4.3.14.1. Social effects of the proposed action.

Element	Group	Direct Effect	Indirect Effect	Cumulative Effect	Regional Differences	Likelihood of Occurrence
Social, Economic, and Cultural Considerations in the Decision-Making Process	Permittees	Minor Beneficial				
	Conservation & Environmental	Minimal				
	Recreation	Minimal				
Implementation of Changes in Grazing Use	Permittees	Beneficial	None	None	None	Good
	Conservation & Environmental	Minimal				
	Recreation	Minimal				
Range Improvement Ownership	Permittees	Minimal				
	Conservation & Environmental	Minimal				
	Recreation	Minimal				
Cooperation with State, County, and Local Established Grazing Boards	Permittees	Minor Beneficial		Minor Beneficial		
	Conservation & Environmental	Minimal				
	Recreation	Minimal				
Review of Biological Assessments and Evaluations	Permittees	Minimal				
	Conservation & Environmental	Minimal				
	Recreation	Minimal				
Temporary Nonuse	Permittees	Adverse	None	Adverse	None	Potential
	Conservation & Environmental	Minimal				
	Recreation	Minimal				
Basis for Rangeland Health Determinations	Permittees	Minor Beneficial	None	Minor Beneficial	None	Potential
	Conservation & Environmental	Minor Beneficial	None	Minor Beneficial	None	Potential
	Recreation	Minor Beneficial	None	Minor Beneficial	None	Potential
Biological Assessments – Application of Protest and Appeal Provisions	Permittees	Minimal				
	Conservation & Environmental	Minimal				
	Recreation	Minimal				

Table 4.3.14.1 (continued). Social effects of the proposed action.

Element	Group	Direct Effect	Indirect Effect	Cumulative Effect	Regional Differences	Likelihood of Occurrence
Timeframe for Taking Action to Meet Rangeland Health Standards	Permittees	Minor Beneficial	None	None	None	Potential
	Conservation & Environmental	Minor Adverse	None	None	None	Potential
	Recreation	Minimal				
Conservation Use	Permittees	Minimal				
	Conservation & Environmental	Minimal				
	Recreation	Minimal				
Definition of Grazing Preference, Permitted Use, and Active Use	Permittees	Minor Beneficial				
	Conservation & Environmental	Minimal				
	Recreation	Minimal				
Definition and Role of Interested Public	Permittees	Minimal				
	Conservation & Environmental	Minimal				
	Recreation	Minimal				
Water Rights	Permittees	Beneficial	None	Beneficial	Yes	Good
	Conservation & Environmental	Adverse	None	Adverse	Yes	Potential
	Recreation	Minimal				
Satisfactory Performance of Permittee or Lessee	Permittees	Minimal				
	Conservation & Environmental	Minimal				
	Recreation	Minimal				
Changes in Grazing Use Within the Terms and Conditions of the Permit or Lease	Permittees	Minimal				
	Conservation & Environmental	Minimal				
	Recreation	Minimal				
Definition and Role of Interested Public	Permittees	Minimal				
	Conservation & Environmental	Minimal				
Service Charges	Permittees	Minimal				
	Conservation & Environmental	Minimal				
	Recreation	Minimal				

Table 4.3.14.1 (concluded). Social effects of the proposed action.

Element	Group	Direct Effect	Indirect Effect	Cumulative Effect	Regional Differences	Likelihood of Occurrence
Prohibited Acts	Permittees	Minimal				
	Conservation & Environmental	Adverse		Adverse		Potential
	Recreation	Adverse		Adverse		
Grazing Use Pending Resolution of Appeals When Decision Has Been Stayed	Permittees	Minimal				
	Conservation & Environmental	Minimal				
	Recreation	Minimal				
Definition of Grazing Preference, Permitted Use, and Active Use	Permittees	Minimal				
	Conservation & Environmental	Minimal				
	Recreation	Minimal				
Treatment of Biological Assessments and Evaluations in the Grazing Decision-Making Process	Permittees	Minimal				
	Conservation & Environmental	Minimal				
	Recreation	Minimal				

Source: Section 4.3.14, Final Environmental Impact Statement

Cooperation with State, Tribal, County and Local Government-Established Grazing Boards: Permittees will experience minor beneficial social effects from this proposed action. The specific requirement to coordinate with grazing boards should stimulate the development of additional grazing boards throughout the West. Thus, the BLM will increase coordination with ranchers as individual permittees and lessees at the allotment level and additionally as a group. Because they have other avenues for monitoring and challenging decisions, social effects on environmental, conservation, and recreation groups will be minimal.

Definition and Role of Interested Publics: Any social effects from the proposed regulations are related to the list of actions for which consultation, cooperation, and coordination are required. Public

involvement does not change for those actions related to planning, but is reduced regarding operational decisions. The manner in which a public gains standing is clarified. In sum, these changes should have minimal social effects on all groups.

Grazing Preference: The proposed regulations will have minimal positive social effects on permittees because it reinforces their belief that permits should be used for livestock grazing. The definition of preference and active use are consistent with their belief that maintaining ranching as the primary use of allotments enhances the stability of their communities and social networks. This change will have minimal effect on the other groups in question.

Implementation of Changes in Use: The proposed regulations would have minor beneficial direct social effects on permittees.

The 5-year timeframe provides flexibility and reduces the immediacy of social and economic stress on ranchers and their families in the event of a cut in active use. Environmental and conservation groups generally oppose this idea, instead preferring immediate implementation to prevent further resource degradation. However, these groups could see no direct social effects stemming from this change. It will also have minimal effect on recreation groups.

Range Improvement Ownership: The proposed regulations would have minimal social effects on permittees. Most expect only a marginal increase in improvements because of being offered title. Social effects on recreational users will be minimal. Effects on conservation and environmental groups are also minimal, being confined mostly to the feeling that permittees holding title to anything on public land is unwarranted. Minimal effects on any group are expected from this proposed action concerning nonstructural improvements.

Satisfactory Performance of Permittee or Lessee: This proposed regulation could have minimal social effects on permittees and conservation and environmental groups by setting out what satisfactory performance actually is, as opposed to what it is not. For the purposes of their involvement in the management of allotments, this provides benchmarks and implies data needs, but is unlikely to require a demonstrable change in how either group interacts with the BLM.

Social, Economic, and Cultural Considerations: This provision does not change the basis for assessing the effects of grazing administration decisions. Any social effects would be related directly to how the information is used or how such considerations are weighed in making decisions. Social effects of the proposed action will be minimal for conservation and environmental advocates, and for

recreational users. By requiring that projected social, economic, and cultural effects be documented, the requirement may result in greater attention being given to such factors. This would likely have a minor beneficial effect on permittees.

Temporary Nonuse: This action will have direct adverse social effects on most permittees. Permittees and lessees feel that a limit on the number of years for which nonuse can be taken is important for maintaining the economic and social viability of their communities. This provision allows permittees and lessees not interested in grazing to apply each year to keep livestock off of the allotments. Permittees see this as being the practical equivalent of a conservation use of these allotments that may produce a cumulative effect over time that reduces their relative social networks within the community and, to them, threatens community stability. These adverse effects could be substantially reduced if forage available during nonuse is apportioned for livestock grazing to other applicants. This would meet objections concerning maintenance of the local livestock herd to maintain economic stability. Minimal effects are expected on recreation groups. Minimal positive social effects are expected on conservation and environmental groups. These stem mostly from their belief that the open-ended nature of the proposed action allows for nonuse to continue as long as necessary to recover good resource conditions. This allows them greater opportunity to work with ranch owners to change management practices on allotments within timeframes they think are more ecologically effective. This would allow them to reallocate organizational resources accordingly. The proposed reasons for approving temporary nonuse will have no social effects on permittees, recreation

groups, or conservation and environmental groups.

Timeframe for Taking Action to Meet Rangeland Health Standards: Minor beneficial direct effects will accrue to permittees from this proposed regulation. They view this proposal as decompressing the decision process surrounding rangeland health standards thereby allowing for better decisions and allowing permittees to plan for potential changes in ranch management. Minimal effects are expected for recreation groups. Social effects for conservation and environmental groups will be minor and adverse. Under this proposed regulation, these groups could encourage and achieve an agency determination about rangeland health but action could be precluded for a 24-month period pending consultations or other action. Direct effects are primarily a perceived degradation in their public access to the BLM decision process, and psychological effects within the organization in that this proposed action engenders a feeling that the decision process is designed to preclude their involvement to a great degree while their concerns about degradation of the resource are minimized.

Water Rights: Permittees will experience beneficial direct and cumulative social effects stemming from the proposed regulations reinforcing their belief that water belongs in private hands. They see the management of water resources for livestock as stabilizing their communities. The proposed regulations could also increase their certainty of stock water resources in the future. This amounts to a potential increase in their rights to stock water over time. Conservation and environmental groups see this proposed action as returning water rights to those who do not use them to support the ecosystem and therefore local communities. These groups believe that the public holds certain rights to water on public land. The proposed action

is seen as precluding uses of water on behalf of the public that are not essentially stock water. They view this as a reduction in their rights to this resource and expect direct and cumulative negative social effects over time. Recreation groups will see few social effects from this proposed regulations.

4.3.15 Environmental Justice

The regulatory changes here must be considered for their potential effect on low-income, minority, and Tribal populations. Executive Order 12898 requires that “each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.” Exec. Order No. 12,898, 59 Fed. Reg. 32 (Feb. 16, 1994). Environmental justice is defined as the “fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people, including racial, ethnic, or socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of Federal, State, local, and Tribal programs and policies” (BLM 2002a).

Although there is no standard method for assessing such effects, any environmental justice review should, to the extent feasible, involve the following steps:

1. Determine the boundaries of the potentially affected area.

2. Identify low-income, minority, and Tribal populations within the area to be subjected to the proposed action.
3. Identify potentially significant, adverse health and environmental effects that may affect one or more of these populations.
4. Consider “the interrelated cultural, social, occupational, historical, or economic factors that may amplify the natural and physical environmental effects of the proposed agency action” (CEQ 1997).
5. Determine whether such an adverse effect “appreciably exceeds or is likely to appreciably exceed those on the general population or other appropriate comparison group.” (CEQ 1997).
6. Determine whether adversely affected low-income, minority, or Tribal populations have been subjected to “cumulative or multiple adverse exposures from environmental hazards” (CEQ 1997), which should include the results of actions by other parties (BLM 2002a).

An environmental justice analysis is most feasible in project-level undertakings, where there is a limited affected area and specific environmental effects to be evaluated. It is more difficult in the large-scale review involved in resource management plans, and particularly problematic in regulatory changes having nationwide application, as in the proposed changes to the BLM’s grazing regulations.

Approximately 160 million acres of BLM-administered land in the West are suitable for grazing. At this geographic scale, it is not feasible to identify specific, potentially affected low-income, minority, or Tribal populations and examine their

reliance on public lands grazing. Rather, an analysis should determine if there is a systematic differential effect inherent in the proposed actions, and if so, whether this effect falls disproportionately on one of these populations.

For example, a change in range health standards that resulted in a broadly applied reduction in permitted AUMs would disproportionately reduce the financial viability of ranching operations having a high dependence on public grazing allotments. If there were a reasonably consistent association between high dependence on public grazing and herds owned by minority, or Tribal ranchers, there might be a conflict with environmental justice principles. (The association between smaller ranches and lower incomes is obvious, and by its nature unlikely to be judged discriminatory.)

The regulations considered here do not involve this type of on-the-ground change in grazing operations. Instead, they concern such matters as the phase-in period for changes in conditions of active use; ownership of rangeland improvements; and the opportunities for public comment in grazing administration decisions.

The economic impact analysis found most of the changes to be either neutral or beneficial for ranchers with BLM grazing allotments, although for a few measures it was not possible to predict whether the effect would result in a net cost or net benefit.

The social impact analysis found the measures neutral or beneficial, with the possible exceptions of regulations concerning prohibited acts, temporary nonuse, and water rights. Conservation and environmental groups may experience some adverse effects from proposals regarding prohibited acts and water rights, in that these measures are inconsistent with their understanding of conditions fostering the health of streams and rangelands. Permittees

may experience some adverse effects from the proposed modification of the length of temporary nonuse. None of these predicted effects, however, would seem to fall disproportionately on low-income, minority, or Tribal populations.

In summary, the changes to BLM's grazing regulations do not violate environmental justice principles.

4.4 Alternative Three: Modified Action

The direct and indirect effects of implementing the regulatory changes known as Alternative Three—Modified Action, as described in Section 2.3, are presented in this section.

4.4.1 Grazing Administration

The effects of the Modified Action Alternative are similar to those of the proposed action in that the Modified Action Alternative emphasizes a stewardship-through-partnership approach to grazing management. It also includes enhancement of administrative efficiency and effectiveness, including addressing legal issues that need clarification. However, it allows the authorized officer to make changes in active use—if greater than 10 percent over a 5-year period—discretionary; does not prescribe that both assessments and monitoring be used as a basis for determinations that identify grazing as a significant factor in failing to achieve rangeland health standards; and makes it a prohibited act to not comply with certified weed seed-free forage, grain, straw, or mulch requirements specified by the Authorized Officer.

Social, Economic, and Cultural Considerations in the Decision-Making Process: The consequences would be the same as the Proposed Action Alternative.

Implementation of Changes in Grazing Use: The effects of this provision would be similar to those of the proposed action except that the phase-in of changes to active use greater than 10 percent may not have to be implemented over a 5-year period. The Authorized Officer may, at his discretion, determine that a shorter or no phase-in period would be warranted. This could provide additional protection to Bureau-listed sensitive species, or other sensitive resource values that may benefit from a shorter phase-in period.

Range Improvement Ownership: The consequences would be the same as the Proposed Action Alternative.

Cooperation with State, Tribal, County, and Local Government-Established Grazing Boards: The consequences would be the same as those of the Proposed Action Alternative.

Temporary Nonuse: Grazing permittees and lessees would only be able to be approved for as long as 5 consecutive years of nonuse for conservation and protection of rangeland resources, or for the personal and business needs that would allow them to better manage their business, such as livestock sales that result in temporary herd size reductions. After the 5-year period has elapsed, the permittee must make full use of the grazing permit or lease. If the BLM determines that additional nonuse would help achieve resource objectives, then the Authorized Officer could issue a grazing decision or enter into an agreement with the permittee or lessee to suspend the permitted use in whole or in part. However, this presents a possible deterrence from a permittee's or lessee's standpoint for declaring nonuse situations, and detracts from cooperative management. In addition, the grazing decision or agreement process would create additional workload on the grazing administration and a delayed timeframe

for addressing needed changes in grazing management.

Timeframe for Taking Action to Meet Rangeland Health Standards: The consequences would be the same as those of the Proposed Action Alternative.

Basis for Rangeland Health Determinations: Allowing the Authorized Officer discretionary use of monitoring data as a basis for determinations of failure to achieve rangeland health standards due to livestock would allow the BLM flexibility at the local level to prioritize data and information collection. With limited resources the BLM would be able to more efficiently and effectively conduct an overall monitoring and assessment program that places an emphasis on allotments that have high resource values, contain resource conflicts, or are not achieving rangeland health standards. The BLM could focus its energy on using monitoring and assessments to make grazing management changes where they are needed to protect high resource values or show that those values are protected under present management.

Conservation Use: The consequences would be the same as those of the Proposed Action Alternative.

Definitions of Preference, Permitted Use and Active Use: The consequences would be the same as those of the Proposed Action Alternative.

Definition and Role of the Interested Public: The consequences would be the same as those of the Proposed Action Alternative.

Water Rights: The consequences would be the same as those of the Proposed Action Alternative.

Satisfactory Performance of Permittee or Lessee: The consequences would be the same as those of Proposed Action Alternative.

Changes in Grazing Use Within the Terms and Conditions of the Permit: The

consequences would be the same as those of the Proposed Action Alternative.

Service Charges: The consequences would be the same as those of the Proposed Action Alternative.

Prohibited Acts: This provision is the same as the Proposed Action Alternative except for adding a provision that requires the use of weed seed-free forage, grain, straw, or mulch when required by the Authorized Officer. This would enable the BLM to enforce weed-free requirements. This preventive measure would reduce the establishment and spread of noxious weeds on BLM-administered lands.

Grazing Use Pending Resolution of Appeals When Decision Has Been Stayed: The consequences would be the same as those of the Proposed Action Alternative.

Treatment of Biological Assessments and Evaluations in the Grazing Decision-Making Process: The consequences would be the same as those of the Proposed Action Alternative.

4.4.2 Vegetation

The effects of implementing Alternative Three on vegetative communities on public lands are expected to be very similar to those of the Proposed Action, Alternative Two, over the long term. Differences between Alternative Three and Alternative Two are analyzed below.

Implementation of Changes in Grazing Use: The alternative of discretionary use of the 5-year phase-in process for reductions of more than 10 percent would give the BLM another option in the few instances where a rapid adjustment is needed, but an agreement cannot be reached with the permittee or lessee. However, the BLM already has an option for immediate action under the proposed regulations, thus, this alternative would have similar effects.

Temporary Nonuse: The limitation of 5 consecutive years of nonuse would adversely affect the public land vegetation when an extended drought limits normal forage production longer than 5 years.

Basis for Rangeland Health

Determinations: The use of standards assessments rather than both assessments and monitoring as a basis for failure to achieve rangeland health standards due to livestock determinations will provide for quicker determinations, especially on low-priority lands. This will allow for more staff time to be directed to high-priority areas where there are vegetation condition concerns.

Prohibited Acts: Under this alternative, the additional authority provided by the prohibited act of “Failing to comply with the use of certified weed seed-free forage, grain, straw, or mulch when required by the Authorized Officer” would result in a slower expansion of exotic invasive species on public lands.

4.4.2.1 Riparian and Wetland Vegetation

Under Alternative Three, the effects on riparian and wetland areas would be the same as those under Alternative Two, except for the actions discussed below.

Implementation of changes in Grazing Use: Allowing the flexibility to use a phased approach or not, when changes in grazing use are greater than 10%, would benefit riparian vegetation to the extent it promotes decisions that match needs at local riparian sites. For large increases in the amount of grazing use (greater than 10%), the potential exists for short-term adverse effects on riparian vegetation during full increase implementation. The areas where large increases have been considered involve pastures with upland treatments such as seedings conducted years ago. The BLM emphasis on riparian resource recovery

and function is also likely to affect the implementation decision. Regardless of the timing of the use and the characteristics of the site, riparian resources would benefit when allocations are made in stages because the risk of unanticipated, short-term effects on riparian vegetation is reduced by the opportunity to evaluate change in increments.

For large decreases in authorized grazing use, the rate of change in grazing pressure would be decreased because only part of the decrease would be in effect starting with the first year. To the extent use levels, rather than timing or duration, rates of riparian recovery may be affected until the full reduction is accomplished. However, the rate and potential for riparian recovery on many streams is much more strongly correlated to timing of use.

In most instances, a carefully implemented and progressive management strategy that produces the intended results creates public support and understanding. Under the modified approach, changes that produce positive riparian condition responses might be implemented more slowly, in some instances, with phase-in, and more quickly in others, without phase-in. However, the increased likelihood of grazing operator agreement and the mitigation benefits provided by phase-in would generally improve implementation effectiveness and delivery of the riparian improvement results.

Temporary Nonuse: Extending the consecutive year limit for temporary nonuse to 5 years would positively benefit riparian and aquatic resources by maintaining the flexibility of managers and operators to implement nonuse. The extension provides 2 years of additional access to a cooperative option to promote additional rest.

Basis for Rangeland Health

Determinations: Using either standards

assessment or monitoring as a basis for determining that existing grazing management practices or levels of grazing use are significant factors in failing to achieve standards and conform with guidelines would have a minimal effect on riparian and wetland vegetation. If either assessments or monitoring show that grazing management practices or levels of grazing use are significant factors in failing to achieve standards or conform with guidelines, then the Authorized Officer can pursue a change in livestock management. However, the flexibility to direct funding for monitoring would focus monitoring efforts on the highest priority needs or issues.

Prohibited Acts: Elimination of several acts prohibited by present and proposed regulations would have both short- and long-term negative effects on riparian and wetland vegetation in a limited number of locations, to the extent other primary enforcement authorities are an ineffective deterrent.

Adding a provision on weeds: Adding a provision making the use of noncertified weed seed-free forage, grain, straw, or mulch where certified is required a prohibited act will have a positive effect on riparian and wetland vegetation. Reducing the likelihood that weeds will be introduced into riparian areas will benefit native riparian species by minimizing competition from introduced weeds. Invasive exotics reduce riparian area stability, consume scarce water, alter wildlife habitat, and compete with beneficial native plant species.

4.4.3 Fire and Fuels

Alternative Three is the same as the analysis for the proposed action in Section 4.3.3

4.4.4 Soils

4.4.4.1 Upland Soils

The effects of Alternative Three would be neutral to slightly beneficial for upland soils because of maintenance or slight improvement of watershed cover.

Implementation of Changes in Grazing Use: The discretionary 5-year phase-in of changes in grazing use could result in more rapid improvement of vegetation, soil cover, and watershed condition than the Proposed Action Alternative.

Temporary Nonuse: The five-year limit on nonuse for grazing would reduce the positive effects of that rule change in comparison with those of the Proposed Action Alternative. Allotments needing more than 5 years for natural recovery of watershed cover may not achieve objectives for protection of the upland soil resource.

Basis for Rangeland Health Determination: The option of using either rangeland health assessments or monitoring as a basis for determining failure to achieve rangeland health standards would be beneficial to upland soil resources since there would be less potential delay in making that determination. An accelerated implementation of management changes would result in more rapid improvement in resource conditions.

Timeframe for Taking Action to Meet Rangeland Health Standards: The effects would be the same as those of the Proposed Action Alternative.

Prohibited Acts: The addition of the provision on weed seed-free forage, grain, straw, or mulch could have a beneficial effect if it results in a reduction in the spread of noxious weeds on public lands. Noxious weeds can provide less effective watershed cover than native vegetation. Noxious weeds can also alter soil biological communities,

thus decreasing restoration success for native species requiring mycorrhizal fungi and other biological components of the natural soils. Elimination of several acts prohibited by present and proposed regulations would have both short- and long-term negative effects in a limited number of locations, to the extent other primary enforcement authorities are an ineffective deterrent.

4.4.4.2 Riparian Soils

The effects of Alternative Three would be neutral to slightly beneficial for riparian soils because of maintenance or a slight improvement of watershed cover.

Implementation of Changes in Grazing Use: The effects would be the same as those of the Proposed Action Alternative.

Temporary Nonuse: The 5-year limit on nonuse for grazing would reduce the positive effects of that rule change in comparison with the Proposed Action Alternative. Riparian areas needing more than 5 years for natural recovery of desirable riparian vegetation may not attain adequate protection of riparian soil resources.

Basis for Rangeland Health

Determinations: The option of using either rangeland health assessments or monitoring as a basis for determinations of failure to achieve rangeland health standards would be beneficial to riparian soil resources since there would be less potential delay in making that determination. An accelerated implementation of management changes would result in more rapid improvement in resource condition.

Timeframe for Taking Action to Meet Rangeland Health Standards: The effects would be the same as those of the Proposed Action Alternative.

Prohibited Acts: The addition of the provision on weed seed-free forage, grain, straw, or mulch could have a beneficial effect

if doing so reduces the spread of noxious weeds in riparian areas. Noxious weeds can provide less effective riparian soil protection than native vegetation. Noxious weeds can also alter soil biological communities, thus decreasing restoration success for native species requiring mycorrhizal fungi and other biological components of the natural soil. Elimination of several acts prohibited by present and proposed regulations would have both short- and long-term negative effects in a limited number of locations to the extent other primary enforcement authorities are an ineffective deterrent.

4.4.5 Water Resources

The effects of Alternative Three would be similar to the effects of the proposed alternative except as noted here.

Implementation of Changes in Grazing Use: Rapid implementation of changes in management may accelerate short-term water resource improvement over the proposed alternative but would not affect long-term watershed recovery rates.

Prohibited Acts: The addition of the provision on weed seed-free forage, grain, straw, or mulch could have a beneficial effect if it resulted in a reduction in the spread of noxious weeds. Noxious weeds can provide less-effective watershed protection than native vegetation. Elimination of several acts prohibited by present and proposed regulations would have both short- and long-term negative effects in a limited number of locations, to the extent other primary enforcement authorities are an ineffective deterrent.

4.4.6 Air Quality

The effects of the implementation of Alternative Three would be similar to those described for the proposed action. The minor regulation differences do not create

a measurable or describable difference in effects.

4.4.7 Wildlife

The effects on wildlife species in Alternative Three are similar to those identified for the proposed regulations except as described here.

Implementation of Changes in Grazing Use: Making the 5-year phase-in period discretionary rather than mandatory for any change in active use in excess of 10% may result in the BLM being able to make changes on the ground more rapidly to benefit wildlife.

Basis for Rangeland Health

Determinations: The ability of the BLM to base failed rangeland health determinations on a rangeland health assessment or monitoring data would be beneficial to wildlife. This change from Alternative Two would enhance the BLM's ability to take corrective action at the earliest date within existing funding and staffing capability.

Temporary Nonuse: The proposal to limit BLM's ability to approve applications for nonuse to no more than 5 consecutive years may adversely affect wildlife. It may take more than 5 consecutive years to improve wildlife habitat to the desired state. However, mechanisms are in place to close areas to livestock grazing for longer than 5 years if conditions warrant.

Prohibited Acts: The addition of the provision on weed seed-free forage, grain, straw, or mulch would have a beneficial effect on wildlife if it reduces the spread of noxious weeds. Removing the capability of the BLM to address violations of Federal or State laws (regulations pertaining to the placement of poisonous bait or hazardous devices designed for the destruction of wildlife; application or storage of pesticides, herbicides, or other hazardous materials; alteration or destruction of natural stream courses without

authorization, or aiding and abetting in the illegal take, destruction, or harassment of fish and wildlife resources; and illegal removal or destruction of archaeological or cultural resources) that have been prosecuted removes a mechanism for protecting wildlife and special status species. Such acts would still be prosecuted by the appropriate Federal or State agency; however, after conviction, the permittee or lessee could not be additionally penalized by having the grazing permit or lease denied, suspended, or canceled.

4.4.8 Special Status Species

The effects on special status species in Alternative Three are similar to those identified for the proposed regulations except for the elements described here. The effects on special status species are also similar to the effects of Alternative Three on wildlife species described in Section 4.4.7.

Implementation of Changes in Grazing Use: Making the 5-year phase-in period discretionary rather than mandatory for any change in active use in excess of 10 percent would provide more flexibility in protecting non-listed species and result in the BLM being able to make changes on the ground more rapidly to benefit special status species. Special status species would not be at risk from the potentially harmful delays in implementation of necessary conservation measures discussed under Alternative Two.

Temporary Nonuse: The proposal to limit the BLM's ability to approve applications for nonuse to no more than 5 consecutive years may adversely affect special status species. It may take more than 5 consecutive years to improve special status species habitat to the desired state. However, if needed, the area could still be closed to livestock grazing for longer than 5 years if conditions warrant.

Basis for Rangeland Health

Determinations: The ability of the BLM to base failed rangeland health determinations

on a rangeland health assessment with or without monitoring data would positively affect special status species. This flexibility would enhance the BLM's ability to take corrective action at the earliest date within existing funding and staffing capability.

Prohibited Acts: The addition of the provision on weed seed-free forage, grain, straw, or mulch should have beneficial effects on special status species if doing so reduces the spread of noxious weeds. The concern for special status species on the proposal to eliminate some prohibited acts is the same as the concern for wildlife. There is no way to ascertain how having the capability to remove a rancher from the land has deterred illegal activities that can adversely affect special status species activities such as poisoning prairie dogs and ground squirrels; killing gray and Mexican wolves, grizzly bear, jaguars, and mountain lions; and others.

4.4.9 Wild Horses and Burros

The effects on wild horses and burros in Alternative Three are identical to those discussed in Alternative Two, with the following exceptions:

Implementation of Changes in Grazing Use: Changes in active use in excess of 10 percent in less than the 5-year phase-in period would be a benefit to the rangeland and the wild horses and burros that use it.

Prohibited Acts: The present regulations allow livestock operators to be cited for certain prohibited acts. The elimination of these prohibited acts would eliminate another deterrent if actions would be taken against a permittee or lessee. However, there are other regulatory mechanisms in place for enforcement of these acts, and the occurrences of permittees or lessees conducting these prohibited acts are rare.

4.4.10 Recreation

Overall, the effects on recreation from implementation of Alternative Three would be similar to those for Alternative Two. Slight differences are explained here, but are not considered noteworthy.

Prohibited Acts: Certain prohibited acts would be removed from the existing range regulations. Although the prohibited acts proposed for removal are activities that could diminish recreational opportunities, their removal would not be expected to affect recreation since those acts would continue to be prohibited in other regulations and laws.

This alternative would make the use of certified weed-free feed a requirement where established by the Authorized Officer. The recreational setting and opportunities for enjoyment of naturalness, wildlife observation, hunting, fishing, and access to recreational opportunities could be adversely affected by the introduction or spread of invasive species. This alternative would help protect the recreational setting by providing additional regulatory assistance in reducing the potential for noxious weed introduction. This alternative would be most evident on recreation permits and uses in special recreation areas, which are the most highly regulated and monitored.

4.4.11 Special Areas

Overall assumptions for all Alternatives: The BLM would base determinations and decisions resulting from the proposed action with full application of the originating proclamations, laws, and policies—whichever is appropriate—to determine implementation suitability. Special area mandates, including the preservation, protection, conservation, and enhancement of resources and other values and uses, must take priority over subordinate purposes.

Effects from the implementation of Alternative Three would be the same as those described for the proposed action. However, there are some slight differences in effects, as stated here.

Prohibited Acts: The provision includes failing to comply with the use of certified weed seed-free forage, grain, straw, or mulch, when required by the Authorized Officer. The regulation would provide a deterrent to the general public, including permittees or lessees, for introducing or spreading noxious weeds on public lands. BLM law enforcement rangers would have the authority to cite for the violation. Also, Alternative Three would remove provisions regarding prohibited acts related to violations of Federal or State laws pertaining to poisonous bait or hazardous devices, storage of hazardous materials, altering stream courses, water pollution, illegal take, destruction or harassment of fish or wildlife, and destruction or removal of cultural resources. Removing the above provisions would represent a potential loss of a deterrent for potential violators by eliminating punitive actions against grazing permits or leases.

4.4.12 Heritage Resources: Paleontological and Cultural Resources (Properties)

Issues to be considered under Alternative Three, Modified Action, are the same as those for the proposed action except for slight modifications to four of the elements (temporary nonuse provision, 5-year phase-in provision, rangeland health determination requirements, and prohibited acts). All of the previous changes or provisions that could have no effect on heritage resources would also have no effect under Alternative Three, including the slight modification in the temporary nonuse provision. Additionally,

the provisions in Alternative Two that could affect heritage resources would also have an effect under Alternative Three.

New project developments will continue to be analyzed for effects on heritage resources on a case-by-case basis; for field office or district area wide planning efforts, the BLM addresses livestock grazing impacts at the land use planning or allotment management planning level. Cultural resource surveys precede management actions that could damage heritage resources (BLM Manual 8100, The Foundation for Managing Cultural Resources). Historic and prehistoric archaeological sites found during surveys would be protected in accordance with the National Historic Preservation Act of 1966 (revised) and other laws or executive orders as stated in the Code of Federal Regulations (36 CFR §800). Additionally, Tribal consultation begins as soon as possible in any case where it appears likely that the nature and/or location of the activity could affect Native American interests or concerns.

Implementation of Changes in Grazing Use: Having the 5-year phase-in provision be discretionary rather than mandatory may allow added flexibility to the relationship between permittee or lessee and the BLM at the local level. Also, this provision could have both beneficial and adverse effects on heritage resources. With decreasing use, heritage resources could be subject to continued effects before the decision is fully implemented; alternatively, with increasing use, the delay could allow extra time to provide protection or data recovery of sites that may be affected by the change.

Basis for Rangeland Health Determinations: Changes to the provision of Rangeland Health Determinations may indirectly affect heritage resources by increasing workload because of site or locality monitoring data requirements.

Prohibited Acts: Changes may have a slight adverse effect on heritage resources. The elimination of the “illegal removal or destruction of archaeological or cultural resources” clause could hinder the BLM’s ability to take action against the permittee or lessee in the form of withholding issuance, cancellation, or suspension of his or her permit or lease. However, it does not preclude the BLM from taking action against the permittee or lessee for violation of Federal law. Overall, this would have a minor affect on the BLM’s ability to protect and manage cultural resources as required by the National Historic Preservation Act and the Archaeological Resources Protection Act.

4.4.13 Economic Conditions

The economic effects of Alternative Three would more closely resemble those under the Proposed Action, with the exception of three following provisions:

Implementation of Changes in Grazing Use: Under Alternative Three, a 5-year phase-in of changes in use exceeding 10 percent would be discretionary rather than mandatory. When the 5-year phase-in is used, the effects would be the same as under the Proposed Action. A phase-in period of less than 5 years may require permittees to make management adjustments more quickly than might be preferred by them. However, a shorter phase-in would accelerate improvements in range conditions which, in turn, may have a long-term beneficial effect on permittees’ operations.

Temporary Nonuse: Under Alternative Three, temporary nonuse could be annually approved for as long as 5 years. The economic effect of this would be somewhere between Present Management (where 3 consecutive years on nonuse may be approved) and the Proposed Action (where there are no limits on the number of

consecutive years of approved nonuse). This provision offers an additional 2 consecutive years of nonuse, which would be a beneficial economic effect on permittees and would increase flexibility for both permittees and the BLM.

Basis for Rangeland Health

Determinations: Under Alternative Three, the BLM would have discretion to use assessments or monitoring as a basis for failed rangeland health determinations. This differs from the Proposed Action, which requires that both assessments and monitoring be used. The provision would give the BLM greater flexibility than under the Proposed Action. All States now have some procedures for standards assessments and these may or may not also be accompanied by monitoring data when making determinations. Overall, greater flexibility to concentrate limited resources on priority allotments would affect the administrative costs or workloads of the BLM. The economic effect on permittees would primarily be that determinations might not be delayed and thus, proposed changes in use might occur earlier than under the Proposed Action.

4.4.14 Social Conditions

Basis for Rangeland Health

Determinations: The proposed action could have minimal social effects on permittees and conservation and environmental groups by allowing the agency to choose to use either assessment or monitoring as a basis for determining range health. Both groups stated that they prefer monitoring to be the basis for important and controversial determinations of rangeland health. Choosing to use an assessment instead could force both groups to use their resources to conduct their own monitoring and to challenge the assessment-based decisions on those grounds. No effects

are expected on recreation groups (Table 4.4.14.1).

Temporary Nonuse: Minimal social effects are expected from this proposed action.

Prohibited Acts: These deletions could have adverse social effects on conservation and environmental groups who see this as a reduction in prohibited acts that will allow further degradation of grazing allotments. They see direct effects in the threat that some of these actions present to the quality of their local environment. Recreation groups could experience similar effects if previously prohibited acts reduce the quality of their recreation experience. Both groups see these changes as potentially requiring that they acquire and expend additional resources over time to monitor and challenge the deleted activities on grazing allotments and as reducing their formal avenues for applying pressure on range managers to stop such activities. Permittees will experience minimal social effects.

4.4.15 Environmental Justice

The environmental justice implications of the modified action alternative are substantially identical to that identified for the proposed regulations alternative.

4.5 Cumulative and Other Effects

The Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA) for 40 CFR Parts 1500–1508 identify requirements for the Federal agencies to address the cumulative effects of proposed actions. Cumulative effects are defined as the effects on the environment resulting from the incremental effects of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency (Federal or non-Federal) or person undertakes such other actions.

Table 4.4.14.1. Social effects of the modified action, alternative three.

Element	Group	Direct Effect	Indirect Effect	Cumulative Effect	Regional Differences	Likelihood of Occurrence
Implementation of Changes in Grazing Use	Permittees	Minimal				
	Conservation & Environmental	Minimal				
	Recreation	Minimal				
Basis for Rangeland Health Determinations	Permittees	Minimal				
	Conservation & Environmental	Minimal				
	Recreation	Minimal				
Temporary Nonuse	Permittees	Minimal				
	Conservation & Environmental	Minimal				
	Recreation	Minimal				

Source: Section 4.4.14, Final Environmental Impact Statement.

The scope of this proposed action and alternatives is very broad. The analysis of effects is therefore programmatic. Other broad-based initiatives and actions that are likely to contribute to cumulative effects are discussed below. In addition to the various programmatic actions, there will likely be regionally and locally based actions that will contribute to the cumulative effects.

As indicated in Chapter 1, the BLM has initiated an effort to develop grazing policies that would promote sustainable rangeland and sustainable ranching. The purpose of this effort, known as the Sustaining Working Landscapes policy initiative, would be to improve the long-term health and productivity of the public lands through innovative partnerships with permittees and lessees within the present regulatory framework. Twenty-four public workshops were held on the policy initiative in spring 2003. In summer and fall 2003, policy options were considered by 21 BLM Resource Advisory Councils throughout the West and recommendations were submitted to the Director. All of this information is presently being reviewed. It was decided, however, that further action on the Sustaining Working Landscapes policy initiative would be deferred until comments had been received on the Proposed Rulemaking to amend the grazing regulations. It is reasonably foreseeable that policies would be developed and implemented over the next year to promote sustainable ranching and rangelands. However, it is not known at this time what the specifics of those policy proposals would be. It is likely that any policies that may be developed would focus on encouraging partnerships with permittees and lessees and others who may be interested in improving the health and productivity of the rangelands, as well as promoting mechanisms to facilitate more efficient ranching operations. The policy emphasis, therefore, will generally

complement the objectives of the proposed regulatory amendments.

The Healthy Forests and Initiative and the National Fire Plan have also been identified as programmatic level policies that will affect rangelands. Both of these initiatives are collaborative efforts with all stakeholders to reduce the potential for devastating wildland fires. These efforts focus on improving the health of both forests and rangelands; it is reasonable to assume that over time rangelands would experience increasing positive benefit from these efforts. In addition, there are projects which train and equip ranchers to be qualified to assist in fire suppression and fuels treatment projects. These efforts promote partnership and cooperation with permittees and lessees in achieving mutually beneficial objectives.

Another initiative under way is the development of a programmatic Vegetation Treatment EIS. The goals of the Vegetation Treatment program are to manage vegetation to sustain the condition of healthy lands and, where land conditions have degraded, to restore vegetation to more healthy conditions. The vegetation treatment program, which covers a variety of vegetation treatment options and best management practices, will also complement the objectives of this Proposed Rulemaking.

A third critical initiative is the BLM Sage-Grouse Habitat Conservation Strategy. The primary goal of this strategy is to help address the precipitous population decline of the sage-grouse, a species under consideration for Federal listing under the ESA, through a comprehensive habitat conservation strategy. Today, the BLM manages more than 50% of the remaining sage-grouse habitat. The strategy is a sage-grouse rangewide effort that involves a diverse group of cooperators, including multiple Federal, State, and Tribal agencies, as well as special interest groups and

private landowners. Appropriate and timely conservation measures for sage-grouse are critical for preventing further population declines and ESA listing of the species. Conserving and improving habitat for native species such as sage-grouse are part of the objectives of improving rangeland health through better use of the Four C's. Therefore, the Sage Grouse Habitat Conservation Strategy is expected to complement the objectives of this Proposed Rulemaking.

Policies and procedures for promoting the Secretary's Four C's—consultation, cooperation, and communication all in the service of conservation—are also being developed. One of the purposes of this rulemaking is to improve working relations with our permittees and lessees, an important component in support of the Four C's philosophy.

In summary, the other related programs now being initiated or contemplated will cumulatively enhance and increase the positive outcomes and effects anticipated from this proposed rulemaking.

There are no irreversible or irretrievable commitments of resources directly resulting from the proposed regulation changes nor are there any projected discernable effects from short-term uses on long-term productivity of resources arising from this proposed rulemaking.

Most of the proposed regulatory changes have little or no adverse impacts on the human environment. Some short-term adverse effects may not be avoided because of increases in timeframes associated with several components of this proposed rulemaking, including the requirement for a 5-year phase-in of changes in use of over 10 percent, the requirement for monitoring before making a determination that livestock grazing is the causal factor for failure to meet standards and conform to guidelines, and the extension of time allowed before a decision must be made after a determination that livestock grazing is the causal factor for failure to meet standards and conform to guidelines for grazing administration. However, better and more sustainable decisions would be developed by using monitoring data in analyzing achievement of standards and by taking the time to carefully develop, formulate, and analyze the appropriate action and ensuring that all legal and consultation requirements are satisfied. In the long-term, it is expected that the effects of these provisions would be beneficial to rangeland health.

Mitigation measures are addressed in the development of Alternative Three. Additional mitigation measures would be appropriately developed when site-specific NEPA documents are prepared to implement the regulatory provisions.

Chapter 5

Public Participation, Consultation, Coordination, and Response to Comments



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5.0 Public Participation, Consultation, Coordination, and Response to Comments

Chapter 5 contains a summary of the public participation process, consultation and coordination with other Federal agencies on this rulemaking and responses to comments on the draft EIS. Also incorporated in this section is a list of preparers for the draft and final EIS.

Changes in Chapter 5 include the following:

- Update of information:
 - 5.1 Public Participation – Updated information on process and incorporated by reference the brief summary of scoping comments that were set forth in the draft EIS in Section 5.1.2
 - 5.2.1 Tribal - Provided updated information on Tribal consultation process
 - 5.2.2 Threatened and Endangered Species – Provided update on determination of no effect
 - 5.3 List of Preparers – Updated list to include individuals who assisted in coding comments, reviewing and analyzing comments, preparing responses to comments and revising/preparing the final EIS.
- Additional information:
 - 5.4 Response to Comments – Based on comments received the draft EIS, incorporated summary comment statements and responses by category.

5.1 Public Participation

As described in Chapter 1, the EIS public participation process consists of several phases. Public participation begins with scoping, which is conducted to help identify issues and alternatives before the proposed action and alternatives have been developed. Information gathered during scoping is analyzed and used in determining the issues to be addressed and the alternatives to be presented in detail in the draft EIS.

The draft EIS is subject to further public review and comment during the 60-day public comment period. Public meetings are held during the comment period on the draft, allowing individuals to present oral comments on the draft. After the comment period, a final EIS is developed that responds to comments received on the draft and incorporates, as appropriate, changes in the proposed action, as well as the analysis of effects.

Including public involvement throughout the process ensures that the process is open and considers information from all interested parties, including other Federal agencies, state and local governments, the scientific community, professional organizations, public land users, conservation organizations, and citizens at large.

5.1.1 Scoping Process

The BLM published an Advance Notice of Proposed Rulemaking (ANPR) and Notice of Intent (NOI) to prepare an EIS in the *Federal Register* on March 3, 2003. These notices requested public comment to assist the BLM in the scoping process for both the proposed rule and associated draft EIS. The

comment period for both ended on May 2, 2003.

In the Notice of Intent to prepare the EIS, the BLM stated that it was considering changes to the present rule and establishing new options for BLM and rangeland users in the administration and management of public land. Comments were requested on topics under consideration that were related to both the EIS and the proposed rule. Copies of the ANPR and NOI were published in the draft EIS in Appendix D and Appendix E, respectively, and are incorporated herein by reference..

The BLM held four public scoping meetings during March 2003. Approximately 60 people attended the Billings, Montana, meeting (March 18) and 23 people offered testimony. Around 200 people attended the Reno, Nevada, meeting (March 20) and 25 offered testimony. Approximately 50 people attended the Albuquerque, New Mexico, meeting (March 25) with 27 individuals providing testimony, and approximately 25 people attended the Washington, D.C., meeting (March 27), with testimony provided by 5 individuals.

5.1.2 Summary of Scoping Comments

The BLM received more than 8,300 comments during scoping in response to the Advance Notice of Proposed Rulemaking and the Notice of Intent. Most of the comments were form letters; however, at least three dozen letters containing substantive comments from special interest organizations and state and Federal agencies were received. In addition, many substantive comments were provided orally at the public meetings.

The comments have been categorized into five topics: A) Definition changes. B) Changes in the regulations to clarify present requirements and to allow

better rangeland management and permit administration. C) Amendments related to changes in permitted use. D) New provisions to the regulations. E) General comments not addressed in the ANPR and NOI. A brief summary of the public comments by these topics was presented in the draft EIS and is incorporated herein by reference.

A more complete summary of the scoping comments is found in Appendix C.

5.2 Consultation and Coordination Actions

5.2.1 Tribal

The Bureau of Land Management works on a government-to-government basis with Native American Tribes. As a part of the government's Treaty and Trust responsibilities, the government-to-government relationship was formally recognized by the Federal government on November 6, 2000, with Executive Order 13175.

The BLM coordinates and consults with Tribal governments, Native communities, and Tribal individuals whose interests might be directly and substantially affected by activities on BLM-administered lands. The BLM strives to provide the Tribes sufficient opportunities for productive participation in BLM planning and resource management decision making.

The BLM contacted Tribal government representatives for input into the grazing rulemaking and draft EIS. It began with the initiation of the public scoping process. Issues raised by Tribal governments, Tribal entities and Native American individuals during meetings and received in letters were considered in the development of the draft EIS and proposed rule.

Once the draft EIS and proposed rule was ready for release and public review, including review by Tribal governments, more than 300 Tribes west of the Mississippi River, excluding Alaska, were sent a letter soliciting their comments to the draft EIS and proposed rule. Enclosed was a copy of the draft EIS and proposed rule on a compact disk and Web site information for finding the documents on the Internet. We received comments from the Agua Caliente Band of Cahuilla Indians, the Pueblo of Laguna, the Shakopee Mdewakanton Sioux Community, the Confederated Salish and Kootenai Tribes, the Mescalero Apache Tribe, and the Shoshone-Paiute Tribes.

5.2.2 Threatened and Endangered Species

BLM evaluated the regulatory changes to determine if candidate, proposed or listed species and Critical Habitat would be affected. A determination was made that the regulatory changes would have no effect on candidate, proposed, threatened or endangered species, or designated or proposed Critical Habitat.

Before grazing permits are issued, the appropriate BLM Office will review the adequacy of existing environmental analyses and determine if candidate, proposed, threatened or endangered species or designated or proposed Critical Habitat within the proposed permit or lease area may be affected. If adverse effects are likely, a formal Section 7 consultation will be conducted with FWS or NOAA, Fisheries.

5.2.3 Cultural and Historic

Before authorizing surface disturbance undertakings at the regional or local level, the BLM will identify cultural properties eligible for inclusion in the National Register of Historic Places and consider the effects

of the proposed undertakings through the consultation process in Section 106 of the National Historic Preservation Act of 1966.

In accordance with BLM's national Programmatic Agreement with the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation officers in 1997, the BLM provides the Council information concerning prospects for regulations. In December of 2003, the BLM sent a letter to the Advisory Council on Historic Preservation notifying them of the proposed grazing regulation changes including a brief synopsis of the goals and objectives of the regulatory changes and information on where to find the current regulations for their review. Upon its release, the draft EIS was sent to the Council for their review.

Any new projects developed under the changed regulations would be analyzed for effects on cultural resources on a case-by-case basis; all applicable laws, executive orders, regulations, and manual requirements and procedures for identification, protection and utilization of, and consultation on cultural resources will be followed.

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5.4 Response to Comments

The extended comment period on the proposed rule and DEIS ended on March 2, 2004. We received more than 18,000 comment letters and electronic communications. An exact count of the comments is not available because of the large amount of duplication among the comments; very often a single individual or entity submitted identical comments multiple times or via different media. We did not attempt to keep track of all the duplications, although we observed many. .

In this section, we provide summary comment statements of the substantive comments on the proposed rule and the draft EIS and responses to those comments. We received a large number of comments that supported or opposed the proposed regulations in general terms. We have not attempted to respond to these general expressions of support or opposition. The comments are organized by subject and presented in groups that address a theme on the subject. Similar comments have been grouped together into themes and are addressed with a single response.

5.4.1 The Process

Comment: Some comments addressed the regulatory process itself. One comment urged the BLM to clarify when comments are due by specifying a date and time, including time zone, stating that they find it uncertain when the exact comment deadline is in the electronic age. Another comment stated that the BLM should not ignore comments received from the public during the rulemaking process.

Response: We always accept comments postmarked or electronically dated within the stated comment period, regardless of the time zone of origin. In future proposed rules, we

will make this clearer. We received almost 18,000 letters, postcards, e-mails, faxes, and web-based comments on the proposed rule and the DEIS, and statements made at the public meetings, and the BLM staff reviewed every comment numerous times.

We have responded to comments on the content of the proposed rule and the DEIS in either the final rule or the EIS, or both. In some cases, we responded with a change in the regulatory text, and in others with revised or additional language in the EIS. In other cases, we have tried to explain why we did not adopt the comment. Since we received so many communications to analyze, we have not attempted to respond separately to every duplicate or substantially similar communication individually, and not all suggestions in the comments are adopted. We often receive conflicting comments from the public. Opinions regarding the rule, especially suggestions to amend the language, were considered by the BLM in preparing the regulatory changes. We discuss in this EIS or we will discuss in the preamble of the final rule every discrete suggestion and argument raised in the comments.

Those comments that appeared in form letters or that were expressed multiple times in multiple ways have been addressed in a response to a prototypical example of each such communication, or have been summarized and responded to as a general comment.

Comment: One comment stated that the BLM should have answered questions at the public meetings to help clarify the proposed rule.

Response: During the public meetings, the BLM sought direction from the audience on other possible policy issues or regulation changes that we should consider for implementation. The BLM did not want to influence the audience or limit the possible discussion during the meetings.

Comment: One comment stated that the BLM should give more weight to comments and concerns from the agricultural industry than those from other interests. Another stated that the Public Lands Council comments should be the first guide in amending the grazing regulations.

Response: The BLM considered all substantive and relevant comments from the public equally on their merits, whether they were from industry, other government agencies, staff comments, academia, other interest groups, or individuals.

Comment: Some comments stated that the BLM should not have released the DEIS nearly one month after publication of the proposed rule and gave three reasons. The comments reasoned that the one month delay indicated that it was a rationalization of the rule, indicated that BLM did not take a hard look at the environmental consequences as required by NEPA and that BLM should have issued the rule and DEIS simultaneously as required by NEPA and CEQ.

Response: Although the Council on Environmental Quality regulations at 40 CFR 1502.5(d) require that the DEIS normally accompany the proposed rule, the proposed rule publication schedule was accelerated to coincide with an opportunity to announce the event publicly, resulting in a time gap prior to the publication of the EIS. Staff schedules and office closure during the holiday season in November and December also contributed to the delay. The analysis of environmental effects was completed prior to the publication of the proposed rule. This EIS documents in a broad way the environmental effects that would result from the proposed regulatory changes in several individual administrative steps in the overall process of managing grazing on public lands. Therefore the analysis is necessarily broad, and the environmental elements and the potential effects of the proposed regulatory changes are described

in a general context in Chapter 4 of this EIS. The BLM is not aware of any absolute requirement to publish the DEIS and proposed rule simultaneously.

Comment: The BLM should not implement the proposed rule because it will result in failure of the BLM to act as trustee of the environment for succeeding generations. BLM's implementation of the proposed regulations will not meet at least 3 of the 6 substantive obligations listed in Section 101(b) of NEPA. The first element is: Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations. The second element is: Assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings. The third element is: Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences. Portions of the rule will result in failure of the BLM to act as trustee of the environment by implementing regulations that limit the ability of the agency to respond in a timely manner to environmental concerns and ecological conditions (e.g., implementation of changes in grazing use, basis for rangeland health determinations, timeframe for taking action to meet rangeland health standards, and grazing use pending resolution of appeals when decision has been stayed.)

Response: The rule is designed to enable succeeding generations of ranching families to stay on their land, a crucial element of rural landscapes, and thus to preserve those landscapes for future generations of all Americans. The implementation schedule changes discussed in the comment are necessary to make the needed changes in grazing administration reasonably attainable from a management perspective, and, by allowing ranchers extra time in certain circumstances to prepare for the changes or

by allowing some uses to continue pending appeal, to make them less economically damaging without changing the substance of the necessary adjustments in use levels or other practices. The rulemaking is based on the axiom that preservation of open space, in the face of a trend toward urbanization and sprawl, is a good thing. The presence of ranch and livestock operations on private and public land is an important bulwark against urban and suburban sprawl. The proposed rule discussed this thoroughly in the preamble. Livestock permittees live and work in the heart of Western rural landscapes. Their relationship with BLM needs to be more than regulatory if we are to engage in conservation of entire landscapes. Our goals are to establish simple and practical ways for permittees, lessees, affected state and local officials, and the interested public to engage in partnerships with BLM that improve open space, watershed, and habitat conditions. In addition, the incentives built into the changes in the regulations, such as shared ownership of range improvements and more flexible provisions for temporary nonuse, will lead to habitat restoration and other benefits. The changes in the rule will not interfere with attaining wide ranges of beneficial uses of the public rangelands, and will allow land managers and users to take steps to reverse degradation.

We explain in detail in Section 4.3 of this EIS why the largely administrative changes BLM is making in the rule will have little or no environmental effect.

Comment: The BLM should not ignore comments received from the public during the rulemaking process.

Response: BLM has not ignored any comments received at any point during the rulemaking process. We received more than 18,000 letters, postcards, e-mails, faxes, and web-based comments on the proposed rule

and the DEIS and the BLM staff reviewed every comment numerous times.

We have responded to comments on the content of the proposed rule and the DEIS in this EIS. In some cases, we responded with a change in the regulatory text, and in others with revised or additional language in the EIS. In other cases, we have tried to explain why we cannot adopt the comment. We discuss in the EIS every substantive suggestion and argument raised in the comments.

Since we received so many comments to analyze we cannot respond to every duplicative or similar comment individually, and we did not adopt every suggestion contained in the comments. We often receive conflicting comments from the public. BLM considered all views and suggestions regarding the rule, especially suggestions to improve the language in the regulations.

Those comments that appeared in form letters or that were expressed multiple times in multiple ways have been addressed in a response to a prototypical example of each such communication, or have been summarized and responded to as a general comment.

Comment: It seems from our review of the draft EIS that comments the BLM received in response to the ANPR and the NOI were ignored—especially those from nongrazing publics. Your proposal has changed little even in the face of some 8300 comments “expressing opposition.” You seem to have severely discounted the nongrazing public’s comments and characterized them as “form letters.” You characterize other comments, mostly from the grazing industry, as “three dozen letters containing substantive comments.”

Response: The BLM reviewed the comments received from the ANPR numerous times. The comments characterized in the DEIS as substantive came from

organizations representing environmental as well as grazing interests. All of the comments were analyzed and considered by BLM. The results of Scoping can be found in section 1.3.2 of the EIS. More detailed analyses of the scoping comments are in Appendix C of the EIS.

Comment: The BLM should send confirmation of receipt of comments for those who submit comments through BLM’s On-Line Regulations Comment System.

Response: The BLM does provide confirmation when a comment is received through the BLM’s On-Line Regulations Comment System. If a comment is entered via the BLM’s On-Line Regulations Comment System web version a confirmation is sent after the email is received. Due to Internet traffic and numerous Internet providers a response email may not be received by the comment immediately. It may take several hours for the receipt of email to be received. Many, if not most, of these factors are out of the control of the BLM.

Comment: The BLM should coordinate with other government agencies to develop a single public comment system because it is difficult for the public to learn so many different systems.

Response: The BLM is currently working with a number of other Federal Government agencies to consolidate on-line commenting on regulations for the public. The BLM’s On-Line Regulations Comment System is currently used by the BLM as well as the Bureau of Indian Affairs for regulation changes.

Comment: The BLM should continue the use of ePlanning for accepting comments from the public on EISs. This allows more people to participate in the BLM’s planning process and it is easier to use than other on-line systems. BLM should provide a feedback mechanism to the user who submits a

comment using ePlanning to verify that BLM actually received the comment.

Response: Based on this comment, BLM has added this feature to be applied to the next version of ePlanning.

Comment: The BLM should not implement ePlanning because it is too difficult to use.

Response: We are working on a revised version of ePlanning that incorporates some changes intended to make the system more user friendly. Specific recommendation from the public for improving its usability would be appreciated. You may submit such suggestions to Director (210), Bureau of Land Management, Washington, DC 20240.

5.4.2 General Opposition

Comment: Many of those who opposed the proposed rule stated that BLM should not adopt the rule because it would give ranchers preferential treatment at the expense of the nation's natural resources; favor ranchers and elevate grazing as the primary use of public land instead of managing for multiple resources and restoring degraded resources; weaken the conservation and restoration of public lands; limit public participation; limit BLM's regulatory authority with respect to public lands; and return to the archaic notion that the grazing lessee in essence owns the public's land. Others opposed the rule, stating that it hampers the work of BLM field offices, or that it fails to identify good and bad grazing practices. Many comments opposing the rule expressed their opposition in terms of opposing public land grazing itself.

Response: We agree that we are a multiple use agency and that single uses should not generally be favored at the expense of other users or resources. These regulations do not favor ranchers at the expense of other resources. Rather, the changes are intended, among other things, to

improve the cooperative environment within which ranching takes place on public land. At the same time we have made certain that these adjustments to the regulations do not harm the rangeland resources or prevent significant involvement of the public in rangeland management. We need to amend the current regulations to improve working relationships with permittees and lessees, to protect and enhance the health of public rangelands, to resolve some legal issues, and to improve administrative efficiency. The rule continues to provide for BLM cooperation with other government agencies that have responsibility for grazing on public lands. The rule provides for the interested public to review, provide input, and comment on reports that evaluate monitoring and other data used as a basis for developing terms and conditions of a grazing permit or lease. Also, the rule retains interested public participation when preparing allotment management plans, developing range improvement projects, and apportioning additional forage. In the rule, the interested public retains the opportunity to review proposed and final decisions, as well as the right to protest proposed decisions and appeal final decisions as long as they meet the requirements of 43 CFR 4.470.

The BLM manages for multiple uses. We also restore degraded resources, and believe that we can pursue restoration while managing under the regulations to achieve responsible grazing.

We do not seek to elevate grazing to be the primary use of public land. BLM manages the public land on the basis of multiple use and sustained yield. We intend the regulatory changes to improve working relationships with permittees and lessees. We anticipate that these changes will enhance consultation, cooperation, and day-to-day coordination with them. Additionally, the rule focuses communication efforts on those groups most interested in the management

of public lands for grazing. The cooperation fostered by the rule should help make BLM's field work more efficient and cost effective.

The BLM does not believe that the rule weakens environmental standards. For example, it strengthens standards by requiring monitoring and land assessment in areas that do not meet rangeland health standards due to grazing practices before BLM makes a determination to that effect. As a result, BLM's decisions are expected to reflect a more comprehensive analysis that in turn can be anticipated to ensure defensible decisions if appealed and ultimately more effective decisions from both an implementation and land health perspective. Nothing in the rule diminishes BLM's regulatory authority.

As for distinguishing between good and bad grazing practices, the rule does change the way BLM determines whether an operator has a satisfactory record of performance. See the discussion under Qualifications, Applications, Service Charges, and Satisfactory Performance, below.

Comment: Some comments stated that BLM should not change the regulations because the new regulations do not follow the Secretary's "4 Cs" philosophy.

Response: The changes in the regulations are designed to improve communication, consultation, and cooperation in the service of conservation. We explain elsewhere in this EIS how the various changes help to conserve the health of the land by encouraging cooperation between BLM and grazing permittees and lessees, and how the interested public can participate at various stages of the range management process.

Comment: One comment stated that BLM should revise the proposed regulations in order to better reflect its multiple use mandates, and that BLM fails to justify reversing current regulations. Another stated

that the proposed rule represents fundamental policy shifts. Others stated that the current regulations were litigated and upheld in Federal court.

Response: The reasons for the changes in the grazing regulations are stated in the proposed rule and in the DEIS. We do not believe that the proposed changes reflect "fundamental" policy shifts, although it reverses some changes made in the 1995 rule. We intend the revisions to improve working relations with permittees and lessees, to protect the health of the rangelands, to increase administrative efficiency and effectiveness, and resolve legal issues. The fact that a regulation has been approved in a court decision does not mean that the agency can never amend it further if it finds a need to do so. The changes in the rule are driven by specific issues and concerns that have come to BLM's attention through experience with the 1995 regulations and from public comments.

The regulatory changes are narrow in scope, make no changes in the substance of the fundamentals of rangeland health or the standards and guidelines for grazing administration, and otherwise leave the majority of the 1995 regulatory changes in place. FLPMA provides authority and direction for managing the public lands on the basis of multiple use and sustained yield principles. FLPMA land use planning has determined that grazing continues to be an appropriate use of a large portion of the public lands administered by the BLM. The rule will not affect BLM's multiple use mandate. In fact, one of the major areas of focus of the grazing regulations revisions is protecting the health of the rangelands by making temporary nonuse a more flexible option, by requiring a BLM finding that additional forage is available for livestock use as opposed to other uses before authorizing livestock grazing use of

it on a temporary or sustained-yield basis, and by emphasizing monitoring as a basis for BLM decisions on grazing management, including any increases in active use as well as decreases.

Comment: Comments opposing the rule asserted that grazing has degraded wildlife habitat, soils, cultural sites, native plant communities, and riparian resources, leading to increased erosion, loss of range productivity, and invasion by exotic plants, and will result in desertification and increased listing of species as threatened or endangered. Other comments stated that the proposed rule would do little to promote recovery of streamside vegetation and would cause short-term damage to rangeland and wildlife habitat. Comments urged BLM to take actions to restore these lands, not weaken the grazing regulations, stating that the effects of overgrazing on western rangeland streams, rivers, and fisheries have been documented. A comment said that BLM should allow the land to rest to heal from overgrazing.

Response: Inappropriately managed grazing can cause the effects described in the comment. Other uses can also contribute to these problems. Within its resource capabilities, BLM, in cooperation with users and the public, manages grazing and other uses in a manner that recognizes and addresses the potential for these effects so that, ideally, they are avoided. Under Subpart 4180 of the grazing regulations, BLM must manage grazing, which includes rest from grazing where appropriate, in a manner that achieves or makes progress towards achieving, standards for rangeland health. These standards have been developed on a regional basis and address watershed function, nutrient cycling and energy flow, water quality, habitat for endangered, threatened, proposed, candidate or other special status species. The rule will strengthen BLM's ability to

implement grazing strategies that provide for maintenance or achievement of healthy rangelands.

Comment: A comment asserted that stocking levels are too high, and forage production is only one-fifth of its potential, resulting in conflict with rangeland health standards. Another comment stated that light stocking levels would provide the highest long-term financial return. A third comment stated that BLM should not allow utilization levels based on the take half-leave half principle.

Response: These comments appear to suggest that stocking and utilization levels should be determined through a rulemaking process. Stocking levels are better addressed during the land use planning process where the wide variety of relevant factors, such as climate, competing forage use, and other multiple use needs, can be addressed. What the rule is doing, on the other hand, is to make mainly procedural changes to improve administration of the grazing program as a result of experience implementing the 1995 rule.

Comment: A comment stated that BLM should not renew grazing permits when they expire. Ranchers should not be allowed to graze cattle for personal gain on public land.

Response: The Taylor Grazing Act, the Federal Land Policy and Management Act, and other laws authorize grazing on public land for private business purposes.

Comment: A comment stated that BLM should not place western grazing rights above those in other areas of the country, and that the government provides competitive advantages to public land grazing permittees and lessees.

Response: The comment raises fee and subsidy issues, which were not part of this rulemaking. The grazing fee formula was established in the Public Rangelands Improvement Act (PRIA) of 1978 (43

U.S.C. 1901, 1905) through 1985. The applicability of the formula was extended by Executive Order 12548 on February 19, 1986 (51 FR 5985). The regulatory provision implementing PRIA and the Executive Order appears at 43 CFR 4130.8-1. The formula is not affected by the costs of grazing in other parts of the country outside of the 11 western states of Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California. Fee and subsidy issues were examined in BLM's EIS for Rangeland Reform '94. This proposed action addresses refinements of Rangeland Reform '94, including, among other things, inefficiencies in the current regulations.

Comment: One comment objected to the "unfair treatment BLM has given to wild horses, using them as scapegoats for the abuses of livestock and plotting to eliminate them along with the vested interest livestock community."

Response: BLM manages rangelands for multiple use and sustained yield, and follows all laws and regulations governing the management of public lands, including the Wild and Free Roaming Horse and Burro Act of 1971. Management considerations for and analysis of effects on wild horse and burro populations are described in EIS chapters 3.12, 4.2.9, 4.3.9, and 4.4.9. BLM consults with the Wild Horse Advisory Board to coordinate an efficient management program in accordance with statutory direction and at a level commensurate with funding appropriated by Congress.

5.4.3 Purpose and Need

We received numerous comments regarding our reasons for amending the grazing regulations, including many form letters and form emails.

Comment: Several comments, although they supported the purpose of the proposed

rule, stated that, with regard to the proposed provisions on grazing preference and removal of the term "permitted use," active use phase-in, and title to range improvements, the rulemaking record lacks concrete examples of problems with the current regulations that warrant the proposed changes. The comments stated that this may cause problems because BLM is effectively rescinding the 1995 grazing regulations as to these particular matters and restoring the pre-existing status quo. The comments went on to say that an agency rescinding a rule must "explain why the old regulation is no longer desirable," citing *Action on Smoking and Health v. C.A.B.*, 699 F.2d 1209, 1216 (D.C.Cir.1983). The comments concluded that, in the 1995 final rule, BLM rejected the concerns expressed in many of the comments on the 1994 proposed rule, and now needs to explain what has changed, including recognition that the concerns stated in those comments on the 1994 proposed rule have proven to be valid.

Response: We believe the changes made in the rule are consistent with the standard announced in *Motor Vehicle Manufacturers Ass'n of the United States, Inc. v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29 (1983): "An agency's view of what is in the public interest may change, either with or without a change in circumstances. But an agency changing its course must supply a reasoned analysis." *Id.* at 57. We will supply the requisite reasoned analysis for the changes in the Record of Decision and in the respective section-by-section discussion in the preamble of the final rule.

Comment: Some comments stated that the current rules are consistent with the TGA because they have been tested in court, and that BLM should comply with Supreme Court rulings.

Response: The changes being made in this rule are based on 9 years of experience implementing the 1995 regulations. In some

instances, we found that provisions of those regulations were impairing our ability to protect and enhance rangeland health. For example, providing for sole United States ownership in range improvements led to a reduction in range improvement applications throughout the time that the regulations have been in effect. Also, requiring BLM to take action by the start of the next grazing year after determining that existing grazing management practices or levels of grazing use were significant factors in failing to achieve standards of rangeland health has been seen to be an impracticable decision because it sets a deadline that is impossible to meet in most instances. Further, it is counterproductive because BLM has had to divert resources from rangeland management and monitoring to deal with legal challenges that arise when we fail to meet the unreasonable deadlines. We will discuss these and other problems with the 1995 regulations in more detail when we address comments on the relevant provisions of the proposed rule.

The Supreme Court did not require BLM to retain its existing regulations. It found that the 1995 grazing regulations that it reviewed did not exceed the authority granted to the Secretary under the TGA. BLM does not dispute that the regulations being changed today were in compliance with the TGA and within the Secretary's statutory authority. Changes being made today also are in compliance with the TGA and are within the Secretary's statutory authority.

Comment: Some comments on the proposed rule suggested that BLM consider making changes through policy instead of through regulation changes.

Response: BLM very often does make changes through policy rather than rulemaking. However, if regulations in place need to be modified to achieve improved management, we can only change those regulations through rulemaking.

Comment: A comment stated that BLM should not enact excessive regulations because they make it uneconomic for traditional ranching families to pursue their business.

Response: Excessive regulation can increase costs to user groups. We believe the changes made in the rule will make grazing on public land more efficient without negatively affecting the health of the public rangelands.

Comment: Many of the comments on the proposed rule stated that the regulation changes seem to be driven by only one small faction: grazing permittees and lessees. They went on to say that that the regulations should balance the requirements of consultation, cooperation, and coordination (CCC), and no emphasis should be placed on a single user group. The comments concluded that this will not result in increases in cooperation with interested publics as stated because the proposed regulations diminish the levels of CCC with other interested publics and emphasize CCC with a single commercial user of public resources. Other comments stated that improving efficiency would be detrimental to public participation.

Response: The rule provides a mechanism for persons and organizations to attain and maintain "interested public" status for purposes of participating in management decisions as to specific allotments. At the same time, the rule provides a way to remove from the list of interested publics those individuals, groups, or organizations that have been on the list indefinitely without ever commenting on or otherwise providing input in the decision process. These regulations will provide numerous opportunities for the interested public input into resource management allocation decisions.

BLM believes that in-depth involvement of the public in day-to-day management decisions is neither warranted nor

administratively efficient and can in fact delay BLM remedial response actions necessitated by resource conditions. Day-to-day management decisions implement land use planning decisions in which the public has already had full opportunity to participate. Also, such in-depth public involvement can delay routine management responses, such as minor adjustments in livestock numbers or use periods to respond to dynamic on-the-ground conditions. Cooperation with permittees and lessees, on the other hand, usually results in more expeditious steps to address resource conditions and can help avoid lengthy administrative appeals.

Comment: Some comments supporting the purposes of the proposed rule, agreed that there is a need for improving working relationships with users. One comment pointed out that cooperation with ranchers would minimize incompatible uses of interspersed private lands, such as subdivisions, and another said that it would provide better care for the land.

Response: BLM recognizes that ranchers who are committed to the health of the land are valuable partners. These regulatory changes are designed, among other things, to ensure sufficient oversight of public land grazers, and to facilitate better cooperation between BLM and the ranching community, while protecting the land.

Comment: Comments opposing the rule stated that the emphasis on certain considerations, such as the social, economic, and cultural effects of agency actions that change levels of grazing preference, would have adverse effects on natural resources, leading to degradation of the public lands. Comments stated that improving working relationships with grazing permittees and lessees would tend to weaken the ability of BLM to manage rangelands in a timely fashion by adding considerable time before

action can be taken. One comment stated that BLM should have working relationships with the public, not just ranchers. Another accused BLM of appeasing ranchers and increasing the level of environmental damage.

Response: BLM retains the discretion to determine how much time is warranted in coordinating with grazing permittees and lessees. Considering the social, economic, and cultural effects of actions that change grazing use levels contemporaneously with considering the environmental effects should not appreciably increase this time or the time consumed in implementing decisions. We have not materially changed current policy in this regard in this rule, and therefore anticipate few additional delays in the authorization or implementation of grazing management actions on public lands.

BLM does have a working relationship with many publics and encourages public participation in the management of public lands. However, with respect to management actions involving livestock, close coordination by BLM with those responsible for the “hands on” management of the livestock, in other words, the permittees and lessees, is essential to ensure that livestock use effects on resources do not prevent achieving other multiple use management objectives.

Comment: Many comments stated that the proposed rule will slow down or diminish any progress made by the 1995 rule.

Response: The Rangeland Reform effort of 1994-95 made numerous significant changes directed at restoring rangeland health. The changes in this rule continue to provide strong regulation to protect resources while allowing public land grazing to occur as allowed under the Taylor Grazing Act and other laws. In this rule, some timeframes for developing appropriate management decisions and, in some cases, implementing changes in the amount of forage authorized

for grazing use have been lengthened. We expect that having more time to make decisions will lead to better decisions, supported by reliable data gathered through monitoring, and to result in achieving long-term management goals and rangeland health. These new regulatory changes do not change the resource protection values of Rangeland Reform, but they do provide additional time for developing appropriate actions to effect grazing changes.

Comment: A comment stated that the final rule should reflect the legal requirements for cooperation with the public, other agencies, and users, in various laws, including the Federal Land Policy and Management Act (FLPMA), the Fish and Wildlife Coordination Act, the Migratory Bird Treaty Act, the Public Rangelands Improvement Act (PRIA), the Sikes Act, and the Taylor Grazing Act (TGA).

Response: We are complying with all relevant laws. However, attempting to list the various requirements of multiple Federal laws in the grazing regulations would be unwieldy and would require amendment of the regulations to reflect future changes in these laws or the addition of new laws. Rather, the BLM utilizes manuals, handbooks, and other guidance to ensure compliance with relevant laws.

Comment: One comment stated that the proposed rule failed to consider the definition of “principal or major uses” in Section 103 of FLPMA, which “includes, and is limited to, domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, and timber production.”

Response: The rule addresses domestic livestock grazing, which is one of the principal uses of the public lands under FLPMA. Regulations on other principal uses of public lands are found elsewhere in Title 43 of the CFR.

Comment: One comment stated that politicians should be barred from direct intervention in matters related to public lands grazing.

Response: Presumably the comment is referring to congressional contacts or oversight associated with livestock grazing. BLM manages the public land, and takes into consideration the views of all interested parties when it is appropriate to do so. This may include the views of public officials, including Members of Congress.

Comment: Many comments expressed the concern that the proposed rule would lead to impairment of the health of the rangelands. They phrased this concern in a variety of ways. Comments stated that the proposed rule would do little to promote riparian recovery or prevent decline of plants or animals. Others stated that the rule would cause additional resource damage to specific geographical areas, such as the Northern Rockies. Comments stated that granting greater discretion to permittees and lessees and to BLM managers may result in more resource impairment. One comment stated that the proposed changes would reduce cooperation in achieving rangeland health objectives. One comment urged that the rule should provide for rangeland management to avoid resource depletion and to conserve resources for the future. Comments disagreed that the changes in the rule were largely administrative in nature with little direct effect on the environment. Comments urged that the rule should be amended to avoid the short-term adverse effects on the environment predicted in the Environmental Impact Statement. Comments stated that the objectives of the regulations should be revised to recognize the real purpose of the proposed rule: to keep ranching operations viable, with rangeland health as a secondary objective. One comment urged that BLM

consider that healthy lands improve local economies.

Response: BLM has not changed the regulatory text in response to these comments. Many provisions in the proposed rule, including increasing the requirements for monitoring, removing the 3-year limit on temporary nonuse, sharing title to range improvements, and others, are designed to protect and enhance the long-term health of the land. The anticipated environmental impacts of the changes are set forth in detail in Section 4.3 of this EIS. We believe that the changes will improve working relationships with permittees and lessees, protect and improve the health of the public rangelands, and improve administrative efficiency. Again, we will address specific regulatory changes in greater detail later in this chapter of the EIS.

Comment: Many comments stated that the monitoring requirements in the proposed rule would cause increased workloads for BLM field managers and personnel.

Response: We acknowledge that the monitoring requirements in the rule will likely increase the workload of BLM field range managers and specialists somewhat, but we anticipate that the increases in monitoring will be accompanied by the benefits of improved management and saved time in the end. This workload increase will require BLM to reprioritize work or to find alternative means of collecting monitoring data, or some combination of these, to the extent that additional monitoring is required. This may include cooperation with the grazing permittees and lessees themselves and with local citizen volunteers. BLM believes the changes in the regulations associated with monitoring will help achieve sustainable management objectives.

Comment: One comment stated that BLM has indicated the necessity of making permit administration more efficient, but that these regulatory changes are motivated

by a determination to exclude the interested public from the decision process. It went on to say that if BLM claims to have processed over 10,000 permits and issued over 13,000 permits, the agency should break down these numbers to show what percent of permits were renewed each year, how many were renewed under Appropriations Act “riders”, and how many were appealed. The comment said that this would help establish a quantitative assessment of the need for change.

Response: The BLM does not believe a quantitative assessment of permit renewals is necessary to explain the need for efficiency changes to the overall administration of the grazing program. Efficient use of public resources, including Federal funding and management, are always proper goals of agency management. However, BLM has revised Section 3.4.1 in the EIS in an effort to address the concerns expressed in the comment. Section 3.4.1 in the EIS now provides additional information which further quantifies and explains the permit renewal process.

The comment also states that our motive in making these regulatory changes was to exclude the interested public from the decision process. In fact, the final rule requires consultation with the interested public where such input is of the greatest value, such as when deciding vegetation management objectives in an allotment management plan, or preparing reports evaluating range conditions. BLM retains the discretion to determine and implement the most appropriate on-the-ground management actions to achieve the objectives and/or respond to range conditions. BLM values productive consultation with the interested public. However, we must retain flexibility in order to take responsive, timely, and efficient management action. We believe that a more efficient consultation process

will help facilitate efficient management of the rangelands while still providing for significant input from interested parties.

Comment: Many comments stated that BLM should increase funding to improve working relations with permittees and lessees and promote conservation of public lands, and that even small funding increases could greatly contribute to the mutual goals of continued grazing and healthy rangelands, if they are applied in an innovative and collaborative manner to facilitate improved on-the-ground livestock management practices.

Response: BLM manages its Congressional appropriations in light of its varied and diverse statutory missions and responsibilities, and seeks opportunities to leverage its funding by engaging in partnerships wherever possible. Funding of BLM programs is not within the scope of this rulemaking. However, BLM intends that the rule will broaden opportunities for partnerships.

Comment: BLM should establish policy and subsequent regulations with procedures for optimizing habitat quantity and quality for the variety of multiple uses and those species that are considered biologically dependent on their respective ecosystems.

Response: BLM manages for multiple uses under the guidance found in BLM land use plans. BLM land use planning regulations, and policy and procedure are found in 43 CFR Subparts 1601 and 1610, BLM Manual 1601—*Land Use Planning*, and BLM Handbook H-1601-1—*Land Use Planning Handbook*. BLM policy and procedures regarding management of wildlife and their habitats, sensitive species and the introduction, transplant and augmentation of fish, wildlife, and plants are found in BLM Manuals 6500—*Wildlife and Fisheries Management*, 6525—*Sikes Act Wildlife Programs*, 6840—*Special*

Status Species Management and 1745—Introduction, Transplant, Augmentation, and Reestablishment of Fish, Wildlife and Plants. Promulgating regulations concerning these subjects is outside the scope of this rule. Species-specific provisions are not appropriate for national regulations, and should be contained in local land use plans issued in accordance with these manual provisions and the planning regulations.

Comment: BLM should not change the regulations because there has been no data presented that support the contention that range health standards will improve as a result of the changes.

Response: The intent of the proposed regulations is to improve working relationships with permittees and lessees, protect the health of the rangelands, and increase administrative effectiveness and efficiency. Most the regulatory changes are administrative and are expected to have little or no effect on the environment. We believe the rationale in Section 1.2 of the EIS, “The Purpose and Need for the Proposed Action,” provides sufficient justification for changing the regulations. Section 4.3, “Alternative Two: Proposed Action,” presents a detailed analysis of the environmental consequences of the proposed alternative. Data show declines in development of range improvements since 1995 (see Table 3.4.3.1), and inability to meet action deadlines (leading to resource-diverting legal challenges and a cumulative negative impact on our administrative procedures). The invalidation of the regulatory provisions on conservation permits led to the need for more flexibility in allowing and administering temporary nonuse.

5.4.4 Range of Alternatives Considered

Comment: Some comments recommended major changes to the grazing

program. Some comments asked BLM not to permit grazing on arid lands. Others advocated eliminating grazing in riparian areas. Other comments recommended use of long-term rest to help achieve standards. One comment recommended reducing stocking rates by 25 percent on allotments not meeting standards of rangeland health. Some comments recommended that the alternatives considered address the relationship between livestock grazing and other uses of the public lands. Some comments recommended that BLM develop alternatives to address a number of specific aspects of grazing management, such as: (1) determining the capacity of the land to support wildlife, watershed function, and livestock; (2) determining livestock stocking rates; and (3) requiring allotments to demonstrate statistically significant improvement.

Response: In light of the broad sweep of the changes in the regulations in 1995 and the accompanying analysis in the EIS at that time, and based on the nine years of experience in implementing those regulatory changes, we have determined that meeting our purposes and needs – the health of the public rangelands, improved working relationships with permittees and lessees, and improved administrative efficiency – does not require major changes in the grazing program.

The matters identified in these comments generally are best considered in land use planning or otherwise on a site-specific basis, not in a rule related to overall regulatory provisions. The relationship between livestock grazing and other uses of the public lands, and the capacity of the land to support wildlife, watershed function, and livestock, are questions of multiple use management, i.e., how public lands and their various resources “are utilized in the combination that will best meet the present and future needs of the American people.” 43 U.S.C. 1702(c)

(definition of “multiple use”). Pursuant to section 202 of FLPMA (43 U.S.C. 1712), BLM prepares resource management plans (RMPs) to consider and balance the multiple uses that may be appropriate for tracts of public lands. Decisions determining or adjusting livestock stocking rates, or determining how to measure an allotment’s improvement in rangeland health, ordinarily require site-specific information that can most efficiently be obtained by developing an allotment management plan (AMP) or a grazing decision.

Comment: Some comments suggested that the EIS should have included an alternative more directed at conservation interests and the recommendations of environmental advocates, such as one that includes sage grouse conservation measures. They believed that the regulation changes are biased toward the interests of the livestock industry and that the livestock industry would benefit at the expense of other users and the environment. One comment urged BLM to add specific sage grouse consideration measures to the alternatives considered.

Response: BLM does not believe that these changes will benefit the livestock industry at the expense of other users and the environment. The long-term objective of requiring livestock grazing operations to meet standards for rangeland health has not been changed from the 1995 regulations. As discussed in the Draft and Final EIS for Rangeland Reform ’94, the overall changes adopted in that rulemaking were anticipated to have a number of positive environmental impacts, including positive impacts for sage grouse. The rule now under consideration is designed to make refinements in the existing regulations and is not a significant departure from the regulations as revised in 1995. We believe that standards for rangeland health can be achieved without the major changes that may have been included under

a substantially different “conservation alternative” suggested by some of the comments. Such changes would be likely to have significant effects on many livestock operators who are dependent on public rangelands for their livelihood. The changes to the regulations were never intended to be either a comprehensive restructuring of the grazing program or a replacement of the 1995 grazing regulations. We do not believe that a broad “conservation alternative” which makes major changes to the livestock grazing program falls within a reasonable range of alternatives that meet the purpose and need of the Proposed Action. Measures to protect sage grouse and their habitat are appropriately considered in the Bureau’s sage grouse conservation measures. We address the sage grouse conservation strategy generally in Chapter 1 and Chapter 4 of this EIS.

Comment: Some comments suggested that the alternatives analyzed in detail in the EIS do not provide a clear basis for choice. Some comments focused on a concern that the alternatives in the EIS do not represent a reasonable range of alternatives because they are too similar. Some comments stated that BLM should prepare an EIS that thoroughly analyzes the cumulative impacts of a range of alternative actions that will truly enable the agency to manage grazing lands under its jurisdiction responsibly. Some comments suggested an alternative that would provide for the development of baseline data on the grazing capacity of public lands. Some comments said that BLM cannot so narrowly define the scope of a project that it forecloses a reasonable consideration of alternatives. (Colorado Environmental Coalition v. Dombeck, (185 F.3d 1162, 1174 (10th Cir. 1999)). Many comments recommended that BLM should examine alternatives that would make major changes in the grazing program or in the relationship

between livestock grazing and other uses of the public lands.

Response: The broad-ranging analysis suggested by these comments was addressed in Rangeland Reform in 1994 and the accompanying EIS for the 1995 regulatory changes. As explained in the EIS for this rulemaking under The Purpose of and Need for the Proposed Action, some of these revisions to the grazing regulations were developed as a means of achieving BLM’s rangeland management objectives, including meeting the standards for rangeland health. It is not BLM’s intent to revise major aspects of multiple use management or the livestock grazing program in this rule. BLM’s intent is to make the existing livestock grazing program work better to achieve the standards for rangeland health on all allotments. The regulatory changes are narrow in scope, and make no changes in grazing fees, the substance of the fundamentals of rangeland health, or the standards and guidelines for grazing administration. They leave the majority of the 1995 regulatory changes in place. The changes are driven by specific issues and concerns that BLM has recognized, either based on our own experience or from input by stakeholders, and we believe that all may benefit from these amendments of the regulations. Additional, markedly different, alternatives would not meet the purpose of and need for the action. While there may be conflicts among resource uses on specific sites that may point to a need to change the way in which livestock grazing occurs on an allotment, such conflicts are more appropriately resolved on an allotment-specific basis, rather than in the grazing regulations. We believe the three alternatives analyzed in detail in the EIS provide a reasonable range of alternatives that best provides a meaningful comparison for achieving the purpose and need described in the EIS.

Comment: Some comments expressed concern over the relative lack of quantification of effects in the EIS. They contended that this limits BLM's ability to compare alternatives.

Response: At the rulemaking tier of decision-making, such as in the case of developing the rule now considered in this EIS, meaningful quantification is generally not appropriate. Quantification is more appropriate at site-specific levels of decision, where on-the-ground issues are analyzed and resolved. To provide perspective on how the regulation changes may affect all allotments, the EIS provides information (see Section 5.4.5) on the number of allotments where assessments have been completed, and the percentage of those that meet standards for rangeland health. Of those that do not meet the standards, we also provide the percentage of allotments where standards are not met because of livestock grazing on the allotment. BLM will make grazing decisions to ensure that management on all allotments that do not meet standards due in significant part to existing grazing management practices or levels of grazing use is changed to help achieve the standards. The timeframes amended under the rule may also affect those allotments. These numbers provide a perspective on the percentage of allotments where the rule, e.g., in section 4110.3, may apply. Because the rule does not make any of the site-specific decisions on where livestock grazing occurs and how, BLM's ability to present and analyze quantifiable estimates in this EIS is limited.

Comment: Some comments recommended the No Action alternative, or at least the No Action alternative with regard to one or more of the changes. The No Action alternative considers that each of the changes would not occur. Some comments stated they preferred the No Action alternative because they believed that the proposed changes were

designed to undermine the amendments made in the regulations in 1995. Some comments believed the regulatory changes could open the door to potentially adverse environmental consequences.

Response: The changes in the regulations were designed to accomplish one or more of the three objectives stated at the beginning of this section and under purpose and need for the Proposed Action. The overall land management objective, both in 1995 and in this rulemaking, is to amend the regulations to assist BLM in managing the grazing program in a way that makes progress toward achieving the standards for rangeland health on all allotments. As experience has shown, some provisions in the 1995 rule have negative effects on BLM's ability to improve rangeland health, and the Federal Court rejection of the provision for conservation use permits created a need for more flexibility in authorizing temporary nonuse to promote rangeland recovery.

The most useful comparison for the changes in the regulations is to compare the changes (Proposed Action) to the 1995 regulations (No Action). Most of the regulation changes do not lend themselves to being implemented in stages or degrees of implementation in a way that would materially affect environmental effects or rangeland health. Those that do are addressed in the section-by-section analysis of comments.

Comment: Many comments expressed concern that alternatives should have been considered for several of the changes in specific sections of the regulations. These specific provisions include the 24-month period after a determination on an allotment that livestock grazing is a significant factor failing to achieve the standards for rangeland health under section 4180.2(c), and the 5-year period for phasing in reductions in active use of more than 10 percent, under section

4110.3-3(a).

Response: We examined what we believe to be an appropriate range of alternatives, and have not added additional ones in the final EIS. When considering time limitations, an infinite array of options is theoretically possible. The alternatives considered here were reasonable, given the nature of the proposed rule, and sufficiently distinct to allow for meaningful comparisons in the analysis.

Currently, section 4180.2(c) requires that corrective action to be taken by the start of the next grazing season when grazing is determined to be a significant factor in the failure to achieve a rangeland health standard. While BLM desires to take effective corrective action as quickly as possible, recent experience has demonstrated that complex circumstances can sometimes require extended periods of time to form effective long-term solutions. Rangeland standards failures have often developed slowly over many years and may take years to remedy completely. Factors complicating the formulation of action plans include the legal requirements of NEPA, the National Historic Preservation Act (NHPA), and ESA; water rights adjudications; and the presence of multiple permittees on an allotment. We determined the proposed action timeframe of 24 months to be the shortest reasonable timeframe that would accommodate the vast majority of corrective actions. The final rule added language to recognize that, in some instances, even more time may be required due to delays outside the control of BLM. We initially considered other deadlines, such as 12 or 18 months, but we viewed them as inadequate to deal with the more complicated situations. We considered removing all timeframe guidance, but determined that a reasonable deadline would be useful to help ensure that BLM actions were not inadvertently delayed.

BLM examined two alternatives for active use changes greater than 10 percent in this EIS, in addition to the current regulations (the No Action Alternative). Scoping indicated that permittees and lessees supported a five-year option to address the financial shocks that can come in the rare instances when large decreases are made in active use. Scoping did not indicate strong support for longer or shorter timeframes. BLM addressed the impacts associated with mandatory or discretionary phase-in systems. This was a reasonable range of alternatives for this issue.

Comments that address specific sections of the regulations and BLM's responses are addressed under separate headings, in this case the section entitled "Timeframe for Taking Action" and "Active use- Definition, Increases and Decreases."

5.4.5 Affected Environment and Impact Analysis

Comment: Large numbers of comments addressed environmental effects of the proposed rule, mostly in opposition to the rule. One comment, however, stated that BLM has overstated the adverse effects of the proposed rule, and that we should say that the short-term effects of regulatory changes would be so minuscule as to be not worth mentioning. It went on to agree that, in the long term, changes under the proposed rule can be expected to improve range conditions.

Response: The environmental effects of the rule are analyzed in Section 4.3 of this EIS. As discussed in detail in Section 4.3 2, we anticipate short-term adverse effects only in those few instances where vegetation recovery is delayed by the extended implementation deadline. This will likely be rare, since BLM has authority under section 4110.3-2 and section 4110.3-3 of the rule to decrease use or suspend use if resource conditions demand, even if the 24 months

allowed for determining an action have not passed. Only in those instances where longer term reductions are requested and rangeland health is not imperiled would the recovery of vegetation be somewhat delayed.

Comment: Many comments expressed concern that the combination of changes in the regulations would lead to multiple-year deferment of appropriate actions. The concern was that requiring monitoring in order to make a determination, allowing up to 24 months to develop and analyze an appropriate action, and requiring up to 5 years to implement changes of more than 10 percent in level of use, could lead to as much as 9 years of delay in changes being made on allotments that most needed the adjustment in grazing management. Effects on wildlife and habitat, threatened and endangered species, invasive weed infestations, recreational uses, and BLM workload and funding were all issues of concern.

Response: The timeframes provided for each of the actions listed are limits. In most cases, the maximum amount of time allowed for each of the 3 issues (monitoring, appropriate action development, and implementing changes) will not likely be needed. At the end of Fiscal Year 2002, only about 16 percent of the 7,437 (or about 1,189) allotments assessed for land health status were not achieving standards because of existing livestock grazing management. Assessments of the remaining 84 percent indicated that standards were met, or that there was a reason other than existing livestock grazing for not meeting standards. Most of the adjustments on these less than 1,190 allotments that failed to meet standards due to existing livestock management have been made in the season of use, or movement and control of livestock, rather than in levels of active use, leaving less than 595 that required decreases in active use. An unknown portion of these adjustments were changes of

more than 10 percent in active use and would be allowed to phase in their reductions over 5 years.

In 2003 the forage actually consumed, as documented by billings, was 6.7 million AUMs, while the amount authorized by term permits was 12.6 million AUMs. This reduced amount of actual grazing was largely due to drought, plus other reasons, such as fire. However, it reflects the fact that grazers are already taking temporary nonuse or being suspended, either voluntarily or by agreement, due to the current range and weather conditions.

As stated in section 4.3.7 of the EIS, there may be limited short-term negative effects if the full 24 months or more is needed to develop an appropriate action and complete the required coordination and consultation. However, the extra time taken to develop a meaningful action is expected to provide greater long term benefits to other resources. For example, merely reducing the level of use in a riparian area is not likely to improve the riparian area condition, because adjustments in season, frequency, and duration of use are much more effective management strategies for restoring riparian functionality. Taking the additional time to develop an appropriate action may actually decrease the amount of time taken to implement the decision, particularly if the decision is not appealed as a result of the additional time spent in consulting with permittees and formulating and analyzing options. Implementing decisions can be delayed by 18 to 36 months if appealed and if a stay is granted.

Under the selected alternative, monitoring will not be necessary on every allotment in order to make a determination, but only on those allotments that fail to meet standards due to levels of grazing use or management practices. The number of allotments where all three action issues (monitoring, 24 months to develop remedial action, and 5-year phase

in of adjustments) are needed is expected to be small. Finally, the rule provides the authorized officer authority to close an allotment or portions thereof immediately if continued grazing use poses an imminent likelihood of significant resource damage. As a result, BLM retains the discretion to address resource problems on a timely basis.

Comment: One comment that opposed the rule stated that BLM should not adopt grazing regulations that will hurt the land in the short-term while betting that long term studies will lead to better land conditions at some indefinite time in the future.

Response: BLM believes that adoption of the rule will lead to improved land conditions in the long-term as indicated in the analysis in section 4.5 of the EIS. That analysis states that some adverse effects are unavoidable, but in the long-term more comprehensive and sustainable decisions would be developed by relying on data and information collected through monitoring.

Comment: One comment stated that BLM should acknowledge that western rangelands are in decline due to improper grazing strategies, and lack of appropriate measures or changes to deal with drought, fire, exotic weeds, and excessive horse populations.

Response: As stated in a previous response, as of the end of 2002, we had completed evaluations on 7,437 allotments. We determined approximately 16 percent of those allotments not to be meeting land health standards because of livestock grazing management. We conclude from this that generally most public rangelands are not in decline, or at least not to levels that we deem unsatisfactory. To the extent that more than 16 percent of allotments may have declined to a state of unsatisfactoriness, we have found that grazing is not a significant cause. We have begun actions to address the problems we identified. The changes made in the rule now under consideration in this EIS.

The rule will improve our ability to assess rangeland health and implement effective corrective measures. Furthermore, we believe the rule will result in more collaboration and cooperation with permittees and lessees in addressing problems. We believe that we have adequate measures in place in the grazing regulations to deal with emergency situations such as drought and fires (section 4110.3.3(b)). The BLM believes it continues to make progress in our livestock grazing and wild horse and burro management programs, particularly in terms of taking appropriate action to address rangeland health issues. The long term goal of this rule is to reverse declines in western rangeland health, in those areas where there are declines, through improved consultation and cooperation with ranchers, state and local authorities in devising means to restore degraded areas and maintain currently healthy areas.

Comment: Comments stated that BLM should not adopt the new regulations because they will weaken wildlife protections. One comment stated that BLM's analysis shows that the regulatory changes would not mitigate declines in populations of mule deer, sage grouse, and many other species, except when ranchers agree not to graze for 3 years. Another comment asked BLM to show by allotment the current status and population trends of greater sage grouse and analyze the cumulative effects of the regulatory changes. One comment asked BLM to discuss the agency's capacity, in terms of budget and personnel, to assess and monitor the status of sage grouse, and how its capacity would be affected by the regulatory changes. Other comments urged BLM to add specific sage grouse conservation measures to the regulations. A comment stated that BLM should consider the effects of the rule on nongame bird species that are likely candidates for listing as threatened or endangered species. Another said that BLM

should consider values of wildlife displaced by livestock on public lands in order to address the loss of wildlife associated recreation which has occurred under current management

Response: Most of the changes in the rule will have little or no detrimental effect on wildlife. The changes are largely administrative in nature to improve working relationships with permittees and lessees, to protect rangeland health, and to improve efficiency and effectiveness, including bringing the regulations into compliance with court decisions. Land use plans and site-specific analyses are the proper vehicles for considering the site-specific effects of grazing on wildlife. Allowing adjustments in active use in excess of 10 percent to be implemented over a 5-year period could have short-term adverse effects on plants and wildlife. Specific effects would be determined on a case by case basis in site-specific NEPA analyses and would identify possible mitigation measures. Changes in active grazing use in excess of 10 percent are infrequent. Also, the provision for phased in changes in use would not apply if it conflicted with an applicable law, e.g., if immediate implementation was a condition of a biological opinion under the Endangered Species Act.

Furthermore, under section 4110.3-3(b), if BLM determines that resources require immediate protection or continued grazing use poses an imminent likelihood of significant resource damage, we can immediately close allotments or portions of allotments or modify grazing use to protect the resources in question. Providing BLM up to 24 months to propose and analyze appropriate action to address failure to meet rangeland health standards may adversely affect wildlife in the short-term, but will benefit wildlife in the long term. The provision which allows for BLM to extend

the timeframe beyond the 24 months would only be invoked if failure to comply with legal requirements was outside of BLM's control, i.e., the responsibility of another agency. The most likely occurrence of that nature would be if there was a delay due to the requirements of the Endangered Species Act not being fully met. Concerns and issues regarding specific species such as sage grouse and any specific threatened, endangered, or other special status species are fully addressed in land use or activity planning or permit or lease issuance or renewal environmental analyses. Specific detailed analysis for individual species is beyond the scope of this rule. In developing these regulations, BLM ensured that it had the mechanisms in place to take appropriate action to protect, as necessary, wildlife resources. This EIS discusses the sage grouse conservation strategy at the end of Chapter 1 and addresses the effects of the rule on the sage grouse strategy in the cumulative effects analysis in Section 4.4.6. Effects on wildlife in general are discussed and analyzed in Sections 4.3.7 through 4.3.9 of this EIS.

Comment: One comment stated that procedures followed by BLM in the management of public rangelands contribute to petitions for Federal listings under the Endangered Species Act, and ultimately to more restricted and costly management of Federal lands. The result of this management is rangeland with reduced capacity to support native big game and upland game species, which has an adverse affect on western cultural, social, and economic values.

Response: This rule focuses on improving the efficiency of livestock grazing administration on public lands. During each step of the land use planning process, BLM considers and analyzes the potential effects on wildlife. This consideration begins at the broad land use planning phase, and continues through allotment management planning,

activity planning, and during development of terms and conditions of a grazing permit or lease. We recognize that recreation and tourism, including the viewing or hunting of animals, have increased in their relative contribution to many local and regional economies. The rule adopted today does not alter the way BLM considers potential effects on wildlife. Therefore, this rule is not expected to have an observable direct effect on the ability of the public to enjoy wildlife, and will not adversely affect the economic values associated with wildlife. Specific effects on local or visiting wildlife enthusiasts would be more appropriately addressed in any subsequent land use plan or allotment management plan analysis.

Comment: Several comments raised a number of other environmental factors that BLM should discuss, and stated that grazing has adverse effects on them: air quality, wild horses and burros, the prevalence of invasive weed species. Comments stated that the proposed rule would encourage the spread of invasive species, threatening shrub-steppe habitat, and damaging riparian and wet areas.

Response: These issues are discussed in detail in the EIS in sections 4.3.6, 4.3.9, and 4.3.2, respectively. To the extent that the fundamentals of rangeland health and the standards and guidelines for grazing administration address these issues in Subpart 4180, the rule makes no substantive changes in the fundamentals or standards themselves. Addressing more specific effects on wild horses and burros is outside the scope of the rule. Specific effects on wild horses and burros are more appropriately addressed in subsequent land use plans, landscape-level analyses, or undertaking-specific analyses.

Comment: Comments also asked BLM to impose various levels of restriction on grazing in the rule, including eliminating public land grazing altogether on the grounds that domestic livestock are exotic

to the western range. Some urged us not to increase grazing in arid lands. Another comment suggested that BLM should require permittees and lessees to fence all riparian areas to eliminate livestock as a cause of degraded riparian areas. Others advocated eliminating grazing in riparian areas.

Response: The rule does not directly result in a change in levels of active use on arid lands or anywhere else. The rule continues to allow BLM to manage the public rangelands to address adverse effects. For example, the rule retains BLM's authority to close allotments or portions of allotments to grazing by any kind of livestock or to modify authorized grazing use when we determine and document that continued grazing use poses an imminent likelihood of significant resource damage. Thus, if a riparian area is threatened with significant damage, we can have it fenced to exclude livestock. The rule also retains the fundamentals, standards and guidelines provisions of the rule to address rangeland health.

Although fencing of riparian areas to improve grazing management is appropriate under certain circumstances, a requirement to fence all riparian areas would be impractical due to potential conflicts the fences might pose with other multiple uses such as recreation and wildlife habitat, and because of the expense of construction and ongoing maintenance.

Comment: Some comments suggested that the EIS should include a description and analysis of the effects that the proposed changes would have on specific resource elements. Comments asked the BLM to describe the water quality effects resulting from livestock waste; the effects of livestock grazing on water quality because of the interaction between livestock, watersheds, riparian zones and streams; livestock grazing effects on fish, birds and many animal species; effects on wildlife resulting from

competition for forage between livestock and wildlife; the capability and suitability of grazing on steep slopes; and finally a quantitative expression of the overall effects of the proposed changes on the land and the resources. Other comments suggested that the role of soil microbiotic crusts and the extent of different soil types, their erosion rates, and the effects of livestock grazing on each soil type should be described in the EIS.

Response: This EIS documents in a broad way the environmental effects that would result from the proposed regulatory changes. The proposed regulatory changes address several individual administrative steps in the overall process of managing grazing on public lands. Therefore the analysis is necessarily broad, and ecological elements and the potential effects of the proposed regulatory changes are described in a general context. It is not BLM's intent in this rule making to initiate major changes to the livestock grazing program or to make land use decisions. Most of the changes in the rule will have little or no effect on wildlife, water quality or soil erosion rates. Normally, land use plans and activity level plans are the proper vehicles for analyzing the effects on and interaction of grazing, wildlife, soils and water quality. We have modified the EIS to quantify the amount of public lands that may be affected in the short-term by those regulatory changes that may affect wildlife, soils, or water quality. The total number of allotments affected by the selected alternative is expected to be small because only 16 percent of the allotments evaluated during the last 5 years needed adjustments in current livestock grazing management. See Section 4.3.1 of this EIS.

Steep slopes can strongly influence livestock grazing patterns on rangelands. When preparing allotment evaluations at the field office level, BLM evaluates this influence when conducting livestock use

pattern mapping, range trend analysis, range health assessments and through other monitoring efforts. This information is considered when developing effective livestock management strategies at the allotment planning level, along with the locations of highly erodible soils, fragile biotic soil crusts, critical fish and wildlife habitat, riparian zones, water bodies, and other resource values. Again, the proposed action and alternatives analyzed here do not address this level of detail, which is more appropriately analyzed at the allotment management and activity planning level.

Comment: Some comments suggested that BLM use information from several references and studies to analyze the impacts of grazing management because these publications describe the flaws with livestock management on public lands. The following references were suggested: "Welfare Ranching, The Subsidized Destruction of the American West"; "The Western Range Revisited: Removing Livestock from Public Lands to Conserve Native Biodiversity"; "Waste of the West"; and the National Research Council's "Riparian Areas: Functions and Strategies for Management"; a 1988 GAO study that determined the best method for promoting riparian recovery is livestock exclusion; a BLM study and the methodology used to show why enclosure fences are unnecessary if allotments are rested to allow recovery; and a study by Catlin et al (2003) and Stevens et al (2002) which criticize a number of elements of the current PFC assessment processes.

Response: The BLM selected the literature used in this EIS based on the resource specialist's best professional judgment as to its relevance and suitability for the analysis. It would be impossible to review and include all literature on a particular topic. We are familiar with several of the references and

studies identified in the comments. Welfare Ranching, *The Subsidized Destruction of the American West* was cited in the discussion on social effects. Several of the studies address issues that are not relevant to the analyses in this EIS. We did not examine large scale changes to the grazing program in this rulemaking, nor did we consider a no grazing scenario. The intent was to address amendments fine-tuning the regulations rather than wholesale revisions. In conclusion, we believe that the studies and reports reviewed for and used in the preparation of this EIS were pertinent and sufficient for the level and focus of the analyses.

Comment: One comment suggested that the EIS should include a summary of BLM surveys (showing densities, population sizes, and distributions) of special status species, how much of its land has been surveyed, what species are considered special status species by states and how they and their habitat are affected by livestock grazing because actions are commonly taken without presenting supporting data. The comment also suggested that BLM should delineate how its management will specifically protect each threatened, endangered or sensitive species or their habitat that occurs on BLM lands.

Response: It is not practical or necessary to summarize all surveys and maintain an inventory of special status species on a national level for the purpose of analyzing a programmatic regulatory amendment such as this rulemaking. Individual BLM state offices manage current information and data relative to special status species in close coordination with the U.S. Fish and Wildlife Service (FWS), the National Oceanic and Atmospheric Administration, Fisheries (NOAA Fisheries), and appropriate state agencies. Special status species surveys are periodically conducted in BLM Districts and are required for all activity level projects. The

conservation and protection of special status species is outlined in the BLM Special Status Species Management Policy as reflected in section 3.11 of the EIS. Actions taken to protect special status species from livestock grazing are developed in interdisciplinary allotment evaluations and outlined in the terms and conditions of grazing permits and leases. In the case of listed species, grazing permit terms and conditions are developed from a Biological Opinion issued by the FWS or NOAA Fisheries, and are based on supporting data from a BLM Biological Assessment.

