

Draft EIS - Chapter 5

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5.0 CONSULTATION AND COORDINATION

Chapter 5 contains a summary of the public participation process, the scoping comments, and consultation and coordination with other Federal agencies on this proposed rulemaking. Also incorporated in this section is a list of preparers of this Draft EIS.

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 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 proposed rule. Copies of the ANPR and NOI can be found in Appendix D and Appendix E, respectively, of this EIS.

The BLM held four public scoping meetings during March 2003. Approximately 60 people attended the Billings, Montana, meeting (March 18) and 25 people offered testimony. Around 150 people attended the Reno, Nevada, meeting (March 20) and 25 offered testimony. Approximately 50 people attended the Albuquerque, New Mexico, meeting (March 25) with 35 individuals providing testimony, and approximately 30 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 summary of the scoping comments is found in Appendix C. All of the comment letters are posted on the internet at <http://doi1.ios.doi.gov/blm/rc3.nsf>. Oral comments at the public meetings were transcribed and are also found on the internet at http://www.blm.gov/nhp/news/releases/pages/2003/pr030303_grazing.htm.

The following is a brief summary of the public comments by topic. The bold text represents what was stated in the ANPR.

A. We are considering revising or creating definitions of the following terms:

- **Active Use:** Several commenters stated that BLM could have administratively removed the term "conservation use" and a rule change was not necessary.
- **Authorized Use:** Comments were polarized. Some wanted BLM to provide for the maximum amount of flexibility when considering the terms "nonuse" and "reduced use" in our definition of "authorized use." Others stated that this change may be inappropriate or illegal, and would limit BLM's ability to adjust livestock numbers and use for the benefit and protection of other uses or resources of the public lands.
- **Base Property:** Commenters stated that the issues were addressed in the 1995 regulations and questioned why there should be a change.
- **Grazing Lease:** Comments were that the existing definition is taken from the Taylor Grazing Act and should not be changed.
- **Grazing permit:** The BLM addressed this and other definitions during the 1995 Range Reform efforts and so commenters questioned why BLM wanted to change them now.
- **Grazing preference or preference:** Comments were split on this issue. Some commenters were in support of using "preference" because it is the term used in the Taylor Grazing Act. The livestock industry groups suggested that preference should replace the term "permitted use" wherever it appears in the current regulations. The environmental groups generally felt 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.
- **Monitoring:** Few comments were received on the definition. There were many comments on the importance of monitoring, how vital it is, and the use of the

monitoring data in decisions and the management of livestock on the public land.

- **Reserve Common Allotments:** No comments were received pertaining to the definition. See below for comments on the establishment of reserve common allotments.

B. We are considering changing the regulation to clarify present requirements and to allow better rangeland management and permit administration. Changes we are considering include:

- **Clarifying the permit renewal performance review requirements when grazing permits are pledged as security for loans.** The livestock interests supported the changes that BLM was proposing, plus added a few additional revisions, and believed it was consistent with the Taylor Grazing Act. The environmental and law school commenters stated that Section 4130.9 should be deleted because it illegally recognizes the use of permits and leases as collateral. They state that by recognizing grazing permits as legal property interests and treating them as such skews real estate markets and increases the pressure to serve individual interests.
- **Clarifying who is qualified for public lands grazing use and who will receive preference for a grazing permit or lease.** These statements centered on who should qualify to conduct grazing operations on public land and how preference order should be decided. Generally grazing interest comments focused on: (1) ensuring compliance with terms and conditions of permits, (2) requiring that permit holders be in the livestock business, and (3) opposition to nongrazing parties holding or retiring permits. Conservation groups advocated opening up receipt of preference to a wider range of parties.
- **Clarifying the provisions addressing grazing preference transfers.** Comments on this issue were primarily focused on the idea that there should not be any "grazing preference transfer," the transfer should be viewed as a new permit, and all appropriate disclosure and NEPA compliance should be required.
- **Reinstating an earlier provision that BLM and the permit holder may share proportional title to certain range improvements if the improvement was constructed under a Cooperative Range Improvement Agreement.** There were many highly polarized comments on this subject. Supporters from the livestock industry felt that shared title would improve stewardship, willingness and ability to invest, and provide incentive for better livestock management, whereas opponents raised the issue of takings cases related to private property on public land and that the 1995 regulation clarified that permittees do not have a property interest in Federal permits when they build range improvements on Federal land.
- **Clarifying that BLM will follow State law with respect to the acquisition of water rights.** The three points of view were expressed by commenters: (1) The BLM should hold water rights on public land, (2) BLM should follow State water law, and (3) permittees should hold stock water rights.
- **Examining whether BLM should authorize temporarily locked gates on public lands in order to protect private lands and improve livestock operations.** There was almost universal opposition from all groups to this proposal. The opposition was due to a concern from the general public of a loss of access to public land and a fear from livestock operators of being criticized if they used this proposed method.
- **Clarifying which nonpermit violations BLM may take into account in penalizing a permittee.** Commenters were split. Supporters of removing certain prohibited acts felt

that being cited by BLM for a grazing violation after being convicted by another agency for the same infraction amounted to "double jeopardy." Opponents felt that citing permittees for violations of environmental law is necessary to encourage good stewardship.

