

**BLM Colorado Southwest District Resource Advisory Council**  
**Sheep Grazing Sub-Committee**  
**Minutes - Meeting Two: Legal Framework**  
**April 5, 2023**

**Resource Advisory Council (Sub-Committee) Members**

***Present***

Mark Roeber; Jim Haugsness; Jon Holst  
RAC Chair Tif Rodriguez was also in attendance.

***Absent***

Steve Garchar; Matt Thorpe

**BLM Employees:**

Stephanie Connolly (District Manager), Jon Kaminsky (Gunnison Field Manager), Suzanne Copping (Uncompahgre Field Manager), Maggie Magee (acting SWD Public Affairs Officer), Candis Fischer (Administrative Assistant), Laria Lovec (Colorado State Office Range Program Lead), Lisa Strunk (Colorado State Office Economist), Anthony Titolo (Wildlife Program), Thane Stranathan (Uncompahgre Field Office Range program)

**Facilitator:** Victoria Atkins

**Public Present:**

Terri Lamers, Brandon Diamond (Colorado Parks & Wildlife), Angela Yemma (USDA Forest Service), Adam Ortega (Colorado Department of Agriculture), Bonnie Brown (Colorado Wool Growers Association), Terry Meyers (Rocky Mountain Bighorn Society), Jamin Grigg (Colorado Parks & Wildlife)

**Opening and Introductions:**

Meeting was opened by Victoria Atkins and Stephanie Connolly, who welcomed everyone to the second of six Southwest RAC Sheep Grazing Sub-Committee meetings. Stephanie led introductions of BLM employees, Sub-Committee members, invited guest speakers and members of the public and thanked everyone for their participation.

**Presentations:**

Laria Lovec

Reviewed the legal history of grazing on public lands, including:

- The Taylor Grazing Act of 1934 --the basis for the District Grazing Service and the General Land Office;
- Federal Land Management and Policy Act (FLPMA) of 1976;
- National Environmental Policy Act (NEPA);
- Interior Board of Land Appeals (IBLA) decisions of 1991, 1993, 1997 regarding Comb Wash, Utah and analysis of each grazing permit;
- The 2015 FLPMA amendment Section 402 (c) (2) -- including that grazing is a privilege not a right and the ability of identifying a 'non-use' option;
- BLM Manual 1771;

**SWRAC Sheep Grazing Sub-Committee  
Meeting #2 - April 5, 2023**

- 43CFR4140.1(a)(2).

The BLM can only close grazing allotments through two methods—land disposal or trade.

Lisa Strunk

- The global sheep production and wool products industries declined over 80% since the 1980s, but are bouncing back.
- In the USA, Colorado ranks in the top five in sheep and wool production with 9% of the US wool market.
- 22% of Colorado's sheep and lamb production is from counties within the Southwest District.
- 30% of Colorado's Rocky Mountain Bighorn Sheep are from counties within the Southwest District.
- 70% of Colorado's Desert Bighorn Sheep are from counties within the Southwest District.
- Hunting (in the SWD?) brings in an estimated \$53 million and 1,000 related jobs.
- Income from Bighorn sheep hunting licenses in the Southwest District is estimated at \$60,000 from resident hunters and \$389,000 from non-resident hunters.

Anthony Titolo (on behalf of Robin Sell)

BLM Manual 6840 identifies special status species and endangered species:

- Directs to “conserve” special species and habitats and reduce or eliminate threats affecting status of species or improve habitat.
- Requires Special Species status to include native status, be located on BLM managed public lands, and that BLM has an ability to affect .
- Criteria for BLM Sensitive Species also includes any recent downward trend and/or the ability to provide refuge.
- In Colorado, both Rocky Mountain Bighorn and Desert Bighorn are designated as Sensitive Species.
- This designation is reviewed every five years and expected to remain the same.
- The 6840 Manual also directs BLM to consider sensitive species and habitats in its Resource Management Plan and land use planning processes.
- Regarding grazing permits, it's required to review authorized actions implementation and apply mitigation measures.

BLM Manual 1730 provides specific guidance for the conflict of domestic and wild animals.