Comment: Some comments recommended that the EIS should provide additional data on range improvements, allotment conditions, permit renewals, and the use of authority in section 4110.3-3(b) to curtail grazing because of grazing effects on upland soils. The range improvement data requested was the type, proportion funded by BLM, and the current condition of the range improvement. Permit renewal information the comment requested was the number of permits renewed since 1999 that were analyzed through a NEPA process, number of permits expiring in the next 5 years, and the current schedule to complete NEPA analysis of the remaining permits that were re-issued using Congressional authority that allowed renewal without NEPA analysis.

Response: This programmatic EIS documents the environmental effects that would result from the proposed regulatory changes. The changes affect several individual administrative and timing provisions in the grazing regulations. Therefore the analysis is necessarily broad, and ecological elements and the potential effects of the proposed regulatory changes are described in a general context. Detailed data on range improvements is not readily available or relevant to the analysis of the regulatory changes that would allow shared

title between BLM and the permittee or lessee. Table 3.4.3.1 in the EIS presents data on range improvements to aid in analyzing the proposed regulatory amendment. Allotment level activity and condition data is valuable for land use planning and allotment management planning but would not provide meaningful analysis for this programmatic EIS. NEPA guidance provided by the President's Council for Environmental Quality states that the level of detail presented in the affected environment section be succinct and only provides detail that is relevant to the level of impact analysis.

Section 3.4.1 of the EIS provides a discussion of BLM's permit renewal status including the number of permits expiring, permits renewed, and the number that will expire in the next 5 years. In response to the request for additional information on grazing permit renewals, we have added information to this section of the EIS on the permits renewed using the authorization provided in the Congressional appropriations language and the schedule to eliminate this backlog. Proposed and final decisions to renew grazing permits under this authority remain subject to protest and appeal by the interested public and monitoring and evaluation reports used as a basis for permit renewal remain available to the interested public in the rule.

BLM does not maintain data on the frequency of use of authority in section 4110.3-3(b) to curtail grazing because of grazing effects on upland soils.

Comment: Some comments requested that we provide additional explanation of the process used to transfer range improvement ownership between permittees, how ownership of range improvement is determined in a cooperative range improvement agreement, and the reason a section 4 range improvement permit can not be used to develop water.

Response: In response to the request for explanation of the process used to transfer any interest in range improvement between permittees or lessees we have added information on the pertinent sections of the regulations that require a documented agreement between the new and former permittee or lessee in section 3.4.3 of the EIS. The transfer of any interest or obligation in permanent range improvements is provided for in section 4110.2-3(a)(2) and section 4120.3-5. As described in section 4.3.1 of the EIS, shared title to range improvements is documented in a cooperative range improvement agreement (CRIA) between the United States and a cooperator "in proportion to their financial or labor contribution toward the project's development and construction." Section 4 range improvement permits can not be used to authorize water developments because section 4120.3-2(b) states "authorization for all new permanent water developments...shall be through cooperative range improvement agreements" as mentioned in the EIS in 3.4.4.

Comment: One comment requested that the affected environment section of the EIS disclose additional information about the methodology used to show vegetation composition. This comment expressed doubt in the validity of using this condition assessment tool to depict environmental conditions of wildlife habitat on public land. Another comment wanted BLM to describe why vegetation conditions appear to have declined from those conditions presented in the 1994 Range Reform DEIS.

Response: BLM used standard protocols (BLM Technical Manual on Site Condition/ Status) to portray vegetation conditions in this EIS. As the comment stated, wildlife habitat is dependent on structural qualities, forage species abundance, diversity and production of both overstory and understory

vegetation. The National Rangeland Inventory data is not intended as the single data element used to rate habitat condition, however it is useful for characterizing general rangeland vegetation condition. The environmental analysis is specific to changes in grazing regulations and is not intended to address wildlife habitat assessment methods. Vegetation information at the ecological site level, where available, resides in the field offices. This information is often summarized and utilized for analysis in land use plans and allotment management plans but is not appropriate for a programmatic analysis.

At present it is unclear whether vegetation conditions on public lands have markedly improved or declined in the 10 years since publication of the 1994 Rangeland Reform DEIS. Many factors such as sustained drought conditions, livestock use and many other public land uses can play a role in the status of plant communities. Natural revegetation tends to be slow and stochastic on arid and semiarid rangelands, where water frequently limits or prevents plant establishment and growth (Call, C. A., and B. A. Roundy, 1991). The influence of grazing on species composition and productivity can be minor relative to the changes caused by variations in rainfall (Archer, S., and F.E. Smeins, 1991).

Comment: Some comments suggested that BLM should include in the Affected Resource section of this EIS additional information regarding fire and fuels, the various studies that describe the influence of human activities, including grazing, on the proliferation and spread of exotic annual grasses, and the resulting changes in fire regimes. Another comment suggested that BLM should include a discussion of the role of livestock in changing the dynamics and moisture characteristics in the Basin sage and sage-steppe communities and their effects on fire frequency and intensity. Finally another

comment suggested that BLM should clarify whether pinyon–juniper habitat has expanded due to grazing.

Response: In response to these comments we have modified section 3.6, Description of Affected Environment, of the EIS to address the proliferation and spread of annual grasses, resulting in larger and more intense wildfires.

Grazing practices prior to 1934 played a role in the reduction of herbaceous vegetation and the increase in woody vegetation. The dramatic changes resulting from these grazing practices are one of the reasons the Grazing Service and later BLM, was established. There are now over 50 percent fewer livestock on public lands now than there was in 1934. The combination of historic grazing practices and 50 years of aggressive fire suppression has had a major effect in the increase in woody vegetation, a buildup of fuels and the increase in severity of fire. A major contributing factor to the increased severity of fires is the prolonged drought in the west. The fuel loading and dryness of the fuels are causing suppression problems, further contributing to the size of recent fires.

While it is likely that there has been some change in the dynamics and moisture regimes in the Great Basin sagebrush steppe vegetation communities, the documentation of the degree of change and its affect on fire frequency and intensity would be difficult, if not impossible to define, especially in view of the other confounding factors like the invasion of cheatgrass and other changes in vegetation composition. For this reason we are not incorporating this discussion in the EIS.

There are three major thoughts about the causal factors of juniper expansion on shrub and grasslands: (a) grazing of domesticated livestock, (b) suppression of wildfires, and (c) climactic shifts (Young and Evans 1981).

European activity may have played a role in limiting fire spread with the construction of roads and breaking up the continuity of fuels. There are too many variables affecting the expansion of pinyon–juniper on rangelands, and some that are of varied opinions, therefore the EIS will not be modified to address this comment.

Comment: We received comments on the description of BLM’s wild horse and burro program. One comment stated that BLM should recognize that establishing Appropriate Management Levels (AML) by 2005 is unlikely based on past performance and on the requirement that a “thriving natural ecological balance” be achieved. Another comment asked BLM to explain why it believes that AML can be achieved by 2007, since that goal seems unlikely in light of past performance and the fiscal situation of the wild horse and burro program.

Response: The establishment of Appropriate Management Levels (AMLs) for all Herd Management Areas by 2005 is a “strategic goal” of the BLM. The agency has developed a blueprint to reach this goal, pursuant to adequate funding provided by Congress. Achieving AML by 2005, not 2007, as stated in the comment, will be useful for the purpose of analysis of the direct and indirect effects of the proposed action and alternatives. Achieving AML by 2005 is feasible, considering current funding proposals and internal capabilities of BLM.

Comment: One comment pointed out that the statement in section 3.13 of the EIS: “More highly developed recreational activities and those recreationists from local or rural areas tend to be less affected by rangeland conditions” is incorrect. Recreationists from local and rural areas can be more affected by rangeland conditions because they tend to recreate on rangelands more than people from distant or urban areas.

Response: We agree that local and rural recreationists may be more affected by rangeland conditions than urban visitors, in that they often spend more time on public lands due to the close proximity of public lands and ready accessibility. We have revised section 3.13 accordingly.

Comment: Some comments suggested that BLM add detailed economic analysis of the effects of the proposed changes to the regulations. One comment asked the BLM to make distinctions and cite statistics for each recreation group (for example, hunters, fishermen, off highway users) to identify the economic costs and benefits of grazing compared to the loss of recreation benefits. One comment suggested the addition of economic data on wildlife and other resource values in order to understand the economic importance of each resource segment. Some comments stated that the economic contribution of public land livestock grazing is insignificant at the local, regional and national scale therefore BLM should acknowledge this and revise its analysis of effects. Another comment stated that the community of Leadore, Idaho should not be used to illustrate ranching’s contributions to local economies. Finally, a comment requested responses to specific questions about livestock economic contributions and proportions attributable to Federal land grazing.

Response: This programmatic EIS documents in a broad way the economic effects that would result from proposed changes in several individual administrative and timing provisions in the grazing regulations. Therefore the analysis is necessarily broad, and describes economic factors and the potential effects of the proposed regulatory changes in a general context. Estimating costs associated with decreased recreational opportunities is

possible at the allotment or land use plan scale but would be difficult to do for this programmatic analysis. In a strict quantitative economic sense, the EIS does not analyze tradeoffs in dollars for wildlife or other resource values. However, BLM does include consideration of wildlife and other resources in the EIS, including analysis of effects of the alternatives on those resources. BLM recognizes that other resources as noted in section 3.16 of the EIS, especially recreation and wildlife, contribute significantly to the growing diversification of rural, regional, and statewide economies in the western states.

We acknowledge in EIS Tables 3.16.3, 3.17.1, and 3.17.2 as well as Section 3.16 that there are other social, economic, and demographic conditions and trends occurring in the western U.S. that affect the relative contribution of agriculture, such as a higher rate of population growth than other regions of the country, diversification of local, regional, and statewide economies, and that agriculture itself is undergoing structural change. Among those changes are increasing reliance on off-farm income to supplement the income of low- to negative-profit livestock operations. The EIS also acknowledges that livestock grazing on public lands is increasingly competing with other growing multiple-use demands that contribute to economic activity, including recreational pursuits such as hunting, fishing, wildlife viewing, OHV use, mountain biking, hiking, and camping. Because of these changes, livestock grazing on public lands has become more limited in regional and national economic importance. The EIS discusses the proportion of the livestock industry to which public lands grazing contributes, and also the varying levels of dependency of public lands livestock operations, e.g. Table 3.16.3. However, authorized livestock grazing on public lands remains an important contributor to the social

and economic fabric of many communities throughout the western U.S.

The example of Leadore, Idaho presented in Section 3.17 of the EIS, is provided as a case study to supplement more general discussions presented in this section. It is used to illustrate the reliance of one community on livestock ranching and the authorized grazing of adjoining public lands. Livestock grazing is the economic basis for much of that population and supports the social fabric of the community. As noted in the EIS... "dominance of ranches, both economically and socially, fosters a common social view that the entire community's social future is tied to the fate of ranchers." Whether the income derived from livestock grazing is spent within or outside the community does not diminish the relative importance of the source of the income or the support of the local tax base to the affected citizens of Leadore.

Comment: One comment found fault with the analysis of the effects of the proposed regulations on BLM Special Areas. The comment suggested that the analysis should include information on which areas are grazed or not grazed, the laws and mandates for each area, or the effects on attributes of these areas that resulted in their designation.

Response: The information presented in this EIS analyzes the environmental effects that would result from proposed regulatory changes in administrative and timing provisions. The continuation or termination of grazing on individual special areas is not an issue addressed in this rulemaking. Individual land use plans are appropriate venues for addressing these types of questions and land use decisions.

Comment: The BLM should clearly show its long-term budget strategy that outlines the monitoring programs, funding, and personnel that will be added to the agency's capacity to carry out the implied monitoring because

BLM does not have adequate funding, personnel, and management support to adequately monitor vegetation, Special Status Species, and Birds of Conservation Concern, let alone other resources.

Response: BLM funding is beyond the scope of this rulemaking. Funding is provided by annual congressional appropriation. We will prioritize allocation of monitoring funding to address issues and provide a foundation for management adjustments. BLM agrees that monitoring is a critical component providing data for evaluation and adjustments of terms and conditions of grazing authorizations. We will continue to prioritize funding to fill monitoring needs.

Comment: BLM should revise the analysis in Chapter 4 and other sections because the effects are greatly understated, there is no link on effects to any valid science and the BLM has omitted scientific literature.

Response: Many of the proposed changes are largely administrative and would have little direct effect on the environment. They are intended to improve agency administrative efficiency and effectiveness, improving consistency across the Bureau, or meeting other administrative objectives. The analysis presented in the DEIS represents the best available knowledge of the potential effects of the regulation changes.

Comment: BLM Range Health Standards should be based on reputable science and research.

Response: The 1994 National Research Council publication *Rangeland Health: New Methods to Classify, Inventory, and Monitor Rangelands* provided the basis for BLM's Fundamentals of Rangeland Health and, subsequently, the rangeland health standards developed by BLM State Directors in consultation with appropriate Resource Advisory Councils.

5.4.6 Definitions— Other Recommendations

This section contains comments on some of the proposed definition changes and recommendations that we received during the comment period. Definition changes for active use, grazing preference, interested public, and temporary nonuse are addressed under separate headings on those specific issues.

Comment: One comment suggested that we revise the definition of ephemeral grasslands. Other comments also suggested changes in this definition similar to those suggested by this comment. Changing this definition was not in the proposed rule, but the change suggested in the comment was more of a clarification than a change, removing the notion that production of sufficient forage by ephemeral range was necessarily unusual.

Response: We have revised the definition for this term as suggested in the comments. We removed the phrase “may briefly produce unusual volumes of forage” and added in its place the phrase “from time to time produce sufficient forage.”

Comment: One comment from a State game and fish agency stated that we should not amend the definitions of “grazing lease” and “grazing permit,” because inclusion of preference in the text of a grazing lease leads to the lease establishing the stocking rate. The comment contended that a grazing lease is not the appropriate vehicle for establishing a stocking baseline.

Response: Changes in the definitions are required in order to remove conservation use from the regulations, based on the 1999 Tenth Circuit Court of Appeals decision. Grazing preference, as well as other allowable uses on BLM lands, is established in land use plans. Grazing permits and leases are the instruments that authorize grazing use, based

on land use planning allocations. Under section 4110.3, BLM will periodically review the grazing preference specified in a grazing permit or lease, and make changes in the grazing preference as needed to help achieve management objectives to attain rangeland health.

Comment: Comments stated that the definitions should not provide that the grazing permit or lease is the document that authorizes grazing on public lands, because this unnecessarily triggers the need to document NEPA compliance.

Response: The Taylor Grazing Act directs BLM to authorize livestock grazing through a permit or lease. The National Environmental Policy Act provides requirements for Federal actions including the issuance of grazing permits and leases. BLM must comply with provisions of both laws.

Comment: Comments urged BLM to amend the definition of a grazing permit to require that landowners be engaged in the livestock business in order to acquire a Federal grazing permit. They stated that this requirement is based on a provision of the Taylor Grazing Act.

Response: The Taylor Grazing Act does not require a permit or lease holder to be in the livestock business. Section 3 of the Act states, "Preference shall be given in the issuance of grazing permits to those within or near a district who are landowners engaged in the livestock business." Therefore, being in the livestock business is not a requirement, only a point of priority for receipt of a forage allocation.

Comment: Other comments cited legislation pending in Congress that would allow the voluntary buyout of grazing permits, and stated that the proposed definition of "grazing permit" would complicate the potential for such voluntary buyouts.

Response: BLM has not changed the rule in response to this comment. Pending legislation is not authority for regulation. If the legislation were to pass both Houses of Congress and be signed by the President, BLM would, if necessary, amend the regulations to implement the new legislation.

Comment: Some comments urged BLM to clarify the regulations by changing the term "actual use" to "actual livestock use," and "actual use report" to "actual livestock use report," because the terms relate only to use by livestock.

Response: The definitions of "actual use" and "actual use report" in the final regulation remain unchanged. The current definition states that actual use relates to livestock use. Incorporating the suggestion would require adjusting the regulations in a number of areas in the regulations. We believe that such changes would not add clarity to the regulations.

Comment: One comment stated that BLM should revise the grazing rules to make consistent the concepts of active use, monitoring, rangeland studies, livestock carrying capacity and the term "forage available on a sustained yield basis." The comment contended that currently they lack consistency between themselves and throughout the existing rules and the proposed rules.

Response: We believe that these terms, as used in the grazing regulations, are used consistently with one another.

Comment: Many comments suggested that we define the term "affected interest." Some provided suggested language: "Affected interest means a permittee, lessee, allotment owner, or property owner who is directly and materially affected by BLM action related to livestock grazing plans or actions related to those plans" and stated that under Section 8 of PRIA, BLM has responsibility to directly consult, coordinate,

and cooperate with any allottee, lessee, and landowner in a situation where they would be directly and materially affected by a BLM action or proposed action. Another comment asked BLM to define the term “affected person, interest, or party” and clearly limit those who are considered “affected” to people who would directly suffer economic and cultural loss. The comment said that this would prevent those who would use legal processes to impair or stop prudent land management from having standing to bring suit. Another said that such a definition would be consistent with the difference between a member of the public who enjoys certain opportunities for public involvement in BLM land use plans as part of the NEPA process, and the permittee, lessee, or landowner who is assured of “careful and considered consultation, cooperation, and coordination.” One comment stated that the term “affected interest” was too vague and could be misused, and suggested that BLM should refer instead specifically to the permittee or the landowner, as the case might be.

Response: The terms “affected person,” “affected interest,” and “affected party” do not appear in Part 4100. There are references to “affected applicant, permittee or lessee, and any agent and lienholder of record,” “affected permittees or lessees, and the State having lands or responsibility for managing resources within the area” and other references to affected parties such “as landowners.” In these cases, the definition of the word “affected” is clearly evident, as pertaining to those persons whose interest is directly affected by the provision of the regulation. There is therefore no need to provide a separate definition for the term “affected interest” or any of its variants.

We have not adopted the recommendation to replace the term “interested public” in the regulations with the term “affected interest” and to restrict its definition to include only

an allotment owner, lessee, or landowner that is directly and materially affected by a BLM action related to livestock grazing plans or actions related to those plans. Although the sections of PRIA that address consultation and coordination (sections 5 and 8) list those entities that BLM should include in the decision process on allocation of range improvement funds and in the formulation of allotment management plans, they do not limit public involvement during the process leading to such BLM decisions. To involve all those who may be interested in participating in the decision process is not in conflict with the portions of PRIA that address consultation and coordination. As noted elsewhere, the rule does affect the role of the interested public and removes the consultation requirement from several day-to-day management level decisions. The effect of these changes is that the interested public, permittees, and lessees all have opportunities to participate under Section 202 of FLPMA (43 U.S.C. 1712) in decisions on land use plans and allotment management plans that form part of the basis for grazing management decisions, while some day-to-day management decisions require consultation opportunities for permittees and lessees but not with the interested public. BLM believes that this best balances the legitimate need for wide public participation in the management of public lands with the need for efficiency in day-to-day matters that directly affect permittees and lessees.

Comment: One comment urged BLM to revise the definition of “animal unit month,” stating that the existing definition is outdated and causes confusion. It suggested that the definition should be based on livestock size and class, since these vary.

Response: The suggestion to define an animal unit month in terms of livestock size and class would make implementation of the regulation prohibitively complex and costly.

Comment: One comment stated that BLM should define the term “authorized use” as it was defined by the Interior Board of Land Appeals in New Burlington Group Grazing Association, IBLA 2003-324: “the level of AUMs granted in the permittee’s grazing permit.” According to the comment, this would make it clear that authorized use is not the previous year’s actual use, an interpretation rejected by IBLA in New Burlington, and would avoid confusion as to what use is authorized.

Response: We have not adopted the recommendation in the comment, since the term does not appear in this form in these regulations. Terms similar to “authorized use” that appear in these regulations include “preference” or “grazing preference” and “active use,” all of which are defined in section 4100.0-5. These definitions and the use of these terms in the regulations address the concern in the comment that the regulations should have a term pertaining to the number of AUMs authorized by a permit or lease.

Comment: One comment asked BLM to define the terms “authorization” and “authorized” to ensure clarity of application of these terms in the regulations. Another comment stated that, to end current confusion and ambiguity regarding meaning of the terms “authorization” and “authorized” in the grazing regulations, BLM should include a definition of “authorized” in the regulations as “the level of AUMs granted by the permittee’s term grazing permit,” or, as “all AUMs included within the permittee’s term grazing permit.”

Response: BLM does not agree that it should define the terms “authorization” and “authorized” as the comment suggested. In the absence of a definition in the regulations, we apply the common dictionary definition and meaning. This is true for terms like “authorization” and “authorized,” whose

dictionary definition is sufficient. The term is used throughout the regulations in the sense of to “allow” or “grant permission,” and in areas that do not directly relate to forage amounts, such as when BLM authorizes construction of a range improvement through a cooperative range improvement agreement. Moreover, the BLM is not limited to authorizing grazing through the use of term permits and leases. We may also authorize grazing on a temporary and nonrenewable basis where the applicant is not a preference holder.

The rule states unambiguously at section 4130.2(a) and through the definitions of “grazing permit” and “grazing lease” at section 4100.0-5 that the grazing permit or lease is the document that authorizes grazing use on the public lands and other BLM-administered lands that are designated in land use plans as available for livestock grazing. Consistent with statutory language in Sections 3 and 15 of the Taylor Grazing Act, and with the use of the term “permit or lease” in Section 402 of the Federal Land Policy and Management Act, BLM intends that the grazing permit or lease, which specifies the terms and conditions of grazing use allowed by the permit or lease during its term, be relied upon as the document that authorizes grazing use.

In the proposed rule, we removed the term “annual grazing authorization” from section 4140.1(b)(1)(i) (which had prohibited grazing without a permit or lease and an “annual grazing authorization”). We found that this term was confusing because it implied that there was some other document besides a permit or lease (or in limited circumstances, an exchange of use agreement) that authorizes public lands grazing.

The grazing regulations provide some flexibility to make minor adjustments in the grazing use within the terms and conditions

of the permit or lease. The amount of forage consumed in any one year need not exactly reflect the amount of forage that could be allowed to be consumed as shown on the authorizing permit or lease. Such flexibility is necessary to be responsive to forage conditions that can vary from year to year due to weather conditions or as a result of emergencies such as wildfire, or to be responsive to personal or business needs of the livestock operator.

BLM collects fees for use authorized by the grazing permit or lease, as may be adjusted. The use shown on the grazing fee billing becomes a part of the permit or lease for the period of grazing use that is specified by the grazing fee billing

Comment: One comment urged BLM to define “livestock carrying capacity” in terms that address and meet ecological needs, including plant productivity, soil nutrient cycles, ground cover, plant community composition, wildlife habitat function, and habitat resilience.

Response: The current definition of “livestock carrying capacity” found in the BLM grazing regulations accords with the commonly accepted definition of this term and reads: “Livestock carrying capacity means the maximum stocking rate possible without inducing damage to vegetation or related resources. It may vary from year to year on the same area due to fluctuating forage production.” “Related resources” include the ecological needs of rangelands. Also, Subpart 4180—Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration, provides guidance for ensuring that grazing management meets the ecological needs of rangelands.

Comment: One comment urged BLM to clarify the regulations by adding a definition of “forage available on a sustained yield basis,” as follows: “Forage available on a sustained yield basis means the average

“livestock carrying capacity” as determined by monitoring over time.”

Response: We considered the proposed definition and determined that it would not add clarity to the regulations. The proposed definition would equate an amount of forage with livestock carrying capacity. “Livestock carrying capacity” is defined by the regulations in terms of a “stocking rate.” “Stocking rate” is a standard term that describes a number of animals, over time, per unit area. Ultimately, were the suggestion to be adopted, the result would be to make an amount of forage the equivalent of a number of animals over time per unit area. To put it simply, “forage available on a sustained yield basis” is not the same thing as a number of animals per unit area per time period. Moreover, adopting this suggestion would create an internal conflict with 43 CFR § 4100.0-8, which states that land use plans establish allowable resource uses and program constraints. In other words, BLM may consider factors other than the results of monitoring in determining livestock carrying capacity.

Comment: Comments suggested that BLM should include in the definitions of “monitoring” and “rangeland studies” the requirement to apply BLM-approved analytical methodology. One criticized BLM’s proposal that monitoring methodologies be handled through policy guidance in manuals and handbooks. Another comment asked for clarification that monitoring is not mere observation but must occur through rangeland studies set forth in approved BLM manuals. It concluded that this monitoring should include data collected on actual use, utilization, climatic conditions, special events, and trend. Others urged that the rule ensure that monitoring will occur through rangeland studies, as set forth in approved BLM Manuals, and not by the “whims” of the authorized officer.

Response: We have not changed the regulations in response to these comments. The BLM Manual, handbooks, and other BLM internal instruction materials provide adequate guidance on monitoring and rangeland studies, and these materials are more easily updated than regulations. The comments generally agree with this approach, and mainly discuss how we should address monitoring in our internal guidance. We will consider these comments when we review our Manual provisions and other internal guidance.

Comment: Comments stated that BLM should restrict monitoring to rangeland studies. They suggested that “monitoring” should be defined as “means the orderly collection of rangeland studies data to evaluate . . .,” stating that this would contrast monitoring with observations and indicate that only the collection of “rangeland studies” will be considered valid monitoring. Further, they stated, “rangeland studies” should be defined as “any study methods as set forth in approved BLM manuals for collecting data on actual use, utilization, climatic conditions, other special events, and trend to determine if management objectives are being met.” The comment’s position was that this will ensure that management decisions are based on sound information.

Response: We considered the suggested definitions. However, we determined that BLM needs flexibility to use site-specific methods in addition to those monitoring methods set forth in Manual guidance. This flexibility will allow BLM to employ techniques that meet local needs and that we can develop in cooperation with other agencies and partners.

Comment: One comment stated that BLM should define the term “multiple use” to include outdoor recreational activities, such as hiking, hunting, fishing, and other outdoor activities, because the Federal Land Policy

and Management Act provides authority for managing lands on the basis of multiple use.

Response: Although the comment correctly interprets outdoor recreation activities to be included in any definition of multiple use, we have not adopted the recommendation to define the term “multiple use” in the regulations on livestock grazing. The term “multiple use” is defined in the Federal Land Policy and Management Act and the BLM planning regulations (43 CFR 1600.0-5) and needs no further definition in these regulations.

5.4.7 Documentation of Social, Economic and Cultural Effects

Comment: We received several comments that opposed including language providing that before BLM changes grazing preference, we will analyze, and if appropriate, document relevant social, economic, and cultural effects of this action. These comments urged BLM to abandon the provision to include social, economic, and cultural considerations in its grazing decisions. The reasons provided by these comments were: neither NEPA, FLPMA, nor PRIA authorize BLM to adopt rules to protect the “custom and culture” of the western cowboy or rancher, protect ways of life, or insulate the public land livestock industry from economic effects, nor does NEPA authorize BLM to ignore the resource protection requirements of FLPMA and PRIA; BLM should apply an even-handed administration of existing laws and regulations rather than try to preserve a way of life and rural character of ranching communities, which the agency has no authority to do; open space and rural character are best preserved through local zoning and tax policies; despite the fact that NEPA does not require analysis of social, economic, and cultural considerations except in connection with preparing an EIS, BLM field managers have routinely considered

these effects, which is why rangeland conditions are still unsatisfactory; it sets the agency up for failure, since no permittee would be willing to share the financial aspects of their operation with BLM; NEPA already allows for consideration of such effects into environmental analyses, so this proposal is duplicative and unnecessary; BLM's policy strategy is based on a skewed interpretation of the law; NEPA does not require that grazing decisions incorporate analyses of social, economic and cultural effects when preparing environmental assessments (EA); Federal law directs that the public lands be managed for multiple uses, of which grazing is only one; it would result in management that benefits ranchers over the short-term and damages the land over the long term; and public land grazing is not very cost effective to begin with, and this provision would perpetuate that.

Response: We have not adopted the suggestion to abandon the requirement for BLM managers to analyze and, if appropriate, document their consideration of relevant social, economic, and cultural factors before changing grazing preference. BLM is obligated under 40 CFR 1508.8(b) to assess the consequences, i.e., impacts or effects, of BLM actions, authorizations, and undertakings on environmental, aesthetic, historic, cultural, economic, social, or health aspects of the human environment. CEQ regulations at 40 CFR 1508.9(b) also direct that Environmental Assessments include brief discussions of the effects of the proposed action and alternatives. The provision at section 4110.3 is consistent with this direction and intent of NEPA. Consideration of these factors in the NEPA context does not result in a particular outcome, but ensures from a procedural perspective that the information is considered and, if appropriate, documented in the associated NEPA analysis.

Comment: Other comments urged BLM

to include in any future direction, guidance, or regulation formulated with respect to social, economic, or cultural considerations, an emphasis on the requirement for a comprehensive and thorough assessment of the effects on multiple resource values of the public rangelands, not just grazing effects, including: the ecological, educational, aesthetic, cultural, recreational, economic and scientific value to the nation of fish and wildlife; the relevant social, economic and cultural effects of livestock overgrazing on recreational users, municipal water users, threatened and endangered species management, the need and cost for erosion control, threatened and endangered species recovery, and restoration and rehabilitation of public lands, watersheds, and wildlife habitat damaged by livestock grazing; the economic, social, and cultural considerations of the vast majority of the people in this country who view public lands as a place to produce wildlife, for recreational enjoyment, clean water, and wild and scenic vistas, and; any economic effects of the subsidy inherent in the grazing program due to the cost of administering the program, undervalued Federal grazing permits, and the benefits of foregone uses.

Response: The BLM agrees that some of the considerations and assessment topics listed in the comment may be relevant to specific proposal(s) for changes in grazing preference. Those determinations would be made for each individual proposal on a case-by-case basis. BLM would likely consider other factors listed in the comment, such as grazing subsidies related to grazing fee issues or costs of administering the program, and the value of grazing permits, outside the scope of future site-specific proposals for changes in grazing preference.

Comment: Another comment stated that, if BLM adopts the proposal to consider social, economic, and cultural considerations

in its grazing decisions, we should be required to consider the past, present, and future effects of grazing management decisions on the culture and traditions of Tribal members. This comment asserted that BLM must include in its analysis a full review of the economic costs to the public of livestock grazing on public lands, and the economic, social, and cultural effects that grazing has on Tribal nations and their members due to the effect of grazing activities on the Tribal resources (e.g., fish, wildlife, roots, berries).

Response: With respect to considering effects of changing grazing preference on Tribal members, the consideration, when appropriate, of social, economic, and cultural factors will not necessarily preserve any particular lifeway associated with the use of public lands. Under NEPA, the American Indian Religious Freedom Act, and the National Historic Preservation Act, however, BLM must specifically consider the effects of BLM actions and undertakings with respect to the concerns and traditional cultural properties of federally recognized Indian Tribes. The rule does not subvert this direction.

Comment: One comment stated that BLM should consider social, economic, and cultural effects only to the extent that agency decisions move toward balance and harmony with the environment, which is the stated purpose of NEPA. Another urged BLM to provide criteria for an “appropriate analysis,” because the regulation is not clear as to what analysis would be appropriate and whether any action could be taken until the analysis has been conducted.

Response: NEPA is a procedural statute, and does not direct the outcome of any agency decision-making process. The selection of impact topics to be considered in any environmental document is not pre-ordained and BLM must tailor it to

the issues identified for each proposed action, authorization, or undertaking. The commensurate level of impact analyses are tied to these selections. BLM believes the consideration of social, economic, and cultural factors provided for in section 4110.3(c) of the regulatory changes making — “analyze and, if appropriate, document relevant social, economic, and cultural effects of the proposed action” — is consistent with the intent of NEPA.

BLM has decided not to provide criteria for an “appropriate analysis” because the level of analysis considered to be “appropriate” will vary with each site-specific proposal and, consequently, specific criteria are unnecessary. As with all proposed actions for which environmental analysis is conducted pursuant to NEPA, the level of analysis must be tailored to the issues identified for each proposal and the level of effects anticipated. Additionally, as with other Federal actions for which NEPA analysis is required, no action may be taken until a decision by the authorized officer is final. This is no different from any other analysis conducted under NEPA where a decision must be made before taking action.

Comment: Other comments stated that emphasis on considerations such as the social, economic, and cultural effects of agency decisions that change levels of grazing preference would have adverse effects on natural resources, leading to degradation of the public lands. Comments stated that improving working relationships with grazing permittees and lessees would tend to weaken the ability of BLM to manage rangelands in a timely fashion by adding considerable time before action can be taken. One comment stated that BLM should have working relationships with the public, not just ranchers. Another accused BLM of appeasing ranchers and increasing the level of environmental damage.

Response: We have not materially changed current policy with regard to the consideration of social, economic, and cultural effects of decisions in the grazing program. We currently consider the social, economic, and cultural effects of actions that change grazing use levels, as well as other aspects of grazing operations in the NEPA process. The main difference is that, under these changes to the regulations at section 4110.3 (c), BLM will more consistently document these considerations. This change in the regulations will help improve evenness across the Bureau in the analysis of social, economic, and cultural effects. The consistent documentation of these concerns does not come at the expense of protecting natural resources and maintaining healthy rangelands. Rather, it improves working relationships between BLM and ranchers by ensuring that social, economic and cultural effects are analyzed and disclosed where appropriate. Since this provision requires no additional analysis than current policy does, we anticipate few delays in the authorization and implementation of grazing management actions on public lands attributable to this provision.

Comment: Several comments suggested that BLM include a “social and economic” land health standard to demonstrate consistency with the proposed requirement that BLM consider relevant social, economic, and cultural effects in their NEPA analyses of the effects of changing levels of grazing use.

Response: BLM believes that land health standards should focus on the biotic and physical components of the ecosystem, and that “human dimension” considerations are best dealt with in the National Environmental Policy Act (NEPA) analyses that we conduct. In order to assure consistent disclosure and consideration of social and economic effects, we have included requirements in section 4110.3(c) to analyze and, if appropriate,

document relevant social, economic, and cultural effects as required by the National Environmental Policy Act before changing grazing preference.

5.4.8 Active Use— Definition, Increases, and Decreases

Comment: BLM received several comments that suggested alternative definitions for the term “active use.” Some comments suggested that active use should be based on “forage available on a sustained yield basis.” The comments also suggested that we define the term “forage available on a sustained yield basis.” Other comments suggested that the definition of active use should include reference to monitoring data and documented resource conditions in an allotment. One comment suggested that “active use” should include both “authorized use” and “nonuse.”

Response: The term “active use” is the amount of forage that is available for grazing use under a permit or lease. Active use is based upon resource conditions within an allotment. When permittees or lessees apply not to use all or a portion of their active use in any particular year, they are applying for “nonuse.” If BLM finds it necessary to reduce the level of grazing use permitted either temporarily or indefinitely, we will suspend “active use.” At that point, active use is reduced and suspended use is created or increased, either temporarily or indefinitely. “Active use” is a grazing-program-specific administrative term and does not include all forage available on a sustained yield basis within an allotment, because other forage, or potential forage, within the allotment is allocated under the auspices of the applicable land use plan to watershed protection, plant maintenance and reproduction, to wildlife habitat and, where wild horses or burros are present, to forage for those animals.

Comment: BLM received numerous comments asking that a permittee's or lessee's stewardship efforts be included as criteria for determining who is to receive temporary, as well as permanent, increases in grazing use.

Response: Additional forage that is temporarily available most often occurs in years when favorable growing conditions result in forage production exceeding the average livestock grazing capacity in a given area, upon which the active grazing preference is based. Although stewardship efforts can contribute to additional forage for livestock that is temporarily available, BLM believes that in most cases, it would be difficult to ascertain the role of stewardship versus the role of good growing conditions in contributing to the increase. Therefore, requiring BLM to consider and reward this role would be impractical.

Comment: One comment asserted that only existing permittees and lessees should be eligible for being granted additional forage for livestock when BLM finds that it is available under section 4110.3-1(b).

Response: Section 4110.3-1 provides that if BLM determines that there is additional forage available for livestock within an allotment, it will first be apportioned to remove any suspensions of that allotment's permittees or lessees, then to those permittees or lessees in proportion to their contributions to stewardship efforts that led to the increased forage production, then to those permittees and lessees in proportion to the amount of their grazing preference, then to other qualified applicants. The comment urges BLM to remove "other qualified applicants" from the list of possible recipients of the forage increase. BLM believes that it would be a rare occasion when there would be an increase in forage available for livestock that would be made available, following satisfaction of the other requirements of this

regulation, to "other qualified applicants." Nonetheless, BLM sees no need for undue restrictions on who may receive this public benefit.

Comment: One comment advocated that BLM should determine if additional forage is temporarily available only upon application by a qualified applicant. If, the comment went on, following such application, BLM finds additional forage to be temporarily available, we should be obliged to approve its use by the applicant, following consultation, cooperation, and coordination with the preference permittee or lessee.

Response: BLM generally responds to, rather than solicits, applications for TNR use. It is unnecessary to make it a regulatory provision that BLM can determine additional forage to be available only if first a qualified applicant applies for it. Most commonly, BLM receives applications for TNR use from the permittee or lessee with preference for use in the allotments where the forage is available. The regulations provide also that a person other than the preference permittee or lessee may apply for TNR use.

Comment: One comment urged us to provide in this section that BLM must consult with wildlife agencies before temporarily, as well as permanently, increasing grazing use, so that they can effectively manage wildlife whose populations can be affected by grazing.

Response: As provided by section 4130.6-2, BLM is required to consult, cooperate, and coordinate with the preference permittee or lessee and the state having lands or responsibility for managing resources in the area prior to authorizing TNR use. Thus the state agencies responsible for managing wildlife resources will be consulted prior to a proposed decision for increases or decreases in active use as well as for TNR use. In addition, BLM will consult with state wildlife

agencies as part of the process to develop the NEPA compliance documentation.

Comment: One comment suggested that the interested public should be excluded from consultation, cooperation, and coordination under section 4110.3-1(b)(2).

Response: The allocation of additional livestock forage available on a sustained yield basis, after satisfaction of any suspension of preference of the permittee or lessee for the allotment where the additional forage is located, is considered a planning decision by the BLM. Therefore, it is appropriate to consult, cooperate, and coordinate with the interested public, as well as affected permittees, lessees, and the state, before issuing a proposed decision allocating that additional livestock forage.

Comment: One comment asked BLM to clarify in this section that additional forage will be, rather than may be, apportioned to qualified applicants consistent with land use plans.

Response: BLM retained the term “may,” rather than “will,” apportion additional forage available for livestock grazing to retain its complete discretion in this matter. The wording in the rule reflects that in the pre-1995 provision. It means that BLM will not apportion additional forage temporarily available if there is no demand for it. (As to additional forage available on a sustained yield basis, on the other hand, the regulations state that BLM will first use it to end suspensions that were in place due to lack of forage. Any further apportionment of such forage, however, will occur only after consultation with the affected state agencies, permittees, lessees, and the interested public.)

Comment: One comment interpreted changes in this section to mean that BLM could designate ephemeral or annual rangelands based on a finding that forage was temporarily available and allow BLM to

approve grazing regardless of land use plan decisions and land conditions.

Response: A BLM determination that additional forage for livestock is available on a temporary basis does not serve to designate ephemeral or annual rangelands. BLM makes these determinations in land use plans.

Comment: One comment asked BLM to make it clear that section 4110.3-1(b)(2) refers only to forage available for livestock, so that the regulation is not interpreted to preclude allocations of additional forage available on a sustained yield basis to other uses.

Response: Section 4110.3-1 (b)(2) is within paragraph (b), which would amend in the final rule by adding the word “livestock,” so that it states in part, “When the authorized officer determines that additional forage is available for livestock use on a sustained yield basis, he will apportion it in the following manner” BLM believes that this makes it clear that the forage being referred to is forage allocated to livestock through planning and decision processes, as compared with, for example, forage that is allocated to wild horses and burros, or forage that is allocated to wildlife, using the same planning and decision processes.

Comment: Another comment asked BLM to include assurances or a requirement that increased forage allocation to wildlife will result when wildlife organizations contribute to a project that increases available forage.

Response: The suggestion to provide assurances in this Subpart that increased forage resulting from projects funded by wildlife organizations is outside of the scope of this rule. However, before agreeing to fund projects that will increase forage available on public lands, wildlife organizations are free to negotiate the terms under which to make such contributions, and to memorialize these arrangements through cooperative

agreements with BLM and other project participants.

Comment: Another comment urged BLM to establish criteria that must be met before preference can be increased.

Response: Regulatory criteria for making changes in grazing preference, including increases in preference, appear in section 4110.3(a). They include: to manage, maintain, or improve rangeland productivity, to assist in restoring ecosystems to properly functioning condition, to conform to land use plans or activity plans, or to comply with the provisions of Subpart 4180.

Comment: One comment urged BLM to provide permittees and lessees the right to “petition” for increased grazing use up to the limit of their preference, subject to its availability.

Response: Under previous and current regulations at section 4130.1-1, permittees and lessees have the right to apply for grazing use at whatever level they desire, regardless of preference. BLM’s response to the application, however, will be guided by available resource information pertinent to the decision, be consistent with land use plan objectives and decisions, and comply with these grazing regulations.

Comment: One comment stated that BLM should develop and demonstrate a process that would allow grazing to increase if monitoring shows that an increase is warranted.

Response: The section discussed in this portion of the EIS already contains procedures to allow grazing to be increased.

Comment: Several comments on this section stated that BLM should have the option to require that preference reductions made under section 4110.3-2(b) be placed in “nonuse” rather than be suspended by BLM.

Response: Adopting this suggestion would confound, rather than clarify, the management implications of the action

of “suspending” active preference versus approving the “nonuse” of active preference.

Before 1995, the grazing regulations provided that when active use was reduced, the amount reduced could be either “held [by BLM] in suspension or in nonuse for conservation or protection purposes.”

This pre-1995 terminology created three categories of preference: “active,” “suspended” and “nonuse for conservation or protection purposes.” Having three categories of preference made it less clear under what management circumstances it was appropriate for BLM to suspend active use rather than “hold” nonuse (of active use) for conservation or protection purposes.

Further conceptual blurring was created by BLM policy, as stated in our handbook, that a permittee or lessee could annually apply and receive approval for nonuse of all or a part of their active use for reasons associated with personal or business needs, or for “conservation and protection of the range,” but this “short-term” nonuse did not affect preference status. Based on the pre-1995 regulations, there currently are some grazing permits and leases which list nonuse that is being “held” by BLM and which is included as a part of the total grazing preference. However, this nonuse, i.e., that portion of active use that was “held in nonuse conservation or protection” under the pre-1995 regulations, is the practical equivalent of suspended preference as this term is used in this rule.

This rule intends to establish and clarify a distinction between “suspended” preference and “nonuse” of preference, thus:

- Suspended preference arises from an action initiated by BLM. BLM suspends preference when necessary to manage resources by decreasing active use under section 4110.3-1 or as a penalty action for grazing regulations violations under

section 4170.1-1. In contrast, nonuse arises when BLM approves an application submitted by a grazing permittee or lessee not to use some or all of the active use authorized by a permit or lease under section 4130.4.

- Suspended preference is shown on the grazing permit or lease, and along with active use is part of the total grazing preference of the permittee or lessee. BLM does not issue a grazing permit or lease to authorize nonuse. The “conservation use permitting” provisions that allowed for this practice were disallowed by the 10th Circuit Court of Appeals in 1998 and are removed from the grazing regulations by this rule. As explained previously, because of the regulations that were in place before 1995, there is one exception to the statement that we do not issue grazing permits or leases that authorize nonuse. On some permits and leases, BLM still shows nonuse as a part of the total preference because pre-1995 regulations allowed reductions of active preference to be “held in nonuse for conservation or protection purposes.” However, this nonuse is the practical equivalent of suspended preference as clarified by this rule.
- BLM may suspend preference on a short-term basis, as may be needed, for example, to allow recovery of vegetation after a fire. BLM also may suspend preference for a longer term or indefinitely, as may be needed, for example, when BLM determines through monitoring that there is not enough livestock forage produced on a sustained yield basis to support the active use authorized by a permit or lease, and that forage production is not expected

to be able to support that level of use for the foreseeable future. To receive BLM’s approval for nonuse, permittees or lessees must apply for nonuse of some or all of the active use authorized by their permit or lease, prior to the start date of the grazing use period specified on their permit or lease. The BLM authorized officer authorizes the nonuse by approving the application, as indicated by his signature on the application. BLM will not approve of nonuse for longer than one year at a time, and will approve it only if we agree that nonuse is warranted for the reasons provided on the application.

- BLM must issue a grazing decision to suspend preference. BLM records suspended preference on permits and leases and in operator case records for recordkeeping purposes, but suspended preference is not available for active use under the permit or lease. BLM need not issue a decision to approve nonuse. If BLM approves an application for nonuse for reasons of rangeland conservation, protection, or enhancement, or for personal or business needs, the permittee or lessee is precluded from using the amount of active use that has been approved for nonuse. BLM may subsequently approve a later application to make use of what had been approved as nonuse should circumstances change (e.g., moisture is received later in the season that increases forage production, thereby alleviating the need for nonuse for conservation reasons, or an operator purchases livestock mid-season and because of this can use forage that he previously could not because he did not own enough livestock).

Suspended preference is a recordkeeping convention adopted by the BLM. If, after the suspension, BLM determines that there is an increase in the amount forage available for livestock on a sustained yield basis, this record indicates who has priority for its use and in what amount. As explained above, due to the regulations in place before 1995, some permits and leases show “nonuse” as a part of the grazing preference. In actuality, this nonuse is equivalent to suspended use as the concept has been clarified by this rule

Comment: One comment requested that BLM not change the regulation and continue to provide that the active use that is reduced under section 4110.3-2 be terminated rather than suspended.

Response: It is important to keep record of any reductions in active preference as “suspended” preference. It helps BLM to track, by allotment, permittee or lessee, and base property, the original livestock grazing use forage allocation, the attachment of that allocation to base property, and subsequent adjustments arising both from management actions to increase or reduce use, and from administrative actions such as preference transfers. Suspended preference is attached to base property, and is transferred along with active preference. This record facilitates BLM’s ability to apply section 4110.3-1 to reinstate active use to permittees and lessees, upon a BLM determination that forage for livestock, in an amount that exceeds active preference, has become available on a sustained yield basis.

Comment: Another comment asked that BLM cross-reference this paragraph to section 4110.3-1 in order to make it clear that activation of preference suspended under section 4110.3-2(b) would be governed by that section.

Response: BLM did not adopt this suggestion. BLM does not believe that cross-referencing section 4110.3-1 in section

4110.3-2(b) is needed to ensure that it is understood that activation of preference suspended under section 4110.3-2(b) is, in fact, governed by section 4110.3-1.

Comment: One comment asked BLM to change the criteria that justifies a reduction of active use as described in paragraph 4110.3-2(b) from “when monitoring or documented field observations show that grazing use or patterns of use are inconsistent with Subpart 4180, or that grazing use is otherwise causing an unacceptable level or pattern of use, or that use exceeds livestock carrying capacity,” to “when monitoring shows that active use is inconsistent with objectives of the applicable land use plan, activity plan, or decision, or shows that active use exceeds the forage available on a sustained yield basis.” This comment said that this change would clarify that land use plans governed actions that affected the amount of active use authorized.

Response: BLM believes that these criteria are sufficiently clear to serve the purpose intended by the regulation. These criteria allow for the affects of grazing use to be measured against objectives tailored specifically to a local area, such as a single stretch of a riparian area, or an individual pasture, that may not be addressed in sufficient management detail in a land use plan, activity plan, or decision of the authorized officer. These local objectives would be consistent with the more general management objectives typically found in land use plans and activity plans. Moreover, section 4110.3(a) provides that BLM will change grazing preference as needed to conform to land use plans or activity plans.

Comment: Another comment stated that because grazing use or patterns of use are by definition a part of monitoring, including them in paragraph 4110.3-2(b) is redundant.

Response: BLM acknowledges that use pattern mapping and measurement of utilization are a part of monitoring. The

wording in the regulation, however, is not redundant. The regulation requires that when this information shows that grazing use levels or patterns of use are unacceptable, BLM will reduce active use, otherwise modify management practices, or both.

Comment: One comment stated that BLM should provide for payment to the permittee or lessee for any cuts in permit numbers at the prevailing appraised rate in order to curtail cutting permits under the pretense of the Endangered Species Act.

Response: It is not clear from the comment how the conclusion that BLM paying a permittee or lessee for reductions in grazing use would curtail reductions made as a result of compliance with the requirements of the Endangered Species Act. In any event, grazing permits and leases convey no right, title, or interest held by the United States in any lands or resources. Therefore, payment for reduced livestock use would be neither appropriate nor legally supportable.

Comment: One comment stated that BLM should not reduce preference, and suggested that individual monitoring would provide the information needed to make grazing changes that would address management issues without having to reduce preference.

Response: We have not adopted the suggestion that BLM not be allowed to reduce preference. This would unduly restrict the statutory authority of the Secretary to manage grazing use on public lands. Depending on circumstances, there are management solutions to grazing issues that do not involve reducing preference. However, this is not always the case.

Comment: One comment asked BLM to require that increases in active use be implemented by decision, so that the action could be protested and appealed, and to make it consistent with the requirement at section 4110.3-3(a)(2), which, the comment states, requires that decreases in active use be

implemented by decision. Another comment stated that BLM should remove its authority at section 4110.3-3 to implement changes in active use by decision, so that range improvements could be installed in lieu of reducing active use.

Response: This provision in section 4110.3-3 was not proposed for change in the proposed rule. BLM believes that it is important to retain the discretion to change preference by agreement or by decision, depending on management circumstances that can vary greatly from instance to instance, and not require the use of one method or the other. Section 4110.3-3(a)(2) does not require that decreases in active use be implemented by decision. This section requires that when a reduction in permitted use is implemented by decision, as opposed to by agreement, the decision first be issued as a proposed decision, except when immediate land protection is needed because of circumstances such as drought, fire, flood, or insect infestation, or when continued grazing use poses an imminent likelihood of resource damage. There are times when the installation of range improvements can negate the need for indefinite suspension of active use, such as when a new water development improves grazing distribution enough that forage not previously available becomes available for livestock use. However, range improvements are not always the appropriate management response.

Comment: One comment urged that, in case of fires in allotments, the allotment should be rested for a minimum of 3 years, and 5 years if any BLM permittee has livestock on a burn area prior to approval plus a substantial reduction in their grazing permit.

Response: The issue of how much rest from livestock grazing is needed after a fire is a matter for internal guidance, and is outside the scope of the rule and this EIS.

Furthermore, prescribing rest periods for lands through the regulatory process does not allow site-specific analysis and consideration of on-the-ground resource conditions and potential impacts.

Comment: One comment suggested rewriting sections 4110.3-2 and 4110.3-3 so that they are clearer and don't cross-reference each other so much.

Response: Each of the two sections specified in the comment contains one cross-reference to the other section. We do not consider this an unreasonable number of cross-references. We have reviewed the two sections and do not see how they could be written more clearly and still provide the information necessary.

Comment: One comment suggested making the 5-year phase in of changes in active use greater than 10 percent discretionary with BLM, stating that it would allow BLM to react in a timely manner if resource conditions were in more immediate need of improvement, for whatever reason, and result in greater benefits to wildlife.

Response: The additional discretion suggested by the comment would affect only a small number of allotments. At the end of FY2002, BLM determined that 16 percent of the allotments with completed land health evaluations needed adjustments to current livestock grazing management in order to help make progress toward meeting the standards, as described in section 4.3.1 of this EIS. Also, section 4110.3-3 provides mechanisms allowing BLM to act more quickly to avoid significant resource damage.

Comment: One comment urged BLM to make adjustments when data indicates livestock numbers are out of balance with the capacity of the land. Estimates of stocking rates in plans do not necessarily reflect BLM's willingness to reduce stocking levels. Another comment stated that Federal rangeland health standards demand that

the rule should focus decision-making on management objectives stated in land use plans, activity plans, and grazing decisions.

Response: Stocking rates are best determined in the land use planning process. However, as we stated earlier, the regulations contain mechanisms for making changes in grazing use to avoid significant resource damage. As provided in Subpart 4180, we will use monitoring and standards assessment to determine whether changes in management practices are necessary.

Comment: Several comments suggested modifications to this section of the proposed rule. One was that BLM should consult with any base property lienholder before closing allotments to grazing or modifying grazing authorizations due to emergencies or when continued grazing use will result in resource damage. Another was to include consultation with county commissioners where downward adjustments in grazing use levels are being planned, and that the reductions should be justified by reasons that are documented in an allotment evaluation that is conducted before the adjustments occur. A third suggested change was to change 4110.3-3 (b)(1) and (b)(2) by replacing the term "authorized grazing use" with "active use" because there is no definition of "authorized grazing use" in the regulations.

Response: BLM is not changing the regulations in response to these comments. BLM implements changes in active use by grazing decision. Our regulations provide for sending such decisions to any lienholder of record. If such lienholders requested "interested public" status, they would also be able to provide input and comment on reports BLM uses as a basis for making decisions to increase or decrease grazing use. Given these opportunities for lienholder input to BLM's decision-making process, there is no need for BLM to require itself to consult specifically with lienholders before implementing

changes in active use. Further, in the pursuit of sound resource management, it would be inappropriate to allow consideration of whether base property is subject to a lien to affect or change a BLM decision to close allotments to grazing or to modify grazing permits or leases due to emergencies or when continued grazing use will result in resource damage.

The state having lands or responsibility for managing resources in the affected area may choose to include county commissioners' input as part of the state's consultation with BLM. BLM may also consult directly with county commissioners at its option. BLM believes that these two avenues of consultation provide adequate opportunity for county commissioners to make their views known to BLM regarding management issues. BLM makes either downward adjustments in grazing use levels temporarily in response to emergencies or indefinitely after it has determined that livestock forage is insufficient on a sustained yield basis to support grazing at levels that had been previously authorized. In either case, the decision implementing the downward adjustment provides the rationale for the action and is subject to review upon appeal. In most cases of indefinite downward adjustments in grazing use levels, such rationale relies upon analysis found in a documented allotment evaluation.

Paragraphs 4110.3-3 (b)(1) and (b)(2) allow BLM to modify authorized grazing use in response to emergencies, including complete closure of an area to grazing when necessary to provide immediate protection because of conditions such as drought, fire, flood and insect infestation. "Active use" refers to a number of animal unit months (AUMs) of forage. The term "authorized grazing use" is more expansive and refers to all the terms and conditions of use authorized by a term permit or lease. These

terms and conditions include at a minimum, the number of livestock authorized, where they may graze, and the season of the year and period that they may graze. Although BLM may modify "active use" in response to emergency resource conditions, we may also modify the other parameters of use such as location, period, and season in response to these conditions.

Comment: One comment suggested removing the provision authorizing BLM to close allotments to grazing or modify authorized grazing use when the authorized officer determines that resources on public land require immediate protection or continued grazing use poses an imminent likelihood of significant resource damage (section 4110.3-3(b)(1)). The comment stated that the provision is too vague and could be used as a catch-all to eliminate grazing at any time.

Response: The phrase "or where continued use poses an imminent likelihood of significant resource damage" is in fact a catch-all to cover situations not otherwise specified in the regulation (i.e. "because of conditions such as drought, fire, flood, or insect infestation"). It would be impractical for BLM to list in the regulations all possible situations where an immediate closure or modification of grazing may be needed. All BLM decisions that close or modify grazing use are supported by rationale stated in the decision, and decisions may be appealed under Subpart 4160 and Part 4.

Comment: One comment stated that, because of the problems associated with recurrent long term drought, the regulations should require that base property provide forage or other means of sustaining livestock should the necessity arise to remove livestock from the public lands. Furthermore, the comment went on, the base property should be real fee property of the permittee or lessee

and not leased property from a state or other private property owner.

Response: In areas where land serves as base property, BLM specifies the length of time that the property must be capable of supporting authorized livestock during the year (see section 4110.2-1(b)), thus including the concept that the base could be used to sustain the livestock should the necessity arise to remove them from public lands. This “base property requirement” differs depending on the BLM jurisdiction, but generally ranges from 2 to 5 months. In the desert southwest, where water or water rights can serve as base property, there is no similar requirement. Regardless, BLM can close allotments or portions of allotments to grazing use immediately to protect resources because of conditions such as drought. BLM sees no need to require that base property must not be leased property.

Comment: One comment identified an incorrect reference to 43 CFR 4.21 in 4110.3-3(b)(2). A stay relative to grazing is granted in accordance with 43 CFR 4.472.

Response: The rule contains the correction.

5.4.9 Phasing in Changes in Active Use

Comment: Many comments opposed the provision allowing up to 5 years to implement changes in active use greater than 10 percent. Some stated that the provision is inconsistent with the regulatory objective: “to accelerate restoration and improvement of public rangelands to properly functioning conditions.” Others reasons given for opposing the provision included concerns that it would allow unhealthy range conditions to persist, delay range recovery, or lead to additional range degradation, especially of riparian and wetland habitats. They said the provision would have negative effects on natural resources and other uses

of the land. Some of these comments stated that the provision showed that BLM is more concerned with private financial well-being of permittees than with managing publicly owned natural resources in the public interest. One comment said that if the condition of the natural resources on a grazing allotment is so bad that a reduction in permitted livestock numbers in excess of 10 percent is necessary, then the situation is probably so bad that delaying implementation of the reductions would be tantamount to criminal neglect. Others said that such delays would lead to continued petitions for listing species under the Endangered Species Act. One comment opposed this provision because it would contradict the goal of increasing administrative efficiency, negate the requirement for prompt action to address harmful grazing practices, and limit the conditions under which BLM may revoke a grazing permit. Others said that it would tend to weaken the ability of the local BLM field offices to manage rangelands in a timely fashion by adding considerable time before we can take action.

Response: We believe the rule gives BLM sufficient discretion to handle a wide range of circumstances. The rule does not change the BLM’s ability to cancel a permit in whole or in part if necessary. The rule is flexible enough to provide for immediate, full implementation of a decision to adjust grazing use if continued grazing use poses an imminent likelihood of significant soil, vegetation, or other resource damage. The rule also allows BLM and the permittee to agree to a shorter timeframe for implementation. The rule allows BLM to initiate necessary adjustments while giving the permittee an opportunity to make changes in their overall business operation. The provision in the rule allows us to begin reducing active use when necessary, while considering the human aspect of the effects

of the reduction. Our cooperative approach should lead to a decreased likelihood of appeal on the part of the permittee or lessee. This decreased likelihood of appeal in turn should result in implementing necessary grazing reductions more quickly, thus allowing the BLM to remedy resource problems more efficiently. During the last 5 years, BLM has determined that 16 percent of the allotments with completed land health evaluations needed adjustments of current livestock grazing management in order to help make progress toward meeting the standards, as described in Section 4.3.1 of this EIS. Most of these adjustments have been made in the season of use, or movement and control of livestock rather than in levels of active use. An unknown portion of these adjustments were changes of more than 10 percent in active use. Where adjustments are needed to improve riparian or wetland condition, the adjustments are rarely in active use, but are frequently adjustments in season of use, or changes in length of time livestock are allowed access to the riparian area (e.g., grazing might be changed from 6 weeks in the summer to 3 weeks in the spring).

Comment: Several comments offered alternatives to the 10 percent threshold and the 5 year implementation period. One comment proposed that the threshold for changes that prompt a delay of 5 years in implementation should be increased from 10 percent to at least 25 percent, reasoning that small adjustments would result in ascertainable changes in resource condition in a season or two. Another comment suggested that the authorized officer implement changes in active use of 5 percent or less in 1 year, 5 to 15 percent equally over 3 years, and in excess of 15 percent equally over 5 years. The comment stated that this formulation would ensure equal, incremental decreases or increases in active use over time, and

accelerate decreases or increases in active use when a relatively small change is made.

Response: The 10 percent threshold and 5 year implementation period proved to be a practical combination prior to being changed in the 1995 rules. The lower threshold allows affected permittees to avoid rapid adjustments in such significant numbers. However, the number of permittees and allotments affected by this provision is not likely to be large, given that over the last 5 years, most adjustments in grazing management resulting from land health assessments have been made in the season of use, or movement and control of livestock rather than in levels of active use. At the end of fiscal year 2002, BLM found that 16 percent of the allotments with completed land health evaluations needed adjustments to current livestock grazing management in order to help make progress toward meeting the standards. See Section 4.3.1 of this EIS. An unknown portion of these adjustments were changes of more than 10 percent in active use.

Comment: Some comments expressed concern that annual conditions or fluctuations in weather could require more than 10 percent reductions on an annual basis, particularly in the arid southwest.

Response: In practice, during prolonged drought conditions, ranchers voluntarily reduce their livestock numbers because of the economics of their industry. However, this section of the rules applies to adjustments in the terms of the grazing permit, rather than in temporary adjustments made on an annual basis. When temporary adjustments need to be made because of annual conditions, BLM and the permittee or lessee can respond by:

- 1) resorting to temporary changes in grazing use within the terms and conditions of the permit or lease under section 4130.4(a);

- 2) electing temporary nonuse under section 4130.4(d);
- 3) decreasing active use through suspensions under section 4110.3-2; or,
- 4) in more extreme cases of drought, fire, flood, or insect infestation, closing or partially closing allotments under section 4110.3-3(b).

Comment: One comment pointed out that BLM has not reviewed many grazing allotments for over a decade. The comment concluded that, considering improvements in our knowledge of range science and of best management practices for rangelands over the past 20 years, it is likely that changes in active use in excess of 10 percent will be required on numerous allotments.

Response: BLM is evaluating current resource conditions in relation to land health standards. By the end of 2003, we had evaluated 40 percent of allotments, and plan to evaluate the remainder by the end of 2008. As we stated earlier, based on results and changes made because of these evaluations, most adjustments in grazing management are being made in the season of use, or movement and control of livestock, rather than in active use.

Comment: One comment stated that slowing the response to unhealthy rangelands seems to be inconsistent with the current Administration policy of accelerating management responses to fire and the conditions that lead to or exacerbate fires.

Response: This comment is attempting to compare two situations that are not comparable. Fires in the wrong locations threaten life and property, and it is vital to accelerate management efforts to deal with these threats. Rangeland degradation does not normally carry equivalent threats. The regulations are flexible enough to allow

accelerated management to address range degradation that cannot wait for the phase-in period provided in section 4110.3-3(a)(1). As stated earlier, the rule at section 4110.3-3(b)(1)(i) allows BLM to remove or modify livestock grazing when immediate protection is needed because of conditions such as drought, fire, flood, or insect infestation. In 1994, the BLM amended its grazing regulations to address the health of public rangelands. These changes, including the standards and guidelines for grazing administration, remain in the rule and continue to contribute to improving the health of public rangelands. The changes adopted in this final rule seek to refine, without altering the fundamental structure of, the grazing regulations. In other words, we are adjusting rather than conducting a major overhaul of the grazing regulations.

5.4.10 Range Improvements

Comment: Numerous comments opposed the change in section 4120.3-2 providing for shared title to permanent range improvements by BLM and the cooperators. One frequently expressed concern was that a shared title creates potential takings issues if the need to change from grazing to some other land use in an allotment arises in the future. Comments asserted that a permittee or lessee with shared title to a permanent structure on public land would demand compensation for the lost value of his or her property if the BLM proposed changes in the land use that would reduce or discontinue grazing in an allotment. Comments also stated that the BLM would lack the funds needed to compensate the permittee, and would be unable to take the management actions needed to sustain rangeland health.

Response: The BLM disagrees that a joint title to range improvements creates “takings” issues. The existing regulations already assure that permittees and lessees

are appropriately compensated for their investment in range improvements that can no longer be used because of government action. Section 4120.3-6(c) provides that “whenever a grazing permit or lease is canceled in order to devote the public lands covered by the permit or lease to another public purpose, including disposal, the permittee or lessee shall receive from the United States reasonable compensation for the adjusted value of their interest in authorized permanent improvements placed or constructed by the permittee or lessee on the public lands covered by the permit or lease.” The selected alternative does not change this requirement for compensation. The regulations do not address compensation for other types of cancellations. For example, there is no provision addressing compensation where permits are canceled for noncompliance. In another example, if a permittee or lessee voluntarily sells his property and interest, he may negotiate compensation with the new owner for the permittee’s share of a range improvement title. However, BLM would not be a party to that transaction, except to decline to approve the transfer of the preference in the event that the new owner has not agreed to compensate the transferrer, as described in section 4120.3-5.

Comment: Some comments stated that the provision for the United States to hold title to range improvement structures on public land was consistent with the TGA.

Response: BLM is choosing to share title to range improvement projects constructed under Cooperative Range Improvement Agreements to encourage greater private investment in range improvements. This is not inconsistent with the TGA.

Comment: Some comments concluded that the change in section 4120.3-2 gives permittees and lessees exclusive title to new range improvements. Other comments

opposed the change because, they asserted, it could create an interest in the land prohibited by the Taylor Grazing Act. A related concern expressed by comments was that BLM would be unable to take the management actions needed to sustain rangeland health when range improvements were owned by permittees. One comment took the opposite view that the change in the rules was not necessary, because the ranchers already have property rights on public lands.

Response: The rule change does not create an exclusive right, title, or interest in the public land, which is prohibited by the Taylor Grazing Act. Section 4120.3-2(b) specifically states: “Subject to valid and existing rights, cooperators and the United States share title to permanent structural range improvements...” The regulations are equally clear on the creation or the existence of an interest in the land prohibited by the Taylor Grazing Act. Holding a joint title to an improvement does not create a permittee interest in the public land. Section 4120.3-1(e) states, “A range improvement permit or cooperative range improvement agreement does not convey to the permittee or cooperator any right, title, or interest in any lands or resources held by the United States.” Since the United States retains ownership of the land, and shared ownership of the improvements, BLM management actions would not be constrained by a permittee’s interest in a range improvement.

Comment: Several comments noted that the changes would be inconsistent with common law or Forest Service regulations.

Response: BLM believes that consistency with Forest Service regulations, though desirable at times, is not necessary for implementing effective rangeland management practices. BLM is not obligated to accept common law rules for ownership of improvements on public lands (*Public Lands Council v. Babbitt*, 167 F.3d 1287, 1302 (10th

Cir. 1999), *aff'd on other grounds*, 529 U.S. 728 (2000)).

Comment: One comment objected to joint title to range improvements because it would increase the BLM's administrative burden.

Response: BLM disagrees that the proposed change will increase our administrative costs. BLM is currently obligated to record and track the value of contributions that cooperators provide for range improvements, including the imputed value of their labor. This is necessary under the current rules to meet our requirement that we reasonably compensate a cooperator if the permit or lease is canceled to devote to another use or for other purposes. Thus, our administrative responsibilities will exist whether BLM shares the title to the improvement, or holds it solely in the name of the United States. Consequently, the shared title does not result in an additional administrative burden.

Comment: One comment expressed concern about how joint title would affect Tribal consultation, cooperation, and coordination requirements and whether BLM is abdicating control of these responsibilities.

Response: BLM is responsible for consultation with the Tribes and will ensure that the required consultation will occur for all appropriate activities on public land. BLM does not believe that shared title with a cooperator for a range improvement is mutually exclusive with consultation. We again refer to section 4120.3-1(e), which states that establishing a range improvement does not convey any right, title, or interest in any lands or resources held by the United States. Under the rule, BLM retains control of when and where improvements are installed, and other terms and conditions of the development (section 4120.3-1). Also, the cooperators' title and interest are limited to the proportion of structural improvements in which they invested. Considering these

factors, cooperative range improvements should have no affect on Tribal consultations, BLM control of the land, or any Indian trust responsibilities.

Comment: Several comments observed that evidence is absent or inconclusive that joint ownership of title to improvements encourages permittees to invest in further improvements, thereby improving range conditions, or increases the permittee's ability to secure a loan.

Response: State-by-state data on range improvements is shown in the EIS in Table 3.4.3.1. It is clear from the data that the number of new range improvements has declined since 1995 when the rule was last changed. The number has declined in every state with grazing on public land. The average decline is 38 percent. From 1982 to 1994, BLM authorized an average of 1,945 range improvements per year. From 1995 to 2002, we authorized an average of 1,210 per year. Several factors may be contributing, but it is reasonable to conclude that some of that decline may have been the result of the 1995 rule change. It is logical to assume that sharing title among cooperators and the United States provides the opportunity to maintain some asset value for investments made, thereby encouraging and facilitating private investment in range improvements. A permittees or lessee's belief that sharing the title to improvements in which he invests contributes to stable ranch operations is also significant. Shared title to range improvements also provides an opportunity for permittees and lessees to document investment in their business enterprises, which is useful for securing business capital and demonstrating value of their overall private and public lands operations. Permittees and lessees perceive this recognition of investment as crucial to their business and, therefore, as an important factor when considering personal investment

in range improvements. Beyond ranch economics, range improvements improve range conditions. Those benefits accrue to all land and resource managers. BLM may enter into a cooperative range improvement agreement with any person, organization, or other government entity to develop range improvements. The shared title to such improvements is expected to serve as an incentive for all potential cooperators to participate and partner with the BLM in the development of range improvements to assist in meeting management or resource condition objectives.

Comment: Other comments were concerned that the effects of shared title were not sufficiently analyzed, including the effect of increased wildlife use as range condition improves.

Response: The BLM considers improvement in wildlife habitat that may result from range improvements and subsequent upward trend of overall watershed condition to be benefits of the rule.

Comment: Some comments questioned the fairness of sharing title to improvements with permittees and lessees. They regarded the assignment of shared title as preferential treatment that is undeserved when terms and conditions of permits or leases are violated. One comment disapproved of shared ownership of improvements because they would be a constraint on other permittees or lessees in a common allotment.

Response: The BLM's commitment to fairness is an important aspect of the joint title to range improvements. A permittee's or lessee's share of the title to a development in which he or she invests has no affect on BLM's administration of terms and conditions of the grazing permit or lease. Under section 4120.3-6(c), permittees and lessees are only compensated for the adjusted value of their interest in range improvements in the event the permit or lease must be

canceled to allow the land to be devoted to another purpose. There is no compensation if there is no remaining value of their interest in the improvement. BLM believes this is an equitable approach. If a permittee or lessee loses his grazing preference due to noncompliance with the permit or lease, there is no compensation for range improvements that remain on the allotment. However, he or she would be given the opportunity to remove improvements unneeded by BLM. The former permittee or lessee would also be responsible for restoration of the improvement site. Regarding common allotments, planning and implementation of range improvements on common allotments is an inclusive process involving all permittees or lessees authorized to graze in the allotment. As provided in section 4120.3-2(a), BLM enters into cooperative range improvement agreements to achieve management or resource condition objectives and does so through a collaborative process.

Comment: One comment suggested that all range improvements, not just permanent improvements, should be eligible for shared title based on contributions of the cooperator.

Response: BLM currently allows title to temporary, removable range improvements installed under range improvement permits to be held by the permittee or lessee (section 4120.3-3). The existing regulations already incorporate the suggested provision.

Comment: One comment expressed concern about who would be liable if a public land user was injured in connection with a privately owned improvement.

Response: Based on our previous experience with joint Federal-private ownership, we do not recognize any liability issues that should be addressed in this rulemaking. Issues of liability generally are fact-specific, and are best resolved on a case-by-case basis. Moreover, cooperative range improvement agreements will continue to

include provisions that protect the interests of the United States in its lands and resources.

Comment: An additional comment suggested that BLM should retroactively provide for shared title to range improvements constructed under cooperative range improvement agreements after the 1995 rules changes took effect.

Response: The Department has declined to make the proposed change retroactive to 1995, since such retroactive changes have been discouraged by the Supreme Court (*Bowen v. Georgetown University Hospital*, 488 U.S. 204 (1988)).

Comment: We received two comments recommending that BLM authorize permanent range improvements under range improvement permits, noting that such permits are allowed under Section 4 of the Taylor Grazing Act.

Response: Under Section 4 of TGA (43 U.S.C. 315), the Secretary has the authority to determine whether to issue permanent range improvements under range improvement permits or under cooperative range improvement agreements. BLM believes it is in the best interests of the public to authorize all permanent developments such as spring developments, wells, reservoirs, stock tanks, and pipelines under cooperative range improvement agreements to promote achievement of management and resource objectives.

Comment: We received an additional comment suggesting that BLM consult with all permittees associated with an allotment prior to approving nonrenewable use, and require cooperation from all permittees or lessees with the temporary operator.

Response: Under section 4130.6-2, which addresses nonrenewable grazing permits and leases, BLM is required to consult, cooperate, and coordinate with all affected permittees or lessees, as well as the state having lands or responsibility for managing

resources within in the area, before issuing a nonrenewable grazing permit or lease. If BLM issues such a nonrenewable permit or lease, the preference permittee or lessee shall cooperate with the temporary authorized use of forage by another operator. BLM agrees that all preference permittees or lessees in an allotment with temporary use authorized should be consulted and should cooperate. Therefore, we have amended section 4120.3-3(c) in the rule by adding “with all preference permittees or lessees within the allotment.”

Comment: One comment urged that we revise section 4120.3-3(c) to remove any reference to the permittee or lessee cooperating with a temporary authorized use of forage by another operator, stating that BLM should not have the discretion to allow someone other than an allotment’s preference holder to graze in an allotment. Doing so, according to the comment, could cause conflict among BLM, the preference holder, and the temporary grazers.

Response: BLM needs the discretion to authorize grazing use on public lands when forage is available. We realize that there is potential for conflict, as the comment describes. We have rewritten paragraph 4120.3-3(c) to make it clear that BLM will consult with the preference operator before authorizing such use.

5.4.11 Cooperation with Governments, Advisory Boards, and Other Agencies

Comment: BLM received comments regarding advisory council membership and function. A comment stated that we should re-establish Multiple Use Advisory Councils (MUAC) to resolve local issues, contending that the Resource Advisory Councils (RAC) that superceded MUACs and Grazing Advisory Boards in 1995 in many cases cover too large an area to respond adequately

to local issues. Such MUACs reorganized on a District or Field Office basis, according to the comment, could be a positive force for problem solving, conflict resolution, and vetting land management issues far beyond grazing management matters. Another comment suggested that RAC membership be made up of 50 percent conservationists, 10 percent community interests, and 30 percent independent biologists and not be dominated by ranchers who represent their narrow special interest. One comment stated that BLM should drop reference to resource advisory councils as public oversight bodies because they are ineffective at arriving at a decision.

Response: The suggestion to re-establish MUAC is outside the scope of this EIS. To the extent there is concern that RACs in many cases cover too large an area to address local issues adequately, the regulations pertaining to RACs at 43 CFR Subpart 1784 provide for the formation of RAC subgroups to gather local level input on specific issues. If you believe a particular issue should be addressed on a smaller subgroup scale by the RAC with which you are associated, you, as a member of the public, may suggest such an action to the RAC. The comment implies that RACs only consider grazing management matters. However, the regulations at 43 CFR Subpart 1784 provide that RACs can address all facets of public land management. Regarding RAC composition, regulations at section 1784.6-1(c) and (d) require that the Secretary provide for balanced and broad representation from commercial, environmental, scientific, and aesthetic interests, as well as the public, Tribes, and state and local governments. This composition of the RAC comports with the statutory requirements of Section 309 of FLPMA.

Comment: Some comments expressed disappointment that BLM choose not to propose reestablishment of Grazing

Advisory Boards as suggested during the public scoping process on the ANPR and the notice of intent to prepare an environmental impact statement. They further expressed disappointment in the justification for not pursuing regulations that would allow board establishment that was presented in the DEIS section 2.4.

Response: The Resource Advisory Councils (RAC) that were established following the 1995 grazing regulation amendments have generally assumed the role played by the Grazing Advisory Boards, whose authority “sunset” on December 31, 1985. RACs provide an evenly balanced advisory board to cooperate with BLM, and are available to represent local interests on all facets of public land management. The regulations governing board functions at 43 CFR Subpart 1784 also provide for the formation of RAC subgroups to gather local level input on specific issues. The suggestion to redefine the role of Resource Advisory Councils is outside the scope of the rulemaking and this EIS. Moreover, we disagree that they are ineffective as public oversight bodies. The RACs represent a balance of views among various interests concerned with the management and use of the public lands. Furthermore, the Councils are advisory in nature and have given the public an effective forum for participating in the management of the public lands, as well as giving land managers direct public insight into proposed programs and policies. BLM has included in the rule a provision that BLM cooperate with Tribal, state, county, or locally established grazing boards when reviewing range improvement projects and allotment management plans on public lands. We feel that these existing and proposed provisions adequately address the need for a forum for cooperation and coordination on both local and regional issues affecting livestock grazing on public lands.

Comment: One comment stated that BLM should collaborate with other agencies like FWS, and another stated that state wildlife agencies should be fully engaged, because BLM decisions can easily affect these other agencies and their work, because BLM decisions can affect species of concern, and because effective wildlife management requires coordination with uses related to grazing management.

Response: BLM routinely consults with FWS and NOAA Fisheries in accordance with the requirements of the ESA and BLM Manual 6840 on Special Status Species Management. This consultation ensures that actions requiring authorization or approval by the BLM are consistent with the conservation needs of species of concern and do not exacerbate the need to list additional species. As for state agencies, current regulations require cooperation with them. This rule does not change this. Section 4120.5-2 states, “The authorized officer shall, to the extent appropriate, cooperate with Federal, State, Tribal and local governmental entities, institutions, organizations, corporations, associations, and individuals.” Many specific provisions also call for cooperation and consideration with the staff having lands or managing resources in the area affected by proposed BLM grazing management decisions.

Comment: One comment urged BLM to address the concept of grazing associations, explain what they are and examine if all members of an association must own base property.

Response: A grazing association is a group of ranchers organized into an association for the common benefit and welfare of the members. Grazing associations are organized under the laws of the state where they are located. Under section 4110.1(a)(2), a grazing association may apply and qualify for grazing use on public lands if

all members of the association own or control land or water base property.

Comment: Many comments supported the addition of state, local, and county-established grazing boards to those groups we routinely cooperate with in administering laws and regulations relating to livestock, livestock diseases, and sanitation) to section 4120.5-2. These comments gave a variety of reasons.

Comment: A comment stated that the regulations should require agency cooperation with State, county, and local grazing boards, because the creation and use of grazing advisory boards would give BLM land managers direct resource-related information from subject matter experts in the local areas, increasing our ability to devise appropriate strategies for managing public lands under the multiple-use mandate. Another supported the amendment because state and local governments and local citizens have more at stake in the health of the land in their area than does BLM. The comment said that where state and local governments have established grazing advisory boards to provide for the health and management of public lands in their jurisdiction, they should be given maximum opportunity to do so. Other comments supported the proposed provision because consultations between grazing boards and BLM officials will provide for improved working relations on issues of significant importance to all stakeholders, and the new provision also fulfills statutory and regulatory requirements for consultation, cooperation, and coordination. One comment stated that grazing advisory boards can be used to help resolve conflicts between the agency and allotment owners, while another said that local grazing advisory boards allow for more efficient use of agency resources and money.

Response: The BLM intends cooperation with grazing boards to provide BLM land

managers local resource-related information from subject matter experts in local areas, thus increasing BLM's ability to develop and recommend appropriate strategies in developing allotment management plans and planning range improvements. BLM agrees that cooperation with local, county, and state agencies, governmental entities, and grazing boards established by state, county, and local governments will help us in considering how best to apply land management practices and spend range improvement funds. Cooperation with all groups and individuals, including Tribal entities, to achieve the objectives of grazing management, is required in section 4120.5-1 of the existing grazing regulations. Existing policy and law provides for the consultation, cooperation, and coordination with these groups as well as others. BLM recognizes that these entities have a high stake in promoting healthy public lands in their area. We therefore also intend the provision to direct BLM field managers to cooperate with state, county, and local government boards in carrying out the boards' functions. That is, we will participate in their meetings, provide information on request when it is legal and appropriate to do so, answer inquiries, provide advice, and generally interact with the boards in a cooperative manner. The amended regulations would formalize the role of grazing boards in providing input and helping to avoid or resolve conflicts between BLM and grazing permittees and lessees. However, it is not the intent of the regulations to confer upon any grazing board cooperating agency status.

Comment: One comment stated that BLM should provide an opportunity for local collaborative groups to be creative and proactive in the management of local public lands. The comment added that private lands adjacent to the public lands—often the base property for permittees—are usually the most

important habitat (for example, critical winter range) for many wildlife species.

Response: BLM agrees that informal collaboration with local publics is beneficial to management of public lands and recognizes that adjacent private lands and land and water base properties often provide important wildlife habitats, for the same reasons that historically these lands were more likely to have been homesteaded or otherwise converted from public domain to private ownership. Our regulations at section 4120.5-1 require us to cooperate with individuals and other local entities, to the extent appropriate, to achieve the objectives stated in the regulations. However, the only requirement added in section 4120.5-2 is that we cooperate with government and government-created boards, not informal citizen groups, in the administration of laws and regulations relating to livestock, livestock diseases, sanitation, and noxious weeds.

Comment: Many comments opposed the addition of paragraph (c) to section 4120.5-2. These comments also gave a variety of reasons.

Comment: One comment stated that the provision gives the impression that grazing board concerns have greater weight than the interests of other groups. The comment said that the perspectives of these other groups can also be valuable to the BLM decision-making process. Others stated that it will reduce BLM's role as an independent land management agency, and that it will duplicate or supplant the current arrangement BLM has with, and will undermine the efforts of, the Resource Advisory Councils (RAC).

Response: BLM is required, to the extent appropriate, to consider the views of all stakeholders providing input into BLM's decision-making process, and will not be constrained in its management by input from grazing boards. This means that, assuming

we have the manpower, we will attend their meetings when invited, provide information when requested, and invite their input when appropriate. The boards will provide expertise in reviewing range improvements and allotment management plans on public lands.

The role of the RACs is broader, in that it also encompasses input into and review of the Standards of Rangeland Health under Subpart 4180. There may be some overlap between these groups in the discussion of grazing allotment management issues. Nevertheless, this input will be valuable to BLM, broadening perspectives as to the issues. As a result, we expect that our decision-making process will be more effective and our data will be more comprehensive. Of course, laws, regulations, policy, and a multitude of other factors also guide and direct BLM's decision-making process.

Comment: A comment from a state wildlife management agency stated that specific language should be added to paragraph (c) to address appropriately the requirements for consultation with state wildlife management agencies called for in several Federal laws, including the Taylor Grazing Act.

Response: Section 4120.5-1 requires BLM to cooperate, to the extent appropriate, with Federal, state (including state wildlife management agencies), Tribal, and local government entities, institutions, organizations, corporations, associations, and individuals to achieve the objectives of the regulations in Part 4100. Section 7 of the Endangered Species Act requires formal consultation with the U.S. Fish and Wildlife Service or the NOAA, Fisheries if a federally listed species may suffer effects due to a proposed action. No additional language is necessary in the grazing regulations regarding coordination with state wildlife management agencies.

Comment: One comment stated that paragraph (c) should be removed because many states, counties, and local areas do not have any established grazing boards. Another stated that it is not clear how these grazing boards are defined or established, nor what it would take for a grazing board to qualify as "established." One comment stated that paragraph (c) was tantamount to the reestablishment of grazing advisory boards, the authority for which expired on December 31, 1985 (43 U.S.C. 1753(f)).

Response: The establishment of grazing boards is at the discretion of state, county, and local governments, and is not required or authorized by BLM. This rule change formally recognizes the benefit of consulting and cooperating with existing and any future grazing boards. Each specific grazing board, or the governmental entity creating or authorizing it, determines the grazing board's establishment, internal organization, and role.

Comment: One comment stated that BLM should include other groups and boards representing various public land resource interests in the local area (such as Tribal Associations) in section 4120.5-2(c), because many of these groups and agencies utilize BLM lands.

Response: In section 4120.5-2 of the grazing regulations, the authorized officer is required to cooperate, to the extent consistent with applicable laws of the United States, with the involved state, county, and Federal governmental agencies in administering certain laws and regulations. Section 4120.5-1 requires cooperation, to the extent appropriate, with all groups and individuals, including Tribal entities, to achieve the objectives of grazing management. Cooperation with grazing boards, where they exist, can give BLM land managers resource-related information from local subject matter experts, thus increasing our ability to develop appropriate strategies for

managing grazing allotments and developing range improvements under the multiple-use mandate. We have added Tribal associations to paragraph (c) in response to the comments.

Comment: One comment suggested that we expand the scope of paragraph (c) to require cooperation with local grazing boards as to other elements of rangeland management. The comment stated that these groups could assist with the resolution of such issues as conflicts between permittees and other users of the public lands and in designing monitoring programs.

Response: Tribal, state, county, and local government-established grazing boards are independent entities, set their own agendas, select their own members, and determine the level of their interest in reviewing allotment management plans and range improvements. Under this rule, BLM will not establish, sanction, or direct the function of grazing boards. BLM's role, as identified in the grazing regulations, is to weigh any input from the grazing boards as well as from others as we consider allotment management plans and range improvements. BLM coordinates with Federal, state, Tribal, and county government entities and RACs on a wide variety of public land management issues and proposed actions.

Comment: One comment stated that grazing boards should be consulted but should remain autonomous from Resource Advisory Councils, as provided in the Taylor Grazing Act. Another stated that grazing boards comprised of members of the general public may have personal concerns or pet issues that should not affect BLM management practices.

Response: Under the proposed grazing regulations, grazing boards established by state, county, and local government and Resource Advisory Councils will remain as distinct organizations. The grazing advisory boards referred to in the Taylor Grazing

Act were terminated in 1974 in accordance with Section 14 of the Federal Advisory Committee Act of 1972 (5 U.S.C. App. 1), and should not be confused with the grazing boards in the proposed grazing regulations. These grazing boards are neither established nor sanctioned by BLM. Partly in response to the confusion and concerns demonstrated by these comments, we are amending paragraph (c) to add the word "government" after the word "local." This should make it clear that the grazing boards referred to in the provision with which BLM must cooperate in administering livestock laws are only those created or sanctioned by state, county, Tribal, or local government entities.

Comment: One comment suggested that only affected permittees, and not individuals from other locations, should be consulted regarding section 4120.5-2, "Cooperation with State, county and Federal agencies."

Response: That section does not include a consultation requirement with the interested public, but does require BLM to cooperate with Tribal, state, county, and other Federal agencies regarding the administration of laws and regulations related to livestock, livestock diseases, sanitation, and noxious weeds. BLM believes it is important to continue to work cooperatively with other governmental authorities on these issues.

5.4.12 Temporary Nonuse

Comment: Several comments expressed general support for the changes in the temporary nonuse provisions. Various other comments suggested amendments for the definition of "temporary nonuse:"

- 1) To include nonuse that is required by BLM in response to fire, drought, or in other cases where range restoration or improvement is necessary;

- 2) To provide that BLM will manage decreases in livestock numbers by temporary nonuse rather than suspension; and
- 3) To require permittees and lessees to apply for temporary nonuse on an annual basis, in order to make the definition consistent with section 4130.4(d)(1).

Response: The first two suggestions are related. Some grazing permittees and lessees do not want to have authorizations suspended for drought, fire, and range restoration. Although no reason is given in the comments, apparently these grazing operators consider a suspension tantamount to a penalty. However, there is no stigma associated with this kind of suspension. Nonuse to allow fire rehabilitation or drought recovery at the request of BLM is properly achieved by suspension. Also, having a suspension imposed by BLM in this situation eliminates the paperwork burden associated with applying for temporary nonuse.

BLM cannot adopt the third suggestion. Definitions are in the regulations to describe what a term means. The definition is not the proper place to describe how to implement it. Section 4130.4 gives sufficient information about the implementation of temporary nonuse; it is unnecessary to repeat it in the definition.

Comment: One comment from a state fish and game agency opposed the definition of temporary nonuse, relating it to its opposition to the proposed definition of “preference.” The agency opposed institutionalizing a stocking number in grazing permits. Instead, the comment supported the definition in the current regulations, stating that forage allocations should be based on available forage.

Response: Changes in the definition of “temporary nonuse” in the rule are necessary

to implement the ruling of the 10th Circuit Court in *Public Lands Council v. Babbitt* (167 F.3d 1287 (10th Cir. 1999)) on conservation use. The interpretation in the comment of the relationship between temporary nonuse and grazing preference is incorrect. The rule defines “grazing preference” or “preference” as the total number of animal unit months on public lands apportioned and attached to base property owned or controlled by a permittee, lessee, or an applicant for a permit or lease. A permit or lease is a long-term (up to 10 years) authorization to graze livestock on public land and is based on available forage. BLM may authorize temporary nonuse, on the other hand, for a short-term, one year, when applied for by a permittee or lessee, for a variety of reasons.

Comment: One comment stated that BLM should amend the rule with regard to temporary nonuse to make the negative effects on grazing permittees as predicted in the DEIS positive.

Response: We believe the long-term effects of the rule will be favorable to the health of the range. BLM is free to disapprove nonuse if resource conditions do not warrant approval of temporary nonuse for conservation reasons, and to allow temporary use by other operators if the nonuse is for personal or business reasons. The regulations contain checks and balances to minimize adverse effects.

Comment: Several comments expressed the concern that, if we adopt the rule as proposed, BLM would be unable to deny nonuse for conservation purposes. The comments pointed out the possibility that since the rules do not limit the number of years that a grazing operator could potentially be approved for nonuse of their grazing permit or lease, conservation organizations could acquire grazing permits and perpetually receive BLM approval not to use them for reasons of natural resource

conservation, enhancement, or protection. Another comment supporting the proposed rule expressed concern that BLM's discretion to grant nonuse for more than 3 years allows a *de facto* "conservation use" permit in violation of the TGA, FLPMA, and the decision in *Public Lands Council v. Babbitt*, *supra*. Also, the proposed rule stated that BLM "will" authorize nonuse to provide for natural resource conservation, enhancement or protection or for the personal or business needs of the permittee.

Response: In the rule, BLM has changed the term "will" to "may" to make clear that BLM retains the discretion to disapprove nonuse if BLM, based on the facts applicable to the circumstances, does not agree that nonuse is warranted.

The rule also does not change provisions that authorize BLM to cancel permits and leases if they are not used for the purpose intended — namely, to graze livestock — and to award them to other applicants in accordance with the decisions, goals, and objectives of the governing land use plan. BLM believes it necessary to retain discretion to approve or disapprove nonuse based on the facts and circumstances at hand, so that it may adapt its management to the needs of the resources as well as the resource user. The regulations adopted today provide that unless the BLM approves nonuse in advance, it is not approved. BLM may deny nonuse if we find that it is not needed either for natural resource conservation, enhancement or protection, or for personal or business needs of the permittee. If BLM denies a permittee's application for nonuse, the permittee would be obligated to graze in accordance with their permit or lease. If the permittee failed to make use as authorized by their permit or lease for two consecutive fee years, then BLM could cancel the unused preference under section 4140.1(a)(2) and allocate it to

other applicants under sections 4110.3-1(b) and 4130.1-2.

If the BLM approves nonuse for personal or business reasons of the permittee or lessee, we may authorize other qualified applicants to graze the forage that is temporarily made available due to the nonuse by the preference permittee under section 4130.4(e). If BLM approves nonuse for reasons of resource conservation, enhancement, or protection, and should a qualified applicant believe that BLM's approval of nonuse for any of these reasons is not justified, that applicant could apply to use the forage that he believes to be made available as a result of BLM's approval of nonuse. Because the regulation at section 4130.4(e) would not allow BLM to approve an application for forage made available as a result of temporary nonuse approved for reasons of resource conservation, enhancement, or protection, BLM would then necessarily deny such an application for use by grazing decision. This grazing decision would be subject to protest and appeal, thereby providing the applicant an opportunity to demonstrate to an administrative law judge or board why he believes BLM's decision to approve the nonuse application was in error, and to have the court compel BLM to either require that the forage be used by the preference permittee or to make the forage available for use by other applicants.

Comment: Some comments stated that the Supreme Court found that unlimited nonuse was not consistent with the TGA.

Response: The rule does not authorize BLM to grant unlimited nonuse. The rule restores to BLM flexibility to approve permittee or lessee applications for nonuse as long as BLM determines annually that the nonuse is warranted by resource needs or by the personal or business needs of the operator.

Comment: One comment questioned why temporary nonuse must be subject to annual application, stating that in at least some cases it should be easy to predict that the benefits from nonuse would take several or even many years to accumulate. The comment suggested that an analysis of historic employment of temporary nonuse might shed light on reasons ranchers applied for temporary nonuse: BLM proposals to reduce AUMs; business reasons of the permittee or lessee; or cooperative agreements to allow range or riparian recovery.

Response: Annual reconsideration of temporary nonuse allows BLM to determine whether it is still necessary. Of course, in some cases the determination will be easy to make. Historical analysis of temporary nonuse is not necessary. Of the three reasons for nonuse suggested in the comment, two are explicitly provided for in the regulations at section 4130.4(d)(2)(i) and (ii). As for the other reason suggested for temporary nonuse, that BLM is proposing to reduce AUMs, temporary nonuse may be a preferable, less drastic, alternative, which will give the range an opportunity to recover to forage levels that will support the permitted AUMs before BLM cancels the AUMs.

Comment: One comment urged BLM to ensure that the grazing regulations provide for maximum flexibility for nonuse, or reduced use, including allowing nonuse for 3 years for reasons other than resource management. Upon 3 years of nonuse, then, according to the comment, BLM should consult with the preference holder to determine how to make the nonuse AUMs temporarily available to other applicants engaged in the livestock basis, or to reallocate them permanently in accordance with the grazing regulations. The comment concluded that BLM should limit nonuse for resource protection reasons to 5 years to protect the range from rangeland health

concerns some contend start to accrue after 5 years without livestock grazing.

Response: The final regulations provide sufficient flexibility for approving nonuse for reasons other than resource management. BLM should not wait for 3 years before authorizing other applicants to graze AUMs made available due to a preference permittee's nonuse for personal or business reasons, as there may be times where the use can appropriately be made immediately. However, we disagree that there should be an arbitrary limit on nonuse for reasons of resource conservation, enhancement, or protection. There may be times when nonuse based on these needs is justified for longer than 5 years, which BLM will determine based on monitoring and standards assessment.

Comment: One comment urged that BLM should not propose reductions and eliminations in resting or nonuse because this action, which is only beneficial to the permittee or lessee, implies that the BLM is only concerned about short-term production of livestock and not the long term benefit of stewardship.

Response: BLM does not believe that granting nonuse when it is beneficial to a permittee or lessee implies that BLM is only interested in short-term livestock production. Long-term stewardship of public lands is inherent in the stated missions and goals of the agency in Section 102(a) of FLPMA. There are also many sections (such as section 4130.3-3(b), Subpart 4180, etc.) in the grazing regulations that provide mechanisms for exercising stewardship of the public lands to ensure that the lands are productive and available to future generations. Additionally, the concept is embodied in BLM's mission statement: "sustains the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations."

Comment: One comment suggested that the regulations should provide that when permit holders request nonuse or a reduction or suspension of what is currently permitted use, such requests would be granted.

Response: Section 4130.4 provides that BLM may authorize temporary nonuse for natural conservation reasons or for business or personal reasons of the permittee or lessee. If the applicant supports the request with appropriate reasons, BLM will normally approve the request, on a year-to-year basis, as provided by section 4130.4(d)(1)(ii). BLM believes it necessary to retain discretion to approve or disapprove nonuse based on the facts and circumstances at hand, so that it may adapt its management to the needs of the resources as well as the resource user.

Comment: One comment stated that BLM's consideration of a request for conservation use should consider whether that use would create a fire hazard.

Response: The rule allows permittees and lessees to apply for temporary nonuse for conservation purposes. BLM's deliberation regarding an application for nonuse for conservation purposes will include consideration of whether approval would result in other effects such as unhealthy buildup of fuels.

5.4.13 Fundamentals of Rangeland Health

Comment: Some comments expressed concern that BLM was replacing the fundamentals of rangeland health in section 4180.1 with the rangeland health standards in section 4180.2. The reasons given for concern were: (1) BLM might no longer take action if we determined that conditions expressed as fundamentals of rangeland health did not exist; (2) BLM would not be able to evaluate the effectiveness of state or regional guidelines; and (3) land health

standards would take precedence over the fundamentals.

Response: Land health standards do not replace or take precedence over the fundamentals of rangeland health, but further define the conditions that must exist in order to achieve Fundamentals of Rangeland Health at the local or regional level. Section 4180.2(b) clearly states that standards must provide for conformance with the fundamentals of section 4180.1. Because of the hierarchical relationship between the fundamentals and the standards of rangeland health, if the standards are met, then the conditions exist to meet the fundamentals. The effectiveness of state or regional guidelines will be determined by evaluating whether or not standards are met when the guidelines are followed. The purpose of the change in section 4180.1 is to make it clear that when standards describing the conditions necessary to meet the fundamentals have not yet been developed, that failure to achieve (or make progress toward achieving) fundamentals will be the basis for taking appropriate action.

Comment: A comment suggested removing or revising section 4180.1 because, as framed in the current rules, the fundamentals do not conform to the concepts and parameters presented in the National Research Council's 1994 publication "Rangeland Health, New Methods to Classify, Inventory, and Monitor Rangelands," and "New Concepts for Assessment of Rangeland Condition" (Journal of Range Management, SRM 48(3), May 1995). It also suggested that the Criteria and Indicators developed by the Sustainable Rangeland Roundtable be incorporated into Subpart 4180.

Response: BLM considered the National Research Council publication cited in the comments in 1995 in preparing the proposed

direction for developing state or regional standards and guidelines (*Rangeland Reform '94 Final Environmental Impact Statement*, page 13). These national concepts were retitled the “fundamentals of rangeland health” in the 1995 final rule (60 FR.9954). The Journal of Range Management article “New Concepts for Assessment of Rangeland Condition” provided a number of recommendations for assessing and reporting range condition based on ecological sites and “Site Conservation Ratings.” The fundamentals of rangeland health are not intended to describe a condition rating system; rather, they describe a threshold condition which either exists or does not exist, and provide BLM a criterion for taking corrective action. BLM has been a participant in the “Sustainable Rangeland Roundtable,” and that work is still in progress. We have determined that further adjustments of the regulations to be consistent with the “Sustainable Rangeland Roundtable” products would not be prudent at this time.

Comment: Other comments suggested moving the fundamentals of rangeland health from the grazing regulations in Subpart 4180 to the planning regulations in Subpart 1610, stating that the fundamentals are clearly planning rather than management concepts. According to the comments, the move would accomplish the 3 criteria listed in Federal Register (68 FR 68457): (1) promoting cooperation with affected permittees, especially land owners; (2) promoting practical mechanisms for protecting rangeland health, and (3) improving administrative efficiencies.

Response: As explained in the proposed rule, we did not consider it appropriate to expand of the scope of the rule and EIS to address planning regulations at Subpart 1610.

Comment: A number of comments addressed the references to “at-risk and

special status species” and the Endangered Species Act (ESA) in Subpart 4180. All suggested removing the term “at risk species” found in 4180.1(d), 4180.2(d)(4), 4180.2(e)(9) and 4180.2(f)(2)(viii) because it is not a term used or authorized in the ESA. Most expressed concern that including the term would lead to single species management when BLM should be managing for plant and animal communities and ecosystems. Some also suggested removing the term “special status species” for the same reasons.

Response: FLPMA directs BLM to manage for multiple uses, including native vegetation communities, and food and habitat for wildlife as well as livestock. Even though it is preferable to manage native plant and animal communities or ecosystems, the ESA requires threatened and endangered species to be managed by BLM, species by species. “Special status species” is defined in BLM Manual 6840, Special Status Species Management, and includes listed, proposed and candidate species, state-listed species, and sensitive species. Considering “other special status species” in standards and guidelines (4180) will identify potential management opportunities to avoid future listing of State listed and sensitive species. Once a species is listed under the ESA, multiple use management becomes increasingly complex and uses of the public lands may become more restrictive. Thus, BLM needs optimum habitat conditions for all special status species. However, because the term “at-risk species” is not defined in ESA or in BLM manuals or handbooks, we have removed it from the regulatory text. The rule retains the term “special status species,” because it is consistent with our objectives in Subpart 4180 and is clearly defined in BLM Manual 6840.

5.4.14 Basis for Rangeland Health Determinations

Comment: Some comments contained suggestions for implementing the rule. Many encouraged BLM to provide sufficient funding to collect the monitoring data needed under the rule, and one comment requested a funding strategy to show how BLM will provide the resources to complete the monitoring necessary to implement this rule. One comment suggested that permittees fund any monitoring above that currently required by BLM to make decisions. Some comments suggested priority-setting strategies so that high priority areas receive first consideration for monitoring.

Response: Priority setting is also a policy issue addressed during the annual budget development along with determinations on appropriate funding levels. Funding sources and amounts for monitoring vary from year to year, and BLM plans to work with permittees and others to determine how data collection will be funded or completed.

Comment: Several comments expressed a desire for BLM to update policy and handbooks to clarify methods and levels of monitoring needed so that there would be consistency in data collection and interpretation. One comment requested incorporation of “the Catlin *et al.* 2003 report and statistical tests (Grand Staircase or Escalante National Monument)” into the EIS because the report and statistical tests provide tools to assist BLM staff in making rangeland health determinations. Comments offered monitoring indicators for all the land health standards, and suggested that monitoring should be focused on goals and objectives agreed upon using the consultation, cooperation, and coordination. It was recommended that monitoring should be conducted by qualified professional agency personnel working with permittees

using approved agency methods to collect data relevant to the decisions being made.

Response: BLM agrees that clear guidance on monitoring methodologies is desirable. Many of the suggestions are more appropriately addressed in the development of policy, handbooks, and technical references, rather than in regulations. This applies particularly to techniques and methods for collecting and interpreting data. The suggestion to update policy and handbooks is appropriate, and BLM is planning on doing so.

Comment: One comment suggested the BLM should add the following wording to 4180.2 (c)(2): “If the appropriate action requires a change in active use, such change will be implemented in accordance with section 4110.3-3” to clarify that timing conflicts are not intended between the implementation requirements of this section and those of section 4110.3-3 on implementing changes in active use under the changes recommended herein.

Response: The regulations state in section 4180.2(c)(3), “Appropriate action means implementing actions pursuant to Subparts 4110, 4120, 4130, and 4160 of this part...” How changes in preference and active use will occur is specified in 4110.3-3, so we believe the suggested word change to section 4180.2 is unnecessary.

Comment: Some comments stated that the regulations in section 4180.2 should provide for individual allotment management plans with specific goals and objectives, and including monitoring plans be developed through consultation, cooperation, and coordination.

Response: Section 4120.2, on allotment management plans, directs that such plans provide for monitoring to evaluate the effectiveness of management actions in achieving the resource objectives of the

plan. These plans are to be developed in consultation, cooperation, and coordination with permittees, landowners, other agencies, and the interested public. Therefore, we believe the suggestion has already been addressed in the regulations.

Comment: A variety of comments opposed requiring both monitoring and assessments to make determinations that rangeland health standards are not being met because of current livestock grazing management. Most were concerned that BLM did not have the budgetary resources to provide adequate data collection and analysis and that the requirement would impose an unrealistic workload on the BLM staff, putting resources at risk by delaying appropriate actions. Setting priorities and assuring that low priority areas were not monitored at the expense of high priority areas was a concern.

Response: As previously stated, BLM prioritizes expenditure of resources for monitoring as well as for other activities in the range program. For example, BLM assigns high monitoring priority to areas it believes to be at risk, are in degraded condition, or in downward trend and in danger of losing capability. BLM believes that it is more effective to expend resources to collect data in these high priority areas, and to use that data to ensure sustainable decisions from a resource and implementation perspective.. Under the rule, monitoring would not be necessary on every allotment to make a determination that an allotment is failing to achieve standards and conform to the guidelines. The rule requires monitoring and data assessment only on those allotments which are found to have failed to meet standards or conform to guidelines, and if it is reasonably likely that the failure was caused by livestock grazing, to determine whether the failure is in fact due to levels of grazing use and grazing management

practices. As of the end of Fiscal Year 2002, about 16 percent of the 7,437 allotments evaluated were determined not to be meeting land health standards because of existing livestock grazing management. We focused our first round of assessments on areas with potential problems. Nevertheless, it is reasonable to use this experience as an indicator of the proportion of allotments that are likely to fail to meet standards as a result of livestock grazing practices in the future. Thus, we expect to be required to have monitoring data to support probably less than 16 percent of our determinations that we make after adoption of the revised regulations. Under projected budgets, we fully expect to have appropriate monitoring data to support a much larger proportion of our determinations, regardless of whether they lead to a finding of failure to meet standards due to livestock grazing.

Comment: Other comments expressed opinions that monitoring was unnecessary and existing direction was adequate for making determinations and necessary adjustments, including flexibility to use existing data, that using follow-up monitoring to determine if the change was needed is an appropriate strategy, and that allowing immediate action when destructive grazing practices and abuse are obvious is essential to good management. One comment stated that requiring monitoring would lead to increased litigation.