- **Considering ways to streamline the grazing decision appeal process.** Most commenters were concerned about the length of the process and streamlining sounded promising, but most were concerned that the proposed rule would reduce public involvement in this process. The grazing interests supported a provision that would call for suspension of a decision when a permittee or lessee files a timely appeal to a BLM decision.
- **Extending the time period that BLM may approve nonuse of forage from 3 to 5 years.** Most grazing interests supported this proposal, but they didn't distinguish between permittee-initiated actions and actions initiated by BLM to address resource problems. Some commenters urged a longer period of nonuse than the initially proposed 5 years for addressing environmental problems, and some were concerned with the possible loss of water rights because of the nonuse beyond 3 years.

C. We are also considering amendments related to changes in permitted use. Amendments we are considering include:

- **Creating provisions that reemphasize consideration of social, economic, and cultural effects in addition to the ecological effects of Federal actions to ensure compliance with the National Environmental Policy Act.** Comments were fairly evenly divided. Supporters from the livestock industry expressed the belief that these factors are consistently ignored, whereas opponents said that NEPA consideration should focus on environmental impacts.
- **Requiring a permittee or lessee to apply to renew a permit or lease.** Several commenters asked BLM to consider automatic renewal for permittees or lessees who follow the terms and conditions of their permits or leases. One commenter asked BLM to consider informing permittees of the renewal process to ensure that they apply for renewal and thus do not lose their permit.
- **What criteria BLM will consider before approving increases in permitted use.** Some commenters said BLM should never allow increases, while others stated that increases or decreases should be based on sound science and monitoring and after other forage and habitat objectives have been met.
- **Considering whether to amend the provisions stating when BLM will implement action that changes grazing management after determining that the allotment used by a permittee or lessee is not meeting or significantly progressing toward meeting land health standards.** Comments received on the topic of rangeland health standards recommended that BLM try stricter adherence to existing standards and establishing timeframes for compliance.

D. We are considering adding the following new provisions to the regulations:

- **Establishing and administering a new concept called "Reserve Common Allotments" (RCAs). RCAs would be managed as reserve forage areas for use by permittees whose allotments are undergoing restoration treatments and require rest from grazing. RCA forage would be allocated on a temporary, nonrenewable basis to permittees participating in the restoration on their allotments.** Opponents and supporters were evenly divided. The operators that supported this proposal still expressed fear that they would be forced off their allotments to create

RCAs. Opponents believed that RCAs will lead to degraded rangeland and will reward operators who are poor stewards of the land. Generally, commenters were skeptical that this program would be carried out as proposed.

- **Adding a fee schedule for preference transfers, crossing permits, applications for nonuse, and replacement or supplemental billing under existing service charge authority. We do not intend to address grazing fees in this rulemaking.** Comments were on both ends of the spectrum on this issue. Many supported the idea of a fee schedule that takes into account appropriate and reasonable administrative costs. Others felt that ranchers spend more time and money on the allotments and improvements than BLM spends on regulation, so there was no need for a fee schedule.
- **General comments on issues not specifically addressed in the ANPR and NOI.** Many other comments were received; for a summary, see the Appendix C "Comment Summary" for many additional comments.

5.2 CONSULTATION AND COORDINATION ACTIONS

5.2.1 Tribal

A letter has been sent to all tribal chairpersons for federally recognized tribes west of the Mississippi River, initiating consultation in accordance with the National Environmental Policy Act, the National Historic Preservation Act, the American Indian Religious Freedom Act, the Native American Graves Protection and Repatriation Act, the Archaeological Resources Protection Act, and Executive Order 13007 to ensure that any concerns they have will be fully considered. The letter included a copy of the Draft EIS for their review, and requests that comments be submitted during the 60-day public comment period.

5.2.2 Threatened and Endangered Species

Conferencing and informal consultation with the U.S. Fish and Wildlife Service (FWS) and National Oceanic and Atmospheric Administration Fisheries (formerly National Marine Fisheries Service (NMFS)) will be conducted to discuss the preliminary findings that there will be no adverse effects to candidate, proposed, threatened or endangered species and/or designated or proposed critical habitat from the proposed regulation changes. Before grazing permits are issued, the appropriate BLM Office must review the adequacy of existing environmental analyses and consider if candidate, proposed, threatened or endangered species and/or designated or proposed critical within the proposed permit area may be affected. If adverse effects are expected, a formal Section 7 consultation will be performed.

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.

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 will send a letter to the Advisory Council on Historic Preservation notifying them of the proposed regulation changes. The letter will provide a brief synopsis of the goals and objectives of the regulations changes and information on where to find the current regulations for their review. Once the

Draft EIS is available, a copy will be sent to them for their review.

Any new projects developed under the changed regulations would be analyzed for effects on heritage 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 heritage resources will be followed.

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