- Recognizes special management attention is needed to create either spatial or temporal “effective separation.”
- This applies to grazing, recreation, and vegetation management.
- Implementation is done at the land use planning level and through NEPA actions.
- “Shalls” include:
  - Conduct risk analysis with best available science including a Risk of Content modeling;
  - Evaluate Risk through NEPA alternative development;
  - Practices identified under the terms and conditions on the permit.
- Also includes practices:
  - Emphasize Collaboration
  - Voluntary removal

**SWRAC Sheep Grazing Sub-Committee  
Meeting #2 - April 5, 2023**

- Consistent conversion to other livestock types
- Consistent cancellation or closure within existing regulations (FLPMA & NEPA, etc.)
- Notification of Bighorn and domestic sheep sightings
- Removal of sick animals from the herds
- Trailing practices -- apply Best Management Practices

The Risk of Contact models and methodologies were peer reviewed in 2014 and are only to estimate probability. The Core Herd Home Range (CHHR) is a habitat model for Bighorn movement and frequencies. Scenarios are presented to predict the annual contact rate and the frequency of a disease outbreak. "All models are wrong, but some are useful." Models allow for the estimate of contact rate, not specific, not disease transmission. Does not factor in animal behavior or domestic sheep strays. Modeling is a decision support tool. The decision is made by the Authorized Officer.

Question: (J. Haugsness) Is providing the Field Office Manager six month old information on patterns and a Risk of Contact model based on only 400 animals compared to the 1980s numbers, an appropriate management strategy?

A: (A. Titolo) The Risk of Contact model is based on herd size. Larger herds = more frequent forays. Reference to the Hells Canyon (Idaho/Oregon) studies. BLM is informed by telemetry from CPW.

Q: (J. Haugsness) Is the current 400 animal goal a good strategy?

A: (A. Titolo) The Risk of Contact model is used as an evaluation tool for a specific RMP's ability to achieve effective separation.

Q: (J. Holst) Will you please provide examples of other EIS or other unlitigated successful decisions?

REQUEST FOR INFORMATION

A: Yes.

Q: (J. Holst) When there is edge to edge overlap, does the Risk of Contact model work?

A: It is presumed there will be one or more contacts per year. The presence of overlap = contact.

Comment: (M. Roeber) Would like to see more information on the economics of private land base properties related to grazing permits and how they tie into local economics and landscapes. He pointed out the value of private ranching properties and undeveloped land as valuable open space. REQUEST FOR INFORMATION.

A: (L.Lovec) There is no requirement for the number of private acres needed to obtain a grazing permit.

A: (S. Connolly) This idea will be used for the next Sub-RAC meeting on economics, with more information from Lisa Strunk.

Q: (J. Haugsness) How does the Risk of Contact model work in winter?

A: (A.Titolo) The model can be evaluated for different seasons by including seasonal space use, animal behavior & movement.

A: (J. Kaminski) The "Cumulative Impacts" of the EIS would include this information.

**Overview of the differences between USDA Forest Service and BLM Grazing Practices & Processes  
Angela Yemma (USFS) & Ryan Kay (BLM)**

A chart of the comparisons was shared and is loaded on the shared drive.

Ryan Kay referred to 43CFR4100 and Colorado BLM's public land health standards. Permits can be renewed through multiple NEPA actions including a Categorical Exclusion document, a DNA

**SWRAC Sheep Grazing Sub-Committee  
Meeting #2 - April 5, 2023**

(Determination of NEPA Adequacy), an Environmental Assessment or an Environmental Impact Statement and can include public comment and scoping.

Before a final decision is issued (43CFR4160) a proposed decision and a protest period occurs. (this is where the current Sheep EIS is). If protests are filed, there is no time period.

After the Final Decision is a 30-day appeal period. Appeals are to be filed with the Office of Hearings and Appeals. It is then reviewed by an Administrative Law Judge (ALJ), who can remand or uphold the decision. Then the decision may be subsequently appealed to the Interior Board of Land Appeals (IBLA) and Federal Court.

The permit terms and conditions cannot be modified and must remain the same as the permit NEPA decision. (USFS can modify the terms and conditions through their Annual Operations Instructions.)

Q: (J. Haugsness) Regarding the litigation and appeal process, a permit is good for 10 years. Can it be canceled for cause and can the permittee appeal?