Response: The level of monitoring needed to determine whether existing livestock grazing is a significant factor in failing to achieve standards will vary depending on such factors as how obvious the causes are for not meeting standards, presence of threatened or endangered species, conflicts between uses, and other criteria. While BLM cannot control the number of appeals or the amount of litigation after issuing a grazing decision, we believe having

a defensible basis for the decision will reduce the number of instances where appropriate action is delayed because of protracted administrative and judicial processes. In addition, BLM would have stronger basis for implementing the corrective actions during a protest, appeal, or stay situation when the decision is founded on monitoring data.

Comment: Another comment maintained that range monitoring as practiced by BLM consistently under-reports biological impacts of cattle grazing on desert environments, particularly riparian areas, and that some monitoring methods do not report loss of habitat function for wildlife, increased susceptibility of soils to erosion, invasion of exotic plants, or destruction of cryptobiotic crusts.

Response: BLM does not agree with this comment. Monitoring is designed to document conditions of a particular attribute or set of attributes at the time data is collected. BLM uses a number of techniques and methods to measure wildlife habitat conditions (including cover, structure, and vegetation composition), ground cover, and presence of exotic plants. In doing so, we rely on many BLM Technical References and Technical Notes, including TR 1734-4 "Sampling Vegetation Attributes," 1996; TN-349 "Terrestrial Wildlife Inventories: Some Methods and Concepts," 1981; "Inventory & Monitoring of Wildlife Habitat," 1986, by Cooperider, Boyd, and Hansan; TN 395 "Evaluation of Bighorn Habitat: A Landscape Approach," 1996; TR 1730-1 "Measuring and Monitoring Plant Population," 1998; and TN 417 "Identifying and Linking Multiple Scale Vegetation Components for Conserving Wildlife Species that Depend on Big Sagebrush Habitat: A case Example – Southeast Oregon," 2004. This monitoring provides BLM with information about the condition and trend in condition of resources. When monitoring the effects of livestock

use, BLM commonly measures utilization, cover, and frequency, and relies on actual use reports and photographs. Data is then correlated to various management activities to determine effectiveness of management in achieving objectives.

Comment: Several comments recommended that the rule should allow BLM to use monitoring or assessment data or both for making determinations, as provided in Alternative 3 in the EIS. The comment stated that this flexibility would enhance efforts to protect rangeland health.

Response: We believe that devoting attention to areas with highest priority will allow us to address range health issues. In fact, at the end of Fiscal Year 2002, about 16 percent of the 7,437 allotments that had been evaluated were determined not to be achieving standards because of existing livestock grazing management. See section 4.3.1 of this EIS. This indicates that monitoring should be focused on high priority areas where there is a risk of not achieving land health standards because of existing livestock grazing.

Comment: The BLM should not unnecessarily place the burden of proof on itself to justify management changes by requiring years of monitoring data before management changes can be mandated because it will delay management changes.

Response: The rule only requires assessment and monitoring to show that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the standards and conform with the guidelines. For the most part, BLM has been focusing its monitoring efforts on those allotments where there are concerns or problems. We believe that this requirement is reasonable and necessary to ensure that we have adequate data to formulate and analyze an appropriate action. Further, as we have stated,

Careful monitoring will make for better, more defensible decisions. BLM is adding the requirement to use standards assessments and monitoring data to support determinations of failure to achieve standards and conform with guidelines because of existing grazing management practices or levels of grazing use because both the public and the livestock industry are concerned about a lack of existing data for making determinations. Although we often make these determinations based on existing monitoring data, adding this requirement provides for a consistent approach to making determinations.

We do not expect this provision to have significant budgetary effects because, as described in section 4.3.1, only 16 percent of the allotments assessed over the last 5 years have failed standards because of existing livestock grazing practices. While this requirement may increase the data collection workload in the grazing program, we expect to accomplish monitoring in those areas we believe to be at risk, in degraded condition, or in downward trend and in danger of losing capability. Refocusing data collection priorities may affect watershed assessment schedules and could delay the permit renewal process in areas where current monitoring data is not available. Under projected budgets we expect to have appropriate monitoring data to support our determinations. The amount of monitoring data needed is likely to vary from case to case. We will be developing guidance on monitoring to address such issues as timing and levels of monitoring.

Comment: Many comments addressed monitoring on public lands, and suggested ways that BLM could use monitoring to improve public land management. Comments stated that BLM should not authorize grazing on areas where it lacks adequate data to determine that standards are met or to ensure that resource damage is avoided. They

recommended that BLM set up exclosures as control sites representing various major ecological types of land in order to establish benchmarks for assessing grazing management.

Response: BLM authorizes livestock grazing on areas that have been determined through the land use planning process to be available for grazing. BLM determines whether lands are available for livestock grazing through the land use planning process in compliance with FLPMA and 43 CFR part 1600. The process involves public participation, assessment, decision-making, implementation, plan monitoring and evaluation, as well as adjustments through plan maintenance, amendment, and revision. This planning process adheres to the principles of multiple use and sustained yield and uses an interdisciplinary approach to integrate physical, biological, economic and other sciences. BLM is required to take appropriate action if we determine that existing grazing management practices or levels of grazing use are significant factors in failing to achieve the standards and conform to the guidelines for grazing administration. The rule emphasizes the importance of using monitoring data by adding a requirement for its use when determining whether existing grazing management is a significant factor in failing to achieve the standards and conform with the guidelines under section 4180.2(c). BLM endorses the use of exclosures to determine the compared effects of grazing and its absence on various ecological types of land, and discusses their use in several BLM and interagency rangeland monitoring technical references.

Comment: Comments suggested that monitoring was so critical to determining whether multiple use objectives are being met on grazing allotments that it should be specifically required in all allotments, along with other methodologies, in the regulations.

Response: BLM agrees that monitoring is important in measuring progress toward meeting objectives in grazing allotments and elsewhere on public land. Allotment-level monitoring is generally a component of allotment management plans, and is sometimes addressed in land use plans. Current allotment management planning includes monitoring on the maximum possible number of priority areas, limited only by budget and workforce. Specific methods are better addressed in handbooks and technical references, which are much more readily updated.

Comment: One comment stated that BLM should incorporate the scientific and economic principles expressed in Catlin *et al.* (2003) and Stevens *et al.* (2002) into its analysis and permit renewal processes, so that appropriate changes are made to ensure that native diversity and productivity are restored to grazed BLM lands. (The comment refers to Catlin, James, Jaro Walker, Allison Jones, John Carter, and Joe Feller, 2003: *Multiple use grazing management in the Grand Staircase National Monument. A tool provided to the Monument range staff by the Southern Utah Land Restoration Project* and Stevens, Laurence E., Peter Stacey, Don Duff, Chad Gourley, and James C. Catlin, 2002: *Riparian ecosystem evaluation: a review and test of BLM's proper functioning condition assessment guidelines.*)

Response: Employment of the technical procedures and principles described by these documents is appropriately addressed in policy, manuals, and guidance rather than in a rule.

Comment: One comment stated that BLM should clearly show its long-term budget strategy that outlines the monitoring programs, funding, and personnel that will be added to the agency's capacity to carry out the implied monitoring. The comment asserted that BLM does not have adequate

funding, personnel, and management support for adequate monitor vegetation, Special Status Species, and Birds of Conservation Concern, let alone other resources.

Response: Funding is provided by annual congressional appropriation. We will prioritize allocation of monitoring funding to address issues and provide a foundation for management adjustments. BLM agrees that monitoring is a critical component providing data for evaluation and adjustments of terms and conditions of grazing authorizations. We will continue to prioritize funding to fill monitoring needs.

Comment: Another comment stated that utilization studies sanctioned by BLM should include methodology for determining which species consumed the forage to ensure that measures taken to correct overutilization are effective.

Response: Methodologies for utilization studies are better addressed in reference manuals, guidance, and policy.

Comment: BLM does not have the monitoring data to assert that their management practices are having any effect on improvement of water quality on public lands.

Response: One of BLM's primary resource management objectives is to meet state water quality standards in water bodies affected by management activities on public lands. Achievement of state water quality standards is a rangeland health standard in each BLM region or state. BLM determines total maximum daily loads of pollutants and develops best management practices (BMPs), with coordination with and approval by each state's environmental quality office. We conduct water quality monitoring to assess the effectiveness of BMPs, as well as direct water column sampling to determine compliance with standards in cooperation with the appropriate state agencies. Streams and lakes are not removed from the states'

lists of impaired water bodies without full verification and direct sampling data. Monitoring to determine the effectiveness of each change in management is not possible, but priority watersheds with existing water quality problems are monitored sufficiently to determine whether new management practices designed to improve water quality are effective.

5.4.15 Timeframe for Taking Action to Meet Rangeland

Health Standards

Comment: Many comments supported the amendments in the proposed rule to allow BLM 24 months after determining that grazing management practices or levels of use were significant factors in failing to meet standards or conform to guidelines to formulate, propose, and analyze appropriate action. They stated that providing adequate time to develop and analyze appropriate actions with adequate public and permittee involvement would result in better decisions appropriate to the need. They said that the longer timeframes would allow a more accurate evaluation, and allowing 24 months instead of 12 months for initiating changing in grazing practices is more practical. BLM agrees and has not changed any of the pertinent provisions of the regulations in the rule.

Response: Under the rule, the BLM field manager has discretion as to whether to allow 24 months for BLM to address failure to meet rangeland health standards. There is no language in the rule that precludes a shorter deadline, once BLM meets its consultation, cooperation, and coordination requirements. Allowing 24 months to develop appropriate action should improve the likelihood of determining the correct remedy for a vegetative resource problem. Also, if immediate action is needed to protect soil,

vegetation, or other resources, BLM may invoke section 4110.3-3(b) and immediately close the area to grazing either totally or partially.

Comment: Those who made comments opposing the change in the amount of time to develop an appropriate action when livestock grazing was determined to be a significant factor in not achieving a land health standard focused on 3 areas. The first was that the extra time allowed is inconsistent with the objective of accelerating restoration and improving public rangelands and that it would create a delay leading to additional degradation of resources or harm to wildlife. The second was that current rules provided adequate time to take action, and that a ruling of the 9th Circuit Court of Appeals, upholding the current regulations, should be continued as a management directive. The third area of focus was that the change would provide preferential treatment not given to other permitted uses.

Response: With respect to the first concern, BLM believes that the proposal to allow up to 24 months (except in those cases where completing legal obligation that are beyond BLM's responsibility require additional time) to propose and analyze appropriate action needed to address the failure to meet a rangeland health standard will result in improvements rather than harm to resources, including wildlife. As stated in section 4.3.7 of the EIS, there may be limited, short-term adverse effects if BLM needs 24 months or more to develop an appropriate action that involves extensive coordination and consultation. However, we expect the extra time taken to develop a meaningful action to provide greater long term benefits to other resources and an overall improvement in rangeland condition. For example, just reducing the level of use in a riparian area, rather than developing a management system that considers timing of use, is not likely

to improve the riparian area condition. Taking the additional time to develop an appropriate action may actually reduce the amount of time taken to implement a decision, particularly if the decision is not appealed. Also, taking additional time should improve the quality of the BLM decisions and reduce the likelihood of successful appeal, and hopefully the number of appeals. Implementing decisions can be delayed by 18-36 months if appealed. At the end of FY2002, about 5 percent of grazing decisions issued after 1997 had been appealed. Labor and funds spent to address these appeals are diverted from developing and implementing workable plans. In many cases, the full 24 months may not be needed to develop appropriate actions. Based on determinations made through the end of Fiscal Year 2002, the number of allotments affected by this rule appears to be fairly limited. Of the 7,437 allotments assessed prior to October 1, 2002, BLM determined that 16 percent did not meet standards due at least in significant part to existing livestock grazing management or levels of use. See Section 4.3.1 of this EIS

Regarding the second area of concern, the BLM has determined that the additional time is needed to enable us to develop and implement better action strategies. We assume the ruling noted in the comments is *Idaho Watersheds Project v. Hahn*, 187 F.3d 1035 (9th Cir. 1999). In the proceedings that led up to that appellate decision, the district court provided a schedule for completing evaluations of land health standards and subsequent NEPA documents for 68 allotments, and issued interim management guidelines pending completion of the NEPA documents and issuing grazing permits. The decision referred to interprets the current regulations, the effects of which are analyzed as part of the No Action Alternative. The rule under consideration in this EIS will give managers and partners an opportunity

to develop, as a result of the additional time, better alternatives that will result in more positive long-term environmental effects. The fact that the 9th Circuit upheld the current regulations does not preclude the BLM from proposing to amend the regulations to improve our grazing management program.

We do not agree that the changes in the regulations give preferential treatment to grazing interests by extending the allowable timeframe for developing and implementing corrective actions. Grazing permittees are the only users required by these regulations to change management in a specified period of time if that management is a significant factor for not achieving rangeland health standards. If other activities are determined to be the cause for not meeting those standards, the regulations do not impose deadlines on making changes in such activities, or even require changes in them.

Comment: Comments provided suggestions for changing the proposed rule. One was to increase the time given to develop an appropriate action to more than 24 months, because climate, weather, or other conditions might require longer studies to determine rangeland health. Another was to provide for a variable timeframe on a case by case basis, because different problems required varying time periods for initiating and scheduling improvements. A third suggestion was to identify problems associated with grazing practices within 3-6 months, and devise measures to correct them within 2-4 months after they are identified, including (a) planning an appropriate action with appropriate consultation and coordination, (b) completing NEPA and Section 7 ESA requirements, and (c) issuing a final decision to implement the action.

Response: We have revised the rule to provide additional time to develop appropriate actions when legally required processes outside BLM's purview prevent

completion of all legal obligations within the 24 month time period. In most cases, 24 months is an adequate period of time to develop appropriate action. Sometimes a corrective action is as simple as changing a grazing period or rotation. In other circumstances, corrective actions are more complex and difficult to conceive and implement, such as when multiple permittees in large allotments with multiple resource issues are involved. When the process includes numerous legal requirements, such as ESA Section 7 consultation, or extensive consultation and coordination with numerous interests, we may need additional time to complete the process. Developing appropriate action to implement remedial grazing management can vary greatly in complexity depending on the management circumstances of the allotment. Sometimes a corrective action is as simple as changing a grazing period or rotation. In other circumstances, corrective actions are more difficult to conceive and implement, such as when working with multiple permittees in large allotments with multiple resource issues. In more complex circumstances, just developing the appropriate action(s) is often not straightforward. Time is needed for planning and budget considerations, such as developing and coordinating a workable proposal, engineering survey and design if range projects are a part of the corrective action, consulting with Tribes and complying with Section 106 of the NHPA, NEPA analysis including consultation with multiple entities and agencies, and securing moneys to support these processes. In practice, when faced with more complex circumstances, the relatively short period allowed by the current regulation within which to devise and implement the appropriate action(s) may not allow BLM time for internal alignment of the planning and budget needed for timely implementation of the corrective action.

Current resources available to BLM to assess rangeland conditions on 160 million acres make it impractical for BLM to implement and maintain a program to identify problems associated with grazing within “3-6 months.” Often, trends in range conditions are not discernible until several years of monitoring data are collected and analyzed. In light of these operational realities, BLM cannot adopt recommendations to shorten this timeframe.

Comment: One comment expressed concern that the effect of allowing up to 24 months to develop and analyze an action to make needed adjustments in grazing would be to protect poor stewards and uncooperative ranchers.

Response: The rule change is intended to provide adequate time “to formulate, propose, and analyze actions in an environment of consultation, cooperation and coordination.” Rather than protecting poor management, this rule provides opportunity to develop an appropriate action. BLM will still take appropriate action to modify livestock grazing management where changes are needed to achieve land health standards before the end of the 24-month period specified in the regulations. The proposed change to grazing management would be issued by a grazing decision under Subpart 4160. BLM is responsible for initiating a change in management regardless of the cooperativeness of the permittees or lessees or their management abilities. Additionally, section 4110.3-3(b)(1) includes the phrase “reasonable attempt to consult with” to allow BLM to implement immediate actions to address resource conditions in situations where an entity is uncooperative.

Comment: One comment urged BLM to eliminate completely the use of the “rapid assessment” or indicators of rangeland health (Technical Reference 1734-6) in assessing rangeland condition, stating that this is nothing more than the old apparent-trend

scorecard that the range management and scientific community abandoned 70 years ago as being too subjective.

Response: The authors of the 1994 National Research Council's (NRC) publication *Rangeland Health: New Methods to Classify, Inventory, and Monitor Rangelands* proposed an approach to assess rangeland health that uses integrity of soil and ecological process as measures of rangeland health (p. 95). They recommended the use of 3 criteria upon which to base an evaluation of rangeland health: (1) degree of soil stability and watershed function, (2) integrity of nutrient cycling and energy flow, and (3) presence of functioning recovery mechanisms (p. 97, 98). The report suggests a number of indicators that can be used to measure and assess rangeland health. The report also describes the use of indicators (soil and vegetation characteristics) that are used by the Natural Resources Conservation Service (NRCS—formerly the Soil Conservation Service, SCS) to indicate apparent trend (USDA, SCS, 1976). The majority of indicators listed in Technical Reference (TR) 1734-6 (jointly developed by United States Geological Survey, NRCS, Agricultural Research Service and Bureau of Land Management, 2000) are those listed in the NRC publication. BLM recognizes that the process for assessing and interpreting indicators of rangeland health as described in TR 1734-6 is qualitative, but is extremely useful for providing an initial assessment of land health. This initial assessment can then be substantiated by collection of quantitative data through monitoring on those areas where concerns are identified (BLM Manual Handbook H-4180-1 *Rangeland Health Standards*, chapter III). BLM expects to continue to use this tool in conjunction with monitoring to make determinations of rangeland health and whether or not existing

livestock grazing is a significant causal factor where land health standards are not achieved.

5.4.16 Rangeland Health Standards

Comment: Some comments included requests to provide BLM State Directors authority to petition the Secretary for additions or changes to current land health standards, stating that providing this authority would allow BLM to modify standards based on current conditions or needs and desires of local working groups.

Response: The final regulations retain the provisions in section 4180.2(b) that give the State Director the responsibility and authority to develop or modify regional standards, following consideration of Resource Advisory Council (RAC) recommendations. The Secretary of the Interior must approve state or regional standards or guidelines developed by the State Director prior to implementing them.

Comment: One comment urged BLM to find ways to reward ranchers who achieve 100 percent compliance with the standards for rangeland health, and to manage permittees who fail to achieve compliance with the standards in order to improve conditions on public lands.

Response: From a policy perspective, BLM does not agree that it should “reward” ranchers whose grazing practices do not prevent achievement of rangeland health standards. Under the rule, where grazing management practices or levels of grazing use are significant factors in failing to achieve the standards and conform to the guidelines, BLM must take appropriate action as soon as practicable, but no later than the start of the next grazing year that follows the execution of an agreement or the issuance of a grazing decision that addresses the causes of failing to achieve, or to progress towards achieving the standards or conform to the guidelines.

Comment: One comment stated that BLM grazing regulations should have provisions in Subpart 4180 that ensure protection of rangelands from further degradation, improvement of water quality, and restoration of areas adversely affected by grazing.

Response: BLM, in consultation with Resource Advisory Councils, has developed and approved regional standards for rangeland health and guidelines for grazing administration under section 4180.2 in all areas that BLM manages for livestock grazing, except for the California Desert District. In the California Desert District the fallback standards and guidelines in section 4180.2(f) currently apply. Section 4130.3-1(c) requires that permits and leases incorporate terms and conditions to require conformance to standards and guidelines. BLM believes that these standards and guidelines adequately provide for the protection of rangelands from degradation, improvement of water quality, and restoration of areas adversely affected by livestock grazing.

Comment: One comment requested that we restrict the fallback guideline in section 4180.2(f)(2)(x) to the use of native plants and eliminate the use of non-native plant species for rehabilitation or restoration projects. Another comment encouraged us to retain the use of non-native plants for restoration and rehabilitation projects under the conditions listed in the fallback guideline in section 4180.2(f)(2)(x).

Response: It is BLM policy to use native plant species in range improvement and other projects intended to re-establish vegetation where they are available and if we expect them to be effective. The current fallback guideline at section 4180.2(f)(2)(x) recognizes that at times native plant materials are in short supply and in certain circumstances native plant species cannot compete with established exotic

invasive species. Section 4180.2(d)(12) also continues to provide that state or regionally developed standards for rangeland health “[i]ncorporat[e] the use of non-native plant species only in those situations in which native species are not available in sufficient quantities or are incapable of maintaining or achieving properly functioning conditions and biological health.” State or regionally-developed standards created under this regulation have recognized that on some sites, native species are incapable of successfully competing with invasive exotics. Where this occurs, BLM uses non-natives in rehabilitation projects.

Comment: One comment asserted that it may be misleading to state that most BLM states have completed establishment of standards. The comment went on to state that, in many of these states, the grazing industry controls state legislatures or has influence over them out of proportion to the contribution of the industry to the economy and to society, and that this brings into question the validity of state rangeland health standards. BLM should have ultimate responsibility for making this determination on lands entrusted to it by the public, the comment concluded, and these determinations should be made using techniques of rangeland science, by qualified individuals, either employed by or under contract to BLM.

Response: The comment misinterpreted what we meant by “BLM states.” BLM is organized into different administrative levels and boundaries. One of those levels is by state and at the state level there is a state office. Some of the administrative states actually include more than one state. For example, the Montana State Office includes the states of Montana, North Dakota, and South Dakota. In the DEIS in Section 2.2.8, when we stated “Most BLM States have completed establishment of standards and

guidelines...,” we were referring to the BLM administrative State Offices.

BLM professionals, along with many of our interested publics, including but not limited to RACs, ranchers, and various organizations and individuals, were involved with the development of the BLM’s rangeland standard and guidelines. In most states, BLM coordinated or consulted with state agencies or the state Governor’s Office during the development of land health standards, but not with state legislatures. All rangeland standards and guidelines are based on current rangeland science. BLM is responsible for implementing the standards and guidelines and determining the condition of the public rangelands that we administer.

5.4.17 Conservation Use

Comment: Several comments opposed removing the concept of conservation use permits from the regulations. Others stated that the regulations should not make it difficult or a lower priority for a conservation group to buy grazing permits. They pointed out that if BLM collects its fees from a conservation group, from a revenue perspective it makes no difference if the conservation group decides not to graze livestock, and that such nongrazing would have minimal effect on western economies. The comment also said that such groups are often able to pay willing sellers higher prices for permits, and that such transactions result in healthier rangelands. Another comment said that BLM should convene a forum of permittees, conservationists, and agency representatives to explore regulatory options for facilitating “willing seller–willing buyer” grazing permit retirement.

One comment that supported removal of reference to “conservation use permits,” stated that not grazing can result in fuel build-up and catastrophic fires.

Response: The removal of the term “conservation use” from the regulations is required by Federal court decision (Public Lands Council v. Babbitt, 167 F.3d 1287, 1308 (10th Cir. 1999)), aff’d on other grounds, 529 U.S. 728 (2000)). Regional Resource Advisory Councils may be one forum for permittees or conservationists to discuss options for grazing permit retirement. However, creating and administering “willing seller–willing buyer” grazing permit retirement opportunities is beyond the scope of the rule.

Comment: Many comments urged BLM to provide means and methods for reducing or eliminating grazing in specific areas, such as by appealing and challenging the court’s ruling against conservation use permits or allowing conservation buy-outs as a provision of the regulations, giving a number of reasons:

- a. Some areas require long-term or permanent protection for rangeland environmental health.
- b. The proposed rule will not promote sustainable grazing.
- c. The elimination of conservation use also eliminates the opportunity for a conservation easement.
- d. Such arrangements can have substantial economic and other benefits for all concerned.
- e. Most people consider conservation to be a legitimate use of the land.

Response: BLM is able to designate areas as not available for grazing by decision based upon the land use plan’s multiple use objectives, or to withdraw areas from grazing

under Section 204 of FLPMA. The Bureau is also able to make changes in grazing management, such as reducing or eliminating grazing use, based upon a determination that livestock grazing is a factor in not meeting the standards for rangeland health.

“Conservation buy-outs” are outside the scope of the rule.

Removing the term “conservation use” from the regulations is required by the judicial decision (*Public Lands Council v. Babbitt*, *supra*).

Comment: One comment stated that BLM and Congress should consider amending the Taylor Grazing Act to allow for conservation use, because that might be the only legal way to protect resources from livestock grazing.

Response: Amending laws, such as the Taylor Grazing Act, FLPMA and PRIA, is not within the scope of the rulemaking or the authority of BLM.

5.4.18 Grazing Preference and Suspension

In the first part of this section on grazing preference we will deviate slightly from the format used earlier to describe and reply to comments. The first three paragraphs describe comments on grazing preference. This is immediately followed by a response that describes the concept and usage of the term over time.

Comment: BLM received some comments supporting and some comments opposing the removal of the term “permitted use” and expanding the definition of “grazing preference” to include a livestock forage allocation. Favorable comments suggested that the term connects a public land livestock forage allocation with base property owned by the preference holder, thus facilitating preference transfer when the property changes hands, thereby providing stability and certainty for grazing operations as well as ranching communities, and eliminating

the confusion that use of the term “permitted use” generated. Some of the comments in support of the change erroneously suggested that preference was somehow a fixed quantity, not subject to change.

Comments opposing the change stated that the definition of preference has no basis in law, that it weakens BLM’s administrative authority, that it will cause confusion unless further clarified, and that it would create expectations that BLM, when choosing among possible public land management actions, would be obligated to minimize livestock forage reductions, ensure they are temporary, and restore historical livestock forage allocations. Other comments opposing the change stated that, since allotments are quantified in terms of acres, further quantification in terms of forage is both unnecessary and unrealistic because the amount of forage produced on a given area is not a fixed quantity. Another comment suggested that the proposed definition of preference should not be adopted because it elevated a livestock forage allocation as first priority above other valid uses of vegetation, such as wildlife habitat and watershed protection. Some comments stated that the present definitions of preference and permitted use were consistent with the TGA.

Response: Amending the definition of preference and removing the term “permitted use” will remove administrative inconsistencies from the regulations and provide for improved BLM administration of forage allocations on public lands. The amendment will alleviate confusion in the regulated community that has existed since 1995. Further responses to comments in this section of the EIS will expand on this.

Comment: One comment suggested that the term preference should be redefined to mean the current livestock carrying capacity following forage allocations to wildlife, watershed protection, and land recovery.

Another comment suggested that the definition of preference should incorporate the concepts of distance from water and the percent slope or steepness of terrain. Another comment suggested that BLM should include in the definition of “grazing preference” the concept that forage is allocated according to land use plans, to emphasize the connection between permitted activities and the land use plan.

Response: The rule includes the definition of “grazing preference” or “preference” as proposed. As explained in the preamble to the proposed rule, the 1995 rules changes introduced some inconsistencies into the regulations by creating the term “permitted use” to mean the forage allocation, and narrowing the definition of “preference” to mean only a priority position as against other applicants for forage.

“Preference” or “grazing preference” is a grazing program-specific administrative term that connects an individual entity’s allocation of public land forage to property that it owns or controls. It allows BLM to record, in accordance with other applicable grazing regulations, a forage allocation on public lands, expressed in terms of “active use” and use that has been suspended, or “suspended use,” together constituting “preference,” and administratively connect it to privately owned base property. It facilitates both the transfer of preference from one party to another or from one property to another, and the making of equitable adjustments of preference in “common allotments” (allotments permitted or leased to more than one operator), when needed in the course of land management.

In the 1978 grazing regulations, the BLM formally defined “grazing preference” to be a forage allocation on public lands, expressed in Animal Unit Months, that is apportioned and attached to base property owned or controlled by a permittee or lessee. These regulations also stated that

“grazing preference shall be allocated to qualified applicants following the allocation of the vegetation resources among livestock grazing, wild free-roaming horses and burros, wildlife, and other uses in the land use plans.” Before 1978, BLM called livestock forage allocations on public lands “grazing privileges.” The amount of privileges awarded to individuals and attached to their base property was limited by the “qualifications” of the property. Determination of land base property qualifications was based in part upon the forage that was produced on the base property, and was used to help calculate BLM’s determination of the property owner’s forage allocation on public lands. Determination of water base property qualifications relied upon the forage production that occurred on public lands within the service area of the water that the water base property owner controlled. Adjudication of grazing privileges occurred independently from, and in many cases pre-dated, pre-FLPMA land use planning processes. Grazing privileges on public lands that were awarded in recognition of base property qualifications were informally referred to by ranchers and BLM alike as “preference AUMs,” and were distinguished from forage use approved on a temporary and nonrenewable basis and from forage consumed in the exercise of livestock crossing permits.

Following the 1978 grazing regulation changes that formally defined the term “grazing preference,” establishment of preference was based on forage allocations that occurred in the course of implementing land use plans under FLPMA. In the majority of cases, these forage allocations mirrored the apportionment of forage that occurred under pre-FLPMA livestock grazing adjudications. In any event, all allocations were supported by resource information, including inventory

and monitoring. Allocations that pre-dated FLPMA, and the preference that arose there from in the course of implementing land use plans under FLPMA, do not “trump” BLM’s multiple use mandate that was formalized under FLPMA. On the contrary, forage allocations made under the auspices of FLPMA land use plans superseded the forage allocations made by the pre-FLPMA adjudications. All BLM offices with a grazing program are covered by land use plans completed since the enactment of FLPMA.

The definition of “preference” corresponds with the requirement that livestock forage allocations on public land be made within a multiple use context as set forth in land use plans under section 4110.2-2. When BLM determines that additional forage is available for livestock within a planning area, through land use planning or activity planning, this definition, coupled with other grazing regulations, provides that the preference holder is “first in line” for that portion of the available forage that occurs within his permitted or leased allotment(s). The proposed definition does not mean and should not be construed to imply that satisfying a permittee’s or lessee’s livestock forage allocation (the preference) has the highest priority when BLM employs land use planning or activity planning processes to determine possible uses, or values to be managed for, that depend on available vegetation. Reconciling competing and possibly conflicting demands placed on public land resources still lies squarely within the realm of BLM’s land use planning process, and must be reflected in subsequent activity plans and management decisions. As discussed below, increasing active preference or activating suspended preference is a valid grazing program goal. However, when considering management opportunities presented by an increase in vegetation available for forage or other uses and values,

meeting this goal must be considered in concert with meeting other equally valid goals established by the land use plan.

BLM is aware that an absolute quantity of forage production on public lands is not fixed in time. In accordance with the TGA and FLPMA, the grazing regulations provide for monitoring and assessment to support both temporary and long-term adjustments in grazing use, including the amount of forage that may be removed under a permit or lease, when BLM determines that such adjustments are warranted. It has been BLM policy for two decades that changes in the amount of forage allowed for grazing use under a term permit or lease (regardless of whether it is called “active use” or “active preference”) must be supported by monitoring, or, since 1995, other resource information that indicates a need for adjustment, such as when the authorized livestock grazing significantly contributes to not meeting rangeland health standards (and excepting, of course, adjustments that are based on significant changes in management circumstances, such as land disposals rendering less land available for grazing use). However, although livestock grazing capacity can and does fluctuate in response to both natural events and to management inputs, BLM also seeks to provide reasonable stability to permittees and lessees who rely on public land forage authorized by their permit or lease. Therefore, BLM established a preference for removal of a specific amount of forage. There is no need to include a requirement for consideration of physical factors such as distance from water and steepness of terrain in the definition of preference. The appropriate place for including this type of guidance is in technical references and handbooks that address how to establish livestock grazing capacity. As indicated in section 4110.3, BLM may adjust preference for several reasons, including the need to conform the livestock grazing use

program to the provisions of applicable land use plans. BLM may also cancel preference outright when circumstances warrant, such as to impose a penalty for egregious regulatory violations, or when public land is transferred to private hands or devoted to another public purpose that precludes livestock grazing.

The regulatory provisions to place preference in “suspension” indefinitely apply when BLM adjusts allowable livestock forage removal based on a determination that grazing use or patterns of use are not consistent with the provisions of Subpart 4180, or grazing is causing unacceptable utilization, or when use exceeds the livestock carrying capacity as determined through monitoring, ecological site inventory, or other acceptable methods, or for other purposes consistent with legal and regulatory requirements. The assumption behind indefinitely suspending preference is that, should management inputs result in restoring acceptable patterns or levels of utilization, or increased production of forage available to livestock, then BLM may reinstate the suspended use under section 4110.3-1(b). BLM believes it appropriate to encourage management input by ranchers who hold preference by providing that when management inputs result in increased forage for livestock available on a sustained yield basis, they can expect that this forage will be made available to them without having to compete for it with other potential applicants. We view the reinstatement of suspended preference as an appropriate livestock grazing program goal that provides incentive to preference holders for improved livestock grazing management. Attaching the suspended preference to base property results in a record that transcends any one entity’s or individual’s tenure of ownership or control of that base property. In the event, perhaps decades later, that BLM determines that increased forage for livestock is

available within a specified area, this record allows BLM to make fair and appropriate distribution of the increased livestock forage first to those with preference for grazing use in the area in question.

To conclude, the definition of grazing preference in the rule is consistent with its longstanding meaning—a meaning that was in formal usage for 17 years before it was changed by the 1995 grazing regulations — and consistent with how the term “preference AUMs” was informally used before 1978.

Comment: Several comments stated that the definition of “suspension” could cause problems because it allows for withholding of active use “by agreement.” These comments urged that we remove the phrase “or by agreement” from the definition, so that the definition would read: “‘Suspension’ means the withholding from active use, through a decision issued by the authorized officer, of part or all of the grazing preference specified in a grazing permit or lease.” They stated that allowing suspensions by agreement could allow the creation of de facto conservation use permits, contrary to the decision of the Federal Court, and would short circuit the grazing decision process under Subpart 4160.

Response: We have not adopted the recommendation to change the definition of “suspension” in the proposed regulation. The phrase “or by agreement” was in the definition prior to the 1995 revision of the regulations. It is in the definition partly to recognize that the permittee may not wish to contest the suspension. The definition also supports our goal of using cooperation with permittees and lessees to achieve rangeland management objectives. When an action that meets the objective of achieving rangeland management objectives is implemented through agreement with affected permittees or lessees, the action carries no less weight than when it is implemented through decision. The implementation of an action to

place active use in suspension, for example, still requires sound rationale, whether implemented through agreement or decision, and may be appealed by parties with standing to appeal.

Comment: Another comment stated that BLM should implement a process to ensure that suspended use is reinstated to active use. The current regulations deprive permittees of this credit, unjustifiably eliminating base property qualifications that are kept on the books in suspended status at the time of permit renewal based on an allotment evaluation. The comment went on to suggest that, as range conditions improve, BLM should reinstate the active use that is presently in suspended use.

Response: BLM agrees that it is important to keep track of grazing use that has been reduced, and section 4110.3-2(b) provides that BLM will place such reductions in suspension. If range conditions improve in the future and BLM finds there is additional forage for livestock on a sustained yield basis, section 4110.3-1(b) requires such additional forage to be applied first to reduce or eliminate any suspensions.

Comment: Some comments stated that BLM should not change the definition of suspended use, but rather retain the one in the 1995 regulations.

Response: BLM has not adopted the recommendation to retain the 1995 definition of “suspension.” The rule changes the definition to be consistent with the restored definition of “preference.”

Comment: One comment on specifying grazing preference urged BLM to give preference to buffalo ranchers in issuing grazing permits because use by buffalo pre-dates use by cattle on the range, and they therefore have right by history to receive first consideration for grazing use. Another comment stated that BLM should let ranchers decide how many livestock should be grazed

and adjusted based on their judgment because most ranchers are good stewards of the land. Another comment urged BLM not to make changes in preference solely on the basis of forage allocations in land use plans, stating that monitoring must be used to justify changes in authorized levels of grazing use.

Response: BLM has no authority to give preference to buffalo ranchers when issuing grazing permits or leases. The TGA requires that when issuing grazing permits, the Secretary must give preference to landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water rights, as may be necessary to permit the proper use of lands, water, or water rights owned, occupied, or leased by them. Grazing permits authorize grazing use on lands within grazing districts established under Section 1 of the Act. The Act also requires that when issuing grazing leases, the Secretary must give preference to owners, homesteaders, lessees, or other lawful occupants of lands contiguous to the public lands available for lease, to the extent necessary to permit proper use of such contiguous lands, with certain exceptions. Grazing leases authorize grazing on public lands outside grazing districts. The regulations define livestock to be cattle, sheep, goats, horses, or burros, but not buffalo. Thus, a change in this provision is outside the scope of the rule. BLM may issue permits to graze privately owned buffalo under the regulations that provide for “Special Grazing Permits or Leases” for indigenous animals (section 4130.6-4), so long as the use is consistent with multiple use objectives expressed in land use plans.

Both Sections 3 and 15 of the Taylor Grazing Act and Sections 402(d) and (e) of FLPMA entrust to the Secretary of Interior the responsibility for determining and adjusting livestock numbers on public lands. The Secretary has delegated this responsibility to the Bureau of Land

Management. BLM may not delegate this responsibility to the ranchers. BLM works cooperatively with ranchers, the state having lands or responsibility for managing resources, and the interested public in determining terms and conditions of grazing permits and leases, including the number of livestock to be grazed. Permits and leases contain terms and conditions to ensure that grazing occurs in conformance to land use plans which are developed with public involvement.

The regulations at section 4110.2-2 do not provide for the establishment of preference solely on the basis of the forage allocation contained in the land use plan. Rather, they state that, alternatively, preference may be established in an activity plan or by decision of the authorized officer under section 4110.3-3. Some land use plans determined a forage allocation for livestock on an area-wide basis and apportioned that allocation among qualified applicants. Other land use plans simply recognized previous allocations and stated that future adjustments to these allocations would be guided by the multiple use objectives contained in the land use plan, be implemented by grazing decisions, and be supported by monitoring information.

Comment: A comment on transfer of grazing preference suggested that before issuing a permit or lease that arises from transfer of preference, BLM should conduct capacity surveys, condition assessments, evaluate monitoring data, and complete NEPA compliance documentation so that the terms and conditions of the permit or lease that we issue reflects current allotment conditions.

Response: BLM does not control when or for what allotments it will receive applications to transfer grazing preference and issue a permit arising from that transfer. By the end of fiscal year 2003, BLM had assessed about 40 percent of its allotments

for achievement of standards of rangeland health. In these areas, BLM reviews the application in light of the existing assessment and NEPA compliance documentation and issues the permit or lease with appropriate terms and conditions. BLM continues to prioritize its data gathering needs based on known resource management issues. If BLM does not conduct an assessment of rangeland health and otherwise “fully process” a permit or lease application that accompanies a preference transfer, it includes terms and conditions on the newly issued permit or lease to ensure achievement of the standards and conformance to appropriate guidelines. These permit or lease terms and conditions include a statement that, if a future assessment results in a determination that changes are necessary in order to comply with the standards and guidelines, BLM will revise the permit or lease terms and conditions to reflect the needed changes.

Comment: One comment stated that BLM should only consider changes in preference when there has been a permanent change in the number of AUMs available for attachment to base property. The comment asserted that, because AUMs of preference were established through formal adjudication, it would be inappropriate for BLM to change grazing preference as needed to manage, maintain, or improve rangeland productivity, to assist in restoring ecosystems to properly functioning condition, to conform to land use plans or activity plans, or to comply with the provisions of Subpart 4180. Another comment stated that it was important for permittees and lessees to retain preference as to potential AUMs that have been suspended, so that when productivity improves the AUMs are awarded to those who own or control the base property to which the suspended preference is attached. Yet another comment stated that BLM should make clear in this section that any changes to grazing

preference must be supported by monitoring that is conducted using BLM-approved Manual procedures.

Response: BLM rejects the contention that because a forage allocation reflected by an existing preference may have at its roots a pre-FLPMA formal adjudication, it would be inappropriate to change it when needed to improve rangeland productivity, restore ecosystems to properly functioning condition, conform to land use plans or activity plans, or comply with the provisions of Subpart 4180. As pointed out by the Supreme Court in *Public Lands Council v. Babbitt, supra*, “the Secretary [of the Interior] has since 1976 had the authority to use land use plans to determine the amount of permissible grazing, 43 U.S.C. § 1712.” Further discussion of the role of FLPMA-mandated land use plans with respect to BLM’s statutory multiple use mission, including the mission to provide for the orderly administration of livestock grazing on public lands under the Taylor Grazing Act and to improve rangeland conditions, is included in the previous section that addresses removing the definition of “permitted use” and redefining “preference” to include a forage allocation element.

The final regulations in section 4110.3-2(b) provide that when BLM decreases active use on an allotment, we will put the reduction in suspension and it will remain associated with base property to which the preference for use in the allotment is attached. This will ensure that the preference holder will be given first consideration for use of the additional forage as provided at section 4110.3-1(b)(1). BLM considered the comment that urged requiring that changes in grazing preference be supported by monitoring methods contained in BLM Manuals and determined that that BLM needs flexibility to use site-specific methods in addition to those monitoring methods set forth in Manual guidance. This flexibility

will allow BLM to use techniques that meet local needs and that BLM may develop in cooperation with other agencies and partners.

Comment: One comment urged BLM to include, in addition to the provision as proposed, provisions to require BLM to work closely with local planning departments, to include consultation, cooperation, and coordination with the grazing permittee or lessee, state and local government in this section, and to give consideration to provision for local, state and regional governance.

Response: Under 43 U.S.C. 1712(c)(9), 40 CFR 1500.4(n), 1501.2(d)(3), 1501.7(a)(1), 1506.2(b), and Departmental Manual and BLM Handbook 1790, BLM is directed to coordinate to the degree feasible with state and local governments. BLM sees no need to reaffirm existing guidance on this aspect of planning and environmental analysis in this rule.

Comment: One comment stated that BLM should require data used to support changes in grazing preference to be acceptable to the permittee or lessee, as well as to the BLM authorized officer.

Response: Congress entrusted the Secretary of the Interior with the responsibility to manage the public lands. The Secretary, in turn, has delegated this responsibility to BLM. We do prefer the data we use to support changes in grazing preference to be acceptable both to BLM and the affected permittees or lessees. However, if the data BLM uses is not acceptable to a permittee or lessee, BLM is still obligated to make its management decision in light of its statutory management responsibilities.

5.4.19 Definition and Role of the Interested Public

Comment: We received many comments regarding the definition of “interested public.” Many of the comments on the

topic were concerned that this change could unduly exclude public input from the grazing management decision process. Some comments stated that this change could lead to secretive decision-making by the BLM. Others stated that the new qualification criteria posed an unreasonable barrier to participation. Contrarily, a significant number of comments stated that more requirements should be imposed to avoid what they saw as unnecessary delays and frivolous protests and administrative appeals. Suggestions for additional requirements included an annual application process or other time limit on interested public status. Creating a substantive standard for the participation requirement was also suggested. Some comments suggested that the interested public be narrowed to include only grazing lessees and permittees and local users of the land. Finally, a significant number of comments supported the changes as proposed.

Response: BLM seeks to balance the legitimate need for public involvement in the management of public lands with the public interest in the cost-effective management of those same lands. Since the definition of interested public was last changed in 1995, BLM has devoted substantial resources to the public participation process. Some of these resources have been devoted to tasks such as maintaining lists that include individuals and groups that have not participated in allotment management activities in years. These uninvolved members of “interested public” still receive periodic mailings at taxpayer expense.

BLM recognizes the importance of public participation and desires to provide an opportunity for all those who demonstrate an ongoing interest in an allotment to participate. Requiring some follow-up activity is not unreasonable, but allows the individual or group to demonstrate true continuing interest in the activities on the

allotment. BLM has not adopted any further qualification requirements, in order to maintain an open process available to all of the public. Annual applications or minimum substantive criteria standards would create additional paperwork requirements, and could run counter to the administrative efficiency goal. Also note that the change to the interested public definition does not in any way affect the public notice and public participation opportunities available when potential grazing decisions are analyzed under NEPA.

Comment: One comment stated that, to enhance BLM’s working relationship with the permittee and to bring cohesive management into the decision-making process, monitoring should be conducted only by the permittee and BLM, omitting the interested public.

Response: Section 202(f) of FLPMA makes clear that it is the direction of Congress that BLM must allow for public involvement and allow the public to comment upon and participate in the formulation of plans and programs relating to the management of public lands. An important element of our plans is the establishment of resource management objectives, which then must be monitored. The grazing regulations do not address who should or should not be involved in monitoring. It is BLM’s policy to encourage partnerships with appropriate interests to accomplish our work. When the interested public joins in conducting monitoring studies with the BLM, they bring their perspective to the management of resources, which often is different from the perspective of BLM or the permittee. BLM benefits from this perspective by receiving more diverse information upon which to base its decisions. BLM retains discretion to reject monitoring information that does not meet agency standards, regardless of who collects it.

Comment: One comment suggested that, in the definition of “interested public”, we should specifically identify that a “lienholder of record” is an entity that may be considered an interested public.

Response: We have not adopted this suggestion. A lienholder of record would be an individual, a group, or an organization, and there is no need to mention them specifically in the definition.

Comment: Numerous comments addressed the role of the interested public in grazing management. The proposed rule contained a definition change for the term and also modified the special involvement opportunities for those with interested public status.

Response: BLM has considered the comments but has decided not to make major changes in the rule. The rule represents what BLM believes to be the proper balance between public participation and the need for flexibility in day-to-day grazing management operations.

Under the previous regulations, you could gain interested public status simply by (1) making a written request to be treated as the interested public or (2) by submitting comments regarding grazing management on a specific allotment during formal public comment periods. Submitting a written request is sufficient to obtain interested public status initially, but this alone is no longer sufficient to maintain that status. Instead, you must also subsequently comment or otherwise participate in the decision-making process when an opportunity arises. This requirement is designed to avoid an inefficient use of Federal resources on clerical duties associated with persons and entities that have no longer expressed an active interest in the issue. Submitting comments during formal public comment periods, however, is still enough to qualify as a member of the interested public. In short,

those who request the status must follow up with later actions, while those who initially demonstrate their interest via comments automatically qualify as the interested public for that decision process. Any member of the general public may initially achieve interested public status through these means, and former members of the interested public may also regain that status through these same means at any time.

Comment: Many were concerned that this definition change would unduly limit participation by the public. On the other hand, some comments on the proposed rule expressed the opinion that the term was still too broadly defined, and more requirements should be implemented before one qualifies as a member of the interested public.

Response: It is important to remember that the opportunities available to the “interested public” are not the full extent of public involvement. Any member of the public can provide input and comments regarding general grazing policy, and many decisions involve formal public comment periods where anyone may comment or be heard at public meetings. By modifying the definition, though, BLM hopes to avoid the sometimes inefficient use of Federal resources that has been associated with the interested public system, while still maintaining a valuable outlet for public participation.

Comment: Many comments opposed these reductions in consultation with the interested public. Some recreationists and other nongrazing public land users were particularly opposed to having opportunities for the interested public limited in any way. These comments emphasized the view that multiple use public lands are best managed when multiple interests are involved with both planning level and implementation level decisions. Some stated that while the system may lead to some inefficiency, when viewed

from a grazing economics perspective, democratic principles favored more public involvement on public lands.

Response: We have retained the proposed changes in the rule. BLM is confident that consultation with the interested public on the larger scale planning decisions will continue to provide ample opportunity for public input. These broader scale decisions then guide the day-to-day management. The changes will, in turn, allow these daily decisions to be made in a more timely and efficient manner.

Comment: Many comments expressed opposition to any reduction in the role of the interested public, and many cited the modification of permits as a general concern. Many felt it was important to have nongrazing interests involved in both planning and implementation-level decisions. Numerous other comments supported a general reduction in mandatory consultation with the interested public, seeing these as activities that would benefit from faster and more efficient action.

Response: Permit and lease modifications are routine management activities. BLM modifies permits and leases to maintain consistency with broader planning decisions such as land use plans and allotment management plans. These planning-level decisions are made with extensive involvement of the interested public and public participation opportunities through environmental analysis under NEPA. Modifications may also be made as a result of monitoring studies, evaluations of rangeland health standards and guidelines for grazing administration or biological assessments or evaluations prepared as part of the Section 7 consultation requirements under the Endangered Species Act. In these cases, BLM provides the interested public, to the extent practical, an opportunity to review and provide input on these reports and evaluations during their preparation, in

accordance with section 4130.3-3(b). Most modification decisions themselves require site specific NEPA analysis leading to public notice and potential public participation. Additionally, the interested public will be specially notified of a proposed decision and can protest if so desired.

In BLM's view, informal consultations and the ability to review the NEPA document and protest a proposed decision provide adequate mechanisms for identifying legitimate public concerns over permit modifications. The rule maintains the opportunity, to the extent practical, for the interested public to review and provide input on reports that evaluate monitoring or other data. BLM appreciates that the interested public can potentially provide important insights on reports that will be used to shape implementation decisions. Because this is information that postdates planning decisions, yet will influence future daily implementation decisions, it is appropriate for the interested public to participate in reviewing this data.

Comment: Many comments opposed any reduction in the role of the interested public when considering changes in active use, but relatively few comments addressed these particular functions. Some comments supporting the change noted active use changes as an area where efficiency could be improved by removing the interested public consultation requirement.

Response: Note again that the role of the public under NEPA is unaffected by this rule change. Additionally, members of the interested public will have an opportunity to review and provide input on any reports used as a basis for decisions on changes in grazing use. The interested public will still receive the proposed and final decisions for changes in active use, and they could protest the proposed decision if so desired.

In BLM's view, the NEPA process, informal consultations, the opportunity to

review and provide input on reports used as a basis for decisions, and the ability to protest before a decision is final, all are adequate mechanisms for identifying legitimate public concerns over active use changes. No protest could be filed against an emergency closure, which is issued as a final decision, but these decisions require management flexibility to allow a quick response to changing circumstances on the ground

Comment: One comment stated that removing the requirement that BLM consult with the interested public before making an allotment boundary adjustment would affect the public role in NEPA analysis of boundary changes.

Response: That is incorrect. The public role under NEPA is unaffected by this rule change.

Comment: One comment stated that allotment boundary adjustments could affect native plant populations and requested continued public involvement. Environmental issues such as effects on native plants are best addressed through the NEPA process, which is unaffected by this change.

Response: The BLM has found that much of the required consultation with the interested public is duplicative of these other processes and often delays routine, noncontroversial decisions. In BLM's view, the NEPA process, informal consultations and the ability to protest before a decision is final provide adequate mechanisms to identify legitimate public concerns over boundary changes.

5.4.20 Land Use Planning and Grazing Retirement

Comment: BLM received numerous comments addressing the types of uses that are generally allowed on public lands. They suggested eliminating some uses or dedicating lands to a single use. The comments included eliminating livestock

grazing on areas with wild horses and burros, establishing rules to optimize wildlife habitat, phasing out livestock grazing completely, selling public lands, not allowing any commodity uses, and dedication of land for water conservation.

Response: BLM manages public lands in accordance with numerous laws passed by Congress, including FLPMA, which requires these lands to be managed for multiple use and sustained yield. FLPMA defines "multiple use" as "the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of land for some or all of these resources or related services over acreages large enough to provide sufficient latitude for period adjustments in use to conform to changing needs and conditions; the use of some of the land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output." 43 U.S.C. 1702(c).

BLM cooperatively develops local land use plans in order to determine balanced, appropriate, and sustainable land uses, following processes defined by various laws, regulations, and policies. These grazing regulations govern management of grazing

on lands that have been determined through land use planning to be appropriate for livestock grazing. BLM's land use planning processes are governed by regulations in 43 CFR part 1600, and are not addressed in this rule. The sale of BLM lands, while permitted by FLPMA, is outside the scope of this rule.

Comment: Comments stated that BLM should determine the forage capacity of its land using scientific livestock utilization rates and re-set permitted use or preference to reflect that condition. The comment went on to say that the fact that AUMs are in suspension demonstrates that the range cannot support those levels of grazing.

Response: This issue is outside the scope of this EIS. BLM makes the determinations referred to in the comment during the planning process. AUMs are in suspension due to current conditions that may not be permanent, such as, for example, drought conditions. Forage availability may also change in the future as a result of range improvements or improved health of the rangelands.

Comment: We received several comments that addressed our land use planning processes, suggesting that better control of motorized vehicle use and access would improve rangeland conditions. Others suggested that BLM should lease lands for recreation, wildlife, and water conservation rather than assign grazing as a sole use. Still others urged BLM not to recommend or provide interim protection for more Wilderness Study Areas or Wild and Scenic Rivers, stating that their management overtaxes BLM's capability.

Response: BLM develops local land use plans to address land use activities such as off-road vehicle and other recreational uses, wildlife, and water conservation uses. Local land use planning allocations are beyond the scope of this rule. BLM will not recommend or designate any additional Wilderness Study

Areas under the Utah Wilderness Settlement and its application, by policy, to BLM lands outside of Utah. IM No. 2003-274 and IM No. 2003-275. The regulations governing management of Wilderness Areas and Wild and Scenic Rivers are in 43 CFR part 6300 and 43 CFR 8351.2, respectively. Those regulations are beyond the scope of this EIS.

Comment: A comment stated that Federal rangeland health standards demand that BLM's rule focus decision-making on management objectives stated in land use plans, activity plans, and grazing decisions.

Response: The rule provides that its objectives will be realized in a manner consistent with land use plans. The regulations also provide that active use is based on the amount of forage available for livestock grazing as established in the land use plan, activity plan, or decision of the authorized officer. The regulations allow BLM to make changes in the grazing preference as needed to conform to land use plans or activity plans, to apportion additional forage to qualified applicants for livestock grazing use consistent with multiple-use management objectives specified in the applicable land use plan. BLM may modify terms and conditions of permit and leases when the active use or related management practices do not meet management objectives specified in the land use plan, allotment management plan or other activity plan, or an applicable decision.

Comment: A comment stated that BLM has not effectively addressed resolution of multiple use conflicts that leads to demands for livestock-free lands.

Response: FLPMA requires BLM to manage lands for multiple. We resolve conflicts among competing uses on individual tracts of public land through land use planning, with participation by the interested public and by or on behalf of the proponents of the competing uses.

Comment: One comment stated that either BLM should establish regulations that provide for making land use planning-level determinations regarding whether public lands are “chiefly valuable for grazing” as described in the October 2002 Solicitor’s Memorandum, or the Secretary should withdraw that memorandum and provide for grazing permit “retirement” within its land use planning process or through its permit issuance or renewal processes.

Response: The comment alludes to an M-Opinion issued on October 4, 2002. M-Opinions (i.e., major opinions) usually are responses to requests by agencies of the Department of the Interior regarding the interpretation of statutes administered by the Department. M-Opinions are signed by the Solicitor or his designee, may receive the concurrence of the Secretary, and are binding on all agencies of the Department of the Interior.

Grazing retirement and the TGA’s chiefly valuable standard have been discussed in two recent Solicitor’s memoranda, as well as the 2002 M-Opinion. In one memorandum, Solicitor Leshy concluded that Congress, at 43 U.S.C. 1752(c) and 1903(c), specifically provided for the possibility of retiring public lands from livestock grazing, but that BLM must make such a decision in a land use plan or an amendment to a land use plan. Memorandum to the Director of BLM from the Solicitor (January 19, 2001).

While the later M-Opinion supersedes the 2001 Solicitor’s memorandum, it agrees that land use planning is an appropriate process for considering retirement of grazing. In addition, the M-Opinion concludes that a decision to cease livestock grazing is not permanent. Memorandum to the Secretary from the Solicitor, M-37008 (October 4, 2002). The M-Opinion was later clarified in a memorandum stating that, whenever the Secretary considers retiring public lands from

grazing, she generally need not determine that such lands are no longer chiefly valuable for grazing and raising forage crops, within the meaning of Section 1 of the TGA, 43 U.S.C. 315. Instead, a chiefly valuable determination is required only when the Secretary is considering creating or changing boundaries of grazing districts. Memorandum to the Assistant Secretary for Policy, Management and Budget, Assistant Secretary for Land and Minerals Management, and the Director of BLM from the Solicitor (May 13, 2003).

Thus, a rulemaking is not needed to address the “chiefly valuable” standard. Moreover, land use planning – the appropriate process for considering grazing retirement – is governed by 43 CFR part 1600, which is outside the scope of this rule. For these reasons, we have not adopted the suggestion for a rule.

Comment: One comment stated that BLM should provide for permit or lease retirement with compensation to the permittee.

Response: The suggestion that permittees and lessees be compensated for grazing retirement is not adopted. BLM lacks statutory authority to provide for such compensation.

Comment: One comment stated that, if BLM considers itself obligated to preserve public land ranching in the West in the face of competing economic pressures for use of ranches and rangeland, then we should reconsider previous policy proposals that were dropped, such as conservation easements and acquisition of ranches, because these may be creative ways to sustain viable operations without inducing further damage to the land.

Response: Under FLPMA, BLM is obligated to manage the public lands on the basis of multiple use and sustained yield unless otherwise specified by law. FLPMA includes livestock grazing as one of the

principal or major uses of the public lands, along with fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production. BLM never proposed acquisition of ranches as a policy proposal. BLM dropped consideration of trading public lands for conservation easements on private lands after comments received in the spring of 2003 indicated general public opposition to this policy proposal.

Comment: One comment urged BLM to update our allotment management plans.

Response: BLM usually determines which allotments require allotment management plans (AMPs) in land use plans. The timing, development, and updating of AMPs is determined through BLM's budgeting process, not in the grazing regulations. Therefore, this issue is outside the scope of this rulemaking.

Comment: Some comments suggested that BLM should enforce all of its current regulations or strengthen them to prevent environmental damage caused by livestock grazing or coal bed methane development. Another comment stated that BLM should allow permittees and lessees to "manage" recreation on public lands.

Response: BLM agrees that it should enforce all of its public land regulations and does so with the resources and authority provided to it by Congress. We believe that the final grazing regulations provide adequate authority for BLM to take action when necessary to arrest and reverse environmental damage attributable to the livestock grazing on public lands. Regulations governing coal bed methane development are found in 43 CFR part 3100 and are not addressed in this rule. BLM cannot grant management authority for one user group, as such, to "manage" another user group. However, any qualified individual or business entity may obtain a permit under BLM regulations to

carry on specific activities on public lands. For example, a rancher can obtain a special recreation permit under 43 CFR part 2930 and operate as an outfitter or guide. However, the rancher cannot obtain authority to bar casual recreational use of the allotment he uses, as the comment seems to suggest would be desirable.

Comment: Several comments raised issues that are tied to the provision on decreases in land acreage in section 4110.4-2. One comment suggested that BLM should be able to designate lands as not available for grazing when this is needed to protect critical or sensitive areas. Another comment stated that BLM should develop regulations providing: (a) for the retirement or nonuse of grazing permits by conservation organizations; (b) that a voluntary permit relinquishment automatically triggers the immediate permanent closure an allotment to livestock grazing when that closure would benefit conservation purposes; and (c) that at the request of the permittee, BLM will promptly initiate a planning process to determine whether the applicable land-use plan should be amended to provide that all or a portion of an allotment will be made unavailable for grazing authorized by FLPMA and PRIA. The comment stated that "voluntary retirement" of grazing permits is sometimes the fastest, simplest, most effective, and most amicable method of resolving disputes over livestock grazing in environmentally-sensitive areas.

Response: FLPMA directs BLM to develop and maintain land use plans to provide for multiple use of the public lands, including livestock grazing use. Land use plans, which are developed at the local office level with the involvement of the general public, identify lands available and not available for livestock use and management. BLM can and does designate lands as not available for grazing, and assigns them to

other uses. This results in reductions in land acreage available for grazing, and BLM acts under section 4110.4-2 to implement the reductions by canceling grazing preference.

BLM amends or revises land use plans under the planning regulations (43 CFR part 1600) and the BLM land use planning handbook. An agreement on voluntary relinquishment of a grazing permit (and preference) for purposes of furthering a proposal to amend a land use plan to provide for the retirement of an area from livestock grazing is not a permanent contractual relationship between the entity relinquishing the permit and BLM. Even if BLM amends the land use plan and effectively retires the area from grazing for the immediate or foreseeable future, this action can be amended or reversed under subsequent BLM planning and decision processes.

Comment: One comment stated that, in addition to the permittee or lessee, BLM also should give 2-year notification to any base property lien holder before canceling a permit or lease when the lands under the permit or lease will be devoted to a public purpose that precludes livestock grazing as stated in 4110.4-2(b) because this will level the playing field.

Response: This suggestion is consistent with existing BLM policy to provide as a courtesy, upon request, notification to known base property lien holders of actions that may affect the value of that property. BLM does not believe, however, that it should require itself by regulation to provide lienholder notice in this circumstance. Lenders normally include provisions in their contracts with the borrower requiring the borrower to notify them of actions that will affect the value of their collateral.

5.4.21 Water Rights

Comment: We received many comments objecting to the change in the water

rights provision. Most common were the general concerns that the proposed change communicated less commitment by the United States to hold the water rights on public land which would result in more water rights in the name of permittees or others, complicating multiple use land management in a variety of ways. The identified complications included clouding title, hindering land exchanges and transfers of preference, encouraging takings claims by privatizing public resources, and devaluing public land. The over-riding concern of these comments was the supposed rejection by the proposed rule change of the fundamental connection of water to the land.

Response: We believe that the predicted complications that may be triggered by removing the requirement for BLM to apply for water rights for livestock use in the name of the United States have a low probability of occurring. First, an increase in the number of water rights for livestock use on public lands held in the name of permittees or lessees is probable, but we believe it unlikely to compromise our ability to manage public lands effectively in accordance with FLPMA's requirement of multiple use management. Use of water on public land for wildlife, recreation, mining, and other uses will continue with rights for those uses usually in the name of the United States. By agreeing that permittees and lessees will hold livestock water rights, BLM may be able to negotiate better cooperative agreements, resulting in improved cooperation between BLM, States and permittees and lessees. Second, ownership of water rights by permittees will have no affect on title to the land, since land remains in the ownership of the United States (section 4120.3-1(e)). Third, complications in exchanges or preference transfers resulting from permittee ownership of water rights for livestock use could occur, although we do not expect

them to be common. When they occur, they can often be resolved through negotiated settlements among all parties. Moreover, in most cases, BLM will not exchange or dispose of large tracts of the public lands; thus, private party ownership of water rights on these lands will have little impact. In addition, a transfer of preference would likely involve a transfer or sale of a permittee's base property or base water to a new permittee. A settlement would have to be reached between transferrer and transferee on compensation for range improvements and water rights. BLM does not believe that the necessity for this type of agreement will hinder transfer. BLM disagrees that private ownership of water rights on public lands will lead to takings claims. A water right is a property right that is distinct and separate from title to the land. Finally, BLM agrees with the comment that the value of public land may be reduced if BLM does not control the water rights. BLM also believes, however, that any such decrease will not affect our ability to manage the public lands.

Comment: Several comments anticipated a loss of incentive to comply with grazing rules or consult and cooperate with BLM by permittees who own the livestock water rights.

Response: We disagree that this expectation is likely. Many water rights are currently held by permittees, or jointly owned with BLM, and we have not seen evidence that holding a water right discourages cooperation or compliance with terms and conditions of grazing permits. BLM will enforce the regulatory procedures in Subparts 4140 and 4160 regardless of the name in which the water right is held.

Comment: Two comments observed that the proposed rule was inconsistent with laws governing water rights ownership on most state land, on land managed by the U.S. Forest Service, and on privately owned land.

Response: BLM agrees that there is inconsistency among the laws and policies governing water rights ownership in states and agencies throughout the country. For example, the BLM grazing program is guided by different laws, regulations and policies than the Forest Service's program. Further, states assign water rights under different state laws, regulations, and policies. In this patchwork regulatory setting the flexibility afforded by the regulatory changes will benefit BLM in cooperating with permittees and states. We believe that any inconsistencies are unlikely to interfere with BLM land management.

Comment: Several comments questioned why permittees had any need for a water right that was associated with a water development. One asked why water right ownership would affect a permittee, as long as he had the water needed for his operation. Another said that water right ownership by the permittee was unnecessary now that the permittee has title of the water development. Another felt the water right should be public, if BLM was investing public funds in the developments.

Response: The BLM disagrees with these comments. Although many water rights for livestock use are associated with water developments, it is not always the case. Moreover, water rights are separate and distinct from water developments. The water right provides for appropriation of water for a specified beneficial use for a specified season of use according to the applicable state law. A cooperative range improvement agreement authorizes the development of and provides the terms, specifications, and conditions for the construction, maintenance, or abandonment of a water development or other range improvements. The permittee or lessee and BLM share the cost of and title to the development; not all the funds used for a water development are public. Ownership

of the water right could benefit the permittee or lessee by ensuring that the water will remain available to him for livestock, and by increasing the value of the permittee's private property.

Comment: One comment urged BLM not to implement the proposed change because it would encourage more livestock water developments to the detriment of wildlife.

Response: Ownership of water rights does not affect the approval of water developments. Further, BLM disagrees that encouraging more livestock water developments would be to the detriment of wildlife. Water developments are constructed to improve grazing management and watershed condition. Before BLM authorizes a water development, the development is analyzed in accordance with NEPA. Such analysis will consider the development's impacts on wildlife, often positive as well as negative, and the ultimate authorization would include the mitigation measures necessary to limit any negative effects. Ownership of water rights does not affect the approval of water developments, nor does it imply a guarantee of approval of any water development.

Comment: Several comments stated that BLM should not acquire or retain water rights for livestock use on public lands.

Response: The BLM disagrees with this statement as contrary to current and proposed regulations, and contrary to the intent of most state water laws to put the states' water to beneficial use by the senior appropriator and claimant. Neither the current regulations nor the rule prevents BLM from filing on some water rights, or filing jointly with a permittee or lessee, when it is in the interest of good rangeland management, supports meeting the objectives of BLM land use and activity plans, and is in accordance with state law.

5.4.22 Qualifications, Applications, Service Charges, and Satisfactory Performance

Comment: Comments urged BLM to add a qualification requirement that permittees "must be engaged in the livestock business," stating that this requirement is in the Taylor Grazing Act, but not in the regulations. The comment went on to say that addition of that statutory requirement would ensure that a permittee has an economic motive to graze livestock on the permitted allotment and is not merely acquiring a permit in order to retire it.

Comment: Although those engaged in the livestock business are preferred recipients of permits, being engaged in the livestock business is not a statutory prerequisite for permit eligibility. Section 3 of the Taylor Grazing Act states that grazing permits shall be issued only to U.S. citizens or those who have filed a valid declaration to become a U.S. citizen, or to corporations, groups, or associations authorized to conduct business under the laws of the states within which the grazing district is located. Section 3 of the Act also states that "[p]reference shall be given in the issuance of grazing permits to those within or near a [grazing] district who are landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water rights, as may be necessary to permit the proper use of lands, water or water rights owned, occupied or leased by them... ." For lands outside grazing districts, Section 15 of the Taylor Grazing Act provides that the Secretary may issue leases for grazing purposes to nearby landowners and does not require that before they can receive a lease, they must be engaged in the livestock business. BLM requires that to receive and retain preference for a term grazing permit or lease, one must own or lease land or water that serves or is capable

of serving as a base for livestock operations and either be a citizen or have filed a valid petition to become a citizen, or be a group or corporation authorized to conduct business in the state where the permit or lease is sought, and must have a satisfactory record of performance as defined by the regulations.

Comment: One comment urged that the regulations should require that to hold a grazing permit or lease, one must own livestock, stating that this is a clear requirement of the Taylor Grazing Act as most recently clarified by the Supreme Court in *Public Lands Council v. Babbitt*.

Response: Our approach is consistent with the TGA, which directs that “[p]reference shall be given to landowners engaged in the livestock business” (43 U.S.C. 315b). Adopting the comment could unduly interfere with a permittee’s or lessee’s ability to pasture leased livestock on the BLM allotment where they are permitted to graze. BLM has long allowed a permittee or lessee to “control,” rather than own, the livestock grazing under their permit or lease. It also is common in the livestock industry that livestock are routinely bought and resold during the course of a year, and it may happen during a typical year that a permittee may not, in fact, own livestock on a particular date. It would be impractical for BLM to track, much less enforce, a requirement that, to maintain status as a BLM permittee or lessee, one must maintain ownership of at least one cow, sheep, goat, horse or burro throughout the entire year.

In *Public Lands Council v. Babbitt*, supra, where the plaintiff objected to BLM’s 1995 removal from the grazing regulations the requirement that one must be “engaged in the livestock business” to qualify for a grazing permit or lease, the Supreme Court found that the Taylor Grazing Act continues to limit the Secretary’s authorization to issue grazing permits to bona fide settlers, residents, and

other stock owners and that BLM need not repeat that requirement in their regulations for it to remain a valid requirement. However, the Court also looked behind the issue at the plaintiff’s concern that with the removal of the requirement that an applicant must be “engaged in the livestock business,” entities could acquire permits specifically to not make use of them (ostensibly for conservation or speculative purposes), thereby excluding others who could make use of the range. The Court pointed out that under the regulations, a permit holder is expected to make substantial use of the permitted use set forth in the grazing permit. These provisions remain in the rule and provide that a permittee or lessee may lose their grazing privileges if they fail to make substantial use of them, as authorized, for two consecutive fee years. The phrase, “as authorized,” is included to make clear that BLM-approved (i.e. authorized) nonuse of grazing privileges, or privileges that BLM has suspended, are not at risk of loss for failure to use.

Comment: One comment stated that BLM should not allow large corporations to acquire grazing permits but instead reserve permits for local families who have a tradition of farming and ranching in the area.

Response: It is not within BLM’s authority to adopt this suggestion. The Taylor Grazing Act authorizes the Secretary to issue grazing permits to “corporations authorized to conduct business under the laws of the State in which the grazing district is located.” The TGA does not place limits on which corporations may be issued permits based on their size.

Comment: One comment asked BLM to clarify whether state government agencies are qualified to hold public land grazing permits.

Response: Section 4110.1 on mandatory qualifications states that to qualify for grazing use on public lands, one must own

land or water base property and either must be a citizen, or have filed a declaration of intention to become a citizen or petition for naturalization, or a group or association authorized to conduct business in the state where the grazing use is sought, all members of which are citizens or have filed petitions for citizenship or naturalization, or, a corporation authorized to conduct business in the state in which the grazing use is sought. Although state agencies may acquire base property, they are not a citizen, group or association, or corporation authorized to conduct business in the state in which the grazing use is sought. As such, state agencies are not qualified under the grazing regulations for grazing use on public lands. Thus, unless the exception for base property acquisition by an “unqualified transferee” in the circumstances described at section 4110.2-2(e) applies (which provides for issuing a permit or lease to an unqualified transferee for up to two years when they acquire base property by “operation of law or testamentary disposition”), state agencies may not be granted a grazing permit or lease.

BLM recognizes that at times a state agency, typically the state wildlife agency, will acquire base property for various purposes, and may apply for the associated grazing preference on public lands, express their wishes that the grazing preference be reallocated to wildlife, or express an interest to limit use of the grazing preference and permit to grazing treatments that are, for example, necessary for maintenance or improvement of habitat for wildlife. BLM will cooperate with state agencies wherever possible to pursue common goals. However, BLM land use plans set forth management goals and objectives and the ways and means available for achieving those objectives. Where state agencies have acquired base property and do not wish to use the public land grazing preference associated with that

property in conformance to the governing land use plan, BLM may work with the state agency, affected permittees or lessees, and any interested public to consider options regarding the management of affected public lands. This could include reallocating the forage to another permittee or lessee. It is not within BLM’s authority to issue term grazing permits to state agencies, even if they own livestock, because they do not meet mandatory requirements to qualify for grazing use on public lands. This, however, does not preclude other arrangements such as where the state agency may form a separate corporation chartered by the state for purposes of holding and managing a public lands grazing permit.

Comment: One comment suggested that we amend section 4130.1-1 to require that BLM offer permittees and lessees a new permit or lease 150 days in advance of their permit or lease expiration date, and suggested that we amend section 4110.1(b) to refer to this proposed requirement.

Response: Permit renewal timeframes are best addressed in BLM’s policy guidance and the BLM Manual rather than in regulations. Also, section 4110.1 deals only with qualifications of applicants, and the only necessary cross-reference is to provisions in section 4130.1-1 on determining satisfactory performance, which is a mandatory qualification. Other procedural matters are not relevant to section 4110.1.

Comment: Finally, one comment urged BLM to prohibit the transfer of preference to groups seeking to eliminate grazing.

Response: BLM has not changed its regulations in response to this comment. In order to qualify for grazing use on public lands, one must still meet the requirements of section 4110.1. Other regulatory provisions allow BLM to cancel preference should a permittee or lessee fail to make grazing use as authorized.

In the proposed rule we invited comments on whether we should require an application for renewal of a grazing permit or lease (68 FR 68456). Several comments addressed this issue.

Comment: Several comments urged BLM to change section 4130.1-1(a) to provide that only new applicants for grazing permits or leases need to submit a formal application, so that it is clear that the holder of an expiring 10-year term permit or lease does not have to submit a formal application for renewal of that permit or lease. These comments stated that Section 402(c) of FLPMA provides that, so long as the lands under the permit or lease remain available for livestock grazing, the holder of the expiring permit has complied with applicable regulations and accepts the terms and conditions of the new permit or lease, the holder of the expiring permit must be given first priority for receipt of the new permit or lease. They offered several policy reasons for not requiring preference holders to reapply for permits every ten years, stating that requiring such applications would allow the agency too much discretion; be used by environmental groups as tools to force review of environmental conditions on allotments; consume agency resources; burden permittees and lessees; increase the importance of performance reviews and perhaps lead to using the performance review as an excuse to deny a new permit; have allowed or will allow agency personnel to use the lease renewal process to extract inappropriate concessions from, or impose inappropriate requirements, on permittees and lessees on environmental and other issues. They stated that FLPMA allows a preference holder the right to renew. One contended that, if grazing allotments are designated in the land use plan, they should not be considered discretionary activities requiring periodic review before renewal.

One comment, however, felt that permittees and lessees should submit an application for renewal when their permits or leases expire. It stated that the renewal application should be thoroughly reviewed by BLM before a decision is made to renew.

Response: The first group of comments is correct in that BLM must give the holder of an expiring permit or lease priority for receipt of a new permit or lease, so long as the conditions of Section 402(c) of FLPMA are met. However, there is administrative utility in requiring application for the renewal of an expiring permit or lease. The regulatory text does not explicitly require an application, but by referring to “the applicant” it implies the requirement. Submitting a permit or lease renewal application by the holders of an expiring permit or lease documents their interest in their continued use of the permit or lease and that they are aware that their permit or lease will be expiring and must be renewed. Submitting an application for renewal also allows an opportunity for the holders of the expiring permit or lease to apply for changes in its terms and conditions that they may desire, and provides them certainty under the Administrative Procedure Act (5 U.S.C. 558 (c)(2)) as to continued use of their permit or lease in the event that its renewal is delayed due to BLM’s inability to process the application in a timely manner. The application will also be a useful element of the administrative record.

Comment: Other comments suggested that we amend the introductory text of section 4130.1-2 (conflicting applications) to provide that applicants with preference have priority for receipt of increased available forage, rather than that preference is treated co-equally with the other factors listed in paragraphs (a) through (h) of the section.

Response: Priority for preference holders in apportioning additional forage is

already required by section 4110.3-1. It is unnecessary to restate this priority in this section. This section, however, directs BLM to consider the other factors in addition to preference, to resolve conflicts among applicants with preference.

Comment: Some comments generally supported increases in the service charges, stating that they would allow BLM's services to be self-supporting, or stating that the service charges should better reflect the costs of grazing administration. However, some of these comments objected to the size of the proposed increases. One comment stated that the maximum service charge should be \$25. Another stated that increases ranging from 500 percent to 1,450 percent appeared excessive. Finally, one comment stated that the proposed service charges were too low, and suggested \$275 for the issuance of a crossing permit, \$2,045 for the transfer of a grazing preference, and \$250 for the cancellation and replacement of a grazing fee billing, in order to shift the full cost of those services to permittees.

Some comments opposed service fee increases for a number of reasons. For example, they stated that increases would not improve working relations between BLM and permittees, would not address legal issues or administrative inefficiencies, and would be too expensive for operators to afford. One comment stated that BLM should reduce the costs of providing services rather than increasing service charges. Some comments objected specifically to the proposed service charge for issuance of a crossing permit. One comment stated that crossing permits merely authorize an operator access to his own allotment, and many such permits are consistent with historical usage or consent of neighboring operators. Some comments supported the increases for preference transfers and for canceling and replacing a grazing bill, but stated that increasing

the service charge for crossing fees would provide operators a disincentive to report a need to cross lands occupied by others. These comments stated that BLM needs to know when operators are crossing public lands occupied by others, that there are safety concerns when operators trail livestock along highways, and that there may be concerns about insurance.

Response: We believe the proposed service charges will not damage working relationships with permittees, will contribute to the goal of covering a portion of administrative costs, and will not likely lessen BLM's goal of protecting rangelands. We do not believe that operators will avoid contacting BLM for a crossing permit in order to avoid the service charge, since this could lead to a trespass violation with serious consequences. We also believe that the proposed service charges are reasonable, as required by Section 304(a) of FLPMA, 43 U.S.C. 1734(a). They range from \$50 to \$145, reflecting the processing costs associated with transactions that require BLM officers to engage in analysis and decision-making activities. Issuing a crossing permit involves analysis of terms and conditions for the grazing use that is incidental to a crossing. The transfer of a grazing preference requires findings with respect to base property, qualifications, and other matters. The \$75 service charge for the cancellation and replacement of a grazing fee billing will be assessed only when a BLM officer must change a billing notice because a permittee or lessee files an application to change grazing use after BLM has issued billing notices for the affected grazing use. That service charge can be avoided altogether merely by applying to change grazing use, in those cases where a permittee knows of the grazing use change, before BLM issues the annual bill in March. Additionally, BLM will not assess the service charge if, after a grazing fee billing

is issued, BLM changes the grazing fee bill because BLM has approved an operator's grazing application not to use all or a portion of their preference for reasons of resource conservation, enhancement, or protection.

Comment: Some comments suggested that BLM add a service charge of \$50 to \$75 for filing a protest, and \$100 to \$150 for filing an appeal, in order to reimburse BLM for a portion of the initial costs of processing protests and appeals. One comment supported the proposed service charges, and suggested that BLM add a service charge of about \$50 to accompany applications for cooperative agreements or permits for range improvements, stating that permittees and lessees would become more serious about implementing a project, having more invested in it.

Response: Instituting additional service charges is not necessary or appropriate at this time. Parties, including permittees and lessees, may be discouraged from filing legitimate protests or appeals of grazing decisions if they have to pay service charges. Further, aggrieved parties do not generally have to pay service charges in order to seek administrative remedies in other BLM programs. Applications for range improvements should not be subject to service charges because range improvements are useful to BLM in rangeland management, and because the public receives more palpable benefits from range improvements than they do from crossing permits, transfers of grazing preference, or the cancellation and replacement of a grazing fee billing.

Comment: One comment stated that, instead of increasing service charges, BLM should increase grazing fees to fair market value because such fees would eliminate the need for the proposed service charges.

Response: As previously indicated, grazing fees and related issues are not

being addressed in this rulemaking. BLM believes the proposed changes in service charges respond to the increasing need for cost recovery. Further, it would not be fair to operators who do not need to transfer their preference, obtain a crossing permit or ask for a rebilling, to subsidize those who do. Although a fair market value fee system may result in higher revenues, this is a separate and more complex issue that is outside the scope of this rulemaking.

Comment: One comment urged BLM to clarify when BLM or the permittee will absorb charges for grazing fee billings under certain circumstances, for example, when permittees take temporary nonuse at the suggestion of BLM due to continuing drought.

Response: Section 4130.8-3(b) in the rule provides that BLM will not assess a service charge when BLM initiates the action. That provision is adopted as proposed. Thus, if BLM suggests temporary nonuse due to drought, there will be no service charge.

Comment: One comment noted the absence of specific information on the proposed increases in service charges.

Response: In response to this concern, we included in the EIS additional information on current average costs associated with the proposed service charges. Specific information on the average cost of issuing billings, free use permits, exchange of use permits, trailing permits, temporary nonrenewable permits and the average cost of processing preference transfers including issuance of a permit to a preference transferee with all NEPA compliance, ESA consultation and protests and appeals, and data management support including GIS costs during Fiscal Year 2003 is found in Section 2.2.15 of the EIS.

Comment: One comment urged BLM not to adopt the proposed rule provision

regarding satisfactory record of performance, stating that the proposed wording is an attempt to show favoritism to someone with past recent violations that did not occur on the allotment for which the applicant is applying. Another comment stated that permittees could avoid violations by timing applications to particular grazing allotments where they had not committed a violation in the last 3-year period.

Response: The consequences of a grazing permittee or lessee not having a satisfactory record of performance remain the same under this rule as they were in the existing grazing regulations. We made minor changes to provide consistent direction on what constitutes a satisfactory record of performance. Determining a satisfactory record of performance is not limited to grazing permit or lease violations on the particular allotment for which an application is being made. Section 4130.1-1(b)(2) states that the authorized officer will consider applicants to have a satisfactory record of performance when the applicant has not had any Federal grazing permit or lease canceled for violation of the permit or lease within the 36 months preceding the date of application.

Comment: One comment suggested that BLM should subject a permit applicant who has a poor management record to a public hearing as part of its process for determining whether the applicant has a satisfactory record of performance. The author of the comment stated that legitimate users of the land do not need to have someone who is known to ignore good range management standards abusing the land or BLM's staff, and added a request for open hearings so that the public interest could be heard.

Response: BLM will determine whether applicants for renewal or issuance of new permits and leases and any affiliates have a satisfactory record of performance. BLM agrees that a poor operator who abuses

public land is detrimental to sound land management. BLM will not approve such renewal or issuance unless the applicant and all affiliates have a satisfactory record of performance, as provided in 4130.1-1(b). BLM does not believe that any useful purpose would be served by including a public hearing as part of the process of determining whether an applicant for a permit or lease has a satisfactory record of performance. If rejected applicants appeal BLM's decision to deny them a permit or lease based on an unsatisfactory record of performance, they would have the right to a hearing of their appeal before an Administrative Law Judge under 43 CFR Part 4, which would be open to the public.

Comment: Several comments urged BLM to remove section 4130.1-1(b)(2)(ii), stating that cancellation of a state grazing permit should not be grounds for determining that a permittee or applicant has an unsatisfactory record of performance. The comments stated that some state rules go beyond practices directly related to livestock grazing. Another comment stated that the provision exceeds BLM's authority under Section 302(c) of FLPMA (43 U.S.C. 1732(c)).

Response: The provision in question provides standards for determining that an applicant has a satisfactory record of performance. BLM will find a record of performance satisfactory if the applicant has not had a state permit or lease of lands within the allotment for which the applicant seeks a Federal authorization, canceled for violation of its terms or conditions within the preceding 36 months. Note that the threshold in the regulations is cancellation, in whole or in part, for violation of the state permit or lease rather than for other reasons under state law, such as cancellation because the state declines to issue permits for the particular time or land or the state has disposed of the land. Section 302(c) states that any

instrument authorizing the use of public lands shall include a provision authorizing BLM to revoke or suspend the instrument upon a final administrative finding of a violation of any term or condition of such instrument. Section 302(c) does not limit the scope of what BLM may require of an applicant.

Comment: One comment requested BLM to clarify whether a person has a satisfactory record of performance if he is damaging the public lands, but has not had a Federal permit or lease canceled, has not had a state permit or lease canceled on the pertinent allotment, and has not been barred from holding a Federal permit or lease by a court of competent jurisdiction. On the other hand, another comment stated that requiring a permittee to apply for renewal will increase the importance of the performance review in the renewal process, but could lead to using the performance review as an excuse not to renew a permit.

Response: BLM will consider the question whether a person is damaging the public lands in determining whether he is in substantial compliance with the terms and conditions of his permit or lease and with the regulations applicable to the permit or lease. Whether or not there has been a cancellation, BLM may find a permittee not in substantial compliance with permit or lease terms and conditions or with the regulations, and consider this finding in determining whether to renew the permit or lease. BLM will also consider whether the lack of substantial compliance was due to circumstances beyond the control of the permittee or lessee.

Comment: One comment suggested that section 4130.1-1(b)(2) also provide that a party would not be considered to have a satisfactory record of performance if he –

1) Obstructs public access to public lands;

- 2) Grazes livestock after the end of the grazing period;
- 3) Removes water sources used by wildlife; or
- 4) Poaches or kills wildlife.

Response: A permittee or lessee who does things like those listed in the comment may be found not in substantial compliance with the terms and conditions of the permit or lease, and thus not to have a satisfactory record of performance.

Comment: One comment stated that BLM should change its qualifications to receive a grazing permit so that applicants with a criminal background are barred from getting a permit.

Response: We have considered the comment and decided that it would be impractical for BLM to bar applicants with a criminal background from getting a grazing permit, unless the criminal conviction was directly related to the loss of a Federal or state grazing permits or leases due to violations, or the applicant was barred from holding a Federal grazing permit or lease by a court of competent jurisdiction as provided in section 4130.1-1 *et seq.* Furthermore, it is not Federal or BLM policy to prevent a person who has been convicted of a crime, served his sentence, and been rehabilitated, from gainful employment.

Comment: One comment stated that BLM should consider increasing the “statute of limitations” on conditions for having a satisfactory record of performance in section 4130.1-1(b)(2) to more than 3 years.

Response: The 36-month period has been in the regulations since the requirement to have a satisfactory record of performance was added in the 1995 rule. We have no evidence that this threshold is not working.

5.4.23 Grazing Permits and Leases

Comment: Some comments stated that the amendment of this section for the purpose of clarifying that the grazing permit or lease is the document that BLM uses to authorize grazing creates an unnecessary burden on the BLM to prepare NEPA analysis prior to issuing a permit or lease. The comment stated that grazing use on public lands is authorized by the land use plan coupled with grazing preference, and that therefore NEPA analysis is not necessary when issuing a permit or lease.

Response: The Taylor Grazing Act directs BLM to authorize livestock grazing through a permit or lease. NEPA requires site-specific analysis of effects before an agency can authorize activities on public land. Most land use plans do not meet site-specific NEPA analysis requirements for issuing permits or leases on individual allotments. The IBLA Comb Wash decision (94-264) reaffirmed the need to prepare site-specific NEPA analysis when issuing grazing permits and leases.

Comment: A comment suggested that BLM should not state that the grazing permit or lease is the only document that authorizes grazing use because each year BLM may approve applications for grazing use under terms and conditions that do not exactly match the terms and conditions listed on the grazing permit or lease. Therefore, the comment went on, BLM should also consider the approval of such an application as a grazing authorization. BLM also should require proof of payment of grazing fees before allowing grazing.

Response: The TGA directs BLM to authorize livestock grazing through a permit or lease. FLPMA provides that a grazing permit or lease will have a 10-year term with certain exceptions. BLM evaluates permits and leases before it issues them pursuant to its obligations under NEPA and its land use planning regulations. One outcome of

this process is permit or lease terms and conditions of grazing use that are compatible with achieving multiple-use management objectives specified in BLM land use plans. The grazing regulations require that terms and conditions of permits and leases include, as a minimum: the allotment(s) to be grazed, the number of livestock, the period of use, and the amount of forage to be removed. Since forage growth and livestock operation needs can change slightly from year to year, BLM allows or requires adaptive minor adjustments in the number of livestock, use period, and amount of forage, so long as the adjustments are within the terms and conditions of the permit or lease and accord with applicable land use plans. These adjustments are documented by BLM case records, decisions and grazing fee billings or payment records. Such adjustments become a part of the term grazing permit or lease for the period the adjustments are in effect. However, the term permit or lease is the document that authorizes the grazing use, not the application and paid grazing fee bill.

Comment: Another comment suggested that grazing permit changes that do not affect the environment or change the terms and conditions of a permit, but only involve paper changes such as a transfer, should not be subject to NEPA, or at most should only involve a categorical exclusion.

Response: Addressing whether the issuance of a permit or lease that is a result of a preference transfer and that is substantially unchanged from the immediately preceding permit or lease should be subject to NEPA is not within the scope of this rulemaking. In a separate effort to streamline permitting processes, BLM is reviewing its current list of actions that are categorically excluded and examining whether a permit or lease that meets specific criteria also should be categorically excluded.

Comment: Some comments suggested that a requirement for consultation, cooperation and coordination with permittees or lessee should be reiterated at section 4130.2(f) in order to emphasize the importance of consultation regarding permit or lease terms and conditions.

Response: While we recognize the importance of coordinating with permittees and lessees when developing terms and conditions, there is no need to restate this requirement because it is redundant. The requirement for consultation, cooperation, and coordination with affected permittees or lessees before issuing or renewing grazing permits and leases is already provided for at section 4130.2(b).

Comment: Numerous comments expressed displeasure with any reduction in the role of the interested public, and many cited the issuance or renewal of permits and leases as specific instances where the rule should not be changed. These comments stated that the issuance of a grazing permit or lease was a significant decision worthy of extensive public involvement. Comments also argued that reliance on NEPA's public participation opportunities was not sufficient, due to the backlog of grazing permit environmental assessments and the recent history of special legislation authorizing renewals without traditional NEPA compliance. Other comments supporting the rule described the grazing permit or lease as the decision that has suffered the most inefficiency because of the interested public consultation requirements. Some argued that grazing permits and leases should be processed in a timely manner and only the BLM and permittees and lessees should be directly involved in this process.

Response: BLM issues or renews an average of nearly 2,000 permits and leases each year, and, thus, we view these as day-to-day grazing management decisions. Permits

and leases implement decisions made in land use plans, allotment management plans and other grazing activity plans—decisions made with significant public input. Many of the comments requesting continued interested public consultation actually raised broad level allocation issues (*i.e.* whether grazing should occur at all) that would properly be addressed in a land use plan rather than at the permit issuance stage. There currently is a backlog of grazing permits requiring final NEPA compliance. BLM is working hard to eliminate this backlog as soon as possible. Under current funding levels, BLM is scheduled to complete full NEPA processing of all permits and leases by 2009. Although timely NEPA participation may be temporarily delayed for some permits, the interested public will ultimately have the opportunity to participate in the NEPA process. If BLM contemplates any changes in levels of grazing use or in permit or lease terms and conditions, we will provide the interested public an opportunity to review and provide input during the preparation of any evaluation or other reports that the authorized officer may use as a basis for such changes. Such reports may include monitoring reports, evaluations of standards and guidelines, biological assessments or evaluations, and any other formal evaluation reports that are used in the decision-making process. Also, the interested public will be notified of proposed decisions and retains the option to protest before a decision is final. This level of participation should achieve a balance that utilizes public input while allowing for timely processing of permits and leases.

Comment: One comment stated that BLM should not grant priority for renewal of permits and leases to permittees and lessees who hold expiring permits and leases unless they, in addition to meeting the other criteria found at section 4130.2(e), have a

satisfactory record of performance. This would make section 4130.2(e) consistent with the proposed rule at section 4130.1-1(b) and (b)(1).

Response: The existing regulations in section 4130.2(e)(2) require, under Section 402(c)(3) of FLPMA (43 U.S.C. 1752(c)(3)), that the permittee or lessee be in compliance with the rules and regulations and the terms and conditions in the permit or lease to have first priority for a new permit or lease. This provision is very similar to language at section 4130.1-1(b)(1)(i) that addresses satisfactory performance. We determined that the language in the rule is adequate.

Comment: Another comment suggested that BLM should remove the requirement that acceptance of terms and conditions of a new permit or lease is required of holders of expiring permits and leases in order for them to receive priority for receipt of the permit or lease. It stated that this requirement is redundant to the statement that “a permit or lease is not valid unless both the BLM and the permittee or lessee have signed it,” and that it is also an inappropriate condition upon which to base priority for renewal of a permit or lease.

Response: We have determined that retention of section 4130.2(e)(3) reflects criteria established in Section 402(c)(3) of FLPMA regarding priority to receive new permits and leases.

5.4.24 Terms and Conditions of Permits or Leases, and Administrative Access

Comment: Some comments objected to the exemption from appeal for those terms and conditions resulting from a biological opinion. In cases where a biological opinion (BO) is the basis for additional terms and conditions in a grazing permit or lease, they felt the affected permittee or lessee should be able to appeal those additional

terms or conditions that are based on the biological opinion. They asserted that in those cases, as may be necessary for a full and true disclosure of the facts, where the BLM authorized officer’s decision rests, in whole or in part, on a material fact not appearing in the agency’s record, such as the material constituting a biological evaluation, biological assessment, or biological opinion, the affected permittee should be entitled to an opportunity to rebut such fact.

Response: Currently, terms and conditions required in a BO, as well as implementation of a reasonable and prudent alternative if required in the BO, are the only terms and conditions not subject to OHA review. However, this exclusion from OHA review is based on Secretarial memoranda dated January 8, 1993, signed by Secretary Lujan, and April 20, 1993, signed by Secretary Babbitt. It has thus been the policy of the Department of the Interior that the Office of Hearing and Appeals (OHA) does not have the authority to review BOs issued under Section 7 of the Endangered Species Act (ESA). Under these Secretarial memoranda, if BLM decides to implement a reasonable and prudent alternative set forth in a Fish and Wildlife Service (FWS) BO, or if BLM implements the mandatory terms and conditions of a BO, OHA is not entitled to “second guess” the FWS findings in the guise of reviewing the BLM decision. Any review of FWS BOs is limited to the Federal courts pursuant to the review mechanism created by Congress in Section 11(g) of ESA (16 U.S.C. 1540(g)). We dropped this provision because BLM believes the Secretarial memoranda signed by Secretaries Lujan and Babbitt provide sufficient clarity regarding the inability of the Office of Hearings and Appeals to review the merits of FWS biological advice. This example has been removed from the rule.

Comment: Some comments stated that BLM should remove the requirement that “grazing permits and leases shall contain terms and conditions...to ensure conformance to the provisions of Subpart 4180” at section 4130.3(a) and section 4130.3-1(c). Subpart 4180 describes Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration. The comments reasoned that this change would clarify that permits and leases must be in conformance to all of the provisions of Part 4100 and the management objectives established by applicable land use plans. They felt that these provisions were redundant because standards and guidelines developed under Subpart 4180 are made a part of land use plans and there is an existing requirement that livestock grazing activities conform to land use plans.

Response: It is true that terms and conditions included in permits and leases implement all the provisions of Part 4100 pertinent to the permit or lease. The provision on conformance to Subpart 4180 does not mean that the terms and conditions must only conform to the fundamentals of rangeland health, standards, and guidelines found in Subpart 4180. They must also conform to the appropriate land use plans. The reference to Subpart 4180 appears in this newly designated paragraph (a) (which was the entire section 4130.3 in the 1995 regulations) as a matter of emphasis. Management objectives from applicable land use plans also establish desirable outcomes that BLM strives to achieve. As such, terms and conditions of permits and leases should conform to and not hinder progress towards management objectives, fundamentals, and standards. BLM has considered these comments and has determined that, despite the redundancy pointed out by the comment, it would be best to continue to state plainly in the regulations that permits and leases must

incorporate terms and conditions that ensure conformance to Subpart 4180.

Comment: Some comments stated the BLM should remove the proposed language at section 4130.3(b)(2) which would not allow protest or appeal of terms and conditions placed on grazing use on additional land acreage outside designated allotments. The comment stated that this would violate Taylor Grazing Act Section 9 hearing rights relative to grazing use upon “additional land acreage” within a Grazing District, and that there is no rational basis to treat appeal rights for permits issued for additional land acreage different from appeal rights for permits issued as a result of preference transfer or permit renewal.

Response: In response to this comment we have removed the provision at section 4130.3(b)(2) from the rule.

Comment: Comments suggested that BLM insert a standard term and condition into all grazing permits that states unequivocally that nothing in the terms and conditions of the permit shall be construed as affecting valid existing rights of way, easements, water rights, land use rights, vested rights, or any other property rights of any kind.

Response: The comment expresses concern that the issuance of a grazing permit or lease and the BLM management of the public lands associated with the permit or lease may affect valid existing rights, including, among other things, “property rights of any kind.” The TGA provides that the Secretary “shall make such rules and regulations ... enter into such cooperative agreements, and do any and all things necessary to accomplish the purposes of” the TGA “and to insure the objects of such grazing districts, namely, to regulate their occupancy and use, , preserve the land and its resources from destruction

or unnecessary injury, to provide for the orderly use, improvement, and development of the range.” BLM accomplishes these goals through grazing permits and leases, which authorize grazing use on the public lands. Typically, the terms and conditions of a permit or lease specify such things as seasons of use and numbers of livestock. If we were to adopt the comment and add a term and condition in grazing permits that would prohibit BLM from doing anything that would affect any valid existing rights or any other property rights of any kind, it would impose an unlawful limit on the Secretary’s broad authority to regulate the use of the public rangelands. Because of the potential confusion the suggestion in the comment would create, because property rights are adequately protected by the U.S. Constitution, and because there are established avenues for seeking compensation for “takings,” we have not adopted the comment.

Comment: One comment suggested that BLM include a statement in section 4130.3 that terms and conditions will include compliance with management goals and objectives.

Response: Authority to include terms and conditions in a grazing permit or lease to assist in achieving management goals and objectives is sufficiently addressed in section 4130.3-2.

Comment: Another comment stated that the regulations should provide that the new permit or lease that BLM offers to the holder of an expiring permit or lease should reflect changes in terms and conditions that apply at the time of renewal, or reflect the terms and conditions of the expiring permit or lease until the terms and conditions are officially changed.

Response: When renewing a permit or lease, BLM must retain the discretion to authorize grazing use under terms

and conditions that it determines to be appropriate, even if those terms and conditions are different from the permit or lease that recently expired. The final regulations also provide in section 4160.4 that, should OHA stay any term or condition included in a BLM decision that renews a permit or lease, the BLM will continue to authorize grazing under the permit or lease, or the relevant term or condition thereof, that was in effect immediately before the decision was issued, subject to any relevant provisions of the stay order.

Comment: One comment stated that BLM should discourage the use of supplemental feed on public land because such feed can introduce weeds and pollute water with excess nutrients.

Response: Supplemental feed, as referred to in section 4130.3-2(c), means a feed that supplements the forage available from the public lands and that the operator provides to improve livestock nutrition or rangeland management. BLM grazing regulations allow placement of supplemental feed, including salt, for improved livestock and rangeland management, but prohibit placement of supplemental feeds on public lands without authorization, or contrary to the terms of the permit or lease. When BLM authorizes the use of supplemental feed it includes all necessary restrictions, including any requirements for avoiding the introduction or spread of noxious weeds, and directions for placement to ensure that its use does not contribute to resource degradation. We have not amended the regulations in response to this comment.

Comment: Some comments suggested that BLM should include in section 4130.3-2(f) a requirement that the Bureau must develop a “findings” document containing the relevant facts, based on documented resource data, supporting decisions BLM issues to change current terms and conditions

of grazing permits or leases for any of the reasons stated in paragraph (f). They stated that such a “findings” document also should accompany any grazing decision placed in full force and effect by the Bureau.

Response: Section 4130.3-2(f) provides that BLM may temporarily delay, discontinue, or modify grazing use as scheduled by the permit or lease to allow for plant recovery, improvement of riparian areas, protection of rangeland resources or values, or to prevent compaction of wet soils, such as when delay of spring turnout is required because of weather conditions or lack of plant growth. This provision allows for timely implementation of temporary changes to grazing use that are needed to respond to on-the-ground conditions that cannot be reliably predicted when the permit or lease is issued. Similarly, BLM makes grazing decisions effective immediately (“full force and effect”) only when needed to respond to temporary and unpredictable conditions such as lack of forage due to wildfire, drought, or insect infestation, or to close grazing areas to abate unauthorized grazing use.

In most cases, the resource conditions that trigger a temporary change in terms and conditions should be evident to both the permittee or lessee and BLM. In the event that they are not and the permittee or lessee does not voluntarily agree to such temporary changes, BLM would need to issue a grazing decision to require the temporary changes. Such a grazing decision would include a rationale for the temporary changes and be subject to appeal and petition for stay.

Because the need for changes cannot be reliably predicted and can arise suddenly, BLM cannot accept the suggestion that a “findings” document be required before making temporary changes or before making changes by grazing decision effective immediately. Such a requirement could result

in unnecessary delay of actions that are needed to conserve and protect resources.

Comment: Some comments stated that BLM should modify the regulation at section 4130.3-2(g) by removing the phrase, “within the allotment” with respect to lands allowed for exchange of use, so that a permittee or lessee who owns land within another permittee’s or lessee’s allotment may be credited on his grazing fee bill for the forage that their lands are providing to the other permittee.

Response: An exchange of use agreement is not the appropriate instrument to document the arrangement described by the comment. The arrangement described by the comment is where BLM acts as an intermediary between two permittees or lessees by: (1) collecting grazing fees from the first party for their grazing use of the second party’s private lands that are located in the first party’s grazing allotment; and (2) then crediting the grazing fee billing of the second party (for grazing use in a different allotment) in the amount collected from the first party. BLM suggests that a more appropriate approach to this situation would be: (1) the first permittee lease for grazing purposes land owned by the second permittee that is located in the first permittee’s allotment; and, (2) the first permittee then provide BLM a copy of the lease to show evidence of control sufficient for BLM to enter into an exchange of use agreement with them. BLM recognizes that where the second permittee does not fence his land and state or local law provides that lands must be fenced before a landowner can gather stray livestock from their land, there is no incentive, other than good will, for the first permittee to lease the second permittee’s land because he can graze the second permittee’s land for free (although they cannot stock to the capacity of the public and private lands considered together because they cannot demonstrate control of

the private land). Therefore, at the local office level, BLM may be willing to provide the intermediary billing services described above through the terms of a cooperative agreement or service contract with all involved parties.

The purpose of an exchange of use agreement is to allow a permittee who owns or controls land that is intermingled with and unfenced from public land within his allotment to stock to the capacity of the public and private lands considered together and be charged grazing fees only for the forage that occurs on the public lands. Removing the phrase “within the allotment” from this paragraph would allow permittees to offer lands in exchange of use that are not within the allotment for which they have a permit. Although removing this phrase could facilitate BLM performing the intermediary billing service described above in some circumstances, generally allowing lands outside allotments to be offered in exchange of use could create an expectation that the permittee would be allowed to stock his permitted allotment to the extent of the forage produced on the land outside his allotment offered in exchange of use, plus the forage that occurs on lands within his allotment. This expectation could not be met by BLM because the resulting stocking level would not comply with the requirement at section 4130.3-1(a) that livestock grazing use authorized by a grazing permit or lease not exceed the livestock carrying capacity of the allotment.

Comment: Several comments stated that the regulations should retain the provision in section 4130.3-2(h) regarding administrative access across private lands in order for agency staff to perform resource management activities on public lands efficiently. Comments expressed concern that removal of this provision might impede the agency’s management of public lands, and pointed out that such access is an implied condition of a

grazing permit. Other comments supported the removal of this provision, asserting that the agency should only have access across private property by permission of the land owner or to respond to an emergency. Some comments thought this provision should be retained because its removal would limit public access to public lands, misinterpreting the intent of this provision. This provision does not apply to public access across private land; it only applies to agency administrative access to perform necessary resource management activities on the public lands.

Response: In response to comments, the final rule retains the language at section 4130.3-2(h) that we considered removing in the proposed rule. Administrative access is an important component of BLM’s ability to manage the lands for which it is responsible, including, but not limited to, Federal grazing lands. The provisions of paragraph (h) regarding administrative access refer to reasonable access across a permittee’s or lessee’s owned or controlled lands to reach Federal lands so that BLM, including BLM staff and third party contractors working for BLM, may perform necessary resource management activities on those lands. These include such activities as range use supervision, compliance checks, trespass abatement, monitoring of resource conditions, and evaluating the conditions of or the need for range or other improvements. Land management agencies, like any landowner, need appropriate access to the lands they manage. Efficient and reasonable access to, for example, grazing allotments, is needed and is consistent with the partnership between grazing permittees or lessees and the agency to manage rangelands properly. Retaining paragraph (h) is the most effective and efficient means of informing the public, including interested parties, of the requirement that a permittee or lessee provide reasonable administrative access across lands

owned or controlled by them to BLM for the orderly management and protection of the Federal lands under BLM management.

Comment: One comment suggested that BLM should require other users of the public lands to get permission to be on public land from BLM and BLM should inform the permittee when other users or BLM staff will be out on the permittee's allotment.

Response: Determining whether and under what circumstances users other than livestock permittees need approval to use public lands is outside the scope of this rulemaking. Whenever feasible, BLM will inform the livestock operators in advance about BLM field operations that affect grazing management of allotments where they have permits or leases in the spirit of consultation, cooperation, and coordination. A regulation requiring advance notification, however, would be impractical to implement and detract from efficient management of the public lands.

Comment: Several comments stated that BLM should remove paragraph (d) from section 4130.1-2, Conflicting applications, because [p]ublic access across private lands should be given voluntarily and never become a condition for consideration by the BLM under any part of these regulations.

Response: Section 4130.1-2(d) provides that when BLM must decide among conflicting applicants who is to receive grazing use, it may consider, along with the several other factors listed in this section, [p]ublic ingress or egress across privately owned or controlled land to public lands. This provision first appeared in the regulations (Grazing Administration – Outside Grazing Districts and Exclusive of Alaska) in 1968, in the following form:

§4121.2-1 (d)(2) The Authorized Officer will allocate the use of the public land on the basis of any or

all of the following factors: (i) Historical use, (ii) proper range management and use of water for livestock, (iii) proper use of the preference lands, (iv) general needs of the applicants, (v) topography, (vi) public ingress and egress across preference lands to public lands under application (where access is not presently available), and (vii) other land use requirements.

Paragraph (d)(2)(vi) included a footnote that stated, "Where the United States obtains such a right-of-way, it will assume responsibility therefore to the full extent authorized by law." The major rewrite of the regulations in the mid-1970s combined the regulations for inside and outside grazing districts. The provision in the current regulations is a "carry over" from the Section 15 grazing lands regulations. The regulation in its original form does in fact direct that, all other factors being equal, if there were several applicants for use of a specific tract of public land, and one applicant offered public access across their base property to the public lands and the others did not, we would choose the applicant that did, and obtain and manage a right-of-way across their lands. BLM obtains public ingress and egress across the successful applicant's base property and the successful applicant receives a grazing permit or lease, so that both parties benefit.

We may consider amending this provision in a future rulemaking exercise.

5.4.25 Modification of Permits or Leases

Comment: Some comments suggested that BLM not use the need to conform to the provisions of Subpart 4180 as justification for modifying terms and conditions of a permit or lease. The comment stated that standards developed under Subpart 4180 are subjective,

and there are no requirements to collect data to support a determination of achievement or failure to meet those standards.

Response: BLM developed rangeland health standards and guidelines for livestock grazing administration in consultation with Resource Advisory Councils in most states and regions. The fundamentals of rangeland health and standards and guidelines recognize rangeland ecological complexity and multiple values, and are among the many tools BLM uses to ensure sustainable multiple use of public lands. Evaluation of rangeland conditions is carried out using all available monitoring, inventory, and assessment data. Permit modifications are based on range health assessments and evaluations, completed by an interdisciplinary team, using all available monitoring data and all available resource information. The rule further emphasizes the importance of using monitoring data by adding a requirement for its use when making a determination that existing grazing management is a causal factor in the failure to meet a standard at section 4180.2(c). The rule retains the provision on conformance to Subpart 4180.

Comment: Another comment suggested adding requirements to collect monitoring data that shows that current grazing use or management is the cause of not meeting management objectives. A similar comment suggested adding requirements to document facts and findings, supported by resource data, as a justification for changing terms or conditions. Finally, another comment stated that BLM should make it clear in Subparts 4110 and 4130 that any changes in grazing preference or changes in other grazing permit terms and conditions must be supported by monitoring done by BLM-approved Manual procedures.

Response: Permit and lease modifications are based on land health assessments and evaluations, completed

by an interdisciplinary team, using all available monitoring data and all available resource information. BLM documents facts and findings during the evaluation process by preparing an evaluation report and NEPA documents that reference all data and information used as a basis for recommending changes in terms and conditions. The rule further emphasizes the importance of using monitoring data by adding a requirement for its use when making a determination that existing grazing management is a causal factor in the failure to meet a standard at Subpart 4180.2(c). BLM needs flexibility to use site-specific methods in addition to those monitoring methods set forth in Manual guidance. This flexibility will allow BLM to use techniques that meet local needs and that we may develop in cooperation with other agencies and partners.

Comment: Another comment suggested that we consider adding a provision at section 4130.3-2 stating that this regulation does not obviate the need to obtain other Federal, state or local authorizations required by law. The comment pointed out that the construction of range improvements associated with grazing activities, such as water improvements and storage structures, are often governed by other laws or regulations.

Response: Section 4120.3 governs the installation, construction, and maintenance of range improvements. Permittees or lessees must enter into a cooperative range improvement agreement with the BLM before building water improvements or storage structures. Through the cooperative agreement, BLM retains control over standards, design, construction and maintenance criteria. The provision suggested by the comment is unnecessary because BLM has a responsibility to ensure compliance with applicable law. Nothing in the regulations prevents BLM from adding such

a term where it is warranted. BLM still must comply with NEPA, the Clean Water Act, and state water rights laws. Since BLM maintains control over range improvement planning, implementation and maintenance, existing regulations and policies ensure compliance with applicable Federal, state, and local law and regulations.

5.4.26 Temporary Changes in Grazing Use Within Terms and Conditions of Permit or Lease

Comment: One comment stated that grazing permits should contain soil, water, riparian vegetation, and wildlife objectives, in order to help determine whether it is appropriate to authorize early opening or late closing of grazing. The comment continued that most detrimental changes in condition of soil, water, riparian vegetation and wildlife result from ill-planned season of livestock use, duration of use, or amount of utilization. It concluded that terms and condition of the permit need to contain objectives that can address these activities, and that BLM should only change grazing use within the terms and conditions of permit or lease if they have monitoring and assessment data to support the change in use, and the change does not result in removing more forage than the “active use” specified by the permit or lease.

Response: Objectives for soil, water, riparian, wildlife and other resources are usually developed through the planning process and included in land use plans, allotment management plans or activity plans, becoming more site specific at each level of planning. A grazing permit must conform to the objectives of land use plans, therefore terms and conditions are designed to achieve the objectives established in the relevant land use plans and it is not necessary to restate objectives in the permit. In addition to objectives established in

overarching plans, standards for rangeland health provided for in section 4180.2 establish levels of physical and biological condition or degree of function and minimum resource conditions that must be achieved or maintained. Terms and conditions of permits must conform to these rangeland health standards. Section 4130.4(b)(1) already limits the temporary use provided for in this section to the amount of active use specified in the permit or lease. Approval of applications for temporary changes will be dependent on range readiness as observed by the authorized officer, following the criteria in internal guidance and in the standards and guidelines under Subpart 4180.

Comment: Another comment suggested that the rule should provide that grazing use that removes more forage than active use specified in the permit or lease be justified by monitoring and assessment data.

Response: The regulations in this rule already address this situation. If BLM were to authorize use greater than the active use specified in the permit or lease, we would do so under section 4110.3-1, which addresses increasing active use, and base it on monitoring or documented field observations.

Comment: Several comments, including one from a state wildlife agency, stated that the rule should provide for consultation with state wildlife departments before BLM authorizes changes within the terms and conditions of the permit. It went on to say that, just as the criteria to be used in justifying temporary changes in grazing use within the terms and conditions of a permit or lease include annual fluctuations in timing and production of forage and rangeland readiness criteria, so are the needs of wildlife species dependant upon these fluctuations. One comment agreed with BLM’s approach on this issue, but stated that we should consider wildlife-critical periods when deciding whether to authorize the temporary

changes in grazing terms within the terms of the permit or lease.

Response: Consideration of wildlife habitat needs occurs during all stages of planning the multiple use of public lands. During each stage of this planning process -- land use planning, allotment management planning and the formulation of individual permits and leases -- the state is invited to participate in developing objectives and strategies to protect wildlife habitat. Since the temporary changes are by definition within the terms and conditions of permits or leases, we believe the state has had ample opportunity to communicate the wildlife-critical periods and specific habitat needs that BLM must consider while processing an application for temporary changes in grazing use.

Comment: Other comments urged BLM to reconsider applying range readiness criteria, and one asked for a definition of range readiness. They opposed the idea of using “locally established range readiness criteria” in this context, stating that the concept of “range readiness” is no longer supported by the range science community. Another comment stated that BLM should amend paragraph 4130.4(a)(1)(ii) to provide that the “locally established range readiness criteria” must have been established in applicable land use plans, activity plans, or decisions. The comment strongly supported recognizing that range readiness for turn out may vary from year to year, and stated that providing a 14-day window is prudent. Several comments stated that the authorization of temporary changes of use should not be based on active use or preference, but on whether forage is actually available.

Response: We are amending this section in the rule by removing the references to the reasons for authorizing temporary changes in grazing use. Thus, the rule will not contain

any reference to “range readiness criteria.” We make these deletions for two reasons. First, we do not want to limit our discretion as to why we may authorize temporary changes in grazing use, and second, we recognize that the method for determining “range readiness” is controversial and technical in nature. It is therefore more appropriately addressed in manual, handbook or other technical guidance. This guidance will include the criteria BLM will follow in authorizing such changes, and appropriate consultation requirements. BLM considers the availability of forage as well as many other physical and biological factors when processing an application for temporary changes in grazing use.

Comment: One comment urged BLM to allow changes within the terms of the permit or lease only if BLM determines it appropriate before the grazing season, to avoid the possibility of legitimizing trespass by changing grazing use periods or numbers part way through the grazing year.

Response: BLM will not use the provision to approve changes in use after the fact, agreeing that it is inappropriate to legitimize grazing trespass. It is also impossible to determine before the grazing season starts what conditions will exist in ensuing months. We have amended paragraph (e) of this section to make it clear that applications for changes within the terms and conditions must be filed in writing on or before the date the change in grazing use would begin. We have also amended paragraph (b) by adding language recognizing that the allotment management plan may allow grazing beyond the 14-day limit. Nevertheless, grazing would still be limited to the total active use allowed in the permit or lease.

Comment: One comment urged BLM to consider shortening the limit for grazing within the terms and conditions of the permit or lease to 7 days instead of 14 days.

The comment stated that some permittees will request a 14-day opening as soon as forage is bite high. It went on to say that 7 days is plenty to allow for varying weather conditions. The comment also said that the same limit should apply at the end of the grazing season, and that if there is more than 7 days of forage remaining, it should be banked for the next year. Another comment asked BLM to explain how the possible 28-day combined extension of the grazing period will not result in overgrazing.

Response: We have determined that 14 days before the begin date in the permit or lease provides an appropriate degree of flexibility in determining when to allow turnout, as does 14 days after the end date to require round up. As for the suggestion that excess forage measured in days should be saved for the next year, it is unnecessary to state this in the regulations. The provision already limits its application to the amount of active use called for in the permit or lease. Forage in excess of this amount will not be allocated under this provision, so this provision will not lead to overgrazing. The regulations allow increases in active use under section 4110.3-1 in appropriate circumstances.

5.4.27 Nonrenewable Grazing Permits and Leases

Comment: A comment urged BLM to reconsider the proposal to increase grazing on cheatgrass ranges because of the potential effect of cheatgrass on native grasses and ecosystem functions.

Response: Grazing of cheatgrass ranges was given as an example in the preamble of the proposed rule when BLM would not be obliged to consult with the interested public. BLM would need to implement cheatgrass range grazing promptly at specific times and under specific conditions. BLM is not

proposing permanent increases in grazing on cheatgrass ranges.

Comment: A few comments expressed concern over removal of the interested public consultation requirements, they believe that public participation under NEPA would not be sufficient, and noted the possibility that a NEPA categorical exclusion could be implemented. One comment requested that the rule be modified to exclude any possibility of a categorical exclusion. Several comments supported the change as proposed.

Response: The NEPA process was not altered by the proposed change. Environmental analysis on nonrenewable grazing permits would continue under NEPA as before. BLM completes NEPA-required analysis either in response to a specific circumstance following an application for additional use, or by completing a regionally-based analysis, in anticipation of applications, that specifies natural resource and weather-based criteria or thresholds that must be met or crossed as well as other conditions that must be met before BLM will authorize a nonrenewable grazing permit or lease. Further, BLM is not proposing a categorical exclusion related to nonrenewable permits and leases at this time. Categorical exclusions are appropriate when a category of actions “do not individually or cumulatively have a significant effect on the human environment.” 40 CFR 1508.4. Nonrenewable grazing permits and leases have not been analyzed to determine if they meet this criterion. It is possible that these permits and leases, or a distinct subset of them, could qualify for a future categorical exclusion. While no such exclusion is sought at this time, BLM does not believe that a blanket ban on any categorical exclusion is warranted.

Comment: Comments stated that BLM should retain the authority to authorize livestock grazing by issuing nonrenewable

permits or leases to help maintain the health of rangelands in situations where significant authorized nonuse by livestock exceeds a period of time appropriate to the respective western ecosystem.

Response: BLM retains the authority to authorize livestock grazing on an allotment even if the preference permittee is granted nonuse of his permit to graze that allotment for personal or business reasons. Although the rule no longer restricts nonuse of a grazing permit or lease to 3 consecutive years, section 4130.6-2(d) allows BLM to issue a temporary and nonrenewable grazing permit or lease to a qualified applicant when forage is temporarily available, the use is consistent with multiple use objectives, and it does not interfere with existing livestock operations. Under that provision and section 4130.4(e), when an allotment has livestock forage available that is not being used by a preference permittee whom BLM has approved for temporary nonuse for business or personal reasons, BLM may grant other qualified applicants a nonrenewable permit or lease to graze it. Section 4120.3-3(c) requires that the preference permittee or lessee cooperate with the temporary use of forage by the permittee or lessee with a temporary, nonrenewable authorization from BLM. In contrast, if BLM approved an application by the preference permittee for nonuse for reasons of resource conservation, enhancement, or protection under section 4130.4(d)(2)(i), BLM would deny an application for a nonrenewable permit under section 4130.4(e) and Subpart 4160. In this circumstance, if the applicant for a temporary, nonrenewable permit or lease disagreed with BLM's determination that the nonuse was warranted for reasons of resource conservation, enhancement, or protection, he would have the option to protest and appeal the grazing decision that denies his application, and BLM would need to defend

the determination that the nonuse was warranted for the reasons specified.

Comment: One comment stated that BLM should address the effects of the grazing use that would be authorized by a nonrenewable permit on seed replenishment by annual forbs, root reserve replenishment by perennial grasses and forbs, and the potential for damage to soil crust.

Response: We believe that it is unnecessary to address these concerns in the regulations, since BLM undertakes appropriate environmental review before issuing nonrenewable permits. Any effects, such as those identified in the comment, would be addressed as a result of that environmental review.

5.4.28 Prohibited Acts, Settlement, and Enforcement

Comment: Many comments supported the proposed changes to the section on prohibited acts. They agreed that BLM should only enforce actions against permittees if the violations occur while grazing on their permitted allotments. Many comments stated that the proposed changes will promote better cooperation with operators.

Comment: Many comments opposed the changes in section 4140.1 that applied civil penalties only if the acts prohibited took place on the allotment that was subject to the permit or lease. They stated that permittees and lessees should be subject to civil penalties set forth in section 4170.1-1 for performance of prohibited acts in section 4140.1 on any public lands, not just those public lands that are part of their grazing permit or lease. The comments gave a number of reasons for this view. They stated that this policy seems inconsistent with the stated intent of the rule to promote strong partnerships with good stewards of the land by development of simple and practicable ways to attain our shared purpose of

sustaining open space, habitat, and watershed values; permittees should be held accountable and responsible for all local, state and Federal resource related laws; it weakens BLM's enforcement of terms of its own leases and permits; it would have a negative effect on wildlife and their habitats and could lead to the degradation of resources; no analysis is provided for the validity of or necessity for the provision; it makes it easier for permit holders to violate environmental laws without fear of repercussions to their permit; it should require tougher enforcement, not more lenient enforcement; a convicted criminal should not be able to hold a grazing permit; BLM should discontinue leasing to individuals who violate BLM requirements on their allotments.

Response: We intend the change in this provision to clarify whether or not the performance of the prohibited act must occur on the allotment for which the permittee or lessee has a BLM permit or lease. There is also some concern that some of the laws and regulations identified in this category of prohibited acts could result in penalties against permittees and lessees that are unfair because they involve a secondary penalty for a violation of a law or regulation whose primary enforcement is by another agency, with its own separate statutory enforcement and penalty authorities. BLM permittees and lessees are still accountable and responsible for violations of local, state, and Federal resource related laws since they are subject to these other penalties for violations of the acts listed in section 4140.1(c). These other penalties will still serve as a deterrent to violation of the prohibited acts. In addition, if the violation occurs on the allotment of the BLM permittee or lessee, that person is subject to the penalties in Subpart 4170. The amendment in section 4140.1(c) has no effect on enforcement of violations occurring on the permittee s or lessee s allotment.

BLM has not frequently had need to apply this provision of the grazing regulations in the past. A prospective permittee or lessee must meet the requirements stated in section 4110.1 and have a satisfactory record of performance under section 4130.1-1(b). The permittee or lessee must have substantial compliance with the terms and conditions applied to their grazing permit or lease and with the rules and regulations applicable to that permit or lease. The overall purpose for our amendments of the grazing regulations, including those in this section, is to develop strong relationships with all partners. As to whether or not a convicted criminal should be able to hold a permit, it is not Federal or BLM policy to prevent a person who has been convicted of a crime, served his sentence, and been rehabilitated, from gainful employment.

Comment: Comments stated that the rule should not prohibit failure to make grazing use as authorized for 2 consecutive fee years, saying only that the provision does not make sense. Another comment stated that the rule should not cancel permitted use for failure to make substantial use as authorized or for failure to maintain or use water base property because threats to cancel use present an obstacle to developing a financial plan acceptable to a lender.

Response: The prohibition of failing to make grazing use as authorized for 2 consecutive fee years ensures that those who acquire grazing permits or leases will use them for the purposes intended, namely to graze livestock. Originally, the purpose of this regulation was to discourage acquisition of base property and grazing permits or leases by land speculators whose primary business was not livestock-related. It may now also be applicable to those who acquire ranch base property and a permit or lease, yet do not graze so that their permitted allotments are "rested" from grazing, ostensibly realizing

conservation benefits. Failing to make grazing use as authorized for 2 consecutive fee years would occur when a permittee or lessee does not obtain BLM approval for nonuse of their permit or lease and does not graze livestock as authorized by their permit or lease for two years in a row.

BLM believes the rule, and the proposed changes, are rational and do not constitute any threat to operators' finances. Failure to make substantial grazing use as authorized for 2 years, and failure to maintain or use water base property, are listed as prohibited acts so that BLM can ensure that permittees are grazing at authorized levels. This helps ensure accurate monitoring and data collection, and in general supports management of the public lands. The provision is also helpful in recognizing if someone does not intend to graze livestock. Such recognition can be applicable to BLM's implementation of FLPMA, which designates livestock grazing as a "principal or major use" of public lands. 43 U.S.C. 1702(1).

Comment: Comments stated that BLM should not make it a prohibited act for a permittee to violate Federal or state laws relating to placement of wildlife destruction devices, pesticide application or storage, alteration or destruction of stream courses, water pollution, illegal take, harassment or destruction of fish and wildlife, or illegal removal or destruction of archaeological resources. The comment stated these provisions will tend to remove permittees from Federal lands.

Response: BLM disagrees entirely with the implication of the comments that unless permittees are allowed to perform these acts, they will be driven from public lands. The vast majority of BLM permittees and lessees do not perform these acts and yet are able to maintain commercial livestock enterprises that depend upon grazing use of public lands.

Such acts can have a negative effect on the natural resource values of the allotment.

Comment: One comment stated that BLM should not make it a prohibited act for a permittee to violate state brand laws because BLM does not have authority to enforce state brand laws.

Response: BLM agrees it does not have the authority to enforce State brand laws. A permittee or lessee who violates State brand laws would be subject to state penalties enforced by the state, as well as the Federal penalties set forth in the rule. BLM believes that violation of state brand laws is a significant infraction that warrants the penalties as stated in the grazing regulations. While states enforce their respective brand laws, compliance with such laws is also an integral part of a permittee's operations on public lands, and facilitates BLM's own management of public lands. Section 4140.1(c)(1)(ii) makes it clear that being convicted under the state enforcement authority is a condition precedent for being found in violation of this prohibited act. This provision will not be removed from the rule.

Comment: Several comments urged that the rule should not include a prohibited act to place supplemental feed on public lands without authorization, stating that BLM has no personnel who are knowledgeable in livestock nutrition.

Response: The prohibition on placing supplemental feed on public lands without authorization is already stated in the regulations; it is not new in the rule. The rule does, however, add a reminder that information regarding the authorization of placement of supplemental feed on public lands may be in the terms and conditions of the permit or lease, and those must be adhered to as well. We disagree with the assertion that BLM has no personnel knowledgeable in livestock nutrition. One of

the intents of the prohibited act on placing supplemental feed on public lands without authorization is to manage distribution of livestock for improved livestock and rangeland management on an allotment. The requirement for BLM authorization of supplemental feeding should reduce the risk of spread of noxious weeds and other undesirable exotic plants that could be introduced by supplemental feeding. Also, supplemental feeding can influence diet selection of the livestock among established plant species, and thus potentially change plant species composition on the allotment.

Comment: Several comments recommended that BLM adopt as a prohibited act the provision set forth in Alternative 3 of the EIS: “Failing to comply with the use of certified weed-seed free forage, grain, straw or mulch when required by the authorized officer. Comments stated that such a provision would contribute to the ongoing efforts to control the alarming invasion and spreading of exotic and noxious plant species and would benefit wildlife and watersheds.

Response: BLM has decided not to pursue adding a prohibited act to section 4140.1(b) addressing noncompliance with weed-seed free forage requirements on public lands at this time. We agree that promoting the use of weed-seed free forage products on public land will help control the introduction and spread of invasive and noxious plants. BLM will continue to develop and implement a nationwide weed-seed free forage, grain or mulch policy for the public lands, working closely with state and local governments.

Comment: One comment from a state department of agriculture urged BLM to remove all of section 4140.1(c) of the proposed rule. The comment stated that, if a permittee or lessee were convicted of a crime and paid the consequences under that conviction, any additional penalties imposed

by the BLM or another entity would be arbitrary, and that there are other ways to encourage good stewardship of the public lands.

Response: The intent of section 4140.1(c), as amended by this rule, is to help enforce provisions of prohibited acts that would affect the integrity of natural resources on the allotment on which the permittee or lessee has a grazing permit or lease. Stewardship of the land includes protection of endangered species and wildlife, protection from pollution by hazardous materials, protection of streams and water quality, and protection of cultural resources. In this rule, as explained above, we have limited the scope of paragraph (c) to actions on the allotment in question.

Comment: One comment suggested reorganizing section 4140.1(c) of the proposed rule so that the Bald Eagle Protection Act and State livestock laws and regulations are not contained in the same numbered paragraph (3), even though they are in separately numbered subparagraphs (i) and (ii). The comment stated that there was no nexus that justified their designation together under paragraph (3).

Response: There is no substantive basis for changing the organization of section 4140.1(c)(3). There is no qualitative difference between numbering the references to the Bald Eagle Protection Act and the state livestock laws (c)(3) and (c)(4)), respectively, and numbering them (c)(3)(i) and (c)(3)(ii). The nexus between them, if any were needed, is that the same penalty applies.

Comment: One comment suggested that the regulations should provide that any grazing use that was canceled as a penalty is available to other applicants.

Response: Grazing permits and leases that are canceled due to noncompliance with terms and conditions of a permit may be available under section 4130.1-1 to other

qualified applicants who apply for grazing use on that allotment.

Comment: A few comments addressed the section on settlement of the proposed rule. One urged BLM to change the regulations to provide that a nonwillful livestock grazing use violation can only occur upon a finding that a nonvolitional act or an act of negligence by the permittee or lessee (or their affiliates) caused the violation. It stated that section 4150.3 should provide that an act of negligence by the permittee or lessee is required as a precedent to a finding of nonwillful livestock grazing trespass, so that BLM does not cite permittees and lessees for trespass when, for example, livestock stray from their authorized pasture because another party left a gate open.

Response: BLM disagrees with this view. Nonwillful unauthorized grazing use occurs when the operator is not at fault, such as when cattle stray from their authorized place of use because a third party left a gate open. In contrast, willful unauthorized grazing use occurs, for example, when the use results from a volitional act or act of negligence committed by a permittee, lessee, or affiliate. The grazing regulations continue to provide that, under certain circumstances, nonwillful violations are eligible for nonmonetary settlement. It also remains a prohibited act under the grazing regulations for any person to fail to reclose any gate or livestock entry during periods of livestock use.

Comment: Another comment urged that we add language to section 4150.3(e) to clarify that BLM cannot withhold a grazing authorization unless: (a) attempts at settlement have failed; (b) BLM has issued a decision that finds there has been a violation, demands payment for the amounts due, and provides that grazing will not be authorized until payment has been received; and (c) any petition for stay of such a decision has been denied. The comment stated that

some BLM offices have been withholding grazing authorizations based on allegations of trespass that have not been finally determined upon review, and that this is contrary to legal administrative procedure.

Response: BLM agrees that the regulations require clarification on this matter. The proposed rule included new paragraph 4150.3(f) providing that, should a decision issued under section 4150.3(e) that demands payment for outstanding unauthorized use fees and penalties be administratively stayed, BLM will authorize grazing under the regulations pending resolution of the appeal. BLM may not withhold authorization to graze under this section unless BLM has issued a decision under Subpart 4160 demanding payment for the amount due, the decision is in effect, and the amount has not been paid.

Comment: One comment urged BLM to provide in the regulations for mandatory cancellation or suspension of grazing authorizations, or denial of applications for grazing use, if permittees or lessees fail to pay trespass fees and fines that BLM finds are due under section 4150.3, so that the permittee or lessee does not unduly evade or delay payment.

Response: The regulation referenced by the comment provides that “[t]he authorized officer may take action under Subpart 4160 to cancel or suspend grazing authorizations or to deny approval of applications for grazing use until such amounts have been paid.” This regulation gives BLM permission to take action under 4160—in other words, issue a grazing decision—in this circumstance. Subpart 4160 requires BLM to issue a grazing decision, with right of protest and appeal, to cancel or suspend grazing authorizations or to deny approval of applications for grazing use. BLM sees no need to mandate that failure to pay trespass fees will result in suspension. Facts

and circumstances in each trespass case are unique, and BLM prefers to retain its discretion to determine when it would be appropriate to cancel or suspend a permit or lease.

5.4.29 Proposed and Final Decisions

Comment: Comments opposed the amendment to provide that a biological assessment or biological evaluation that BLM prepares for purposes of the Endangered Species Act (16 U.S.C. 1531 –1544) is not a proposed decision for purposes of a protest to BLM, or a final decision for purposes of an appeal to the Office of Hearings and Appeals under the Taylor Grazing Act. They stated that it effectively eliminates all administrative appeals of grazing permit or lease terms and conditions that result from a biological assessment (BA) and related biological opinion (BO). Other comments said that where the terms and conditions of a grazing lease or permit were mandated by a BO, the terms and conditions should be subject to appeal if they were substantially the same terms and conditions submitted by BLM in a BA or biological evaluation (BE). Both the TGA, 43 U.S.C. 315, and the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, provide a right of administrative appeal, comments noted.

Other comments pointed out that proposed section 4130.3(b)(1) presented similar problems. That section states that permit or lease terms and conditions may be protested and appealed unless they are not subject to review by the Office of Hearings and Appeals (OHA). This would include terms and conditions mandated by a biological opinion prepared under ESA. Comments opposed this provision, arguing that it denied permittees and members of the public opportunities to correct mistakes in an agency BE.

Response: Section 9 of the TGA, 43 U.S.C. 315h, states that the Secretary of the Interior shall provide by appropriate rules and regulations for local hearings on appeals from the decisions of the administrative officer in charge in a manner similar to the procedures in the land department. This provision has been construed to require a hearing on the record under Section 5 of the APA, 5 U.S.C. 554. The regulations called for by Section 9 appear at 43 CFR Subpart 4160 and 43 CFR 4.470 - 4.480. Appeals of BLM grazing decisions under these rules (or their predecessors) have occurred for decades.

Key to Section 9 is the notion that a decision is a prerequisite to an appeal. The rule states at section 4160.1 that a BA or BE is not a decision. This provision makes plain a fact that has long been clear from regulations of FWS. As defined at 50 CFR 402.02, a BA refers to information prepared by a Federal agency about a proposed or listed species that may be present in an action area, and the evaluation of the potential effects of the action on the species. Regulations at 50 CFR 402.12(a) provide that a BA shall evaluate the potential effects of an action on listed and proposed species and determine whether any such species are likely to be adversely affected by the action. A BA is used to determine whether formal consultation is necessary.

These regulations at 50 CFR make clear that a BA or BE is an intermediate step that BLM will take in assessing its obligations under the ESA. A BA or BE does not grant or deny a permit application, modify a permit or lease, or assess trespass damages, which actions are examples of BLM decisions that are subject to appeal.

A BA or BE is not a proposed decision for purposes of a protest to BLM, or a final decision for purposes of an appeal to OHA under the Taylor Grazing Act. The rule at

section 4160.1(d) prospectively supersedes the decision of IBLA in *Blake v. BLM*, 45 IBLA 154 (1998), *aff'd*, 156 IBLA 280 (2002), which held that the protest and appeal provisions of 43 CFR Subpart 4160 apply to a BA or BE.

As explained in the preamble to the proposed rule at 68 FR 68464, a BA or BE is a tool that FWS and NOAA Fisheries use to decide whether to initiate formal consultation under Section 7 of the ESA. Formal consultation results in a biological opinion prepared by FWS. If BLM were to issue a decision implementing a reasonable and prudent alternative set forth in a BO, or if it issued a decision implementing the mandatory terms and conditions of an incidental take statement attached to the BO, any review by OHA would be limited to the merits of BLM's decision. OHA could not second-guess the BO or the findings of FWS, because its review authority does not extend to decisions of FWS. This policy is set forth in a memorandum of Secretary Lujan, dated January 8, 1993, and affirmed by Secretary Babbitt on April 20, 1993.

Concerns in comments as to review of the terms and conditions of a BO are addressed by Secretary Lujan's memorandum in this way: "In summary, OHA has no authority under existing delegations to review the merits of FWS biological opinions. Any review of biological opinions would necessarily be limited to the Federal district courts pursuant to Section 11(g) of the ESA. The longstanding administrative practice of not providing OHA review of the biological determinations of the FWS under the ESA, the specific remedies provided by the ESA itself, and the need for expedited treatment, all militate against a change to the existing delegations."

Comment: Comments urged that BLM amend section 4160.3 so that the authorized officer cannot make decisions adverse to

the livestock grazing permittee or lessee effective immediately unless he has found after a hearing on the record that the current authorized grazing use poses an imminent likelihood of irreparable resource damage. The comment also recommends that BLM be barred from making a decision effective immediately before the hearing unless the authorized officer declares an emergency, after having applied the IBLA standards for a stay found in 43 CFR 4.21(b)(1), in which case the decision would be in effect only for the 30-day period allowed for filing an appeal. In addition, the comment recommended retaining the consultation requirements already proposed for section 4160.1. The comment based these recommendations on the arguments that BLM grazing decisions over the past 10 years have not been based on state of the art rangeland studies, and the OHA regulations misplace the burden of proof on appellants in justifying stays.

Response: Consultation, cooperation, and coordination with affected permittees and lessees is already required before active use can be decreased. *See* 43 CFR § 4110.3-3. Further, any reduction in active use must be issued as a proposed decision, subject to a possible protest before it is finalized, unless the authorized officer documents the emergency-type situations listed in section 4110.3-3(b)(1). A decision may also be appealed after it is finalized, and a stay of the decision may be sought. Thus, the current requirements provide ample opportunity for affected permittees and lessees to participate in the decision-making process. Adding a pre-decisional hearing based on the OHA stay standards would unnecessarily limit the BLM's ability to respond in a timely manner to changing range conditions.

Comment: A number of comments addressed proposed section 4160.3. That section provides that, notwithstanding section

4.21(a), BLM may provide that a final decision shall be effective upon issuance or on a date established in the decision when BLM has made a determination under sections 4110.3-3(b) or 4150.2(d). (The latter two provisions authorize final decisions effective upon issuance where reductions in permitted use or temporary closures are necessary.)

Comments expressed the opinion that BLM decisions, as a general matter, should be suspended pending resolution of an appeal. Comments acknowledged that special circumstances could apply, such as the likelihood of irreparable resource damage, to render a decision effective during this time.

Response: The comments, if adopted, would, in effect, revive the provisions of section 4.21(a) prior to its amendment on January 19, 1993, at 58 FR 4939. Prior section 4.21(a) provided that “except as otherwise provided by law or other pertinent regulation, a decision will not be effective during the time in which a person adversely affected may file a notice of appeal, and the timely filing of a notice of appeal will suspend the effect of the decision appealed from pending the decision on appeal.” (A grazing regulation similar to prior section 4.21(a) was only changed in 1995) This prior section was criticized because it allowed the filing of an appeal to halt agency action without regard to the merits of the appeal.

Current section 4.21 sets forth a general rule that suspends an agency decision for the 30-day period during which appellant may file an appeal and request for stay. An appellant seeking a stay must demonstrate, among other factors, the likelihood of success on the merits of the appeal. We believe this to be a superior rule. It allows agency decisions to go into effect reasonably quickly, but allows for a stay of such decisions upon a showing as to the likelihood of success on the

merits and other requirements under section 4.21.

Proposed section 4160.3 acknowledges the vitality of current section 4.21(a) even as it sets forth an exception to its terms. It is not necessary to promulgate a general rule that would suspend a decision during appeal.

5.4.30 Administrative Appeals, Stays of Appeals, and Judicial Matters

Comment: Comments expressed support for proposed section 4160.4(b), stating that, in effect, the immediately preceding authorization would not be terminated, but would be extended for purposes of the stay. This is consistent with a stay allowing the status quo to continue, comments stated, and allows for continuity of operations when grazing decisions are appealed. Other comments thought that our use of the terms “authorized” and “authorization” in the proposed rule was confusing and should be clarified.

Response: We have clarified section 4160.4(b) in the final rule to reflect these comments. We state that, upon OHA’s issuance of a stay of a decision described at paragraph (b)(1), BLM will continue to authorize grazing under the permit or lease that was in effect immediately before the decision was issued. Clarifying language has also been added to paragraphs (b)(2) and (b)(3).

We invited comment (at 68 FR 68465) on how we might effectively incorporate the exhaustion requirement of the APA at 5 U.S.C. 558(c) and the APA judicial review “finality” provision at 5 U.S.C. 704. Section 558(c) provides in part, “When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been

finally determined by the agency.” The APA’s exhaustion requirements are found at 5 U.S.C. 704. As explained in our proposed rule at 68 FR 68465, an agency action is not considered final for purposes of judicial review where the agency requires by rule that an administrative appeal to a superior agency authority be filed and provides that the agency action is inoperative while the appeal is pending.

Comment: A comment from OHA suggested elimination of proposed section 4160.4(c), stating that the rationale for authorizing grazing consistent with the stayed decision does not logically apply to the cases described at paragraphs (c)(2) and (c)(3), which addresses forage available on ephemeral or annual rangeland or temporarily available is, inherently, not reliably available from year to year, and BLM allocates it on a short-term basis of a year or less. Decisions allocating this type of forage do not involve activity of a continuing nature under 5 U.S.C. 558(c). We agree with this comment, and have adopted section 4130.6-2(b) in lieu of proposed regulations at section 4160.4(c)(2) and (c)(3)

This same comment stated that it is difficult to evaluate proposed section 4160.4(c)(4) without knowing the full range of decisions to which it would apply, and added that it seems odd to provide for stay petitions in a given category of cases and also provide that, if a stay is granted in such cases, grazing will be authorized irrespective of the stay. If an administrative process is worth having, the comment stated, effect arguably should be given to any stays that are granted.

Other comments expressed concerns about trying to identify the types of cases to which paragraphs (b) and (c) of section 4160.4 might apply. It is impossible to anticipate all types of appeals that might be encountered because grazing decisions do

not fit neatly into one of the listed categories, these comments stated.

Response: As a result of the concerns expressed in these comments, we have entirely removed proposed section 4160.4(c) from the rule and limited paragraph (b) to apply to a very circumscribed set of circumstances. With the intention of simplifying these provisions, and improving administrative efficiency, we are revising the regulations proposed at section 4160.4(b) to address the following kinds of BLM grazing decisions:

- Those that modify terms and conditions of a permit or lease during its current term or during the renewal process; and
- Those that deny a permit or lease to a preference transferee, or offer a preference transferee a permit or lease with terms and conditions that differ from those in the previous permit or lease.

If a BLM decision makes changes to terms and conditions of a permit or lease, and all or some of these changes are stayed by OHA pending appeal, then the affected permittee, lessee, or preference transferee may graze in accordance with the comparable provisions of the immediately preceding permit or lease that were changed or deleted by the BLM decision under appeal, subject to any applicable provisions of the stay order and subject to proposed section 4130.3(c).

There is no need for a provision equivalent to section 4160.4(c)(1) in the proposed rule. That paragraph provided that, notwithstanding a stay order by OHA, we would authorize grazing consistent with our decision that modifies a permit or lease because of a decrease in acreage available for grazing. On internal review, we found the proposed provision unnecessary in light of

the provision in section 4110.4-2(b), which gives grazers a 2-year lag time to reduce grazing in decreased acreage situations.

Comment: In our proposed rule at 68 FR 68455, we noted that we were not addressing whether BLM would be assigned the burden of proof in appeals. A number of comments thought that this topic should have been addressed, and moreover that BLM should bear the burden of proof to support its decisions. Several cited the APA in support. Section 7 of the APA, 5 U.S.C. 556(d), provides that “[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof.”

Response: We believe the comments lack merit for the reasons stated in our proposed rule. Each case must be analyzed on its own terms to determine the identity of the proponent of a rule or order. A one-size-fits-all rule would be difficult to craft. Case law of IBLA has answered this question in one context: where a rancher is claimed to have allowed cattle to graze in trespass, BLM has the burden of proof. *BLM v. Ericsson*, 88 IBLA 248, 255, 261 (1985). However, as we pointed out in the proposed rule (68 FR 68456), if BLM denies a permit or lease to a new grazing applicant, that applicant would have the burden of showing where BLM erred in its decision. See *West Cow Creek Permittees v. BLM*, 142 IBLA 224, 236 (1998).

Comment: One comment said that we should not have cited in our proposed rule a workers compensation board case when discussing who bears the burden of proof in grazing appeals.

Response: We cited *Director, Office of Workers' Compensation Programs v. Greenwich Collieries*, 512 U.S. 267 (1994), in our proposed rule because it is a fairly recent case of the U.S. Supreme Court that examines section 7 of the APA in considerable detail. Section 7 is key to any

decision assigning the burden of proof in a formal APA hearing.

Comment: A number of comments suggested that BLM consider imposing bonds on appellants who are not directly affected by a BLM decision in order to help pay for adverse economic effects to permittees during the adjudication of an appeal. We have not adopted the comment.

Response: In order for an appeal to be filed, the person or entity filing an appeal must be adversely affected by a decision of BLM. 43 CFR 4160.4. It is thus unclear who would have to obtain the bond suggested by comments. A bond is ordinarily required by BLM to protect the interests of the United States. In such a case, the holder of a permit would have to obtain a bond in order to secure the obligations imposed by the permit and applicable laws and regulations. See, e.g., 43 CFR 2803.1-4 (bonding for rights-of-way.)

Comment: One comment stated that only those individuals who are directly affected by a decision and can meet the standing requirements of 43 CFR Part 4 should be able to appeal terms and conditions contained in a BLM grazing decision.

Response: Regulations at 43 CFR 4.470(a) provide that any applicant, permittee, lessee, or any other person whose interest is adversely affected by a final decision may appeal to an administrative law judge. Thus, the requirement that an appellant be directly affected appears to be set forth in existing regulations. This requirement is also set forth in the standing regulations of IBLA, which require that an appellant be a party to the case and adversely affected by the decision on appeal. A party is adversely affected when that party has a legally cognizable interest and the decision on appeal has caused, or is substantially likely to cause, injury to that interest (43 CFR 4.410(d)).

Comment: One comment stated that BLM regulations should provide for independent science panels to examine and resolve grazing-related disputes.

Response: We believe that the formal APA hearing provided by the Taylor Grazing Act, with its opportunity for presentation of evidence, cross examination of witnesses, and decision by an impartial tribunal, provides an opportunity for the evidence, including scientific evidence, to be impartially examined.

It should be noted that there are mechanisms in place for providing science advice and input before the issuance of a proposed and final grazing decision. Existing regulations at 43 CFR 1784.6-1 and 1784.6-2 provide for the formation of Resource Advisory Councils (RACs), whose function is to “advise ... the Bureau of Land Management official to whom it reports regarding the preparation, amendment and implementation of land use plans for public lands and resources within its area.” RACs, in turn, may provide for the formation of “Rangeland Resource Teams,” whose function is “providing local level input to the resource advisory council” regarding issues pertaining to the administration of grazing on public land within the area for which the rangeland resource team is formed. While a rangeland resource team is not an independent science panel, one of its functions is to examine and provide the RACs advice regarding grazing-related disputes. The rangeland resource team, in turn, may request that BLM form a technical review team from Federal employees and paid consultants whose function is to “gather and analyze data and develop recommendations [for consideration by the rangeland resource team] to aid the decision-making process... .” Ultimately, if BLM’s decision is disputed despite the efforts and

advice of these groups, it may be protested and appealed under Subpart 4160 and Part 4.

Comment: One comment said that BLM should add to its regulation a requirement that all parties in a dispute must first litigate under the OHA administrative process to allow field solicitors to develop and resolve cases before they are filed in Federal Court.

Response: The comment is in effect asking for a regulation requiring exhaustion of administrative remedies. The APA addresses exhaustion at 5 U.S.C. 704, and OHA regulations cross-reference this provision. OHA’s exhaustion requirement appears at 43 CFR 4.21(c). That regulation states that no decision which at the time of its rendition is subject to appeal to OHA shall be considered final so as to be agency action subject to judicial review under 5 U.S.C. 704, unless a petition for stay of the decision has been filed in a timely manner and the decision being appealed has been made effective pending the appeal.

Comment: A comment stated that BLM should add a provision to the grazing regulations requiring BLM to notify permittees when BLM has received a Notice of Intent to sue or has been sued under ESA, Clean Water ACT (CWA) or other environmental law, when the outcome of the lawsuit may affect the permittee’s allotments or grazing privileges. This advance notification would allow the permittee to take whatever action he deems necessary to protect his interests.

Response: Notification procedures for potential challenges under various Federal laws are more appropriately handled through policy rather than regulation. This is because as statutory or regulatory provisions change BLM may have to undertake a regulatory change which is time consuming. The BLM does not have rulemaking authority to implement CWA or ESA as to citizen-suit

provisions or notice of intent provisions. The CWA provides that notice “shall be given in such manner as the Administrator [of the Environmental Protection Agency] shall prescribe by regulation.” 33 U.S.C. 1365(b). The FWS and NOAA Fisheries) may promulgate regulations for the enforcement of the ESA, by citizen suit and by other means. 16 U.S.C. 1540(f). BLM will defer to the rulemaking authorities of these agencies. As a matter of policy and customer service, however, BLM routinely informs grazing operators of such eventualities as lawsuits that may affect their allotments.

Comment: One comment asserted that a rancher does not have to have a grazing permit to access his vested rights, and that the rancher’s ownership of water rights, forage rights, and improvements are issues that are not appealable, and cited several court decisions.

Response: Under the Taylor Grazing Act (sections 3 and 15), ranchers must hold a BLM permit or lease in order to graze livestock on public lands. The current regulations, as well as the proposed regulations, reiterate this requirement, 40 CFR Subparts 4130 and 4140, which has been upheld by decisions of Federal courts. See, e.g., *Osborne v. United States*, 145 F.2d 892, 896 (9th Cir. 1944) (livestock grazing on public lands is “under the original tacit consent or ... under regulation through the permit system ... a privilege which is withdrawable at any time for any use by the sovereign.”) Although the Court of Federal Claims ruled in 2002 that a holder of ditch right-of-way established under the Act of 1866 also has an appurtenant right for livestock to forage 50 feet on each side of the ditch, this matter is still in litigation and no final decision has been rendered by the court. *Hage v. United States*, 51 Fed. Cl. 570, 580-84 (2002).

5.4.31 Grazing Fees

Comment: We received numerous comments on grazing fees. Many comments favored increasing BLM’s grazing fees to help fund monitoring activities and range improvements and to offset the costs of managing public rangelands. The reasons cited for raising fees included the following: the current system skews the market, below-market fees promote overgrazing, it is inequitable to increase fees for recreation and not for grazing, and reduction of taxpayer burden. Comments stated that BLM should no longer subsidize public land ranching. Several comments recommended that BLM increase fees to fair market value or to private land lease rates but offer ranchers the financial incentives of lowered fees in return for conservation easements or for management that improves riparian areas, land health, and maintenance of wildlife habitat and corridors. Many comments stated that BLM should allow competitive bidding for allotments, and listed a number of reasons, including economic efficiency, promotion of multiple use and rangeland health, reduction of taxpayer burden, and emulation of state and eastern national forest grazing fees.

Response: The grazing program has many purposes. Congress, in relevant statute, has directed that a reasonable fee be charged for grazing use. There are many requirements that we have under the law, two of which are to protect the health of the land and to manage the public lands on a multiple use basis, which includes livestock grazing. The 1995 regulations and the changes contained in this rule combine to protect the health of the land while allowing appropriate public land grazing. The amount of appropriated funds that go toward the grazing program as opposed to that which is returned in various fees and charges does not amount to a subsidy. Additionally, there are benefits to

the general public in open space preserved as private ranch land attached to Federal allotments that might not exist but for the grazing program. Benefits also include the production of beef as well as the Western heritage that is important to the American identity.

As indicated in the ANPR (FR Volume 68, Number 41, March 3, 2003) as well as the proposed rule (FR Volume 68, Number 235, December 8, 2003), we were not intending to address grazing fee issues in this rulemaking. We specifically stated that increasing grazing fees and restructuring grazing based on market demand were outside the scope of this rulemaking. We have not analyzed any of the grazing fee related options presented in comments, have not addressed grazing fees in the rule, and have not adopted any of the recommendations. The existing fee structure is not altered by this rule.

Comment: One comment stated that BLM should implement grazing fee increases immediately rather than implement them over 5 years because public land ranchers should not be protected from market forces.

Response: We did not propose any changes in grazing fees nor in how changes in grazing fees would be implemented. It appears that the individual making this comment misinterpreted our proposal to phase in implementation of changes in active use over a 5 year period when such changes were in excess of 10 percent. This proposal applied only to changes in grazing use—not changes in grazing fees.

Comment: Many comments recommended that the sheep or goat to cattle equivalency be changed from “5 sheep or 5 goats” to “7 sheep or 7 goats.” They asserted that this proposed change would not involve a change in any portion of the established grazing fee formula, but would track more closely the amount of forage used by sheep as compared to cattle. Several comment

letters pointed out that the 5:1 ratio used by the BLM, originated from data collected on sheep and cattle grazing in Utah from 1949 to 1967. The research data was collected by Dr. C. Wayne Cook, who used the concept of metabolic body weight to reflect the differences between nutritional requirements of different species. Dr. Cook’s research was based on forage consumption and energy expenditures for sheep and cattle and indicated an approximate 5:1 ratio; although Dr. Cook concluded that “these calculations do not represent a conversion factor for exchanging numbers of one kind of animal for another on the range.” This early research was also based upon using a 914 lb. lactating cow and her calf as an AUM, and a 139 lb. ewe and her lamb for forage consumption estimates. The comments stated that in 1991, the Forage and Grazing Terminology Committee with participation from the U.S. Departments of Agriculture and Interior published new standardized definitions of animal units. The animal unit was defined as a 1,100 lb. nonlactating bovine, and estimated the weight of a mature ewe at 147 pounds. This new definition indicated that a 6.5:1 ratio would be appropriate. Comments also cited a study by the USDA-ARS 1994, Animal Unit Equivalents: An Examination of the Sheep to Cattle Ratio for Stocking Rangelands which supported a 7:1 ratio. This study was submitted with comments by several organizations. Several of the comments objected to the rationale given in the proposed rule for not addressing this issue, which was that the ratio is used for the purpose of calculating grazing fee billings and is therefore outside the scope of the rule. Comments stated that this issue is not a grazing fee issue but an issue of equity and improved management for the health of western rangelands

Response: The sheep to cattle ratio is strictly a matter involving grazing fees and is

therefore outside the scope of the proposed rule. Confusion regarding the role of the sheep to cattle ratio is understandable due to the two distinct definitions of Animal Unit Month (AUM) in the grazing regulations. However, a sheep to cattle ratio is only stipulated in one of these definitions.

The first definition is used in all aspects of grazing administration except fee calculation. See section 4100.0-5. Here, an AUM is defined as follows: "Animal unit month (AUM) means the amount of forage necessary for the sustenance of one cow or its equivalent for a period of 1 month." No sheep to cattle ratio is stipulated, no specific amount of forage is designated, and no equivalency to any other animals is mentioned.

The second definition of AUM, the definition at issue here, is found at section 4130.8-1(c). It is as follows: "For the purposes of calculating the fee, an animal unit month is defined as a month's use and occupancy of the range by 1 cow, bull, steer, heifer, horse, burro, mule, 5 sheep, or 5 goats...." This definition strictly pertains to the calculation of fees. The ratios of all kinds and classes of livestock to one another are based upon the administration of a month's use and occupancy, not the amount of forage necessary for their sustenance or any other biological measure. This method of calculating the fee facilitates efficiency and consistency in permit administration by controlling variables associated with ecological site, vegetation composition or quality, topography, pasture, allotment, grazing management, breed, size, weight, physiological stage, metabolic rate, and so forth.

Comment: On the other hand, one comment stated that each sheep and goat should be counted as one animal unit because all animals should be charged, and because any other way of accounting allows too much grazing.

Response: As previously indicated, issues related to the fee structure, including the definition of an animal unit month for purpose of calculating fees, are not being addressed in this EIS. In response to this comment, however, we wish to clarify that, as defined in section 4100.0-5, an animal unit month (AUM) is "the amount of forage necessary for the sustenance of one cow or its equivalent for a period of 1 month." On a forage-consumption basis, 5 sheep or goats grazing for one month is, by regulation, "equivalent" to one cow grazing for one month, and therefore comports with the regulation.

Comment: One comment stated that BLM's practice of not charging a grazing fee for calves under 6 months is antiquated, and BLM should charge a fee for such calves.

Response: As previously stated, we are not addressing issues related to the fee structure, including the definition of an animal unit month for the purpose of calculating fees. In response to this comment, however, we provide the following information for clarification of the exclusion of calves 6 months or younger from the calculation of fees. Typically, calves under 6 months of age are not weaned and therefore rely on their mother's milk rather than forage as their primary source of sustenance. Because grazing fees are charged for the amount of forage consumed, an animal unit is considered to be a mother cow and her calf less than 6 months of age, unless the calf has been weaned or becomes 12 months of age during the authorized period of use.

Comment: Another comment urged BLM to amend the definition of an animal unit month in section 4130.8-1 by specifying that 2 steers or heifers that are between 1 and 2 years old will equal 1 animal unit month for the purposes of calculating the grazing fee. The comment explained that a heifer will not calve until she is over 24 months of age. Her

weight is not equal to that of a grown cow. A weaned steer or heifer that weighs 500 lbs. going on an allotment will not consume forage equal to that consumed by a cow. In daily intake, it will require 2 steers to equal 1 cow. The comment concluded that this change would allow for more flexibility in livestock operations.

Response: The definition of an animal unit month in section 4130.8-1(c) is strictly for “the purposes of calculating the fee.” As we have stated throughout this rulemaking process, matters involving grazing fees are outside the scope of this EIS. Therefore, the definition of animal unit month in section 4130.8-1(c) is outside the scope of this rule.

Comment: Numerous comments recommended that BLM recognize that the surcharge, which is added to grazing fee billings under section 4130.8-1(d) of the current regulations where an operator does not own the livestock that are authorized by permit or lease to graze on public lands, is not a grazing fee and eliminate or reduce surcharges.

Response: We have not changed the requirement that a surcharge be added to grazing fee billings where an operator does not own the livestock that are authorized by permit or lease to graze on public lands (except that the paragraph is redesignated (f) in the rule). The surcharge equals 35 percent of the difference between current Federal grazing fees and the prior year’s private grazing land lease rates for the appropriate state as determined by the National Agricultural Statistics Service. Sons and daughters of the permittee or lessee are exempt from the surcharge where they meet the conditions listed at section 4130.7(f).

The surcharge is BLM’s most recent response to a longstanding problem, i.e., a potential for windfall profits stemming from pasturing agreements. In 1984, Congress enacted legislation that was intended to

recapture such profits for the Federal treasury. The legislation provided that “the dollar equivalent of value, in excess of the grazing fee established under law and paid to the United States Government, received by any permittee or lessee as compensation for assignment or other conveyance of a grazing permit or lease, or any grazing privileges or rights there under, and in excess of the installation and maintenance cost of grazing improvements provided . . . shall be paid to the Bureau of Land Management.” Continuing Appropriations, 1985 – Comprehensive Crime Control Act of 1984, Public Law No. 98-473, 98 Stat. 1839 (1984). The penalty for noncompliance was mandatory cancellation of the operator’s permit or lease. BLM promulgated regulations to implement the 1984 legislation.

In 1986, the General Accounting Office reviewed the extent to which BLM permittees and lessees sublease their grazing privileges, and the adequacy of our regulations to control this practice. One of the recommendations in the resulting report (RCED-86-168BR) was to require that subleasing arrangements be approved for a minimum of 3 years. Such a lease constitutes a long-term commitment, and thus reduces the potential for large, short-term profits. This recommendation was promulgated in 1995, and continues in effect at section 4110.2-3(f).

In 1992, the Inspector General for the Department of the Interior recommended that BLM adopt more stringent measures further reducing the potential for collecting windfall profits through pasturing agreements or subleasing of base property. Selected Grazing Lease Activities, Bureau of Land Management, Report No. 92-I-1364 (Sept. 1992). BLM responded by promulgating the existing surcharge provision at section 4130.8-1(d).

Comment: One comment stated that the surcharge is an obstacle to finding ways to

adapt to drought conditions. This comment stated that short-term flexibility is important so that livestock can be moved rapidly from an area in decline to an area where forage is available. Some other comments stated that the surcharge is an obstacle to adjusting stocking rates quickly when weather conditions change, and that the surcharge results in the loss of cooperation among ranchers in the event of a natural disaster. Finally, some comments stated that the elimination of surcharges would improve management flexibility, resulting in more effective relationships between BLM and operators, as well as better land management.

Response: Drought and other weather-related conditions are a perennial risk in ranching and farming. We are not persuaded that the claimed extra increment of risk, which may or may not be added by the surcharge, is significant enough to warrant rescission.

Comment: Many comments suggested that the surcharge discourages livestock owners from entering into pasturing agreements with permittees who pass through their costs to livestock owners. According to these comments, the surcharge causes permittees to lose opportunities to collect income that could help them weather cycles of prosperity and hardship. These comments also allege that the surcharge causes destabilization of ranching operations, loss of open spaces and western communities, and fragmentation of wildlife habitat.

Response: The concerns expressed in these comments provide no basis for BLM to eliminate or reduce the surcharge. Permittees who want to augment their income without purchasing livestock may sublease all or some or all of their public land grazing privileges to another operator along with the base property associated with those grazing privileges. While BLM must approve the transfer of the grazing preference and permit

in connection with the transaction, BLM assesses no surcharge.

Comment: Some comments suggested that the surcharge is too high for permittees to profit from their operations while paying the surcharge. Several of these comments stated that the surcharge makes public land ranchers less competitive than ranchers who use only private land. One of these comments stated that the surcharge gives nonresident interests a foothold on public rangelands, and increases financial pressures for owner-operated ranches. Finally, some of these comments included two illustrations intended to show financial difficulties resulting from the surcharge. In one illustration, a young rancher is forced to abandon his efforts to establish a cow-calf operation. In another, a rancher's widow incurs expenses in order to avoid the surcharge, so that she and her family can remain on their ranch.

Response: It is unreasonable to assign the surcharge the sole blame for an individual rancher's financial success or failure. Ranching tends to be a low- or negative-profit enterprise on both private and public lands. There are many factors in addition to the grazing fee surcharge that may affect whether a rancher will have financial success; the rancher's business acumen, operating loan interest rates, mortgage rates, livestock prices, business efficiency of the enterprise, and the weather are among those factors. The comments we received on financial effects do not justify changing the surcharge regulation.

Comment: Some comments stated that the surcharge was instituted as a penalty, and that the surcharge is not a grazing fee issue.

Response: To the contrary, the surcharge was implemented as a component of the grazing fee to reduce the potential for windfall profits, as identified by the General Accounting Office and the Office of the Inspector General. 60 FR at 9945.

Comment: One comment stated that BLM should not exempt children of permittees from the surcharge in order to reduce the taxpayers' burden for the management of public lands. One comment stated that, assuming windfall profits are a large enough concern to justify the surcharge, BLM should waive it in cases of drought and stewardship contracts, and otherwise retain the requirement. Another comment stated that there is no windfall profit to the rancher if he brings in outside cattle. A few comments suggested that the surcharge should be eliminated because it represents an unnecessary workload for BLM. One of these comments stated that administering the surcharge takes valuable time away from on-the-ground monitoring and management activities. Another stated that the surcharge complicates the paperwork for both the operator and the land manager. Some other comments requested that we consider providing relief from the surcharge in cases of extreme drought, or where permittees' finances are strained. Some comments stated that the surcharge should not apply where ranchers sublease their private property rights in their allotments.

Response: These suggestions, like all those pertaining to fees, are beyond the scope of this EIS. Moreover, none of the comments provide persuasive evidence that the original rationale – the potential for windfall profits – has changed. We have not changed the provision establishing a surcharge.

Comment: One comment stated that BLM should waive surcharges for permittees who enter into stewardship contracts to make surplus forage available to other operators, pursuant to Section 323 of Public Law No. 108-7. This comment states further that a permittee who provides surplus forage under a stewardship contract performs a public service by helping to preserve ranches, with

their attendant benefits to local economies, open spaces, and wildlife habitats.

Response: As we have stated, we are not addressing issues related to grazing fees, including surcharge issues. Furthermore, this rule is not promulgated to implement the legislation (16 U.S.C. 2104 note) that authorizes BLM to enter into stewardship contracts with private persons or entities, or with other public entities. That legislation is the subject of guidance issued by BLM and the U.S. Forest Service. 69 FR 4107, 4174 (Jan. 28, 2004).

Comment: One comment stated that BLM should not allow “after-the-grazing-season” payment of grazing fees.

Response: After-the-grazing-season billing is allowed only where BLM has made an allotment management plan (AMP) a part of the permit or lease and it provides for the privilege of after-the-grazing-season billing. AMPs generally contain grazing systems that prescribe limits of flexibility in the number of livestock and period of use, allowing operators to adjust grazing practices within such limits to meet the resource use and management goals specified in the AMP. BLM may cancel the privilege of after-the-grazing-season billing if the operator fails to submit the required report of actual grazing use on time, fails to pay the grazing fee billing on time, or if BLM finds that the use is erroneously reported. BLM believes that after-the-grazing-season billing remains a useful management and administrative tool that happens to be advantageous to operators. In addition to relieving operators of the requirement to pay fees in advance, it provides flexibility for operators to make adjustments in grazing use, within pre-set limits, without first having to apply for and receive approval for such adjustments. BLM benefits from reductions in paperwork, and both BLM and operators benefit from the

improved working relationships that result from AMPs.

Comment: One comment urged BLM to find a means of reimbursing counties for bearing the burden of high Federal land ownership in parts of the West. They suggested that BLM allocate a portion of grazing lease and permit fees to the counties.

Response: This issue is not addressed in the regulations. It is, however, addressed in the Taylor Grazing Act. Under 43 U.S.C. 315i, 12 ½ percent of revenues from grazing permits and 50 percent of revenues from grazing leases are distributed to the states in which the lands producing the revenues are situated. The state legislature then decides how to spend those funds for the benefit of the affected counties. We note also that counties do receive Federal payments in lieu of property taxes under 31 U.S.C. 6901-6907. (In 2003, those payments totaled \$2,050,000.)

5.4.32 Reserve Common Allotments

Comment: We received several comments on the concept referred to as “Reserve Common Allotments” (RCA), a proposal and accompanying regulations that would have established forage reserves.

Response: We decided not to pursue the possibility of creating RCAs in the proposed rule following a generally unenthusiastic reception during the public scoping process.

Comment: Comments that opposed this concept speculated that it would foster abuse and excessive grazing on the one hand, or could lead to a loss of preference AUMs on public lands on the other. Some comments supported designation of RCAs on a temporary basis only, not permanent designation that would eliminate those AUMs from term permit availability. Comments that supported the RCA concept expressed disappointment that we did not propose them because they recognized the RCA as

a potential solution to environmental and economic challenges confronting modern-day ranching. Another comment suggested that RCAs could provide an outlet for producers whose allotments are unusable due to weather, fire, or scheduled range improvements such as prescribed burning or stream restoration. This comment also suggested implementing the concept on a pilot basis and monitoring performance on a set of administrative and environmental criteria.

Response: BLM recognizes that these thoughtful comments demonstrate cautious interest and qualified support of the RCA concept. It is also obvious that the proposal rolled out in the ANPR was insufficiently defined and inadequately developed to gain full public support. We will continue to examine the concept of establishing temporary or permanent forage reserves, or alternative management scenarios, through future policymaking processes. Due to the keen interest in this subject, we will communicate with the public during any policy development process on RCAs.

5.4.33 Stewardship Incentives

Comment: Some comments stated that rangeland conditions would improve if BLM regulations established various incentives for ranchers who implement good management practices, or allowed “considerations” for permittees who voluntarily reduce livestock numbers or build wildlife projects, or provided for purchasing willow whips from private landowners for planting on public lands

Response: In past decades, BLM, in consultation with user groups and the public, has examined various programs (e.g. Incentive Based Grazing Fees - 1993; Cooperative Management Agreements—1984) intended to provide incentive for rancher stewardship of public lands for

multiple uses, including wildlife habitat. Ultimately, consensus could not be achieved and these efforts were set aside. More recently, in early 2003, BLM's Sustaining Working Landscapes (SWL) policy development initiative explored possible incentives for ranchers to engage in partnerships to achieve conservation ends, while encouraging and enabling good stewardship. In mid-2003, BLM decided to focus its grazing program resources on this rulemaking effort, rather than attempt simultaneously to accomplish SWL policy development and a rule. Upon completion of this rule, BLM intends to revisit SWL policy concepts and focus on updating grazing manuals and technical procedures needed to implement the grazing rules.

Comment: One comment suggested adopting conservation easement tax laws currently in effect in Colorado, New Mexico, and other states.

Response: While BLM supports the use of conservation easements for protection of watershed and habitat values on private lands, we do not have authority to change the tax laws of individual states.

5.4.34 Exchange-of-Use Grazing Agreements

In the proposed rule, BLM invited comment regarding whether BLM should facilitate "trade-of-use" arrangements between operators (68 FR 68456). As stated in the proposed rule, this type of arrangement allows one permittee or lessee to own or control unfenced intermingled private lands that are not within his allotment, but in the allotment of a second permittee or lessee.

Some comments urged that BLM facilitate "trade-of-use" in this type of situation by collecting a grazing fee from the second permittee for the use of lands owned by the first permittee but located in the second permittee's allotment, and crediting

the fees collected from the second permittee for these lands to the first permittee's grazing bills.

Comment: Comments on the proposed rule either urged BLM to facilitate this arrangement or urged BLM not to facilitate this arrangement, but did not provide reasons other than either that it would "contribute to multiple use benefits" (from comments supporting BLM facilitation), or that it would not (from comments opposing BLM involvement).

Response: BLM continues to believe that "trade-of-use" arrangements between private parties are best handled by the private parties. The regulation continues to provide that lands offered in exchange-of-use must be unfenced and intermingled with the public lands in the same allotment.

Comment: Another comment urged BLM to include in this section a provision stating, "BLM will include in calculation of the total allotment or lease livestock carrying capacity, the total number of livestock carrying capacity AUMs of lands offered for exchange of use as determined by a rangeland survey conducted by persons qualified as professional rangeland managers."

Response: The regulation continues to limit the level of use on public lands authorized by an exchange-of-use agreement on public lands to the livestock carrying capacity of the lands offered in exchange-of-use. Guidance regarding how this level is determined is best contained in grazing management handbooks and technical references, not in the grazing regulations.

5.4.35 Miscellaneous Comments

Comment: One comment expressed concern that proposed changes in the regulations would limit adaptive management options, and urged BLM to increase opportunities for adaptive management for unforeseen circumstances such as drought.

Response: The rule is designed to improve working relations with permittees and lessees. Better working relationships should result in more frequent communication and greater willingness to consider additional management alternatives.

Comment: One comment stated that BLM should require other users of the public lands to get permission to be on public land from BLM, and that BLM should inform the permittee when other users or BLM staff will be out on the permittee's allotment.

Response: Determining whether and under what circumstances public land users other than livestock permittees need approval to use public lands is outside the scope of this rule. Casual recreationists normally do not need permits to visit public lands, so there is no way BLM can inform grazers in advance of such visitation. Whenever feasible, in the spirit of consultation, cooperation, and coordination, BLM will inform the livestock operators in advance about BLM field operations or public uses under permit, lease, or license that affect grazing management of allotments where they have permits or leases. However, a provision requiring advance notification would be impractical to implement and detract from efficient management of the public lands. BLM declines to adopt this suggestion.

Comment: One comment addressed the substance of the section describing the objectives of the grazing regulations (4100.0-2), stating that BLM should remove the statement "to accelerate restoration and improvement of public rangelands to properly functioning conditions" and should change the words "consistent with" to "that is in conformance with," for several reasons. First, removal of this objective would ensure that the public is not distracted from the real objectives of grazing management, which are expressed in the applicable land use plans. These plans may or may not

require the "restoration and improvement of public rangelands to properly functioning conditions" upon every acre of the public lands. Second, removal of the objective would make it clear that the applicable land use plan and relevant laws guide management.

Response: We have not amended the objectives section in response to this comment. "[T]o accelerate restoration and improvement of public rangelands to properly functioning conditions" is a proper objective for these regulations, and consistent with Section 2 of the Taylor Grazing Act ("The Secretary ... shall make provision for the protection...and improvement of ...grazing districts and do any and all things necessary to insure the objects of such grazing districts, [including] ... to preserve the land and its resources from destruction or unnecessary injury [and] to provide for ... improvement of the range; and the Secretary ... is authorized to ... perform such work as may be necessary amply to protect and rehabilitate the areas subject to the provisions of this Act ..."). To ensure clarity regarding the role of land use plans and grazing management, section 4100.0-8 of the regulations, which is not changed by the rule, continues to state unequivocally that "... [I]ivestock grazing activities and management actions approved by the authorized officer shall be in conformance with the land use plan as defined at 43 CFR 1601.0-5(b)."

Rangeland Standards and Guidelines (43 CFR Part 4180) have been or are required to be developed statewide or regionally in consultation with Resource Advisory Councils. Consistent with the fundamentals of rangeland health, rangeland watersheds are to be in, or making significant progress toward, proper functioning physical condition. This regulatory language does not imply, nor does BLM subsequently interpret in policy or guidance, that every single

acre of a watershed is in proper functioning condition. Proper functioning condition refers to the ability of an area to sustain natural plant communities and basic ecological functions. BLM determines functionality at the watershed scale, determining functionality for each one of the 160,000,000 acres managed is impractical.

BLM planning regulations define “conformity” or “conformance” as meaning that a resource management action is specifically provided for in the land use plan or, if not specifically mentioned, clearly consistent with the terms, conditions and decisions of the plan. The planning regulations define “consistent” as meaning that plans will adhere to the terms, conditions, and decisions of resource related plans, or in their absence with policies and programs. We cannot anticipate in land use plans the specific circumstances involved in subsequent grazing decisions. Therefore, the specific term chosen for use in this rule, either “conformance” or “consistent,” would not alter the intent of the objective described in this rule. Finally, all individual records of decision issued when BLM adopted land health standards pursuant to section 4180.2 amended applicable land use plans to include those land health standards.

Comment: One comment suggested that BLM should provide for payment to the permittee or lessee for any cuts in permit numbers at the prevailing appraised rate, in order to curtail cutting permits under the pretense of the Endangered Species Act.

Response: The relevant statutes and regulations governing grazing on Federal land and case law interpreting these statutes and regulations have consistently recognized grazing on Federal land as a revocable license and not a property interest. A grazing permit or lease authorizes a privilege or revocable license, not a property right protected under the Constitution.

Comment: One comment addressed the Failure to Use provision (4170.1-2), stating that BLM should not cancel a permit or lease for failure to make substantial use as authorized or for failure to maintain or use water base property for 2 consecutive grazing fee years. The comment averred that this provision could be construed to mean that if a well on private property is not used for 2 years then BLM can cancel all or part of the lease. It went on to say that BLM through its regulations is placing an unfair burden on the lessee in his ability to obtain financing from a local lender, that BLM’s threat to cancel or suspend active use creates a major obstacle in producing a feasible financial plan required by the lender, and that lenders would not be impressed with a plan that would force them to term out a loan over a period of time based on BLM’s whim to create uncertainty and prevent a positive cash flow for the borrower.

Response: BLM disagrees. As indicated by the Taylor Grazing Act, Congress intends grazing permits and leases to be used for grazing purposes as “necessary to permit the proper use of lands, water or water rights owned or leased by” the permittees or lessees. Failure of a permittee or lessee to maintain or use water base property in the grazing operation would indicate that the grazing operator is not making “proper use” of the water. Under these circumstances, it would be appropriate to revoke the grazing privileges that had been associated with that water, and to award them to someone who would maintain or use some other nearby water in the furtherance of his livestock operations. Agricultural lenders are, or should be, aware that retention of a BLM permit or lease is contingent upon the permittee or lessee complying with the grazing regulations that govern the permits and leases.

Comment: When adjusting allotment boundaries BLM should consult with base property lien holders before adjusting

allotment boundaries, and should remove its authority to adjust allotment boundaries by decision so that the permittee or lessee has control over allotment boundaries rather than BLM.

Response: Under section 4110.2-4, BLM will consult with affected permittees or lessees before adjusting allotment boundaries. Should permittees or lessees wish to consult regarding boundary adjustment proposals with those holding liens on their base properties, they may do so at their option. It is necessary for BLM to retain authority to adjust allotment boundaries by decision for those situations where all affected parties cannot reach consensus regarding an allotment boundary adjustment.

Comment: BLM policy should reflect that grazing decisions always be based on appropriate scientific data because it is required by the Data Quality Act. Some comments maintained that BLM is required to prove, on administrative appeal, that the terms and conditions of grazing permits are consistent with the Data Quality Act (DQA), Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554).

Response: As discussed above, BLM is not required to launch an affirmative defense of grazing permits in response to an administrative appeal to the Office of Hearings and Appeals. BLM may come forward with a rebuttal, but the appellant bears the ultimate burden of persuasion.

The Office of Hearings and Appeals may not be the forum of choice for raising questions with respect to BLM's compliance with the DQA standards (i.e., "the quality, objectivity, utility, and integrity of information"). As required by the DQA, BLM has issued guidelines which provide an administrative mechanism for raising such

questions directly with BLM (Department of the Interior's Data Quality Guidelines, published October 1, 2002).

Comment: In case of fires in allotments the allotment should be rested for a minimum of 3 years and 5 years if any BLM permittee has livestock on a burn area prior to approval plus a substantial reduction in their grazing permit.

Response: This issue of how much rest from livestock grazing is needed after a fire is outside the scope of this rulemaking and is not examined in the DEIS. Administrative remedies and penalties are listed in the rules in Subparts 4160 and 4170.

Comment: One comment letter stated the BLM should correct an error that appears in Appendix C of the DEIS, in which a number of references stated "The University of Wyoming Law School commented . . ." The letter concluded by saying the University of Wyoming Law School did not make the comments, but rather that they were those of Debra L. Donahue.

Response: We explain without excusing this error by stating that the email containing the comment on the ANPR identified the author with her employer in the signature block. Since there were so many letters received, over 8,300, letters were divided into individual comments to group like comments together so that we could capture the essence of the various concerns expressed, the statement in the letter, "Please note that the opinions expressed herein are my own, and not those of my employer" was separated from the various comments contained in the letter. The comments were then tagged as coming from the University of Wyoming. The author of the letter should have received a letter of apology already and we hereby retract the error that appeared in the DEIS.

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Acronyms and Abbreviations

ACEC—area of critical environmental concern

AML—appropriate management level

AMP—Allotment Management Plan

ANPR—Advance Notice of Proposed Rulemaking

AO—Authorized Officer

APA—Administrative Procedure Act

ARC—Association of Rangeland Consultants

ARPA—Archaeological Resources Protection Act

AUM—animal unit month

BA—Biological Assessment

BCC—Birds of Conservation Concern

BE—Biological Evaluation

BLM—Bureau of Land Management

BMP—Best Management Practice

BO—Biological Opinion

BOR—Bureau of Reclamation

CAT—U.S. Forest Service Content Analysis Team

CBD—Center for Biological Diversity

CCC—consult, cooperate, and coordinate

CEQ—Council of Environmental Quality

CFR—Code of Federal Regulations

CO—carbon monoxide

CRIA—Cooperative Range Improvement Agreement

CWA—Clean Water Act

DEIS—Draft Environmental Impact Statement

DQA—Data Quality Act

EA—Environmental Assessment

EIS—Environmental Impact Statement

EPA—Environmental Protection Agency

ESA—Endangered Species Act

FACA—Federal Advisory Committee Act

FAR—Functioning-at-Risk

FEIS—Final Environmental Impact Statement

FLPMA—Federal Land Policy and Management Act

Four C's—Consultation, Cooperation, Communication, and Conservation

FR—Federal Register

FWS—U.S. Fish and Wildlife Service

FY—Fiscal Year

GAO—General Accounting Office

HMA—Herd Management Area

IBLA—Interior Board of Land Appeals

IC—Idaho Code

IDFG—Idaho Department of Fish and Game

IM—Instruction Memorandum

IMPLAN—Impact Analysis for Planning

LUP—Land Use Plan

MUAC—Multiple Use Advisory Councils

NAAQS—National Ambient Air Quality Standard

NASDA—National Association of State Departments of Agriculture

NASS—National Agricultural Statistics Service

NCBA—National Cattlemen's Beef Association

NCRAC—Northwest California Resource Advisory Council

NEPA—National Environmental Policy Act

NFB—Nevada Farm Bureau

NHPA—National Historic Preservation Act

NLCS—National Landscape Conservation System

NOA—notice of availability

NOAA—National Oceanic and Atmospheric Administration

NOI—notice of intent

NOX—oxides of nitrogen

NRC—National Research Council

NRCS—Natural Resources Conservation Service (formally the SCS)

O₃—Ozone

OHA—Office of Hearing and Appeals

OHV—Off Highway Vehicle

OMB—Office of Management and Budget

ONDA—Oregon Natural Desert Association

PFC—Proper Functioning Condition

PLC—Public Lands Council

PLF—Public Lands Foundation

PLS—Public Land Statistics

PM—particulate matter

PRIA—Public Rangelands Improvement Act

PSD—prevention of significant deterioration

RAC—Resource Advisory Council

RCA—Reserve Common Allotments

REIS—Regional Economic Information System

RFA—Regulatory Flexibility Act of 1980

RIP—Range Improvement Permit

RMP—Resource Management Plan

RNA—Research Natural Area

ROD—Record of Decision

S&G—Standards and Guidelines

SCS—Soil Conservation Service (now the NRCS)

SIP—State Implementation Plan

SRM—Society of Range Management

SOX—oxides of sulphur

SWL—Sustaining Working Landscapes

T&E—Threatened or Endangered

TGA—Taylor Grazing Act

TNC—The Nature Conservancy

TNR—temporary, nonrenewable

TR—Technical Reference

U.S.C.—United States Code

USDA—United States Department of Agriculture

USDI—United States Department of the Interior

USFS—U.S. Forest Service

USFWS—U.S. Fish and Wildlife Service

WGFD—Wyoming Game and Fish Department

WSA—Wilderness Study Area

Appendix A – Proposed Final Regulations

A1. Final Shown with Strike and Replace

DOCUMENT IDENTIFICATION: This document shows in strike-replace format the changes being made in 2004 to BLM grazing regulations for BLM lands in the western continental United States. This document should not be relied on for legal purposes.

Title 43: Public Lands: Interior

PART 4100—GRAZING ADMINISTRATION—EXCLUSIVE OF ALASKA

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- § 4130.8-1 Payment of fees.
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- § 4130.8-3 Service charge.
- § 4130.9 Pledge of permits or leases as security for loans.

Subpart 4140—Prohibited Acts

§ 4140.1 Acts prohibited on public lands.

Subpart 4150—Unauthorized Grazing Use

- § 4150.1 Violations.
- § 4150.2 Notice and order to remove.
- § 4150.3 Settlement.
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- § 4150.4-1 Notice of intent to impound.
- § 4150.4-2 Impoundment.
- § 4150.4-3 Notice of public sale.
- § 4150.4-4 Redemption.
- § 4150.4-5 Sale.

Subpart 4160—Administrative Remedies

- § 4160.1 Proposed decisions.
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Subpart 4170—Penalties

- § 4170.1 Civil penalties.
- § 4170.1-1 Penalty for violations.
- § 4170.1-2 Failure to use.
- § 4170.2 Penal provisions.
- § 4170.2-1 Penal provisions under the Taylor Grazing Act.
- § 4170.2-2 Penal provisions under the Federal Land Policy and Management Act.

Subpart 4180—Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration

- § 4180.1 Fundamentals of rangeland health.
- § 4180.2 Standards and guidelines for grazing administration.

Subpart 4190—Effect of Wildfire Management Decisions

- § 4190.1 Effect of wildfire management decisions.

Authority: 43 U.S.C. 315, 315a-315r, 1181d, 1740.

Source: 43 FR 29067, July 5, 1978, unless otherwise noted.

Subpart 4100—Grazing Administration—Exclusive of Alaska; General

§ 4100.0-1 Purpose.

The purpose is to provide uniform guidance for administration of grazing on the public lands exclusive of Alaska.

§ 4100.0-2 Objectives.

(a) The objectives of these regulations are to promote healthy sustainable rangeland ecosystems; to accelerate restoration and improvement of public rangelands to properly functioning conditions; to promote the orderly use, improvement and development of the public lands; to establish efficient and effective administration of grazing of public rangelands; and to provide for the sustainability of the western livestock industry and communities that are dependent upon productive, healthy public rangelands.

(b) These objectives ~~will~~ shall be realized in a manner ~~that is~~ consistent with land use plans, multiple use, sustained yield, environmental values, economic and other objectives stated in ~~43 CFR part 1720, subpart 1725;~~ the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315, 315a–315r); section 102 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701~~40~~) and the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901(b)(2)).

§ 4100.0-3 Authority.

(a) The Taylor Grazing Act of June 28, 1934 as amended (43 U.S.C. 315, 315a through 315r);

(b) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) as amended by the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 *et seq.*);

(c) Executive orders that transfer land acquired under the Bankhead-Jones Farm Tenant Act of July 22, 1937, as amended (7 U.S.C. 1012), to the Secretary and authorize administration under the Taylor Grazing Act.

(d) Section 4 of the Oregon and California Railroad Land Act of August 28, 1937 (43 U.S.C. 1181(d));

(e) The Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 *et seq.*); and

(f) Public land orders, Executive orders, and agreements that authorize the Secretary to administer livestock grazing on specified lands under the Taylor Grazing Act or other authority as specified.

§ 4100.0-5 Definitions.

Whenever used in this part, unless the context otherwise requires, the following definitions apply:

The *Act* means the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315, 315a–315r).

Active use means ~~the current authorized use, including livestock grazing and conservation use. Active use may constitute a portion, or all, of permitted use. Active use does not include temporary nonuse or suspended use of forage within all or a portion of an allotment. that portion of the grazing preference that is:~~

(1) Available for livestock grazing use under a permit or lease based on livestock carrying capacity and resource conditions in an allotment; and

(2) Not in suspension.

Activity plan means a plan for managing a resource use or value to achieve specific objectives. For example, an allotment management plan is an activity plan for managing livestock grazing use to improve or maintain rangeland conditions.

Actual use means where, how many, what kind or class of livestock, and how long livestock graze on an allotment, or on a portion or pasture of an allotment.

Actual use report means a report of the actual livestock grazing use submitted by the permittee or lessee.

Affiliate means an entity or person that controls, is controlled by, or is under common control with, an applicant, permittee or lessee. The term “control” means having any relationship which gives an entity or person authority directly or indirectly to determine the manner in which an applicant, permittee or lessee conducts grazing operations.

Allotment means an area of land designated and managed for grazing of livestock.

Allotment management plan (AMP) means a documented program developed as an activity plan, consistent with the definition at 43 U.S.C. 1702(k), that focuses on, and contains the necessary instructions for, the management of livestock grazing on specified public lands to meet resource condition, sustained yield, multiple use, economic and other objectives.

Animal unit month (AUM) means the amount of forage necessary for the sustenance of one cow or its equivalent for a period of 1 month.

Annual rangelands means those designated areas in which livestock forage production is primarily attributable to annual plants and varies greatly from year to year.

Authorized officer means any person authorized by the Secretary to administer regulations in this part.

Base property means: (1) Land that has the capability to produce crops or forage that can be used to support authorized livestock for a specified period of the year, or (2) water that is suitable for consumption by livestock and is available and accessible, to the authorized livestock when the public lands are used for livestock grazing.

Cancelled or cancellation means a permanent termination of a grazing permit or grazing lease and grazing preference, or free-use grazing permit or other grazing authorization, in whole or in part.

Class of livestock means ages and/or sex groups of a kind of livestock.

~~*Conservation use* means an activity, excluding livestock grazing, on all or a portion of an allotment for purposes of—~~

- ~~(1) Protecting the land and its resources from destruction or unnecessary injury;~~
- ~~(2) Improving rangeland conditions; or~~
- ~~(3) Enhancing resource values, uses, or functions.~~

Consultation, cooperation, and coordination means interaction for the purpose of obtaining advice, or exchanging opinions on issues, plans, or management actions.

Control means being responsible for and providing care and management of base property and/or livestock.

District means the specific area of public lands administered by a District Manager or a Field Manager.

Ephemeral rangelands means areas of the Hot Desert Biome (Region) that do not consistently produce enough forage to sustain a livestock operation but from time to time may briefly produce ~~unusual volumes of~~ sufficient forage to accommodate livestock grazing.

Grazing district means the specific area within which the public lands are administered under section 3 of the Act. Public lands outside grazing district boundaries are administered under section 15 of the Act.

Grazing fee year means the year, used for billing purposes, which begins on March 1, of a given year and ends on the last day of February of the following year.

Grazing lease means a document that authorizes grazing use of the public lands under Section 15 of the Act, outside an established grazing district. A grazing lease specifies grazing preference and the terms and conditions under which lessees make grazing use during the term of the lease. ~~all authorized use including livestock grazing, suspended use, and conservation use. Leases specify the total number of AUMs apportioned, the area authorized for grazing use, or both.~~

Grazing permit means a document ~~that authorizes~~ grazing use of the public lands under Section 3 of the Act within an established grazing district. A grazing permit specifies grazing preference and the terms and conditions under which permittees make grazing use during the term of the permit, by all authorized use including livestock grazing, suspended use, and conservation use. Permits specify the total number of AUMs apportioned, the area authorized for grazing use, or both.

Grazing preference or preference means the total number of animal unit months on public lands apportioned and attached to base property owned or controlled by a permittee, lessee, or an applicant for a permit or lease. Grazing preference includes active use and use held in suspension. Grazing preference holders have a superior or priority position against others for the purpose of receiving a grazing permit or lease. This priority is attached to base property owned or controlled by the permittee or lessee.

Interested public means an individual, group or organization that has:

(1)(i) Submitted a written request to BLM the authorized officer to be provided an opportunity to be involved in the decisionmaking process as to a for the management of livestock grazing on specific grazing allotment, and

(ii) Followed up that request by or has submitted written comments as to the authorized officer regarding the management of livestock grazing on a specific allotment, or otherwise participated in the decisionmaking process as to a specific allotment, if BLM has provided them an opportunity for comment or other participation; or

(2) Submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment.

Land use plan means a resource management plan, developed under the provisions of 43 CFR part 1600, or a management framework plan. These plans are developed through public participation in accordance with the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C 1701 *et seq.*) and establish management direction for resource uses of public lands.

Livestock or kind of livestock means species of domestic livestock—cattle, sheep, horses, burros, and goats.

Livestock carrying capacity means the maximum stocking rate possible without inducing damage to vegetation or related resources. It may vary from year to year on the same area due to fluctuating forage production.

Monitoring means the periodic observation and orderly collection of data to evaluate:

- (1) Effects of management actions; and
- (2) Effectiveness of actions in meeting management objectives.

Preference means grazing preference (see definition of “grazing preference”).

Permitted use means ~~the forage allocated by, or under the guidance of, an applicable land use plan for livestock grazing in an allotment under a permit or lease and is expressed in AUMs.~~

Public lands means any land and interest in land outside of Alaska owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, except lands held for the benefit of Indians.

Range improvement means an authorized physical modification or treatment which is designed to improve production of forage; change vegetation composition; control patterns of use; provide water; stabilize soil and water conditions; restore, protect and improve the condition of rangeland ecosystems to benefit livestock, wild horses and burros, and fish and wildlife. The term includes, but is not limited to, structures, treatment projects, and use of mechanical devices or modifications achieved through mechanical means.

Rangeland studies means any study methods accepted by the authorized officer for collecting data on actual use, utilization, climatic conditions, other special events, and trend to determine if management objectives are being met.

Secretary means the Secretary of the Interior or his authorized officer.

Service area means the area that can be properly grazed by livestock watering at a certain water.

State Director means the State Director, Bureau of Land Management, or his or her authorized representative.

Supplemental feed means a feed which supplements the forage available from the public lands and is provided to improve livestock nutrition or rangeland management.

Suspension means the ~~temporary~~ withholding from active use, through a decision issued by the authorized officer or by agreement, of part or all of the grazing preference specified permitted use in a grazing permit or lease.

Temporary nonuse means that portion of active use that the authorized officer authorizes not to be used, withholding, on an annual basis, of all or a portion of permitted livestock use in response to an application made by request of the permittee or lessee.

Trend means the direction of change over time, either toward or away from desired management objectives.

Unauthorized leasing and subleasing means—

(1) The lease or sublease of a Federal grazing permit or lease, associated with the lease

or sublease of base property, to another party without a required transfer approved by the authorized officer;

(2) The lease or sublease of a Federal grazing permit or lease to another party without the assignment of the associated base property;

(3) Allowing another party, other than sons and daughters of the grazing permittee or lessee meeting the requirements of §4130.7(f), to graze on public lands livestock that are not owned or controlled by the permittee or lessee; or

(4) Allowing another party, other than sons and daughters of the grazing permittee or lessee meeting the requirements of §4130.7(f), to graze livestock on public lands under a pasturing agreement without the approval of the authorized officer.

Utilization means the portion of forage that has been consumed by livestock, wild horses and burros, wildlife and insects during a specified period. The term is also used to refer to the pattern of such use.

§ 4100.0-7 Cross reference.

The regulations at part 1600 of this chapter govern the development of land use plans; the regulations at part 1780, subpart 1784 of this chapter govern advisory committees; and the regulations at subparts B and E of part 4 of this title govern appeals and hearings.

§ 4100.0-8 Land use plans.

The authorized officer shall manage livestock grazing on public lands under the principle of multiple use and sustained yield, and in accordance with applicable land use plans. Land use plans shall establish allowable resource uses (either singly or in combination), related levels of production or use to be maintained, areas of use, and resource condition goals and objectives to be obtained. The plans also set forth program constraints and general management practices needed to achieve management objectives. Livestock grazing activities and management actions approved by the authorized officer shall be in conformance with the land use plan as defined at 43 CFR 1601.0-5(b).

§ 4100.0-9 Information collection.

~~(a) The information collection requirements contained in Group 4100 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance numbers 1004-0005, 1004-0019, 1004-0020, 1004-0041, 1004-0047, 1004-0051, and 1004-0068. The information would be~~ is collected to enable ~~permit~~ the authorized officer to determine whether to approve an application to utilize public lands for grazing or other purposes. ~~should be approved. Response is required to obtain a benefit.~~

~~(b) Public reporting burden for the information collections are as follows: Clearance number 1004-0005 is estimated to average 0.33 hours per response, clearance number 1004-0019~~

~~is estimated to average 0.33 hours per response, clearance number 1004-0020 is estimated to average 0.33 hours per response, clearance number 1004-0041 is estimated to average 0.25 hours per response, clearance number 1004-0047 is estimated to average 0.25 hours per response, clearance number 1004-0051 is estimated to average 0.3 hours per response, and clearance number 1004-0068 is estimated to average 0.17 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing the burden to the Information Collection Clearance Officer (873), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004-0005, -0019, -0020, -0041, -0047, -0051, or -0068, Washington, DC 20503.~~

Subpart 4110—Qualifications and Preference

§ 4110.1 Mandatory qualifications.

(a) Except as provided under §§4110.1-1, 4130.5, and 4130.6-3, to qualify for grazing use on the public lands an applicant must own or control land or water base property, and must be:

(1) A citizen of the United States or have properly filed a valid declaration of intention to become a citizen or a valid petition for naturalization; or

(2) A group or association authorized to conduct business in the State in which the grazing use is sought, all members of which are qualified under paragraph (a) of this section; or

(3) A corporation authorized to conduct business in the State in which the grazing use is sought.

(b) Applicants for the renewal or issuance of new permits and leases and any affiliates must be determined by the authorized officer to have a satisfactory record of performance under § 4130.1-1(b).

~~(1) *Renewal of permit or lease.* (i) The applicant for renewal of a grazing permit or lease, and any affiliate, shall be deemed to have a satisfactory record of performance if the authorized officer determines the applicant and affiliates to be in substantial compliance with the terms and conditions of the existing Federal grazing permit or lease for which renewal is sought, and with the rules and regulations applicable to the permit or lease.~~

~~(ii) The authorized officer may take into consideration circumstances beyond the control of the applicant or affiliate in determining whether the applicant and affiliates are in substantial compliance with permit or lease terms and conditions and applicable rules and regulations.~~

~~(2) *New permit or lease.* Applicants for new permits or leases, and any affiliates, shall be deemed not to have a record of satisfactory performance when—~~

~~(i) The applicant or affiliate has had any Federal grazing permit or lease cancelled for violation~~

~~of the permit or lease within the 36 calendar months immediately preceding the date of application; or~~

~~(ii) The applicant or affiliate has had any State grazing permit or lease, for lands within the grazing allotment for which a Federal permit or lease is sought, cancelled for violation of the permit or lease within the 36 calendar months immediately preceding the date of application; or~~

~~(iii) The applicant or affiliate is barred from holding a Federal grazing permit or lease by order of a court of competent jurisdiction.~~

~~(c) In determining whether affiliation exists, the authorized officer shall consider all appropriate factors, including, but not limited to, common ownership, common management, identity of interests among family members, and contractual relationships.~~

~~(c)~~ Applicants shall submit an application and any other relevant information requested by the authorized officer in order to determine that all qualifications have been met.

§ 4110.1-1 Acquired lands.

Where lands have been acquired by the Bureau of Land Management through purchase, exchange, Act of Congress or Executive Order, and an agreement or the terms of the act or Executive Order provide that the Bureau of Land Management shall honor existing grazing permits or leases, such permits or leases are governed by the terms and conditions in effect at the time of acquisition by the Bureau of Land Management, and are not subject to the requirements of §4110.1.

§ 4110.2 Grazing preference.

§ 4110.2-1 Base property.

(a) The authorized officer shall find land or water owned or controlled by an applicant to be base property (see §4100.0–5) if:

(1) It is capable of serving as a base of operation for livestock use of public lands within a grazing district; or

(2) It is contiguous land, or, when no applicant owns or controls contiguous land, noncontiguous land that is capable of being used in conjunction with a livestock operation which would utilize public lands outside a grazing district.

(b) After appropriate consultation, cooperation, and coordination, the authorized officer shall specify the length of time for which land base property shall be capable of supporting authorized livestock during the year, relative to the multiple use management objective of the public lands.

(c) An applicant shall provide a legal description, or plat, of the base property and shall certify to the authorized officer that this base property meets the requirements under paragraphs (a) and (b) of this section.

(d) A permittee's or lessee's interest in water previously recognized as base property on public land shall be deemed sufficient in meeting the requirement that the applicant control base property. Where such waters become unusable and are replaced by newly constructed or reconstructed water developments that are the subject of a range improvement permit or cooperative range improvement agreement, the permittee's or lessee's interest in the replacement water shall be deemed sufficient in meeting the requirement that the applicant control base property.

(ed) If a permittee or lessee loses ownership or control of all or part of his/her base property, the permit or lease, to the extent it was based upon such lost property, shall terminate immediately without further notice from the authorized officer. However, if, prior to losing ownership or control of the base property, the permittee or lessee requests, in writing, that the permit or lease be extended to the end of the grazing season or grazing year, the termination date may be extended as determined by the authorized officer after consultation with the new owner. When a permit or lease terminates because of a loss of ownership or control of a base property, the grazing preference shall remain with the base property and be available through application and transfer procedures at 43 CFR 4110.2-3, to the new owner or person in control of that base property.

(fe) Applicants who own or control base property contiguous to or cornering upon public land outside a grazing district where such public land consists of an isolated or disconnected tract embracing 760 acres or less shall, for a period of 90 days after the tract has been offered for lease, have a preference right to lease the whole tract.

§ 4110.2-2 Specifying grazing preference permitted use.

(a) All grazing permits and grazing leases will specify grazing preference~~Permitted use is granted to holders of grazing preference and shall be specified in all grazing permits and leases. Permitted use shall encompass all authorized use including livestock use, any suspended use, and conservation use, except for permits and leases for designated ephemeral rangelands, where BLM authorizes livestock use is authorized based upon forage availability, or designated annual rangelands. Preference includes active use and any suspended use. Active use is~~ Permitted livestock use shall be based upon the amount of forage available for livestock grazing as established in the land use plan, activity plan, or decision of the authorized officer under §4110.3-3, except, in the case of designated ephemeral or annual rangelands, a land use plan or activity plan may alternatively prescribe vegetation standards to be met in the use of such rangelands.

(b) The grazing preference permitted use specified is shall attached to the base property supporting the grazing permit or grazing lease.

(c) The animal unit months of grazing preference permitted use are attached to:

(1) The acreage of land base property on a pro rata basis, or

(2) Water base property on the basis of livestock forage production within the service area of the water.

§ 4110.2-3 Transfer of grazing preference.

(a) Transfers of grazing preference in whole or in part are subject to the following requirements:

(1) The transferee shall meet all qualifications and requirements of §§4110.1, 4110.2-1, and 4110.2-2.

(2) The transfer applications under paragraphs (b) and (c) of this section shall evidence assignment of interest and obligation in range improvements authorized on public lands under §4120.3 and maintained in conjunction with the transferred preference (see §4120.3-5). The terms and conditions of the cooperative range improvement agreements and range improvement permits are binding on the transferee.

(3) The transferee shall accept the terms and conditions of the terminating grazing permit or lease (see §4130.2) with such modifications as he may request which are approved by the authorized officer or with such modifications as may be required by the authorized officer.

(4) The transferee shall file an application for a grazing permit or lease to the extent of the transferred preference simultaneously with filing a transfer application under paragraph (b) or (c) of this section.

(b) If base property is sold or leased, the transferee shall within 90 days of the date of sale or lease file with the authorized officer a properly executed transfer application showing the base property and the ~~grazing preference amount of permitted use being transferred,~~ in animal unit months, attached to that base property.

(c) If a grazing preference is being transferred from one base property to another base property, the transferrer shall own or control the base property from which the grazing preference is being transferred and file with the authorized officer a properly completed transfer application for approval. ~~If the applicant leases the base property, no transfer will be allowed without the written consent of the owner(s), and any person or entity holding an encumbrance of the base property from which the transfer is to be made. Such consent will not be required where the applicant for such transfer is a lessee without whose livestock operations the grazing preference would not have been established.~~

(d) At the date of approval of a transfer, the existing grazing permit or lease shall terminate automatically and without notice to the extent of the transfer.

(e) If an unqualified transferee acquires rights in base property through operation of law or testamentary disposition, such transfer will not affect the grazing preference or any outstanding grazing permit or lease, or preclude the issuance or renewal of a grazing permit or lease based

on such property for a period of 2 years after the transfer. However, such a transferee shall qualify under paragraph (a) of this section within the 2-year period or the grazing preference shall be subject to cancellation. The authorized officer may grant extensions of the 2-year period where there are delays solely attributable to probate proceedings.

(f) Transfers shall be for a period of not less than 3 years unless a shorter term is determined by the authorized officer to be consistent with management and resource condition objectives.

(g) Failure of either the transferee or the transferrer to comply with the regulations of this section may result in rejection of the transfer application or cancellation of grazing preference.

§ 4110.2-4 Allotments.

After consultation, cooperation, and coordination with the affected grazing permittees or lessees ~~and~~; the ~~s~~State having lands or responsibility~~te~~ for managing resources within the area, ~~and the interested public~~, the authorized officer may designate and adjust grazing allotment boundaries. The authorized officer may combine or divide allotments, through an agreement or by decision, when necessary for the proper and efficient management of public rangelands.

§ 4110.3 Changes in ~~permitted use~~grazing preference.

~~(a)~~ The authorized officer shall periodically review the ~~permitted use~~grazing preference specified in a grazing permit or lease and ~~shall make changes in the grazing preference~~permitted use as needed to:

~~(1)~~ Mmanage, maintain or improve rangeland productivity; ~~to~~

~~(2)~~ assist in making progress towards restoring ecosystems to properly functioning conditions; ~~to~~

~~(3)~~ Conform with land use plans or activity plans; ~~or, to~~

~~(4)~~ eComply with the provisions of subpart 4180 of this part.

~~(b)~~ The authorized officer will support tThese changes ~~must be supported by~~ monitoring, documented field observations, ecological site inventory or other data acceptable to the authorized officer.

~~(c)~~ Before changing grazing preference, the authorized officer will undertake the appropriate analysis as required by the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.). Under NEPA, the authorized officer will analyze and, if appropriate, document the relevant social, economic, and cultural effects of the proposed action.

§ 4110.3-1 Increasing ~~permitted~~active use.

When monitoring or documented field observations show that additional forage is available for livestock grazing, either on a temporary or sustained yield basis, BLM may apportion
~~A~~additional forage may be apportioned to qualified applicants for livestock grazing use consistent with multiple-use management objectives specified in the applicable land use plan.

(a) Additional forage temporarily available. ~~When the authorized officer determines that additional forage is temporarily available for livestock, he may authorize its use on a nonrenewable basis under § 4130.6-2 in the following order: grazing use may be apportioned on a nonrenewable basis.~~

(1) To permittees or lessees who have preference for grazing use in the allotment where the forage is available, in proportion to their active use; and,

(2) To other qualified applicants under § 4130.1-2.

(b) Additional forage available on a sustained yield basis. ~~When the authorized officer determines that additional forage is available for livestock grazing use on a sustained yield basis, he will apportion it in the following manner: shall~~

(1) ~~F~~first, to remove all or a part of the ~~be apportioned in satisfaction of suspension of preference ded permitted use to the of~~ permittee(s) or lessee(s) with permits or leases authorized to graze in the allotment in which the forage is available; and

(2) Second, if additional forage remains after ending all suspensions, the authorized officer will:

(c) ~~After consultation, cooperation, and coordination with the affected permittees or lessees, the State having lands or managing resources within the area, and the interested public, and additional forage on a sustained yield basis available for livestock grazing use in an allotment may be apportioned to permittees or lessees or other applicants, provided the permittee, lessee, or other applicant is found to be qualified under subpart 4110 of this part. Additional forage shall be apportion~~ ited in the following order~~priority:~~

(i) ~~1~~ Permittees or lessees in proportion to their contribution or stewardship efforts which result in increased forage production;

(ii) ~~2~~ Permittee(s) or lessee(s) in proportion to the amount of their grazing preference permitted use; and

(iii) ~~3~~ Other qualified applicants under §4130.1-2 of this title.

§ 4110.3-2 Decreasing active~~permitted~~ use.

(a) The authorized officer ~~Permitted use may be suspended~~ active use in whole or in part on a temporary basis due to reasons specified in § 4110.3-3(b)(1), drought, fire, or other natural causes, or to facilitate installation, maintenance, or modification of range improvements.

(b) When monitoring or documented field observations show grazing use or patterns of use are not consistent with the provisions of subpart 4180, or grazing use is otherwise causing an unacceptable level or pattern of utilization, or when use exceeds the livestock carrying capacity as determined through monitoring, ecological site inventory or other acceptable methods, the authorized officer ~~will~~shall reduce ~~active permitted grazing use, or~~ otherwise modify management practices, or both. To implement reductions under this paragraph, BLM will suspend active use.

§ 4110.3-3 Implementing ~~changes~~reductions in ~~active permitted~~ use.

(a) ~~(1) After consultation, cooperation, and coordination with the affected permittee or lessee, and the State having lands or managing resources within the area, the authorized officer will implement changes in and the interested public, reductions of permitted active use shall be implemented through a documented agreement or by a decision of the authorized officer. The authorized officer will implement changes in active use in excess of 10 percent over a 5-year period unless:~~

~~(i) After consultation with affected permittees or lessees, an agreement is reached to implement the increase or decrease in less than 5 years, or~~

~~(ii) The changes must be made before 5 years have passed in order to comply with applicable law.~~

~~(2) Decisions implementing § 4110.3-2 will~~shall be issued as proposed decisions pursuant to § 4160.1, except as provided in paragraph (b) of this section.

~~(b)(1) When the authorized officer determines that the soil, vegetation, or other resources on the public lands require immediate protection because of conditions such as drought, fire, flood, insect infestation, or when continued grazing use poses an imminent likelihood of significant resource damage, a~~After consultation with, or a reasonable attempt to consult with, affected permittees or lessees, the interested public, and the State having lands or responsibility for managing resources within the area, the authorized officer ~~will~~shall close allotments or portions of allotments to grazing by any kind of livestock or modify authorized grazing use notwithstanding the provisions of paragraph (a) of this section when the authorized officer determines and documents that—

~~(i) The soil, vegetation, or other resources on the public lands require immediate protection because of conditions such as drought, fire, flood, insect infestation; or,~~

~~(ii) Continued grazing use poses an imminent likelihood of significant resource damage.~~

~~(2) Notices of closure and decisions requiring modification of authorized grazing use may be issued as final decisions effective upon issuance or on the date specified in the decision. Such decisions will~~shall remain in effect pending the decision on appeal unless ~~a stay is granted by the Office of Hearings and Appeals grants a stay in accordance with 43 CFR 4.21§ 4.472 of this title.~~

§ 4110.4 Changes in public land acreage.

§ 4110.4-1 Additional land acreage.

When lands outside designated allotments become available for livestock grazing under the administration of the Bureau of Land Management, the forage available for livestock shall be made available to qualified applicants at the discretion of the authorized officer. Grazing use shall be apportioned under §4130.1–2 of this title.

§ 4110.4-2 Decrease in land acreage.

(a) Where there is a decrease in public land acreage available for livestock grazing within an allotment:

(1) Grazing permits or leases may be cancelled or modified as appropriate to reflect the changed area of use.

(2) ~~Grazing preference~~ Permitted use may be cancelled in whole or in part. Cancellations determined by the authorized officer to be necessary to protect the public lands will be apportioned by the authorized officer based upon the level of available forage and the magnitude of the change in public land acreage available, or as agreed to among the authorized users and the authorized officer.

(b) When public lands are disposed of or devoted to a public purpose which precludes livestock grazing, the permittees and lessees shall be given 2 years' prior notification except in cases of emergency (national defense requirements in time of war, natural disasters, national emergency needs, etc.) before their grazing permit or grazing lease and grazing preference may be canceled. A permittee or lessee may unconditionally waive the 2-year prior notification. Such a waiver shall not prejudice the permittee's or lessee's right to reasonable compensation for, but not to exceed the fair market value of his or her interest in authorized permanent range improvements located on these public lands (see §4120.3–6).

§ 4110.5 Interest of Member of Congress.

Title 18 U.S.C. 431 through 433 (1970) generally prohibits a Member of or Delegate to Congress from entering into any contract or agreement with the United States. Title 41 U.S.C. 22 (1970) generally provides that in every contract or agreement to be made or entered into, or accepted by or on behalf of the United States, there shall be inserted an express condition that no Member of or Delegate to Congress shall be admitted to any share or part of such contract or agreement, or to any benefit to arise thereupon. The provisions of these laws are incorporated herein by reference and apply to all permits, leases, and agreements issued under these regulations.

Subpart 4120—Grazing Management

§ 4120.1 [Reserved]

§ 4120.2 Allotment management plans and resource activity plans.