A: For an appellant to ask for a stay from the Administrative Law Judge, they must demonstrate

1. Relative harm
2. Irreparable harm
3. Best interest of the public

Appellant can ask for stay until it is resolved for up to 45 days if permit continues.

Q: (J. Haugsness) If BLM cancels a permit, does that meet the definition of harm?

A: Yes, if economic harm.

**Perspectives Panel: The Options from Various Points of View**

Jamin Grigg (Colorado Parks & Wildlife) & Adam Ortega (Colorado Department of Agriculture)

Jamin Grigg reviewed the bighorn herd under discussion:

- Tier 1 herd, a native endemic herd larger than 100 animals with few transplanted animals;
- 1980s disease and die off with 1,000 animals reduced to 40;
- Followed by low lamb recruitment;
- Forty years later rebounding to about 400 animals;
- Current population objective is 400-500 animals and are intentionally managing below the carrying capacity;
- If domestic sheep were not on the landscape, the population objective would be closer to 1,000 animals;
- CPW concern is there is less than effective separation. Adjacent does not equal effective separation;
- The WAFWA Guidelines recommend a buffer zone of 9 airline miles, which is difficult to achieve in this landscape;
- Bighorn health can turn fast; it is a dynamic situation with sudden 20-30% die off.

Q: (J. Haugsness) Why are hunting licenses issued for ewes?

A: In order to maintain the herd population objectives and to limit contact. We do our part to attain effective separation.

Q: (J. Haugsness) How are populations estimated for the Risk of Contact models?

**SWRAC Sheep Grazing Sub-Committee  
Meeting #2 - April 5, 2023**

A: Helicopter surveys are performed in summer and winter. Winter surveys more helpful to determine lamb recruitment when they are closer to 1 year of age. And data from radio collars.

Adam Ortega:

Adam expressed appreciation for the comparison chart of FS & BLM grazing permit procedures. Regarding permittee performance as to evaluation, some permittees have GPS, spot technology and collars. Best Management Practices and Terms and Conditions are important and the way to address issues. CDA will support if Terms and Conditions are not complied with. They want to help with performance improvement.

If a permit is canceled for performance, it does not mean closed for grazing.

This EIS has multiple permittees with vacant but not closed allotments.

Jon Kaminsky:

The Gunnison Resource Management Plan (RMP) as amended dates to 1994 -- the second oldest in the state. RMPs are typically re-done every 20 years. An RMP outlines the allotments and stocking rights. Permits are what's on paper and negotiation occurs based on the current condition of the land through land health assessments, drought issues, etc. and what is "do-able" within the ranching business.

Stephanie Connolly:

Given the current situation and the scope of the current EIS, Steph hopes the RAC can offer a collective voice. What would you do in this situation?

Q: (J. Haugsness) for Jamin: How often is grazing info provided?

A: Data is collected annually and shared whenever the agency asks for it and with direct and regular communication between CPW and agency wildlife staff.

Q: (J. Haugsness) What is the risk of foray?

A: Historic radio collar data shows 14-15% of rams foray outside of the area and 2% of ewes foray.

Foray can be related also to young animals looking for new habitat. Estimated 10% not counted in the core herd range, and does not include forays.

REQUEST FOR INFORMATION: Jon Holst requests examples of showing 1730 Manual compliance with edge to edge allotments, or the next closest resolution or Best Management Practices. Anthony Titolo will look for. REQUEST FOR INFORMATION

Q: (J. Haugsness) Is the annual survey adequate time to prevent risk of contact?

A: (J. Grigg): State statute mandates annual data requirements reported to the wildlife commissioner and Colorado Legislature. In the event of a concerning situation -- e.g. a federal agency biologist and a known Bighorn foray into a domestic sheep herd, CPW would immediately reach out to the land manager. Same for a domestic sheep.

Q: (J. Haugsness) Is the 400-500 population objective working?

A: CPW is concerned with adjacent grazing allotments so are intentionally keeping the numbers below.

Q: (J. Haugsness) Do we need to cancel permits or is this satisfactory for the 400-500 population?

A: It remains a high degree of risk on the landscape with potential for contact and disease events.

**Public Comment Period**

Bonnie Brown, Colorado Wool Growers Association

- Bonnie Brown expressed concern that the Risk of Contact model can be leveraged; the dirt model of whether a Bighorn steps on a domestic sheep allotment does not take in Best Management Practices.