Allotment management plans or other activity plans intended to serve as the functional equivalent of allotment management plans may be developed by permittees or lessees, other Federal or State resource management agencies, interested citizens, and the Bureau of Land Management. When such plans affecting the administration of grazing allotments are developed, the following provisions apply:

(a) An allotment management plan or other activity plans intended to serve as the functional equivalent of allotment management plans shall be prepared in careful and considered consultation, cooperation, and coordination with affected permittees or lessees, landowners involved, the resource advisory council, any State having lands or responsible for managing resources within the area to be covered by such a plan, and the interested public. The plan shall become effective upon approval by the authorized officer. The plans shall—

(1) Include terms and conditions under §§4130.3, 4130.3–1, 4130.3–2, 4130.3–3, and subpart 4180 of this part;

(2) Prescribe the livestock grazing practices necessary to meet specific resource objectives;

(3) Specify the limits of flexibility, to be determined and granted on the basis of the operator's demonstrated stewardship, within which the permittee(s) or lessee(s) may adjust operations without prior approval of the authorized officer; and

(4) Provide for monitoring to evaluate the effectiveness of management actions in achieving the specific resource objectives of the plan.

(b) Private and State lands may be included in allotment management plans or other activity plans intended to serve as the functional equivalent of allotment management plans dealing with rangeland management with the consent or at the request of the parties who own or control those lands.

(c) The authorized officer shall provide opportunity for public participation in the planning and environmental analysis of proposed plans affecting the administration of grazing and shall give public notice concerning the availability of environmental documents prepared as a part of the development of such plans, prior to implementing the plans. The decision document following the environmental analysis ~~will shall be issued in accordance with~~ will be issued in accordance with ~~considered the proposed decision for the purposes of subpart § 4160.1 of this part.~~

(d) A requirement to conform with completed allotment management plans or other applicable activity plans intended to serve as the functional equivalent of allotment management plans

shall be incorporated into the terms and conditions of the grazing permit or lease for the allotment.

(e) Allotment management plans or other applicable activity plans intended to serve as the functional equivalent of allotment management plans may be revised or terminated by the authorized officer after consultation, cooperation, and coordination with the affected permittees or lessees, landowners involved, the resource advisory council, any State having lands or responsible for managing resources within the area to be covered by the plan, and the interested public.

§ 4120.3 Range improvements.

§ 4120.3-1 Conditions for range improvements.

(a) Range improvements shall be installed, used, maintained, and/or modified on the public lands, or removed from these lands, in a manner consistent with multiple-use management.

(b) Prior to installing, using, maintaining, and/or modifying range improvements on the public lands, permittees or lessees shall have entered into a cooperative range improvement agreement with the Bureau of Land Management or must have an approved range improvement permit.

(c) The authorized officer may require a permittee or lessee to maintain and/or modify range improvements on the public lands under §4130.3-2 of this title.

(d) The authorized officer may require a permittee or lessee to install range improvements on the public lands in an allotment with two or more permittees or lessees and/or to meet the terms and conditions of agreement.

(e) A range improvement permit or cooperative range improvement agreement does not convey to the permittee or cooperator any right, title, or interest in any lands or resources held by the United States.

(f) Proposed range improvement projects shall be reviewed in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4371 *et seq.*). The decision document following the environmental analysis ~~will~~ shall be issued in accordance with ~~considered the proposed decision under subpart~~ § 4160.1. of this part.

§ 4120.3-2 Cooperative range improvement agreements.

(a) The Bureau of Land Management may enter into a cooperative range improvement agreement with a person, organization, or other government entity for the installation, use, maintenance, and/or modification of permanent range improvements or rangeland developments to achieve management or resource condition objectives. The cooperative range improvement agreement shall specify how the costs or labor, or both, shall be divided between the United States and cooperator(s).

(b) Subject to valid existing rights, cooperators and the United States will share title to permanent range improvements such as fences, wells, and pipelines where authorization is granted after [Insert date 30 days after publication of final rule in the FEDERAL REGISTER] in proportion to their contribution to on-the-ground project development and construction costs~~August 21, 1995 shall be in the name of the United States.~~ The authorization for all new permanent water developments such as spring developments, wells, reservoirs, stock tanks, and pipelines will~~shall~~ be through cooperative range improvement agreements. The authorized officer will document a~~A~~ permittee's or lessee's interest in contributed funds, labor, and materials will be documented by the Bureau of Land Management to ensure proper credit for the purposes of §§4120.3-5 and 4120.3-6(c).

(c) The United States will~~shall~~ have title to nonstructural range improvements such as seeding, spraying, and chaining.

(d) Range improvement work performed by a cooperator or permittee on the public lands or lands administered by the Bureau of Land Management does not confer the exclusive right to use the improvement or the land affected by the range improvement work.

§ 4120.3-3 Range improvement permits.

(a) Any permittee or lessee may apply for a range improvement permit to install, use, maintain, and/or modify removable range improvements that are needed to achieve management objectives for the allotment in which the permit or lease is held. The permittee or lessee shall agree to provide full funding for construction, installation, modification, or maintenance. Such range improvement permits are issued at the discretion of the authorized officer.

(b) The permittee or lessee may hold the title to authorized removable range improvements used as livestock handling facilities such as corrals, creep feeders, and loading chutes, and to temporary structural improvements such as troughs for hauled water.

(c) ~~Where a permittee or lessee cannot make use of the forage available for livestock and an application for temporary nonuse or conservation use has been denied or the opportunity to make use of the available forage is requested by the authorized officer, the permittee or lessee shall cooperate with the temporary authorized use of forage by another operator, when it is authorized by the authorized officer following consultation with the preference permittee(s) or lessee(s). If forage available for livestock is not or will not be used by the preference~~ permittee or lessee, BLM may issue nonrenewable grazing permits and leases to other qualified applicants to use it under §§ 4130.6-2 and 4130.4(d), or § 4110.3-1(a)(2). The term "forage available for livestock" does not include temporary nonuse that BLM approves for reasons of natural resource conservation, enhancement, or protection, or use suspended by BLM under § 4110.3-2(b). Before issuing a nonrenewable permit or lease, BLM will consult, cooperate and coordinate as provided in § 4130.6-2. If BLM issues such a nonrenewable permit or lease, the preference permittee or lessee will cooperate with the temporary authorized use of forage by another operator.

(1) A permittee or lessee shall be reasonably compensated for the use and maintenance of improvements and facilities by the operator who has an authorization for temporary grazing use.

(2) The authorized officer may mediate disputes about reasonable compensation and, following consultation with the interested parties, make a determination concerning the fair and reasonable share of operation and maintenance expenses and compensation for use of authorized improvements and facilities.

(3) Where a settlement cannot be reached, the authorized officer shall issue a temporary grazing authorization including appropriate terms and conditions and the requirement to compensate the preference permittee or lessee for the fair share of operation and maintenance as determined by the authorized officer under subpart 4160 of this part.

§ 4120.3-4 Standards, design and stipulations.

Range improvement permits and cooperative range improvement agreements shall specify the standards, design, construction and maintenance criteria for the range improvements and other additional conditions and stipulations or modifications deemed necessary by the authorized officer.

§ 4120.3-5 Assignment of range improvements.

The authorized officer shall not approve the transfer of a grazing preference under §4110.2-3 of this title or approve use by the transferee of existing range improvements, unless the transferee has agreed to compensate the transferrer for his/her interest in the authorized improvements within the allotment as of the date of the transfer.

§ 4120.3-6 Removal and compensation for loss of range improvements.

(a) Range improvements shall not be removed from the public lands without authorization.

(b) The authorized officer may require permittees or lessees to remove range improvements which they own on the public lands if these improvements are no longer helping to achieve land use plan or allotment goals and objectives or if they fail to meet the criteria under §4120.3-4 of this title.

(c) Whenever a grazing permit or lease is cancelled in order to devote the public lands covered by the permit or lease to another public purpose, including disposal, the permittee or lessee shall receive from the United States reasonable compensation for the adjusted value of their interest in authorized permanent improvements placed or constructed by the permittee or lessee on the public lands covered by the cancelled permit or lease. The adjusted value is to be determined by the authorized officer. Compensation shall not exceed the fair market value of the terminated portion of the permittee's or lessee's interest therein. Where a range improvement is authorized by a range improvement permit, the livestock operator may elect

to salvage materials and perform rehabilitation measures rather than be compensated for the adjusted value.

(d) Permittees or lessees shall be allowed 180 days from the date of cancellation of a range improvement permit or cooperative range improvement agreement to salvage material owned by them and perform rehabilitation measures necessitated by the removal.

§ 4120.3-7 Contributions.

The authorized officer may accept contributions of labor, material, equipment, or money for administration, protection, and improvement of the public lands necessary to achieve the objectives of this part.

§ 4120.3-8 Range improvement fund.

(a) In addition to range developments accomplished through other resource management funds, authorized range improvements may be secured through the use of the appropriated range improvement fund. One-half of the available funds shall be expended in the State and district from which they were derived. The remaining one-half of the fund shall be allocated, on a priority basis, by the Secretary for on-the-ground rehabilitation, protection and improvement of public rangeland ecosystems.

(b) Funds appropriated for range improvements are to be used for investment in all forms of improvements that benefit rangeland resources including riparian area rehabilitation, improvement and protection, fish and wildlife habitat improvement or protection, soil and water resource improvement, wild horse and burro habitat management facilities, vegetation improvement and management, and livestock grazing management. The funds may be used for activities associated with on-the-ground improvements including the planning, design, layout, contracting, modification, maintenance for which ~~with~~ the Bureau of Land Management is responsible, and monitoring and evaluating the effectiveness of specific range improvement projects.

(c) During the planning of the range development or range improvement programs, the authorized officer shall consult the resource advisory council, affected permittees, lessees, and members of the interested public.

§ 4120.3-9 Water rights for the purpose of livestock grazing on public lands.

Any right ~~that the United States acquires~~ ~~on or after August 21, 1995~~ to use water on public land for the purpose of livestock watering on public land will ~~shall~~ be acquired, perfected, maintained and administered under the substantive and procedural laws of the State within which such land is located. ~~To the extent allowed by the law of the State within which the land is located, any such water right shall be acquired, perfected, maintained, and administered in the name of the United States.~~

§ 4120.4 Special rules.

(a) When a State Director determines that local conditions require a special rule to achieve improved administration consistent with the objectives of this part, the Director may approve such rules. The rules shall be subject to public review and comment, as appropriate, and upon approval, shall become effective when published in the Federal Register as final rules. Special rules shall be published in a local newspaper.

(b) Where the Bureau of Land Management administers the grazing use of other Federal Agency lands, the terms of an appropriate Memorandum of Understanding or Cooperative Agreement shall apply.

§ 4120.5 Cooperation.

§ 4120.5-1 Cooperation in management.

The authorized officer shall, to the extent appropriate, cooperate with Federal, State, Indian Tribal and local governmental entities, institutions, organizations, corporations, associations, and individuals to achieve the objectives of this part.

§ 4120.5-2 Cooperation with Tribal, State, county, and Federal agencies.

Insofar as the programs and responsibilities of other agencies and units of government involve grazing upon the public lands and other lands administered by the Bureau of Land Management, or the livestock which graze thereon, the Bureau of Land Management will cooperate, to the extent consistent with applicable laws of the United States, with the involved agencies and government entities. The authorized officer ~~will shall~~ cooperate with Tribal, State, county, and Federal agencies in the administration of laws and regulations relating to livestock, livestock diseases, sanitation, and noxious weeds including—

(a) State cattle and sheep sanitary or brand boards in control of stray and unbranded livestock, to the extent such cooperation does not conflict with the Wild Free-Roaming Horse and Burro Act of 1971 (16 U.S.C. 1331 et seq.); ~~and~~

(b) County or other local weed control districts in analyzing noxious weed problems and developing control programs for areas of the public lands and other lands administered by the Bureau of Land Management; ~~and~~

(c) Tribal, state, county, or local government-established grazing boards in reviewing range improvements and allotment management plans on public lands.

Subpart 4130—Authorizing Grazing Use

§ 4130.1 Applications.

§ 4130.1-1 Filing applications.

(a) Applications for grazing permits or leases (active use and nonuse), free-use grazing permits and other grazing authorizations shall be filed with the authorized officer at the local Bureau of Land Management office having jurisdiction over the public lands involved.

(b) The authorized officer will determine whether applicants for the renewal of permits and leases or issuance of permits and leases that authorize use of new or transferred preference, and any affiliates, have a satisfactory record of performance. The authorized officer will not renew or issue a permit or lease unless the applicant and all affiliates have a satisfactory record of performance.

(1) Renewal of permit or lease.

(i) The authorized officer will deem the applicant for renewal of a grazing permit or lease, and any affiliate, to have a satisfactory record of performance if the authorized officer determines the applicant and affiliates to be in substantial compliance with the terms and conditions of the existing Federal grazing permit or lease for which renewal is sought, and with the rules and regulations applicable to the permit or lease.

(ii) The authorized officer may take into consideration circumstances beyond the control of the applicant or affiliate in determining whether the applicant and affiliates are in substantial compliance with permit or lease terms and conditions and applicable rules and regulations.

(2) New permit or lease or transfer of grazing preference. The authorized officer will deem applicants for new permits and leases or transfer of grazing preference, including permits and leases that arise from transfer of preference, and any affiliates, to have a record of satisfactory performance when --

(i) The applicant or affiliate has not had any Federal grazing permit or lease canceled, in whole or in part, for violation of the permit or lease within the 36 calendar months immediately preceding the date of application; and

(ii) The applicant or affiliate has not had any state grazing permit or lease, for lands within the grazing allotment for which a Federal permit or lease is sought, canceled, in whole or in part, for violation of the permit or lease within the 36 calendar months immediately preceding the date of application; and

(iii) A court of competent jurisdiction has not barred the applicant or affiliate from holding a Federal grazing permit or lease.

(c) In determining whether affiliation exists, the authorized officer will consider all appropriate factors, including, but not limited to, common ownership, common management, identity of interest among family members, and contractual relationships.

§ 4130.1-2 Conflicting applications.

When more than one qualified applicant applies for livestock grazing use of the same public lands and/or where additional forage for livestock or additional acreage becomes available, the authorized officer may authorize grazing use of such land or forage on the basis of §4110.3-1 of this title or on the basis of any of the following factors:

- (a) Historical use of the public lands (see §4130.2(e));
- (b) Proper use of rangeland resources;
- (c) General needs of the applicant's livestock operations;
- (d) ApplicantPublic ingress or egress across privately owned or controlled land to public lands where the grazing use is sought;
- (e) Topography;
- (f) Other land use requirements unique to the situation.
- (g) Demonstrated stewardship by the applicant to improve or maintain and protect the rangeland ecosystem; and
- (h) The applicant's and affiliate's history of compliance with the terms and conditions of grazing permits and leases of the Bureau of Land Management and any other Federal or State agency, including any record of suspensions or cancellations of grazing use for violations of terms and conditions of agency grazing rules.



§ 4130.2 Grazing permits or leases.

- (a) Grazing permits or leases ~~shall be issued to qualified applicants to authorize use on the public lands and other BLM-administered lands under the administration of the Bureau of Land Management that are designated in land use plans as available for livestock grazing through land use plans.~~ Permits and leases will ~~shall~~ specify the grazing preference ~~types and levels of use authorized, including active and livestock grazing, suspended use, and conservation use.~~ These grazing permits and leases will ~~shall~~ also specify terms and conditions pursuant to §§ 4130.3, 4130.3-1, and 4130.3-2.
- (b) The authorized officer shall consult, cooperate and coordinate with affected permittees or lessees and the sState having lands or responsibility te for managing resources within the area, and the interested public before ~~prior to the issuing~~ ance or renewing ~~of~~ grazing permits and leases.
- (c) Grazing permits or leases convey no right, title, or interest held by the United States in any lands or resources.

(d) The term of grazing permits or leases authorizing livestock grazing on the public lands and other lands under the administration of the Bureau of Land Management shall be 10 years unless—

(1) The land is being considered for disposal;

(2) The land will be devoted to a public purpose which precludes grazing prior to the end of 10 years;

(3) The term of the base property lease is less than 10 years, in which case the term of the Federal permit or lease shall coincide with the term of the base property lease; or

(4) The authorized officer determines that a permit or lease for less than 10 years is in the best interest of sound land management.

(e) Permittees or lessees holding expiring grazing permits or leases shall be given first priority for new permits or leases if:

(1) The lands for which the permit or lease is issued remain available for domestic livestock grazing;

(2) The permittee or lessee is in compliance with the rules and regulations and the terms and conditions in the permit or lease; and

(3) The permittee or lessee accepts the terms and conditions to be included by the authorized officer in the new permit or lease.

~~(f) The authorized officer will not offer, grant or renew grazing permits or leases when the applicants, including permittees or lessees seeking renewal, refuse to accept the proposed terms and conditions of a permit or lease~~ A permit or lease is not valid unless both BLM and the permittee or lessee have signed it.



~~(g) Temporary nonuse and conservation use may be approved by the authorized officer if such use is determined to be in conformance with the applicable land use plans, allotment management plan or other activity plans and the provisions of subpart 4180 of this part.~~

~~(1) Conservation use may be approved for periods of up to 10 years when, in the determination of the authorized officer, the proposed use will promote rangeland resource protection or enhancement of resource values or uses, including more rapid progress toward resource condition objectives; or~~

~~(2) Temporary nonuse for reasons including but not limited to financial conditions or annual fluctuations of livestock, may be approved on an annual basis for no more than 3 consecutive years. Permittees or lessees applying for temporary nonuse shall state the reasons supporting nonuse.~~

~~(h) Application for nonrenewable grazing permits and leases under §§4110.3-1 and 4130.6-2 for areas for which conservation use has been authorized will not be approved. Forage made available as a result of temporary nonuse may be made available to qualified applicants under §4130.6-2.~~

(g) Permits or leases may incorporate the percentage of public land livestock use (see §4130.3-2(g)) or may include private land offered under exchange-of-use grazing agreements (see §4130.6-1).

(h) Provisions explaining how grazing permits or authorizations may be granted for grazing use on state, county or private land leased by the Bureau of Land Management under “The Pierce Act” and located within grazing districts are explained in 43 CFR part 4600.

§ 4130.3 Terms and conditions.

(a) Livestock grazing permits and leases shall contain terms and conditions determined by the authorized officer to be appropriate to achieve management and resource condition objectives for the public lands and other lands administered by the Bureau of Land Management, and to ensure conformance with the provisions of subpart 4180 of this part.

(b) Upon a BLM offer of a permit or lease, the permit or lease terms and conditions may be protested and appealed under part 4 and subpart 4160.

(c) If any term or condition of a BLM-offered permit or lease is stayed pending appeal, BLM will authorize grazing use as provided in § 4160.4 with respect to the stayed term or condition.

§ 4130.3-1 Mandatory terms and conditions.

(a) The authorized officer shall specify the kind and number of livestock, the period(s) of use, the allotment(s) to be used, and the amount of use, in animal unit months, for every grazing permit or lease. The authorized livestock grazing use shall not exceed the livestock carrying capacity of the allotment.

(b) All permits and leases shall be made subject to cancellation, suspension, or modification for any violation of these regulations or of any term or condition of the permit or lease.

(c) Permits and leases shall incorporate terms and conditions that ensure conformance with subpart 4180 of this part.

§ 4130.3-2 Other terms and conditions.

The authorized officer may specify in grazing permits or leases other terms and conditions which will assist in achieving management objectives, provide for proper range management or assist in the orderly administration of the public rangelands. These may include but are not limited to:

- (a) The class of livestock that will graze on an allotment;
- (b) The breed of livestock in allotments within which two or more permittees or lessees are authorized to graze;
- (c) Authorization to use, and directions for placement of supplemental feed, including salt, for improved livestock and rangeland management on the public lands;
- (d) A requirement that permittees or lessees operating under a grazing permit or lease submit within 15 days after completing their annual grazing use, or as otherwise specified in the permit or lease, the actual use made;
- (e) The kinds of indigenous animals authorized to graze under specific terms and conditions;
- (f) Provision for livestock grazing temporarily to be delayed, discontinued or modified to allow for the reproduction, establishment, or restoration of vigor of plants, provide for the improvement of riparian areas to achieve proper functioning condition or for the protection of other rangeland resources and values consistent with objectives of applicable land use plans, or to prevent compaction of wet soils, such as where delay of spring turnout is required because of weather conditions or lack of plant growth;
- (g) The percentage of public land use determined by the proportion of livestock forage available on public lands within the allotment compared to the total amount available from both public lands and those owned or controlled by the permittee or lessee; and
- (h) A statement disclosing the requirement that permittees or lessees shall provide reasonable administrative access across private and leased lands to the Bureau of Land Management for the orderly management and protection of the public lands.

§ 4130.3-3 Modification of permits or leases.

~~(a) Following consultation, cooperation, and coordination with the affected lessees or permittees and; the State having lands or responsibility for managing resources within the area, and the interested public; the authorized officer may modify terms and conditions of the permit or lease when the active use or related management practices;~~

~~(1) Do are not meeting management objectives specified in:~~

~~(i) The land use plan;~~

~~(ii) The pertinent allotment management plan or other activity plan; or~~

~~(iii) An applicable decision issued under § 4160.3; management objectives; or~~

~~(2) Do is not in-conformance towith the provisions of subpart 4180, of this part.~~

~~(b) To the extent practical, the authorized officer shall provide to affected permittees or lessees, States having lands or responsibility for managing resources within the affected area, and the interested public an opportunity to review, comment and give input during the preparation of reports that evaluate monitoring and other data that the authorized officer are used as a basis for making decisions to increase or decrease grazing use, or otherwise to change the terms and conditions of a permit or lease, the authorized officer will provide the following with an opportunity to review and offer input:~~

~~(1) Affected permittees or lessees;~~

~~(2) States having lands or responsibility for managing resources within the affected area; and~~

~~(3) The interested public.~~

§ 4130.4 ~~Approval~~Authorization of temporary changes in grazing use within the terms and conditions of permits and leases, including temporary nonuse.

~~(a) Applications for changes in grazing use should be filed with the authorized officer before the billing notices for the affected grazing use have been issued. Applications for changes in grazing use filed after the billing notices for the affected grazing use have been issued and which require the issuance of a replacement or supplemental billing notice shall be subject to a service charge under §4130.8-3 of this title.~~

~~(ab) The authorized officer may authorize temporary changes in grazing use within the terms and conditions of the permit or lease, may be granted by the authorized officer.~~

~~(b) For the purposes of this subpart, “temporary changes in grazing use within the terms and conditions of the permit or lease” means temporary changes in livestock number, period of use, or both, that would:~~

~~(1) Result in temporary nonuse; or~~

~~(2) Result in forage removal that --~~

~~(i) Does not exceed the amount of active use specified in the permit or lease; and~~

~~(ii) Occurs either not earlier than 14 days before the begin date specified on the permit or lease, and not later than 14 days after the end date specified on the permit or lease, unless otherwise specified in the appropriate allotment management plan under § 4120.2(a)(3); or~~

~~(3) Result in both temporary nonuse under paragraph (b)(1) of this section and forage removal under paragraph (b)(2) of this section.~~

~~(c) The authorized officer will consult, cooperate and coordinate with the permittees or lessees regarding their applications for changes within the terms and conditions of their permit or lease.~~

(d) Permittees and lessees ~~must~~ may apply if they wish –

(1) Not to use all or a part of their active use by applying for temporary nonuse under paragraph (e) of this section;

(2) ~~To activate use forage previously authorized as in temporary nonuse; or conservation use or to place forage in temporary nonuse or conservation use, and may apply for the~~

(3) To use of forage that is temporarily available on designated ephemeral or annual ranges.

(e)(1) Temporary nonuse is authorized –

(i) Only if the authorized officer approves it in advance; and

(ii) For no longer than one year at a time.

(2) Permittees or lessees applying for temporary nonuse must state on their application the reasons supporting nonuse. The authorized officer may authorize nonuse to provide for:

(i) Natural resource conservation, enhancement, or protection, including more rapid progress toward meeting resource condition objectives or attainment of rangeland health standards; or

(ii) The business or personal needs of the permittee or lessee.

(f) Under § 4130.6-2, the authorized officer may authorize qualified applicants to graze forage made available as a result of temporary nonuse approved for the reasons described in paragraph (d)(2)(ii). The authorized officer will not authorize anyone to graze forage made available as a result of temporary nonuse approved under paragraph (d)(2)(i) of this section.

(g) Permittees or lessees who wish to obtain temporary changes in grazing use within the terms and conditions of their permit or lease must file an application in writing with BLM on or before the date they wish the change in grazing use to begin. The authorized officer will assess a service charge under § 4130.8-3 to process applications for changes in grazing use that require the issuance of a replacement or supplemental billing notice.

§ 4130.5 Free-use grazing permits.

(a) A free-use grazing permit shall be issued to any applicant whose residence is adjacent to public lands within grazing districts and who needs these public lands to support those domestic livestock owned by the applicant whose products or work are used directly and exclusively by the applicant and his family. The issuance of free-use grazing permits is subject to §4130.1–2. These permits shall be issued on an annual basis. These permits cannot be transferred or assigned.

(b) The authorized officer may also authorize free use under the following circumstances:

- (1) The primary objective of ~~authorized grazing use or conservation use~~ is the management of vegetation to meet resource objectives other than the production of livestock forage and such use is in conformance with the requirements of this part;
- (2) The primary purpose of grazing use is for scientific research or administrative studies; or
- (3) The primary purpose of grazing use is the control of noxious weeds.

§ 4130.6 Other grazing authorizations.

Exchange-of-use grazing agreements, nonrenewable grazing permits or leases, crossing permits, and special grazing permits or leases have no priority for renewal and cannot be transferred or assigned.

§ 4130.6-1 Exchange-of-use grazing agreements.

(a) An exchange-of-use grazing agreement may be issued to an applicant who owns or controls lands that are unfenced and intermingled with public lands in the same allotment when use under such an agreement will be in harmony with the management objectives for the allotment and will be compatible with the existing livestock operations. The agreements shall contain appropriate terms and conditions required under §4130.3 that ensure the orderly administration of the range, including fair and equitable sharing of the operation and maintenance of range improvements. The term of an exchange-of-use agreement may not exceed the length of the term for any leased lands that are offered in exchange-of-use.

(b) An exchange-of-use grazing agreement may be issued to authorize use of public lands to the extent of the livestock carrying capacity of the lands offered in exchange-of-use. No fee shall be charged for this grazing use.

§ 4130.6-2 Nonrenewable grazing permits and leases.

~~(a) Nonrenewable grazing permits or leases may be issued on an annual basis, as provided in § 4110.3-1(a), to qualified applicants when forage is temporarily available, provided this use is consistent with multiple-use objectives and does not interfere with existing livestock operations on the public lands. The authorized officer shall consult, cooperate and coordinate with affected permittees or lessees, and the State having lands or responsibility for managing resources within the area, and the interested public prior to, the before issuance of nonrenewable grazing permits and leases.~~

~~(b) Notwithstanding the provisions of § 4.21(a)(1) of this title, when BLM determines that it is necessary for orderly administration of the public lands, the authorized officer may make a decision that issues a nonrenewable grazing permit or lease, or that affects an application for grazing use on annual or designated ephemeral rangelands, effective immediately or on a date established in the decision.~~

§ 4130.6-3 Crossing permits.

A crossing permit may be issued by the authorized officer to any applicant showing a need to cross the public land or other land under Bureau of Land Management control, or both, with livestock for proper and lawful purposes. A temporary use authorization for trailing livestock shall contain terms and conditions for the temporary grazing use that will occur as deemed necessary by the authorized officer to achieve the objectives of this part.

§ 4130.6-4 Special grazing permits or leases.

Special grazing permits or leases authorizing grazing use by privately owned or controlled indigenous animals may be issued at the discretion of the authorized officer. This use shall be consistent with multiple-use objectives. These permits or leases shall be issued for a term deemed appropriate by the authorized officer not to exceed 10 years.

§ 4130.7 Ownership and identification of livestock.

(a) The permittee or lessee shall own or control and be responsible for the management of the livestock which graze the public land under a grazing permit or lease.

(b) Authorized users shall comply with the requirements of the State in which the public lands are located relating to branding of livestock, breed, grade, and number of bulls, health and sanitation.

(c) The authorized officer may require counting and/or additional special marking or tagging of the authorized livestock in order to promote the orderly administration of the public lands.

(d) Except as provided in paragraph (f) of this section, where a permittee or lessee controls but does not own the livestock which graze the public lands, the agreement that gives the permittee or lessee control of the livestock by the permittee or lessee shall be filed with the authorized officer and approval received prior to any grazing use. The document shall describe the livestock and livestock numbers, identify the owner of the livestock, contain the terms for the care and management of the livestock, specify the duration of the agreement, and shall be signed by the parties to the agreement.

(e) The brand and other identifying marks on livestock controlled, but not owned, by the permittee or lessee shall be filed with the authorized officer.

(f) Livestock owned by sons and daughters of grazing permittees and lessees may graze public lands included within the permit or lease of their parents when all the following conditions exist:

(1) The sons and daughters are participating in educational or youth programs related to animal husbandry, agribusiness or rangeland management, or are actively involved in the family ranching operation and are establishing a livestock herd with the intent of assuming part or all of the family ranch operation.

(2) The livestock owned by the sons and daughters to be grazed on public lands do not comprise greater than 50 percent of the total number authorized to occupy public lands under their parent's permit or lease.

(3) The brands or other markings of livestock that are owned by sons and daughters are recorded on the parent's permit, lease, or grazing application.

(4) Use by livestock owned by sons and daughters, when considered in addition to use by livestock owned or controlled by the permittee or lessee, does not exceed authorized livestock use and is consistent with other terms and conditions of the permit or lease.

§ 4130.8 Fees.

§ 4130.8-1 Payment of fees.

(a) Grazing fees shall be established annually by the Secretary.

(1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, the calculated fee or grazing fee shall be equal to the \$1.23 base established by the 1966 Western Livestock Grazing Survey multiplied by the result of the Forage Value Index (computed annually from data supplied by the National Agricultural Statistics Service) added to the Combined Index (Beef Cattle Price Index minus the Prices Paid Index) and divided by 100; as follows:

$$CF = \$1.23 \times \frac{FVI + BCPI - PPI}{100}$$

CF = Calculated Fee (grazing fee) is the estimated economic value of livestock grazing, defined by the Congress as fair market value (FMV) of the forage;

\$1.23=The base economic value of grazing on public rangeland established by the 1966 Western Livestock Grazing Survey;

FVI=*Forage Value Index* means the weighted average estimate of the annual rental charge per head per month for pasturing cattle on private rangelands in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) (computed by the National Agricultural Statistics Service from the June Enumerative Survey) divided by \$3.65 and multiplied by 100;

BCPI=*Beef Cattle Price Index* means the weighted average annual selling price for beef cattle (excluding calves) in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) for November through October (computed by the National Agricultural Statistics Service divided by \$22.04 per hundred weight and multiplied by 100; and

PPI=*Prices Paid Index* means the following selected components from the National Agricultural Statistics Service's Annual National Index of Prices Paid by Farmers for Goods

and Services adjusted by the weights indicated in parentheses to reflect livestock production costs in the Western States: 1. Fuels and Energy (14.5); 2. Farm and Motor Supplies (12.0); 3. Autos and Trucks (4.5); 4. Tractors and Self-Propelled Machinery (4.5); 5. Other Machinery (12.0); 6. Building and Fencing Materials (14.5); 7. Interest (6.0); 8. Farm Wage Rates (14.0); 9. Farm Services (18.0).

(2) Any annual increase or decrease in the grazing fee for any given year shall be limited to not more than plus or minus 25 percent of the previous year's fee.

(3) The grazing fee for any year shall not be less than \$1.35 per animal unit month.

(b) Fees shall be charged for livestock grazing upon or crossing the public lands and other lands administered by the Bureau of Land Management at a specified rate per animal unit month.

(c) Except as provided in §4130.5, the full fee shall be charged for each animal unit month of authorized grazing use. For the purposes of calculating the fee, an animal unit month is defined as a month's use and occupancy of range by 1 cow, bull, steer, heifer, horse, burro, mule, 5 sheep, or 5 goats;

~~(1) Over the age of 6 months at the time of entering the public lands or other lands administered by BLM the Bureau of Land Management;~~

~~(2) by any such W weaned animals regardless of age; or and~~

~~(3) by such animals that will b become 12 months of age during the authorized period of use.~~

~~(d) BLM will not charge grazing fees shall be made for animals that are less than under 6 months of age; at the time of entering BLM-administered public lands or other lands administered by the Bureau of Land Management, provided that are the natural progeny of animals upon which fees are paid, and, provided they will not become 12 months of age during the authorized period of use, nor for progeny born during that period.~~

~~(e) In calculating the billing, the authorized officer will prorate the grazing fee is prorated on a daily basis and will round charges are rounded to reflect the nearest whole number of animal unit months.~~

~~(f) A surcharge shall be added to the grazing fee billings for authorized grazing of livestock owned by persons other than the permittee or lessee except where such use is made by livestock owned by sons and daughters of permittees and lessees as provided in §4130.7(f). The surcharge shall be over and above any other fees that may be charged for using public land forage. Surcharges shall be paid prior to grazing use. The surcharge for authorized pasturing of livestock owned by persons other than the permittee or lessee will be equal to 35 percent of the difference between the current year's Federal grazing fee and the prior year's private grazing~~

land lease rate per animal unit month for the appropriate State as determined by the National Agricultural Statistics Service.

(ge) Fees are due on due date specified on the grazing fee bill. Payment will be made prior to grazing use. Grazing use that occurs prior to payment of a bill, except where specified in an allotment management plan, is unauthorized and may be dealt with under subparts 4150 and 4170 of this part. If allotment management plans provide for billing after the grazing season, fees will be based on actual grazing use and will be due upon issuance. Repeated delays in payment of actual use billings or noncompliance with the terms and conditions of the allotment management plan and permit or lease shall be cause to revoke provisions for after-the-grazing-season billing.

(hf) Failure to pay the grazing bill within 15 days of the due date specified in the bill shall result in a late fee assessment of \$25.00 or 10 percent of the grazing bill, whichever is greater, but not to exceed \$250.00. Payment made later than 15 days after the due date, shall include the appropriate late fee assessment. Failure to make payment within 30 days after the due date ~~may be a~~ is a violation of § 4140.1(b)(1) and may ~~shall~~ result in action by the authorized officer under §§4150.1 and subpart 4160.1-2.

§ 4130.8-2 Refunds.

(a) Grazing fees may be refunded where applications for change in grazing use and related refund are filed prior to the period of use for which the refund is requested.

(b) No refunds shall be made for failure to make grazing use, except during periods of range depletion due to drought, fire, or other natural causes, or in case of a general spread of disease among the livestock that occurs during the term of a permit or lease. During these periods of range depletion the authorized officer may credit or refund fees in whole or in part, or postpone fee payment for as long as the emergency exists.

§ 4130.8-3 Service charge.

(a) ~~A service charge may be assessed for each crossing permit, transfer of grazing preference, application solely for nonuse or conservation use, and each replacement or supplemental billing notice except for actions initiated by the authorized officer. Pursuant to Under Section 304(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734(a)), BLM may establish reasonable charges for various services such as application processing. BLM may adjust these charges periodically to account for cost changes. calculation of the Bureau service charge assessed shall reflect processing costs and shall be adjusted periodically as costs change. BLM will inform the public of any changes by publishing a n~~ Notice of changes shall be published periodically in the Federal Register.

(b) The following table of service charges is applicable until changed through a Federal Register notice as provided in paragraph (a) of this section. Except when the action is initiated by BLM, the authorized officer will assess the following service charges:

Action	Service Charge
Issue crossing permit	\$75
Transfer grazing preference	\$145
Cancel and/or replace and/or supplement a grazing fee billing	\$50

§ 4130.9 Pledge of permits or leases as security for loans.

Grazing permits or leases that have been pledged as security for loans from lending agencies shall be renewed by the authorized officer under the provisions of these regulations for a period of not to exceed 10 years if the loan is for the purpose of furthering the permittee's or lessee's livestock operation, *Provided*, That the permittee or lessee has complied with the rules and regulations of this part and that such renewal will be in accordance with other applicable laws and regulations. While grazing permits or leases may be pledged as security for loans from lending agencies, this does not exempt these permits or leases from the provisions of these regulations.

Subpart 4140—Prohibited Acts

§ 4140.1 Acts prohibited on public lands.

~~The following acts are prohibited on public lands and other lands administered by the Bureau of Land Management:~~

(a) Grazing permittees or lessees performing the following prohibited acts may be subject to civil penalties under §4170.1:

- (1) Violating special terms and conditions incorporated in permits or leases;
- (2) Failing to make substantial grazing use as authorized by a permit or lease for 2 consecutive fee years. ~~This does, but not including~~ approved temporary nonuse, ~~conservation use~~, or use temporarily suspended by the authorized officer.
- (3) Placing supplemental feed on these lands without authorization, or contrary to the terms and conditions of the permit or lease.
- (4) Failing to comply with the terms, conditions, and stipulations of cooperative range improvement agreements or range improvement permits;
- (5) Refusing to install, maintain, modify, or remove range improvements when so directed by the authorized officer.
- (6) Unauthorized leasing or subleasing as defined in this part.

(b) ~~Persons performing the following prohibited acts related to rangelands shall be on BLM-administered lands~~ are subject to civil and criminal penalties set forth at §§4170.1 and 4170.2:

(1) Allowing livestock or other privately owned or controlled animals to graze on or be driven across these lands:

(i) Without a permit or lease, ~~and an annual or other grazing use authorization (see § 4130.6) and timely payment of grazing fees. For the purposes of this paragraph, grazing bills for which payment has not been received do not constitute grazing authorization.~~

(ii) In violation of the terms and conditions of a permit, lease, or other grazing use authorization including, but not limited to, livestock in excess of the number authorized;

(iii) In an area or at a time different from that authorized; or

(iv) Failing to comply with a requirement under §4130.7(c) of this title.

(2) Installing, using, maintaining, modifying, and/or removing range improvements without authorization;

(3) Cutting, burning, spraying, destroying, or removing vegetation without authorization;

(4) Damaging or removing U.S. property without authorization;

(5) Molesting, harassing, injuring, poisoning, or causing death of livestock authorized to graze on these lands and removing authorized livestock without the owner's consent;

(6) Littering;

(7) Interfering with lawful uses or users including obstructing free transit through or over public lands by force, threat, intimidation, signs, barrier or locked gates;

(8) Knowingly or willfully making a false statement or representation in base property certifications, grazing applications, range improvement permit applications, cooperative range improvement agreements, actual use reports and/or amendments thereto;

(9) Failing to pay any fee required by the authorized officer pursuant to this part, or making payment for grazing use of public lands with insufficiently funded checks on a repeated and willful basis;

(10) Failing to reclaim and repair any lands, property, or resources when required by the authorized officer;

(11) Failing to reclose any gate or other entry during periods of livestock use.

(c) (1) A grazing permittee or lessee Pperformingance of any of the prohibited acts listed in paragraphs (e)(1), (c)(2) or (c)(3) of this section on an allotment where he is authorized to graze under a BLM permit or lease may be subject to civil penalties set forth at § 4170.1-1, if:

~~where public land administered by the Bureau of Land Management is involved or affected;~~
~~The permittee or lessee performs the prohibited act while engaged in activities the violation is~~
related to grazing use authorized by ~~his~~ permit or lease;

~~(ii) issued by the Bureau of Land Management, and t~~The permittee or lessee has been
convicted or otherwise found to be in violation of any of these laws or regulations by a court
or by final determination of an agency charged with the administration of these laws or
regulations; and

~~(iii) N~~no further appeals are outstanding, ~~constitutes a prohibited act that may be subject to the~~
~~civil penalties set forth at §4170.1-1.~~

(2+) Violation of Federal or State laws or regulations pertaining to the:

(i) Placement of poisonous bait or hazardous devices designed for the destruction of wildlife;

(ii) Application or storage of pesticides, herbicides, or other hazardous materials;

(iii) Alteration or destruction of natural stream courses without authorization;

(iv) Pollution of water sources;

(v) Illegal take, **destruction**, or harassment, or aiding and abetting in the illegal take, **destruction**,
or harassment of fish and wildlife resources; and

(vi) Illegal removal or destruction of archeological or cultural resources;

~~(32)~~(i) Violation of the Bald **and Golden Eagle** Protection Act (16 U.S.C. 668 *et seq.*),
Endangered Species Act (16 U.S.C. 1531 *et seq.*), or any provision of part 4700 of this chapter
concerning the protection and management of wild free-roaming horses and burros; or

~~(ii)~~(3) Violation of State livestock laws or regulations relating to the branding of livestock; breed,
grade, and number of bulls; health and sanitation requirements; and violating State, county, or
local laws regarding the **straying** of livestock from permitted public land grazing areas onto areas
that have been formally closed to open range grazing.

Subpart 4150—Unauthorized Grazing Use

§ 4150.1 Violations.

Violation of §4140.1(b)(1) constitutes unauthorized grazing use.

(a) The authorized officer shall determine whether a violation is nonwillful, willful, or repeated
willful.

(b) Violators shall be liable in damages to the United States for the forage consumed by their livestock, for injury to Federal property caused by their unauthorized grazing use, and for expenses incurred in impoundment and disposal of their livestock, and may be subject to civil penalties or criminal sanction for such unlawful acts.

§ 4150.2 Notice and order to remove.

(a) Whenever it appears that a violation exists and the owner of the unauthorized livestock is known, written notice of unauthorized use and order to remove livestock by a specified date shall be served upon the alleged violator or the agent of record, or both, by certified mail or personal delivery. The written notice shall also allow a specified time from receipt of notice for the alleged violator to show that there has been no violation or to make settlement under §4150.3.

(b) Whenever a violation has been determined to be nonwillful and incidental, the authorized officer shall notify the alleged violator that the violation must be corrected, and how it can be settled, based upon the discretion of the authorized officer.

(c) When neither the owner of the unauthorized livestock nor his agent is known, the authorized officer may proceed to impound the livestock under §4150.4.

(d) The authorized officer may temporarily close areas to grazing by specified kinds or class of livestock for a period not to exceed 12 months when necessary to abate unauthorized grazing use. Such notices of closure may be issued as final decisions effective upon issuance or on the date specified in the decision and shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals in accordance with 43 CFR ~~4.214~~4.472(d).

§ 4150.3 Settlement.

Where violations are repeated willful, the authorized officer shall take action under §4170.1–1(b) of this title. The amount due for settlement shall include the value of forage consumed as determined in accordance with paragraph (a), (b), or (c) of this section. Settlement for willful and repeated willful violations shall also include the full value for all damages to the public lands and other property of the United States; and all reasonable expenses incurred by the United States in detecting, investigating, resolving violations, and livestock impoundment costs.

(a) For nonwillful violations: The value of forage consumed as determined by the average monthly rate per AUM for pasturing livestock on privately owned land (excluding irrigated land) in each State as published annually by the Department of Agriculture. The authorized officer may approve nonmonetary settlement of unauthorized use only when the authorized officer determines that each of the following conditions is satisfied:

(1) Evidence shows that the unauthorized use occurred through no fault of the livestock operator;

- (2) The forage use is insignificant;
 - (3) The public lands have not been damaged; and
 - (4) Nonmonetary settlement is in the best interest of the United States.
- (b) For willful violations: Twice the value of forage consumed as determined in paragraph (a) of this section.
- (c) For repeated willful violations: Three times the value of the forage consumed as determined in paragraph (a) of this section.
- (d) Payment made under this section does not relieve the alleged violator of any criminal liability under Federal or State law.
- (e) Violators shall not be authorized to make grazing use on the public lands administered by the Bureau of Land Management until any amount found to be due the United States under this section has been paid. The authorized officer may take action under ~~subpart §4160-1 of this title~~ to cancel or suspend grazing authorizations or to deny approval of applications for grazing use until such amounts have been paid. The proposed decision shall include a demand for payment.
- (f) Upon a stay of a decision issued under paragraph (e) of this section, the authorized officer will allow a permittee or lessee to graze in accordance with this part 4100 pending completion of the administrative appeal process.

§ 4150.4 Impoundment and disposal.

Unauthorized livestock remaining on the public lands or other lands under Bureau of Land Management control, or both, after the date set forth in the notice and order to remove sent under §4150.2 may be impounded and disposed of by the authorized officer as provided herein.

§ 4150.4-1 Notice of intent to impound.

- (a) A written notice of intent to impound shall be sent by certified mail or personally delivered to the owner or his agent, or both. The written notice shall indicate that unauthorized livestock on the specified public lands or other lands under Bureau of Land Management control, or both, may be impounded any time after 5 days from delivery of the notice.
- (b) Where the owner and his agent are unknown, or where both a known owner and his agent refuses to accept delivery, a notice of intent to impound shall be published in a local newspaper and posted at the county courthouse and a post office near the public land involved. The notice shall indicate that unauthorized livestock on the specified public lands or other lands under Bureau of Land Management control, or both, may be impounded any time after 5 days from publishing and posting the notice.

§ 4150.4-2 Impoundment.

After 5 days from delivery of the notice under §4150.4-1(a) of this title or any time after 5 days from publishing and posting the notice under §4150.4-1(b) of this title, unauthorized livestock may be impounded without further notice any time within the 12-month period following the effective date of the notice.

§ 4150.4-3 Notice of public sale.

Following the impoundment of livestock under this subpart the livestock may be disposed of by the authorized officer under these regulations or, if a suitable agreement is in effect, they may be turned over to the State for disposal. Any known owners or agents, or both, shall be notified in writing by certified mail or by personal delivery of the sale and the procedure by which the impounded livestock may be redeemed prior to the sale.

§ 4150.4-4 Redemption.

Any owner or his agent, or both, or lien-holder of record of the impounded livestock may redeem them under these regulations or, if a suitable agreement is in effect, in accordance with State law, prior to the time of sale upon settlement with the United States under §4150.3 or adequate showing that there has been no violation.

§ 4150.4-5 Sale.

If the livestock are not redeemed on or before the date and time fixed for their sale, they shall be offered at public sale to the highest bidder by the authorized officer under these regulations or, if a suitable agreement is in effect, by the State. If a satisfactory bid is not received, the livestock may be reoffered for sale, condemned and destroyed or otherwise disposed of under these regulations, or if a suitable agreement is in effect, in accordance with State Law.

Subpart 4160—Administrative Remedies

§ 4160.1 Proposed decisions.

(a) Proposed decisions shall be served on any affected applicant, permittee or lessee, and any agent and lien holder of record, who is affected by the proposed actions, terms or conditions, or modifications relating to applications, permits and agreements (including range improvement permits) or leases, by certified mail or personal delivery. Copies of proposed decisions shall also be sent to the interested public.

(b) Proposed decisions shall state the reasons for the action and shall reference the pertinent terms, conditions and the provisions of applicable regulations. As appropriate, decisions shall state the alleged violations of specific terms and conditions and provisions of these regulations alleged to have been violated, and shall state the amount due under §§4130.8 and 4150.3 and the action to be taken under §4170.1.

(c) The authorized officer may elect not to issue a proposed decision prior to a final decision where the authorized officer has made a determination in accordance with § 4110.3-3(b), § 4130.6-2(b), or § 4150.2(d), or § 4190.1(a).

(d) A biological assessment or biological evaluation prepared by BLM for purposes of an Endangered Species Act consultation or conference is not a decision for purposes of protest and appeal.

§ 4160.2 Protests.

Any applicant, permittee, lessee or other interested public may protest the proposed decision under §4160.1 of this title in person or in writing to the authorized officer within 15 days after receipt of such decision.

§ 4160.3 Final decisions.

(a) In the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice unless otherwise provided in the proposed decision.

(b) Upon the timely filing of a protest, the authorized officer shall reconsider her/his proposed decision in light of the protestant's statement of reasons for protest and in light of other information pertinent to the case. At the conclusion to her/his review of the protest, the authorized officer shall serve her/his final decision on the protestant or her/his agent, or both, and the interested public.

~~(c) A period of 30 days following receipt of the final decision, or 30 days after the date the proposed decision becomes final as provided in paragraph (a) of this section, is provided for filing an appeal and petition for stay of the decision pending final determination on appeal. A decision will not be effective during the 30-day appeal period, except as provided in paragraph (f) of this section. See §§4.21 and 4.470 of this title for general provisions of the appeal and stay processes.~~

~~(d) When the Office of Hearings and Appeals stays a final decision of the authorized officer regarding an application for grazing authorization, an applicant who was granted grazing use in the preceding year may continue at that level of authorized grazing use during the time the decision is stayed, except where grazing use in the preceding year was authorized on a temporary basis under §4110.3-1(a). Where an applicant had no authorized grazing use during the previous year, or the application is for designated ephemeral or annual rangeland grazing use, the authorized grazing use shall be consistent with the final decision pending the Office of Hearings and Appeals final determination on the appeal.~~

~~(e) When the Office of Hearings and Appeals stays a final decision of the authorized officer to change the authorized grazing use, the grazing use authorized to the permittee or lessee during the time that the decision is stayed shall not exceed the permittee's or lessee's authorized use in the last year during which any use was authorized.~~

(cf) Notwithstanding the provisions of §4.21(a) of this title pertaining to the period during which a final decision will not be in effect, the authorized officer may provide that the final decision shall be effective upon issuance or on a date established in the decision and shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals when the authorized officer has made a determination in accordance with ~~§ 4110.3-3(b), § 4130.6-2(b), or § 4150.2(d), or § 4190.1(a)~~. Nothing in this section shall affect the authority of the Director of the Office of Hearings and Appeals, ~~or the Interior Board of Land Appeals, or an administrative law judge to provide that the decision becomes effective immediately as provided in place decisions in full force and effect as provided in §§ 4.21(a)(1) and 4.479(c)~~ of this title.

§ 4160.4 Appeals.

~~(a) Those who wish to~~ Any person whose interest is adversely affected by a final decision of the authorized officer may appeal or seek a stay of a BLM grazing decision for the purpose of a hearing before an administrative law judge by ~~must~~ following the requirements set forth ~~out~~ in § 4.470 et seq. of this title. ~~TAs stated in that part, the appeal or petition for stay must be filed with the BLM office that issued the decision within 30 days after its receipt of the final decision or within 30 days after the date the proposed decision becomes final as provided in §4160.3(a). Appeals and petitions for a stay of the decision shall be filed at the office of the authorized officer. The authorized officer shall promptly transmit the appeal and petition for stay and the accompanying administrative record to ensure their timely arrival at the Office of Hearings and Appeals.~~

(b) When OHA stays all or a portion of a BLM grazing decision that affects a grazing permit or lease, BLM will authorize grazing use as follows:

(1) When OHA stays implementation of all or part of a grazing decision that cancels or suspends a permit or lease, changes any terms or conditions of a permit or lease during its current term, or renews a permit or lease, BLM will continue to authorize grazing under the permit or lease, or the relevant term or condition thereof, that was in effect immediately before the decision was issued, subject to any relevant provisions of the stay order. This continued authorization is not subject to protest or appeal.

(2) When OHA stays implementation of a grazing decision that denies issuance of a permit or lease to a preference transferee, BLM will issue the preference applicant a permit or lease with terms and conditions that are the same as the terms and conditions of the most recent permit or lease applicable to the allotment or portion of the allotment in question, subject to any relevant provisions of the stay order. This temporary permit will expire upon the resolution of the administrative appeal. Issuance of the temporary permit is not a decision subject to protest or appeal.

(3) When OHA stays implementation of a grazing decision that offers a permit or lease to a preference transferee with terms and conditions different from terms and conditions of the most recent permit or lease applicable to the allotment or portion of the allotment in question, BLM

will issue the preference applicant a permit or lease that, with respect to any stayed term and condition, is the same as the terms and conditions of the most recent permit or lease applicable to the allotment or portion of the allotment in question, subject to any relevant provisions of the stay order. This temporary permit will expire upon resolution of the administrative appeal. Issuance of the temporary permit is not a decision subject to protest and appeal.

Subpart 4170—Penalties

§ 4170.1 Civil penalties.

§ 4170.1-1 Penalty for violations.

(a) The authorized officer may withhold issuance of a grazing permit or lease, or suspend the grazing use authorized under a grazing permit or lease, in whole or in part, or cancel a grazing permit or lease and grazing preference, or a free use grazing permit or other grazing authorization, in whole or in part, under subpart 4160 of this title, for violation by a permittee or lessee of any of the provisions of this part.

(b) The authorized officer shall suspend the grazing use authorized under a grazing permit, in whole or in part, or shall cancel a grazing permit or lease and grazing preference, in whole or in part, under subpart 4160 of this title for repeated willful violation by a permittee or lessee of §4140.1(b)(1) of this title.

(c) Whenever a nonpermittee or nonlessee violates §4140.1(b) of this title and has not made satisfactory settlement under §4150.3 of this title the authorized officer shall refer the matter to proper authorities for appropriate legal action by the United States against the violator.

(d) Any person found to have violated the provisions of §4140.1(a)(6) after August 21, 1995, shall be required to pay twice the value of forage consumed as determined by the average monthly rate per AUM for pasturing livestock on privately owned land (excluding irrigated land) in each State as supplied annually by the National Agricultural Statistics Service, and all reasonable expenses incurred by the United States in detecting, investigating, and resolving violations. If the dollar equivalent value is not received by the authorized officer within 30 days of receipt of the final decision, the grazing permit or lease shall be cancelled. Such payment shall be in addition to any other penalties the authorized officer may impose under paragraph (a) of this section.

§ 4170.1-2 Failure to use.

If a permittee or lessee has, for 2 consecutive grazing fee years, failed to make substantial use as authorized in the lease or permit, or has failed to maintain or use water base property in the grazing operation, the authorized officer, after consultation, coordination, and cooperation with the permittee or lessee and any lienholder of record, may cancel whatever amount of activepermitted use the permittee or lessee has failed to use.

§ 4170.2 Penal provisions.

§ 4170.2-1 Penal provisions under the Taylor Grazing Act.

Under section 2 of the Act any person who willfully commits an act prohibited under §4140.1(b), or who willfully violates approved special rules and regulations is punishable by a fine of not more than \$500.

§ 4170.2-2 Penal provisions under the Federal Land Policy and Management Act.

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), any person who knowingly and willfully commits an act prohibited under §4140.1(b) or who knowingly and willfully violates approved special rules and regulations may be brought before a designated U.S. magistrate and is punishable by a fine in accordance with the applicable provisions of Title 18 of the United States Code, or imprisonment for no more than 12 months, or both.

Subpart 4180—Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration

§ 4180.1 Fundamentals of rangeland health.

Where standards and guidelines have not been established under § 4180.2(b), and the authorized officer determines that grazing management needs to be modified to assist in achieving the following conditions, the authorized officer will~~shall~~ take appropriate action under subparts 4110, 4120, 4130, and 4160 of this part as soon as practicable but not later than the start of the next grazing year that follows BLM's completion of relevant and applicable requirements of laws and regulations, and the consultation requirements of §§ 4110.3-3 and 4130.3-3:

~~upon determining that existing grazing management needs to be modified to ensure that the following conditions exist.~~

(a) Watersheds are in, or are making significant progress toward, properly functioning physical condition, including their upland, riparian-wetland, and aquatic components; soil and plant conditions support infiltration, soil moisture storage, and the release of water that are in balance with climate and landform and maintain or improve water quality, water quantity, and timing and duration of flow.

(b) Ecological processes, including the hydrologic cycle, nutrient cycle, and energy flow, are maintained, or there is significant progress toward their attainment, in order to support healthy biotic populations and communities.

(c) Water quality complies with State water quality standards and achieves, or is making significant progress toward achieving, established BLM management objectives such as meeting wildlife needs.

(d) Habitats are, or are making significant progress toward being, restored or maintained for Federal threatened and endangered species, Federal ~~Proposed or Category 1 and 2~~ Federal-candidate ~~threatened and endangered species~~ and other special status species.

§ 4180.2 Standards and guidelines for grazing administration.

(a) The Bureau of Land Management State Director, in consultation with the affected resource advisory councils where they exist, will identify the geographical area for which standards and guidelines are developed. Standards and guidelines will be developed for an entire state, or an area encompassing portions of more than 1 state, unless the Bureau of Land Management State Director, in consultation with the resource advisory councils, determines that the characteristics of an area are unique, and the rangelands within the area could not be adequately protected using standards and guidelines developed on a broader geographical scale.

(b) The Bureau of Land Management State Director, in consultation with affected Bureau of Land Management resource advisory councils, shall develop and amend State or regional standards and guidelines. The Bureau of Land Management State Director will also coordinate with Indian tribes, other State and Federal land management agencies responsible for the management of lands and resources within the region or area under consideration, and the public in the development of State or regional standards and guidelines. Standards and guidelines developed by the Bureau of Land Management State Director must provide for conformance with the fundamentals of §4180.1. State or regional standards or guidelines developed by the Bureau of Land Management State Director may not be implemented prior to their approval by the Secretary. Standards and guidelines made effective under paragraph (f) of this section may be modified by the Bureau of Land Management State Director, with approval of the Secretary, to address local ecosystems and management practices.

~~(c)~~(1) If a standards assessment indicates to the authorized officer that the rangeland is failing to achieve standards or that management practices do not conform to the guidelines, then the authorized officer will use monitoring data will be used by the authorized officer to identify the significant factors that contribute to failing to achieve the standards or to conform with the guidelines. If ~~The authorized officer shall take appropriate action as soon as practicable but not later than the start of the next grazing year upon determining through standards assessment and monitoring that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the standards and conform with the guidelines that are made effective under this section, the authorized officer will, in compliance with applicable laws and with the consultation requirements of this part, formulate, propose, and analyze appropriate action to address the failure to meet standards or to conform to the guidelines.~~

(i) Parties will execute a documented agreement and/or the authorized officer will issue a final decision on the appropriate action under § 4160.3 as soon as practicable, but not later than 24 months after a determination.

(ii) BLM may extend the deadline for meeting the requirements established in paragraph (c)(1)(i) of this section when legally required processes that are the responsibility of another agency prevent completion of all legal obligations within the 24-month timeframe. BLM will make a decision as soon as practicable after the legal requirements are met.

(2) Upon executing the agreement and/or in the absence of a stay of the final decision, the authorized officer will implement the appropriate action as soon as practicable, but not later than the start of the next grazing year.

(2) Upon executing the agreement and/or in the absence of a stay of the final decision, the authorized officer will implement the appropriate action as soon as practicable, but not later than the start of the next grazing year.

(3) The authorized officer will take appropriate action as defined in this paragraph by the deadlines established in paragraph (c)(1) and (c)(2) of this section. Appropriate action means implementing actions pursuant to subparts 4110, 4120, 4130, and 4160 ~~of this part~~ that will result in significant progress toward fulfillment of the standards and significant progress toward conformance with the guidelines. Practices and activities subject to standards and guidelines include the development of grazing-related portions of activity plans, establishment of terms and conditions of permits, leases and other grazing authorizations, and range improvement activities such as vegetation manipulation, fence construction and development of water.

(d) At a minimum, ~~s~~State ~~and~~ regional standards developed or revised under paragraphs (a) and (b) of this section must address the following:

(1) Watershed function;

(2) Nutrient cycling and energy flow;

(3) Water quality;

(4) Habitat for endangered, threatened, proposed, ~~c~~Candidate ~~1 or 2~~, and other special status species; and

(5) Habitat quality for native plant and animal populations and communities.

(e) At a minimum, State or regional guidelines developed under paragraphs (a) and (b) of this section must address the following:

(1) Maintaining or promoting adequate amounts of vegetative ground cover, including standing plant material and litter, to support infiltration, maintain soil moisture storage, and stabilize soils;

(2) Maintaining or promoting subsurface soil conditions that support permeability rates appropriate to climate and soils;

(3) Maintaining, improving or restoring riparian-wetland functions including energy dissipation, sediment capture, groundwater recharge, and stream bank stability;

(4) Maintaining or promoting stream channel morphology (e.g., gradient, width/depth ratio, channel roughness and sinuosity) and functions appropriate to climate and landform;

(5) Maintaining or promoting the appropriate kinds and amounts of soil organisms, plants and animals to support the hydrologic cycle, nutrient cycle, and energy flow;

- (6) Promoting the opportunity for seedling establishment of appropriate plant species when climatic conditions and space allow;
- (7) Maintaining, restoring or enhancing water quality to meet management objectives, such as meeting wildlife needs;
- (8) Restoring, maintaining or enhancing habitats to assist in the recovery of Federal threatened and endangered species;
- (9) Restoring, maintaining or enhancing habitats of Federal Proposed, ~~Category 1 and 2~~ Federal candidate, and other special status species to promote their conservation;
- (10) Maintaining or promoting the physical and biological conditions to sustain native populations and communities;
- (11) Emphasizing native species in the support of ecological function; and
- (12) Incorporating the use of non-native plant species only in those situations in which native species are not available in sufficient quantities or are incapable of maintaining or achieving properly functioning conditions and biological health;
- ~~(f) In the event that State or regional standards and guidelines are not completed and in effect by February 12, 1997, and until such time as State or regional standards and guidelines are developed and in effect, the following standards provided in paragraph (f)(1) of this section and guidelines provided in (f)(2) of this section will apply and will be implemented in accordance with paragraph (c) of this section. However, the Secretary may grant, upon referral by the BLM of a formal recommendation by a resource advisory council, a postponement of the February 12, 1997, fallback standards and guidelines implementation date, not to exceed the 6-month period ending August 12, 1997. In determining whether to grant a postponement, the Secretary will consider, among other factors, long-term rangeland health and administrative efficiencies.~~
- (1) *Fallback standards.* (i) Upland soils exhibit infiltration and permeability rates that are appropriate to soil type, climate and landform.
- (ii) Riparian-wetland areas are in properly functioning condition.
- (iii) Stream channel morphology (including but not limited to gradient, width/depth ratio, channel roughness and sinuosity) and functions are appropriate for the climate and landform.
- (iv) Healthy, productive and diverse populations of native species exist and are maintained.
- (2) *Fallback guidelines.* (i) Management practices maintain or promote adequate amounts of ground cover to support infiltration, maintain soil moisture storage, and stabilize soils;

- (ii) Management practices maintain or promote soil conditions that support permeability rates that are appropriate to climate and soils;
- (iii) Management practices maintain or promote sufficient residual vegetation to maintain, improve or restore riparian-wetland functions of energy dissipation, sediment capture, groundwater recharge and stream bank stability;
- (iv) Management practices maintain or promote stream channel morphology (e.g., gradient, width/depth ratio, channel roughness and sinuosity) and functions that are appropriate to climate and landform;
- (v) Management practices maintain or promote the appropriate kinds and amounts of soil organisms, plants and animals to support the hydrologic cycle, nutrient cycle, and energy flow;
- (vi) Management practices maintain or promote the physical and biological conditions necessary to sustain native populations and communities;
- (vii) Desired species are being allowed to complete seed dissemination in 1 out of every 3 years (Management actions will promote the opportunity for seedling establishment when climatic conditions and space allow.);
- (viii) Conservation of Federal threatened or endangered, ~~Proposed, Category 1 and 2~~ candidate, and other special status species is promoted by the restoration and maintenance of their habitats;
- (ix) Native species are emphasized in the support of ecological function;
- (x) Non-native plant species are used only in those situations in which native species are not readily available in sufficient quantities or are incapable of maintaining or achieving properly functioning conditions and biological health;
- (xi) Periods of rest from disturbance or livestock use during times of critical plant growth or regrowth are provided when needed to achieve healthy, properly functioning conditions (The timing and duration of use periods shall be determined by the authorized officer.);
- (xii) Continuous, season-long livestock use is allowed to occur only when it has been demonstrated to be consistent with achieving healthy, properly functioning ecosystems;
- (xiii) Facilities are located away from riparian-wetland areas wherever they conflict with achieving or maintaining riparian-wetland function;
- (xiv) The development of springs and seeps or other projects affecting water and associated resources shall be designed to protect the ecological functions and processes of those sites; and
- (xv) Grazing on designated ephemeral (annual and perennial) rangeland is allowed to occur only if reliable estimates of production have been made, an identified level of annual growth

or residue to remain on site at the end of the grazing season has been established, and adverse effects on perennial species are avoided.

Subpart 4190—Effect of Wildfire Management Decisions

§ 4190.1 Effect of wildfire management decisions.

(a) Notwithstanding the provisions of 43 CFR 4.21(a)(1), when BLM determines that vegetation, soil, or other resources on the public lands are at substantial risk of wildfire due to drought, fuels buildup, or other reasons, or at immediate risk of erosion or other damage due to wildfire, BLM may make a rangeland wildfire management decision effective immediately or on a date established in the decision. Wildfire management includes but is not limited to:

- (1) Fuel reduction or fuel treatment such as prescribed burns and mechanical, chemical, and biological thinning methods (with or without removal of thinned materials); and
- (2) Projects to stabilize and rehabilitate lands affected by wildfire.

(b) The Interior Board of Land Appeals will issue a decision on the merits of an appeal of a wildfire management decision under paragraph (a) of this section within the time limits prescribed in 43 CFR 4.416.

A2. Final Shown without Strike and Replace

DOCUMENT IDENTIFICATION: This document shows in strike-replace format the changes being made in 2004 to BLM grazing regulations for BLM lands in the western continental United States. This document should not be relied on for legal purposes.

Title 43: Public Lands: Interior

PART 4100—GRAZING ADMINISTRATION—EXCLUSIVE OF ALASKA

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Authority: 43 U.S.C. 315, 315a-315r, 1181d, 1740.

Source: 43 FR 29067, July 5, 1978, unless otherwise noted.

Subpart 4100—Grazing Administration—Exclusive of Alaska; General

- § 4100.0-1 Purpose.

The purpose is to provide uniform guidance for administration of grazing on the public lands exclusive of Alaska.

§ 4100.0-2 Objectives.

(a) The objectives of these regulations are to promote healthy sustainable rangeland ecosystems; to accelerate restoration and improvement of public rangelands to properly functioning conditions; to promote the orderly use, improvement and development of the public lands; to establish efficient and effective administration of grazing of public rangelands; and to provide for the sustainability of the western livestock industry and communities that are dependent upon productive, healthy public rangelands.

(b) These objectives will be realized in a manner consistent with land use plans, multiple use, sustained yield, environmental values, economic and other objectives stated in the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315, 315a–315r); section 102 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701) and the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901(b)(2)).

§ 4100.0-3 Authority.

(a) The Taylor Grazing Act of June 28, 1934 as amended (43 U.S.C. 315, 315a through 315r);

(b) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) as amended by the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 *et seq.*);

(c) Executive orders that transfer land acquired under the Bankhead-Jones Farm Tenant Act of July 22, 1937, as amended (7 U.S.C. 1012), to the Secretary and authorize administration under the Taylor Grazing Act.

(d) Section 4 of the Oregon and California Railroad Land Act of August 28, 1937 (43 U.S.C. 1181d));

(e) The Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 *et seq.*); and

(f) Public land orders, Executive orders, and agreements that authorize the Secretary to administer livestock grazing on specified lands under the Taylor Grazing Act or other authority as specified.

§ 4100.0-5 Definitions.

Whenever used in this part, unless the context otherwise requires, the following definitions apply:

The *Act* means the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315, 315a–315r).

Active use means that portion of the grazing preference that is:

- (1) Available for livestock grazing use under a permit or lease based on livestock carrying capacity and resource conditions in an allotment; and
- (2) Not in suspension.

Activity plan means a plan for managing a resource use or value to achieve specific objectives. For example, an allotment management plan is an activity plan for managing livestock grazing use to improve or maintain rangeland conditions.

Actual use means where, how many, what kind or class of livestock, and how long livestock graze on an allotment, or on a portion or pasture of an allotment.

Actual use report means a report of the actual livestock grazing use submitted by the permittee or lessee.

Affiliate means an entity or person that controls, is controlled by, or is under common control with, an applicant, permittee or lessee. The term “control” means having any relationship which gives an entity or person authority directly or indirectly to determine the manner in which an applicant, permittee or lessee conducts grazing operations.

Allotment means an area of land designated and managed for grazing of livestock.

Allotment management plan (AMP) means a documented program developed as an activity plan, consistent with the definition at 43 U.S.C. 1702(k), that focuses on, and contains the necessary instructions for, the management of livestock grazing on specified public lands to meet resource condition, sustained yield, multiple use, economic and other objectives.

Animal unit month (AUM) means the amount of forage necessary for the sustenance of one cow or its equivalent for a period of 1 month.

Annual rangelands means those designated areas in which livestock forage production is primarily attributable to annual plants and varies greatly from year to year.

Authorized officer means any person authorized by the Secretary to administer regulations in this part.

Base property means: (1) Land that has the capability to produce crops or forage that can be used to support authorized livestock for a specified period of the year, or (2) water that is suitable for consumption by livestock and is available and accessible, to the authorized livestock when the public lands are used for livestock grazing.

Cancelled or cancellation means a permanent termination of a grazing permit or grazing lease

and grazing preference, or free-use grazing permit or other grazing authorization, in whole or in part.

Class of livestock means ages and/or sex groups of a kind of livestock.

Consultation, cooperation, and coordination means interaction for the purpose of obtaining advice, or exchanging opinions on issues, plans, or management actions.

Control means being responsible for and providing care and management of base property and/or livestock.

District means the specific area of public lands administered by a District Manager or a Field Manager.

Ephemeral rangelands means areas of the Hot Desert Biome (Region) that do not consistently produce enough forage to sustain a livestock operation but from time to time produce sufficient forage to accommodate livestock grazing.

Grazing district means the specific area within which the public lands are administered under section 3 of the Act. Public lands outside grazing district boundaries are administered under section 15 of the Act.

Grazing fee year means the year, used for billing purposes, which begins on March 1, of a given year and ends on the last day of February of the following year.

Grazing lease means a document that authorizes grazing use of the public lands under Section 15 of the Act. A grazing lease specifies grazing preference and the terms and conditions under which lessees make grazing use during the term of the lease.

Grazing permit means a document that authorizes grazing use of the public lands under Section 3 of the Act. A grazing permit specifies grazing preference and the terms and conditions under which permittees make grazing use during the term of the permit.

Grazing preference or preference means the total number of animal unit months on public lands apportioned and attached to base property owned or controlled by a permittee, lessee, or an applicant for a permit or lease. Grazing preference includes active use and use held in suspension. Grazing preference holders have a superior or priority position against others for the purpose of receiving a grazing permit or lease.

Interested public means an individual, group or organization that has:

(1)(i) Submitted a written request to BLM to be provided an opportunity to be involved in the decisionmaking process as to a specific allotment, and

(ii) Followed up that request by submitting written comments as to management of a specific

allotment, or otherwise participated in the decisionmaking process as to a specific allotment, if BLM has provided them an opportunity for comment or other participation; or

(2) Submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment.

Land use plan means a resource management plan, developed under the provisions of 43 CFR part 1600, or a management framework plan. These plans are developed through public participation in accordance with the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C 1701 *et seq.*) and establish management direction for resource uses of public lands.

Livestock or kind of livestock means species of domestic livestock—cattle, sheep, horses, burros, and goats.

Livestock carrying capacity means the maximum stocking rate possible without inducing damage to vegetation or related resources. It may vary from year to year on the same area due to fluctuating forage production.

Monitoring means the periodic observation and orderly collection of data to evaluate:

- (1) Effects of management actions; and
- (2) Effectiveness of actions in meeting management objectives.

Preference means grazing preference (see definition of “grazing preference”).

Public lands means any land and interest in land outside of Alaska owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, except lands held for the benefit of Indians.

Range improvement means an authorized physical modification or treatment which is designed to improve production of forage; change vegetation composition; control patterns of use; provide water; stabilize soil and water conditions; restore, protect and improve the condition of rangeland ecosystems to benefit livestock, wild horses and burros, and fish and wildlife. The term includes, but is not limited to, structures, treatment projects, and use of mechanical devices or modifications achieved through mechanical means.

Rangeland studies means any study methods accepted by the authorized officer for collecting data on actual use, utilization, climatic conditions, other special events, and trend to determine if management objectives are being met.

Secretary means the Secretary of the Interior or his authorized officer.

Service area means the area that can be properly grazed by livestock watering at a certain water.

State Director means the State Director, Bureau of Land Management, or his or her authorized representative.

Supplemental feed means a feed which supplements the forage available from the public lands and is provided to improve livestock nutrition or rangeland management.

Suspension means the withholding from active use, through a decision issued by the authorized officer or by agreement, of part or all of the grazing preference specified in a grazing permit or lease.

Temporary nonuse means that portion of active use that the authorized officer authorizes not to be used, in response to an application made by the permittee or lessee.

Trend means the direction of change over time, either toward or away from desired management objectives.

Unauthorized leasing and subleasing means—

- (1) The lease or sublease of a Federal grazing permit or lease, associated with the lease or sublease of base property, to another party without a required transfer approved by the authorized officer;
- (2) The lease or sublease of a Federal grazing permit or lease to another party without the assignment of the associated base property;
- (3) Allowing another party, other than sons and daughters of the grazing permittee or lessee meeting the requirements of §4130.7(f), to graze on public lands livestock that are not owned or controlled by the permittee or lessee; or
- (4) Allowing another party, other than sons and daughters of the grazing permittee or lessee meeting the requirements of §4130.7(f), to graze livestock on public lands under a pasturing agreement without the approval of the authorized officer.

Utilization means the portion of forage that has been consumed by livestock, wild horses and burros, wildlife and insects during a specified period. The term is also used to refer to the pattern of such use.

§ 4100.0-7 Cross reference.

The regulations at part 1600 of this chapter govern the development of land use plans; the regulations at part 1780, subpart 1784 of this chapter govern advisory committees; and the regulations at subparts B and E of part 4 of this title govern appeals and hearings.

§ 4100.0-8 Land use plans.

The authorized officer shall manage livestock grazing on public lands under the principle of multiple use and sustained yield, and in accordance with applicable land use plans. Land use plans shall establish allowable resource uses (either singly or in combination), related levels of production or use to be maintained, areas of use, and resource condition goals and objectives to be obtained. The plans also set forth program constraints and general management practices needed to achieve management objectives. Livestock grazing activities and management actions approved by the authorized officer shall be in conformance with the land use plan as defined at 43 CFR 1601.0–5(b).

§ 4100.0-9 Information collection.

The information collection requirements contained in Group 4100 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. The information is collected to enable the authorized officer to determine whether to approve an application to utilize public lands for grazing or other purposes.

Subpart 4110—Qualifications and Preference

§ 4110.1 Mandatory qualifications.

(a) Except as provided under §§4110.1–1, 4130.5, and 4130.6–3, to qualify for grazing use on the public lands an applicant must own or control land or water base property, and must be:

(1) A citizen of the United States or have properly filed a valid declaration of intention to become a citizen or a valid petition for naturalization; or

(2) A group or association authorized to conduct business in the State in which the grazing use is sought, all members of which are qualified under paragraph (a) of this section; or

(3) A corporation authorized to conduct business in the State in which the grazing use is sought.

(b) Applicants for the renewal or issuance of new permits and leases and any affiliates must be determined by the authorized officer to have a satisfactory record of performance under § 4130.1-1(b).

(c) Applicants shall submit an application and any other relevant information requested by the authorized officer in order to determine that all qualifications have been met.

§ 4110.1-1 Acquired lands.

Where lands have been acquired by the Bureau of Land Management through purchase, exchange, Act of Congress or Executive Order, and an agreement or the terms of the act or Executive Order provide that the Bureau of Land Management shall honor existing grazing permits or leases, such permits or leases are governed by the terms and conditions in effect

at the time of acquisition by the Bureau of Land Management, and are not subject to the requirements of §4110.1.

§ 4110.2 Grazing preference.

§ 4110.2-1 Base property.

(a) The authorized officer shall find land or water owned or controlled by an applicant to be base property (see §4100.0–5) if:

(1) It is capable of serving as a base of operation for livestock use of public lands within a grazing district; or

(2) It is contiguous land, or, when no applicant owns or controls contiguous land, noncontiguous land that is capable of being used in conjunction with a livestock operation which would utilize public lands outside a grazing district.

(b) After appropriate consultation, cooperation, and coordination, the authorized officer shall specify the length of time for which land base property shall be capable of supporting authorized livestock during the year, relative to the multiple use management objective of the public lands.

(c) An applicant shall provide a legal description, or plat, of the base property and shall certify to the authorized officer that this base property meets the requirements under paragraphs (a) and (b) of this section.

(d) A permittee's or lessee's interest in water previously recognized as base property on public land shall be deemed sufficient in meeting the requirement that the applicant control base property. Where such waters become unusable and are replaced by newly constructed or reconstructed water developments that are the subject of a range improvement permit or cooperative range improvement agreement, the permittee's or lessee's interest in the replacement water shall be deemed sufficient in meeting the requirement that the applicant control base property.

(e) If a permittee or lessee loses ownership or control of all or part of his/her base property, the permit or lease, to the extent it was based upon such lost property, shall terminate immediately without further notice from the authorized officer. However, if, prior to losing ownership or control of the base property, the permittee or lessee requests, in writing, that the permit or lease be extended to the end of the grazing season or grazing year, the termination date may be extended as determined by the authorized officer after consultation with the new owner. When a permit or lease terminates because of a loss of ownership or control of a base property, the grazing preference shall remain with the base property and be available through application and transfer procedures at 43 CFR 4110.2–3, to the new owner or person in control of that base property.

(f) Applicants who own or control base property contiguous to or cornering upon public land outside a grazing district where such public land consists of an isolated or disconnected tract embracing 760 acres or less shall, for a period of 90 days after the tract has been offered for lease, have a preference right to lease the whole tract.

§ 4110.2-2 Specifying grazing preference.

(a) All grazing permits and grazing leases will specify grazing preference, except for permits and leases for designated ephemeral rangelands, where BLM authorizes livestock use based upon forage availability, or designated annual rangelands. Preference includes active use and any suspended use. Active use is based upon the amount of forage available for livestock grazing as established in the land use plan, activity plan, or decision of the authorized officer under §4110.3–3, except, in the case of designated ephemeral or annual rangelands, a land use plan or activity plan may alternatively prescribe vegetation standards to be met in the use of such rangelands.

(b) The grazing preference specified is attached to the base property supporting the grazing permit or grazing lease.

(c) The animal unit months of grazing preference are attached to:

(1) The acreage of land base property on a pro rata basis, or

(2) Water base property on the basis of livestock forage production within the service area of the water.

§ 4110.2-3 Transfer of grazing preference.

(a) Transfers of grazing preference in whole or in part are subject to the following requirements:

(1) The transferee shall meet all qualifications and requirements of §§4110.1, 4110.2–1, and 4110.2–2.

(2) The transfer applications under paragraphs (b) and (c) of this section shall evidence assignment of interest and obligation in range improvements authorized on public lands under §4120.3 and maintained in conjunction with the transferred preference (see §4120.3–5). The terms and conditions of the cooperative range improvement agreements and range improvement permits are binding on the transferee.

(3) The transferee shall accept the terms and conditions of the terminating grazing permit or lease (see §4130.2) with such modifications as he may request which are approved by the authorized officer or with such modifications as may be required by the authorized officer.

(4) The transferee shall file an application for a grazing permit or lease to the extent of the

transferred preference simultaneously with filing a transfer application under paragraph (b) or (c) of this section.

(b) If base property is sold or leased, the transferee shall within 90 days of the date of sale or lease file with the authorized officer a properly executed transfer application showing the base property and the grazing preference, in animal unit months, attached to that base property.

(c) If a grazing preference is being transferred from one base property to another base property, the transferrer shall own or control the base property from which the grazing preference is being transferred and file with the authorized officer a properly completed transfer application for approval. No transfer will be allowed without the written consent of the owner(s), and any person or entity holding an encumbrance of the base property from which the transfer is to be made.

(d) At the date of approval of a transfer, the existing grazing permit or lease shall terminate automatically and without notice to the extent of the transfer.

(e) If an unqualified transferee acquires rights in base property through operation of law or testamentary disposition, such transfer will not affect the grazing preference or any outstanding grazing permit or lease, or preclude the issuance or renewal of a grazing permit or lease based on such property for a period of 2 years after the transfer. However, such a transferee shall qualify under paragraph (a) of this section within the 2-year period or the grazing preference shall be subject to cancellation. The authorized officer may grant extensions of the 2-year period where there are delays solely attributable to probate proceedings.

(f) Transfers shall be for a period of not less than 3 years unless a shorter term is determined by the authorized officer to be consistent with management and resource condition objectives.

(g) Failure of either the transferee or the transferrer to comply with the regulations of this section may result in rejection of the transfer application or cancellation of grazing preference.

§ 4110.2-4 Allotments.

After consultation, cooperation, and coordination with the affected grazing permittees or lessees and the state having lands or responsible for managing resources within the area, the authorized officer may designate and adjust grazing allotment boundaries. The authorized officer may combine or divide allotments, through an agreement or by decision, when necessary for the proper and efficient management of public rangelands.

§ 4110.3 Changes in grazing preference.

(a) The authorized officer shall periodically review the grazing preference specified in a grazing permit or lease and make changes in the grazing preference as needed to:

(1) Manage, maintain or improve rangeland productivity;

(2) Assist in making progress towards restoring ecosystems to properly functioning conditions;

(3) Conform with land use plans or activity plans; or,

(4) Comply with the provisions of subpart 4180 of this part.

(b) The authorized officer will support these changes by monitoring, documented field observations, ecological site inventory or other data acceptable to the authorized officer.

(c) Before changing grazing preference, the authorized officer will undertake the appropriate analysis as required by the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). Under NEPA, the authorized officer will analyze and, if appropriate, document the relevant social, economic, and cultural effects of the proposed action.

§ 4110.3-1 Increasing active use.

When monitoring or documented field observations show that additional forage is available for livestock grazing, either on a temporary or sustained yield basis, BLM may apportion additional forage to qualified applicants for livestock grazing use consistent with multiple-use management objectives specified in the applicable land use plan.

(a) Additional forage temporarily available. When the authorized officer determines that additional forage is temporarily available for livestock, he may authorize its use on a nonrenewable basis under § 4130.6-2 in the following order:

(1) To permittees or lessees who have preference for grazing use in the allotment where the forage is available, in proportion to their active use; and,

(2) To other qualified applicants under § 4130.1-2.

(b) Additional forage available on a sustained yield basis. When the authorized officer determines that additional forage is available for livestock use on a sustained yield basis, he will apportion it in the following manner:

(1) First, to remove all or a part of the suspension of preference of permittee(s) or lessee(s) with permits or leases in the allotment in which the forage is available; and

(2) Second, if additional forage remains after ending all suspensions, the authorized officer will consult, cooperate, and coordinate with the affected permittees or lessees, the State having lands or managing resources within the area, the interested public, and apportion it in the following order:

(i) Permittees or lessees in proportion to their contribution or stewardship efforts which result in increased forage production;

- (ii) Permittee(s) or lessee(s) in proportion to the amount of their grazing preference; and
- (iii) Other qualified applicants under §4130.1–2.

§ 4110.3-2 Decreasing active use.

(a) The authorized officer may suspend active use in whole or in part on a temporary basis due to reasons specified in § 4110.3-3(b)(1), or to facilitate installation, maintenance, or modification of range improvements.

(b) When monitoring or documented field observations show grazing use or patterns of use are not consistent with the provisions of subpart 4180, or grazing use is otherwise causing an unacceptable level or pattern of utilization, or when use exceeds the livestock carrying capacity as determined through monitoring, ecological site inventory or other acceptable methods, the authorized officer will reduce active use, otherwise modify management practices, or both. To implement reductions under this paragraph, BLM will suspend active use.

§ 4110.3-3 Implementing changes in active use.

(a) (1) After consultation, cooperation, and coordination with the affected permittee or lessee and the state having lands or managing resources within the area, the authorized officer will implement changes in active use through a documented agreement or by a decision. The authorized officer will implement changes in active use in excess of 10 percent over a 5-year period unless:

(i) After consultation with affected permittees or lessees, an agreement is reached to implement the increase or decrease in less than 5 years, or

(ii) The changes must be made before 5 years have passed in order to comply with applicable law.

(2) Decisions implementing § 4110.3–2 will be issued as proposed decisions pursuant to § 4160.1, except as provided in paragraph (b) of this section.

(b)(1) After consultation with, or a reasonable attempt to consult with, affected permittees or lessees and the state having lands or responsible for managing resources within the area, the authorized officer will close allotments or portions of allotments to grazing by any kind of livestock or modify authorized grazing use notwithstanding the provisions of paragraph (a) of this section when the authorized officer determines and documents that—

(i) The soil, vegetation, or other resources on the public lands require immediate protection because of conditions such as drought, fire, flood, insect infestation; or,

(ii) Continued grazing use poses an imminent likelihood of significant resource damage.

(2) Notices of closure and decisions requiring modification of authorized grazing use may be issued as final decisions effective upon issuance or on the date specified in the decision. Such decisions will remain in effect pending the decision on appeal unless the Office of Hearings and Appeals grants a stay in accordance with § 4.472 of this title.

§ 4110.4 Changes in public land acreage.

§ 4110.4-1 Additional land acreage.

When lands outside designated allotments become available for livestock grazing under the administration of the Bureau of Land Management, the forage available for livestock shall be made available to qualified applicants at the discretion of the authorized officer. Grazing use shall be apportioned under §4130.1–2 of this title.

§ 4110.4-2 Decrease in land acreage.

(a) Where there is a decrease in public land acreage available for livestock grazing within an allotment:

(1) Grazing permits or leases may be cancelled or modified as appropriate to reflect the changed area of use.

(2) Grazing preference may be cancelled in whole or in part. Cancellations determined by the authorized officer to be necessary to protect the public lands will be apportioned by the authorized officer based upon the level of available forage and the magnitude of the change in public land acreage available, or as agreed to among the authorized users and the authorized officer.

(b) When public lands are disposed of or devoted to a public purpose which precludes livestock grazing, the permittees and lessees shall be given 2 years' prior notification except in cases of emergency (national defense requirements in time of war, natural disasters, national emergency needs, etc.) before their grazing permit or grazing lease and grazing preference may be canceled. A permittee or lessee may unconditionally waive the 2-year prior notification. Such a waiver shall not prejudice the permittee's or lessee's right to reasonable compensation for, but not to exceed the fair market value of his or her interest in authorized permanent range improvements located on these public lands (see §4120.3–6).

§ 4110.5 Interest of Member of Congress.

Title 18 U.S.C. 431 through 433 (1970) generally prohibits a Member of or Delegate to Congress from entering into any contract or agreement with the United States. Title 41 U.S.C. 22 (1970) generally provides that in every contract or agreement to be made or entered into, or accepted by or on behalf of the United States, there shall be inserted an express condition that no Member of or Delegate to Congress shall be admitted to any share or part of such contract or agreement, or to any benefit to arise thereupon. The provisions of these laws are

incorporated herein by reference and apply to all permits, leases, and agreements issued under these regulations.

Subpart 4120—Grazing Management

§ 4120.1 [Reserved]

§ 4120.2 Allotment management plans and resource activity plans.

Allotment management plans or other activity plans intended to serve as the functional equivalent of allotment management plans may be developed by permittees or lessees, other Federal or State resource management agencies, interested citizens, and the Bureau of Land Management. When such plans affecting the administration of grazing allotments are developed, the following provisions apply:

(a) An allotment management plan or other activity plans intended to serve as the functional equivalent of allotment management plans shall be prepared in careful and considered consultation, cooperation, and coordination with affected permittees or lessees, landowners involved, the resource advisory council, any State having lands or responsible for managing resources within the area to be covered by such a plan, and the interested public. The plan shall become effective upon approval by the authorized officer. The plans shall—

(1) Include terms and conditions under §§4130.3, 4130.3–1, 4130.3–2, 4130.3–3, and subpart 4180 of this part;

(2) Prescribe the livestock grazing practices necessary to meet specific resource objectives;

(3) Specify the limits of flexibility, to be determined and granted on the basis of the operator's demonstrated stewardship, within which the permittee(s) or lessee(s) may adjust operations without prior approval of the authorized officer; and

(4) Provide for monitoring to evaluate the effectiveness of management actions in achieving the specific resource objectives of the plan.

(b) Private and State lands may be included in allotment management plans or other activity plans intended to serve as the functional equivalent of allotment management plans dealing with rangeland management with the consent or at the request of the parties who own or control those lands.

(c) The authorized officer shall provide opportunity for public participation in the planning and environmental analysis of proposed plans affecting the administration of grazing and shall give public notice concerning the availability of environmental documents prepared as a part of the development of such plans, prior to implementing the plans. The decision document following the environmental analysis will be issued in accordance with § 4160.1.

(d) A requirement to conform with completed allotment management plans or other applicable activity plans intended to serve as the functional equivalent of allotment management plans shall be incorporated into the terms and conditions of the grazing permit or lease for the allotment.

(e) Allotment management plans or other applicable activity plans intended to serve as the functional equivalent of allotment management plans may be revised or terminated by the authorized officer after consultation, cooperation, and coordination with the affected permittees or lessees, landowners involved, the resource advisory council, any State having lands or responsible for managing resources within the area to be covered by the plan, and the interested public.

§ 4120.3 Range improvements.

§ 4120.3-1 Conditions for range improvements.

(a) Range improvements shall be installed, used, maintained, and/or modified on the public lands, or removed from these lands, in a manner consistent with multiple-use management.

(b) Prior to installing, using, maintaining, and/or modifying range improvements on the public lands, permittees or lessees shall have entered into a cooperative range improvement agreement with the Bureau of Land Management or must have an approved range improvement permit.

(c) The authorized officer may require a permittee or lessee to maintain and/or modify range improvements on the public lands under §4130.3–2 of this title.

(d) The authorized officer may require a permittee or lessee to install range improvements on the public lands in an allotment with two or more permittees or lessees and/or to meet the terms and conditions of agreement.

(e) A range improvement permit or cooperative range improvement agreement does not convey to the permittee or cooperator any right, title, or interest in any lands or resources held by the United States.

(f) Proposed range improvement projects shall be reviewed in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4371 *et seq.*). The decision document following the environmental analysis will be issued in accordance with § 4160.1.

§ 4120.3-2 Cooperative range improvement agreements.

(a) The Bureau of Land Management may enter into a cooperative range improvement agreement with a person, organization, or other government entity for the installation, use, maintenance, and/or modification of permanent range improvements or rangeland developments to achieve management or resource condition objectives. The cooperative range

improvement agreement shall specify how the costs or labor, or both, shall be divided between the United States and cooperator(s).

(b) Subject to valid existing rights, cooperators and the United States will share title to permanent range improvements such as fences, wells, and pipelines where authorization is granted after [Insert date 30 days after publication of final rule in the FEDERAL REGISTER] in proportion to their contribution to on-the-ground project development and construction costs. The authorization for all new permanent water developments such as spring developments, wells, reservoirs, stock tanks, and pipelines will be through cooperative range improvement agreements. The authorized officer will document a permittee's or lessee's interest in contributed funds, labor, and materials to ensure proper credit for the purposes of §§4120.3–5 and 4120.3–6(c).

(c) The United States will have title to nonstructural range improvements such as seeding, spraying, and chaining.

(d) Range improvement work performed by a cooperator or permittee on the public lands or lands administered by the Bureau of Land Management does not confer the exclusive right to use the improvement or the land affected by the range improvement work.

§ 4120.3-3 Range improvement permits.

(a) Any permittee or lessee may apply for a range improvement permit to install, use, maintain, and/or modify removable range improvements that are needed to achieve management objectives for the allotment in which the permit or lease is held. The permittee or lessee shall agree to provide full funding for construction, installation, modification, or maintenance. Such range improvement permits are issued at the discretion of the authorized officer.

(b) The permittee or lessee may hold the title to authorized removable range improvements used as livestock handling facilities such as corrals, creep feeders, and loading chutes, and to temporary structural improvements such as troughs for hauled water.

(c) If forage available for livestock is not or will not be used by the preference permittee or lessee, BLM may issue nonrenewable grazing permits and leases to other qualified applicants to use it under §§ 4130.6-2 and 4130.4(d), or § 4110.3-1(a)(2). The term “forage available for livestock” does not include temporary nonuse that BLM approves for reasons of natural resource conservation, enhancement, or protection, or use suspended by BLM under § 4110.3-2(b). Before issuing a nonrenewable permit or lease, BLM will consult, cooperate and coordinate as provided in § 4130.6-2. If BLM issues such a nonrenewable permit or lease, the preference permittee or lessee will cooperate with the temporary authorized use of forage by another operator.

(1) A permittee or lessee shall be reasonably compensated for the use and maintenance of improvements and facilities by the operator who has an authorization for temporary grazing use.

(2) The authorized officer may mediate disputes about reasonable compensation and, following consultation with the interested parties, make a determination concerning the fair and reasonable share of operation and maintenance expenses and compensation for use of authorized improvements and facilities.

(3) Where a settlement cannot be reached, the authorized officer shall issue a temporary grazing authorization including appropriate terms and conditions and the requirement to compensate the preference permittee or lessee for the fair share of operation and maintenance as determined by the authorized officer under subpart 4160 of this part.

§ 4120.3-4 Standards, design and stipulations.

Range improvement permits and cooperative range improvement agreements shall specify the standards, design, construction and maintenance criteria for the range improvements and other additional conditions and stipulations or modifications deemed necessary by the authorized officer.

§ 4120.3-5 Assignment of range improvements.

The authorized officer shall not approve the transfer of a grazing preference under §4110.2-3 of this title or approve use by the transferee of existing range improvements, unless the transferee has agreed to compensate the transferrer for his/her interest in the authorized improvements within the allotment as of the date of the transfer.

§ 4120.3-6 Removal and compensation for loss of range improvements.

(a) Range improvements shall not be removed from the public lands without authorization.

(b) The authorized officer may require permittees or lessees to remove range improvements which they own on the public lands if these improvements are no longer helping to achieve land use plan or allotment goals and objectives or if they fail to meet the criteria under §4120.3-4 of this title.

(c) Whenever a grazing permit or lease is cancelled in order to devote the public lands covered by the permit or lease to another public purpose, including disposal, the permittee or lessee shall receive from the United States reasonable compensation for the adjusted value of their interest in authorized permanent improvements placed or constructed by the permittee or lessee on the public lands covered by the cancelled permit or lease. The adjusted value is to be determined by the authorized officer. Compensation shall not exceed the fair market value of the terminated portion of the permittee's or lessee's interest therein. Where a range improvement is authorized by a range improvement permit, the livestock operator may elect to salvage materials and perform rehabilitation measures rather than be compensated for the adjusted value.

(d) Permittees or lessees shall be allowed 180 days from the date of cancellation of a range improvement permit or cooperative range improvement agreement to salvage material owned by them and perform rehabilitation measures necessitated by the removal.

§ 4120.3-7 Contributions.

The authorized officer may accept contributions of labor, material, equipment, or money for administration, protection, and improvement of the public lands necessary to achieve the objectives of this part.

§ 4120.3-8 Range improvement fund.

(a) In addition to range developments accomplished through other resource management funds, authorized range improvements may be secured through the use of the appropriated range improvement fund. One-half of the available funds shall be expended in the State and district from which they were derived. The remaining one-half of the fund shall be allocated, on a priority basis, by the Secretary for on-the-ground rehabilitation, protection and improvement of public rangeland ecosystems.

(b) Funds appropriated for range improvements are to be used for investment in all forms of improvements that benefit rangeland resources including riparian area rehabilitation, improvement and protection, fish and wildlife habitat improvement or protection, soil and water resource improvement, wild horse and burro habitat management facilities, vegetation improvement and management, and livestock grazing management. The funds may be used for activities associated with on-the-ground improvements including the planning, design, layout, contracting, modification, maintenance for which the Bureau of Land Management is responsible, and monitoring and evaluating the effectiveness of specific range improvement projects.

(c) During the planning of the range development or range improvement programs, the authorized officer shall consult the resource advisory council, affected permittees, lessees, and members of the interested public.

§ 4120.3-9 Water rights for the purpose of livestock grazing on public lands.

Any right that the United States acquires to use water on public land for the purpose of livestock watering on public land will be acquired, perfected, maintained and administered under the substantive and procedural laws of the State within which such land is located

§ 4120.4 Special rules.

(a) When a State Director determines that local conditions require a special rule to achieve improved administration consistent with the objectives of this part, the Director may approve such rules. The rules shall be subject to public review and comment, as appropriate, and upon

approval, shall become effective when published in the Federal Register as final rules. Special rules shall be published in a local newspaper.

(b) Where the Bureau of Land Management administers the grazing use of other Federal Agency lands, the terms of an appropriate Memorandum of Understanding or Cooperative Agreement shall apply.

§ 4120.5 Cooperation.

§ 4120.5-1 Cooperation in management.

The authorized officer shall, to the extent appropriate, cooperate with Federal, State, Indian Tribal and local governmental entities, institutions, organizations, corporations, associations, and individuals to achieve the objectives of this part.

§ 4120.5-2 Cooperation with Tribal, state, county, and Federal agencies.

Insofar as the programs and responsibilities of other agencies and units of government involve grazing upon the public lands and other lands administered by the Bureau of Land Management, or the livestock which graze thereon, the Bureau of Land Management will cooperate, to the extent consistent with applicable laws of the United States, with the involved agencies and government entities. The authorized officer will cooperate with Tribal, state, county, and Federal agencies in the administration of laws and regulations relating to livestock, livestock diseases, sanitation, and noxious weeds including—

(a) State cattle and sheep sanitary or brand boards in control of stray and unbranded livestock, to the extent such cooperation does not conflict with the Wild Free-Roaming Horse and Burro Act of 1971 (16 U.S.C. 1331 et seq.);

(b) County or other local weed control districts in analyzing noxious weed problems and developing control programs for areas of the public lands and other lands administered by the Bureau of Land Management; and

(c) Tribal, state, county, or local government-established grazing boards in reviewing range improvements and allotment management plans on public lands.

Subpart 4130—Authorizing Grazing Use

§ 4130.1 Applications.

§ 4130.1-1 Filing applications.

(a) Applications for grazing permits or leases (active use and nonuse), free-use grazing permits and other grazing authorizations shall be filed with the authorized officer at the local Bureau of Land Management office having jurisdiction over the public lands involved.

(b) The authorized officer will determine whether applicants for the renewal of permits and leases or issuance of permits and leases that authorize use of new or transferred preference, and any affiliates, have a satisfactory record of performance. The authorized officer will not renew or issue a permit or lease unless the applicant and all affiliates have a satisfactory record of performance.

(1) Renewal of permit or lease.

(i) The authorized officer will deem the applicant for renewal of a grazing permit or lease, and any affiliate, to have a satisfactory record of performance if the authorized officer determines the applicant and affiliates to be in substantial compliance with the terms and conditions of the existing Federal grazing permit or lease for which renewal is sought, and with the rules and regulations applicable to the permit or lease.

(ii) The authorized officer may take into consideration circumstances beyond the control of the applicant or affiliate in determining whether the applicant and affiliates are in substantial compliance with permit or lease terms and conditions and applicable rules and regulations.

(2) New permit or lease or transfer of grazing preference. The authorized officer will deem applicants for new permits and leases or transfer of grazing preference, including permits and leases that arise from transfer of preference, and any affiliates, to have a record of satisfactory performance when --

(i) The applicant or affiliate has not had any Federal grazing permit or lease canceled, in whole or in part, for violation of the permit or lease within the 36 calendar months immediately preceding the date of application; and

(ii) The applicant or affiliate has not had any state grazing permit or lease, for lands within the grazing allotment for which a Federal permit or lease is sought, canceled, in whole or in part, for violation of the permit or lease within the 36 calendar months immediately preceding the date of application; and

(iii) A court of competent jurisdiction has not barred the applicant or affiliate from holding a Federal grazing permit or lease.

(c) In determining whether affiliation exists, the authorized officer will consider all appropriate factors, including, but not limited to, common ownership, common management, identity of interest among family members, and contractual relationships.

§ 4130.1-2 Conflicting applications.

When more than one qualified applicant applies for livestock grazing use of the same public lands and/or where additional forage for livestock or additional acreage becomes available, the

authorized officer may authorize grazing use of such land or forage on the basis of §4110.3–1 of this title or on the basis of any of the following factors:

- (a) Historical use of the public lands (see §4130.2(e));
- (b) Proper use of rangeland resources;
- (c) General needs of the applicant’s livestock operations;
- (d) Applicant ingress or egress across privately owned or controlled land to public lands where the grazing use is sought; 
- (e) Topography;
- (f) Other land use requirements unique to the situation.
- (g) Demonstrated stewardship by the applicant to improve or maintain and protect the rangeland ecosystem; and
- (h) The applicant’s and affiliate’s history of compliance with the terms and conditions of grazing permits and leases of the Bureau of Land Management and any other Federal or State agency, including any record of suspensions or cancellations of grazing use for violations of terms and conditions of agency grazing rules.

§ 4130.2 Grazing permits or leases.

- (a) Grazing permits or leases authorize use on the public lands and other BLM-administered lands that are designated in land use plans as available for livestock grazing. Permits and leases will specify the grazing preference, including active and suspended use. These grazing permits and leases will also specify terms and conditions pursuant to §§ 4130.3, 4130.3–1, and 4130.3–2.
- (b) The authorized officer shall consult, cooperate and coordinate with affected permittees or lessees and the state having lands or responsibility for managing resources within the area before issuing or renewing grazing permits and leases.
- (c) Grazing permits or leases convey no right, title, or interest held by the United States in any lands or resources.
- (d) The term of grazing permits or leases authorizing livestock grazing on the public lands and other lands under the administration of the Bureau of Land Management shall be 10 years unless—
 - (1) The land is being considered for disposal;

(2) The land will be devoted to a public purpose which precludes grazing prior to the end of 10 years;

(3) The term of the base property lease is less than 10 years, in which case the term of the Federal permit or lease shall coincide with the term of the base property lease; or

(4) The authorized officer determines that a permit or lease for less than 10 years is in the best interest of sound land management.

(e) Permittees or lessees holding expiring grazing permits or leases shall be given first priority for new permits or leases if:

(1) The lands for which the permit or lease is issued remain available for domestic livestock grazing;

(2) The permittee or lessee is in compliance with the rules and regulations and the terms and conditions in the permit or lease; and

(3) The permittee or lessee accepts the terms and conditions to be included by the authorized officer in the new permit or lease.

(f) A permit or lease is not valid unless both **BLM** and the permittee or lessee have signed it.

(g) Permits or leases may incorporate the percentage of public land livestock use (see §4130.3–2(g)) or may include private land offered under exchange-of-use grazing agreements (see §4130.6–1).

(h) Provisions explaining how grazing permits or authorizations may be granted for grazing use on state, county or private land leased by the Bureau of Land Management under “The Pierce Act” and located within grazing districts are explained in 43 CFR part 4600.

§ 4130.3 Terms and conditions.

(a) Livestock grazing permits and leases shall contain terms and conditions determined by the authorized officer to be appropriate to achieve management and resource condition objectives for the public lands and other lands administered by the Bureau of Land Management, and to ensure conformance with the provisions of subpart 4180 of this part.

(b) Upon a BLM offer of a permit or lease, the permit or lease terms and conditions may be protested and appealed under part 4 and subpart 4160.

(c) If any term or condition of a BLM-offered permit or lease is stayed pending appeal, BLM will authorize grazing use as provided in § 4160.4 with respect to the stayed term or condition.

§ 4130.3-1 Mandatory terms and conditions.

- (a) The authorized officer shall specify the kind and number of livestock, the period(s) of use, the allotment(s) to be used, and the amount of use, in animal unit months, for every grazing permit or lease. The authorized livestock grazing use shall not exceed the livestock carrying capacity of the allotment.
- (b) All permits and leases shall be made subject to cancellation, suspension, or modification for any violation of these regulations or of any term or condition of the permit or lease.
- (c) Permits and leases shall incorporate terms and conditions that ensure conformance with subpart 4180 of this part.

§ 4130.3-2 Other terms and conditions.

The authorized officer may specify in grazing permits or leases other terms and conditions which will assist in achieving management objectives, provide for proper range management or assist in the orderly administration of the public rangelands. These may include but are not limited to:

- (a) The class of livestock that will graze on an allotment;
- (b) The breed of livestock in allotments within which two or more permittees or lessees are authorized to graze;
- (c) Authorization to use, and directions for placement of supplemental feed, including salt, for improved livestock and rangeland management on the public lands;
- (d) A requirement that permittees or lessees operating under a grazing permit or lease submit within 15 days after completing their annual grazing use, or as otherwise specified in the permit or lease, the actual use made;
- (e) The kinds of indigenous animals authorized to graze under specific terms and conditions;
- (f) Provision for livestock grazing temporarily to be delayed, discontinued or modified to allow for the reproduction, establishment, or restoration of vigor of plants, provide for the improvement of riparian areas to achieve proper functioning condition or for the protection of other rangeland resources and values consistent with objectives of applicable land use plans, or to prevent compaction of wet soils, such as where delay of spring turnout is required because of weather conditions or lack of plant growth;
- (g) The percentage of public land use determined by the proportion of livestock forage available on public lands within the allotment compared to the total amount available from both public lands and those owned or controlled by the permittee or lessee; and

(h) A statement disclosing the requirement that permittees or lessees shall provide reasonable administrative access across private and leased lands to the Bureau of Land Management for the orderly management and protection of the public lands.