**SWRAC Sheep Grazing Sub-Committee  
Meeting #2 - April 5, 2023**

- NOT “Disease” transmission; “pathogen” transmission may or may not manifest depending on the duration of contact and the dosage.
- Studies done in pen enclosures with forced contact are not indicative of in the wild.
- Cites *Wild Earth Guardians vs. Martinez* in Washington State, unsuccessful with USFS.
- Cites Wyoming Forest Service ruled Bighorn not on every acre.
- Requests balance in the decision.
- What is the definition of harm?
- Viable ranching depends on the use of public land summer pastures so that the base private property may be used to grow hay -- needed for sustaining the domestic sheep through the winter. Not as simple as ‘just go home.’

Terry Meyers, Rocky Mountain Bighorn Society

- Die-off is not hypothetical. It is happening in the Western US every year.
- Effective separation does not mean boundary to boundary.
- The 1730 Manual decisions have not been litigated because no decisions have been made and no examples exist.
- See Kameth reference in the share folder on over 500 spillover disease events from domestic sheep or domestic goats.
- On the specific three high allotments, effective separation cannot be achieved. Time is better spent to help “re-tool” the permittee to keep operations (other allotments?).
- Since you can’t change Terms and Conditions without NEPA, there has been no change.

Q: (J. Haugsness) What options are there for permittees?

A: (T. Meyers) Monetary compensations (aka “Buy-out”) and/or use of other allotments. Also current proposed Farm Bill in Congress to help permittees stay in business.

Q: (J. Haugsness) What kind of compensation?

A: The amounts and situations are quite variable. Negotiation occurs with individual private discussions.

Q: (J. Haugsness) What factors are considered?

A: How many AUMs are involved; available alternate allotments; viability of conversion to other livestock.

**General Discussion**

Terry Meyers asked if the BLM feels there are reasonable existing alternatives?

Jon Kaminsky responded: Can we pick an alternative with documentation today and be successful? The proposed decision has been picked and protested. If we make an allotment unavailable it will require an RMP amendment.

Stephanie Connolly stated that the NEPA document has been completed and hopes the Sub-RAC will make sure all the facts are out.

Q: (J. Haugsness) If a permittee voluntarily terminates, would BLM still need to go back to the RMP to stop grazing (otherwise open to other grazing)?

A: (various) A “Buyout” is a non-BLM transaction. The Authorized Officer has flexibility to change livestock and change the permittees. See FLPMA Section 402(c)(2) and also an Instruction Memorandum regarding the process of permittees relinquishment (e.g. Grass Bank). The No Action alternative grazing is required on every NEPA document and offers a full description of what that alternative would look like, but not usually the alternative chosen. Perhaps a “pause” for grazing?

**SWRAC Sheep Grazing Sub-Committee  
Meeting #2 - April 5, 2023**

Jon Kaminsky and Jim Haugsness discussed the idea of continuing with an RMP amendment (since the no grazing alternative was not an EIS Alternative) to include a ten-year processing “pause” on grazing option.

**Closing Remarks**

Stephanie Connolly thanked the group for their participation. The next meeting will be held on Tuesday, May 9 and will focus on Economics. Topics to be considered include:

- Mark Roeber’s request to consider the value of a ranching operation’s base private property and the unintended consequences of the loss of large parcels of private land (to private land development/subdivision). Laria Lovec added the value of long-term ranching support to rural communities vs. short term hunting support; Payment in Lieu of Taxes; the aesthetics and visual values and the ranching community support of rural schools.
- Lisa Strunk expects to open her economic presentation with a general lay of the lay and the economics of the area. Will include the economic impacts of grazing in this area, also economic modeling data of the impacts of recreation and oil and gas leasing.
- Jim Haugsness suggests including the pluses and minuses of how terminating a grazing lease causes a permittee harm and what advantages does a permittee have to lease a different area (e.g. less fuel and transportation costs, etc.)?
- Terry Meyers commented on the economics of managing the BLM grazing program -- \$345,000 was spent on the EIS (2019). How much will it cost for 9 permits?

**Meeting adjourned.**

Draft minutes submitted by Victoria Atkins