§ 4130.3-3 Modification of permits or leases.

(a) Following consultation, cooperation, and coordination with the affected lessees or permittees and the state having lands or responsibility for managing resources within the area, the authorized officer may modify terms and conditions of the permit or lease when the active use or related management practices:

(1) Do not meet management objectives specified in:

(i) The land use plan;

(ii) The pertinent allotment management plan or other activity plan; or

(iii) An applicable decision issued under § 4160.3; or

(2) Do not conform to the provisions of subpart 4180.

(b) To the extent practical, during the preparation of reports that evaluate monitoring and other data that the authorized officer uses as a basis for making decisions to increase or decrease grazing use, or otherwise to change the terms and conditions of a permit or lease, the authorized officer will provide the following with an opportunity to review and offer input:

(1) Affected permittees or lessees;

(2) States having lands or responsibility for managing resources within the affected area; and

(3) The interested public.

§ 4130.4 Authorization of temporary changes in grazing use within the terms and conditions of permits and leases, including temporary nonuse.

(a) The authorized officer may authorize temporary changes in grazing use within the terms and conditions of the permit or lease.

(b) For the purposes of this subpart, “temporary changes in grazing use within the terms and conditions of the permit or lease” means temporary changes in livestock number, period of use, or both, that would:

(1) Result in temporary nonuse; or

(2) Result in forage removal that --

- (i) Does not exceed the amount of active use specified in the permit or lease; and
 - (ii) Occurs either not earlier than 14 days before the begin date specified on the permit or lease, and not later than 14 days after the end date specified on the permit or lease, unless otherwise specified in the appropriate allotment management plan under § 4120.2(a)(3); or
- (3) Result in both temporary nonuse under paragraph (b)(1) of this section and forage removal under paragraph (b)(2) of this section.
- (c) The authorized officer will consult, cooperate and coordinate with the permittees or lessees regarding their applications for changes within the terms and conditions of their permit or lease.
- (d) Permittees and lessees must apply if they wish –
- (1) Not to use all or a part of their active use by applying for temporary nonuse under paragraph (e) of this section;
 - (2) To use forage previously authorized as temporary nonuse; or
 - (3) To use of forage that is temporarily available on designated ephemeral or annual ranges.
- (e)(1) Temporary nonuse is authorized –
- (i) Only if the authorized officer approves it in advance; and
 - (ii) For no longer than one year at a time.
- (2) Permittees or lessees applying for temporary nonuse must state on their application the reasons supporting nonuse. The authorized officer may authorize nonuse to provide for:
- (i) Natural resource conservation, enhancement, or protection, including more rapid progress toward meeting resource condition objectives or attainment of rangeland health standards; or
 - (ii) The business or personal needs of the permittee or lessee.
- (f) Under § 4130.6-2, the authorized officer may authorize qualified applicants to graze forage made available as a result of temporary nonuse approved for the reasons described in paragraph (d)(2)(ii). The authorized officer will not authorize anyone to graze forage made available as a result of temporary nonuse approved under paragraph (d)(2)(i) of this section.
- (g) Permittees or lessees who wish to obtain temporary changes in grazing use within the terms and conditions of their permit or lease must file an application in writing with BLM on or before the date they wish the change in grazing use to begin. The authorized officer will

assess a service charge under § 4130.8-3 to process applications for changes in grazing use that require the issuance of a replacement or supplemental billing notice.

§ 4130.5 Free-use grazing permits.

(a) A free-use grazing permit shall be issued to any applicant whose residence is adjacent to public lands within grazing districts and who needs these public lands to support those domestic livestock owned by the applicant whose products or work are used directly and exclusively by the applicant and his family. The issuance of free-use grazing permits is subject to §4130.1–2. These permits shall be issued on an annual basis. These permits cannot be transferred or assigned.

(b) The authorized officer may also authorize free use under the following circumstances:

(1) The primary objective of grazing use is the management of vegetation to meet resource objectives other than the production of livestock forage and such use is in conformance with the requirements of this part;

(2) The primary purpose of grazing use is for scientific research or administrative studies; or

(3) The primary purpose of grazing use is the control of noxious weeds.

§ 4130.6 Other grazing authorizations.

Exchange-of-use grazing agreements, nonrenewable grazing permits or leases, crossing permits, and special grazing permits or leases have no priority for renewal and cannot be transferred or assigned.

§ 4130.6-1 Exchange-of-use grazing agreements.

(a) An exchange-of-use grazing agreement may be issued to an applicant who owns or controls lands that are unfenced and intermingled with public lands in the same allotment when use under such an agreement will be in harmony with the management objectives for the allotment and will be compatible with the existing livestock operations. The agreements shall contain appropriate terms and conditions required under §4130.3 that ensure the orderly administration of the range, including fair and equitable sharing of the operation and maintenance of range improvements. The term of an exchange-of-use agreement may not exceed the length of the term for any leased lands that are offered in exchange-of-use.

(b) An exchange-of-use grazing agreement may be issued to authorize use of public lands to the extent of the livestock carrying capacity of the lands offered in exchange-of-use. No fee shall be charged for this grazing use.

§ 4130.6-2 Nonrenewable grazing permits and leases.

(a) Nonrenewable grazing permits or leases may be issued on an annual basis, as provided in § 4110.3-1(a), to qualified applicants when forage is temporarily available, provided this use is consistent with multiple-use objectives and does not interfere with existing livestock operations on the public lands. The authorized officer shall consult, cooperate and coordinate with affected permittees or lessees, and the state having lands or responsibility for managing resources within the area, before issuing nonrenewable grazing permits and leases.

(b) Notwithstanding the provisions of § 4.21(a)(1) of this title, when BLM determines that it is necessary for orderly administration of the public lands, the authorized officer may make a decision that issues a nonrenewable grazing permit or lease, or that affects an application for grazing use on annual or designated ephemeral rangelands, effective immediately or on a date established in the decision.

§ 4130.6-3 Crossing permits.

A crossing permit may be issued by the authorized officer to any applicant showing a need to cross the public land or other land under Bureau of Land Management control, or both, with livestock for proper and lawful purposes. A temporary use authorization for trailing livestock shall contain terms and conditions for the temporary grazing use that will occur as deemed necessary by the authorized officer to achieve the objectives of this part.

§ 4130.6-4 Special grazing permits or leases.

Special grazing permits or leases authorizing grazing use by privately owned or controlled indigenous animals may be issued at the discretion of the authorized officer. This use shall be consistent with multiple-use objectives. These permits or leases shall be issued for a term deemed appropriate by the authorized officer not to exceed 10 years.

§ 4130.7 Ownership and identification of livestock.

(a) The permittee or lessee shall own or control and be responsible for the management of the livestock which graze the public land under a grazing permit or lease.

(b) Authorized users shall comply with the requirements of the State in which the public lands are located relating to branding of livestock, breed, grade, and number of bulls, health and sanitation.

(c) The authorized officer may require counting and/or additional special marking or tagging of the authorized livestock in order to promote the orderly administration of the public lands.

(d) Except as provided in paragraph (f) of this section, where a permittee or lessee controls but does not own the livestock which graze the public lands, the agreement that gives the permittee or lessee control of the livestock by the permittee or lessee shall be filed with the authorized officer and approval received prior to any grazing use. The document shall describe

the livestock and livestock numbers, identify the owner of the livestock, contain the terms for the care and management of the livestock, specify the duration of the agreement, and shall be signed by the parties to the agreement.

(e) The brand and other identifying marks on livestock controlled, but not owned, by the permittee or lessee shall be filed with the authorized officer.

(f) Livestock owned by sons and daughters of grazing permittees and lessees may graze public lands included within the permit or lease of their parents when all the following conditions exist:

(1) The sons and daughters are participating in educational or youth programs related to animal husbandry, agribusiness or rangeland management, or are actively involved in the family ranching operation and are establishing a livestock herd with the intent of assuming part or all of the family ranch operation.

(2) The livestock owned by the sons and daughters to be grazed on public lands do not comprise greater than 50 percent of the total number authorized to occupy public lands under their parent's permit or lease.

(3) The brands or other markings of livestock that are owned by sons and daughters are recorded on the parent's permit, lease, or grazing application.

(4) Use by livestock owned by sons and daughters, when considered in addition to use by livestock owned or controlled by the permittee or lessee, does not exceed authorized livestock use and is consistent with other terms and conditions of the permit or lease.

§ 4130.8 Fees.

§ 4130.8-1 Payment of fees.

(a) Grazing fees shall be established annually by the Secretary.

(1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, the calculated fee or grazing fee shall be equal to the \$1.23 base established by the 1966 Western Livestock Grazing Survey multiplied by the result of the Forage Value Index (computed annually from data supplied by the National Agricultural Statistics Service) added to the Combined Index (Beef Cattle Price Index minus the Prices Paid Index) and divided by 100; as follows:

$$CF = \$1.23 \times \frac{FVI + BCPI - PPI}{100}$$

CF = Calculated Fee (grazing fee) is the estimated economic value of livestock grazing, defined by the Congress as fair market value (FMV) of the forage;

\$1.23=The base economic value of grazing on public rangeland established by the 1966 Western Livestock Grazing Survey;

FVI=*Forage Value Index* means the weighted average estimate of the annual rental charge per head per month for pasturing cattle on private rangelands in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) (computed by the National Agricultural Statistics Service from the June Enumerative Survey) divided by \$3.65 and multiplied by 100;

BCPI=*Beef Cattle Price Index* means the weighted average annual selling price for beef cattle (excluding calves) in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) for November through October (computed by the National Agricultural Statistics Service divided by \$22.04 per hundred weight and multiplied by 100; and

PPI=*Prices Paid Index* means the following selected components from the National Agricultural Statistics Service's Annual National Index of Prices Paid by Farmers for Goods and Services adjusted by the weights indicated in parentheses to reflect livestock production costs in the Western States: 1. Fuels and Energy (14.5); 2. Farm and Motor Supplies (12.0); 3. Autos and Trucks (4.5); 4. Tractors and Self-Propelled Machinery (4.5); 5. Other Machinery (12.0); 6. Building and Fencing Materials (14.5); 7. Interest (6.0); 8. Farm Wage Rates (14.0); 9. Farm Services (18.0).

(2) Any annual increase or decrease in the grazing fee for any given year shall be limited to not more than plus or minus 25 percent of the previous year's fee.

(3) The grazing fee for any year shall not be less than \$1.35 per animal unit month.

(b) Fees shall be charged for livestock grazing upon or crossing the public lands and other lands administered by the Bureau of Land Management at a specified rate per animal unit month.

(c) Except as provided in §4130.5, the full fee shall be charged for each animal unit month of authorized grazing use. For the purposes of calculating the fee, an animal unit month is defined as a month's use and occupancy of range by 1 cow, bull, steer, heifer, horse, burro, mule, 5 sheep, or 5 goats:

(1) Over the age of 6 months at the time of entering the public lands or other lands administered by BLM;

(2) Weaned regardless of age; or

(3) Becoming 12 months of age during the authorized period of use.

(d) BLM will not charge grazing fees for animals that are less than 6 months of age at the time of entering BLM-administered lands, provided that are the natural progeny of animals upon which fees are paid, and they will not become 12 months of age during the authorized period of use.

(e) In calculating the billing, the authorized officer will prorate the grazing fee on a daily basis and will round charges to reflect the nearest whole number of animal unit months.

(f) A surcharge shall be added to the grazing fee billings for authorized grazing of livestock owned by persons other than the permittee or lessee except where such use is made by livestock owned by sons and daughters of permittees and lessees as provided in §4130.7(f). The surcharge shall be over and above any other fees that may be charged for using public land forage. Surcharges shall be paid prior to grazing use. The surcharge for authorized pasturing of livestock owned by persons other than the permittee or lessee will be equal to 35 percent of the difference between the current year's Federal grazing fee and the prior year's private grazing land lease rate per animal unit month for the appropriate State as determined by the National Agricultural Statistics Service.

(g) Fees are due on due date specified on the grazing fee bill. Payment will be made prior to grazing use. Grazing use that occurs prior to payment of a bill, except where specified in an allotment management plan, is unauthorized and may be dealt with under subparts 4150 and 4170 of this part. If allotment management plans provide for billing after the grazing season, fees will be based on actual grazing use and will be due upon issuance. Repeated delays in payment of actual use billings or noncompliance with the terms and conditions of the allotment management plan and permit or lease shall be cause to revoke provisions for after-the-grazing-season billing.

(h) Failure to pay the grazing bill within 15 days of the due date specified in the bill shall result in a late fee assessment of \$25.00 or 10 percent of the grazing bill, whichever is greater, but not to exceed \$250.00. Payment made later than 15 days after the due date, shall include the appropriate late fee assessment. Failure to make payment within 30 days after the due date is a violation of § 4140.1(b)(1) and may result in action by the authorized officer under §4150.1 and subpart 4160.

§ 4130.8-2 Refunds.

(a) Grazing fees may be refunded where applications for change in grazing use and related refund are filed prior to the period of use for which the refund is requested.

(b) No refunds shall be made for failure to make grazing use, except during periods of range depletion due to drought, fire, or other natural causes, or in case of a general spread of disease among the livestock that occurs during the term of a permit or lease. During these periods of range depletion the authorized officer may credit or refund fees in whole or in part, or postpone fee payment for as long as the emergency exists.

§ 4130.8-3 Service charge.

(a) Under **Section** 304(a) of the Federal Land Policy and Management Act of 1976, BLM may establish reasonable charges for various services such as application processing. BLM may adjust these charges periodically to account for cost changes. BLM will inform the public of any changes by publishing a notice in the Federal Register.

(b) The following table of service charges is applicable until changed through a Federal Register notice as provided in paragraph (a) of this section. Except when the action is initiated by BLM, the authorized officer will assess the following service charges:

Action	Service Charge
Issue crossing permit	\$75
Transfer grazing preference	\$145
Cancel and/or replace and/or supplement a grazing fee billing	\$50

§ 4130.9 Pledge of permits or leases as security for loans.

Grazing permits or leases that have been pledged as security for loans from lending agencies shall be renewed by the authorized officer under the provisions of these regulations for a period of not to exceed 10 years if the loan is for the purpose of furthering the permittee's or lessee's livestock operation, *Provided*, That the permittee or lessee has complied with the rules and regulations of this part and that such renewal will be in accordance with other applicable laws and regulations. While grazing permits or leases may be pledged as security for loans from lending agencies, this does not exempt these permits or leases from the provisions of these regulations.

Subpart 4140—Prohibited Acts

§ 4140.1 Acts prohibited on public lands.

(a) Grazing permittees or lessees performing the following prohibited acts may be subject to civil penalties under §4170.1:

- (1) Violating special terms and conditions incorporated in permits or leases;
- (2) Failing to make substantial grazing use as authorized by a permit or lease for 2 consecutive fee years. This does not include approved temporary nonuse or use temporarily suspended by the authorized officer.
- (3) Placing supplemental feed on these lands without authorization, or contrary to the terms and conditions of the permit or lease.
- (4) Failing to comply with the terms, conditions, and stipulations of cooperative range improvement agreements or range improvement permits;

(5) Refusing to install, maintain, modify, or remove range improvements when so directed by the authorized officer.

(6) Unauthorized leasing or subleasing as defined in this part.

(b) Persons performing the following prohibited acts on BLM-administered lands are subject to civil and criminal penalties set forth at §§4170.1 and 4170.2:

(1) Allowing livestock or other privately owned or controlled animals to graze on or be driven across these lands:

(i) Without a permit or lease, or other grazing use authorization (see § 4130.6) and timely payment of grazing fees.

(ii) In violation of the terms and conditions of a permit, lease, or other grazing use authorization including, but not limited to, livestock in excess of the number authorized;

(iii) In an area or at a time different from that authorized; or

(iv) Failing to comply with a requirement under §4130.7(c) of this title.

(2) Installing, using, maintaining, modifying, and/or removing range improvements without authorization;

(3) Cutting, burning, spraying, destroying, or removing vegetation without authorization;

(4) Damaging or removing U.S. property without authorization;

(5) Molesting, harassing, injuring, poisoning, or causing death of livestock authorized to graze on these lands and removing authorized livestock without the owner's consent;

(6) Littering;

(7) Interfering with lawful uses or users including obstructing free transit through or over public lands by force, threat, intimidation, signs, barrier or locked gates;

(8) Knowingly or willfully making a false statement or representation in base property certifications, grazing applications, range improvement permit applications, cooperative range improvement agreements, actual use reports and/or amendments thereto;

(9) Failing to pay any fee required by the authorized officer pursuant to this part, or making payment for grazing use of public lands with insufficiently funded checks on a repeated and willful basis;

(10) Failing to reclaim and repair any lands, property, or resources when required by the authorized officer;

(11) Failing to reclose any gate or other entry during periods of livestock use.

(c) (1) A grazing permittee or lessee performing any of the prohibited acts listed in paragraphs (c)(2) or (c)(3) of this section on an allotment where he is authorized to graze under a BLM permit or lease may be subject to civil penalties set forth at § 4170.1-1, if:

(i) The permittee or lessee performs the prohibited act while engaged in activities related to grazing use authorized by his permit or lease;

(ii) The permittee or lessee has been convicted or otherwise found to be in violation of any of these laws or regulations by a court or by final determination of an agency charged with the administration of these laws or regulations; and

(iii) No further appeals are outstanding.

(2) Violation of Federal or State laws or regulations pertaining to the:

(i) Placement of poisonous bait or hazardous devices designed for the destruction of wildlife;

(ii) Application or storage of pesticides, herbicides, or other hazardous materials;

(iii) Alteration or destruction of natural stream courses without authorization;

(iv) Pollution of water sources;

(v) Illegal take, **destruction**, or harassment, or aiding and abetting in the illegal take, **destruction**, or harassment of fish and wildlife resources; and

(vi) Illegal removal or destruction of archeological or cultural resources;

(3)(i) Violation of the Bald and **Golden Eagle** Protection Act (16 U.S.C. 668 *et seq.*), Endangered Species Act (16 U.S.C. 1531 *et seq.*), or any provision of part 4700 of this chapter concerning the protection and management of wild free-roaming horses and burros; or

(ii) Violation of State livestock laws or regulations relating to the branding of livestock; breed, grade, and number of bulls; health and sanitation requirements; and violating State, county, or local laws regarding the **straying** of livestock from permitted public land grazing areas onto areas that have been formally closed to open range grazing.

Subpart 4150—Unauthorized Grazing Use

§ 4150.1 Violations.

Violation of §4140.1(b)(1) constitutes unauthorized grazing use.

(a) The authorized officer shall determine whether a violation is nonwillful, willful, or repeated willful.

(b) Violators shall be liable in damages to the United States for the forage consumed by their livestock, for injury to Federal property caused by their unauthorized grazing use, and for expenses incurred in impoundment and disposal of their livestock, and may be subject to civil penalties or criminal sanction for such unlawful acts.

§ 4150.2 Notice and order to remove.

(a) Whenever it appears that a violation exists and the owner of the unauthorized livestock is known, written notice of unauthorized use and order to remove livestock by a specified date shall be served upon the alleged violator or the agent of record, or both, by certified mail or personal delivery. The written notice shall also allow a specified time from receipt of notice for the alleged violator to show that there has been no violation or to make settlement under §4150.3.

(b) Whenever a violation has been determined to be nonwillful and incidental, the authorized officer shall notify the alleged violator that the violation must be corrected, and how it can be settled, based upon the discretion of the authorized officer.

(c) When neither the owner of the unauthorized livestock nor his agent is known, the authorized officer may proceed to impound the livestock under §4150.4.

(d) The authorized officer may temporarily close areas to grazing by specified kinds or class of livestock for a period not to exceed 12 months when necessary to abate unauthorized grazing use. Such notices of closure may be issued as final decisions effective upon issuance or on the date specified in the decision and shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals in accordance with 43 CFR 4.472(d).

§ 4150.3 Settlement.

Where violations are repeated willful, the authorized officer shall take action under §4170.1–1(b) of this title. The amount due for settlement shall include the value of forage consumed as determined in accordance with paragraph (a), (b), or (c) of this section. Settlement for willful and repeated willful violations shall also include the full value for all damages to the public lands and other property of the United States; and all reasonable expenses incurred by the United States in detecting, investigating, resolving violations, and livestock impoundment costs.

(a) For nonwillful violations: The value of forage consumed as determined by the average monthly rate per AUM for pasturing livestock on privately owned land (excluding irrigated land) in each State as published annually by the Department of Agriculture. The authorized officer may approve nonmonetary settlement of unauthorized use only when the authorized officer determines that each of the following conditions is satisfied:

- (1) Evidence shows that the unauthorized use occurred through no fault of the livestock operator;
 - (2) The forage use is insignificant;
 - (3) The public lands have not been damaged; and
 - (4) Nonmonetary settlement is in the best interest of the United States.
- (b) For willful violations: Twice the value of forage consumed as determined in paragraph (a) of this section.
- (c) For repeated willful violations: Three times the value of the forage consumed as determined in paragraph (a) of this section.
- (d) Payment made under this section does not relieve the alleged violator of any criminal liability under Federal or State law.
- (e) Violators shall not be authorized to make grazing use on the public lands administered by the Bureau of Land Management until any amount found to be due the United States under this section has been paid. The authorized officer may take action under subpart 4160 to cancel or suspend grazing authorizations or to deny approval of applications for grazing use until such amounts have been paid. The proposed decision shall include a demand for payment.
- (f) Upon a stay of a decision issued under paragraph (e) of this section, the authorized officer will allow a permittee or lessee to graze in accordance with this part 4100 pending completion of the administrative appeal process.

§ 4150.4 Impoundment and disposal.

Unauthorized livestock remaining on the public lands or other lands under Bureau of Land Management control, or both, after the date set forth in the notice and order to remove sent under §4150.2 may be impounded and disposed of by the authorized officer as provided herein.

§ 4150.4-1 Notice of intent to impound.

- (a) A written notice of intent to impound shall be sent by certified mail or personally delivered to the owner or his agent, or both. The written notice shall indicate that unauthorized livestock on the specified public lands or other lands under Bureau of Land Management control, or both, may be impounded any time after 5 days from delivery of the notice.
- (b) Where the owner and his agent are unknown, or where both a known owner and his agent refuses to accept delivery, a notice of intent to impound shall be published in a local newspaper and posted at the county courthouse and a post office near the public land involved. The notice shall indicate that unauthorized livestock on the specified public lands or other lands under

Bureau of Land Management control, or both, may be impounded any time after 5 days from publishing and posting the notice.

§ 4150.4-2 Impoundment.

After 5 days from delivery of the notice under §4150.4–1(a) of this title or any time after 5 days from publishing and posting the notice under §4150.4–1(b) of this title, unauthorized livestock may be impounded without further notice any time within the 12-month period following the effective date of the notice.

§ 4150.4-3 Notice of public sale.

Following the impoundment of livestock under this subpart the livestock may be disposed of by the authorized officer under these regulations or, if a suitable agreement is in effect, they may be turned over to the State for disposal. Any known owners or agents, or both, shall be notified in writing by certified mail or by personal delivery of the sale and the procedure by which the impounded livestock may be redeemed prior to the sale.

§ 4150.4-4 Redemption.

Any owner or his agent, or both, or lien-holder of record of the impounded livestock may redeem them under these regulations or, if a suitable agreement is in effect, in accordance with State law, prior to the time of sale upon settlement with the United States under §4150.3 or adequate showing that there has been no violation.

§ 4150.4-5 Sale.

If the livestock are not redeemed on or before the date and time fixed for their sale, they shall be offered at public sale to the highest bidder by the authorized officer under these regulations or, if a suitable agreement is in effect, by the State. If a satisfactory bid is not received, the livestock may be reoffered for sale, condemned and destroyed or otherwise disposed of under these regulations, or if a suitable agreement is in effect, in accordance with State Law.

Subpart 4160—Administrative Remedies

§ 4160.1 Proposed decisions.

(a) Proposed decisions shall be served on any affected applicant, permittee or lessee, and any agent and lien holder of record, who is affected by the proposed actions, terms or conditions, or modifications relating to applications, permits and agreements (including range improvement permits) or leases, by certified mail or personal delivery. Copies of proposed decisions shall also be sent to the interested public.

(b) Proposed decisions shall state the reasons for the action and shall reference the pertinent terms, conditions and the provisions of applicable regulations. As appropriate, decisions shall

state the alleged violations of specific terms and conditions and provisions of these regulations alleged to have been violated, and shall state the amount due under §§4130.8 and 4150.3 and the action to be taken under §4170.1.

(c) The authorized officer may elect not to issue a proposed decision prior to a final decision where the authorized officer has made a determination in accordance with § 4110.3–3(b), § 4130.6-2(b), § 4150.2(d), or § 4190.1(a).

(d) A biological assessment or biological evaluation prepared by BLM for purposes of an Endangered Species Act consultation or conference is not a decision for purposes of protest and appeal.

§ 4160.2 Protests.

Any applicant, permittee, lessee or other interested public may protest the proposed decision under §4160.1 of this title in person or in writing to the authorized officer within 15 days after receipt of such decision.

§ 4160.3 Final decisions.

(a) In the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice unless otherwise provided in the proposed decision.

(b) Upon the timely filing of a protest, the authorized officer shall reconsider her/his proposed decision in light of the protestant's statement of reasons for protest and in light of other information pertinent to the case. At the conclusion to her/his review of the protest, the authorized officer shall serve her/his final decision on the protestant or her/his agent, or both, and the interested public.

(c) Notwithstanding the provisions of §4.21(a) of this title pertaining to the period during which a final decision will not be in effect, the authorized officer may provide that the final decision shall be effective upon issuance or on a date established in the decision and shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals when the authorized officer has made a determination in accordance with § 4110.3–3(b), § 4130.6-2(b), § 4150.2(d), or § 4190.1(a). Nothing in this section shall affect the authority of the Director of the Office of Hearings and Appeals, the Interior Board of Land Appeals, or an administrative law judge to provide that the decision becomes effective immediately as provided in §§ 4.21(a)(1) and 4.479(c) of this title.

§ 4160.4 Appeals.

(a) Those who wish to appeal or seek a stay of a BLM grazing decision must follow the requirements set forth in § 4.470 *et seq.* of this title. The appeal or petition for stay must be filed with the BLM office that issued the decision within 30 days after its receipt or within 30 days after the proposed decision becomes final as provided in §4160.3(a).

(b) When OHA stays all or a portion of a BLM grazing decision that affects a grazing permit or lease, BLM will authorize grazing use as follows:

(1) When OHA stays implementation of all or part of a grazing decision that cancels or suspends a permit or lease, changes any terms or conditions of a permit or lease during its current term, or renews a permit or lease, BLM will continue to authorize grazing under the permit or lease, or the relevant term or condition thereof, that was in effect immediately before the decision was issued, subject to any relevant provisions of the stay order. This continued authorization is not subject to protest or appeal.

(2) When OHA stays implementation of a grazing decision that denies issuance of a permit or lease to a preference transferee, BLM will issue the preference applicant a permit or lease with terms and conditions that are the same as the terms and conditions of the most recent permit or lease applicable to the allotment or portion of the allotment in question, subject to any relevant provisions of the stay order. This temporary permit will expire upon the resolution of the administrative appeal. Issuance of the temporary permit is not a decision subject to protest or appeal.

(3) When OHA stays implementation of a grazing decision that offers a permit or lease to a preference transferee with terms and conditions different from terms and conditions of the most recent permit or lease applicable to the allotment or portion of the allotment in question, BLM will issue the preference applicant a permit or lease that, with respect to any stayed term and condition, is the same as the terms and conditions of the most recent permit or lease applicable to the allotment or portion of the allotment in question, subject to any relevant provisions of the stay order. This temporary permit will expire upon resolution of the administrative appeal. Issuance of the temporary permit is not a decision subject to protest and appeal.

Subpart 4170—Penalties

§ 4170.1 Civil penalties.

§ 4170.1-1 Penalty for violations.

(a) The authorized officer may withhold issuance of a grazing permit or lease, or suspend the grazing use authorized under a grazing permit or lease, in whole or in part, or cancel a grazing permit or lease and grazing preference, or a free use grazing permit or other grazing authorization, in whole or in part, under subpart 4160 of this title, for violation by a permittee or lessee of any of the provisions of this part.

(b) The authorized officer shall suspend the grazing use authorized under a grazing permit, in whole or in part, or shall cancel a grazing permit or lease and grazing preference, in whole or in part, under subpart 4160 of this title for repeated willful violation by a permittee or lessee of §4140.1(b)(1) of this title.

(c) Whenever a nonpermittee or nonlessee violates §4140.1(b) of this title and has not made

satisfactory settlement under §4150.3 of this title the authorized officer shall refer the matter to proper authorities for appropriate legal action by the United States against the violator.

(d) Any person found to have violated the provisions of §4140.1(a)(6) after August 21, 1995, shall be required to pay twice the value of forage consumed as determined by the average monthly rate per AUM for pasturing livestock on privately owned land (excluding irrigated land) in each State as supplied annually by the National Agricultural Statistics Service, and all reasonable expenses incurred by the United States in detecting, investigating, and resolving violations. If the dollar equivalent value is not received by the authorized officer within 30 days of receipt of the final decision, the grazing permit or lease shall be cancelled. Such payment shall be in addition to any other penalties the authorized officer may impose under paragraph (a) of this section.

§ 4170.1-2 Failure to use.

If a permittee or lessee has, for 2 consecutive grazing fee years, failed to make substantial use as authorized in the lease or permit, or has failed to maintain or use water base property in the grazing operation, the authorized officer, after consultation, coordination, and cooperation with the permittee or lessee and any lienholder of record, may cancel whatever amount of active use the permittee or lessee has failed to use.

§ 4170.2 Penal provisions.

§ 4170.2-1 Penal provisions under the Taylor Grazing Act.

Under section 2 of the Act any person who willfully commits an act prohibited under §4140.1(b), or who willfully violates approved special rules and regulations is punishable by a fine of not more than \$500.

§ 4170.2-2 Penal provisions under the Federal Land Policy and Management Act.

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), any person who knowingly and willfully commits an act prohibited under §4140.1(b) or who knowingly and willfully violates approved special rules and regulations may be brought before a designated U.S. magistrate and is punishable by a fine in accordance with the applicable provisions of Title 18 of the United States Code, or imprisonment for no more than 12 months, or both.

Subpart 4180—Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration

§ 4180.1 Fundamentals of rangeland health.

Where standards and guidelines have not been established under § 4180.2(b), and the authorized officer determines that grazing management needs to be modified to assist in

achieving the following conditions, the authorized officer will take appropriate action as soon as practicable but not later than the start of the next grazing year that follows BLM's completion of relevant and applicable requirements of laws and regulations, and the consultation requirements of §§ 4110.3-3 and 4130.3-3:

a) Watersheds are in, or are making significant progress toward, properly functioning physical condition, including their upland, riparian-wetland, and aquatic components; soil and plant conditions support infiltration, soil moisture storage, and the release of water that are in balance with climate and landform and maintain or improve water quality, water quantity, and timing and duration of flow.

(b) Ecological processes, including the hydrologic cycle, nutrient cycle, and energy flow, are maintained, or there is significant progress toward their attainment, in order to support healthy biotic populations and communities.

(c) Water quality complies with State water quality standards and achieves, or is making significant progress toward achieving, established BLM management objectives such as meeting wildlife needs.

(d) Habitats are, or are making significant progress toward being, restored or maintained for Federal threatened and endangered species, Federal proposed or candidate threatened and endangered species and other special status species.

§ 4180.2 Standards and guidelines for grazing administration.

(a) The Bureau of Land Management State Director, in consultation with the affected resource advisory councils where they exist, will identify the geographical area for which standards and guidelines are developed. Standards and guidelines will be developed for an entire state, or an area encompassing portions of more than 1 state, unless the Bureau of Land Management State Director, in consultation with the resource advisory councils, determines that the characteristics of an area are unique, and the rangelands within the area could not be adequately protected using standards and guidelines developed on a broader geographical scale.

(b) The Bureau of Land Management State Director, in consultation with affected Bureau of Land Management resource advisory councils, shall develop and amend State or regional standards and guidelines. The Bureau of Land Management State Director will also coordinate with Indian tribes, other State and Federal land management agencies responsible for the management of lands and resources within the region or area under consideration, and the public in the development of State or regional standards and guidelines. Standards and guidelines developed by the Bureau of Land Management State Director must provide for conformance with the fundamentals of §4180.1. State or regional standards or guidelines developed by the Bureau of Land Management State Director may not be implemented prior to their approval by the Secretary. Standards and guidelines made effective under paragraph (f) of this section may be modified by the Bureau of Land Management State Director, with approval of the Secretary, to address local ecosystems and management practices.

(c)(1) If a standards assessment indicates to the authorized officer that the rangeland is failing to achieve standards or that management practices do not conform to the guidelines, then the authorized officer will use monitoring data to identify the significant factors that contribute to failing to achieve the standards or to conform with the guidelines. If the authorized officer determines through standards assessment and monitoring that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the standards and conform with the guidelines that are made effective under this section, the authorized officer will, in compliance with applicable laws and with the consultation requirements of this part, formulate, propose, and analyze appropriate action to address the failure to meet standards or to conform to the guidelines.

(i) Parties will execute a documented agreement and/or the authorized officer will issue a final decision on the appropriate action under § 4160.3 as soon as practicable, but not later than 24 months after a determination.

(ii) BLM may extend the deadline for meeting the requirements established in paragraph (c)(1)(i) of this section when legally required processes that are the responsibility of another agency prevent completion of all legal obligations within the 24-month timeframe. BLM will make a decision as soon as practicable after the legal requirements are met.

(2) Upon executing the agreement and/or in the absence of a stay of the final decision, the authorized officer will implement the appropriate action as soon as practicable, but not later than the start of the next grazing year.

(3) The authorized officer will take appropriate action as defined in this paragraph by the deadlines established in paragraph (c)(1) and (c)(2) of this section. Appropriate action means implementing actions pursuant to subparts 4110, 4120, 4130, and 4160 that will result in significant progress toward fulfillment of the standards and significant progress toward conformance with the guidelines. Practices and activities subject to standards and guidelines include the development of grazing-related portions of activity plans, establishment of terms and conditions of permits, leases and other grazing authorizations, and range improvement activities such as vegetation manipulation, fence construction and development of water.

(d) At a minimum, state and regional standards developed or revised under paragraphs (a) and (b) of this section must address the following:

- (1) Watershed function;
- (2) Nutrient cycling and energy flow;
- (3) Water quality;
- (4) Habitat for endangered, threatened, proposed, candidate, and other special status species; and
- (5) Habitat quality for native plant and animal populations and communities.

(e) At a minimum, State or regional guidelines developed under paragraphs (a) and (b) of this section must address the following:

- (1) Maintaining or promoting adequate amounts of vegetative ground cover, including standing plant material and litter, to support infiltration, maintain soil moisture storage, and stabilize soils;
 - (2) Maintaining or promoting subsurface soil conditions that support permeability rates appropriate to climate and soils;
 - (3) Maintaining, improving or restoring riparian-wetland functions including energy dissipation, sediment capture, groundwater recharge, and stream bank stability;
 - (4) Maintaining or promoting stream channel morphology (e.g., gradient, width/depth ratio, channel roughness and sinuosity) and functions appropriate to climate and landform;
 - (5) Maintaining or promoting the appropriate kinds and amounts of soil organisms, plants and animals to support the hydrologic cycle, nutrient cycle, and energy flow;
 - (6) Promoting the opportunity for seedling establishment of appropriate plant species when climatic conditions and space allow;
 - (7) Maintaining, restoring or enhancing water quality to meet management objectives, such as meeting wildlife needs;
 - (8) Restoring, maintaining or enhancing habitats to assist in the recovery of Federal threatened and endangered species;
 - (9) Restoring, maintaining or enhancing habitats of Federal Proposed, Federal candidate, and other special status species to promote their conservation;
 - (10) Maintaining or promoting the physical and biological conditions to sustain native populations and communities;
 - (11) Emphasizing native species in the support of ecological function; and
 - (12) Incorporating the use of non-native plant species only in those situations in which native species are not available in sufficient quantities or are incapable of maintaining or achieving properly functioning conditions and biological health.
- (f) Until such time as state or regional standards and guidelines are developed and in effect, the following standards provided in paragraph (f)(1) of this section and guidelines provided in (f)(2) of this section will apply and will be implemented in accordance with paragraph (c) of this section.
- (1) *Fallback standards.* (i) Upland soils exhibit infiltration and permeability rates that are appropriate to soil type, climate and landform.

- (ii) Riparian-wetland areas are in properly functioning condition.
 - (iii) Stream channel morphology (including but not limited to gradient, width/depth ratio, channel roughness and sinuosity) and functions are appropriate for the climate and landform.
 - (iv) Healthy, productive and diverse populations of native species exist and are maintained.
- (2) *Fallback guidelines.*
- (i) Management practices maintain or promote adequate amounts of ground cover to support infiltration, maintain soil moisture storage, and stabilize soils;
 - (ii) Management practices maintain or promote soil conditions that support permeability rates that are appropriate to climate and soils;
 - (iii) Management practices maintain or promote sufficient residual vegetation to maintain, improve or restore riparian-wetland functions of energy dissipation, sediment capture, groundwater recharge and stream bank stability;
 - (iv) Management practices maintain or promote stream channel morphology (e.g., gradient, width/depth ratio, channel roughness and sinuosity) and functions that are appropriate to climate and landform;
 - (v) Management practices maintain or promote the appropriate kinds and amounts of soil organisms, plants and animals to support the hydrologic cycle, nutrient cycle, and energy flow;
 - (vi) Management practices maintain or promote the physical and biological conditions necessary to sustain native populations and communities;
 - (vii) Desired species are being allowed to complete seed dissemination in 1 out of every 3 years (Management actions will promote the opportunity for seedling establishment when climatic conditions and space allow.);
 - (viii) Conservation of Federal threatened or endangered, proposed, candidate, and other special status species is promoted by the restoration and maintenance of their habitats;
 - (ix) Native species are emphasized in the support of ecological function;
 - (x) Non-native plant species are used only in those situations in which native species are not readily available in sufficient quantities or are incapable of maintaining or achieving properly functioning conditions and biological health;
 - (xi) Periods of rest from disturbance or livestock use during times of critical plant growth or regrowth are provided when needed to achieve healthy, properly functioning conditions (The timing and duration of use periods shall be determined by the authorized officer.);

- (xii) Continuous, season-long livestock use is allowed to occur only when it has been demonstrated to be consistent with achieving healthy, properly functioning ecosystems;
- (xiii) Facilities are located away from riparian-wetland areas wherever they conflict with achieving or maintaining riparian-wetland function;
- (xiv) The development of springs and seeps or other projects affecting water and associated resources shall be designed to protect the ecological functions and processes of those sites; and
- (xv) Grazing on designated ephemeral (annual and perennial) rangeland is allowed to occur only if reliable estimates of production have been made, an identified level of annual growth or residue to remain on site at the end of the grazing season has been established, and adverse effects on perennial species are avoided.

Subpart 4190—Effect of Wildfire Management Decisions

§ 4190.1 Effect of wildfire management decisions.

(a) Notwithstanding the provisions of 43 CFR 4.21(a)(1), when BLM determines that vegetation, soil, or other resources on the public lands are at substantial risk of wildfire due to drought, fuels buildup, or other reasons, or at immediate risk of erosion or other damage due to wildfire, BLM may make a rangeland wildfire management decision effective immediately or on a date established in the decision. Wildfire management includes but is not limited to:

- (1) Fuel reduction or fuel treatment such as prescribed burns and mechanical, chemical, and biological thinning methods (with or without removal of thinned materials); and
- (2) Projects to stabilize and rehabilitate lands affected by wildfire.

(b) The Interior Board of Land Appeals will issue a decision on the merits of an appeal of a wildfire management decision under paragraph (a) of this section within the time limits prescribed in 43 CFR 4.416.

Appendix B. Special Status Species

This appendix, the BLM's most current list of special status species in the western States, includes species listed under the Endangered Species Act (ESA) as endangered, threatened, candidate, and proposed, as well as BLM-sensitive species

Although this list is the BLM's most up-to-date list of special status species, the list may change at any time according to changes in the listing by the Fish and Wildlife Service, more recent data from recent investigations, and further verification of a species presence on public lands.

Status	Class	Common Name	Scientific Name
FT	Amphibian	Frog, California Red-Legged	<i>Rana aurora draytonii</i>
FT	Amphibian	Frog, Chiricahua Leopard	<i>Rana chiricahuensis</i>
C	Amphibian	Frog, Columbia Spotted	<i>Rana luteiventris</i>
C	Amphibian	Frog, Oregon Spotted	<i>Rana pretiosa</i>
C	Amphibian	Frog, Relict Leopard	<i>Rana onca</i>
FE, Eme	Amphibian	Salamander, California Tiger	<i>Ambystoma californiense</i>
FE	Amphibian	Salamander, Desert Slender	<i>Batrachoseps aridus</i>
FE	Amphibian	Salamander, Sonora Tiger	<i>Ambystoma tigrinum stebbinsi</i>
FE	Amphibian	Toad, Arroyo	<i>Bufo microscaphus californicus</i>
C	Amphibian	Toad, Boreal	<i>Bufo boreas boreas</i>
FE	Amphibian	Toad, Wyoming	<i>Bufo hemiophrys baxteri</i>
FE	Bird	Albatross, Short-Tailed	<i>Phoebastris albatrus</i>
FT	Bird	Caracara, Audubon's Crested	<i>Polyborus plancus audubonni</i>
FE ex	Bird	Condor, California	<i>Gymnogyps californianus</i>
FE ex	Bird	Crane, Whooping	<i>Grus americana</i>
C	Bird	Cuckoo, Western Yellow-Billed	<i>Coccyzus americanus occidentalis</i>
FE	Bird	Curlew, Eskimo	<i>Numenius borealis</i>
FT	Bird	Eagle, Bald	<i>Haliaeetus leucocephalus</i>
FT	Bird	Eider, Spectacled	<i>Somateria fischeri</i>
FT	Bird	Eider, Steller's	<i>Polystricta stelleri</i>
FE	Bird	Falcon, Northern Aplomado	<i>Falco femoralis septentrionalis</i>
FE	Bird	Flycatcher, Southwestern Willow	<i>Empidonax traillii extimus</i>
FT	Bird	Gnatcatcher, Coastal California	<i>Polioptila californica californica</i>
Dm	Bird	Goose, Aleutian Canada	<i>Branta canadensis leucopareia</i>
FT	Bird	Jay, Florida Scrub	<i>Aphelocoma coerulescens coerulescens</i>
C	Bird	Lark, Streaked Horned	<i>Eremophila alpestris strigata</i>
FT	Bird	Murrelet, Marbled	<i>Brachyramphus marmoratus marmoratus</i>
FT	Bird	Owl, Mexican Spotted	<i>Strix occidentalis lucida</i>
FT	Bird	Owl, Northern Spotted	<i>Strix occidentalis caurina</i>
FE	Bird	Pelican, Brown	<i>Pelecanus occidentalis</i>
FT	Bird	Plover, Piping	<i>Charadrius melodus</i>

Appendix B
Special Status Species

Proposed Revisions to Grazing Regulations for the Public Lands
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Status	Class	Common Name	Scientific Name
FT	Bird	Plover, Western Snowy	<i>Charadrius alexandrinus nivosus</i>
C	Bird	Prairie Chicken, Lesser	<i>Tympanuchus pallidicinctus</i>
FE	Bird	Pygmy-Owl, Cactus Ferruginous	<i>Glaucidium brasilianum cactorum</i>
FE	Bird	Rail, Yuma Clapper	<i>Rallus longirostris yumanensis</i>
C, BS	Bird	Sage-Grouse, Greater	<i>Centrocercus urophasianus</i>
C	Bird	Sage-Grouse, Gunnison	<i>Centrocercus minimus</i>
FE	Bird	Stork, Wood	<i>Mycteria americana</i>
FE	Bird	Vireo, Least Bell's	<i>Vireo bellii pusillus</i>
FE	Bird	Warbler, Kirtland's	<i>Dendroica kirtlandii</i>
FE	Bird	Woodpecker, Red-Cockaded	<i>Picoides borealis</i>
FE	Crustacean	Amphipod, Illinois Cave	<i>Gammarus acherondytes</i>
P	Crustacean	Amphipod, Noel's	<i>Gammarus desperatus</i>
FE	Crustacean	Fairy Shrimp, Conservancy	<i>Branchinecta conservatio</i>
FE	Crustacean	Fairy Shrimp, Longhorn	<i>Branchinecta longiantenna</i>
FT	Crustacean	Fairy Shrimp, Vernal Pool	<i>Branchinecta lynchi</i>
FE	Crustacean	Isopod, Socorro	<i>Exosphaeroma thermophilus</i>
C	Crustacean	Pyrg, Chupadera	<i>Pyrgulopsis chupaderae</i>
C	Crustacean	Pyrg, Gila	<i>Pyrgulopsis Gilae</i>
FE	Crustacean	Pyrg, Socorro	<i>Pyrgulopsis neomexicana</i>
FE	Crustacean	Shrimp, Vernal Pool Tadpole	<i>Lepidurus packardi</i>
FE	Fish	Chub, Bonytail	<i>Gila elegans</i>
FE	Fish	Chub, Borax Lake	<i>Gila boraxobius</i>
P	Fish	Chub, Cowhead Lake Tui	<i>Gila bicolor vaccaceps</i>
P	Fish	Chub, Gila	<i>Gila intermedia</i>
FE	Fish	Chub, Humpback	<i>Gila cypha</i>
FT	Fish	Chub, Hutton Tui	<i>Gila bicolor ssp. 1</i>
FE	Fish	Chub, Mohave Tui	<i>Gila bicolor mohavensis</i>
FE	Fish	Chub, Oregon	<i>Oregonichthys crameri</i>
FE	Fish	Chub, Owens Tui	<i>Gila bicolor snyderi</i>
FE	Fish	Chub, Pahrnagat Roundtail	<i>Gila robusta jordani</i>
FT	Fish	Dace, Blackside	<i>Phoxinus cumberlandensis</i>
FT	Fish	Dace, Foskett Speckled	<i>Rhinichthys osculus ssp.</i>
FE	Fish	Dace, Moapa	<i>Moapa coriacea</i>
FE	Fish	Dace, Nevada Speckled	<i>Rhinichthys osculus nevadensis</i>
FE	Fish	Darter, Okaloosa	<i>Etheostoma okaloosa</i>
FE	Fish	Gambusia, Pecos	<i>Gambusia nobilis</i>
FT	Fish	Minnnow, Loach	<i>Rhinichthys cobitis</i>
FE	Fish	Minnnow, Rio Grande Silvery	<i>Hybognathus amarus</i>
FE	Fish	Poolfish, Pahrump	<i>Empetrichthys latus</i>
FE	Fish	Pupfish, Ash Meadows Amargosa	<i>Cyprinodon nevadensis mionectes</i>

Status	Class	Common Name	Scientific Name
FE	Fish	Pupfish, Desert	<i>Cyprinodon macularius</i>
FE	Fish	Pupfish, Devil's Hole	<i>Cyprinodon diabolis</i>
FE	Fish	Pupfish, Owens	<i>Cyprinodon radiosus</i>
C	Fish	Pupfish, Pecos	<i>Cyprinodon pecosensis</i>
FE	Fish	Pupfish, Warm Springs	<i>Cyprinodon nevadensis pectoralis</i>
FT	Fish	Salmon, Fall Chinook	<i>Oncorhynchus (+salmo) tshawytscha</i>
FE	Fish	Shiner, Beautiful	<i>Cyprinella formosa</i>
FT	Fish	Shiner, Pecos Bluntnose	<i>Notropis simus pecosensis</i>
FT	Fish	Spikedace	<i>Meda fulgida</i>
FT	Fish	Spinedace, Big Spring	<i>Lepidomeda mollispinis pratensis</i>
FT	Fish	Spinedace, Little Colorado	<i>Lepidomeda vittata</i>
FT	Fish	Splittail, Sacramento	<i>Pogonichthys macrolepidotus</i>
FT	Fish	Springfish, Railroad Valley	<i>Crenichthys nevadae</i>
FT	Fish	Steelhead	<i>Oncorhynchus (=salmo) mykiss</i>
C	Fish	Steelhead, Oregon Coastal	<i>Oncorhynchus mykiss</i>
FT	Fish	Steelhead, Upper Willamette Basin	<i>Oncorhynchus mykiss</i>
FE	Fish	Stickleback, Unarmored Threespine	<i>Gasterosteus aculeatus williamsonii</i>
FT	Fish	Sturgeon, Gulf	<i>Acipenser oxyrhynchus desotoi</i>
FE	Fish	Sturgeon, Pallid	<i>Scaphirhynchus albus</i>
FE	Fish	Sucker, June	<i>Chasmistes liorus</i>
FE	Fish	Sucker, Modoc	<i>Catostomus mcrops</i>
FE	Fish	Sucker, Razorback	<i>Xyrauchen texanus</i>
FE	Fish	Sucker, Shortnose	<i>Chasmistes brevirostris</i>
FT	Fish	Sucker, Warner	<i>Catostomus warnerensis</i>
FT	Fish	Trout, Bull	<i>Salvelinus confluentus</i>
FE	Fish	Trout, Gila	<i>Oncorhynchus Gilae</i>
FT	Fish	Trout, Greenback Cutthroat	<i>Oncorhynchus clarki stomias</i>
FT	Fish	Trout, Lahontan Cutthroat	<i>Oncorhynchus clarki henshawi</i>
FE	Fish	Woundfin	<i>Plagopterus argentissimus</i>
FE	Insect	Beetle, American Burying	<i>Nicrophorus americanus</i>
C	Insect	Beetle, Coral Pink Sand Dunes	<i>Cicndela limbata albissima</i>
FT	Insect	Beetle, Valley Elderberry Longhorn	<i>Desmocerus californicus dimorphus</i>
FT	Insect	Bug, Ash Meadows Naucorid	<i>Ambrysus amargosus</i>
FE	Insect	Butterfly, Fender's Blue	<i>Icaricia icarioides fenderi</i>
FE	Insect	Butterfly, Karner Blue	<i>Lycaides melissa samuelis</i>
FT	Insect	Butterfly, Oregon Silverspot	<i>Speyeria zerene hippolyta</i>
FE	Insect	Butterfly, Quino Checkerspot	<i>Euphydryas editha quino</i>
C	Insect	Butterfly, Taylor's Checkerspot	<i>Euphydryas editha taylori</i>
FE	Insect	Butterfly, Uncomopahgre Fritillary	<i>Boloria improba acrocneuma</i>
FT	Insect	Moth, Kern Primrose Sphinx	<i>Euproserpinus euterpe</i>
FE	Insect	Skipper, Carson Wandering	<i>Pseudocopaeodes eunus ssp. Obscurus</i>

**Appendix B
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Status	Class	Common Name	Scientific Name
C	Insect	Skipper, Dakota	<i>Hesperia dacotae</i>
C	Insect	Skipper, Mardon	<i>Polites mardon</i>
FT	Insect	Skipper, Pawnee Montane	<i>Hesperia leonardus maontana</i>
FE	Mammal	Bat, Gray	<i>Myotis grisescens</i>
FE	Mammal	Bat, Indiana	<i>Myotis sodalis</i>
FE	Mammal	Bat, Lesser Long-Nosed	<i>Leptonycteris currosoae yerbuensis</i>
FE	Mammal	Bat, Mexican Long-Nosed	<i>Leptonycteris nivalis</i>
FE	Mammal	Caribou, Woodland	<i>Rangifer tarandus caribou</i>
FE	Mammal	Deer, Columbia White-Tailed	<i>Odocoileus virginianus leucurus</i>
FE ex	Mammal	Ferret, Black-Footed	<i>Mustela nigripes</i>
FE	Mammal	Fox, San Joaquin Kit	<i>Vulpes macrotis mutica</i>
FE	Mammal	Jaguar	<i>Panthera onca</i>
FE	Mammal	Kangaroo Rat, Fresno	<i>Dipodomys heermanni exilis</i>
FE	Mammal	Kangaroo Rat, Giant	<i>Dipodomys ingens</i>
FE	Mammal	Kangaroo Rat, Morro Bay	<i>Dipodomys heermanni morroensis</i>
FE	Mammal	Kangaroo Rat, Stephen's	<i>Dipodomys stephensi</i>
FE	Mammal	Kangaroo Rat, Tipton	<i>Dipodomys nitratoides nitratoides</i>
FT	Mammal	Lynx, Canada	<i>Lynx canadensis</i>
FE	Mammal	Mouse, Alabama Beach	<i>Peromyscus polionotus penninsularis</i>
FE	Mammal	Mouse, Choctawhatchee Beach	<i>Peromyscus polionotus allophrys</i>
FT	Mammal	Mouse, Preble's Meadow Jumping	<i>Zapus hudsonius preblei</i>
FE	Mammal	Ocelot	<i>Felis pardalis</i>
C	Mammal	Prairie Dog, Arizona Black-Tailed	<i>Cynomys ludovicianus arizonensis</i>
C	Mammal	Prairie Dog, Black-Tailed	<i>Cynomys ludovicianus</i>
FT	Mammal	Prairie Dog, Utah	<i>Cynomys parvidens</i>
FE	Mammal	Pronghorn, Sonoran	<i>Antilocapra americana sonoriensis</i>
FE	Mammal	Rabbit, Lower Keys Marsh	<i>Sylvilagus palustris hefneri</i>
FE	Mammal	Rat, Rice	<i>Oryzomys palustris natator</i>
FE FT	Mammal	Sea-Lion, Steller	<i>Eumetopias jubatus</i>
FE	Mammal	Shrew, Buena Vista Lake Ornate	<i>Sorex ornatus relictus</i>
C	Mammal	Squirrel, Coachella Valley Round-Tailed Ground	<i>Spermophilus tereticaudus chlorus</i>
FT	Mammal	Squirrel, Northern Idaho Ground	<i>Spermophilus brunneus brunneus</i>
C	Mammal	Squirrel, Southern Idaho Ground	<i>Spermophilus brunneus</i>
C	Mammal	Squirrel, Washington Ground	<i>Spermophilus washingtoni</i>
FE	Mammal	Vole, Amargosa	<i>Microtus californicus scirpensis</i>
FE	Mammal	Vole, Hualapai Mexican	<i>Microtus mexicanus hualpaiensis</i>
FE	Mammal	Whale, Blue	<i>Balaenoptera musculus</i>
FE	Mammal	Whale, Bowhead	<i>Balaena mysticetus</i>
FE	Mammal	Whale, Finback	<i>Balaenoptera physalus</i>
FE	Mammal	Whale, Humpback	<i>Megaptera novaeangliae</i>

Status	Class	Common Name	Scientific Name
FT	Mammal	Wolf, Gray	<i>Canis lupus</i>
FE ex	Mammal	Wolf, Mexican Gray	<i>Canis lupus baileyi</i>
FE	Mollusk	Clubshell, Ovate	<i>Pleurobema perovatum</i>
FE	Mollusk	Kidneyshell, Triangular	<i>Ptychobranthus greenii</i>
FT	Mollusk	Moccasinshell, Alabama	<i>Medionidus acutissimus</i>
FT	Mollusk	Mucket, Orange-Nacre	<i>Lamsilis perovalis</i>
FE	Mollusk	Mussel, Dark Pigtoe	<i>Pleurobema furvum</i>
FE	Plant	Agave, Arizona	<i>Agave arizonica</i>
P	Plant	Ambrosia, San Diego	<i>Ambrosia pumila</i>
FT	Plant	Amole, Purple	<i>Chlorogalum purpureum var. Purpureum</i>
FE	Plant	Barberry, Nevin's	<i>Berberis nevinii</i>
C	Plant	Beardtongue, Graham	<i>Penstemon grahamii</i>
FE	Plant	Beardtongue, Penland	<i>Penstemon penlandii</i>
FE	Plant	Bear-Poppy, Dwarf	<i>Arctomecon humilis</i>
FE	Plant	Bedstraw, San Jacinto	<i>Galium californicum ssp. Sierrae</i>
FE	Plant	Bedstraw, San Jacinto	<i>Galium californicum ssp. Sierrae</i>
FT	Plant	Birds-In-A-Nest, White	<i>Macbridea alba</i>
FT	Plant	Bladderpod, Dudley Bluffs	<i>Lesquerella congesta</i>
C	Plant	Bladderpod, Whitebluff's	<i>Lesquerella tuplashensis</i>
FE	Plant	Blue-Star, Kearney's	<i>Amsonia kearneyana</i>
FE	Plant	Buckwheat, Clay-Loving Wild	<i>Eriogonum pelinophilum</i>
FE	Plant	Buckwheat, Gypsum Wild	<i>Eriogonum gypsophilum</i>
FE	Plant	Buckwheat, Ione	<i>Eriogonum apricum</i>
C	Plant	Buckwheat, Red Mountain	<i>Eriogonum kelloggii</i>
FE	Plant	Buckwheat, Steamboat	<i>Eriogonum ovalifolium williamsiae</i>
C	Plant	Buckwheat, Umtanum Desert	<i>Eriogonum codium</i>
P	Plant	Buckwheat, Windloving	<i>Eriogonum anemophilum</i>
FE	Plant	Buttercup, Autumn	<i>Ranunculus aestivalis</i>
FT	Plant	Butterfly Plant, Colorado	<i>Gaura neomexicana ssp. Coloradensis</i>
FT	Plant	Butterweed, Layne's	<i>Senecio layneae</i>
C	Plant	Cactus, Acuna	<i>Echinomastus erectocentrus var. Acunensi</i>
FE	Plant	Cactus, Arizona Hedgehog	<i>Echinocereus triglochidiatus</i>
FE	Plant	Cactus, Bakersfield	<i>Opuntia treleasei</i>
C	Plant	Cactus, Blue Diamond Cholla	<i>Opuntia whipplei var multigeniculata</i>
FE	Plant	Cactus, Brady Pincushion	<i>Pediocactus bradyi</i>
FT	Plant	Cactus, Cochise Pincushion	<i>Coryphantha robbinsorum</i>
C	Plant	Cactus, Fickeisen Hedgehog	<i>Pediocactus peeblesianus var. Fickeiseni</i>
FE	Plant	Cactus, Knowlton	<i>Pediocactus knowltonii</i>
FE	Plant	Cactus, Kuenzler's Hedgehog	<i>Echinocereus fendleri var. Kuenzleri</i>
FT	Plant	Cactus, Lee Pincushion	<i>Coryphantha sneedii var. Leei</i>
FT	Plant	Cactus, Mesa Verde	<i>Sclerocactus mesae-verdae</i>

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Status	Class	Common Name	Scientific Name
FE	Plant	Cactus, Nichol's Turk's Head	<i>Echinocactus horizonthalonius</i> var. <i>Nicho</i>
FE	Plant	Cactus, Peebles Navajo	<i>Pediocactus peeblesianus</i> var. <i>Peeblesian</i>
FE	Plant	Cactus, Pima Pineapple	<i>Coryphantha scheeri</i> var. <i>Robustispina</i>
FE	Plant	Cactus, San Rafael	<i>Pediocactus despainii</i>
FT	Plant	Cactus, Siler Pincushion	<i>Pediocactus sileri</i>
FE	Plant	Cactus, Sneed's Pincushion	<i>Coryphantha sneedii</i> var. <i>Sneedii</i>
FT	Plant	Cactus, Uinta Basin Hookless	<i>Sclerocactus glaucus</i>
FT	Plant	Cactus, Winkler	<i>Pediocactus winkleri</i>
FE	Plant	Cactus, Wright's Fishhook	<i>Sclerocactus wrightiae</i>
FT	Plant	Catchfly, Spalding's	<i>Silene spaldingii</i>
FT	Plant	Centaury, Spring-Loving	<i>Centaurium namophilum</i>
FE	Plant	Checker-Mallow, Keck's	<i>Sidalcea keckii</i>
FT	Plant	Checker-Mallow, Nelson's	<i>Sidalcea nelsoniana</i>
FE	Plant	Chorro Creek Bog Thistle	<i>Cirsium fontinale</i> var. <i>Obispoense</i>
FT	Plant	Clarkia, Springville	<i>Clarkia springvillensis</i>
FE	Plant	Cliff-Rose, Arizona	<i>Purshia subintegra</i>
FE	Plant	Crownscale, San Jacinto Valley	<i>Atriplex coronata</i> var. <i>Notatior</i>
FE	Plant	Cushenbury Oxytheca	<i>Oxytheca parishii</i> var. <i>Goodmaniana</i>
FT	Plant	Cycladenia, Jones	<i>Cycladenia humilis</i> var. <i>Jonesii</i>
FE	Plant	Daisy, Maguire	<i>Erigeron maguirei</i>
FT	Plant	Daisy, Parish's	<i>Erigeron parishii</i>
FE	Plant	Daisy, Willamette	<i>Erigeron decumbens</i> var. <i>Decumbens</i>
FE	Plant	Desert-Parsley, Bradshaw's	<i>Lomatium bradshawii</i>
FT	Plant	Encinitis Baccharis	<i>Baccharis vanessae</i>
FT	Plant	Evening-Primrose, San Benito	<i>Camissonia benitensis</i>
FE ex	Plant	Evening-Primrose, Wolf's	<i>Oenothera wolfii</i>
FE	Plant	Fern, Aleutian Shield	<i>Polysticum aleuticum</i>
FE	Plant	Flannelbush, Mexican	<i>Fremontodendron mexicanum</i>
FE	Plant	Flannelbush, Pine Hill	<i>Fremontodendron californicum</i> ssp. <i>Decumb</i>
C	Plant	Fleabane, Basalt	<i>Erigeron basalticus</i>
C	Plant	Fleabane, Lemmon	<i>Erigeron lemmonii</i>
FT	Plant	Fleabane, Zuni	<i>Erigeron rhizomatus</i>
FT	Plant	Florida Skullcap	<i>Scutellaria floridana</i>
FT	Plant	Four-O'clock, Mcfarlane's	<i>Mirabilis macfarlanei</i>
FE	Plant	Gilia, Monterey	<i>Gilia tenuiflora</i> ssp. <i>Arenaria</i>
FE	Plant	Goldfields, Contra Costa	<i>Lasthenia conjugens</i>
FE	Plant	Grass, California Orcutt	<i>Orcuttia californica</i>
FE	Plant	Grass, Hairy Orcutt	<i>Orcuttia pilosa</i>
FT	Plant	Grass, San Joaquin Valley Orcutt	<i>Orcuttia inaequalis</i>
FE	Plant	Grass, Slender Orcutt	<i>Orcuttia tenuis</i>
FT	Plant	Gumplant, Ash Meadows	<i>Grindelia fraxino-pratensis</i>

Status	Class	Common Name	Scientific Name
FT	Plant	Howellia, Water	<i>Howellia aquatilis</i>
FT	Plant	Howell's Spectacular Thelypody	<i>Thelypodium howellii</i> ssp. <i>Spectabilis</i>
FE	Plant	Howell's Spineflower	<i>Chorizanthe howellii</i>
FE	Plant	Jewel-Flower, California	<i>Caulanthus californicus</i>
FE	Plant	Jewel-Flower, Metcalf Canyon	<i>Streptanthus albidus</i> ssp. <i>Albidus</i>
FT	Plant	Kodachrome Bladderpod	<i>Lesquerella tumulosa</i>
FE	Plant	Ladies'-Tresses, Canelo Hills	<i>Spiranthes delitescens</i>
FT	Plant	Ladies'-Tresses, Ute	<i>Spiranthes diluvialis</i>
FE	Plant	Last Chance Townsendia	<i>Townsendia aprica</i>
FE	Plant	Layia, Beach	<i>Layia carnosa</i>
C	Plant	Lily, Siskiyou Mariposa	<i>Calochortus persistens</i>
C	Plant	Lily, Umpqua Mariposa	<i>Calochortus umpquaensis</i>
FE	Plant	Lompoc Yerba Santa	<i>Eriodictyon capitatum</i>
FT	Plant	Lupine, Kincaid's	<i>Lupinus sulphureus</i> var. <i>Kincaidii</i>
FE	Plant	Mallow, Kern	<i>Eremalche kernensis</i>
FT	Plant	Manzanita, Ione	<i>Arctostaphylos myrtifolia</i>
FT	Plant	Manzanita, Morro	<i>Arctostaphylos morroensis</i>
FT	Plant	Marcescent Dudleya	<i>Dudleya cymosa</i> ssp. <i>Marcescens</i>
FE	Plant	Meadowfoam, Butte County	<i>Limnanthes floccosa</i> var. <i>Californica</i>
FE	Plant	Mesa-Mint, Otay	<i>Pogogyne nudiuscula</i>
FE	Plant	Milk-Vetch Applegate's	<i>Astragalus applegatei</i>
FT	Plant	Milk-Vetch, Ash Meadows	<i>Astragalus phoenix</i>
FE	Plant	Milk-Vetch, Braunton's	<i>Astragalus brauntonii</i>
FE	Plant	Milk-Vetch, Coachella Valley	<i>Astragalus lentiginosus</i> var. <i>Coachellae</i>
FE	Plant	Milk-Vetch, Cushenbury	<i>Astragalus albens</i>
FT	Plant	Milk-Vetch, Desert	<i>Astragalus desereticus</i>
FT	Plant	Milk-Vetch, Fish Slough	<i>Astragalus lentiginosus</i> var. <i>Piscinensis</i>
FT	Plant	Milk-Vetch, Pierson's	<i>Astragalus magdalenae</i> var. <i>Peirsonii</i>
FE	Plant	Milk-Vetch, Shivwitz	<i>Astragalus ampullarioides</i>
FT	Plant	Milkweed, Welsh's	<i>Asclepias welshii</i>
C	Plant	Moonwort, Slender	<i>Botrychium lineare</i>
FE	Plant	Morning-Glory, Stebbins'	<i>Calystegia stebbinsii</i>
FT	Plant	Orchid, Western Prairie Fringed	<i>Platanthera praeclara</i>
FT	Plant	Owl's-Clover, Fleshy	<i>Castilleja campestris</i> ssp. <i>Succulenta</i>
FE	Plant	Phacelia, Clay	<i>Phacelia argillacea</i>
C	Plant	Phacelia, Debeque	<i>Phacelia submutica</i>
FE	Plant	Phlox, Eureka	<i>Phlox hirsuta</i>
FE	Plant	Popcornflower, Rough	<i>Plagiobothrys hirtus</i>
FE	Plant	Poppy, Sacramento Prickly	<i>Argemone pleiacantha</i> ssp. <i>Pinnatisecta</i>
FT	Plant	Primrose, Maguire	<i>Primula maguirei</i>
FE	Plant	Reed-Mustard, Shrubby	<i>Schoenocrambe suffrutescens</i>

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FE	Plant	Rock-Cress, McDonalds	<i>Arabis macdonaldiana</i>
FT	Plant	Sedge, Navajo	<i>Carex specuicola</i>
FT	Plant	Spineflower, Monterey	<i>Chorizanthe pungens var. Pungens</i>
FE	Plant	Spineflower, Orcutt's	<i>Chorizanthe orcuttiana</i>
FE	Plant	Spineflower, Slender-Horned	<i>Dodecahema leptoceras</i>
FT	Plant	Spurge, Hoover's	<i>Chamaesyce hooveri</i>
FE	Plant	Stickseed, Showy	<i>Hackelia venusta</i>
C	Plant	Stonecrop, Red Mountain	<i>Sedum eastwoodiae</i>
FE	Plant	Sunburst, Hartweg's Golden	<i>Pseudobahia bahiifolia</i>
FT	Plant	Sunburst, San Joaquin Adobe	<i>Pseudobahia peirsonii</i>
FT	Plant	Sunflower, Pecos	<i>Helianthus paradoxus</i>
FT	Plant	Sunray, Ash Meadows	<i>Enceliopsis nudicaulis var. Corrugata</i>
FT	Plant	Tarplant, Otay	<i>Hemizonia conjugens</i>
FT	Plant	Thistle, Pitcher's	<i>Cirsium pitcheri</i>
FE	Plant	Tuctoria, Greene's	<i>Tuctoria greenei</i>
FE	Plant	Wallflower, Menzies'	<i>Erysimum menziesii ssp. Eurekaense</i>
FE	Plant	Water-Umbel, Huachuca	<i>Lilaeopsis schaffneriana var. Recurva</i>
FE	Plant	Wirelettuce, Malheur	<i>Stephanomeria malheurensis</i>
FE	Plant	Wooly-Threads, San Joaquin	<i>Lembertia congdonii</i>
C	Plant	Wormwood, Northern	<i>Artemisia campestris var. Wormskioldii</i>
C	Plant	Yellow Cress, Tahoe	<i>Rorippa subumbellata</i>
FE	Reptile	Lizard, Blunt-Nosed Leopard	<i>Gambelia silus</i>
C	Reptile	Lizard, Sand Dune	<i>Sceloporus arenicolus</i>
C	Reptile	Rattlesnake, Eastern Massasauga	<i>Sistrurus catenatus catenatus</i>
FT	Reptile	Rattlesnake, New Mexican Ridge-Nosed	<i>Crotalus willardi obscurus</i>
FE	Reptile	Sea Turtle, Leatherback	<i>Dermochelys coriacea</i>
FT	Reptile	Turtle, Flattened Musk	<i>Sternotherus depressus</i>
FE	Snail	Limpet, Banbury Springs	<i>Lanx species</i>
C	Snail	Mountainsnail, Ogden Deseret	<i>Oreohelix periphera</i>
C	Snail	Pondsnail, Bonneville	<i>Stagnicola bonnevillensis</i>
FE	Snail	Snail, Bruneau Hot Springs	<i>Pyrgulopsis bruneauensis</i>
P	Snail	Snail, Koster's Tryonia	<i>Tryonia kosteri</i>
C	Snail	Snail, Pecos Assiminea	<i>Assiminea pecos</i>
FE	Snail	Springsnail, Idaho	<i>Fontelicella idahoensis</i>
P	Snail	Springsnail, Roswell	<i>Pyrgulopsis roswellensis</i>
BS (W in ID)	Amphibian	Frog, Wood	<i>Rana sylvatica</i>
BS (W in ID)	Bird	Curlew, Long Billed	<i>Numenius americanus</i>
BS (W in ID)	Bird	Hawk, Swainson's	<i>Buteo swainsoni</i>

Status	Class	Common Name	Scientific Name
BS (W in ID)	Bird	Jay, Pinyon	<i>Gymnorhinus cyanocephalus</i>
BS (W in ID)	Bird	Nuthatch, Pygmy	<i>Sitta pygmaea</i>
BS (W in ID)	Bird	Owl, Boreal	<i>Aegolius funereus</i>
BS (W in ID)	Bird	Owl, Great Gray	<i>Strix nebulosa</i>
BS (W in ID)	Bird	Sapsucker, Red-Naped	<i>Sphyrapicus nuchalis</i>
BS (W in ID)	Bird	Sparrow, Grasshopper	<i>Ammodramus savannarum</i>
BS (W in ID)	Bird	Thrasher, Sage	<i>Oreoscoptes montanus</i>
BS (W in ID)	Bird	Woodpecker, Black Backed	<i>Picoides arcticus</i>
BS (W in ID)	Mammal	Bat, Western Pipistrell	<i>Pipistrellus hesperus</i>
BS (W in ID)	Mammal	Myotis, Long-Eared	<i>Myotis evotis</i>
BS (W in ID)	Mammal	Myotis, Long-Legged	<i>Myotis volans</i>
BS (W in ID)	Plant	Cryptantha, Silky	<i>Cryptantha sericea</i>
BS (bto)	Bird	Bobolink	<i>Dolichonyx oryzivorus</i>
BS (ba)	Fish	Trout, Westslope Cutthroat	<i>Oncorhynchus clarki lewisi</i>
BS	Amphibian	Frog, Foothill Yellow-Legged	<i>Rana boyleii</i>
BS	Amphibian	Frog, Northern Cricket	<i>Acris crepitans</i>
BS	Amphibian	Frog, Northern Leopard	<i>Rana pipiens</i>
BS	Amphibian	Frog, Plain's Leopard	<i>Rana blairi</i>
BS	Amphibian	Frog, San Sebastian Leopard	<i>Rana yavapaiensis</i>
BS	Amphibian	Frog, Tailed	<i>Ascaphus truei</i>
BS	Amphibian	Salamander, Coeur D'alene	<i>Plethodon idahoensis</i>
BS	Amphibian	Salamander, Idaho Giant	<i>Dicamptodon aterrimus</i>
BS	Amphibian	Salamander, Inyo Mountains Slender	<i>Batrachoseps campi</i>
BS	Amphibian	Salamander, Oregon Slender	<i>Batrachoseps wrighti</i>
BS	Amphibian	Salamander, Tehachapi Slender	<i>Batrachoseps stebbinsi</i>
BS	Amphibian	Salamander, Yellow-Blotched	<i>Ensatina eschscholtzi croceator</i>
BS	Amphibian	Spadefoot, Great Basin	<i>Spea intermontana</i>
BS	Amphibian	Toad, Amargosa	<i>Bufo nelsoni</i>
BS	Amphibian	Toad, Arizona	<i>Bufo microscaphus microscaphus</i>
BS	Amphibian	Toad, Canadian	<i>Bufo hemiophrys</i>
BS	Amphibian	Toad, Couch's Spadefoot	<i>Scaphiopus couchi</i>
BS	Amphibian	Toad, Southwestern	<i>Bufo microscaphus</i>

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BS	Amphibian	Toad, Western	<i>Bufo boreas</i>
BS	Amphibian	Toad, Woodhouse	<i>Bufo woodhousii</i>
BS	Amphibian	Treefrog, Canyon	<i>Hyla arenicolor</i>
BS	Annelid	Earthworm, Oregon Giant	<i>Driloleirus (megascolides) macelfreshi</i>
BS	Annelid	Flatworm, No Common Name	<i>Kenkia rhynchida</i>
BS	Arachnid	Pseudoscorpion, Malheur	<i>Apochthonius malheuri</i>
BS	Bird	Bittern, Least	<i>Ixobrychus exilis</i>
BS	Bird	Blackbird, Tricolored	<i>Agelaius tricolor</i>
BS	Bird	Brant, Black	<i>Branta bernicla</i>
BS	Bird	Bunting, Mckay's	<i>Plectrophenax hyperboreus</i>
BS	Bird	Chat, Yellow-Breasted	<i>Icteria virens</i>
BS	Bird	Curlew, Bristle-Thighed	<i>Numenius tahitiensis</i>
BS	Bird	Curlew, Long Billed	<i>Numenius americanus</i>
BS	Bird	Dickcissel	<i>Spiza americana</i>
BS	Bird	Dovekie	<i>Alle alle</i>
BS	Bird	Duck, Canvasback	<i>Aythya valisineria</i>
BS	Bird	Duck, Fulvous Whistling	<i>Dendrocygna bicolor</i>
BS	Bird	Duck, Harlequin	<i>Histrionicus histrionicus</i>
BS	Bird	Duck, Harlequin	<i>Histrionicus histrionicus</i>
BS	Bird	Duck, Long-Tailed	<i>Clangula hyemalis</i>
BS	Bird	Eagle, Bald	<i>Haliaeetus leucocephalus</i>
BS	Bird	Eagle, Golden	<i>Aquila chrysaetos</i>
BS	Bird	Eider, King	<i>Somateria spectabilis</i>
BS	Bird	Falcon, American Peregrine	<i>Falco peregrinus anatum</i>
BS	Bird	Falcon, Arctic Peregrine	<i>Falco peregrinus tundrius</i>
BS	Bird	Falcon, Prairie	<i>Falco mexicanus</i>
BS	Bird	Finch, Black Rosy	<i>Leucosticte atrata</i>
BS	Bird	Flycatcher, Gray	<i>Empidonax wrightii</i>
BS	Bird	Flycatcher, Hammond's	<i>Empidonax hammondii</i>
BS	Bird	Flycatcher, Olive-Sided	<i>Contopus borealis</i>
BS	Bird	Flycatcher, Willow	<i>Empidonax traillii</i>
BS	Bird	Godwit, Black-Tailed	<i>Limosa limosa</i>
BS	Bird	Godwit, Marbled	<i>Limosa fedoa</i>
BS	Bird	Goldeneye, Barrow's	<i>Bucephala islandica</i>
BS	Bird	Goose, Dusky Canada	<i>Branta canadensis occidentalis</i>
BS	Bird	Goose, Tule White-Fronted	<i>Anser albifrons gambelli</i>
BS	Bird	Goshawk, Northern	<i>Accipiter gentilis</i>
BS	Bird	Goshawk, Northern	<i>Accipiter gentilis</i>
BS	Bird	Grebe, Red-Necked	<i>Podiceps grisegena</i>
BS	Bird	Grosbeak, Blue	<i>Guiraca caerulea</i>
BS	Bird	Grouse, Columbian Sharpe-Tailed	<i>Tympanuchus phasianellus columbianus</i>

Status	Class	Common Name	Scientific Name
BS	Bird	Grouse, Columbian Sharpe-Tailed	<i>Tympanuchas phasianellus columbianus</i>
BS	Bird	Grouse, Sharp-Tailed	<i>Tympanuchus phasianellus</i>
BS	Bird	Guillemot, Black	<i>Cepphus grylle</i>
BS	Bird	Harrier, Northern	<i>Circus cyaneus</i>
BS	Bird	Hawk, Ferruginous	<i>Buteo regalis</i>
BS	Bird	Hawk, Northern Gray	<i>Buteo nitidus maximus</i>
BS	Bird	Hummingbird, Calliope	<i>Stellula calliope</i>
BS	Bird	Ibis, White-Faced	<i>Plegadis chihi</i>
BS	Bird	Knot, Red	<i>Calidris canutus</i>
BS	Bird	Loon, Common	<i>Gavia immer</i>
BS	Bird	Loon, Red-Throated	<i>Gavia stellata</i>
BS	Bird	Martin, Purple	<i>Progne subis</i>
BS	Bird	Meadowlark, Western	<i>Sturnella neglecta</i>
BS	Bird	Murrelet, Kittlitz's	<i>Brachyramphus brevirostris</i>
BS	Bird	Nighthawk, Common	<i>Chordeiles minor</i>
BS	Bird	Osprey	<i>Pandion haliaetus</i>
BS	Bird	Owl, California Spotted	<i>Strix occidentalis occidentalis</i>
BS	Bird	Owl, Flammulated	<i>Otus flammeolus</i>
BS	Bird	Owl, Long-Eared	<i>Asio otus</i>
BS	Bird	Owl, Short-Eared	<i>Asio flammeus</i>
BS	Bird	Pelican, American White	<i>Pelecanus erythrorhynchos</i>
BS	Bird	Phainopepla	<i>Phainopepla nitens</i>
BS	Bird	Plover, Mountain	<i>Charadrius montanus</i>
BS	Bird	Quail, Mountain	<i>Oreortyx pictus</i>
BS	Bird	Rail, Yellow	<i>Coturnicops noveboracensis</i>
BS	Bird	Sage-Grouse, Greater	<i>Centrocercus urophasianus</i>
BS	Bird	Sandpiper, Buff-Breasted	<i>Tryngites subruficollis</i>
BS	Bird	Sandpiper, Upland	<i>Bartramia longicauda</i>
BS	Bird	Sapsucker, Williamson's	<i>Sphyrapicus thyoideus</i>
BS	Bird	Scoter, Black	<i>Melanitta nigra</i>
BS	Bird	Scoter, Surf	<i>Melanitta perspicillata</i>
BS	Bird	Shrike, Loggerhead	<i>Lanius ludovicianus</i>
BS	Bird	Sparrow, Baird's	<i>Ammodramus bairdii</i>
BS	Bird	Sparrow, Black-Throated	<i>Amphispiza bilineata</i>
BS	Bird	Sparrow, Brewer's	<i>Spizella breweri</i>
BS	Bird	Sparrow, Large-Billed Savannah	<i>Passerculus sandwichensis rostratus</i>
BS	Bird	Sparrow, Leconte's	<i>Ammodramus leconteii</i>
BS	Bird	Sparrow, Sage	<i>Amphispiza belli</i>
BS	Bird	Swan, Trumpeter	<i>Cygnus buccinator</i>
BS	Bird	Swan, Trumpeter	<i>Cygnus buccinator</i>
BS	Bird	Swift, Black	<i>Cypseloides niger</i>

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BS	Bird	Tern, Black	<i>Chlidonias niger</i>
BS	Bird	Tern, Caspian	<i>Sterna caspia</i>
BS	Bird	Thrasher, Bendire's	<i>Toxostoma bendirei</i>
BS	Bird	Thrasher, Crissal	<i>Toxostoma crissale</i>
BS	Bird	Thrasher, Le Conte's	<i>Toxostoma lecontei</i>
BS	Bird	Thrush, Gray-Cheeked	<i>Catharus mimimus</i>
BS	Bird	Titmouse, Juniper	<i>Baelophus griseus</i>
BS	Bird	Vireo, Bell's	<i>Vireo bellii</i>
BS	Bird	Vireo, Gray	<i>Vireo vicinior</i>
BS	Bird	Warbler, Blackpoll	<i>Dendroica striata</i>
BS	Bird	Warbler, Lucy's	<i>Vermivora luciae</i>
BS	Bird	Warbler, Townsend's	<i>Denroica townsendi</i>
BS	Bird	Warbler, Virginia's	<i>Vermivora virginiae</i>
BS	Bird	Woodpecker, Black Backed	<i>Picoides arcticus</i>
BS	Bird	Woodpecker, Hairy	<i>Picoides villosus</i>
BS	Bird	Woodpecker, Lewis'	<i>Melanerpes lewis</i>
BS	Bird	Woodpecker, Three-Toed	<i>Picoides tridactylus</i>
BS	Bird	Woodpecker, White-Headed	<i>Picoides ablolarvatus</i>
BS	Bird	Yellowthroat, Common	<i>Geothlypis trichas</i>
BS	Bryophyte	Bug-On-A-Stick, Leafless	<i>Buxbaumia aphylla</i>
BS	Bryophyte	Bug-On-A-Stick, Piper's	<i>Buxbaumia piperi</i>
BS	Bryophyte	Moss	<i>Encalypta brevicolla var. Crumiana</i>
BS	Bryophyte	Moss	<i>Limbella fryei</i>
BS	Crustacean	Amphipod, Malheur Cave	<i>Stygobromus hubbsi</i>
BS	Crustacean	Mountainsnail, Mineral Creek	<i>Oreohelix pilsbryi</i>
BS	Fish	Burbot	<i>Lota lota</i>
BS	Fish	Char, Angayukaksurak	<i>Salvelinus anaktuvukensis</i>
BS	Fish	Char, Kigliak	<i>Salvelinus alpinus</i>
BS	Fish	Chub, Big Smoky Valley Tui	<i>Gila bicolor ssp.</i>
BS	Fish	Chub, Catlow Tui	<i>Gila bicolor ssp. 2</i>
BS	Fish	Chub, Fish Creek Springs Tui	<i>Gila bicolor isolata</i>
BS	Fish	Chub, Fish Lake Valley Tui	<i>Gila bicolor ssp.</i>
BS	Fish	Chub, Flathead	<i>Hybopsis (platygobio) gracilis</i>
BS	Fish	Chub, Hot Creek Valley Tui	<i>Gila bicolor ssp.</i>
BS	Fish	Chub, Independence Valley Tui	<i>Gila bicolor newarkensis</i>
BS	Fish	Chub, Least	<i>Itichthys phlegethontis</i>
BS	Fish	Chub, Leatherside	<i>Gila copei</i>
BS	Fish	Chub, Newark Valley Tui	<i>Gila bicolor newarkensis</i>
BS	Fish	Chub, Oregon Lakes Tui	<i>Gila bicolor oregonensis</i>
BS	Fish	Chub, Railroad Valley Tui	<i>Gila bicolor ssp.</i>
BS	Fish	Chub, Rio Grande	<i>Gila pandora</i>

Status	Class	Common Name	Scientific Name
BS	Fish	Chub, Roundtail	<i>Gila rubusta</i>
BS	Fish	Chub, Sicklefin	<i>Macrhybopsis meeki</i>
BS	Fish	Chub, Sturgeon	<i>Macrhybopsis gelida</i>
BS	Fish	Chub, Sturgeon	<i>Machrybopsis gelida</i>
BS	Fish	Chub, Summer Basin Tui	<i>Gila bicolor ssp. 13</i>
BS	Fish	Dace, Longfin	<i>Agosia chrysogaster</i>
BS	Fish	Dace, Meadow Valley Wash Speckled	<i>Rhinichthys osculus spp.</i>
BS	Fish	Dace, Millicoma	<i>Rhinichthys cataractae spp. 1</i>
BS	Fish	Dace, Moapa Speckled	<i>Rhinichthys osculus moapae</i>
BS	Fish	Dace, Monitor Valley Speckled	<i>Rhinichthys osculus spp.</i>
BS	Fish	Dace, Northern Redbelly X Finescale	<i>Phoxinus eos x phoxinus neogaeus</i>
BS	Fish	Dace, Oasis Valley Speckled	<i>Rhinichthys osculus spp.</i>
BS	Fish	Dace, Pahrnagat Speckled	<i>Rhinichthys osculus velifer</i>
BS	Fish	Dace, Pearl	<i>Margariscus margarita nachtriebi</i>
BS	Fish	Dace, Speckled	<i>Rhinichthys osculus</i>
BS	Fish	Darter, Iowa	<i>Etheostoma exile</i>
BS	Fish	Darter, Orangethroat	<i>Etheostoma spectabile</i>
BS	Fish	Gar, Shortnose	<i>Lepisosteus platostomus</i>
BS	Fish	Lamprey, Goose Lake	<i>Lampetra tridentata ssp. 1</i>
BS	Fish	Lamprey, Pacific	<i>Lampetra tridentata</i>
BS	Fish	Lamprey, Western Brook	<i>Lampetra richardsoni</i>
BS	Fish	Paddlefish	<i>Polyodon spathula</i>
BS	Fish	Pupfish, White Sands	<i>Cyprinodon tularosa</i>
BS	Fish	Roach, Red Hills	<i>Lavinia symmetricus ssp. 3</i>
BS	Fish	Salmon, Beaver Creek Chinook	<i>Onconhynchus tshawytscha</i>
BS	Fish	Salmon, Chum	<i>Oncorhynchus (+salmo) keta</i>
BS	Fish	Salmon, Clear Creek Chum	<i>Oncorhynchus keta</i>
BS	Fish	Salmon, Fall Chinook	<i>Oncorhynchus (+salmo) tshawytscha</i>
BS	Fish	Sauger	<i>Stizostedion canadense</i>
BS	Fish	Sculpin, Bear Lake	<i>Cottus extensus</i>
BS	Fish	Sculpin, Malheur Mottled	<i>Cottus bendirei</i>
BS	Fish	Sculpin, Shoshone	<i>Cottus greenei</i>
BS	Fish	Shiner, Rio Grande	<i>Notropis jemezianus</i>
BS	Fish	Steelhead, Gulkana	<i>Oncorhynchus mykiss</i>
BS	Fish	Stonecat	<i>Noturus flavus</i>
BS	Fish	Sturgeon, White	<i>Acipenser transmontanus</i>
BS	Fish	Sucker, Blue	<i>Cycleptus elongatus</i>
BS	Fish	Sucker, Bluehead	<i>Catostomus discobolus</i>
BS	Fish	Sucker, Desert	<i>Catostomus [pantosteus] clarki</i>
BS	Fish	Sucker, Flannelmouth	<i>Catostomus latipinnis</i>
BS	Fish	Sucker, Goose Lake	<i>Catostomus occidentalis lacusanserinus</i>

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Status	Class	Common Name	Scientific Name
BS	Fish	Sucker, Little Colorado	<i>Catostomus sp.</i>
BS	Fish	Sucker, Mountain	<i>Catostomas platyrhynchus</i>
BS	Fish	Sucker, Rio Grande	<i>Catostomus plebeius</i>
BS	Fish	Sucker, Sonora	<i>Catostomus insignis</i>
BS	Fish	Sucker, Wall Canyon	<i>Catostomus sp.</i>
BS	Fish	Topminnow, Plains	<i>Fundulus sciadicus</i>
BS	Fish	Trout, Bonneville Cutthroat	<i>Oncorhynchus clarki utah</i>
BS	Fish	Trout, Great Basin Redband	<i>Oncorhynchus mykiss pop. 18</i>
BS	Fish	Trout, Redband	<i>Oncorhynchus mykiss gibbsi</i>
BS	Fish	Trout, Rio Grande Cutthroat	<i>Oncorhynchus clarki virginalis</i>
BS	Fish	Trout, Westslope Cutthroat	<i>Oncorhynchus clarki lewisi</i>
BS	Fish	Trout, Yellowstone Cutthroat	<i>Oncorhynchus clarki bouvieri</i>
BS	Fish	Whitefish, Bear Lake	<i>Prosopium abyssicola</i>
BS	Fish	Whitefish, Pygmy	<i>Prosopium coulteri</i>
BS	Insect	A Caddisfly	<i>Farula constricta</i>
BS	Insect	Bee, Mojave Gypsum	<i>Andrena balsamorhiza</i>
BS	Insect	Bee, Mojave Poppy	<i>Perdita meconis</i>
BS	Insect	Beetle, Blind Cave Leiodid	<i>Glacicavicola bathyscoides</i>
BS	Insect	Beetle, Bruneau Dunes Tiger	<i>Cicindela waynei</i>
BS	Insect	Beetle, Chiricahua Water Scavenger	<i>Cymbiodyta arizonica</i>
BS	Insect	Beetle, Ciervo Aegialian Scarab	<i>Aegialia concinna</i>
BS	Insect	Beetle, Devil's Hole Warm Spring Riffle	<i>Stenelmis calida calida</i>
BS	Insect	Beetle, Large Aegilian Scarab	<i>Aegialia magnifica</i>
BS	Insect	Beetle, Maricopa Tiger	<i>Cicindela oregona maricopa</i>
BS	Insect	Beetle, Moapa Warm Spring Riffle	<i>Stenelmis moapa</i>
BS	Insect	Beetle, Roth's Blind Ground	<i>Pterostichus rothi</i>
BS	Insect	Beetle, San Joaquin Dune	<i>Coelus gracilis</i>
BS	Insect	Blue, Sand Mountain	<i>Euphilotes palliscens ssp.arenamontana</i>
BS	Insect	Bug, Harney Hot Spring Shore	<i>Micracanthia fennica</i>
BS	Insect	Bug, Pahrnagat Naucorid	<i>Pelociris shoshone shoshone</i>
BS	Insect	Bug, Santa Rita Mountains Chlorochroan	<i>Chlorochroa rita</i>
BS	Insect	Butterfly, Baking Powder Flat Blue	<i>Euphilotes bernadino minuta</i>
BS	Insect	Butterfly, Carson Valley Silverspot	<i>Speyeria nokomis carsonensis</i>
BS	Insect	Butterfly, Desert Viceroy	<i>Limenitis archippus obsoleta</i>
BS	Insect	Butterfly, Early Blue	<i>Euphilotes enoptes primavera</i>
BS	Insect	Butterfly, Fused Battoides Blue	<i>Euphilotes battoides fusimaculata</i>
BS	Insect	Butterfly, Giuliani's Blue	<i>Eupilotes ancilla giulanii</i>
BS	Insect	Butterfly, Great Basin Small Blue	<i>Philotiella speciosa septentrionalis</i>
BS	Insect	Butterfly, Grey's Silverspot	<i>Speyeria hesperis greyi</i>
BS	Insect	Butterfly, Honey Lake Blue	<i>Euphilotes pallescens calneva</i>

Status	Class	Common Name	Scientific Name
BS	Insect	Butterfly, Insular Blue	<i>Plebejus saepiolus insulanus</i>
BS	Insect	Butterfly, Koret's Checkerspot	<i>Euphydryas editha koreti</i>
BS	Insect	Butterfly, Mattoni's Blue	<i>Euphilotes pallescens mattonii</i>
BS	Insect	Butterfly, Mono Checkerspot	<i>Euphydryas editha monoenisis</i>
BS	Insect	Butterfly, New Mexico Silverspot	<i>Speyeria nokomis nitocris</i>
BS	Insect	Butterfly, Northern Mojave Blue	<i>Euphilotes mojave virginensis</i>
BS	Insect	Butterfly, Rice's Blue	<i>Euphilotes pallescens ricei</i>
BS	Insect	Butterfly, Sand Mountain Blue	<i>Euphilotes pallescens arenamontana</i>
BS	Insect	Butterfly, Shield's Blue	<i>Euphilotes ancilla shieldsi</i>
BS	Insect	Butterfly, Steptoe Valley Crescentspot	<i>Phyciodes pascoiensis arenacolor</i>
BS	Insect	Caddisfly, Haddock's Rhyacophilan	<i>Rhyacophila haddocki</i>
BS	Insect	Caddisfly, Scott's Apatanian	<i>Allomyia scotti</i>
BS	Insect	Checkerspot, Spring Mountain Acastus	<i>Chlosyne acastus robusta</i>
BS	Insect	Cricket, Arizona Giant Sand Treader	<i>Daihinibaenetes arizonensis</i>
BS	Insect	Cricket, Mary's Peak Ice	<i>Grylloblatta sp. Nov.</i>
BS	Insect	Cricket, Navajo Jerusalem	<i>Stenopelmatus navajo</i>
BS	Insect	Fritillary, Nokomis	<i>Speyeria nokomis nokomis</i>
BS	Insect	Grass Bug, American Acetropis	<i>Acetropis americana</i>
BS	Insect	Grasshopper, Idaho Pointheaded	<i>Acrolophitus punchellus</i>
BS	Insect	Lacewing, Cheese-Weed Moth	<i>Oliarces clara</i>
BS	Insect	Meesia	<i>Meesia longiseta</i>
BS	Insect	Nymph, Big Smoky Wood	<i>Cercyonis oetus alkalorum</i>
BS	Insect	Nymph, Pallid Wood	<i>Cercyonis oetus pallescens</i>
BS	Insect	Scarab, Aegialian Beetle	<i>Aegialia knighti</i>
BS	Insect	Scarab, Big Dune Aphodius	<i>Aphodius sp.</i>
BS	Insect	Scarab, Crescent Dune Aegialian	<i>Aegialia crescenta</i>
BS	Insect	Scarab, Crescent Dune Aphodius	<i>Aphodius sp.</i>
BS	Insect	Scarab, Crescent Dune Serican	<i>Serica ammomensico</i>
BS	Insect	Scarab, Guiliani's Dune	<i>Pseudocotalpa guilianii</i>
BS	Insect	Scarab, Hardy's Aegialian	<i>Aegialia hardyi</i>
BS	Insect	Scarab, Humboldt Serican	<i>Serica humboldti</i>
BS	Insect	Scarab, Sand Mountain Aphodius	<i>Aphodius sp.</i>
BS	Insect	Scarab, Sand Mountain Aphodius	<i>Aphodius</i>
BS	Insect	Scarab, Sand Mountain Serican	<i>Serica psamnobunus</i>
BS	Insect	Skipper, Ash Meadows Alkali	<i>Pseudocopaeodes eunus alinea</i>
BS	Insect	Skipper, Denio Sandhill	<i>Polites sabuleti sinemaculata</i>
BS	Insect	Skipper, Macneil Sootywing	<i>Hesperopsis graciaelae</i>
BS	Insect	Skipper, Mono Basin	<i>Hesperia uncas guilianii</i>
BS	Insect	Skipper, Railroad Valley	<i>Hesperia uncas fulvapalla</i>
BS	Insect	Stonefly, Wahkeena Falls Flightless	<i>Zapada wahkeena</i>

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BS	Insect	Weevil, Rulien's Miloderes	<i>Miloderes sp.</i>
BS	Mammal	Bat, Big Brown	<i>Eptesicus fuscus</i>
BS	Mammal	Bat, Big Free-Tailed	<i>Nyctinomous macrotis</i>
BS	Mammal	Bat, Big Free-Tailed	<i>Nyctinomops macrotis</i>
BS	Mammal	Bat, Brazilian Free-Tailed	<i>Tadarida braziliensis</i>
BS	Mammal	Bat, California Leaf-Nosed	<i>Macrotus californicus</i>
BS	Mammal	Bat, Greater Western Mastiff	<i>Eumops perotis californicus</i>
BS	Mammal	Bat, Hoary	<i>Lasiurus cinerus</i>
BS	Mammal	Bat, Mexican Long-Tongued	<i>Choeronycteris mexicana</i>
BS	Mammal	Bat, Pale Townsend's Big-Eared	<i>Plecotus townsendii pallescens</i>
BS	Mammal	Bat, Pallid	<i>Antrozous pallidus</i>
BS	Mammal	Bat, Pocketed Free-Tailed	<i>Nyctinomops femorosaccus</i>
BS	Mammal	Bat, Silver-Haired	<i>Lasionycteris noctivagans</i>
BS	Mammal	Bat, Spotted	<i>Euderma maculatum</i>
BS	Mammal	Bat, Townsend's Big-Eared	<i>Corynorhinus townsendii</i>
BS	Mammal	Bat, Townsend's Western Big-Eared	<i>Corynorhinus townsendii townsendii</i>
BS	Mammal	Bat, Underwood Mastiff	<i>Eumops underwoodi</i>
BS	Mammal	Bat, Western Red	<i>Lasiurus blossevillii</i>
BS	Mammal	Bear, Florida Black	<i>Ursus americanus floridans</i>
BS	Mammal	Chipmunk, Cliff	<i>Tamias dorsalis</i>
BS	Mammal	Chipmunk, Gray-Footed	<i>Tamias canipes</i>
BS	Mammal	Chipmunk, Uinta	<i>Tamis umbrinus</i>
BS	Mammal	Fisher	<i>Martes pennanti</i>
BS	Mammal	Fisher, Pacific	<i>Martes pennanti pacifica</i>
BS	Mammal	Fox, Kit	<i>Vulpes velox macrotis</i>
BS	Mammal	Fox, Swift	<i>Vulpes velox</i>
BS	Mammal	Gopher, Desert Pocket	<i>Geomys bursarius tularosae</i>
BS	Mammal	Gopher, Fish Spring Pocket	<i>Thomomys bottae abstrusus</i>
BS	Mammal	Gopher, Guadalupe Pocket	<i>Thomomys bottae guadalupensis</i>
BS	Mammal	Gopher, Idaho Pocket	<i>Thomomys idahoensis</i>
BS	Mammal	Gopher, San Antonio Pocket	<i>Thomomys bottae curtatus</i>
BS	Mammal	Gopher, Southern Pocket	<i>Thomomys umbrinus emotus</i>
BS	Mammal	Gopher, Wyoming Pocket	<i>Thomomys clusius</i>
BS	Mammal	Kangaroo Mouse, Dark	<i>Microdipodops megacephalus</i>
BS	Mammal	Kangaroo Mouse, Desert Valley	<i>Microdipodops megacephalus albiventer</i>
BS	Mammal	Kangaroo Mouse, Fletcher Dark	<i>Microdipodops megacephalus nasutus</i>
BS	Mammal	Kangaroo Rat, Chisel-Toothed	<i>Dipodomys microps celsus</i>
BS	Mammal	Kangaroo Rat, Desert	<i>Dipodomys deserti</i>
BS	Mammal	Kangaroo Rat, Marysville	<i>Dipodomys californicus eximius</i>
BS	Mammal	Kangaroo Rat, Merriam's	<i>Dipodomys merriami</i>
BS	Mammal	Kangaroo Rat, Short-Nosed	<i>Dipodomys nitratoides brevinasus</i>

Status	Class	Common Name	Scientific Name
BS	Mammal	Lemming, Northern Bog	<i>Synaptomys borealis</i>
BS	Mammal	Marten	<i>Martes americana</i>
BS	Mammal	Mole, Coast	<i>Scapanus orarius</i>
BS	Mammal	Mouse, Cactus	<i>Peromyscus torridus</i>
BS	Mammal	Mouse, Little Pocket	<i>Perognathus longimembris</i>
BS	Mammal	Mouse, Meadow Jumping	<i>Zapus hudsonius</i>
BS	Mammal	Mouse, New Mexican Jumping	<i>Zapus hudsonius luteus</i>
BS	Mammal	Mouse, Northern Rock	<i>Peromyscus nasutus</i>
BS	Mammal	Mouse, Olive-Backed Pocket	<i>Perognathus fasciatus</i>
BS	Mammal	Mouse, Rock Pocket	<i>Chaetodipus intermedius</i>
BS	Mammal	Mouse, San Joaquin Pocket	<i>Perognathus inornatus inornatus</i>
BS	Mammal	Mouse, Southern Grasshopper	<i>Onychomys torridus</i>
BS	Mammal	Mouse, Tulare Grasshopper	<i>Onychomys torridus tularensis</i>
BS	Mammal	Mouse, Yellow-Eared Pocket	<i>Perognathus xanthonotus</i>
BS	Mammal	Myotis, California	<i>Myotis californicus</i>
BS	Mammal	Myotis, Cave	<i>Myotis velifer</i>
BS	Mammal	Myotis, Fringed	<i>Myotis thysanodes</i>
BS	Mammal	Myotis, Little Brown	<i>Myotis lucifugus</i>
BS	Mammal	Myotis, Long-Eared	<i>Myotis evotis</i>
BS	Mammal	Myotis, Long-Legged	<i>Myotis volans</i>
BS	Mammal	Myotis, Yuma	<i>Myotis yumanensis</i>
BS	Mammal	Myotis, Yuma	<i>Myotis yumanensis</i>
BS	Mammal	Otter, River	<i>Lutra canadensis lataxina</i>
BS	Mammal	Pika	<i>Ochotona princeps</i>
BS	Mammal	Prairie Dog, Gunnison's	<i>Cynomys gunnisoni</i>
BS	Mammal	Prairie Dog, White-Tailed	<i>Cynomys leucurus</i>
BS	Mammal	Ringtail	<i>Bassariscus astutus</i>
BS	Mammal	Sheep, Desert Bighorn	<i>Ovis canadensis nelsoni</i>
BS	Mammal	Shrew, Arizona	<i>Sorex arizonae</i>
BS	Mammal	Shrew, Dwarf	<i>Sorex nanus</i>
BS	Mammal	Shrew, Merriam's	<i>Sorex merriami</i>
BS	Mammal	Shrew, Preble's	<i>Sorex preblei</i>
BS	Mammal	Skunk, Spotted	<i>Spilogale putorius</i>
BS	Mammal	Squirrel, Ground Piauete	<i>Spermophilus mollis artemisiae</i>
BS	Mammal	Squirrel, Miriam's Ground	<i>Spermophilus canus vigilis</i>
BS	Mammal	Squirrel, Wyoming Ground	<i>Spermophilus elegans nevadensis</i>
BS	Mammal	Vole, Ash Meadows Montane	<i>Microtus montanus nevadensis</i>
BS	Mammal	Vole, Mexican	<i>Microtus mexicanus</i>
BS	Mammal	Vole, Pahrnagat Valley Montane	<i>Microtus montanus fucosus</i>
BS	Mammal	Woodrat, Stephen's	<i>Neotoma stepheni</i>
BS	Mammal	Woodrat, White Sands	<i>Neotoma micropus leucophaea</i>

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BS	Mollusk	Floater, California	<i>Anodonta californiensis</i>
BS	Mollusk	Lanx, Shortface	<i>Fisherola nuttalli</i>
BS	Plant	Adder's-Tongue	<i>Ophioglossum pusillum</i>
BS	Plant	Adder's-Tongue, Howell's	<i>Erythronium howellii</i>
BS	Plant	Agave, Murphey	<i>Agave murpheyi</i>
BS	Plant	Agave, Santa Cruz Striped	<i>Agave parviflora ssp parviflora</i>
BS	Plant	Agoseris, Pale	<i>Agoseris glauca</i>
BS	Plant	Agoseris, Pink	<i>Agoseris lackschewitzii</i>
BS	Plant	Allocarya, Coral Seeded	<i>Plagiobothrys figuratus ssp. Corallicarp</i>
BS	Plant	Alumroot, Duran's	<i>Heuchera duranii</i>
BS	Plant	Angelica, King's	<i>Angelica kingii</i>
BS	Plant	Angelica, Rough	<i>Angelica scabrida</i>
BS	Plant	Apple, Indian	<i>Peraphyllum ramosissimum</i>
BS	Plant	Arrowhead, Sanford's	<i>Sagittaria sanfordii</i>
BS	Plant	Asphodel, Bog	<i>Narthecium americanum</i>
BS	Plant	Aster, Cruise's Golden	<i>Chrysopsis cruiseana</i>
BS	Plant	Aster, Gorman's	<i>Aster gormanii</i>
BS	Plant	Aster, Huachuca Golden	<i>Heterotheca rutteri</i>
BS	Plant	Aster, Jessica's	<i>Aster jessicae</i>
BS	Plant	Aster, Orcutt's Woody	<i>Xylorhiza orcuttii</i>
BS	Plant	Aster, Pygmy	<i>Aster pygmaeus</i>
BS	Plant	Aster, Red Rock Canyon	<i>Ionactis caelestis</i>
BS	Plant	Aster, Rush	<i>Aster junciformis</i>
BS	Plant	Aster, Rush	<i>Aster borealis</i>
BS	Plant	Aster, Wayside	<i>Aster vialis (eucephalus vialis)</i>
BS	Plant	Aster, White-Topped	<i>Aster curtus</i>
BS	Plant	Avens, Mountain	<i>Senecio moresbiensis</i>
BS	Plant	Balloonvine	<i>Cardiospermum corindum</i>
BS	Plant	Balsamroot, Big-Scale	<i>Balsamorhiza macrolepis var. Macrolepis</i>
BS	Plant	Balsamroot, Woolly	<i>Balsamorhiza hookeri var. Lanata</i>
BS	Plant	Barberry, Kofa Mt	<i>Berberis harrisoniana</i>
BS	Plant	Bartonberry	<i>Rubus bartonianus</i>
BS	Plant	Beaked-Rush, California	<i>Rhynchospora californica</i>
BS	Plant	Beardtongue, Absaroka	<i>Penstemon absarokensis</i>
BS	Plant	Beardtongue, Alamo	<i>Penstemon alamosensis</i>
BS	Plant	Beardtongue, Bashful	<i>Penstemon pudicus</i>
BS	Plant	Beardtongue, Blue-Leaf	<i>Penstemon glaucinus</i>
BS	Plant	Beardtongue, Branched	<i>Penstemon ramosus</i>
BS	Plant	Beardtongue, Cordelia	<i>Penstemon floribundus</i>
BS	Plant	Beardtongue, Degener	<i>Penstemon degeneri</i>
BS	Plant	Beardtongue, Gibbens'	<i>Penstemon gibbensii</i>

Status	Class	Common Name	Scientific Name
BS	Plant	Beardtongue, Harrington	<i>Penstemon harringtonii</i>
BS	Plant	Beardtongue, Lahontin	<i>Penstemon palmeri</i> var. <i>Macranthus</i>
BS	Plant	Beardtongue, Mt Trumbull	<i>Penstemon distans</i>
BS	Plant	Beardtongue, Nevada Dune	<i>Penstemon arenarius</i>
BS	Plant	Beardtongue, Pahute Mesa	<i>Penstemon pahutensis</i>
BS	Plant	Beardtongue, Rosy Two-Tone	<i>Penstemon bicolor</i> ssp. <i>Roseus</i>
BS	Plant	Beardtongue, Sheep Range	<i>Penstemon petiolatus</i>
BS	Plant	Beardtongue, Stemless	<i>Penstemon acaulis</i> var. <i>Acaulis</i>
BS	Plant	Beardtongue, Stephen's	<i>Penstemon stephensii</i>
BS	Plant	Beardtongue, Thread-Leaved	<i>Penstemon filiformis</i>
BS	Plant	Beardtongue, Tiehm	<i>Penstemon tiehmii</i>
BS	Plant	Beardtongue, Tracy's	<i>Penstemon tracyi</i>
BS	Plant	Beardtongue, Whipple's	<i>Penstemon whippleanus</i>
BS	Plant	Beardtongue, White-Margined	<i>Penstemon albomarginatus</i>
BS	Plant	Beardtongue, Yellow Two-Toned	<i>Penstemon bicolor</i> ssp. <i>Bicolor</i>
BS	Plant	Beavertail, Short-Joint	<i>Opuntia basilaris</i> var. <i>Brachyclada</i>
BS	Plant	Bedstraw, Hardham's	<i>Galium hardhamiae</i>
BS	Plant	Bedstraw, Modoc	<i>Galium glabrescens</i> ssp. <i>Modocense</i>
BS	Plant	Bedstraw, San Gabriel	<i>Galium grande</i>
BS	Plant	Bedstraw, Warner Mountains	<i>Galium serpticum</i> ssp. <i>Warnernse</i>
BS	Plant	Bensoniella, Oregon	<i>Bensoniella oregana</i>
BS	Plant	Birch, Gray	<i>Betula populifolia</i>
BS	Plant	Birdbeak, Tecopa	<i>Cordylanthus tecopensis</i>
BS	Plant	Bird's Beak, Hispid	<i>Cordylanthus mollis</i> ssp. <i>Hispidus</i>
BS	Plant	Bird's Beak, Pallid	<i>Cordylanthus tenuis</i> ssp. <i>Pallescens</i>
BS	Plant	Bird's-Beak, Point Reyes	<i>Cordylanthus maritimus</i> ssp. <i>Palustris</i>
BS	Plant	Biscuitroot, Wideleaf	<i>Lomatium latilobum</i>
BS	Plant	Bittercress, Constance's	<i>Cardamine constancei</i>
BS	Plant	Bitterweed, Richardson's	<i>Hymenoxys richardsonii</i>
BS	Plant	Bladderpod, Beautiful	<i>Lesquerella pulchella</i>
BS	Plant	Bladderpod, Calder's	<i>Lesquerella calderi</i>
BS	Plant	Bladderpod, Garnet	<i>Lesquerella carinata</i> var. <i>Languida</i>
BS	Plant	Bladderpod, Montrose	<i>Lesquerella vicina</i>
BS	Plant	Bladderpod, Prostrate	<i>Lesquerella prostrata</i>
BS	Plant	Bladderpod, Salmon Twin	<i>Physaria didymocarpa</i> var. <i>Lyrata</i>
BS	Plant	Bladderpod, Sidesaddle	<i>Lesquerella arenosa</i> var. <i>Agrillosa</i>
BS	Plant	Bladderpod, Western	<i>Lesquerella multiceps</i>
BS	Plant	Blazingstar, Tiehm	<i>Mentzelia tiehmii</i>
BS	Plant	Bluebell, Drummond's	<i>Mertensia drummondii</i>
BS	Plant	Bluecup, Mission Canyon	<i>Githopsis diffusa</i> ssp. <i>Filicaulis</i>
BS	Plant	Bluegrass, Alaska	<i>Poa hartzii</i> <i>alaskana</i>

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Status	Class	Common Name	Scientific Name
BS	Plant	Bluegrass, Loose-Flowered	<i>Poa laxiflora</i>
BS	Plant	Blue-Star Fugate's	<i>Amsonia fugatei</i>
BS	Plant	Bluestar, Peebles	<i>Amsonia peeblesii</i>
BS	Plant	Bolandra, Oregon	<i>Bolandra oregana</i>
BS	Plant	Breadroot, Paradox	<i>Pediomelum aromaticum</i>
BS	Plant	Brittlebrush, Annual	<i>Psathyrotes annua</i>
BS	Plant	Brodiaea, Indian Valley	<i>Brodiaea coronaria ssp. Rosea</i>
BS	Plant	Brodiaea, Leach's	<i>Triteleia hendersonii var. Leachiae</i>
BS	Plant	Broom, Round-Leaf	<i>Errazurizia rotundata</i>
BS	Plant	Buckwheat, Brandegee Wild	<i>Eriogonum brandegeei</i>
BS	Plant	Buckwheat, Calcareous	<i>Eriogonum ochrocephalum var. Calcareum</i>
BS	Plant	Buckwheat, Churchill Narrows	<i>Eriogonum diatomaceum</i>
BS	Plant	Buckwheat, Colorado Wild	<i>Eriogonum coloradense</i>
BS	Plant	Buckwheat, Crosby's	<i>Eriogonum crosbyae</i>
BS	Plant	Buckwheat, Grand	<i>Eriogonum contortum</i>
BS	Plant	Buckwheat, Las Vegas	<i>Eriogonum corymbosum var. Glutinosum</i>
BS	Plant	Buckwheat, Lewis	<i>Eriogonum lewisii</i>
BS	Plant	Buckwheat, Mouse	<i>Eriogonum nudum var. Murinum</i>
BS	Plant	Buckwheat, Packard's Cowpie	<i>Eriogonum shockleyi var. Packardiae</i>
BS	Plant	Buckwheat, Panamint Mountains	<i>Eriogonum microthecum var. Panamintense</i>
BS	Plant	Buckwheat, Piute	<i>Eriogonum breedlovei var. Breedlovei</i>
BS	Plant	Buckwheat, San Carlos Wild	<i>Eriogonum capillare</i>
BS	Plant	Buckwheat, Sand-Loving	<i>Eriogonum nummulare var. Ammophilum</i>
BS	Plant	Buckwheat, Scarlet	<i>Eriogonum phoeniceum</i>
BS	Plant	Buckwheat, Smooth	<i>Eriogonum salsuginosum</i>
BS	Plant	Buckwheat, Sulphurflower	<i>Eriogonum umbellatum var. Glaberrimum</i>
BS	Plant	Buckwheat, Tiehm	<i>Eriogonum tiehmii</i>
BS	Plant	Buckwheat, Welsh's	<i>Eriogonum capistratum v. Welshii</i>
BS	Plant	Buckwheat, Wild Rose Canyon	<i>Eriogonum eremicola</i>
BS	Plant	Buckwheat, Wild Single-Stemmed	<i>Eriogonum acaule</i>
BS	Plant	Buckwheat, Woodside	<i>Eriogonum tumulosum</i>
BS	Plant	Buckwheat, Yukon Wild	<i>Eriogonum flavum var. Aquilinum</i>
BS	Plant	Bugbane, Tall	<i>Cimicifuga elata</i>
BS	Plant	Bush, Gentry Indigo	<i>Dalea tentaculoides</i>
BS	Plant	Buttercup, Alaskan Glacier	<i>Beckwithia glacialis spp. Alaskana</i>
BS	Plant	Buttercup, Southern Oregon	<i>Ranunculus austrooreganus</i>
BS	Plant	Cabbage, Wild	<i>Caulanthus major var. Nevadensis</i>
BS	Plant	Cactus, Alverson's Foxtail	<i>Escobaria vivipara var. Alversonii</i>
BS	Plant	Cactus, Brack's	<i>Sclerocactus cloveriae ssp. Brackii</i>
BS	Plant	Cactus, Cushion	<i>Coryphantha vivipara</i>
BS	Plant	Cactus, Duncan's Cory	<i>Coryphantha duncanii</i>

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BS	Plant	Cactus, Howe's Hedgehog	<i>Echinocereus engelmannii</i> var. <i>Howei</i>
BS	Plant	Cactus, Kaibab Pincushion	<i>Pediocactus paradinei</i>
BS	Plant	Cactus, Santa Cruz Beehive	<i>Coryphantha recurvata</i>
BS	Plant	Cactus, Simpson's Hedgehog	<i>Pediocactus simpsonii</i> var. <i>Robustior</i>
BS	Plant	Cactus, Villard's Pincushion	<i>Escobaria villardii</i>
BS	Plant	Calicoflower, Harlequin	<i>Downingia insignis</i>
BS	Plant	Camas, Cusick's	<i>Camassia cusickii</i>
BS	Plant	Camas, Howell's	<i>Camassia howellii</i>
BS	Plant	Camissonia, Small	<i>Camissonia parvula</i>
BS	Plant	Candle, Miner's	<i>Cryptantha scoparia</i>
BS	Plant	Candle, Owl Creek Miner's	<i>Cryptantha subcapitata</i>
BS	Plant	Candystick	<i>Allotropa virgata</i>
BS	Plant	Candytuft, Pear-Shaped	<i>Smelowskia pyriformis</i>
BS	Plant	Catchfly, Gentian	<i>Eustoma exaltatum</i>
BS	Plant	Catchfly, Jan's; Nachlinger Catchfly	<i>Silene nachlingerae</i>
BS	Plant	Catseye, Shacklette's	<i>Cryptantha shackletteana</i>
BS	Plant	Catseye, Unusual	<i>Cryptantha insolita</i>
BS	Plant	Caulostramina, Jaeger's	<i>Caulostramina jaegeri</i>
BS	Plant	Ceanothus, Calistoga	<i>Ceanothus divergens</i>
BS	Plant	Ceanothus, Lakeside	<i>Ceanothus cyaneus</i>
BS	Plant	Ceanothus, Mahala-Mat	<i>Ceanothus prostratus</i>
BS	Plant	Ceanothus, Monterey	<i>Ceanothus cuneatus</i> var. <i>Rigidus</i>
BS	Plant	Ceanothus, Rincon Ridge	<i>Ceanothus confusus</i>
BS	Plant	Chaenactis, Shasta	<i>Chaenactis suffrutescens</i>
BS	Plant	Checker-Mallow, Butte County	<i>Sidalcea robusta</i>
BS	Plant	Checker-Mallow, Dwarf	<i>Sidalcea malviflora</i> ssp. <i>Patula</i>
BS	Plant	Cholla, Munz	<i>Opuntia munzii</i>
BS	Plant	Cinquefoil, Stipulated	<i>Potentilla stipularis</i>
BS	Plant	Clarkia, Beaked	<i>Clarkia rostrata</i>
BS	Plant	Clarkia, Mosquin's	<i>Clarkia mosquinii</i> ssp. <i>Mosquinii</i>
BS	Plant	Clarkia, Shasta	<i>Clarkia borealis</i> ssp. <i>Arida</i>
BS	Plant	Claytonia, Great Basin	<i>Claytonia umbellata</i>
BS	Plant	Cleomella, Flat-Seeded	<i>Cleomella plocasperma</i>
BS	Plant	Clover, Dedecker's	<i>Trifolium dedeckerae</i>
BS	Plant	Clover, Douglas'	<i>Trifolium douglasii</i>
BS	Plant	Clover, Frisco	<i>Trifolium friscanum</i>
BS	Plant	Clover, Mogollon	<i>Trifolium longipes</i> var. <i>Neurophyllum</i>
BS	Plant	Clover, Owyhee	<i>Trifolium owyheense</i>
BS	Plant	Clover, Plumed	<i>Trifolium plumosum</i> var. <i>Amplifolium</i>
BS	Plant	Clover, Surrant Summit	<i>Trifolium andinum</i> var. <i>Podocephalum</i>
BS	Plant	Clubrush, Water	<i>Scirpus subterminalis</i>

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BS	Plant	Collomia, Barren Valley	<i>Collomia renacta</i>
BS	Plant	Columbine, Golden	<i>Aquilegia chrysantha</i> var. <i>Rydbergii</i>
BS	Plant	Columbine, Laramie	<i>Aquilegia laramiensis</i>
BS	Plant	Combleaf, Desert	<i>Polyctenium fremontii</i> var. <i>Confertum</i>
BS	Plant	Combleaf, William's	<i>Polyctenium williamsiae</i>
BS	Plant	Coralroot, Chisos Mountains	<i>Hexalectris revoluta</i>
BS	Plant	Coralroot, Purple-Spike	<i>Hexalectris warnockii</i>
BS	Plant	Corydalis, Case's	<i>Corydalis caseana</i> var. <i>Hastata</i>
BS	Plant	Corydalis, Cold-Water	<i>Corydalis aquae-gelidae</i>
BS	Plant	Cottongrass, Slender	<i>Eriophorum gracile</i>
BS	Plant	Crazyweed, Columbia	<i>Oxytropis campestris</i> var. <i>Columbiana</i>
BS	Plant	Crazyweed, Wanapum	<i>Oxytropis campestris</i> var. <i>Wanapum</i>
BS	Plant	Cress, Darwin Rock	<i>Arabis pulchra</i> var. <i>Munciensis</i>
BS	Plant	Cress, Small Rock	<i>Arabis pusilla</i>
BS	Plant	Cryptantha, Unita Basin	<i>Cryptantha breviflora</i>
BS	Plant	Cryptantha, Gander's	<i>Cryptantha ganderi</i>
BS	Plant	Cryptantha, Osterhout	<i>Cryptantha osterhoutii</i>
BS	Plant	Cryptantha, Rollins	<i>Cryptantha rollinsii</i>
BS	Plant	Cryptantha, Tufted	<i>Cryptantha caespitosa</i>
BS	Plant	Cryptanth, Mound	<i>Cryptantha compacta</i>
BS	Plant	Currant, Moreno San Diego	<i>Ribes canthariforme</i>
BS	Plant	Currant, Wolf's	<i>Ribes wolfii</i>
BS	Plant	Cypress, Piute	<i>Cupressus arizonica</i> ssp. <i>Nevadensis</i>
BS	Plant	Cypress, Tecate	<i>Cupressus forbesii</i>
BS	Plant	Daisy, Black Rock	<i>Townsendia smithii</i>
BS	Plant	Daisy, Blochman's Leafy	<i>Erigeron blochmaniae</i>
BS	Plant	Daisy, Clifton Rock	<i>Perityle ambrosiifolia</i>
BS	Plant	Daisy, Hall's	<i>Erigeron aequifolius</i>
BS	Plant	Daisy, Howell's	<i>Erigeron howellii</i>
BS	Plant	Daisy, Kachina	<i>Erigeron kachinensis</i>
BS	Plant	Daisy, Nodding Rock	<i>Perityle cernua</i>
BS	Plant	Daisy, Panamint	<i>Enceliopsis covillei</i>
BS	Plant	Dalea, Ornate	<i>Dalea ornata</i>
BS	Plant	Deer-Fern	<i>Blechnum spicant</i>
BS	Plant	Desert-Mallow, Rusby's	<i>Sphaeralcea rusbyi</i> var. <i>Eremicola</i>
BS	Plant	Downingia, Bacigalupi's	<i>Downingia bacigalupii</i>
BS	Plant	Draba, Yellowstone	<i>Draba incerta</i>
BS	Plant	Dropseed, Tall	<i>Sporobolus asper</i>
BS	Plant	Dudleya, San Luis Obispo Serpentine	<i>Dudleya abramsii</i> ssp. <i>Bettinae</i>
BS	Plant	Easter-Daisy, Strigose	<i>Townsendia strigosa</i>
BS	Plant	Eatonella, White	<i>Eatonella nivea</i>

Status	Class	Common Name	Scientific Name
BS	Plant	Eggvetch, Lavin	<i>Astragalus oophorus</i> var. <i>Lavinii</i>
BS	Plant	Estes' Artemisia	<i>Artemisia ludoviciana</i> ssp. <i>Estesii</i>
BS	Plant	Evening Primrose, Palmer's	<i>Camissonia palmeri</i>
BS	Plant	Evening Primrose, Winged-Seed	<i>Camissonia pterosperma</i>
BS	Plant	Evening-Primrose, Cane Spring	<i>Camissonia megalantha</i>
BS	Plant	Evening-Primrose, Pale	<i>Oenothera pallida</i> ssp. <i>Idahoensis</i>
BS	Plant	Fairy poppy, White	<i>Meconella oregana</i>
BS	Plant	Fawn-Lily, Tuolumne	<i>Erythronium tuolumnense</i>
BS	Plant	Feathergrass, Porter	<i>Ptilagrostis porteri</i>
BS	Plant	Felwort, Marsh	<i>Lomatogonium rotatum</i>
BS	Plant	Fern, Goldenback	<i>Pentagramma triangularis</i> ssp. <i>Triangular</i>
BS	Plant	Fern, Lance-Leaved Grape	<i>Botrychium lanceolatum</i> var. <i>Lanceolatum</i>
BS	Plant	Fescue, Rough	<i>Festuca scabrella</i>
BS	Plant	Feverfew, Ligulate	<i>Parthenium ligulatum</i>
BS	Plant	Fiddleleaf, Matted	<i>Nama densum</i> var. <i>Parviflorum</i>
BS	Plant	Figwort, Black-Flowered	<i>Scrophularia atrata</i>
BS	Plant	Fireweed, Oregon	<i>Epilobium oreganum</i>
BS	Plant	Fireweed, Siskiyou	<i>Epilobium siskiyouense</i>
BS	Plant	Flameflower, Pinos Altos	<i>Talinum humile</i>
BS	Plant	Flannelbush, California	<i>Fremontodendron californicum</i>
BS	Plant	Flax, Brewer's Dwarf	<i>Hesperolinon breweri</i>
BS	Plant	Flax, Drymaria-Like Western	<i>Hesperolinon drymarioides</i>
BS	Plant	Flax, Glandular Western	<i>Hesperolinon adenophyllum</i>
BS	Plant	Flax, Napa Western	<i>Hesperolinon serpentinum</i>
BS	Plant	Flax, Tehama County Western	<i>Hesperolinon tehamense</i>
BS	Plant	Fleabane, Broad	<i>Erigeron latus</i>
BS	Plant	Fleabane, Fish Creek	<i>Erigeron piscaticus</i>
BS	Plant	Fleabane, Muir's	<i>Erigeron muirii</i>
BS	Plant	Fleabane, Sheep	<i>Erigeron ovinus</i>
BS	Plant	Food, Sand	<i>Pholisma sonorae</i>
BS	Plant	Food, Scaly Sand	<i>Pholisma arenarium</i>
BS	Plant	Fritillary, Butte County	<i>Fritillaria eastwoodiae</i>
BS	Plant	Fritillary, Talus	<i>Fritillaria falcata</i>
BS	Plant	Gentian, Bristly	<i>Gentiana plurisetosa</i>
BS	Plant	Gentian, Mendocino	<i>Gentiana setigera</i>
BS	Plant	Gentian, Tufted Green	<i>Frasera paniculata</i>
BS	Plant	Gentian, Utah	<i>Gentianella tortuosa</i>
BS	Plant	Gilia, Mussentuchit	<i>Gilia tenuis</i>
BS	Plant	Gilia, Narrowstem	<i>Gilia stenothyrsa</i>
BS	Plant	Gilia, Spreading	<i>Ipomopsis polycladon</i>
BS	Plant	Glasswort, Red	<i>Salicornia rubra</i>

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BS	Plant	Globeberry, Texas	<i>Ibervillea tenuisecta</i>
BS	Plant	Globeberry, Tumamoc	<i>Tumamoca macdougalii</i>
BS	Plant	Golden-Aster, Shevock's Hairy	<i>Heterotheca shevockii</i>
BS	Plant	Goldenbush, Eastwood's	<i>Ericameria fasciculata</i>
BS	Plant	Goldenbush, Pine Valley	<i>Haplopappus crispus</i>
BS	Plant	Goldenstar, San Diego	<i>Muilla clevelandii</i>
BS	Plant	Goldenweed, Palouse	<i>Haplopappus liatrifomis</i>
BS	Plant	Goldfields, Coulter's	<i>Lasthenia glabrata ssp. Coulteri</i>
BS	Plant	Goldfields, Large-Flowered	<i>Lasthenia macrantha ssp. Prisca</i>
BS	Plant	Goldthread, Three-Leaf	<i>Coptis trifolia</i>
BS	Plant	Gooseberry, Sequoia	<i>Ribes tulareense</i>
BS	Plant	Goosefoot, Sandhill	<i>Chenopodium cycloides</i>
BS	Plant	Gramma, Blue	<i>Bouteloua gracilis</i>
BS	Plant	Grapefern, Pumice	<i>Botrychium pumicola</i>
BS	Plant	Grappling Hook, Palmer's	<i>Harpagonella palmeri</i>
BS	Plant	Grass, Hitchcock's Blue-Eyed	<i>Sisyrinchium hitchcockii</i>
BS	Plant	Grass, Hitchcock's Blue-Eyed	<i>Sisyrinchium hitchcockii</i>
BS	Plant	Grass, Pale Blue-Eyed	<i>Sisyrinchium sarmentosum</i>
BS	Plant	Grass, Pale Blue-Eyed #2	<i>Sisyrinchium pallidum</i>
BS	Plant	Grass, Parish's Alkali	<i>Puccinellia parishii</i>
BS	Plant	Grass, Semaphore	<i>Pleuropogon sabinei</i>
BS	Plant	Grass, Sessile-Leaved Scurvy	<i>Cochlearia sessilifolia</i>
BS	Plant	Greasebush, Rough Dwarf	<i>Glossopetalon pungens var. Pungens</i>
BS	Plant	Greasebush, Smooth Dwarf	<i>Glossopetalon pungens var. Glabrum</i>
BS	Plant	Greenbriar, English Peak	<i>Smilax jamesii</i>
BS	Plant	Greenthread, Uinta	<i>Thelesperma pubescens</i>
BS	Plant	Grounddaisy, Charleston	<i>Townsendia jonesii var. Tumulosa</i>
BS	Plant	Groundsel, Gila	<i>Senecio quaerens</i>
BS	Plant	Gumweed, Howell's	<i>Grindelia howellii</i>
BS	Plant	Harebell, Castle Crag	<i>Campanula shetleri</i>
BS	Plant	Hawksbeard, Idaho	<i>Crepis bakeri ssp. Idahoensis</i>
BS	Plant	Hazardia, Orcutt's	<i>Hazardia orcuttii</i>
BS	Plant	Hedgehog, Simpson's	<i>Pediocatus simpsonii</i>
BS	Plant	Helodium, Blandow's	<i>Helodium blandowii</i>
BS	Plant	Horkelia, Parry's	<i>Horkelia parryi</i>
BS	Plant	Horkelia, Shaggy	<i>Horkelia congesta ssp. Congesta</i>
BS	Plant	Horse-Mint, Cusick's	<i>Agastache cusickii</i>
BS	Plant	Howell's Bentgrass	<i>Agrostis howellii</i>
BS	Plant	Howell's Silverpuffs	<i>Microseris howellii</i>
BS	Plant	Hulsea, Inyo	<i>Hulsea vestita ssp. Inyoensis</i>
BS	Plant	Ivesia, Alkali	<i>Ivesia kingii var. Kingii</i>

Status	Class	Common Name	Scientific Name
BS	Plant	Ivesia, Ash Creek	<i>Ivesia paniculata</i>
BS	Plant	Ivesia, Castle Crags	<i>Ivesia longibracteata</i>
BS	Plant	Ivesia, Grimy	<i>Ivesia rhypara</i> var. <i>Rhypara</i>
BS	Plant	Ivesia, Jaeger's	<i>Ivesia jaegeri</i>
BS	Plant	Ivesia, Pickering's	<i>Ivesia pickeringii</i>
BS	Plant	Ivesia, Pine Nut Mountains	<i>Ivesia pityocharis</i>
BS	Plant	Ivesia, Plumas	<i>Ivesia sericoleuca</i>
BS	Plant	Ivesia, Shelly's	<i>Ivesia rhypara</i> var. <i>Shellyi</i>
BS	Plant	Ivesia, Sierra Valley	<i>Ivesia aperta</i> var. <i>Aperta</i>
BS	Plant	Ivesia, Webber's	<i>Ivesia webberi</i>
BS	Plant	Jewel-Flower, Dorr's Cabin	<i>Streptanthus morrisonii</i> ssp. <i>Hirtiflorus</i>
BS	Plant	Jewel-Flower, Freed's	<i>Streptanthus brachiatus</i> ssp. <i>Hoffmanii</i>
BS	Plant	Jewel-Flower, Hoffmann's	<i>Streptanthus glandulosus</i> var. <i>Hoffmanii</i>
BS	Plant	Jewel-Flower, Kruckeberg's	<i>Streptanthus morrisonii</i> ssp. <i>Kruckebergi</i>
BS	Plant	Jewel-Flower, Morrison's	<i>Streptanthus morrisonii</i> ssp. <i>Morrisonii</i>
BS	Plant	Jewel-Flower, Mount Hamilton	<i>Streptanthus callistus</i>
BS	Plant	Jewel-Flower, Piute Mountains	<i>Streptanthus cordatus</i> var. <i>Piutensis</i>
BS	Plant	Jewel-Flower, Santa Barbara	<i>Caulanthus amplexicaulis</i> var. <i>Barbarae</i>
BS	Plant	Jewel-Flower, Socrates Mine	<i>Streptanthus brachiatus</i> ssp. <i>Brachiatus</i>
BS	Plant	Jewel-Flower, Three Peaks	<i>Streptanthus morrisonii</i> ssp. <i>Elatus</i>
BS	Plant	Kentrophyta, Bastard	<i>Astragalus tegetarioides</i>
BS	Plant	Knotweed, Modoc County	<i>Polygonum polygaloides</i> ssp. <i>Esotericum</i>
BS	Plant	Ladies'-Tresses, Western	<i>Spiranthes porrifolia</i>
BS	Plant	Lady's-Slipper, Clustered	<i>Cypripedium fasciculatum</i>
BS	Plant	Lady's-Slipper, Small Yellow	<i>Cypripedium parviflorum</i>
BS	Plant	Lady's-Slipper, Yellow	<i>Cypripedium alpinum</i>
BS	Plant	Laphamia, Inyo	<i>Perityle inyoensis</i>
BS	Plant	Larkia, Mariposa	<i>Clarkia biloba</i> ssp. <i>Australis</i>
BS	Plant	Larkspur, Kern County	<i>Delphinium purpusii</i>
BS	Plant	Larkspur, Recurved	<i>Delphinium recurvatum</i>
BS	Plant	Larkspur, Wenatchee	<i>Delphinium viridescens</i>
BS	Plant	Larkspur, White Rock	<i>Delphinium leucophaeum</i>
BS	Plant	Larkspur, Willamette Valley	<i>Delphinium oreganum</i>
BS	Plant	Layia, Colusa	<i>Layia septentrionalis</i>
BS	Plant	Layia, Jones's	<i>Layia jonesii</i>
BS	Plant	Layia, Pale-Yellow	<i>Layia heterotricha</i>
BS	Plant	Legenere	<i>Legenere limosa</i>
BS	Plant	Lewisia, Cantelow's	<i>Lewisia cantelovii</i>
BS	Plant	Lewisia, Heckner's	<i>Lewisia cotyledon</i> var. <i>Heckneri</i>
BS	Plant	Lewisia, Purdy's	<i>Lewisia cotyledon</i> var. <i>Purdyi</i>
BS	Plant	Lewisia, Stebbins'	<i>Lewisia stebbinsii</i>

Status	Class	Common Name	Scientific Name
BS	Plant	Lichen, Anderegg's Reindeer	<i>Cladonia andereggii</i>
BS	Plant	Lichen, Ball-Bearing	<i>Sphaerophorus globosus</i>
BS	Plant	Lichen, Dot	<i>Physcia semipinnata</i>
BS	Plant	Lichen, Earth	<i>Catapyrenium congestum</i>
BS	Plant	Lichen, Idaho Range	<i>Xanthoparmelia idahoensis</i>
BS	Plant	Lichen, Nail	<i>Pilophorus acicularis</i>
BS	Plant	Lichen, Reindeer	<i>Cladonia luteoalba</i>
BS	Plant	Lichen, Scurfy Jelly	<i>Collema furfuraceum</i>
BS	Plant	Lichen, Short-Spored Jelly	<i>Collema curtisporum</i>
BS	Plant	Lichen, Skin	<i>Dermatocarpon lorenzianum</i>
BS	Plant	Lichen, Skin	<i>Dermatocarpon lorenzianum</i>
BS	Plant	Lichen, Transcending Reindeer	<i>Cladonia transcendens</i>
BS	Plant	Lichen, Tube	<i>Hypogymnia apinnata</i>
BS	Plant	Lichen, White-Dot	<i>Pseudocyphellaria anthraspis</i>
BS	Plant	Lichen, Worm	<i>Thamnia vermicularis</i>
BS	Plant	Licorice-Root, Calder's	<i>Ligusticum calderi</i>
BS	Plant	Lily, Adobe	<i>Fritillaria pluriflora</i>
BS	Plant	Lily, Alkali Mariposa	<i>Calochortus striatus</i>
BS	Plant	Lily, Arroyo De La Cruz Mariposa	<i>Calochortus clavatus ssp. Recurvifolius</i>
BS	Plant	Lily, Blue Sand	<i>Triteleopsis palmeri</i>
BS	Plant	Lily, Broad-Fruit Mariposa	<i>Calochortus nitidus</i>
BS	Plant	Lily, Broad-Fruit Mariposa	<i>Calochortus nitidus</i>
BS	Plant	Lily, Crinite Mariposa	<i>Calochortus coxii</i>
BS	Plant	Lily, Inyo Mariposa	<i>Calochortus excavatus</i>
BS	Plant	Lily, Peck's Mariposa	<i>Calochortus longebarbatus var. Peckii</i>
BS	Plant	Lily, Pleasant Valley Mariposa	<i>Calochortus clavatus var. Avius</i>
BS	Plant	Lily, San Luis Mariposa	<i>Calochortus obispoensis</i>
BS	Plant	Linanthus, Orcutt's	<i>Linanthus orcuttii</i>
BS	Plant	Liverwort	<i>Chiloscyphus gemmiparus</i>
BS	Plant	Liverwort	<i>Jamsoniella autumnalis var. Heterostips</i>
BS	Plant	Liverwort	<i>Sphaerocarpos hians</i>
BS	Plant	Lobelia, Kalm's	<i>Lobelia kalmii</i>
BS	Plant	Lobelia, Water	<i>Lobelia dortmanna</i>
BS	Plant	Locoweed, Arctic	<i>Oxytropis arctica var. Barnedyana</i>
BS	Plant	Locoweed, Kobuk	<i>Oxytropis kobukensis</i>
BS	Plant	Loeflingia, Sagebrush	<i>Loeflingia squarrosa var. Artemisiarum</i>
BS	Plant	Lomatium, Congdon's	<i>Lomatium congdonii</i>
BS	Plant	Lomatium, Ochoco	<i>Lomatium ochocense ssp. Nov</i>
BS	Plant	Lomatium, Owens Peak	<i>Lomatium shevockii</i>
BS	Plant	Lomatium, Suksdorf's	<i>Lomatium suksdorfii</i>
BS	Plant	Lotus, Red-Flowered	<i>Lotus rubriflorus</i>

Status	Class	Common Name	Scientific Name
BS	Plant	Lotus, Scrub	<i>Lotus argyraeus var multicaulis</i>
BS	Plant	Lousewort, Dwarf	<i>Pedicularis centranthera</i>
BS	Plant	Lousewort, Hairy	<i>Pedicularis hirsuta</i>
BS	Plant	Lungwort, Hall's	<i>Lobaria hallii</i>
BS	Plant	Lungwort, Pored	<i>Lobaria scrobiculata</i>
BS	Plant	Lungwort, Smeared	<i>Lobaria linita</i>
BS	Plant	Lupine, Anthony Peak	<i>Lupinus antoninus</i>
BS	Plant	Lupine, Holmgren	<i>Lupinus holmgrenianus</i>
BS	Plant	Lupine, Inch-High	<i>Lupinus uncialis</i>
BS	Plant	Lupine, Mono Lake	<i>Lupinus duranii</i>
BS	Plant	Lupine, Panamint Mountains	<i>Lupinus magnificus var. Magnificus</i>
BS	Plant	Lupine, Paradox Valley	<i>Lupinus crassus</i>
BS	Plant	Lupine, Quincy	<i>Lupinus dalesiae</i>
BS	Plant	Lupine, Sabine's	<i>Lupinus sabinianus</i>
BS	Plant	Lupine, Shaggyhair	<i>Lupinus spectabilis</i>
BS	Plant	Madia, Hall's	<i>Madia hallii</i>
BS	Plant	Madia, Niles's	<i>Madia doris-nilesiae</i>
BS	Plant	Madia, Showy	<i>Madia radiata</i>
BS	Plant	Madia, Stebbins's	<i>Madia stebbinsii</i>
BS	Plant	Malacothrix, Carmel Valley	<i>Malacothrix saxatilis var. Arachnoidea</i>
BS	Plant	Mallow, Carmel Valley Bush	<i>Malacothamnus palmeri var. Involutcratus</i>
BS	Plant	Mallow, Davidson's Bush	<i>Malacothamnus davidsonii</i>
BS	Plant	Manzanita, Arroyo De La Cruz	<i>Arctostaphylos cruzensis</i>
BS	Plant	Manzanita, Hooker's	<i>Arctostaphylos hookeri ssp. Hookeri</i>
BS	Plant	Manzanita, Klamath	<i>Arctostaphylos klamathensis</i>
BS	Plant	Manzanita, Monterey	<i>Arctostaphylos montereyensis</i>
BS	Plant	Manzanita, Otay	<i>Arctostaphylos otayensis</i>
BS	Plant	Manzanita, Sand Mesa	<i>Arctostaphylos rudis</i>
BS	Plant	Manzanita, Sandmat	<i>Arctostaphylos pumila</i>
BS	Plant	Meadowfoam, Bellinger's	<i>Limnanthes floccosa ssp. Bellingeriana</i>
BS	Plant	Meadowrue, Purple	<i>Thalictrum dasycarpum</i>
BS	Plant	Microseris, Detling's	<i>Microseris laciniata ssp. Detlingii</i>
BS	Plant	Milk-Vetch, Ames'; Suksdorf's	<i>Astragalus pulsiferae var. Suksdorfii</i>
BS	Plant	Milk-Vetch, Aquarius	<i>Astragalus newberryi var. Aquarii</i>
BS	Plant	Milk-Vetch, Ash Valley	<i>Astragalus anxius</i>
BS	Plant	Milk-Vetch, Barren	<i>Astragalus sterilis</i>
BS	Plant	Milk-Vetch, Bitterroot	<i>Astragalus scaphoides</i>
BS	Plant	Milk-Vetch, Brandegeee	<i>Astragalus brandegeei</i>
BS	Plant	Milk-Vetch, Challis	<i>Astragalus amblytropis</i>
BS	Plant	Milk-Vetch, Cliff	<i>Astragalus cremnophylax var. myriorrhaphis</i>
BS	Plant	Milk-Vetch, Clokey	<i>Astragalus aequalis</i>

Appendix B
Special Status Species

Proposed Revisions to Grazing Regulations for the Public Lands
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Status	Class	Common Name	Scientific Name
BS	Plant	Milk-Vetch, Columbia	<i>Astragalus columbianus</i>
BS	Plant	Milk-Vetch, Cotton's	<i>Astragalus australis</i> var. <i>Olympicus</i>
BS	Plant	Milk-Vetch, Cronquist	<i>Astragalus cronquistii</i>
BS	Plant	Milk-Vetch, Currant	<i>Astragalus uncialis</i>
BS	Plant	Milk-Vetch, Cushion	<i>Astragalus aretioides</i>
BS	Plant	Milk-Vetch, Darwin Mesa	<i>Astragalus atratus</i> var. <i>Mensanus</i>
BS	Plant	Milk-Vetch, Deane's	<i>Astragalus deanei</i>
BS	Plant	Milk-Vetch, Debeque	<i>Astragalus debequaeus</i>
BS	Plant	Milk-Vetch, Debris	<i>Astragalus detritalis</i>
BS	Plant	Milk-Vetch, Diamond Butte	<i>Astragalus toanus</i> var. <i>Scidulus</i>
BS	Plant	Milk-Vetch, Dubois	<i>Astragalus gilviflorus</i> var. <i>Purpureus</i>
BS	Plant	Milk-Vetch, Duchesne	<i>Astragalus duchesnensis</i>
BS	Plant	Milk-Vetch, Ferris's	<i>Astragalus tener</i> var. <i>Ferrisiae</i>
BS	Plant	Milk-Vetch, Ferron	<i>Astragalus musiniensis</i>
BS	Plant	Milk-Vetch, Field	<i>Astragalus agrestis</i>
BS	Plant	Milk-Vetch, Fisher Tower's	<i>Astragalus piscator</i>
BS	Plant	Milk-Vetch, Four-Wing	<i>Astragalus tetrapterus</i>
BS	Plant	Milk-Vetch, Geyer	<i>Astragalus geyeri</i>
BS	Plant	Milk-Vetch, Gilman	<i>Astragalus gilmanii</i>
BS	Plant	Milk-Vetch, Goose Creek	<i>Astragalus anserinus</i>
BS	Plant	Milk-Vetch, Gunnison	<i>Astragalus anisus</i>
BS	Plant	Milk-Vetch, Halfring	<i>Astragalus mohavensis</i> var. <i>Hemigyryus</i>
BS	Plant	Milk-Vetch, Lemhi	<i>Astragalus aquilonius</i>
BS	Plant	Milk-Vetch, Meadow	<i>Astragalus diversifolius</i>
BS	Plant	Milk-Vetch, Mokiak	<i>Astragalus mokiaceus</i>
BS	Plant	Milk-Vetch, Nelson	<i>Astragalus nelsonianus</i>
BS	Plant	Milk-Vetch, Newberry's	<i>Astragalus newberryi</i> var. <i>Castoreus</i>
BS	Plant	Milk-Vetch, Park	<i>Astragalus leptaleus</i>
BS	Plant	Milk-Vetch, Payson's	<i>Astragalus paysonii</i>
BS	Plant	Milk-Vetch, Peck's	<i>Astragalus peckii</i>
BS	Plant	Milk-Vetch, Picabo	<i>Astragalus oniciformis</i>
BS	Plant	Milk-Vetch, Plains	<i>Astragalus gilviflorus</i>
BS	Plant	Milk-Vetch, Precocious	<i>Astragalus proimanthus</i>
BS	Plant	Milk-Vetch, Railhead	<i>Astragalus terminalis</i>
BS	Plant	Milk-Vetch, San Rafeal	<i>Astragalus rafaelsensis</i>
BS	Plant	Milk-Vetch, Spring Mountain	<i>Astragalus remotus</i>
BS	Plant	Milk-Vetch, Starveling	<i>Astragalus jejunos</i> var. <i>Jejunus</i>
BS	Plant	Milk-Vetch, Tiehm's	<i>Astragalus tiehmii</i>
BS	Plant	Milk-Vetch, Tonopah	<i>Astragalus pseudiodanthus</i>
BS	Plant	Milk-Vetch, Toquima	<i>Astragalus toquimanus</i>
BS	Plant	Milk-Vetch, Webber's	<i>Astragalus webberi</i>

Status	Class	Common Name	Scientific Name
BS	Plant	Milk-Vetch, Whited's	<i>Astragalus sinuatus</i>
BS	Plant	Milkweed, Asclepias	<i>Asclepias eastwoodiana</i>
BS	Plant	Milkweed, Dwarf	<i>Asclepias uncialis</i>
BS	Plant	Mistmaiden, Thompson	<i>Romanzoffia thompsonii</i>
BS	Plant	Monardella, Crisp	<i>Monardella crispa</i>
BS	Plant	Monardella, Flax-Like	<i>Monardella linoides ssp. Oblonga</i>
BS	Plant	Monardella, Robison	<i>Monardella robisonii</i>
BS	Plant	Monardella, San Luis Obispo	<i>Monardella frutescens</i>
BS	Plant	Monardella, Sweet-Smelling	<i>Monardella beneolens</i>
BS	Plant	Monardella, Veiny	<i>Monardella douglasii ssp. Venosa</i>
BS	Plant	Monkeyflower, Disappearing	<i>Mimulus evanescens</i>
BS	Plant	Monkeyflower, Kaweah	<i>Mimulus norrisii</i>
BS	Plant	Monkeyflower, Membrane-Leaved	<i>Mimulus hymenophyllus</i>
BS	Plant	Monkeyflower, Pygmy	<i>Mimulus pygmaeus</i>
BS	Plant	Monkeyflower, Shevock's	<i>Mimulus shevockii</i>
BS	Plant	Monkeyflower, Spacious	<i>Mimulus washingtonensis (ampliatus)</i>
BS	Plant	Monkeyflower, Stalke-Leaved	<i>Mimulus patulus</i>
BS	Plant	Moonpod, Desert	<i>Selinocarpus diffusus</i>
BS	Plant	Moonpod, Goosefoot	<i>Ammocodon chenopodioides</i>
BS	Plant	Moonwort, Least	<i>Botrychium simplex</i>
BS	Plant	Moonwort, Mingan	<i>Botrychium minganense</i>
BS	Plant	Moonwort, Twin-Spiked	<i>Botrychium paradoxum</i>
BS	Plant	Moonwort; Moonwort, Upward-Lobed	<i>Botrychium ascendens</i>
BS	Plant	Moss	<i>Encalypta brevicolla var. Crumiana</i>
BS	Plant	Mule Ears, El Dorado	<i>Wyethia reticulata</i>
BS	Plant	Neoparrya, Rock Loving	<i>Neoparrya lithophila</i>
BS	Plant	Onion, Tall Swamp	<i>Allium validum</i>
BS	Plant	Onion, Tolmie's	<i>Allium tolmiei var. Persimile</i>
BS	Plant	Onion, Two-Headed	<i>Allium anceps</i>
BS	Plant	Orchid, Chatterbox	<i>Epipactis gigantea</i>
BS	Plant	Orcytes	<i>Orcytes nevadensis</i>
BS	Plant	Orthocarpus, Shasta	<i>Orthocarpus pachystachyus</i>
BS	Plant	Oryctes, Nevada	<i>Oryctes nevadensis</i>
BS	Plant	Owl-Clover, Rosy	<i>Orthocarpus bracteosus</i>
BS	Plant	Paintbrush, Fraternal	<i>Castilleja fraterna</i>
BS	Plant	Paintbrush, Purple Alpine	<i>Castilleja rubida</i>
BS	Plant	Paintbrush, Steens Mountain	<i>Castilleja pilosa var. Steenensis</i>
BS	Plant	Paronychia, Ahart's	<i>Paronychia ahartii</i>
BS	Plant	Penstemon, Idaho	<i>Penstemon idahoensis</i>
BS	Plant	Penstemon, Lemhi	<i>Penstemon lemhiensis</i>

Appendix B
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Status	Class	Common Name	Scientific Name
BS	Plant	Penstemon, Pinyon	<i>Penstemon pinorum</i>
BS	Plant	Pepper-Grass, Borrego Valley	<i>Lepidium flavum</i> var. <i>Felipense</i>
BS	Plant	Peppergrass, Davis'	<i>Lepidium davisii</i>
BS	Plant	Pepper-Grass, Jared's	<i>Lepidium jaredii</i> ssp. <i>Jaredii</i>
BS	Plant	Phacelia, Death Valley Round-Leaved	<i>Phacelia mustelina</i>
BS	Plant	Phacelia, Least; Dwarf Phacelia	<i>Phacelia minutissima</i>
BS	Plant	Phacelia, Mackenzie's	<i>Phacelia lutea</i> var. <i>Mackenzieorum</i>
BS	Plant	Phacelia, Malheur Yellow	<i>Phacelia lutea</i> var. <i>Calva</i>
BS	Plant	Phacelia, Mount Diablo	<i>Phacelia phacelioides</i>
BS	Plant	Phacelia, Nash's	<i>Phacelia nashiana</i>
BS	Plant	Phacelia, Nine Mile Canyon	<i>Phacelia novemmillensis</i>
BS	Plant	Phacelia, Siskiyou	<i>Phacelia leonis</i>
BS	Plant	Phacelia, Stebbins'	<i>Phacelia stebbinsii</i>
BS	Plant	Phacelia, Sticky	<i>Phacelia lenta</i>
BS	Plant	Phlox, Beaver Rim	<i>Phlox pungens</i>
BS	Plant	Pincushion, Desert	<i>Chaenactis stevioides</i>
BS	Plant	Pine, Washoe	<i>Pinus washoensis</i>
BS	Plant	Pitcher-Sage, Gander's	<i>Lepechinia ganderi</i>
BS	Plant	Plant, Death Valley Sandpaper	<i>Petalonyx thurberi</i> ssp. <i>Gilmanii</i>
BS	Plant	Plant, Dolores Skeleton	<i>Lygodesmia doloresensis</i>
BS	Plant	Plant, White-Margined Wax	<i>Glyptopleura marginata</i>
BS	Plant	Podistera, Yukon	<i>Podistera yukonensis</i>
BS	Plant	Pogogyne, Profuse-Flowered	<i>Pogogyne floribunda</i>
BS	Plant	Polemonium, Great	<i>Polemonium carneum</i>
BS	Plant	Popcornflower, Altered Andesite	<i>Plagiobothrys glomeratus</i>
BS	Plant	Poppy, Red Rock	<i>Eschscholzia minutiflora</i> ssp. <i>Twisselman</i>
BS	Plant	Poreleaf, Pygmy	<i>Porophyllum pygmaeum</i>
BS	Plant	Prairie Rocket, Narrow-Leaved	<i>Erysimum asperum</i> var. <i>Angustatum</i>
BS	Plant	Primrose, Alkali	<i>Primula alcalina</i>
BS	Plant	Primula, Cusick's	<i>Primula cusickiana</i>
BS	Plant	Princesplume, Malheur	<i>Stanleya confertiflora</i>
BS	Plant	Princesplume, Perennial	<i>Stanleya confertiflora</i>
BS	Plant	Purpusia, Rock	<i>Ivesia arizonica</i> var. <i>saxosa</i>
BS	Plant	Pussytoes, Meadows	<i>Antennaria arcuata</i>
BS	Plant	Queen-Of-The-Forest	<i>Filipendula occidentalis</i>
BS	Plant	Rabbitbrush, Guadalupe	<i>Chrysothamnus nauseosus</i> ssp. <i>Texensis</i>
BS	Plant	Ragwort, Few Flowered	<i>Packera pauciflora</i>
BS	Plant	Ragwort, Western	<i>Senecio hesperius</i>
BS	Plant	Raspberry, Northwest	<i>Rubus nigerrimus</i>
BS	Plant	Rattleweed, San Diego	<i>Astragalus oocarpus</i>

Status	Class	Common Name	Scientific Name
BS	Plant	Reedgrass, Cascade	<i>Calamagrostis tweedyi</i>
BS	Plant	Ricegrass, Henderson's	<i>Achnatherum hendersonii</i>
BS	Plant	Ricegrass, Small-Flowered	<i>Oryzopsis micranthum</i>
BS	Plant	Ricegrass, Wallowa	<i>Achnatherum wallowensis</i>
BS	Plant	Rock-Brake, Slender	<i>Cryptogramma stelleri</i>
BS	Plant	Rockcress, Bodie Hills	<i>Arabis bodiensis</i>
BS	Plant	Rockcress, Crandall	<i>Arabis crandallii</i>
BS	Plant	Rockcress, Elko	<i>Arabis falcifructa</i>
BS	Plant	Rockcress, Grouse Creek	<i>Arabis falcatoria</i>
BS	Plant	Rockcress, Hells Canyon	<i>Arabis hastatula</i>
BS	Plant	Rockcress, Koehler's	<i>Arabis koehleri</i> var. <i>Koehleri</i>
BS	Plant	Rockcress, Park	<i>Arabis fernaldiana</i> var. <i>Fernaldiana</i>
BS	Plant	Rockcress, Sapphire	<i>Arabis fecunda</i>
BS	Plant	Rockmat, Chelan	<i>Petrophyton cinerascens</i>
BS	Plant	Rockcress, Kass	<i>Draba kassii</i>
BS	Plant	Rock-Tansey	<i>Sphaeromeria capitata</i>
BS	Plant	Rosewood, Limestone	<i>Vauquelinia californica</i>
BS	Plant	Rush, Red Bluff Dwarf	<i>Juncus leiospermus</i> var. <i>Leiospermus</i>
BS	Plant	Rush-Lily, Purple-Flowered	<i>Hastingsia atropurpurea</i>
BS	Plant	Saltbush, Giant Four-Wing	<i>Atriplex canescens</i> var. <i>Gigantea</i>
BS	Plant	Sandwort, Lassics	<i>Minuartia decumbens</i>
BS	Plant	Sandwort, Nuttall	<i>Minuartia nuttallii</i>
BS	Plant	Sanicle, Tracy's	<i>Sanicula tracyi</i>
BS	Plant	Saw-Wort, Weber	<i>Saussurea weberi</i>
BS	Plant	Sedge, Buxbaum's	<i>Carex buxbaumii</i>
BS	Plant	Sedge, Canadian Single Spike	<i>Carex scirpoidea</i>
BS	Plant	Sedge, Craw's	<i>Carex crawei</i>
BS	Plant	Sedge, Foothill	<i>Carex tumulicola</i>
BS	Plant	Sedge, Giant	<i>Carex spissa</i>
BS	Plant	Sedge, Green	<i>Carex viridula</i>
BS	Plant	Sedge, Idaho	<i>Carex parryana</i> ssp. <i>Idaho</i>
BS	Plant	Sedge, Indian Valley	<i>Carex arboriginum</i>
BS	Plant	Sedge, Livid	<i>Carex livida</i>
BS	Plant	Sedge, Low Northern	<i>Carex concinna</i>
BS	Plant	Sedge, San Luis Obispo	<i>Carex obispoensis</i>
BS	Plant	Sedge, Siskiyou	<i>Carex gigas</i>
BS	Plant	Sedge, String-Root	<i>Carex chordorrhiza</i>
BS	Plant	Sedge, Western	<i>Carex occidentalis</i>
BS	Plant	Sedge, Yellow	<i>Carex flava</i>
BS	Plant	Shootingstar, Frigid	<i>Dodecatheon austrofrigidum</i>
BS	Plant	Shoshonea	<i>Shoshonea pulvinata</i>

Status	Class	Common Name	Scientific Name
BS	Plant	Sidalcea, Maple-Leaved	<i>Sidalcea malachroides</i>
BS	Plant	Silverberry, American	<i>Elaeagnus commutata</i>
BS	Plant	Sneezeweed, Virginia	<i>Helenium virginicum</i>
BS	Plant	Snow-Wreath, Shasta	<i>Neviusia cliftonii</i>
BS	Plant	Soaproot, Dwarf	<i>Chlorogalum pomeridianum var. Minus</i>
BS	Plant	Soaproot, Red Hills	<i>Chlorogalum grandiflorum</i>
BS	Plant	Spineflower, Brewer's	<i>Chorizanthe breweri</i>
BS	Plant	Spineflower, San Benito	<i>Chorizanthe biloba var. Immemora</i>
BS	Plant	Spineflower, Straight-Awned	<i>Chorizanthe rectispina</i>
BS	Plant	Spleenwort, Dalhouse	<i>Asplenium [=ceterach] dalhousiae</i>
BS	Plant	Spleenwort, Green	<i>Asplenium viride</i>
BS	Plant	Springbeauty, Ogilvie Mountains	<i>Claytonia ogilviensis</i>
BS	Plant	Spruce, White	<i>Picea glauca</i>
BS	Plant	Spurge, Flat-Seeded	<i>Chamaesyce platysperma</i>
BS	Plant	Star-Tulip, Long-Haired	<i>Calochortus longebarbatus var. Longebarb</i>
BS	Plant	Star-Tulip, Shirley Meadows	<i>Calochortus westonii</i>
BS	Plant	Stenotus, Woolly	<i>Stenotus lanuginosus</i>
BS	Plant	Stickleaf, Royal Gorge	<i>Mentzelia densa</i>
BS	Plant	Stickleaf, Smooth	<i>Mentzelia mollis</i>
BS	Plant	Stickleaf, Southwest	<i>Mentzelia argillosa</i>
BS	Plant	Stickseed, Cronquist's	<i>Hackelia cronquistii</i>
BS	Plant	Stickseed, Deep Creek	<i>Hackelia ibapensis</i>
BS	Plant	Stickseed, Rattlesnake	<i>Hackelia ophiobia</i>
BS	Plant	Stickseed, Rattlesnake	<i>Hackelia ophiobia</i>
BS	Plant	Stonecrop, Applegate	<i>Sedum oblanceolatum</i>
BS	Plant	Stonecrop, Bartram	<i>Graptopetalum bartramii</i>
BS	Plant	Stonecrop, Canyon Creek	<i>Sedum paradisum</i>
BS	Plant	Strawberry, Idaho	<i>Waldsteinia idahoensis</i>
BS	Plant	Streptanthus, Howell's	<i>Streptanthus howellii</i>
BS	Plant	Stroganowia, Tiehm	<i>Stroganowia tiehmii</i>
BS	Plant	Stylocline	<i>Stylocline flaginea</i>
BS	Plant	Sullivantia, Oregon	<i>Sullivantia oregana</i>
BS	Plant	Sumac, Kearney	<i>Rhus kearneyi ssp. Kearneyi</i>
BS	Plant	Sunflower, Fort Tejon Woolly	<i>Eriophyllum lanatum var. Hallii</i>
BS	Plant	Sunray, Silverleaf	<i>Enceliopsis argophylla</i>
BS	Plant	Swertia, Umpqua	<i>Frasera umpquaensis</i>
BS	Plant	Swordfern, Kruckeberg's	<i>Polystichum kruckebergii</i>
BS	Plant	Tansy, Cinquefoil	<i>Sphaeromeria potentilloides</i>
BS	Plant	Tansymustard, Wyoming	<i>Descurainia torulosa</i>
BS	Plant	Tarplant, Congdon's	<i>Hemizonia parryi ssp. Congdonii</i>
BS	Plant	Tarplant, Tecate	<i>Hemizonia floribunda</i>

Status	Class	Common Name	Scientific Name
BS	Plant	Tauschia, Hoover's	<i>Tauschia hooveri</i>
BS	Plant	Tauschia, Howell's	<i>Tauschia howellii</i>
BS	Plant	Tetracoccus, Parry's	<i>Tetracoccus dioicus</i>
BS	Plant	Thelypody, Arrowleaf	<i>Thelypodium eucosmum</i>
BS	Plant	Thelypody, Northwestern	<i>Thelypody paniculatum</i>
BS	Plant	Thelypody, Wavy-Leaf	<i>Thelypodium repandum</i>
BS	Plant	Thistle, Ashland	<i>Cirsium ciliolatum</i>
BS	Plant	Thistle, Cedar Rim	<i>Cirsium aridum</i>
BS	Plant	Thistle, Compact Cobwebby	<i>Cirsium occidentale var. Compactum</i>
BS	Plant	Thistle, Hill's	<i>Cirsium hillii</i>
BS	Plant	Thistle, Rocky Mountain	<i>Cirsium perplexans</i>
BS	Plant	Thistle, Wright's Marsh	<i>Cirsium wrightii</i>
BS	Plant	Threadstem, Rigid	<i>Nemacladus rigidus</i>
BS	Plant	Tidy-Tips, Munz's	<i>Layia munzii</i>
BS	Plant	Townsendia, Scapose	<i>Townsendia scapigera</i>
BS	Plant	Twayblade	<i>Liparis loeselii</i>
BS	Plant	Twayblade, Northern	<i>Listera borealis</i>
BS	Plant	Twinpod, Dorn's	<i>Physaria dornii</i>
BS	Plant	Twinpod, Tufted	<i>Physaria condensata</i>
BS	Plant	Wallflower, Coast	<i>Erysimum ammophilum</i>
BS	Plant	Water-Starwort, The Dalles	<i>Callitriche fassettii</i>
BS	Plant	Wavewing, Greeley's	<i>Cymopterus acaulis var. Greeleyorum</i>
BS	Plant	Waxflower; Jamesia, Four Petal	<i>Jamesia tetrapetala</i>
BS	Plant	Whitlow-Grass, Howell's	<i>Draba howellii</i>
BS	Plant	Whitlow-Grass, Oblong-Fruited	<i>Draba adamsii sensu mulligan proparte</i>
BS	Plant	Whitlow-Grass, Ogilve Mountains	<i>Draba ogilviensis</i>
BS	Plant	Whitlow-Grass, Standley	<i>Draba standleyi</i>
BS	Plant	Whitlow-Grass, Tundra	<i>Draba kananaskis</i>
BS	Plant	Whitlow-Grass, Murray's	<i>Draba murrayi</i>
BS	Plant	Willow	<i>Salix reticulata</i> spp. <i>Glabellicarpa</i>
BS	Plant	Willow, Hoary	<i>Salix candida</i>
BS	Plant	Willow, Soft-Leaved	<i>Salix sessilifolia</i>
BS	Plant	Willow-Herb, Nevada	<i>Epilobium nevadense</i>
BS	Plant	Willow-Herb, Siskiyou	<i>Epilobium siskiyouense</i>
BS	Plant	Wire-Lettuce, Schott	<i>Stephanomeria schottii</i>
BS	Plant	Woodfern, Aravaipa	<i>Thelypteris puberula var. Sonorensis</i>
BS	Plant	Woolly-Heads, Slender	<i>Psilocarphus tenellus</i>
BS	Plant	Woolly-Sunflower, Barstow	<i>Eriophyllum mohavense</i>
BS	Plant	Wormwood, Aleutian	<i>Artemisia aleutica</i>
BS	Plant	Wormwood, Mystery	<i>Artemisia biennis var. Diffusa</i>
BS	Plant	Wormwood, Purple	<i>Artemisia globularia var. Lutea</i>

Status	Class	Common Name	Scientific Name
BS	Plant	Wormwood, Yellow-Ball	<i>Artemisia senjavinensis</i>
BS	Plant	Yampah, Red-Rooted	<i>Perideridia erythrorhiza</i>
BS	Plant	Yellow Cress, Columbian; Cress, Columbia	<i>Rorippa columbiae</i>
BS	Reptile	Boa, Rosy	<i>Lichanura trivirgata</i>
BS	Reptile	Chuckwalla	<i>Sauromalus obesus</i>
BS	Reptile	Chuckwalla, Glen Canyon	<i>Sauromalus obesus multiforaminatus</i>
BS	Reptile	Chuckwalla, Western	<i>Sauromalus obesus obesus</i>
BS	Reptile	Gila Monster, Banded	<i>Heloderma suspectum cinctum</i>
BS	Reptile	Iguana, Desert	<i>Dipsosaurus dorsalis</i>
BS	Reptile	Kingsnake, California Mountain	<i>Lampropeltis zonata</i>
BS	Reptile	Kingsnake, Common	<i>Lampropeltis getula</i>
BS	Reptile	Kingsnake, Sonoran Mountain	<i>Lampropeltis pyromelana</i>
BS	Reptile	Lizard, Desert Night	<i>Xantusia vigilis vigilis</i>
BS	Reptile	Lizard, Desert Spiny	<i>Sceloporus magister</i>
BS	Reptile	Lizard, Flat-Tailed Horned	<i>Phrynosoma mcallii</i>
BS	Reptile	Lizard, Longnose Leopard	<i>Gambelia wislizenii</i>
BS	Reptile	Lizard, Mojave Black-Collared	<i>Crotaphytus bicinctores</i>
BS	Reptile	Lizard, Mojave Fringe-Toed	<i>Uma scoparia</i>
BS	Reptile	Lizard, Northern Sagebrush	<i>Sceloporus graciosus graciosus</i>
BS	Reptile	Lizard, Short-Horned	<i>Phrynosoma doublassii</i>
BS	Reptile	Lizard, Sierra Alligator	<i>Elgaria coerulea palmeri</i>
BS	Reptile	Lizard, Texas Horned	<i>Phrynosoma cornutum</i>
BS	Reptile	Lizard, Utah Night	<i>Xantusia vigilis utahensis</i>
BS	Reptile	Massasauga	<i>Sistrurus catenatus</i>
BS	Reptile	Rattlesnake, Midget Faded	<i>Crotalus viridis concolor</i>
BS	Reptile	Rattlesnake, Southwestern Speckled	<i>Crotalus mitchellii pyrrhus</i>
BS	Reptile	Sidewinder, Mojave Desert	<i>Crotalus cerastes cerastes</i>
BS	Reptile	Skink, Arizona	<i>Eumeces gilberti arizonensis</i>
BS	Reptile	Skink, Coronado	<i>Eumeces skiltonianus interparietalis</i>
BS	Reptile	Skink, Many-Lined	<i>Eumeces multivirgatus gaigeae</i>
BS	Reptile	Snake, Common Garter	<i>Thamnophis sirtalis</i>
BS	Reptile	Snake, Great Plains Rat	<i>Elaphe guttata emoryi</i>
BS	Reptile	Snake, Longnose	<i>Rhinocheilus lecontei</i>
BS	Reptile	Snake, Mexican Garter	<i>Thamnophis eques megalops</i>
BS	Reptile	Snake, Milk	<i>Lampropeltis triangulum taylori</i>
BS	Reptile	Snake, Milk	<i>Lampropeltis triangulum taylori</i>
BS	Reptile	Snake, Mojave Patch-Nosed	<i>Salvadora hexalepis mojavensis</i>
BS	Reptile	Snake, Narrowhead Garter	<i>Thamnophis rufipunctatus</i>
BS	Reptile	Snake, Sanora Lyre	<i>Trimorphodon biscutatus lambda</i>
BS	Reptile	Snake, Smooth Green	<i>Opheodrys vernalis</i>

Status	Class	Common Name	Scientific Name
BS	Reptile	Snake, Two-Striped Garter	<i>Thamnophis hammondi</i>
BS	Reptile	Snake, Utah Blind	<i>Leptotyphlops humilis utahensis</i>
BS	Reptile	Snake, Western Ground	<i>Sonora semiannulata</i>
BS	Reptile	Turtle, Northwestern Pond	<i>Clemmys marmorata marmorata</i>
BS	Reptile	Turtle, Painted	<i>Chrysemys picta</i>
BS	Reptile	Turtle, Snapping	<i>Chelydra serpentina</i>
BS	Reptile	Turtle, Spiny Softshell	<i>Trionyx spiniferus</i>
BS	Reptile	Whiptail, Plateau Striped	<i>Cnemidophorus velox</i>
BS	Snail	Disc, Cockerell's Striate	<i>Discus shemeki cockerelli</i>
BS	Snail	Fieldslug, Evening	<i>Deroceras hesperium</i>
BS	Snail	Jumping-Slug, Malone	<i>Hemphillia malone</i>
BS	Snail	Lanx, Rotund	<i>Lanx subrotundata</i>
BS	Snail	Lanx, Scale	<i>Lanx klamathensis</i>
BS	Snail	Lanx, Shortface	<i>Fisherola nuttalli (lymnaeidae)</i>
BS	Snail	Peaclam, Montane	<i>Pisidium ultramontanum</i>
BS	Snail	Pebblesnail, Casebeer	<i>Flumicola sp. Nov.</i>
BS	Snail	Pebblesnail, Columbia	<i>Flumicola columbianus</i>
BS	Snail	Pebblesnail, Diminutive	<i>Flumicola sp. Nov. 3</i>
BS	Snail	Pebblesnail, Fall Creek	<i>Flumicola sp. Nov.</i>
BS	Snail	Pebblesnail, Flat	<i>Lepyrium showalteri</i>
BS	Snail	Pebblesnail, Keene Creek	<i>Flumicola sp. Nov.</i>
BS	Snail	Pebblesnail, Klamath	<i>Flumicola sp. Nov</i>
BS	Snail	Pebblesnail, Klamath Rim	<i>Flumicola sp. Nov. 1</i>
BS	Snail	Pebblesnail, Lake Of The Woods	<i>Flumicola sp. Nov.</i>
BS	Snail	Pebblesnail, Newrite	<i>Flumicola sp. Nov. 11</i>
BS	Snail	Pebblesnail, Tigerlily	<i>Flumicola sp. Nov.</i>
BS	Snail	Pebblesnail, Toothed	<i>Flumicola sp. Nov.</i>
BS	Snail	Pyrg, Bifid Duct	<i>Pyrgulopsis peculiararis</i>
BS	Snail	Pyrg, Big Warm Spring	<i>Pyrgulopsis papillata</i>
BS	Snail	Pyrg, Carinate Duckwater	<i>Pyrgulopsis carinata</i>
BS	Snail	Pyrg, Duckwater	<i>Pyrgulopsis aloba</i>
BS	Snail	Pyrg, Elongate Cain Spring	<i>Pyrgulopsis augusta</i>
BS	Snail	Pyrg, Fly Ranch	<i>Pyrgulopsis bruesi</i>
BS	Snail	Pyrg, Humbolt	<i>Pyrgulopsis humboldtensis</i>
BS	Snail	Pyrg, Landyes	<i>Pyrgulopsis landeyi</i>
BS	Snail	Pyrg, Large-Gland Carico	<i>Pyrgulopsis basiglans</i>
BS	Snail	Pyrg, Spring Mountains	<i>Pyrgulopsis deaconi</i>
BS	Snail	Pyrg, Transverse Gland	<i>Pyrgulopsis cruciglans</i>
BS	Snail	Pyrg, Wongs	<i>Pyrgulopsis wongi</i>
BS	Snail	Snail, Hells Canyon Land	<i>Cryptomastix populi</i>
BS	Snail	Snail, Newcomb's Littorine	<i>Algamorda subrotundata</i>

Status	Class	Common Name	Scientific Name
BS	Snail	Snails, Hydrobiid Spring	<i>All species in genus pyrgulopsis</i>
BS	Snail	Snails, Succineid	<i>All species in family succineidae</i>
BS	Snail	Springsnail, Crooked Creek	<i>Pyrgulopsis intermedia</i>
BS	Snail	Springsnail, Harney Lake	<i>Pyrgulopsis hendersoni</i>
BS	Snail	Springsnail, Malheur Cave	<i>Oncopodura mala</i>
BS	Snail	Springsnail, Owyhee Hot	<i>Pyrgulopsis sp. N+d40ov.</i>
BS	Snail	Tryonia, Grated	<i>Tryonia clathrata</i>
W	Bird	Blackbird, Brewer's	<i>Euphagus cyanocephalus</i>
W	Bird	Finch, Cassin's	<i>Carpodacus cassinii</i>
W	Bird	Flycatcher, Cordilleran	<i>Empidonax occidentalis</i>
W	Bird	Phalaropus, Wilson's	<i>Phalaropus tricolor</i>
W	Bird	Swift, Vaux's	<i>Chaetura vauxi</i>
W	Fish	Sculpin, Shorthead	<i>Cottus confusus</i>
W	Fish	Sculpin, Torrent	<i>Cottus rohtheus</i>
W	Mammal	Squirrel, Rock	<i>Spermophilus variegatus</i>
W	Plant	Goldenweed, Howell's One-Flowered	<i>Hyplopappus uniflorus var.howellii</i>
W	Plant	Milk-Vetch, Piper's	<i>Astragalus riparis</i>
W	Plant	Sedge, Henderson's	<i>Carex hendersonii</i>
W	Plant	Willow-Herb, Swamp	<i>Epilobium palustre</i>

Key to species status:

ba = Bureau advisory
 BS = Bureau sensitive
 bto = Bureau tracking, Oregon
 C = Federal candidate
 eme = Federal emergency listing
 ex = Experimental population
 FE = Federally endangered
 FT = Federally threatened
 P = Petitioned
 W = Watchlisted (Idaho only).

Appendix C. Summary of Scoping Comments

One change was made to this scoping summary on the basis of a comment received from the public. One of the letters received during scoping contained numerous comments that the BLM attributed to the individual's employer, the University of Wyoming. The comment letter, however, clearly stated that the comments were those of the author and did not necessarily reflect the views of the University. Accordingly, we have deleted references to the University of Wyoming as the source of those comments in this summary of scoping comments.

Introduction

As of July 2003, the Bureau of Land Management (BLM) received more than 8,300 comments in response to the Advanced Notice of Proposed Rulemaking and the Notice of Intent. Most of the 8,300 comments were form letters expressing opposition to the BLM making any changes to the existing regulations that were passed in 1995. We received approximately three dozen letters containing substantive comments from interest groups and state and Federal agencies. In many instances, the comments submitted by individuals and interest groups duplicated the comments of "like-minded" organizations. Some comments referenced the previous changes to the grazing regulations as either the "1994" or "1995" regulatory changes. They are the same.

The BLM held four public scoping meetings during March 2003. Approximately 60 people attended the Billings, Montana, meeting and 25 people offered testimony. Around 150 people attended the Reno, Nevada, meeting and 25 offered testimony. Approximately 50 people attended the

Albuquerque, New Mexico, meeting, with 35 individuals providing testimony, and approximately 30 people attended the Washington, D.C., meetings, where five persons gave testimony.

The topics, in order of the number of comments received, are listed as follows:

1. Authorizing temporarily locked gates on public lands.
2. Establishing Reserve Common Allotments.
3. Sharing proportional title to range improvements.
4. Considering the social, economic, and cultural factors in NEPA analysis.
5. Acquisition of water rights.
6. Extending authorized temporary nonuse from 3 to 5 years.
7. Eliminating certain nonpermit violations.
8. Modifying the appeal process.
9. Considering adding a fee schedule for certain administrative actions.
10. Clarify what actions the BLM will take if we determine rangeland health standards are not being met.

1.0 Definitions

1.1 General comments regarding definitions

The Nevada Department of Agriculture commented at the Reno public scoping meetings that the BLM should not change its present definitions and should maintain the interpretations as close to the original meanings as they are in the Taylor Grazing Act.

The State of Arizona Game and Fish Department asked why the BLM proposed changing the definitions in the regulations. The department said they found BLM's intent in making these regulatory changes unclear; however, it supported revisions and clarifications that would effectively and efficiently accomplish the goal of attaining healthy rangelands and support multiple use of public lands including, benefits to fish and wildlife resources.

The Defenders of Wildlife, Friends of the Earth, National Wildlife Federation, and National Resources Defense Council asked why the Department believes it is necessary to change any of the definitions that weren't changed in 1995.

1.2 Section 4100.0-5 Definitions

1.2.1 Active use

A consortium of environmental and conservation groups (Defenders of Wildlife, Friends of the Earth, National Wildlife Federation, and National Resources Defense Council) jointly commented that the term "conservation use" could have been removed administratively without the expense of a rulemaking effort. The group commented

that it could not identify other necessary or warranted changes to this definition because the BLM was too vague about its intentions. Several commenters asked the BLM not to revoke conservation use permits.

1.2.2 Authorized use

The National Cattlemen's Beef Association (NCBA) and the Public Lands Council (PLC) asked the BLM to provide for the maximum amount of flexibility when considering the terms "nonuse," and "reduced use" in our definition of "authorized use." It asked the BLM to allow nonuse for 3 years for reasons other than resource management. After 3 years the group wants the BLM to consult with the preference holder to determine how Federal AUMs could be made available to qualified applicants who are engaged in the livestock business. It commented that the BLM should do this by issuing either a temporary permit or a reallocation under the criteria in the regulations. It also asked the BLM to clarify whether Federal AUMs in nonuse should be made available for active use after 3 years.

The consortium of environmental and conservation groups asked why the BLM is proposing to change this definition if it was not considered in the 1995 rulemaking. The groups commented that "Adopting the claims advanced in the PLC case is inappropriate, illegal, and limits BLM's ability to adjust livestock numbers and use for the benefit and protection of other users' uses or resources of the public lands in accordance with the goals and mandates of FLPMA and PRIA."

1.2.3 Base property

The consortium of environmental and conservation groups said the Department of Interior already addressed these issues in the 1994 regulations and it asked why the BLM believes they must be changed now.

1.2.4 Grazing lease

The consortium of environmental and conservation groups commented that the existing definition is taken from the TGA and should not be changed. It commented that it is inappropriate to link this definition to a particular number of livestock and the BLM should link numbers to preference because this process can identify and reveal real obstacles to improved management and improved conditions.

1.2.5 Grazing permit

The consortium of environmental and conservation groups commented that the BLM addressed this and other definitions during the 1995 Range Reform efforts and it asked how the BLM justifies changing them now, so soon after that effort.

1.2.6 Grazing Preference or Preference

The NCBA and the PLC asked the BLM to replace the term “permitted use” with the term “preference” wherever it occurs in the existing regulations because the term “preference,” as used in the Taylor Grazing Act (TGA), was intended by Congress to provide a preference level of Federal AUMs of livestock forage to ranchers who qualified for grazing permits and leases.

The NCBA and the PLC also commented that the term “preference” means the sum total of active-use AUMs and any suspended nonuse AUMs. They asked if the BLM is considering this term in this context. They asked if the BLM intended to continue recognizing that permittees and lessees have an incentive to improve livestock management practices, and to improve rangeland conditions where possible by reactivating part or all of their suspended nonuse.

The consortium of environmental and conservation groups commented that the term “preference” is taken directly from the Taylor Grazing Act and that the BLM should not change it. It commented that the definition should not be linked to a particular number of livestock because it interferes with the BLM’s ability to manage public lands pursuant to PRIA and FLPMA. It further commented that “permitted use” is properly determined by a land use plan and should remain as an indicator of livestock numbers allowed on a particular allotment.

1.2.7 Monitoring

General comments: The BLM received few comments pertaining to the definition. However, it received many comments advising the BLM how to conduct monitoring and what the results of these monitoring efforts should be. The livestock industry generally believes that more thorough monitoring will benefit the industry and vindicate them from allegations that livestock grazing is responsible for degrading public lands. The environmental and conservation communities urge increased monitoring because they believe monitoring will support their long-held belief that livestock grazing is degrading public lands.

The consortium of environmental and conservation groups alleges that after 1995, the BLM changed the way it monitors resource damage on public lands because it did not have the budget or resources to carry out required monitoring. The groups commented that this caused the BLM to delay remedial actions resulting in additional damage to public lands, and indefinitely stalled true environmental range improvements. It also commented that the BLM’s return to the pre-1995 policy of “no data, no action” will block needed improvements and would be completely inconsistent with true stewardship.

The Public Lands Council and the National Cattlemen’s Beef Association commented that data collection must be consistent and that the BLM should prepare an annual report on monitoring activities and make that information available.

The Oregon Natural Desert Association commented that monitoring is vital to BLM’s success in land management actions. It commented that the definition of “monitoring” should recognize the importance of—and require the collection of—measurable, repeatable, quantitative information. It said the BLM relies on “drive-by” narratives, not by applying professional scientific procedures and standards.

The Nevada Department of Agriculture commented at the Reno public scoping meeting that the BLM must clarify how it will monitor results of trend studies and how that information will be used to increase AUMS on a particular allotment.

The New Mexico Public Lands Council commented at the Albuquerque public scoping meeting that vegetation monitoring will ensure that long-term range conditions and trends are stable or improving, enhance the resource for future generations, provide positive economic returns, and stabilize the range livestock industry and the culture of the vital human resources of New Mexico.

The Oregon Cattlemen’s Association commented at the Reno public scoping meeting that it recognizes the importance of long-term monitoring when it supports the grazing program and establishes sustainability. It urged the BLM to consider data from a study pertaining to monitoring in preparation by the National Cattlemen’s Beef Association and the Public Lands Council; however, it gave no other details or specifics of that study.

1.2.8 Reserve Common Allotments

The BLM did not receive any comments pertaining to a definition of Reserve Common Allotments.

See Section 4.1 for discussions of Reserve Common Allotments.

2.0 Changing the regulations to clarify present requirements and to allow better rangeland management and permit administration

We are considering the following changes:

2.1 Clarifying the permit renewal performance review requirements when grazing permits are pledged as security for loans

The Public Lands Council (PLC) and the National Cattlemen’s Beef Association (NCBA) generally supported the BLM’s proposed changes and provided extensive and substantial comments pertaining to all aspects of the BLM’s proposed criteria. In addition, it submitted several additional provisions it wants the BLM to address in this rulemaking.

The consortium of environmental and conservation groups commented that the

fact that a permittee or lessee has a loan should not guarantee that the permittee or lessee has a right to an automatic renewal of his or her permit or lease, nor should it guarantee that any particular number of livestock can be run on the permittee's or lessee's allotment.

The Center for Biological Diversity (CBD) commented that permits should not be used as collateral for loans, because permits are not the legitimate property of the permittee. It said permits should include terms and conditions specifically preventing their use in this manner. It also commented that other methods, such as allowing competitive bidding for permits or leases, would remove the incorrect perception that permits are a property interest. The CBD commented that Section 4130.9 should be deleted because it illegally recognizes the use of permits and leases as collateral.

One individual commented that the BLM should delete Section 4130.9 because grazing permits are not legal property interests and treating them as such skews real estate markets and increases pressure on rangelands and encourages range managers to serve individual interests while diminishing economic benefits of healthy rangelands not priced in any market and not easily considered. (The Western Watersheds Project submitted identical comments on this provision.)

An environmental group commented that this provision shields permittees who are bad stewards or who have borrowed against their permits in an illegal attempt to make livestock use the dominant use on the public lands. The group said the TGA, FPLMA, and PRIA require that public lands be managed for multiple uses.

2.2 Clarifying who is qualified for public lands grazing use and who will receive preference for a grazing permit or lease

The Environmental Protection Agency (EPA) commented that it supports giving preference to applicants who promote wildlife habitats, water quality, healthy riparian zones, and encouraging native vegetation because these are important factors and should be an integral part of BLM's criteria for issuing permits.

The Oregon Natural Desert Association (ONDA) commented that the present regulations on these issues clearly direct the BLM to provide detailed information to the public about any problems the BLM perceives. It commented that, when considering changing the regulations, the BLM should include the following provisions clarifying that persons will not qualify for a grazing permit if:

1. They have failed to comply with grazing permit terms and conditions, especially when: utilization levels.
2. They repeatedly trespassed.
3. They failed to maintain exclosures or other fences.

The State of Arizona Game and Fish Department supports this considered change and believes the BLM should not change any of the grazing regulations that would diminish the requirements to maintain a record of satisfactory performance.

A commenter said the courts have found that individuals who hold preference rights on BLM grazing allotments must be engaged

in the “livestock business.” The commenter said the TGA stipulations have been so diluted that groups or associations can qualify for an allotment preference right even though they are not actually engaged in the livestock business. The commenter said the BLM must revise the grazing regulations so grazing permits are only issued to bona fide livestock operators and allotments are used for legitimate livestock grazing purposes.

Representatives of the Western Watersheds Project commented that this section does not need clarification. It wants the BLM to consider the following:

1. Removing livestock from areas unsuited for grazing.
2. Replacing the present grazing fee formula with a system of competitive bidding to ensure compliance with the mandate in 43 U.S.C. Section 1701(a)(9) that the government obtain fair market value for public resources.

The Utah Farm Bureau Federation commented that the BLM should reinstate the pre-1995 definition of “grazing preference” because Range Reform eliminated permittees’ rights to additional forage within their preference amounts even when it became available. The Federation commented that the BLM’s 1995 regulation change let the BLM reduce the number of AUMs historically held under grazing preference on allotments during periods of drought or in response to appeals for expanded wildlife use. The Federation commented that it is now exceedingly difficult for ranchers to recover their historical permitted grazing use after the cuts have been made.

The New Mexico Wool Growers Association commented at the New Mexico public scoping meeting that it supports

requiring a permittee to be engaged in the livestock business to qualify for a permit.

One commenter stated that only those parties legitimately engaged in the livestock business should be allowed a grazing preference. The commenter believes that the Secretary’s Four C’s approach on the local level is the correct way to provide incentive for proper management. He stated that when communities agree on a management plan everyone benefits.

A commenter said the BLM should allow nongrazing parties to buy and hold a grazing permit for the conservation use or to improve the health of range lands or improve water quality.

2.3 Clarifying the provisions addressing grazing preference transfers

An environmental group commented that the BLM should not allow preference transfers and that issuance of a permit to a new permittee is a new permit issuance, not a transfer. The group commented that issuance of all new permits or reissuance of existing permits should be open to competitive bidding and occur only after full compliance with NEPA.

The CBD commented that the BLM should not allow transfers of grazing preference. It commented that issuing a new permit to a new permittee should not be considered a transfer and wanted permit issuances to be subject to full NEPA disclosure and conformance with all other resource protection laws prior to issuance.

An individual commented that grazing preferences should not be transferred and, before issuing or reissuing any permit, the BLM must ensure full public disclosure to comply with NEPA, FLPMA, and any other

environmental protections required by other law or regulation.

Great Old Broads for Wilderness commented that the BLM should not transfer preference for permits and that the permitting process should be open to competitive bidding and that issuance of permits to a new permittee should be through a new permit, not a transfer, and that permits should be subject to full NEPA disclosure and conformance with all other resource protection laws prior to issuing a permit.

A commenter said the BLM is incorrect regarding the transfer of “preference right” versus “transfer of the grazing permit” because the BLM already has the nondiscretionary requirement to transfer the preference right to qualified applicants. The commenter said that when the preference is transferred, the new permittee should be entitled to graze under the same terms and conditions as the immediately preceding term permit until the BLM issues a decision and, allowing for appropriate administrative appeal, changes the terms and conditions of the permit.

The Western Watersheds Project commented that “preference” should not be transferred. It commented that when a permit is issued to a new permittee it is being “issued” not “transferred.” It also commented that the BLM must ensure a full public disclosure and compliance with NEPA, FLPMA, and any environmental protections required by other law or regulation before issuing or reissuing any permit.

2.4 Reinstating an earlier provision that BLM and permit holder may share proportional title to certain range improvements

Generally, many commenters who opposed the considered changes expressed particular opposition to livestock operators sharing title to range improvements. Most of the commenters who supported the BLM’s considered changes stated that sharing title to range improvements could improve an operator’s ability to secure funding to continue operating.

Several commenters, including The Sierra Club and the consortium of environmental and conservation groups, opposed sharing title to range improvements because they believe it would allow the BLM to confer private property rights to permittees operating on public lands. The groups commented that “ownership of all such developments and improvements must remain in the public domain because the permittee is only an individual or corporation allowed by the public to use public lands.”

The CBD commented that the BLM should not change the existing regulation because it said that it supported the 1995 regulations that clarified that permittees do not have a property interest in Federal permits when they build range improvements on Federal land.

The Association of Rangeland Consultants supported reinstating the pre-1995 provision allowing BLM and the permit holder to share title to certain range improvements because they think it is an incentive to good land stewardship.

The ONDA opposed changing this provision so soon after the 1995 revisions. It

cites the TGA and other court cases which, it said, demonstrate specifically that a permit to graze on public lands does not entitle the permit holder to any rights on public lands.

The Columbia River Basin Inter-Tribal Fish Commission (a coalition of the Confederated Tribes of the Umatilla, Confederated Tribes and Bands of the Yakama Nation, and the Nez Perce Tribe) opposed sharing title to range improvements because this provision could allow property rights to be established on public lands that could interfere with transferability of permits.

The Matador Cattle Company, Dillon, Montana, supports this provision and commented that incentives like sharing title provide a better way for implementing and maintaining range improvements than punitive actions.

The Forest Guardians, Animal Protection Institute, and Sinapu jointly submitted comments and cited case laws that they say support their opposition to sharing title to range improvements.

The State of Arizona Game and Fish Department commented that if this provision is introduced, the BLM must ensure that wildlife and wildlife-related recreational interests are considered and addressed.

The Montana Wildlife Federation opposed sharing proportional title to range improvements unless they are short term and the permittee intends to remove them.

The NCBA and PLC strongly urged the BLM to revise Subpart 4130 to read as follows:

“Title to structural or removable range improvements will be shared by the United States and the cooperators in proportion to the amount of their respective contributions to on-the-ground expenses of initial construction.”

The NBCA and PLC said the BLM should amend Section 4130.3-3 Range

improvement permits in the existing regulations to read:

“When the permittee or lessee agrees to provide full funding for construction, installation, modification, or maintenance of structural or removable range improvements, the permittee or lessee will hold title to those improvements authorized under this section. The permittee or lessee will control livestock ponds, wells, or pipelines when their construction is authorized under this section. The permittee or lessee may enter into an MOU with BLM to allow the use and maintenance of the improvements by activities other than livestock grazing.”

An individual commented that the Supreme Court approved the 1995 changes to the regulations. It said the BLM is trying to place the economic interests of a small number of permittees and licensees above public interests and above the goal of managing the multiple resources and values of public lands. It commented that the BLM is disregarding FLPMA’s mandates without considering the relative scarcity of the values involved or weighing the long-term benefits to the public against short-term benefits to the permittees. (The Western Watersheds Project submitted duplicate comments regarding this provision.)

The New Mexico Farm and Livestock Bureau supports shared title to range improvements and, in particular, co-ownership of range improvements or ownership by permittees who fund their own improvements with no contributions by the government.

The Nevada Farm Bureau (NFB) commented at the Reno public scoping meeting that the NFB’s public policy position encourages actions to expand private development and ownership of stock water and Federal land. It said this policy is important for increasing benefits for

enhanced resource conditions as a result of maximum livestock distribution for expanded water development projects. It also said that providing ranchers with the opportunity for developing water resources on Federal lands expands the resources available for improving resource management.

The Western Watersheds Project commented that it opposes sharing title to range improvements because allowing permittees to “own” improvements may result in misunderstandings between permittees and the BLM over whether protective actions taken by the BLM constitutes a “taking” of property. It said these situations would involve great expense to the public.

The Utah Farm Bureau Federation commented that farmers and ranchers who pay for and construct range improvements should have an ownership interest in them, and should be able to list them as an asset on a producer’s balance sheet. The Federation commented that little of the Federal money that is earmarked for range improvements goes toward on-the-ground improvements and there are presently no incentives for cooperation. The Federation commented that shared title to range improvements would give permittees incentives to construct and maintain range improvements on Federal lands.

The Custer Rod and Gun Club commented that it opposes sharing title to range improvements and that the BLM should retain ownership, thereby guaranteeing flexibility in the grazing management of the public lands.

The Conservation Roundtable of Billings Montana opposes this provision because physical improvements are permanently attached to the public lands and, therefore, ownership must be held and owned by the public land management agency.

The American Farm Bureau Federation commented that sharing title to range improvement would provide co-ownership and permittees with the incentive to construct and maintain range improvements of federal lands. The federation commented that “permittees operating on the allotments are in a better position to maintain those improvements than BLM personnel with limited time on the ground and limited funding.”

The National Association of State Departments of Agriculture (NASDA) commented that allowing permittees or lessees to retain ownership of their portion of permitted range improvements provides incentives for permittees or lessees to invest funds in the improvement of Federal land. The Association commented that permittees and lessees should be compensated for, or allowed to retain, ownership of their portions of the investment.

Animal Alliance opposes sharing title to range improvements because it is concerned that the BLM would have to bear the high cost of buying out the permittee or lessee if the BLM must remove them from their allotment.

The New Mexico Farm and Livestock Bureau commented that ranching on public lands is the fourth largest contributor to that state’s economy, and reinstating ownership of range improvements would stimulate sustained growth and stability for New Mexico by recognizing and rewarding the custom and culture of livestock production.

The New Mexico Public Lands Council commented at the Albuquerque public scoping meeting that it supported sharing title to range improvements because the long-standing livestock industry is the fourth largest sector in New Mexico and, therefore, must receive incentives to continue the industry’s sustained growth and sustainability.

The Montana Farm Bureau commented at the Billings public scoping meeting that it supported sharing title to range improvements because it would provide incentive for range improvements.

A commenter at the Billings public scoping meeting said he supported shared title to range improvements because it will improve public land for everyone, not just the permittee.

A commenter at the Reno public scoping meeting said he supports shared title to range improvements because it provides incentive to operators. He commented that the pre-1995 system worked and ranchers “should get some of that back.”

The California Farm Bureau commented at the Reno public scoping meeting that shared title to range improvements gives operators incentive to put “sweat equity” and their own dollars into improvements on their range so they can show a balance sheet to a banker when they have to justify those expenditures.

The County Commissioners of Washington County, Utah, commented during the New Mexico public scoping meetings that range improvements need to be owned, at least in part, by a permittee. They said ranchers invest time and money in developing improvements that benefit wildlife and livestock and they support the provision to share title as it existed before rangeland reform.

The New Mexico Wool Growers Association commented at the New Mexico public scoping meetings that it supports proportionally sharing title to range improvements and if the operator invests 100 percent of the cost associated with an improvement, then the operator should receive title to that improvement.

A commenter at the New Mexico public scoping meetings said he was concerned about the number of changes the BLM

is proposing. He commented that he owns a ranch in the area but does not run livestock. The commenter said sharing title to improvements for the purpose of livestock grazing does nothing for other users of the land and he does not believe it is appropriate to reward permittees for making changes on public lands that are not advantageous to other land use purposes.

The consortium of environmental and conservation groups commented that a provision giving operators title to range improvements is unjustified and will interfere with the BLM’s ability to take necessary action to comply with FLPMA’s mandate of resource protection.

The Conservation Roundtable said ownership of physical improvements that are permanently attached to the public lands (pipelines, wells, reservoirs, and others) should be retained by the land management agency because such improvements are important to multiple uses of the land. It also commented that policies that propose other alternatives should assess how private ownership of the improvements affects the ability of the agency to transfer grazing privileges from one permittee to another, and the cost and effects to the public for the use of those lands.

The Northern California Resource Advisory Council said the “proposed rules” subordinate public property rights, benefit private interests, and violate the public trust doctrine.

A commenter from Montana opposed sharing title to range improvements on BLM lands because in Montana the practice limits the state’s ability to consider other applicants for grazing permits. The commenter said shared title is a burden to track and gives existing permit holders an advantage over anyone else who may apply for a grazing permit.

A commenter at the Reno public scoping meeting said that most of the BLM's proposed changes were unnecessary and had nothing to do with conservation. The commenter said that the BLM is proposing to give away private property rights and livestock facilities.

A commenter opposed sharing title to range improvements because he believes it is bad public policy to permit anyone to establish private property rights on the public's land. The commenter said if the BLM implements this change it would lead to takings litigation and result in the BLM having to impose additional management prescriptions to protect public lands.

A commenter said permittees should be expected to participate in development of worthwhile investments that will improve and health, wildlife, and livestock values and provide a return on their investment. The commenter stated that livestock operators shouldn't be expected to invest without reasonable assurances they will be able to recapture a fair return on their investment.

A commenter said that the BLM should hold full title to all improvements because the TGA grants permittees perpetual benefit of their permit and improvements as long as they manage the resources responsibly. The commenter stated that permittees have renters' rights and no more. The commenter said a permittee should own title to temporary range improvements as long as they are removable or portable.

2.5 Clarifying that BLM will follow state law with respect to the acquisition of water rights

Nevada State Senator Dean Rhodes supports "allowing states to return to the

favored, traditional three-way system, as it existed prior to the 1995 regulation changes." The Senator states that the plain language of the regulation and Nevada's water laws provide for a three-way system allowing the BLM to obtain stock water permits in the name of the Federal government.

Senator Rhodes commented that joint permits or permits that are issued only in the name of the range user are no longer possible in Nevada and the Federal regulation seems to require the BLM to acquire stock water rights exclusively in the name of the United States. He believes this approach precludes a range user from holding the water rights solely in the user's name, even if the user was fully responsible for the development of the water rights and putting the water to beneficial use.

The Senator also commented that as a result of the 1995 changes made to the grazing regulations the Nevada Legislature is considering introducing legislation urging the Secretary to amend this specific regulation and remove the requirement that stock water rights must be acquired in the name of the United States.

The Northwest California Resource Advisory Council recommended that the BLM consider that the government should hold water rights associated with livestock grazing allotments for the benefit of the livestock permittee and other beneficial uses .

The Humboldt River Basin Water Authority, representing five Nevada counties, commented that the BLM need not change its regulations because the regulations clearly state the requirements and parameters under which "...any such water right is to be acquired, perfected, maintained, and administered in the name of the United States."

The CBD commented that the BLM should not change the existing regulation because Section 4120.3-9 already allows

water rights that are acquired to be subject to state law where applicable. It commented that the regulations should be strengthened to require the BLM to assert and use reserved and other existing water rights, with priority given to wildlife and recovery of T&E species.

The Association of Rangeland Consultants commented that the BLM should clarify and emphasize that it intends to follow state law with respect to the acquisition of water rights.

The State of Arizona Game and Fish Department commented that it does not understand the need to change the present regulations and that the BLM should continue to file for water rights in a way that is compatible with multiple-use management, including fish and wildlife purposes.

The ONDA commented that the BLM should emphasize that water rights do not constitute a claim for compensation if a permit or lease is canceled to devote lands to another purpose. It commented that the BLM must make this provision consistent with Hage v. United States, 51 Fed.Cl. 570 by reaffirming that permits are only a license to use the land, not an irrevocable right of the permit holder.

The Montana Wildlife Federation opposes BLM's considered changes to acquiring water rights because the BLM should hold all water rights needed for appropriate uses and management of public lands.

The NCBA and PLC commented that the BLM should revise and amend Section 4120.3-9 Water rights to read as follows: "BLM will follow state water law to provide livestock water on Federal lands."

The Western Watersheds Project commented that the BLM should not change the present regulations except to require that any water rights acquired by the BLM on public lands in the course of administering grazing permits shall include specific water

right protection, including compliance with the Clean Water Act.

The Conservation Roundtable of Billings, Montana, commented that the BLM should prohibit the construction of any range improvement if it enables a permittee to meet state law requirements for acquiring a private water right on public land. It commented that the BLM should hold, under state law, all water rights needed for all appropriate uses and management of the public lands.

The National Association of State Departments of Agriculture (NASDA) commented that the use and appropriation of water rights by any entity, including the Federal government, must be in accordance with state law. The Association commented that any proposal, either administrative or legislative, must not create an expressed or implied reservation of water rights in the name of the United States and that the Secretaries of the Interior and Agriculture must follow state law regarding water ownership.

The Utah Farm Bureau Federation supports state control of water rights because it prevents encroachment by government agencies on private water rights and stock-watering rights issued to individual permittees when they construct water developments on private land. The Federation asked the BLM to amend the existing regulations to allow water rights for livestock grazing to be acquired in the name of the permittee, as was allowed before 1995.

A commenter at the New Mexico public scoping meetings said, "In New Mexico, BLM's attempt to acquire water rights will be opposed because in that state water is property and according NMS 72 Water Law—Property Rights, the Federal government is only permitted to have water as per their specific reservation related to the purpose of reservation."

The Oregon Cattlemen's Association commented at the Reno public scoping meeting that it is critical for the BLM to follow state water law and state water regulations in order to maintain continuity.

The Montana Farm Bureau commented at the Billings public scoping meeting that the BLM must clarify its intention regarding BLM following state law with respect to the acquisition of state water rights.

The County Commissioners of Washington County, Utah, commented during the New Mexico public scoping meeting that any water rights should be acquired through the process established before 1995 under state water law.

The consortium of environmental and conservation groups commented that the BLM was too vague in the ANPR and it doesn't know what types of modifications the BLM is considering. It said there is no need to change this regulation because if the BLM owns the water rights on the land it controls, then the BLM specifies how those rights are to be used. The consortium comments that if the BLM can justify changing the existing regulation, then the BLM must consider the following:

- Ensure changes will not limit the BLM's ability to manage the lands surrounding the water right even when it results in suspending or reducing grazing and the BLM devotes the land and water to other purposes.
- When states have statutes precluding the BLM from holding a state water right, the BLM must continue to assert a right to acquire, possess, and maintain water rights on its land for appropriate purposes.
- The EIS must contain a complete analysis of the possible environmental

consequences of any change to the existing rule.

A commenter stated that the BLM should adhere to the pre-1995 livestock water rights on public lands.

A commenter said the BLM must not concede all authority over water rights to states because states won't properly manage water resources. The commenter asserted that states would drain or degrade natural watersheds to support short-term livestock interests. This commenter also said he opposed provisions that "give away the Federal government's water rights" by conceding to state's rights. The commenter states that the BLM must retain the ability to assert Federal water rights, which may be more important for public purposes such as fish and wildlife habitat and other public uses.

2.6 Examining whether BLM should authorize temporarily locked gates on public lands in order to protect private land and improve livestock operations

General Comments: The majority of comments the BLM received, from both supporters and opponents of other proposed changes, expressed opposition to BLM's consideration to allow temporarily locked gates on public lands. The most widely expressed concern was that ranchers would indiscriminately prevent the public from gaining access to public lands. Several commenters said this was already occurring on public lands in some western states. Some supporters of BLM's proposed grazing rule changes stated that they opposed the locked

gates provision because they feared livestock operators would be blamed for making the BLM close off access to public lands. The BLM can authorize locked gates in specific instances. This provision would not change the present regulation, and therefore, the BLM has decided to remove this provision from consideration in the proposed rule.

The Northwest California Resource Advisory Council (RAC) commented that it had concerns about “limiting public access to public lands” and it unanimously agreed that the BLM already has the authority to order emergency public land or road closures where necessary.

Several commenters from Idaho stated that unauthorized locked gates on BLM land is a long-standing, significant problem in that state and they believe the provision will aggravate the situation because more access to more public lands will be prohibited.

The Columbia River Basin Inter-Tribal Fish Commission commented that it opposed locked gates on public lands because in it would interfere with access for the public and could restrict Tribal access to reserved resources on public lands. If there are problems with gates being left open, the BLM should investigate other avenues for addressing the problem, such as posting signs and imposing fines.

The Wyoming Game and Fish Department opposes authorizing locked gates on public lands because the BLM must consider the public’s access when it is associated with fish and wildlife recreational pursuits—often a significant part of local economies and lifestyles. The Department also commented that access to public lands is necessary for adequately managing big game populations.

The Montana Wildlife Federation (MWF) opposes BLM’s consideration to allow temporarily locked gates on public lands. The Federation stated this would be

inconsistent with the BLM’s own intentions to consider the effects. The Federation also stated that agriculture is presently second in economic importance to recreational pursuits. Loss of access for hunting and fishing recreationalists would negatively affect Montana’s economy. The Federation commented that present grazing fees are so low as to be considered a subsidy given to a few. The MWF asked the BLM to consider implementing competitive bidding for grazing leases to bring fees closer to fair market value.

The NCBA and PLC do not support the provision to authorize locked gates on public lands. They believe the issue is more appropriately addressed in other regulations guiding the BLM and state and local governments regarding roads on public lands.

The Forest Guardians, Animal Protection Institute, and Sinapu jointly submitted comments opposing locking gates on public lands because permittees merely have a revocable license giving them a privilege to graze public lands. The groups believe that permittees have no right to deny the public access to public lands.

Idaho State Parks and Recreation opposed allowing locked gates on public lands and commented that private property owners already have the right to lock gates on their own lands and therefore the ability to lock gates on public lands is a bad idea and should not be considered in the proposed regulations. The department suggested, “Although some public land grazers complain that recreationalists leave gates open allowing animals to move into unauthorized areas, open gates are problems with many solutions.” They commented that the BLM could improve efforts to educate the public on the importance of closing gates. Gates that are easy to close tend to be used more responsibly.

The Idaho Department of Fish and Game (IDFG) said the BLM should abandon this consideration because the department received numerous complaints and concerns from the public who adamantly oppose this provision. In 2002, IDFG conducted a survey of 3,000 individuals who identified access to public lands as one of the top five issues they thought IDFG should address.

The State of Arizona Game and Fish Department opposes the provision to authorize locked gates on public lands and states the public should not be denied access to public lands unless all other methods to resolve this have been exhausted.

The ONDA commented that authorizing locked gates on public lands would be inappropriate and runs counter to the entire concept of public lands. It cited the present regulations, in which they said the Secretary made it illegal for any person to obstruct free transit through or over public lands by force, threat, intimidation, signs, barriers, or locked gates. The group states they see no compelling reason why private property rights or livestock operations should possibly override the public interest in having access to public lands.

The Sierra Club, Rocky Mountain Chapter, is concerned that locked gates will allow bad permit managers to shield the consequences of their practices from public view. It said access questions should be decided on the basis of a public process in which the most important parameters to be considered are critical wildlife habitat, watershed protection, and protecting recreational use for the long term.

An individual opposed the provision to propose locked gates on public lands because it would aid permittees and not improve rangelands or public values.

The Nature Conservancy commented that the BLM already has the authority to close areas temporarily to public use to

protect public health and resources. It stated, "Beyond these exceptions, we believe that all interests should have equal access to public lands."

An environmental group commented that the principles of the Four C's and multiple use require the public to have access to all allotments to gage the condition and management of the public lands.

Great Old Broads for Wilderness commented that giving ranchers control over access to public lands and ownership of structures on public lands complicates range management and may violate a number of laws.

The consortium of environmental and conservation groups commented that it opposes locked gates on public lands for the following reasons:

1. The prohibition against locking gates on public lands and blocking access to public lands is a statutory requirement with which the BLM cannot interfere. The BLM's authorization of such an action erodes the agency's mandate under FLPMA to manage the public lands for "Multiple use and sustained yield."
2. The EIS must clearly define what constitutes "temporary" and the environmental and recreational consequences resulting from such a closure.
3. If the BLM allows a permittee to block access to public lands, it must provide a mechanism to allow some publics, namely state or county employees and the BLM, to have access to those lands to monitor activities occurring on them.

Water Access Association, Inc., of Montana opposed allowing ranchers to lock

gates and said that the public wants more access to public lands, not less.

The Public Lands Foundation urged the BLM to consider canceling a grazing permit if the permittee prevents the general public, or company holding a right-of-way permit to cross public lands, from obtaining lawful access to the public lands without written permission from the Field Office Manager.

The Conservation Roundtable of Billings, Montana, commented that the EIS should assess the effect on the public's use of the land if permittees abuse their privilege to close public lands. The group recommends that the BLM cancel a grazer's permit if the grazer impedes the public's lawful access to public lands.

The Sierra Club commented that it opposes any provision that would impede or prevent the public's access to public lands.

The Taxpayers for Common Sense commented that it opposes any alterations that would limit public access to Federal grazing lands or reduce the opportunity for public input into the oversight and management of these lands.

The County Commissioners of Garfield County, Utah, commented at the New Mexico public scoping meeting that they opposed locking gates and preventing access to public lands at any time. The Commissioners said they would consider supporting the provision if the permittee needed to lock a gate to take some kind of action beneficial to ranching action.

The New Mexico Wool Growers Association commented at the New Mexico public scoping meeting that it supports allowing temporary locked gates at certain times, particularly during lambing and calving or to enable the operator to protect his or her private property.

A commenter at the New Mexico public scoping meetings said he is concerned about

the BLM's proposal to restrict public access to public lands.

A commenter at the Reno public scoping meeting said his primary concern was the BLM's consideration to allow locked gates on public lands.

The Oregon Cattlemen's Association commented at the Reno public scoping meeting that it believes allowing the BLM to lock gates on public lands sends the wrong message to the public and creates ill will. It said it is not appropriate for grazers to try to lock out a segment of the public.

A commenter cited "Idaho Code" (I.C. 40-203(1)) and said this proposed provision might be contrary to that law as it pertains to public rights-of-way that include those that furnish public access to state and Federal public lands and waters.

A commenter at the Billings public scoping meeting said that he supports locking gates to protect property on public lands because livestock are often killed or stolen during hunting season.

The Northern California Resource Advisory Council said the "proposed rules" would diminish public access and public enjoyment of BLM lands.

A commenter opposed locked gates placed on public lands by private landowners. By lessening access, the BLM will contribute to more destruction of fragile dry public lands in the West.

A commenter said that when ranchers acquire grazing rights on public lands they know the issues and constraints that go along with grazing on public lands. The commenter said ranchers know that the public has access to the land and this may be problematic because the landowner must request that the BLM or law enforcement deal with recreational user violations, just as recreational users can request that BLM law enforcement deal with overgrazing or other permittee violations.

A commenter said public access to public lands will not harm grazing operations because ranchers are only there as the result of BLM's balanced approach to public land use.

A commenter opposed limiting public access to public lands because, although the BLM may desire to protect private lands and livestock operations, the public pays taxes to own those lands and keep those lands in good condition. The commenter said locked gates equals taking away public lands and, even when temporary, gives added support to private landowners and agribusiness.

A commenter opposed allowing locked gates on public lands and says ranching concerns routinely post "No Trespassing" signs on public lands and deny access to other public users.

A commenter opposed locked gates on public lands because it would prohibit public access and set aside public resources for exclusive use.

A commenter said public access to public lands in Idaho is already hampered and stopped by illegal locks placed on gates.

A commenter said the grazing industry pays a pittance to graze livestock on public lands and that does not give it a right to damage watersheds and destroy the natural biodiversity, nor does it entitle the grazing industry to exclude other users from public lands.

A commenter opposed the provision and says he has been verbally abused and threatened by a private landowner while on public lands. The commenter said many ranchers work to improve the land; however, many treat their inherited leases as if they were private property.

A commenter said the BLM intends to give ranchers control of the public's right to access public lands. The commenter said that property owners were responsible for protecting their own lands but that should not

include blocking access to public lands. The commenter stated that private property owners are already illegally locking the public out of public lands in Idaho, where he resides.

A commenter supported temporary locked gates because "locking up specific areas for wintering big game, nesting sage-grouse, and other critical values are best defined by the local residents and should be given consideration. Illegal access to private land through BLM land is a big problem in some areas and BLM should retain the right, with local agreement to block access, only for a short time where this is an issue."

A commenter opposed allowing locked gates on public lands and commented that by allowing ranchers to block access to public lands the BLM will be reverting to the times when the dominant use of the public lands was livestock grazing, while recreational, environmental, and ecological concerns were ignored.

A commenter said any decision to limit access to public lands should be avoided except for specific reasons that have undergone public scrutiny and public debate. He said locking the public off of their public lands only benefits private livestock operators.

A commenter opposed allowing livestock owners to lock gates to public lands because "BLM lands belong to the public and BLM's Organic Act guarantees the public's access to these lands the same as the ranchers who are renting space."

2.7 Clarifying which nonpermit-related violations BLM may take into account in penalizing a permittee

The Sierra Club commented that permit violations need to have consequences and permittees must follow all applicable environmental laws, including the Endangered Species Act and the Clean Water Act. It also commented that failure to comply with the laws should be grounds for terminating a grazing permit or lease.

The Nature Conservancy commented that the BLM must retain its present authority to cancel, suspend, or deny renewals of permits when permittees violate laws or regulations when the violation is related to grazing use.

A commenter said only permit violations that have been upheld by the OHA, IBLA, or a Federal court as a final agency action should be used in determining any future penalties against grazing permittees.

An environmental and conservation group commented that the BLM should not change the 1995 provisions that expanded the list of prohibited acts. It said these include violations of Federal environmental, natural, and cultural resource laws.

The EPA commented that the BLM should retain the ability to revoke a permit in situations where nonpermit violations, such as Clean Water Act violations, have resulted in significant adverse environmental effects.

The Forest Guardians, Animal Protection Institute, and Sinapu commented that failure to comply with applicable Federal environmental laws such as the ESA should be grounds for terminating a grazing permit or at least significantly reducing permitted use.

The Sierra Club, Rocky Mountain Chapter, commented that it would support

the BLM's authority to deny permits to those who abuse environmental and other laws, whether on public land or otherwise, because other government entities often place similar conditions on contractors and the BLM should continue to do the same.

The NASDA commented that it supports the provision to remove and reduce the number of violations that could result in a permittee losing their permit because they believe the 1995 grazing regulations created a "double jeopardy issue."

The Utah Farm Bureau Federation commented that the BLM should not have authority to take action against a permittee for actions that do not violate the terms or conditions of his or her permit. The group also commented that any such violation should be addressed within the confines of the particular law or regulation that allegedly was violated and not by taking an action against a grazing permit. The Federation also commented that permittees should not be at risk of losing their permit for violation of any law or regulation outside of the specific scope of the permit.

The Oregon Cattlemen's Association commented at the Reno scoping meeting that the BLM should not be allowed to take action against permittees for actions that do not violate the terms and conditions of the permit itself.

The Montana Farm Bureau at the Billings public scoping meeting commented that his group opposes BLM's taking action against a permittee for actions that do not violate the terms and conditions of the permit.

The consortium of environmental and conservation groups commented that they strongly oppose rolling back these provisions because the present rule provides incentives for permittees to be good stewards of the public lands as well as of their livestock.

A commenter said removing this provision would avoid “double jeopardy” issues.

A commenter supported the provision, stating that only violations directly related to the grazing permit itself should be a consideration for cancellation of a permit.

A commenter said the BLM should strengthen the provision for determining and pursuing permit and nonpermit violations that violate environmental laws that were passed to protect public resources on public lands.

The Western Watersheds Project commented that the only change the BLM should make to the present regulation is to amend it by deleting 43 CFR. §4140.1(a)(2).

2.8 Considering ways to streamline the grazing decision appeal process

The ONDA commented that the present grazing decision appeal process takes an inordinate amount of time, is largely ineffective, and does not actually stop an action from going forward. The ONDA commented that they support streamlining timelines and procedures. They are concerned that streamlining the process will eliminate the public’s ability to participate in appealing grazing decisions.

The Grand Canyon Trust commented that although there may be legitimate reasons to streamline the grazing appeals process, no changes should be made that diminish the public’s ability to participate in, or challenge, the decision-making process.

The CBD commented that BLM must revise the regulations to provide broader public access to administrative remedies for grazing decisions. It commented that the BLM should also provide a simpler appeals process giving State Directors authority

to suspend ongoing grazing or stay the proposed action if there is evidence of harm to resources by ongoing or planned grazing in the project record.

The Sierra Club opposed streamlining the permitting process because it doesn’t think the BLM ever denies a permittee the privilege to graze. It commented that the permitting process should remain open to public scrutiny and that the BLM should seek additional ways to involve the public in making determinations for public lands.

The Columbia River Basin Inter-Tribal Fish Commission commented that although the Tribal consultation and trust responsibility obligations are separate from the general public’s input process, Tribal concerns are often relayed through that same public input process. The Tribes are concerned that this provision could limit or eliminate the public’s, and their own, ability to participate in the management of public lands.

The Sierra Club’s Rocky Mountain Chapter commented that the BLM is making worse an already cumbersome appeals process that neither remedies nor alleviates environmentally damaging agency grazing decisions. It asked the BLM to limit what it considers a nuisance of appeals; saying it would be better for the agency to improve opportunities for public participation in the decision-making process.

The Western Watersheds Project commented that the BLM should allow broader public involvement and make it easier for the public to obtain an administrative remedy for unsound grazing decisions. It commented that the rules should provide a simpler appeals process to the appropriate BLM State Director who should have express authority to suspend grazing use or stay a proposed action if the administrative record shows that ongoing grazing has harmed or is harming the resources, or if such

harm is likely to occur if the proposed action goes forward.

The Forest Guardians, Animal Protection Institute, and Sinapu jointly submitted comments that generally supported the BLM's efforts to ease a bureaucratic process. But they are concerned that this could limit the public's ability to participate in grazing administration and policy decisions. It also commented that the BLM should strive to increase the public access to administrative remedies such as suspension of ongoing grazing if evidence exists of harm to natural resources from grazing.

The Sky Island Alliance recommended that the BLM allow broader public access to administrative remedies for grazing decisions and asked the BLM to consider providing a simpler appeals process for State Directors with authority to suspend ongoing grazing or stay the proposed action if evidence of harm exists.

A commenter at the New Mexico public scoping meetings said he is concerned about BLM's proposal to streamline the appeals process because he thinks the BLM will continue to restrict engagement of broad public interest in issues regarding public lands. He commented that it is inappropriate to reduce the number of people who are allowed to appeal rulings.

The Matador Cattle Company, Dillon, Montana, supports the provision to streamline the appeals process and recommends that the BLM require appellants to post a bond when they appeal a decision.

The consortium of environmental and conservation groups commented that the BLM is attempting to restrict the right of their organization, their members, and other members of the public from participating in appeals affecting their use, enjoyment, or organizational interests in the public lands. It commented that such restrictions

are inconsistent with FLPMA and are inconsistent with the Secretary's "Four C's."

A commenter said they opposed streamlining the grazing appeal process because it took years and much effort to develop a process that is highly effective, efficient, and enjoys a high degree of accuracy. The commenter also said that streamlining the grazing appeals process would give the petitioner a more advantageous position and give the BLM less management ability to work for common ground in grazing decision appeals.

A commenter supported the provision and the importance of the Secretary's "Four C's." The commenter said the BLM should look to local collaborative groups to provide the main voice for directing management goals on BLM lands within their communities.

A commenter said this provision would remove the general public's ability to participate in decisions on public lands. The commenter also said the provision would hamper the public's ability to participate and comment on BLM grazing decisions for public lands.

A commenter said the proposed revision could make the grazing appeals process a "private club" and that the appeals process and grazing decisions are "the public's business."

2.9 Extending the time that BLM may approve nonuse of forage from 3 to 5 years for resource improvement, business, or personal needs

In general, most commenters supported allowing the BLM the flexibility to authorize temporary nonuse for longer than 3 years. Many commenters, however, misunderstood

that the BLM is seeking to authorize temporary nonuse when the permittee or lessee requests it for personal or business reasons or for resource protection or rehabilitation, not for BLM-initiated actions.

The Sierra Club commented that nonuse of grazing permits for recovery purposes should be determined by the accomplishment of range health or conservation goals.

It recommended that the BLM consider recovery periods of 5 to 20 years when necessary; when the land has recovered, the BLM should reduce the number of AUMs to keep those lands in a healthy condition.

The CBD commented that the BLM must have the authority to grant nonuse for the entire 10 years of a permit or longer or until resource conditions have fully recovered, without needing to make land use plan amendments.

The consortium of environmental and conservation groups commented that Section 4180 Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration should be amended because the BLM has had 8 years since Rangeland Reform but has not assessed thousands of allotments to determine if standards are being met or guidelines followed. The BLM is adding another layer of delay by failing to require prompt corrective action. It commented that, at most, a 6-month grazing period might be appropriate in certain limited situations.

The Forest Guardians, Animal Protection Institute, and Sinapu supported extending nonuse for conservation purposes and commented that the timeframe should be extended beyond 5 years if necessary and should be tied to reestablishing rangeland health, rather than a standard number of years.

The Association of Rangeland Consultants commented that it approved extending the time period that the BLM may

approve nonuse of forage from 3 to 5 years in the interest of conservation and good land stewardship.

The ONDA commented that a period of nonuse for recovery of damaged rangelands should be tied to actual recovery rather than across-the-board number of years; that is, the period of nonuse should be determined by accomplishment of range health or conservation goals and should be tied directly to standards relevant to ecosystem health and recovery. It also stated that if an area has been returned to health, AUMS should be reduced so those public lands will remain healthy.

The State of Arizona Game and Fish Department commented that the BLM's performance reviews must clearly state that failures to meet standards and guidelines for rangeland health or failing to achieve management objectives would result in the following BLM actions:

- A permit might not being renewed,
- Authorized use may be decreased, or
- The allotment may be reclassified.

The Wyoming Game and Fish Department supported expanding nonuse to 5 years to allow regeneration of native rangeland and habitat conditions because 5 years would allow the BLM more flexibility to achieve multiple-use benefits, and would be useful when used in connection with Reserve Common Allotments.

The State of Arizona Game and Fish Department supported the BLM's provision to extend the current period for nonuse of forage for resource improvement because these actions take longer in the arid Southwest than other parts of the country. The Department also commented that the BLM should consider approving

nonuse of forage “until stated objectives are met” which, they said, may be more appropriate to a specific time period in some parts of the country.

The Idaho Department of Fish and Game supported extending the nonuse time period from 3 to 5 years and said they would support a longer period for nonuse—as long as 10 years when necessary.

The Owyhee Cattlemen’s Association asked the BLM to clarify what effects this provision may have on state water rights where beneficial use must be made.

The Nature Conservancy (TNC) commented that the provision is good for resource improvement purposes because of the present drought conditions throughout the West. They believe the present 3 years is insufficient to allow for range improvement following prescribed fire, wildfire, drought, or other range improvement treatment.

The Sierra Club, Rocky Mountain Chapter, recommended that the BLM allow a longer resting period when it is necessary and commented that recovery times should be based on the landscape in question.

The Utah Farm Bureau Federation commented that the provision is necessary because Utah is now entering its 5th year of drought and extending the period of nonuse from 3 to 5 years will provide greater flexibility for producers to protect and enhance forage resources.

The Matador Cattle Company, Dillon, Montana, commented that it generally supports the provision but stated that after 3 years the ground “should be disturbed to maintain health and vigor and desirable plants.”

The New Mexico Farm and Livestock Bureau commented that it supported the BLM’s provision to extend nonuse from 3 to 5 years because it provides greater flexibility to producers and to the forage resource. The bureau commented that this would

provide the BLM and the permittee or lessee greater flexibility to address situations that required the nonuse in the first place. The bureau also commented that it does not want this provision to become a substitute for “conservation nonuse.”

The New Mexico Farm and Livestock Bureau stated concerns about potential conflicts between New Mexico State water law and the BLM’s provision. The bureau said that, according to New Mexico water rights, nonuse of water for more than 3 years jeopardizes the holder’s water rights. The bureau also stated that it would oppose the 5-year extension unless this issue is addressed.

The Western Watersheds Project commented that the BLM should be authorized to grant nonuse for 10 years or until resource conditions have fully recovered. It said that the BLM should not have to develop an amendment to the applicable resource management plan because FLPMA, or RMPs, and the rangeland health regulations do not allow grazing that causes or perpetuates unhealthy rangeland conditions. It also commented that the BLM’s Planning Regulations should be revised to allow allotment cancellations and retirements by the BLM.

The Montana Farm Bureau at the Billings public scoping meeting, said it supported extending the time period for nonuse from 3 to 5 years but the proposed rule should be drafted so that this provision will only apply to people engaged in the livestock business as required by the TGA.

An individual at the Reno public scoping meeting commented that temporary nonuse from 3 to 5 years is acceptable, but cautioned that this was not enough time to significantly improve range health in the arid West.

The County Commissioners, Garfield County, Utah, commented at the New Mexico public scoping meetings that the BLM should consider making this provision applicable

only to those who are engaged in the livestock business as mandated by the TGA.

Southwest Resource Consultants, LLC, commented at the New Mexico public scoping meetings that extension of the 5-year period should be considered on a case-by-case basis because recovery often takes longer than 3 years.

The consortium of environmental and conservation groups commented that rangelands cannot be restored in 3 years and will not be solved by extending the time limit to 5 years because the real problem on BLM lands is that the permitted use exceeds actual use and grazing capacity. It commented that long-term voluntary nonuse is used improperly and that the BLM should reduce or suspend the permitted use and bring permittees and lessees into conformance with the BLM's legal obligations.

A commenter supported the extension of temporary nonuse to 5 years and said the BLM should not be limited to 5 years. She said BLM should consider approving nonuse for as long as necessary to rest and rehabilitate the resource.

A commenter said extending permitted nonuse from 3 to 5 years because 2 additional years of nonuse provides better habitat for wildlife and could lead to more appreciable utilization by other groups, especially hunters, presently the largest user group on public lands.

3.0 Considering amendments related to changes in permitted use

3.1 Creating provisions reemphasizing consideration of social, economic, and cultural effects, in addition to the ecological effects, of Federal actions to ensure compliance with NEPA

The Sierra Club, Rocky Mountain Chapter, commented that the BLM and other Federal agencies often neglect public lands by placing too much emphasis on keeping local economies alive just because they exist. It commented that the BLM's social analysis must clearly state the costs to the public for continuing nonsustainable grazing operations and the costs and benefits of continuing grazing on public lands.

The Grand Canyon Trust commented that the ecological impacts of grazing are well documented and that the BLM should give these impacts its greatest attention. It commented that the NEPA exists to protect the environment and the Act is intended to ensure that environmental information is available to public officials and citizens before decisions are made and actions are taken in accordance with the best available scientific information. It also suggested that if the BLM wishes to place greater weight on the consideration of social and economic factors in the permitting process, the BLM

should require rigorous economic analysis including disclosing the true economic costs of public lands grazing to American taxpayers.

The Forest Guardians, Animal Protection Institute, and Sinapu commented that they opposed the BLM's provision to consider the social, economic, and cultural effects of Federal actions along with ecological considerations. The groups stated that NEPA does not justify protecting social or economic customs of ranchers at the expense of environmental degradation of public lands. The groups commented that although NEPA provides for consideration of historic, cultural, economic, social, and health effects of proposed actions, its primary goal is to require agencies to consider environmental consequences of their decisions to protect the environment. The groups asserted that any other application violates the intent of Congress in its creation of NEPA.

The CBD opposed any change to the present regulations regarding NEPA analysis.

The State of Arizona Game and Fish Department commented that social, economic, and cultural elements should be considered in NEPA analysis but the BLM should not reduce the evaluation or resolution of ecological impacts.

The Association of Rangeland Consultants supported any provisions that reemphasize effects on local social, economic, and cultural interests, while considering the ecological effects of Federal actions. It commented that this best serves the interests of conservation and good land stewardship.

The County Commissioners of Washington County, Utah, commented during the New Mexico public scoping meeting that NEPA requires that effects on social, economic, and cultural interests be considered in an EA or EIS. Their representative commented that livestock

forms a vital basis for his county's rich cultural heritage and that this heritage should be considered in NEPA analysis and preserved.

The Utah Farm Bureau Federation commented that NEPA requires the BLM to consider economic and social effects in environmental impact statements and environmental analysis. The Federation stated that livestock grazing forms a vital basis for the rich cultural heritage of the West and asked the BLM to consider this heritage in any NEPA analysis and to preserve it.

The Humboldt River Basin Water Authority, representing five Nevada counties, commented that the BLM should consider the fiscal effects on local governments before implementing any proposed grazing administration regulations or any alternative regulations.

The Nevada State Grazing Board, District N-3, commented that environmental organizations routinely use the ESA litigation to remove livestock from public lands, and the BLM should consider a provision requiring cooperative planning among affected interests at the allotment level, including the permittee, and the U.S. Fish and Wildlife Service if special status species are involved.

ONDA commented that NEPA is the basic national charter for protecting the environment and the Act's first and foremost purpose is to ensure fully informed decision making and to provide for public participation in environmental analysis and decision making. It also commented that NEPA neither requires nor justifies perpetuating environmentally damaging land use practices to protect the social and economic customs of a minority of subsidized public land users.

The Wyoming Game and Fish Department supported the BLM's provision to consider the social, economic, and

cultural effects from Federal actions especially if those effects might influence decisions associated with fish and wildlife recreation. The department commented that it is particularly concerned about the effects these rule changes might have on local economies and on recreational hunting.

The Sierra Club commented that commercial livestock grazing causes deterioration of the public lands, and is neither ecologically nor economically viable. It asked the BLM to consider the following issues when addressing effects of grazing on public lands:

1. Focus on the ecological effects of grazing.
2. Vigorously follow NEPA and emphasize sound biological and ecological science.
3. Consider social and economic factors only when biological and ecological effects are neutral.
4. Look at the long-term effects of grazing.

The Nature Conservancy commented that considerations of social, economic, cultural, and ecological effects are required in all documents prepared under NEPA, and stated that the BLM does not need to duplicate those requirements in the grazing regulations.

An environmental group commented that it opposed the BLM making any changes to the existing regulations. It opposed allowing social, cultural, and economic review to take precedence over environmental review because the NEPA process can assist managers in making decisions on the basis of understanding environmental consequences of decisions. It also commented that the BLM should take appropriate actions to protect, restore, and enhance the environment.

NASDA commented that as long as a “term grazing permit” is consistent with a land use plan that was developed within the provisions of NEPA, the permit should not be considered a major Federal undertaking requiring additional study or assessment under NEPA.

The Animal Alliance commented that it opposed any proposed changes that focus on the effects of the BLM’s decisions on the social, economic, and cultural aspects of NEPA because such a change would place a rancher’s social and economic concerns above environmental protection.

The New Mexico Farm and Livestock Bureau commented at the New Mexico public scoping meetings that social, economic, and cultural considerations must be conducted at the local community level. It said the BLM presently considers these issues only on a state and national level and not within the actual communities that are affected.

The Western Watersheds Project commented that no changes should be made to this provision because NEPA concerns for the human environment are clear, as are the BLM’s own implementing rules and those of the CEQ. It said that reemphasizing these human impacts subverts NEPA’s concern for ecological effects. It stated that giving such effects more emphasis in BLM’s Planning Regulations increases the likelihood that the BLM will continue to place the economic and purported way of life interests of grazing permittees above public interests—specifically multiple-use resources and values for which the public lands are to be managed.

Southwest Resource Consultants, LLC, commented at the New Mexico public scoping meeting that the BLM must make social, economic, and cultural observations and considerations on the local level, in small communities.

The consortium of environmental and conservation groups commented that the BLM should not include this provision in the proposed rule because the BLM already gives precedence to the social, economic, and cultural interests of ranchers over environmental considerations. The groups also commented that “seeking to protect the custom and culture of the western cowboy or to insulate the public land livestock industry from economic impacts is inconsistent with the resource protection mandates of FLPMA and NEPA.”

A commenter said that the BLM’s NEPA analysis of potential impacts to social, economic, and cultural elements must include the financial losses incurred by the below-market payments that operators make to the Treasury during the life of grazing leases. The commenter stated that the BLM is giving subsidies to ranchers as a result of below-market fees and these should be considered as an offset to potential or real social, economic, and cultural effects on grazing permittees.

A commenter supported the BLM’s considerations because public land is best managed with local input and goals, and the effects on local social, economic, and cultural interests should be major considerations for NEPA compliance.

A commenter opposed the provision because the BLM is ignoring the environmental considerations of NEPA in favor of the social, economic, and cultural needs of a small special interest group. She said NEPA reviews should focus on environmental effects because the integrity of environmental review must be retained and other values—specifically economic, social, and cultural, should be considered at the decision-making stage.

3.2 Requiring a permittee or lessee to apply to renew a permit or lease

One commenter stated that when the permittee follows “the plan,” and monitoring verifies that fact, a permit should be renewed automatically.

A commenter said that BLM Field Managers could show bias when considering applications for permit renewals and that requiring an operator to renew a permit can cause undue hardship and create excessive paper work for BLM staff. The commenter stated that the BLM should consider renewing permits based on an operator’s past performance.

A commenter said that when the BLM determines a permittee must reapply for a grazing permit or lease, it should recognize the requirements at 5 U.S.C. Sec. 558(c) and the BLM must inform the permittee of the process for reapplication so the permittee can take full and timely advantage of the requirements detailed in the Administrative Procedure Act.

The CBD commented that the BLM should not allow automatic renewals of leases or permits because applications should be issued through competitive bidding to qualified stockowners.

The Western Watersheds Project commented that the BLM should never allow increased livestock use of public lands and, therefore, 43 CFR §4110.3-1, should be deleted.

3.3 Determining what criteria BLM will consider before approving increases in permitted use

The State of Arizona Game and Fish Department commented that the BLM should consider changing its criteria for approving increases in permitted use. The department asked that such approvals be based on the best available scientific monitoring data and any increases should be approved only when forage and other habitat objectives have been met. The department also commented that the present rule seems to allow only increases, and it wants the BLM to also consider decreases in permitted use when necessary.

A commenter recommended that permittees be allowed to increase production on their allotment by 25 percent or more if they exercise “wise management.” They also commented that such increases could be allowed in normal precipitation years.

The CBD commented that the BLM should delete §4110.3-1 because it should never approve increased grazing use. It said that scientific studies and agency reports show that the arid West has been chronically overgrazed by livestock and is no longer suited for grazing use.

3.4 Considering whether to amend the provision stating when BLM will implement action that changes grazing management

The ONDA commented that the present grazing Standards and Guidelines must be retained because it actually demonstrates

whether permittees and lessees are meeting, not meeting, or significantly progressing toward meeting, land health standards.

The Association of Rangeland Consultants said the BLM must clarify how to implement actions to change grazing management if it determines that land health standards are not being met. The Association commented that the present provision limits the amount of time the BLM has to develop thoughtful solutions incorporating improved timing and sequence of grazing treatments.

The Public Lands Foundation commented that ownership of all permanent improvements placed on public lands must be held by the land managing agency. It commented that a “recent Supreme Court ruling” upholds BLM’s authority to take title improvements even when they are made cooperatively with a permittee.

The Northwest California Resource Advisory Council (RAC) asked if the BLM intends to change the land health standards and livestock grazing guidelines developed by the RAC. This RAC wanted the EIS to clearly identify any portion of the land health standards and livestock grazing guidelines that would be affected by any regulation change.

The State of Arizona Game and Fish Department commented that any changes to this regulation must emphasize the need to complete evaluations and determinations to meet multiple-use objectives and rangeland health standards as identified in the present regulations.

The Idaho Department of Fish and Game commented that in some areas of Idaho the land is not recovering sufficiently and the slow pace of improvements in rangeland health and fish and wildlife habitat could contribute to listing more species under the ESA.

The EPA commented that it supported the BLM’s authority to amend permits whenever

the BLM determines the permittee is not meeting or progressing toward meeting land health.

The Nature Conservancy commented that this provision would affect the BLM's attempts to restore and rehabilitate rangelands. It said it supported granting a reasonable time for permittees to make adjustments to their allotment management, but it stated that livestock operators must still meet rangeland health standards.

The Forest Guardians, Animal Protection Institute, and Sinapu commented that they opposed this change and said that the BLM must establish timeframes to ensure that assessments are actually completed in conjunction with NEPA analysis at the time of permit renewals. The groups also commented that permits must not be renewed if standards are being continually violated.

The Nevada Department of Agriculture commented that 1 year is adequate time to achieve range improvements or change livestock distribution and show improvements. The department, however, said it doubts that the BLM can respond to new rangeland improvements within a year and get through all necessary review processes, analysis, and agricultural clearances.

The Western Watersheds Project commented that if the BLM determined that a permittee has misrepresented compliance within the terms and conditions of his or her permit or lease, the BLM should institute an automatic 25 percent reduction in season of use and numbers of livestock by the following season of use.

4.0 Considering adding new provisions to the regulations

4.1 Establishing and administering a new concept called Reserve Common Allotments

General Comments: Second to the “locked gates” provision, this issue received the most attention and comments. Opponents expressed concern that Reserve Common Allotment (RCAs) would encourage and reward poor range stewardship by allowing operators to beat down the lands in their lease or allotment and then simply move to another area of public land and overgraze that one too. Many livestock operators and industry representatives commented that they were concerned that ranchers might be removed from their allotments to create an RCA, especially if they have worked hard to keep their allotments in good condition. Several stated that they tentatively support the concept of RCAs, but they expected the BLM to clearly explain how RCAs will be created and managed in the proposed rule. Some commenters stated that they had extensive knowledge about the availability of forage within their respective districts and that they were unaware of any area, not presently being grazed, where there was enough forage to create and sustain an RCA.

The Columbia River Basin Inter-Tribal Fish Commission commented that RCAs could provide incentives for permittees to

rest their allotments, but those RCAs must be held to a higher ecological standard than other grazing allotments. The Tribes commented that healthy range standards should be exceeded, necessary improvements made, and stocking levels decreased on RCAs. The Tribes cited examples in the Columbia Interior Basin, where PACFISH and INFISH plans require higher standards over much of the public land.

Sportsmen for Fish and Wildlife commented that the BLM should place allotments and forage in reserve as Reserve Common Allotments, or consider voluntary allotment restructuring to increase the numbers of wildlife on BLM lands.

The CBD believes RCAs are unnecessary because the BLM already has authority to move ranchers to any allotments that are in personal preference nonuse. It also commented that the existing regulations already provide “alarmingly” broad latitude for all sorts of grazing use through temporary permits, ephemeral use, crossing permits, special permits under 4130, and subleasing.

The Grand Canyon Trust commented that the BLM should not adopt rules that assume there are ungrazed allotments available for use as RCAs and that do not provide a mechanism for creating reserve allotments. Mr. Hedden also commented that allotments that are presently managed for uses other than for livestock grazing—for example, environmental restoration or recreation—should not be used as RCAs.

The New Mexico Farm and Livestock Bureau expressed the following concerns about RCAs:

- RCAs could result in reduced livestock numbers resulting in loss to the state’s economic base.
- The BLM must clarify how RCAs will be used to restore rangeland to optimum

health, including how they are used in response to emergencies and natural disasters such as fire and drought.

- New Mexico State water law prohibits extended periods of nonuse without forfeiture of water rights.
- Who holds the water rights on RCAs?
- Will the BLM force permittees off their allotments to create RCAs?

A commenter supported the concept of RCAs but is concerned about abuse by “anti-livestock grazing” BLM employees. The commenter said the BLM’s unstated goal is to reducing livestock on public lands, and voluntary programs such as RCAs must consider maintenance of a viable ranch operation for the permittee.

The Wyoming Game and Fish Department commented that RCAs could allow flexibility in distributing livestock, support needed range management projects, and provide adequate posttreatment rest from grazing. The department commented that broad-scale implementation of reserve common allotments is a critical and necessary element for creating a successful grazing management program.

A spokesperson from the Western Watersheds Project opposes RCAs because he states no lands that are presently suitable for grazing are ungrazed, although the vast majority of lands are unsuited to that use. He commented that implementing this proposal would depend on the following:

1. Increasing grazing on lands already grazed and likely degraded by that use.
2. Using pastures being rested from grazing that is contrary to the objectives of the government management plan.

3. Allowing grazing on tracts of presently ungrazed public lands.

The Western Watersheds Project also commented that the unavoidable effects of RCAs would be further ecological degradation of public lands and prolonging an unsustainable land use that is contrary to the mandates and policies of FLPMA and PRIA.

The State of Arizona Game and Fish Department supports the concept of RCAs with the following provisions:

- RCAs should support multiple-use objectives.
- RCAs should be available to permittees who are cooperating in range restoration efforts, including resting their allotments.
- Permitted use levels and seasons of use on RCAs should be consistent with the maintenance of healthy rangeland conditions and wildlife habitat.
- Terms and conditions for using RCAs should be clearly defined.
- The BLM should institute requirements on permittees to implement a rest-rotation system to qualify as eligible to use and RCA

The Idaho Department of Fish and Game commented that it supported the concept of RCAs because the new provision could encourage voluntary relinquishment of permits to establish RCAs. The department asked the BLM to reduce the number of AUMs and spread the remaining number across a larger area.

The NBCA and the PLC commented that they support the concept as long as the BLM and the operator agree that range conditions

warrant such an action. The groups said they are concerned RCAs could result in a loss of preference AUMs on public lands and asked the BLM to consider the following criteria to establish an RCA:

- Allotments for RCAs should be designated for a limited time.
- No more than 10 percent of AUMs within a district should be in use as RCAs at any one time.
- All decisions regarding allocations of RCA should involve permittees and grazing boards chartered by state or local governments.
- RCAs would be used to support and maintain the level and integrity of the grazing programs on the allotments within the area.
- The BLM should consider creating RCAs from other Federal lands not presently used for livestock grazing.
- Permittees should have priority to use RCAs that are located within the grazing district they presently use.
- The preference holders controlling the base properties must voluntarily offer their allotments for use as RCAs.
- RCAs must be attached to base property.

The EPA commented that RCAs could aid in the recovery of vegetation and reduce soil compaction from intense grazing on allotments. The EPA also recommended that the BLM confine grazing to areas that are capable of sustaining grazing and eliminate grazing in areas that are significantly degraded or do not have the adequate amount of resources to support grazing.

The Utah Farm Bureau Federation commented that RCAs are reminiscent of past Federal actions that resulted in grazing being prohibited in Dinosaur National Monument in Utah. The Federation wants RCAs to be developed from vacant or unused allotments. It commented that it would support the provision if it provides flexibility to both the BLM and the livestock producer. The Federation said it would oppose taking existing permits from operators to create an RCA and said the BLM must develop a fair and equitable process for allocating forage under this new program.

The Nevada State Grazing Board, District N-3, commented that it supports the development of RCAs but is concerned that administration changes could affect how the program is managed. The Board asked the BLM to ensure that forage used by someone other than the permittee is truly available. The Board urged the BLM to consider agreements with other land managing agencies (USFS, BOR) where lands are now grazed and could be used during times of drought or periods of needed rest.

The Sierra Club, Rocky Mountain Chapter, commented that although RCAs might benefit overgrazed or damaged rangelands, they won't fix the basic problem that the BLM allows grazing on lands that are not suitable for grazing.

The Forest Guardians, Animal Protection Institute, and Sinapu commented that they oppose developing RCAs because they won't end overstocking and overgrazing on lands that are unsuitable for grazing. The groups commented that they are concerned that creating RCAs could create a "sacrifice zone" by damaging grazing lands that are in relatively better condition. The groups commented that the BLM should reduce stocking rates on degraded allotments and not subject vacant allotments to the same uses

that degraded them in the first place.

The ONDA commented that it opposes RCAs because they will create public land grazing commons for federally permittees and recreate a long-recognized problem in public land management known as “the tragedy of the commons.” It commented that an abundance of public land grasses has encouraged continued overstocking and overuse and there will always be severely damaged allotments struggling to recover. It asked the BLM to encourage ranchers to purchase and develop their own private land grass banks and to avail themselves of market system opportunities for their business needs like any other business in America.

The consortium of environmental and conservation groups commented that it is inappropriate for the BLM to create RCAs from allotments donated to the BLM for the purpose of long-term rest because it may limit future donations. It said potential donors might not want to donate their allotments if it cannot be assured that the BLM’s goal is long-term rest of those allotments. It wants the BLM to “buy out” allotments to create RCAs because grazing costs the taxpayers significantly, would not reduce administration costs, and would not increase resource protection on public lands. It also commented that the BLM should address the following issues in the proposed rule:

- How do the regulations limit implementation of this concept?
- How will the BLM choose allotments?
- Are there suitable allotments presently in reserve?
- How will the BLM account for the loss of benefits these allocations will have to other uses?
- What are the BLM’s criteria for

establishing allotments?

- How will the BLM manage these allotments to prevent resource degradation?

The Nature Conservancy commented that it supported the concept of RCAs for restoration purposes and cited similar concepts called “grass banking” that it said are used by private landowners to restore large landscapes.

The American Farm Bureau Federation commented that it supported the concept of an RCA because such a program could provide flexibility for the BLM and permittees. The Federation asked the BLM to include the following four issues in any proposed rulemaking:

- RCAs should be created from vacant allotments, not by removing permittees from their existing allotments.
- RCAs could be created from lands that are not being utilized by a permittee.
- The BLM must have the full consent of the permittees and must compensate them for the use of their allotments as RCAs.
- The BLM must devise a fair and equitable process for allocating forage under the reserve common allotment program.
- The BLM should also consider if more than one permittee at a time could use an RCA.

The Public Lands Foundation commented that it supports the concept of RCAs and asked the BLM to observe similar programs administered by the Department of Agriculture, the Farm Service Agency’s Conservation Reserve Program, and the

Grassland Reserve Program for their effectiveness.

The Conservation Roundtable of Billings, Montana, commented that it supports the concept of RCAs, and asked the BLM to implement safeguards to ensure that Reserve Common Allotments do not become grazing commons that the TGA is supposed to prevent.

The Animal Alliance commented that it opposed developing reserve common allotments because the BLM will allow permittees or lessees to move livestock onto areas that were previously allocated exclusively to wildlife.

The consortium of environmental and conservation groups and the Sierra Club commented that RCAs would not be a benefit particularly during droughts.

The County Commissioners of Garfield County, Utah, commented at the New Mexico public scoping meeting that the BLM should not create RCAs by removing a permittee from an existing allotment.

The Federal Lands Committee and the New Mexico Cattle Growers commented at the New Mexico public scoping meeting that they are concerned about the BLM developing RCAs.

The Oregon Cattlemen's Association commented at the Reno public scoping meeting that RCAs could do a lot of good for the industry because they would relieve hardships on the small family businesses that make up the industry. It is concerned that RCAs will be taken from active permits at the expense of the operators trying to make a living. It asked BLM to consider acquiring these allotments through attrition or buyout rather than what is presently practiced, or through some other way that doesn't displace an operator.

A commenter at the Reno public scoping meeting said the BLM should consider allowing grazing on lands that are already

held in reserve for other purposes. The commenter said the Sheldon and Hart Mountain Antelope Ranges are already reserved and the BLM should consider using those and similar areas as RCAs.

A commenter at the Reno public scoping meetings said he supported RCAs and also asked the BLM to consider developing areas such as the Sheldon and Hart Refuges as RCAs.

The California Farm Bureau commented at the Reno public scoping meeting that he supports RCAs because they could allow a permittee to take on long-term range improvement projects and accomplish these goals, as well as provide forage in emergency situations.

A commenter at the Reno scoping meeting that he supports RCAs if they are established by retiring permits and if they are to be grazed during times of harsh conditions, as in the case of fire.

The New Mexico Wool Growers Association commented at the New Mexico public scoping meetings that the BLM should develop RCAs from vacant and retired allotments.

A commenter asked whether a permittee who was unable to use his or her allotment because it was degraded would have his or her permit revised or revoked, or would he or she instead be moved to an RCA.

A commenter supported the concept of RCAs as long as the BLM only uses vacant allotments or buys out allotments from willing sellers for that specific purpose.

A commenter asked how the BLM could create "extra" acres for an RCA when most of the public lands are already in a chronically overused situation.

A commenter said RCAs would not remedy the problem of overstocking or overgrazing public lands with insufficient forage and is concerned that this provision may create a new set of lands sacrificed to

replace already degraded lands.

4.2 Adding a fee schedule for preference transfers, crossing permits, applications for nonuse, and replacement or supplemental billing under existing service charge authority

Many commenters who opposed the changes the BLM is considering strongly urged the BLM to consider raising grazing fees to reflect “fair market value” for grazing livestock on public lands.

A commenter asked the BLM to determine a grazing fee based on the market value of the available forage and land available and whether multiple-use of public lands is practiced. The commenter says as a landowner he believes BLM grazing fees are so low they should be considered donations.

A commenter wants the BLM to implement a fee schedule for all appropriate and adequate administrative costs for applications and transfers because those who graze livestock on public lands should pay an additional amount beyond administrative costs for all incidental and indirect costs as well as other unanticipated costs.

The Idaho Cattle Association commented at the Reno public scoping meeting that the administrative fees the BLM is considering are inappropriate because ranchers spend more time and money on their allotments and improvements than BLM spends to regulate grazing activities. The commenter states that planting and fire suppression, fence maintenance, weed control, and ESA activities protecting water developments, would continue even if there were no grazing

and that the public would still demand these values be maintained. He commented that fees must be kept minimal otherwise permittees, who are usually cash poor, would seek to avoid the fees that would lead to less effective range management.

The Western Watersheds Project commented that if the BLM were receiving fair market value for grazing privileges, and if FLPMA’s fee formula weren’t out of date, this rule would not be necessary. It recommended that the BLM initiate an analysis of increasing the grazing fee to actual market rates through a bidding process and minimal acceptable rates that are equal to the average cost per AUM of private land grazing leases in each western state.

General comments on issues not addressed in the ANPR and NOI.

The Northwest California Resource Advisory Council (NCRAC) commented that they were disappointed the Department did not consult with RACs prior to the public release of the proposed changes in grazing regulations and that the criteria appears to be from the “top down” and therefore seems contrary to the Secretary’s “Four C’s” philosophy and commitment to community-based decision making.

The NCRAC raised the following general concerns:

- The proposed changes do not serve conservation. They are coercive in nature rather than being collaborative.”
- The proposed changes will make it more difficult to hold grazing permittees accountable for the health of the rangeland they graze.
- The proposed rule will diminish the value of the public natural resource for future generations.
- The proposed rules represent favoritism

for one interest group to the detriment of the general public and other stakeholders.

- Present grazing rules have been adjudicated and found in compliance with the TGA and other laws. These new rules will set off a new round of costly litigation.

A commenter said: “I do not like to see public lands and campgrounds full of cattle droppings.”

A commenter stated that the BLM’s present permit renewal process allows anti-grazing factions to interrupt, without just cause, the normal process of renewing a permit. The commenter said that BLM’s management plan goals must be based on meeting certain standards and guidelines and improving the health of the public lands for multiple use.

An environmental group commented that the BLM should modify existing regulations so that cancellations by the BLM are considered automatic revisions to the applicable land or resource management plans. It stated that the BLM should have authority to grant nonuse, until resource conditions have fully recovered, without a requirement to complete a RMPA.

The Nature Conservancy commented that, although it manages ranching properties in 11 western states, it can’t comment on the considered changes until it knows the specifics of any changes the BLM is considering. It commented that it opposes any changes that would restrict organizations with multiple interests, such as the Nature Conservancy, from qualifying for a grazing permit or lease.

The Public Lands Foundation commented that the BLM has not allowed enough time for the 1995 regulatory changes to be effective before considering making these additional changes to the grazing rule. The

PLF commented that the 1995 effort was a huge and costly undertaking and asked why the BLM was creating a new grazing policy so soon. It stated that it had followed BLM’s implementation of the 1995 rules and was unaware of any major problems that would necessitate changing the existing rules.

The Public Lands Foundation also commented on the full-force-and-effect provision, stating that the land manager must have the authority to make needed changes in grazing use immediately or before the next grazing season to protect and enhance the resource.

The Grand Canyon Trust commented that the goal of the proposed regulations should be to protect and restore the health of public lands and not just perpetuate livestock grazing on public lands. It said the 1995 regulations were subjected to a thorough environmental impact analysis and were determined to be necessary and appropriate for protecting public rangelands.

The Nevada Department of Agriculture “sincerely recommends reverting all grazing regulations to that which existed before Secretary Babbitt. The department said that most of what Secretary Babbitt implemented caused problems, increased litigation for the agency and permittees, and increased workloads on agency staff and permittees for meaningless regulatory and NEPA compliance that provided little or no positive effects on the natural resources, livestock industry, or any other public multiple use.”

The Nevada Department of Agriculture also asked the BLM to allow only trained BLM employees to be tasked with environmental monitoring and not contract out this task. The department is concerned that this consideration will weaken or diminish the importance of monitoring the condition of rangeland health.

The Conservation Roundtable of

Billings Montana asked why the BLM was drafting new grazing regulations so soon after the huge effort undertaken in 1995. It commented that the proposed changes will result in the “old system of private control by the privileged over the general public’s enjoyment of healthy functioning public lands.” It asked the BLM to clarify the following elements of the Secretary’s Four C’s concept in the EIS:

- With whom is the BLM consulting?
- What is the consultation about?
- What does BLM mean by “community-based conservation?”
- What is the role of the general taxpaying public in “community-based conservation?”
- Does conservation mean restoration of [public lands] to functioning condition and their multiple uses?

The consortium of environmental and conservation groups commented that the BLM must provide definitions for the following new definitions used in BLM’s Press Release, and include them in any proposed regulations:

- Sustainable rangelands
- Sustainable ranching
- Working landscapes
- Citizen-based stewardship
- Conservation partners

The Sierra Club and the consortium of environmental and conservation groups want the BLM to add the following provisions to

any proposed changes to the regulations:

1. Ensure that standards and guides are uniform, consistent, and rigorously applied on all BLM-administered lands.
2. Ensure that range health standards are being met. If not, the BLM should strengthen and enforce existing criteria.
3. Initiate performance-based contracts. The BLM has not adequately and consistently held permit holders accountable and generally renews permits on allotments that do not meet rangeland health standards and guidelines.
4. Develop new performance-based contracts with strong enforcement provisions that include consequences for failing to meet these requirements.
5. Establish performance-based incentives. There must be consequences for not achieving agreed-on conservation goals.
6. Do not allow stocking increases. When an area has recovered, AUMs should be adjusted downward to maintain the health of the land.
7. “Conservation partnerships” are a misnomer if the BLM’s goal is simply to increase forage production and not to restore declining rangelands.

The Sportsmen for Fish and Wildlife commented that the BLM must consider the following issues in any proposed rule changes:

1. Adopt a rule that protects ranchers’ existing rights and allows a free marketplace to solve conflicts between

wildlife and livestock. This can allow the BLM to meet the public demand for increased wildlife populations and increased recreation.

2. Allow allotments and forage or AUMs to be reallocated on a permanent basis for wildlife when a permittee voluntarily relinquishes the grazing preference back to the BLM.
3. Do not change the present regulations allowing for nontraditional individuals and corporations that own base property to hold grazing permits.
4. Allow permittees to choose to have their AUMs dedicated either to livestock or game herds.
5. Allow for nonuse and predisposition toward reallocation between the time a willing seller and buyer transaction is completed and the LUP is amended.

The Association of Rangeland Consultants (ARC) echoed the comments submitted by the PLC asking the BLM to consider addressing “exchange-of-use grazing agreements,” citing an earlier provision in the grazing regulations that allowed outside allotment lands to be offered in return for equivalent reduction of the owner’s grazing bill. It commented that in an exchange, the outside lands were then controlled by the BLM, which could bill the neighboring permittee for the capacity of those lands, thus allowing a permittee to benefit from his lands outside his allotment, and enable the neighboring permittee to pay for and add the capacity of those lands to his or her authorization. It also commented that this trade arrangement was eliminated when the words “in the same allotment” were inserted in 1995.

The ARC asked the BLM to consider reinstating “suspended-use” because the BLM interprets this definition as authorizing the elimination of all suspended-use from the records at the time of permit renewal based on a full allotment evaluation. It commented that this is an unjustified elimination of the base property qualifications that remains on the books in a suspended status.

ARC also commented that the BLM must address the “infamous ‘F’ clause” in 43 CFR 4130.2(f). They asserted this paragraph denies “due process and allows the BLM manager to determine terms and conditions capriciously and arbitrarily with no recourse.” It said that due process and the right of protect should be reinstated in keeping with the regulatory tradition of fairness.

A commenter from the Montana Farm Bureau at the Billings public scoping meeting said that the BLM must clarify its provision pertaining to grazing preference transfers because when those transfers don’t affect the environment, but are limited to paper changes, they should not be “subject to the need for documentation.”

The California Farm Bureau commented at the Reno public scoping meeting that the BLM should consider expanding monitoring efforts to vacant and retired allotments in order to observe long-term trends when cattle are removed because this can provide credible evidence that the land is improving instead of relying on speculation.

The Idaho Cattle Association commented at the Reno public scoping meeting that “the BLM should consider performance-based stewardship contracts to demonstrate the validity of local information and input on how to manage range resources. If experience determines this is not a successful undertaking, however, it should not reflect badly on the operator. Ranch science is

an inexact science and good faith efforts should be considered.” It also said the BLM should consider fuel load and fire effects when considering what criteria should be used when an operator requests increased permitted use, and said decreasing livestock numbers on public lands contributes to increased wildfires.

A commenter at the Reno public scoping meeting said that the BLM’s definitions of citizen-based and community-based decision making seems to exclude the rest of the public from the rule-making process. She believes this means that decisions will be made between the BLM and the permittee and not include the public.

The New Mexico Cattle Growers Association and the Public Lands Council of New Mexico commented that BLM should reinstate Section 4 permits and reinstate district grazing advisory boards.

The State of Wyoming Game and Fish Department (WGFD) commented that it supports an adequate and meaningful grazing monitoring program and that BLM’s present monitoring methods, consistencies in evaluation of monitoring results, and application of monitoring results into future grazing management are key items in support of a successful and defensible grazing management program.

A commenter at the New Mexico public scoping meetings said that she is concerned with the effects of oil and gas development on her grazing allotments because the BLM considers improvements made by oil and gas developers belong to the developers, and that oil and gas developers own their leases for as long as they continue to produce. The commenter said ranchers do not own their improvements and their leases expire after 10 years and the BLM should to treat ranchers equally with oil and gas developers.

The New Mexico Wool Growers Association commented at the New Mexico

public scoping meeting that the BLM needs to adhere to its present management objectives on wild horses because although there are too many on the public lands, ranchers are being asked to reduce their AUMs. The BLM should reopen the WHBA to address this issue.

The Sierra Club commented that the BLM should be looking for ways to reward ranchers who accomplish 100 percent compliance for standards and guidelines for rangeland health. It said the BLM must take action against any permittees who fail to achieve compliance.

A commenter supported community-based conservation and citizen-centered stewardship because local residents have the greatest incentive and desire for conservation of the lands that surround where they live. The commenter wants the Secretary to give precedence to the comments of those who live in public land states who are most qualified to resolve problems. This commenter also wants the BLM to improve its business practices through local collaboration and seeking agreement within the communities and counties that have generated solid plans to enhance land health and sustainability. The person commented that the same practices should be given ample opportunity to succeed through more simplified business practices, and land health and wildlife populations are enhanced by proper grazing that is compatible with controlled recreation and proper planning.

Several commenters asked the BLM to address the following issues in the proposed rule:

- How to deal with noxious weed infestation.
- How to deal with the aftereffects of catastrophic wildfires on public lands.
- Increasing the listing of T&E species.

- Implement a program to voluntarily buy out grazing permits.
- Raise the present grazing fees to reflect market-based economics.

A commenter said court orders were the only means to justify a change to the existing regulations. The commenter also stated that the BLM should provide complete details and take full public comment, not just from industry representatives, before changes are made in the grazing regulations.

A commenter recommended that the BLM develop an incentive system, such as reducing grazing fees, to reward livestock operators for “doing a good job.”

The American Farm Bureau Federation commented that BLM should consider the following issues in its draft proposed regulation changes:

1. The BLM should consider ways to further streamline procedures if certain actions are identified as CXs in the burdensome NEPA processes. They cited an example of permit transfers when a base property changes ownership or control and there are no deviations to the terms or conditions for the duration of the existing permit. They state that these actions have little or no environmental effects and there is no reason that these actions should be subject to NEPA.
2. Required Endangered Species Act Section 7 consultations can cause livestock permittees major problems and permittees should be included in these consultations with the USFWS instead of having their livelihoods affected in closed-door policy decisions.
3. The BLM should eliminate the subleasing surcharge imposed by the 1995

regulations.

The Taxpayers for Common Sense commented that fees the BLM charges for livestock grazing on public lands constitute an inappropriate expense for taxpayers and do little to encourage an individual’s stewardship of grazing lands.

The NCBA and PLC recognize the Secretary’s authority to apply a surcharge. The groups believe that adding a surcharge creates an unnecessary workload to the BLM’s administration of permits and leases. They also commented that the surcharge creates an unfair financial and bureaucratic burden and prevents many young ranchers from being able to participate in Federal land grazing operations. They believe that elimination of the surcharge will help the BLM’s directive to develop grazing policies that encourage family ranches to stay on the land and continue to contribute to local economies.

A commenter asked the BLM to change the regulations at Section 4130.7(a) to read as follows:

a) The permittee or lessee shall own and be responsible for the management of livestock that graze the public land under a grazing permit or lease.

The ONDA commented that the BLM did not mention permit retirements or relinquishment that, the group claims, are of considerable interest to conservationists, permittees, and BLM staff. The ONDA does not agree with the Solicitor’s opinion that a “chiefly valuable” determination must be made before the BLM makes a land use decision allowing for the retirement of a grazing permit. It commented that if DOI intends to act in accordance with the Solicitor’s memorandum, the chiefly valuable determination must occur on each and every acre of land within the land use planning area every time the BLM develops or revises

a resource management plan. It said that if the BLM adopts this policy, it could balance competing resource values to ensure that public lands are managed in a manner that best meets the needs of the American people.

The NCBA and PLC want the BLM to remove the term “interested public” from the grazing regulations because this broad level of public participation is more appropriate to the planning process, where decisions regarding resource allocations are made.

The NCBA and PLC want the BLM to incorporate “affected interest” as it was before 1995, to mean a party who has established in writing that it may be materially and economically affected by an agency decision. They believe that permit administration involving the contractual relation between the grazing permittee and the BLM should involve only other permittees within the same allotment as affected interests.

The NCBA and PLC want the BLM to limit the definition of “interested public” to mean a person or organization that has submitted a written request to the BLM to be provided an opportunity to be involved in the Land Use Plan for a BLM Field Area and whom BLM has determined to be an “interested public.” The groups want applicants to provide information to the BLM demonstrating how their participation in the LUP development process would provide information or expertise that would otherwise not be available to the BLM.

The NCBA and PLC also want the BLM to amend Section 4120.2 paragraphs (a) and (c) to consider changing the definition of the term “allotment” to reinstate the phrase “Boards were established” that was removed in the 1995 changes. The groups commented that this change is justified by the requirement still contained in Section 8 of the PRIA whereby the Secretary is required

to consult, cooperate, and coordinate with land owners involved in any boards created by states having lands or responsibilities for managing lands within an area to be covered by an allotment management plan. The PLC justifies this amendment because it believes that when Grazing Boards were eliminated, the BLM and livestock grazers lost an important tool for resolving conflicts and cooperating in resource stewardship.

The New Mexico Farm and Livestock Bureau commented that the BLM should remove “interested public” from the regulations because the 1995 regulations allowed anyone to participate in consultations between the BLM and a permittee or lessee regarding grazing management.

The New Mexico Farm and Livestock Bureau wants the BLM to eliminate the “full force and effect” provision.

Section 4120.5-1 paragraph (c) [It is probably intended to reference Section 5120.5-2]

The PLC wants the BLM to add a paragraph (c) to Section 4120.5-1 as follows:

“BLM will participate with state, local, or county officials who establish grazing boards under their jurisdiction and, if requested, provide periodic opportunities for members of these grazing boards to review and provide comments to BLM on range improvement and allotment management plan programs within their area of jurisdiction.”

The NCBA and PLC asked the BLM to amend the conversion ratio for sheep from 5:1 to 7:1 when billing for AUMs. They comment that the 5:1 ratio for sheep is based on data collected in Utah between 1949 and 1967. By 1991, and later in 1995, new standards were published that showed a higher ratio for sheep AUMs would be

appropriate.

The NCBA and PLC commented that their review of BLM's grazing decisions over the past 10 years shows little actual data from "state of the art" rangeland studies. They also believe the IBLA has incorrectly applied the burden of proof to the appellant instead of the BLM which, they assert, is required by the Administrative Procedure Act. They comment that when decisions are not suspended, the permittee or lessee could be put out of business while the BLM is pending a final disposition.

The NCBA and PLC comment that the BLM should revise the language at Section 4160.3, Full Force and Effect Decisions & Petitions for Stay of Decisions, to read as follows:

"When a permittee or lessee generates a timely appeal in response to a BLM decision, that decision will not be effective pending a final agency decision following a hearing on the record. While the appeal is pending the terms and conditions of the existing or prior permit will be in effect."

The NCBA and PLC comment that the BLM should add the following language to Section 4160, Hearings and Appeals:

"If BLM can show sufficient justification to determine that the authorized grazing use is contributing to irreparable resource damage, BLM will consult with the permittee or lessee, and the state having responsibility over those lands and other land owners. BLM may then declare an emergency and place the decision in effect before the hearing or final administrative decision. The decision should be effective for the 30-day period provided for filing an appeal.

Situations that justify declaring an

emergency would include the following considerations:

- (i) Relative harm to the parties if the decision is effective pending an appeal
- (ii) The likelihood of BLM's success on the merits
- (iii) The likelihood of immediate and irreparable harm if the decision is not effective pending appeal
- (iv) Does the public interest favor placing the decision in effect pending appeal?"

Section 4130.1-1, Filing applications. The NCBA and PLC asked the BLM to amend this section, which it refers to as "Authorizing Grazing Use" to read as follows:

"A positive response from a permittee or lessee to BLM's offer of an annual grazing license in the last year of a multiyear term permit or lease period to continue the livestock grazing program on an allotment or lease past the term of the present permit or lease shall be considered by the BLM as an application to renew a term grazing permit or lease. If a permittee or lessee desires to appeal any of the terms and conditions in a permit or lease renewal offered to him or her by the BLM, the action of an appeal shall be considered an application for renewal and the permit or lease shall be extended under the existing terms and conditions until such time as a final action is adjudicated."

Section 4130.6-1, Exchange of Use. The NCBA and PLC want the BLM to insert

the following language into §4130.6-1:

“BLM will calculate the total allotment/lease livestock carrying capacity, the total number of livestock carrying capacity AUMs of lands offered for exchange of use as determined by a rangeland survey conducted by person qualified as professional rangeland managers.” They also ask that the phrase “. . . in the same allotment” be removed from the existing regulations in this same section.

Section 4130.1-2, Conflicting Applications. The NCBA and PLC asked that the BLM remove the following language in paragraph (d) of Section 4130.1-2:

“Public ingress or egress across privately owned or controlled land to public land should be removed as consideration in allocating AUM.”

The NCBA and PLC commented that the preceding existing language constitutes “blackmail” because it allocates Federal forage to applicants for that forage. The group commented that it is irrelevant whether a person will now or in the future grant public access to private lands because it is related to whether or not that person is the best steward of Federal forage.

Section 4180, Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration. The NCBA and PLC asked the BLM to amend this section by transferring the entire Section 4180 to BLM’s Planning Regulations and transferring authority to the BLM. They commented that Section 4180 directs the BLM to conduct multiple-use planning exercises at the watershed level and is intended to guide the BLM in conducting on-

the-ground livestock management activities, but the regulations do not provide those management directives. They also want the BLM to rewrite the Planning regulations.

The NCBA and PLC asked the BLM to address monitoring by renaming Section 4180.2 “Monitoring” and developing language to develop a scientifically based short- and long-term field-level monitoring program in consultation with and with participation from permittees and lessees.

The Western Watersheds Program commented that it knows of hundreds of grazing allotments that are failing the most minimal of environmental health measures because of grazing on BLM-administered lands.

A commenter said the BLM should remove requirements in paragraph (b) of 4180.1 because there are no field methods presently available to determine energy flow and nutrient cycling, and the BLM can’t make an accurate determination based on these functions.

The County Commissioners of Chaves County in Roswell, New Mexico, asked the BLM to reverse the present Full Force and Effect provisions to the pre-1995 standards that allowed the permittee to exhaust all appeals before removing livestock from the allotment because the present regulations do not recognize due process, including a full disclosure of the facts related to the decision, equal representation, and the rights of the accused to be assumed innocent until proven guilty.

A commenter said the BLM should replace “interested public” with “affected interest” wherever it appears in the regulations. He stated that local BLM employees’ workloads are horrendous because the BLM is asking people with radical agendas against multiple use to participate in the everyday BLM

activities. He stated that this detracts from the BLM's ability to manage the resources.

The Idaho Department of Fish and Game (IDFG) commented that designing grazing regulations that make it easier for permittees to voluntarily opt for nonuse or relinquish a permit will allow the BLM to spread remaining livestock over a larger area and reduce the number of animals grazing an allotment, thereby allowing the range to be rested or rehabilitated. The IDFG commented that this would benefit permittees, improve rangeland health, and improve fish and wildlife habitats.

The NCBA and PLC commented that the BLM should continue periodic evaluations of rangeland resources on existing locations in a way that ensures continuity over time, and the BLM should ensure that all monitoring data collected on BLM lands is made available in allotment files to use in evaluating trends in resource conditions over time.

The Public Lands Foundation commented that the key to BLM's successful rangeland management should be in their capacity to monitor changes in vegetation and soil conditions and make appropriate adjustments in use.

A commenter at the Reno scoping meetings said that the BLM needed to address noxious weeds, catastrophic wildfires, and improve basic monitoring. The commenter said the BLM is only considering protecting 10 percent to 15 percent of permittees who are either poor managers or unsuccessful at trying to make a living on public rangelands that are not suitable for livestock grazing. The commenter wants the BLM to develop incentives so that permittees who successfully manage grazing to meet land health objectives pay less. Permittees who fail to meet these objectives will pay more in the short term and lose their permits

in the long term. The commenter said that the BLM needed to institute a voluntary buyout program for permittees who can't make a living on marginal rangeland.

The consortium of environmental and conservation groups commented that reverting to the pre-1995 policies is illegal because it prevents the BLM from fulfilling its obligations under FLPMA and is inconsistent with the agency's stated goal of conservation. It commented that the BLM should only restrict monitoring if the allotment is in nonuse or until the BLM can meet its monitoring objectives.

It recommended that the BLM reinstate Grazing Boards and provide them with these reports so they can be subjected to peer review. It also asked the BLM to require periodic reports, in consultation with the permittee, to determine whether the data from monitoring and field observations show that resource management objectives are being met.

The NCBA and PLC asked that the BLM develop a new policy, in consultation with livestock operators and land grant institutions, to consider how best to address resource management objectives for wildlife and T&E species, and effects from recreational users at the allotment level. It believes these objectives are important for short- and long-term monitoring programs that are founded in present and historical quantitative vegetative data having the technical ability to determine if resource objectives are being met.

The Animal Alliance opposed altering the administrative appeals process if it would be more difficult to sue than what is presently required by the Federal rules. It commented that the proposed rule would narrow the definition of "legally cognizable interests" and, in effect, reduce the public's ability to appeal grazing administration and policy

decisions.

Great Old Broads for Wilderness commented that BLM's fee formula should reflect present market rates for non-Federal grazing lands because the present grazing fee is 10 times less than the open market rate. It said this is a dereliction of duty by the agency.

The South Dakota Department of Game, Fish, and Parks commented that the BLM should expand its management objectives to include all its lands and consider monitoring as a means to assess the effects of management actions. The department also commented that if the BLM cannot adequately manage small tracts of public land, it should consider land exchanges as a way of creating larger and easier to manage allotments. The department commented that increased monitoring by the BLM could identify at-risk lands and prevent them from degrading to a state where they need extensive restoration.

The CBD commented that the BLM should delete Section 4130.8 from the regulations because the fee fails to track market rates for livestock. It commented that the BLM's fees are 10 times less than the average westwide market rental of unirrigated rangeland and that the BLM's present fee formula should be eliminated and replaced with a competitive bidding process.

A commenter said "drive-by" monitoring and monitoring only when a permittee or lessee is renewing a permit or lease are not sufficient. The commenter said grazing practices should be adjusted annually to ensure that the land is improving in condition and health. The commenter said that if the BLM does not have adequate resources to properly monitor an allotment, that allotment should not be used until adequate funds and resources are available to manage it. The commenter said the BLM should conduct an

economic analysis of what constitutes a well-funded range conservation effort and use the information to inform Congress of the cost and effect of neglecting the public land.

An environmental group commented that the BLM should have authority to grant nonuse for an entire 10 years or longer if the resource needs that much time to recover and that the BLM should be able to do this without having to make land or resource management plan amendments. The group also commented that the BLM should consider allotment cancellations to be automatic revisions to the applicable land or resource management plan.

The CBD commented that the BLM should prohibit any ephemeral grazing on public lands.

A member of the Northern California Resource Advisory Council commented that the BLM must conduct effective monitoring to ensure that the goals of the management plan are being met.

The Sky Island Alliance commented that grazing permits and leases should be open to competitive bidding as follows:

Bids are for the fee paid per AUM of actual forage for that period of the permit or lease.

- Reserve price on permits should be no less than 50 percent of the present average of private market rental rates for that state according to the National Agricultural Statistics Service.
- The highest bid from a qualified stockowner establishes the fair market value for that permit.
- Incumbent permittees should be offered first option to renew at highest bid.
- If an incumbent declines, the bidding process is reopened until a willing

permittee is identified.

- No qualifying bids received would result in allotment cancellation and closure to grazing.

5.0 General comments on issues not addressed in the ANPR and NOI

The Northwest California Resource Advisory Council (NCRAC) commented that it was disappointed the Department did not consult with the RACs before the public release of the proposed changes in grazing regulations and that the criteria seems to be from the “top down” and, therefore, seems contrary to the Secretary’s “Four C’s” philosophy and commitment to community-based decision making.

The NCRAC raised the following general concerns:

- The proposed changes do not serve conservation. They are coercive in nature rather than being collaborative.
- The proposed changes will make it more difficult to hold grazing permittees accountable for the health of the rangeland they graze.
- The proposed rule will diminish the value of the public natural resource for future generations.
- The proposed rules represent favoritism for one interest group to the detriment of the general public and other stakeholders.
- Current grazing rules have been adjudicated and found in compliance

with the TGA and other laws. These new rules will set off a new round of costly litigation.

A commenter said, “I do not like to see public lands and campgrounds full of cattle droppings.”

A commenter stated that the BLM’s present permit renewal process allows antigrazing factions to interrupt, without just cause, the normal process of renewing a permit. The commenter said that BLM’s management plan goals must be based on meeting certain standards and guidelines and improving the health of the public lands for multiple uses.

An environmental group commented that the BLM should modify existing regulations so that cancellations by the BLM are considered automatic revisions to the applicable land or resource management plans. It stated that the BLM should have authority to grant nonuse, until resource conditions have fully recovered, without a requirement to complete a RMPA.

The Nature Conservancy commented that, although it manages ranching properties in 11 western states, it can’t comment on the considered changes until the specifics of any changes the BLM is considering are made known. The Conservancy commented that it opposes any changes that would restrict organizations with multiple interests, such as theirs, from qualifying for a grazing permit or lease.

The Public Lands Foundation commented that the BLM has not allowed enough time for the 1995 regulatory changes to be effective before considering making these additional changes to the grazing rule. The PLF commented that the 1995 effort was a huge and costly undertaking and asked why the BLM was creating a new grazing policy so soon. The PLF stated it had followed the BLM’s implementation of the 1995 rules

and was unaware of any major problems that would necessitate changing the existing rules.

The Public Lands Foundation also commented on the full-force-and-effect provision, stating that the land manager must have the authority to make needed changes in grazing use immediately or before the next grazing season to protect and enhance the resource.

The Grand Canyon Trust commented that the goal of the proposed regulations should be to protect and restore the health of public lands and not just perpetuate livestock grazing on public lands. It said the 1995 regulations were subjected to a thorough environmental impact analysis and were deemed necessary and appropriate for protecting public rangelands.

The Nevada Department of Agriculture “sincerely recommends reverting all grazing regulations to that which existed before Secretary Babbitt.” The department said that “most of what Secretary Babbitt implemented caused problems, increased litigation for the agency and permittees, and increased workloads on agency staff and permittees for meaningless regulatory and NEPA compliance that provide little or no positive effects on the natural resources, livestock industry, or any other public multiple use.”

The Nevada Department of Agriculture also asked the BLM to allow only trained BLM employees to perform environmental monitoring and to not contract out this task. The department is concerned that this consideration will weaken or diminish the importance of monitoring the condition of rangeland health.

The Conservation Roundtable of Billings, Montana, asked why the BLM is drafting new grazing regulations so soon after the huge effort undertaken in 1995. It commented that the proposed changes would result in the “old system of private control by the privileged over the general public’s enjoyment

of healthy functioning public lands.” It asked the BLM to clarify the following elements of the Secretary’s Four C’s concept in the EIS:

- With whom is the BLM consulting?
- What is the consultation about?
- What does the BLM mean by “community-based conservation?”
- What is the role of the general taxpaying public in “community-based conservation?”
- Does conservation mean restoration of [public lands] to functioning condition and their multiple uses?

The consortium of environmental and conservation groups commented that the BLM must provide definitions for the following new definitions used in BLM’s Press Release, and include them in any proposed regulations:

- Sustainable rangelands
- Sustainable ranching
- Working landscapes
- Citizen-based stewardship
- Conservation partners

The Sierra Club and the consortium of environmental and conservation groups want the BLM to add the following provisions to any proposed changes to the regulations:

Section 4130.1-1, Filing applications. The NCBA and PLC asked the BLM to amend this section, which it refers to as “Authorizing Grazing Use” to read as follows:

“A positive response from a permittee or lessee to BLM’s offer of an annual

grazing license in the last year of a multiyear term permit or lease period to continue the livestock grazing program on an allotment or lease past the term of the current permit or lease shall be considered by the BLM as an application to renew a term grazing permit or lease. If a permittee or lessee desires to appeal any of the terms and conditions in a permit or lease renewal offered to him or her by the BLM, the action of an appeal shall be considered an application for renewal and the permit or lease shall be extended under the existing terms and conditions until such time as a final action is adjudicated.”

Section 4130.6-1, Exchange of Use. The NCBA and PLC want the BLM to insert the following language into §4130.6-1:

“BLM will calculate the total allotment/lease livestock carrying capacity, the total number of livestock carrying capacity AUMs of lands offered for exchange of use as determined by a rangeland survey conducted by person qualified as professional rangeland managers.” They also ask that the phrase “. . . in the same allotment” be removed from the existing regulations in this same section.

Section 4130.1-2, Conflicting Applications. The NCBA and PLC asked that the BLM remove the following language in paragraph (d) of Section 4130.1-2:

“Public ingress or egress across privately owned or controlled land to public land should be removed as consideration in allocating AUM.”

The NCBA and PLC commented that the above existing language constitutes “blackmail” because it allocates Federal forage to applicants for that forage. The group commented that it is irrelevant whether a person will now or in the future grant public access to private lands because it is related to whether or not that person is the best steward of Federal forage.

Section 4180, Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration.

The NCBA and PLC asked the BLM to amend this section by transferring the entire Section 4180 to BLM’s Planning Regulations and transferring authority to the BLM. They commented that Section 4180 directs the BLM to conduct multiple-use planning exercises at the watershed level and is intended to guide the BLM in conducting on-the-ground livestock management activities but the regulations do not provide those management directives. They also want the BLM to rewrite the Planning regulations.

The NCBA and PLC asked the BLM to address monitoring by renaming Section 4180.2 “Monitoring” and developing language to develop a scientifically based short- and long- term field-level monitoring program in consultation with and with participation from permittees and lessees.

The Western Watersheds Program commented that it knows of hundreds of grazing allotments that are failing the most minimal of environmental health measures because of grazing on BLM-administered lands.

A commenter said the BLM should remove requirements in paragraph (b) of §4180.1 because there are no field methods presently available to determine energy flow and nutrient cycling and the BLM can’t make an accurate determination based on these

functions.

The County Commissioners of Chaves County in Roswell, New Mexico, asked the BLM to reverse the present Full Force and Effect provisions to the pre-1995 standards that allowed the permittee to exhaust all appeals before removing livestock from the allotment because the present regulations do not recognize due process, including a full disclosure of the facts related to the decision, equal representation, and the rights of the accused to be assumed innocent until proven guilty.

A commenter said the BLM should replace “interested public” with “affected interest” wherever it appears in the regulations. He stated that local BLM employees’ workloads are horrendous because the BLM is asking people with radical agendas against multiple-use to participate in the everyday BLM activities. He stated that this detracts from BLM’s ability to manage the resources.

The Idaho Department of Fish and Game (IDFG) commented that designing grazing regulations that make it easier for permittees to voluntarily opt for nonuse or relinquish a permit will allow the BLM to spread remaining livestock over a larger area and reduce the number of animals grazing an allotment, thereby allowing the range to be rested or rehabilitated. The IDFG commented that this would benefit permittees, improve rangeland health, and improve fish and wildlife habitats.

The NCBA and PLC commented that the BLM should continue periodic evaluations of rangeland resources on existing locations in a way that ensures continuity over time and the BLM should ensure that all monitoring data collected on BLM lands is made available in allotment files to use in evaluating trends in resource conditions over time.

The Public Lands Foundation commented that the BLM’s key to successful rangeland management should be in its capacity to monitor changes in vegetation and soil conditions and make appropriate adjustments in use.

A commenter at the Reno scoping meetings said the BLM needed to address noxious weeds, catastrophic wildfires, and improve basic monitoring. The commenter said the BLM is only considering protecting 10 percent to 15 percent of permittees who are either poor managers or unsuccessful at trying to make a living on public rangelands that are not suitable for livestock grazing. The commenter wants the BLM to develop incentives so that permittees who successfully manage grazing to meet land health objectives pay less. Permittees who fail to meet these objectives will pay more in the short term and lose their permits in the long term. The commenter said the BLM needed to institute a voluntary buyout program for permittees who can’t make a living on marginal rangeland.

The consortium of environmental and conservation groups commented that reverting to the pre-1995 policies is illegal because it prevents the BLM from fulfilling its obligations under FLPMA and is inconsistent with the agency’s stated goal of conservation. It commented that the BLM should restrict monitoring only if the allotment is in nonuse or until the BLM can meet its monitoring objectives.

It recommended that the BLM reinstate Grazing Boards and provide them with these reports so they can be subjected to peer review. It also asked the BLM to require periodic reports, in consultation with the permittee, to determine whether the data from monitoring and field observations show that resource management objectives are being met.

The NCBA and PLC asked that the BLM develop a new policy, in consultation with livestock operators and land grant institutions, to consider how best to address resource management objectives for wildlife and T&E species and the effects from recreational users at the allotment level. It believes these objectives are important for short- and long-term monitoring programs that are founded in present and historical quantitative vegetative data having the technical ability to determine if resource objectives are being met.

The Animal Alliance opposed altering the administrative appeals process if it would be more difficult to sue than what is presently required by the Federal rules. It commented that the proposed rule would narrow the definition of “legally cognizable interests” and, in effect, reduce the public’s ability to appeal grazing administration and policy decisions.

Great Old Broads for Wilderness commented that the BLM’s fee formula should reflect present market rates for non-Federal grazing lands because the present grazing fee is 10 times less than the open market rate. It said this is a dereliction of duty by the agency.

The South Dakota Department of Game, Fish, and Parks commented that the BLM should expand its management objectives to include all its lands and consider monitoring as a means for assessing the effects of management actions. The department also commented that if the BLM cannot

adequately manage small tracts of public land, it should consider land exchanges as a way of creating larger and easier to manage allotments. The department commented that increased monitoring by the BLM could identify at-risk lands and prevent them from degrading to a state where they need extensive restoration.

The CBD commented that the BLM should delete Section 4130.8 from the regulations because the fee fails to track market rates for livestock. It commented that the BLM’s fees are 10 times less than the average westwide market rental of unirrigated rangeland, and the BLM’s present fee formula should be eliminated and replaced with a competitive bidding process.

A commenter said “drive-by” monitoring and monitoring only when a permittee or lessee is renewing a permit or lease are not sufficient. The commenter said grazing practices should be adjusted annually to ensure that the land is improving in condition and health. The commenter said that if the BLM does not have adequate resources to properly monitor an allotment, that allotment should not be used until adequate funds and resources are available to manage it. The commenter said the BLM should conduct an economic analysis of what constitutes a well-funded range conservation effort and use the information to inform Congress of the cost and effect of neglecting the public land.

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- Incumbent permittees are offered first option to renew at highest bid.
- If an incumbent declines, the bidding process is reopened until a willing permittee is identified.
- No qualifying bids received results in allotment cancellation and closure to grazing.

Appendix D. Advance Notice of Proposed Rulemaking

There was no change in Appendix D from the draft EIS to this final EIS. This Appendix is incorporated by reference into the final EIS.

The Advance Notice of the Proposed Rulemaking, as it appeared in the Federal Register, can be found by clicking on the following link:

http://www.blm.gov/nhp/news/regulatory/ANPR_4100/4100-ANPR.html

Appendix E. Notice of Intent to Prepare an EIS

There was no change in Appendix E from the draft EIS to this final EIS. This Appendix is incorporated by reference into the final EIS.

The on-line version of the Notice of Intent to Prepare an EIS can be found at:
http://www.blm.gov:80/nhp/news/regulatory/ANPR_4100/4100-ANPR.html

Appendix F. Social Impact Assessment Methods

As part of the Social Impact Assessment concerning proposed amendments to BLM grazing regulations, focus groups were conducted with selected constituents in the West. The purpose of the focus groups was to

- Review the proposed changes to grazing regulations;
- Assess whether the proposed changes could create potential positive or negative social effects on the respondents, their communities, and people who utilize BLM lands in similar ways;
- Identify the distribution of any positive or negative social effects from the proposed changes.

To capture potential regional differences in effects, three sets of focus groups were conducted. One set each occurred in Salmon, Idaho; Ontario, Oregon; and Albuquerque, New Mexico. These regions were chosen because they presented three differing types of ranching and levels of dependence on BLM grazing allotments. Salmon is characterized by high-mountain grazing with reliance on both BLM and Forest Service allotments during spring and summer grazing. Ontario captured a mix of desert and mountain allotments with varying degrees of dependence on BLM allotments of differing durations and seasons. Finally, Albuquerque provided access to a mix of desert types experiencing multiple years of severe drought and with some year-long grazing permits on BLM land.

Each set of focus groups included one group each of grazing permittees, recreational user groups, and environmental

and conservation groups. Participants were recruited on the basis of their involvement with BLM grazing decisions in the past or positions they hold in groups that were involved. This produced a mix of permittees with various-sized operations; recreationists with a wide variety of interests including hiking, off-highway vehicle use, and equestrian events; and conservation and environmental groups ranging from Trout Unlimited to active pressure groups such as the Western Watersheds Project.

Social effects were assessed according to standard categories of impact variables consisting of population changes, community and institutional structures, political and social resources, individual and family changes, and community resources (Interorganizational Committee 1994). After the focus groups were finished, effects of any size or nature fell into the following categories:

- Community and Institutional Structures—changes to group and individual relations with the BLM, changes to basis for community economic and social stability;
- Individual and Family Changes—changes in attitudes toward and perceptions of the policies, perceived changes to family economic situations, changes to local social networks, changes in how groups frame their relation to the resource;
- Community Resources—perceived risk to and changes in participants' environment.

Some of these effects were larger than others. Other effects fell completely on one of the three groups. Many of these effects are

what Vanclay (2003) categorizes as changes to “fears and aspirations” of themselves and the groups they represent. The effects were then evaluated as direct effects if they were related directly to the proposed action. Indirect effects occur as a result of the change brought on by the direct effect. Cumulative effects occur over time as changes

accumulate from the proposed action and all other changes. Each effect was then evaluated for regional differences found in the focus groups. Finally, the likelihood that each effect might occur was judged to be good, potential, or unknown. Social effects from the proposed changes to grazing regulation were then incorporated into the effects sections.

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Proposed Revisions to Grazing Regulations for the Public Lands
Bureau of Land Management - FES 04-39

REVISIONS and ERRATA

June 17, 2005

NOTE: THIS REVISION AND ERRATA SHEET, DATED JUNE 17, 2005, SUPERSEDES ALL PREVIOUS ERRATA SHEETS.

Publication Month

The date of printing for the EIS is "October, 2004." Add "released June, 2005," wherever the printing date appears in the document, including the cover, title page and on the "footer" of each page of the entire document.

Due to delay in final clearance, the EIS was not cleared for release until June, 2005.

Abstract

Item 2, Second paragraph: The last sentence of this paragraph refers to a "modified" alternative (alternative 3). Change to "modified action" alternative (alternative 3).

Table of Contents

Section 2.1, page v: The title of this section is listed as "Alternative One: No Change in Regulations (No Action)." While it is true that the No Action alternative does consist of the current regulations with no changes, the correct name of this alternative is "Alternative One: No Action."

Appendix A1 and A2, page vi: Insert "Proposed" before "Final."

Executive Summary

Section entitled *Proposed Action and Alternatives*, page ES-2, first paragraph: Insert the following sentence at the end of this paragraph – "The BLM's preferred alternative is the Proposed Action Alternative, alternative 2."

Page ES-2, right column, fifth full bullet: Delete this bullet and in its place insert – "Provide that a standards assessment will be used by the authorized officer to assess whether rangeland is failing to achieve standards or that management practices do not conform to the guidelines and require standards assessment and monitoring of resource conditions to support BLM determinations of whether existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve standards or conform with guidelines."

Page ES-4 and Table ES-1, page ES-14: The description of "temporary changes within the terms and conditions of permits and leases" does not, but should, include that temporary changes within the terms and conditions of permits and leases also may mean temporary changes in livestock number, period-of-use, or both as specified in an allotment management plan under § 4120.2(a)(3).

Page ES-4, right column, paragraph describing the "Modified Action Alternative," first sentence: Add the word "Action" between the words "Modified" and "Alternative."

Section titled *Effects of the Proposed Alternative*, Page ES-5, left column: Change this section title to – "Effects of the Proposed Action Alternative."

Table ES-1 and Table 2.5

The column heading for the right hand column is labeled "Modified Alternative 3." Change this column label to "Modified Action Alternative 3."

The heading for the column located second from the left is "No Action/No Change Alternative 1." Delete the words "/No Change" from this heading.

Table ES-1, Page ES-9, "Proposed Action" Column, "Basis for Rangeland Health Determinations" Row: Insert the following sentence at the beginning of this paragraph – "A standards assessment will be used by the authorized officer to assess whether rangeland is failing to achieve standards or that management practices do not conform to the guidelines."

Chapter 1

Section 1.0, page 1-7, right column: Add the following bullet under "Other Changes" –

"

- o Section 1.2.2.7 – Add the following paragraphs to the end of this section:

\Language had been added to the preferred alternative to make this process a two-step process instead of a combined process of standards assessments and a determination of whether livestock grazing management practices or levels of grazing use are a significant factor in failing to achieve standards or that management practices do not conform to the guidelines. Instead, a standards assessment will be used by the authorized officer to assess whether rangeland is failing to achieve standards or that management practices do not conform to the guidelines. Determinations that existing grazing management practices or levels of grazing use are significant factors in failing to achieve standards and conform with guidelines would be based on standards assessment and monitoring.

This minor change is a procedural step made for administrative ease and will not affect the quality of the environment in a significant manner not already considered. As such, there is no need to supplement the existing analysis. This change merely provides that as a first step assessments will be used to assess whether rangeland is failing to achieve standards or that management practices do not conform to the guidelines. The next step, determination of whether existing grazing management practices or levels of grazing use are significant factors in failing to achieve standards and conform with guidelines, would be based on standards assessment and monitoring as described in the proposed action. As a result, any impacts of making this relatively minor change for administrative ease falls within the range of analysis presented in the draft and final EIS.'"

Section 1.4, page 1-26, right column, first full sentence: Replace the word "significant" with "major."

Chapter 2

Section 2.0 - Description of the Proposed Action and Alternatives, page 2-5, left column, third paragraph: Add the following sentence to the end of this paragraph - "The Proposed Action, alternative two, is the BLM's preferred alternative."

Section 2.0, page 2-8, left column, first full paragraph: Add before the first sentence - "Added that a standards assessment will be used by the authorized officer to assess whether rangeland is failing to achieve standards or that management practices do not conform to the guidelines."

Section 2.2.7, page 2-21, right column, third sentence: Delete this sentence and in its place insert - "Under the proposed regulations in §4180.2, a two-step process would be used to ensure progress towards standards achievement and conformance with guidelines. First, a standards assessment will be used by the authorized officer to assess whether rangeland is failing to achieve standards or that management practices do not conform to the guidelines. If an assessment indicates a failure to achieve standards or that management practices do not conform to guidelines, then BLM will use existing or new monitoring data to determine whether existing grazing management practices or levels of grazing use are significant factors in failing to achieve standards and conform with guidelines."

Section 2.2.14, page 2-26, right column, first full paragraph, second sentence: Within this sentence, delete "...1. Result in temporary nonuse of all or part of the allotment; or ..." and in its place insert "...1. Result in temporary nonuse; or ...".

Section 2.2.14, page 2-26 and Table 2.5, page 2-45: The description of "temporary changes within the terms and conditions of permits and leases" does not, but should, include that temporary changes within the terms and conditions of permits and leases also may mean temporary changes in livestock number, period-of-use, or both as specified in an allotment management plan under § 4120.2(a)(3).

Section 2.1.17, page 2-30: This section duplicates Section 2.1.17 on page 2-18, rather than being an original Section 2.2.17, as was intended. Delete the duplicate Section 2.1.17 on page 2-30, including the 3 paragraphs that follow the section heading, and in its place insert –

“Section 2.2.17: As a result of concerns raised during the review of the draft EIS, we made changes in the proposed action related to grazing use when a stay has been granted.

A. Effect on grazing use when a decision to authorize use on a temporary and nonrenewable basis or on ephemeral or annual rangeland has been stayed.

The proposed action would be changed by amending section 4130.6-2 to allow the BLM to make a decision issuing a nonrenewable grazing permit or lease or a decision affecting an application for grazing use on annual or designated ephemeral rangelands effective immediately or on a date established in the decision. The proposed action would remove language from existing section 4160.3(d) on final decisions that described the effect of an administrative stay on decisions related to designated ephemeral or annual rangelands and temporary nonrenewable grazing. The ability to issue nonrenewable grazing permits and leases as full force and effect decisions under final rule section 4130.6-2(b) would largely eliminate the need for any special stay provisions for such decisions. The proposed action will allow time-sensitive decisions to authorize forage use to be immediately put into practice, without being delayed up to 75 days as could happen under current appeal and stay request time periods. If that decision is appealed and a stay is granted, the decision would be inoperative and, depending on the provisions of the stay order, the livestock may have to be removed from the allotment. These changes should improve administrative efficiency and effectiveness by allowing faster responses to time-sensitive requests and clarify compliance with legal requirements.

B. Effect on grazing use when a decision affecting grazing permits or leases is stayed.

Although the present regulations address what actions would be taken by BLM when a stay is granted on a BLM decision to modify or renew a permit or lease, they do not address actions that would be taken when a stay is granted on an appeal of a decision on a permit or lease application submitted in conjunction with a preference transfer.

The proposed action in §4160.4 provides that if OHA stays a BLM decision that changes the terms and conditions of a permit or lease during its current term, or offers a preference transferee a permit or lease with terms and conditions that are different from that of the previous permittee or lessee, or renews a permit or lease, then the immediately preceding authorization and any terms and conditions therein would not expire, and grazing would continue under the immediately preceding authorization, subject

to the provisions of the stay order and provisions of other applicable law, pending resolution of the appeal.

In addition, some procedural requirements from Subpart 4160 would be removed and replaced with a cross-reference to the regulations governing the Office of Hearings and Appeals in 43 CFR Part 4. Many of the procedural requirements set forth in existing §4160.4 are restatements of the requirements found in §4.470 *et seq.* for appealing a grazing decision, and it is not necessary to restate them in the grazing regulations in Subpart 4100."

Table 2-5, page 2-40, "Proposed Action" Column, "Basis for Rangeland Health Determinations" Row: Insert the following sentence at the beginning of this paragraph – "A standards assessment will be used by the authorized officer to assess whether rangeland is failing to achieve standards or that management practices do not conform to the guidelines."

Chapter 5

Section 5.4.4, page 5-30, left column: Delete the first five full sentences in this column and in their place insert – "Such an alternative was considered in the EIS for Rangeland Reform '94 and the anticipated effects on many livestock operators who are dependent on public rangelands for their livelihood were displayed in that document. The changes to the regulations adopted here were never intended to be either a comprehensive restructuring of the grazing program or a replacement of the 1995 grazing regulations. We do not believe that a broad "conservation alternative" which makes major changes to the livestock grazing program falls within a reasonable range of alternatives that meet the purpose and need of the action under consideration in the current EIS. Measures to protect sage grouse and their habitat are appropriately considered in the Bureau's sage grouse conservation measures, and at the land use plan and/or permit issuance levels. We addressed the sage grouse conservation strategy generally in Chapter 1 and Chapter 4 of the EIS."

Section 5.4.4, page 5-30, right column: Delete the seventh full sentence in this column and in its place insert – "The changes are driven by specific issues and concerns that BLM has recognized, either based on our own experience or from input by stakeholders."

Section 5.4.5, page 5-34, left column: Insert the following sentence before the first full sentence on this page – "The use of monitoring information to support determinations is necessary only for those allotments where assessment indicates to BLM that the rangeland is failing to achieve standards or management practices do not conform with guidelines, and the extended phase-in period will be invoked only when conditions require changes of greater than 10 percent."

Section 5.4.5, page 5-34, left column, second full response: Delete this response and in its place insert – "As of the end of 2002, we had completed evaluations on 7,437 allotments. We determined approximately 16 percent of those allotments not to be meeting land health standards because of livestock grazing management. We conclude from this that generally most public rangelands are not in decline, or at least not to

levels that we deem to have failed to achieve the standards and conform with the guidelines. To the extent that more than 16 percent of allotments may have so failed, we have found that grazing is not a significant cause. We have begun actions to address the problems we identified. The changes made in this rule will improve our ability to implement effective corrective measures - requiring new or existing monitoring data to support determinations that grazing use is implicated in not meeting standards or conforming with guidelines and taking time to engage knowledgeable and affected parties will improve the likelihood of an effective solution, and participation by the affected operator in determining the solution will increase his likelihood of complying with the corrective measures. Furthermore, we believe the rule will result in more collaboration and cooperation with permittees and lessees in addressing problems. We believe that we have adequate measures in place in the grazing regulations to deal with emergency situations such as drought and fires, or where continued grazing use poses an imminent likelihood of significant resource damage (section 4110.3.3(b)). The long term goal of this final rule is to reverse declines in western rangeland health, in those areas where there are declines, through improved consultation and cooperation with ranchers, and interested state and local authorities, as well as the interested public, in devising means to restore degraded areas and maintain currently healthy areas."

Section 5.4.5, page 5-35, right column: Add the following paragraph to the end of the first response - "Finally, these changes are based on our experience implementing the regulations adopted in 1995. The changes here do not significantly alter those provisions adopted in 1995 that were examined in the accompanying EIS for that rule. As discussed in that EIS, the changes adopted at that time were expected to improve rangeland health, including habitat for sage grouse. The timing and phase-in provisions adopted here are not expected to have significant effects on the improvements in rangeland health derived from the 1995 regulatory changes."

Section 5.4.5, page 5-36, left column: Add the following sentences after the fourth full sentence in this column - "Finally, as stated above, these changes are based on our experience implementing the regulations adopted in 1995. The changes here do not significantly alter those provisions adopted in 1995 that were examined in the accompanying EIS for that rule. The provisions adopted here are not expected to have significant effects on the improvements in rangeland health derived from the 1995 regulatory changes."

Section 5.4.7, page 5-51, left column, first full response, second sentence: Replace "assure" with "ensure."

Section 5.4.8, page 5-55, right column, first full bullet, first sentence: Delete this sentence and in its place insert - "When BLM suspends preference, it must do so by decision or by agreement."

Section 5.4.8, page 5-58, left column, second full response, second sentence: Delete this sentence and in its place insert - "The regulations, at section 4110.3-3, already allow BLM to act more quickly to avoid significant resource damage by closing all or portions of an allotment in the circumstances described in the comment."

Section 5.4.8, page 5-58, right column, second response, second and third sentence: Delete these two sentences and in their place insert – “BLM implements changes in active use by agreement or grazing decision. In the case of agreement, the grazing operator is free to conduct whatever consultation they believe needed with their lien holder, in accordance with the requirements of their lien holder. In the case of a grazing decision, the grazing operator may conduct whatever consultation they need to with their lien holder, and our regulations provide for sending such decisions to any lien holder of record.”

Section 5.4.8, page 5-59, left column, second full paragraph, first sentence: Replace “Pargraphs” with “Paragraphs.”

Section 5.4.11, page 5-70, left column, first full sentence: Delete this sentence and in its place insert – “The boards will provide expertise in reviewing range improvements and allotment management plans on public lands, but BLM will retain its independent decisionmaking role.”

Section 5.4.12, page 5-74, left column, first full comment, second sentence: Replace “basis” with “business.”

Section 5.4.14, page 5-78, left column, first response, fourth and fifth sentences: Delete these sentences and in their place insert – “The final rule requires that monitoring data be used to identify significant contributing factors and support determinations regarding same only on those allotments that standards assessment indicates are failing to meet standards or conform to guidelines. This will ensure that subsequent corrective action is focused on remedying the factors that monitoring has verified are contributing to not achieving standards or not conforming with applicable guidelines.”

Section 5.4.14, page 5-78, right column, first full response, first sentence: Delete this sentence and in its place insert – “Once a standards assessment indicates that the rangeland is failing to achieve standards or that management practices do not conform to guidelines, the level of new monitoring, if any, needed to determine what are the significant contributing factors in failing to achieve standards or conform to guidelines will vary depending on such variables as how obvious the causes are for not meeting standards, the quantity and quality of existing relevant monitoring data, presence of threatened or endangered species, conflicts between uses, and other criteria.”

Section 5.4.14, page 5-79, right column, first response: Add the following sentences at the end of this response – “The final rule does add a provision to section 4180.2(c) that limits the monitoring requirement to those cases where a standards assessment indicates that the rangeland is failing to achieve standards or that management practices do not conform to guidelines. In such cases, we will use new or existing monitoring data to identify and support a determination regarding the significant factors that contribute to the failure to achieve standards.”

Section 5.4.14, page 5-79, right column, second response: Delete the first four sentences and in their place insert – “The final rule only requires monitoring to determine causation in cases where assessment

indicates that rangelands are failing to achieve the standards or conform to the guidelines. For the most part, BLM has been focusing its monitoring efforts on those allotments where there are concerns or problems. We believe that this requirement is reasonable and necessary to ensure that we have adequate data to formulate and analyze an appropriate action where we find that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the standards and conform with the guidelines. Further, as we have stated, determinations that are supported by monitoring will make for better, more defensible decisions, especially when we need to change grazing practices on allotments."

Section 5.4.14, page 5-80, left column, first full paragraph: Delete the second sentence and in its place insert – "While this requirement may increase the on-going data collection workload in the grazing program, we expect to continue to monitor in those areas we believe to be at risk, in degraded condition, or in downward trend and in danger of losing capability, within our funding allocation without needing additional funding. Further, the change in the final rule limiting the monitoring requirement to cases where standards assessments indicate rangeland failure to achieve standards or management failure to conform with guidelines should reduce the workload and budgetary effects of the final rule."

Section 5.4.14, page 5-81, left column, first full response: Add the following sentence to the end of this response – "When revising policy, manuals, and other guidance, BLM reviews all available technical materials, and will review the Catlin and Stevens articles before the next revision."

Section 5.4.18, page 5-92, right column, first response: Delete the first paragraph of this response and in its place insert – "BLM has no authority to give priority to buffalo ranchers when issuing grazing permits or leases. The TGA requires that when issuing grazing permits, the Secretary must give preference to landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water rights, as may be necessary to permit the proper use of lands, water, or water rights owned, occupied, or leased by them. (Grazing permits authorize grazing use on lands within grazing districts established under Section 1 of the Act.) The Act also requires that when issuing grazing leases, the Secretary must give preference to owners, homesteaders, lessees, or other lawful occupants of lands contiguous to the public lands available for lease, to the extent necessary to permit proper use of such contiguous lands, with certain exceptions. (Grazing leases authorize grazing on public lands outside grazing districts.) Therefore, under the TGA, the kind of animal an applicant for a permit or lease wishes to graze on public lands has no bearing on whether the applicant has or will be granted preference for a grazing permit or lease. BLM may issue permits to graze privately owned or controlled buffalo under the regulations that provide for "Special Grazing Permits or Leases" for indigenous animals (section 4130.6-4), so long as the use is consistent with multiple use objectives expressed in land use plans."

Section 5.4.18, page 5-94, left column, third sentence: Replace "FLMPA" with "FLPMA."

Section 5.4.20, page 5-100, left column, first response: Insert the following after the second sentence – “BLM believes we have sufficient guidance to consider the issue of so-called ‘grazing retirement,’ and so does not need a regulatory provision to address this topic.”

Section 5.4.20, page 5-100: In the left column, delete the last paragraph (which continues in the upper right column) and replace with the following – “While the later M-Opinion supersedes the 2001 Solicitor’s memorandum, it agrees that land use planning is an appropriate process for considering retirement of grazing, and that whenever the Secretary retires public lands from grazing, she must determine that such lands are no longer ‘chiefly valuable for grazing and raising forage crops,’ within the meaning of Section 1 of the TGA, 43 U.S.C. 315. In addition, the M-Opinion concludes that a decision to cease livestock grazing is not permanent. See Memorandum to the Secretary from the Solicitor, M-37008 (October 4, 2002). The M-Opinion was later clarified in a memorandum stating that whenever the Secretary considers retiring grazing permits in a grazing district she must determine whether such lands remain chiefly valuable for grazing if any such retirement may ultimately result in the modification of the district’s boundaries. See Memorandum to the Assistant Secretary for Policy, Management and Budget, Assistant Secretary for Land and Minerals Management, and the Director of BLM from the Solicitor (May 13, 2003).”

Section 5.4.20, page 5-100, right column, first full paragraph: Delete this paragraph.

Section 5.4.21, page 5-103, right column, last sentence beginning with “Ownership...” : Delete this sentence.

Section 5.4.22, page 5-108: The response in the right column states that the service charge for canceling and replacing, or supplementing a grazing fee billing is \$75. The charge for these services will be \$50. This response also implies that it is BLM standard practice to issue annual grazing fee billings in March. This is not the case in all areas. It is BLM typical practice to issue grazing fee billings 30 days before the first grazing begin date shown on the permit or lease. Also typically, to ensure accurate billing, each year BLM provides the grazing operator a “courtesy grazing application” approximately 60 days before the first begin date shown on their permit or lease. This application lists the grazing use that will be authorized (upon their timely payment of grazing fees) by the permit or lease that year and invites application for changes in this use as may be needed or desired by the operator. If the operator wishes to avoid the service charge, this application must be returned before BLM issues the corresponding grazing fee billing. Grazing begin dates can occur throughout the year.

Section 5.4.22, page 5-110, left column, first full response: Delete the first two sentences of this response and in their place insert – “The changes made provide consistent direction on what constitutes a satisfactory record of performance.”

Section 5.4.26, page 5-121, right column, first full sentence: Delete this sentence and in its place insert – “Terms and conditions of these

permits and leases must ensure conformance with subpart 4180 of the grazing regulations."

Section 5.4.28, page 5-127: There are two references to the "Bald Eagle Protection Act." Change these to read "Bald and Golden Eagle Protection Act."

Section 5.4.29, page 5-129, right column, second full paragraph: Delete this paragraph and in its place insert – "These regulations at 50 CFR make clear that a BA or BE is an intermediate step that BLM will take in assessing its obligations under the ESA, and thus is not subject to appeal. A BA or BE does not grant or deny a permit application, modify a permit or lease, or assess trespass damages, which are examples of BLM decisions that are subject to appeal."

Section 5.4.29, page 5-129, right column, last paragraph, sentence that begins on page 5-129 and ends on page 5-130: Delete this sentence and in its place insert – "The rule at section 4160.1(d) prospectively supersedes the decision of IBLA in *Blake v. BLM*, 145 IBLA 154 (1998), *aff'd*, 156 IBLA 280 (2002), which held that the protest and appeal provisions of 43 CFR subpart 4160 apply to a proposed change in a permit or lease evaluated in a BA or BE."

Section 5.4.29, page 5-130, left column, first full paragraph: Delete this paragraph and in its place insert – "As explained in the preamble to the proposed rule at 68 FR 68464, a BA or BE is a tool that FWS and NOAA Fisheries use to decide whether to initiate formal consultation under Section 7 of the ESA. Formal consultation results in a BO prepared by FWS. TGA Section 9 hearings are administered through OHA, a body that has been delegated authority regarding public land use decisions, but has not been delegated authority over FWS actions. See Secretarial Memorandum of January 8, 1993 (Secretary Lujan); Secretarial Memorandum of April 20, 1993 (Secretary Babbitt). The ESA does not require or authorize the creation of an administrative appeal procedure for biological opinions, and instead authorizes direct suit in a Federal court. 16 U.S.C. 1540(g). Issuance of a BO is also a final agency action that can be challenged in Federal court under the APA. Bennett v. Spear, 520 U.S. 154, 178 (1997). Thus, direct legal remedies are already in place and OHA has not been delegated administrative review authority over FWS BOs."

Section 5.4.29, page 5-130, left column, second full paragraph, first sentence: Delete this sentence and in its place insert – "OHA can review BLM grazing decisions that implement alternatives and conditions described in a FWS BO, but that review is limited to the merits of the BLM decision and can not extend to the validity of the BO findings or the FWS procedures used to produce the opinion. This final rule does nothing to change this longstanding policy, which is summarized in Secretary Lujan's memorandum as follows:"

Section 5.4.29, page 5-131, right column, first paragraph, last sentence: Delete this sentence.

Section 5.4.30, page 5-131, right column, third paragraph: Add the following sentences to the end of this paragraph – "BLM believes it is important to actively manage the use of the rangelands and not automatically halt grazing when a stay of a decision is issued. This

approach recognizes the continuing nature of grazing operations that are authorized through permits and leases as contemplated in Section 558(c) of the APA."

Section 5.4.30, page 5-132, right column, first paragraph, second sentence: Delete this sentence and in its place insert – "With the intention of simplifying these provisions, and improving administrative efficiency, we are revising the regulations proposed at section 4160.4(b) to address the following kinds of BLM grazing decisions:

- Those that cancel or suspend a permit or lease, those that renew a permit or lease, and those that modify terms and conditions of a permit or lease during its current term; and
- Those that deny a permit or lease to a preference transferee, or offer a preference transferee a permit or lease with terms and conditions that differ from those in the previous permit or lease."

Section 5.4.30, page 5-132, right column, second paragraph: After this paragraph, insert the following paragraph – "So, although the grazing decision appealed is stayed, grazing can continue at the previous levels of use. This ensures that the decision appealed is rendered inoperative for exhaustion purposes under 5 U.S.C. 704 and the status quo prior to issuance of the decision appealed remains in effect. In the instance of an appeal and stay preventing implementation of a new grazing authorization, the fact that a permittee may still be authorized to graze at some level is not a function of the stayed decision being implemented. It is worth noting that the APA provides at 5 U.S.C. 558(c) that existing authorizations remain in effect until an agency makes a final decision on a new authorization. It is worth noting that the APA provides at 5 U.S.C. 558(c) that existing authorizations remain in effect until an agency makes a final decision on a new authorization. BLM is making these changes to balance the exhaustion of administrative remedies under the APA and our responsibilities under FLPMA and TGA to

- manage lands for multiple use and sustained yield
- regulate the occupancy and use of the rangelands,
- safeguard grazing privileges,
- preserve the public rangelands from destruction or unnecessary injury and provide for the orderly use, improvement, and development of the range.

Section 5.4.30, page 5-132, right column, last paragraph, first sentence: Replace the word "proposed" with "final."

Section 5.4.30, page 5-134, right column, first response: Add the following sentence at the end of this response – "For further discussion of administrative exhaustion and judicial review, see the proposed rule at 68 FR 68465."

Appendix A

Paragraph 4120.3-2(b), pages A-20 and A-68 indicates that a date should be inserted in this paragraph that is "60 days" after the final rule is published in the Federal Register. Change this to read "30 days" after the final rule is published in the Federal Register.

Paragraph 4130.1-2(d), pages A-25 and A-73: This paragraph was not changed as shown on these pages. This paragraph continues to read – "(d) Public ingress or egress across privately owned or controlled land to public land."

Paragraph 4130.2(f), pages A-26 and A-74: Delete the word "the" before "BLM."

Paragraph 4130.8-3 (a), pages A-35 and A-83: Capitalize the word "section" to be "Section."

Paragraph 4140.1(c)(3)(ii), pages A-38 and A-85: Change the word "stray" to "straying."

Paragraph 4140.1(c)(2)(v), pages A-38 and A-85: Add a comma after both instances of the word "destruction."

Paragraph 4180.2(c)(1), pages A-46 and A-93: Add the following sentence at the beginning of this paragraph: "If a standards assessment indicates to the authorized officer that the rangeland is failing to achieve standards or that management practices do not conform to the guidelines, then monitoring will be used by the authorized officer to identify the significant factors that contribute to failing to achieve the standards or to conform with the guidelines."

References

Page R-15: The title to BLM Technical Note 417 is not correct. The actual title for Technical Note 417 is "Assessing Big Sagebrush at Multiple Spatial Scales: An Example in Southeast Oregon."