

Nevada Bureau of Land Management Land Health Standards and Guidelines

Their Development and Use

Presentation to the Northeast Great Basin
Resource Advisory Council

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Overview

- Use in Public Lands Management
- Historical Context of Development
- Court Cases of Significance



Use in Land Management (Livestock Grazing)

- 43 CFR 4130.3-1(c) (2005): [Grazing] “Permits and Leases shall incorporate terms and conditions that ensure conformance with subpart 4180 of this part” [Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration].
- Other BLM programs have no *regulatory* requirements regarding implementation of Standards and Guidelines.
- But, some have similar policy and program guidance, such as “best management practices” that can serve similar purposes.



Fundamentals (Paraphrased – 43 CFR 4180.1)

- Watersheds are functioning properly.
- Ecological processes (hydrologic cycle, nutrient cycle, energy flow) support healthy biotic populations and communities.
- Water quality meets state standards and meets BLM biological management objectives (e.g., clean water for fish).
- Wildlife habitat is being restored or maintained for special status species (T&E, etc.).



Standards and Guidelines Development

(Paraphrased /Condensed 43 CFR 4180.2)

- Geographic area to which S&Gs apply determined by State Directors in consultation with RACs based on similar land characteristics.
- S&Gs to be developed and amended by BLM State Directors in consultation with RACs, state agencies, other federal agencies and tribes, and the public – and then approved by the Secretary of the Interior.
- S&Gs must provide for conformance with the Fundamentals.



Standards 43 CFR 4180.2(d)

- At a minimum standards must state aspirations for:
 - Watershed function
 - Nutrient quality and energy flow
 - Water quality
 - Special status species habitat
 - All other native species habitat



Guidelines 43 CFR 4180.2(e)

- At a minimum (grazing) guidelines must elucidate management practices that:
 - Promote adequate ground cover
 - Maintain healthy soil physical and biological conditions
 - Maintain or restore riparian/wetland processes and functions
 - Maintain healthy habitat for plants and animals
 - Promote the use of native species wherever possible in vegetation restoration efforts



Use in Land Management (Livestock Grazing)

- 43 CFR 4180.2(c) requires the BLM to take “appropriate action” before the start of the next grazing year if it finds that it is authorizing grazing use that significantly contributes to not meeting standards or that does not conform with the guidelines.
- Appropriate action means changing any aspect of grazing management that the BLM determines are causing the problem(s).
- Changes are implemented by a BLM grazing decision and are subject to “due process” protest and appeal rights.



Field Application – Handbook (2001)

	UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT MANUAL TRANSMITTAL SHEET	Release 4-107 Date 1/1901
<hr/>		
Subject <u>H-4180-1 - RANGELAND HEALTH STANDARDS</u>		
1. <u>Explanation of Material Transmitted:</u> This release transmits a new Handbook describing the authorities, objectives, and policies that guide the implementation of the Healthy Rangeland Initiative. Implementation will provide for the assessment of public land health, and for taking appropriate action to achieve, or make progress toward achieving, specified rangeland health standards.		
2. <u>Reports Required:</u> None.		
3. <u>Material Superseded:</u> None.		
4. <u>Filing Instructions:</u> File as directed below, immediately following the Manual Section.		
<u>REMOVE:</u>	<u>INSERT:</u>	
None	H-4180-1	
	(Total: 24 Sheets)	
		/s/ Sylvia V. Baca Acting Director, Bureau of Land Management



Field Application – Manual (2009)

Form 1221-2 (June 1969)	UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT MANUAL TRANSMITTAL SHEET	Release 4-110 Date 1/16/09
<hr/>		
Subject <u>4180 – Land Health</u>		
1. <u>Explanation of Materials Transmitted:</u> This release transmits a complete revision of Manual 4180, the Land Health Manual for the Bureau of Land Management. This manual establishes policy, provides guidelines, and assigns management structure and responsibilities for conducting land health evaluations.		

Guidance:

within their jurisdiction. The BLM and the RACs have agreed to work together to evaluate and, where appropriate, expand these Standards to ensure that there are land health standards that are relevant to all ecosystems and programs across public lands, including livestock grazing (Handbook H-1601-1, *Land Use Planning*).



ATTACHMENT 1
FLOW CHART FOR EVALUATION AND DETERMINATION PROCESSES

Field Application – Instruction Memorandum WO-2009-007

Detailed Instruction is in the IM accessed at:
http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2009/IM_2009-007.html



Standards and Guidelines for Nevada Approved 1997

**BUREAU OF LAND MANAGEMENT
STANDARDS AND GUIDELINES FOR NEVADA**

**LAND USE PLAN CONFORMANCE DETERMINATION
AND
NATIONAL ENVIRONMENTAL POLICY ACT ANALYSIS**

FINAL

I. INTRODUCTION

A. Purpose and Need

The purpose of developing Standards and Guidelines is to ensure that the Bureau of Land Management's (BLM) administration of grazing helps preserve currently healthy rangelands and restore healthy conditions to those areas that are not functioning properly. Standards and Guidelines will provide specific measures of rangeland health and will identify acceptable or best management practices.

The Standards and Guidelines would meet these needs through developing consensus among the BLM, the public and special interest groups on what values should be assigned to measure healthy rangeland and what methods and practices are needed to help achieve a healthy rangeland.

B. Background Leading to Development of Standards & Guidelines



Standards and Guidelines for Nevada Approved 1997

- Three geographic areas - based on NRCS "Major Land Resource Areas" selected for establishment of RACs and for S&G development:
 - Mohave – Southern Great Basin
 - All or portions of Clark, Nye, Esmeralda and Lincoln Counties. This includes portions of the Ely, Las Vegas (now Southern) and Battle Mountain BLM Districts.
 - Sierra Front-Northwestern Great Basin
 - All or portions of Humboldt, Pershing, Washoe, Carson City, Douglas, Lyon, Mineral, Storey and Churchill Counties and Lassen, Plumas, Sierra and Alpine Counties in California. This includes the Winnemucca and Carson City BLM Districts.
 - Northeastern Great Basin
 - All or portions of Elko, White Pine, Eureka and Lander Counties. This includes all of the Elko and portions of the Ely and Battle Mountain BLM Districts.



Standards and Guidelines for Nevada Approved January 1997

- Development effort initiated by RACs in September, 1995.
- Combination of public scoping meetings, RAC meetings (30 of them) and field trips occurred over the next 17 months.
- EIS developed; Land Use Plan conformance determined.
- More details in the Nevada S&G Documentation.



What Are the Nevada S&G's?



Mohave / S. Great Basin	Sierra Front / NW Great Basin	NE Great Basin
Three Standards	Five Standards	Four Standards
20 Guidelines	23 Guidelines	14 Guidelines

- See Appendices A, B and C of the Nevada S&G Documentation.



Use of Nevada S&G's

- Implementation process described in preamble – two processes ... short term and longer term:
 - 1) If grazing use supervision or monitoring indicate existing permit provisions are causing standard non-attainment-then Decision or Agreement to modify permit by next grazing year.



Use of Nevada S&G's

- 2) Established Allotment Evaluation – Multiple Use Decision process used to determine whether current management of multiple uses meet LUP objectives, Activity Plan objectives and S & Gs. Outcome is decision that sets:
 - a) Grazing permit terms and conditions
 - b) Appropriate Management Levels for wild horses and burros
 - c) Recommendations for wildlife population levels
- However, the Interior Board of Land Appeals decision known as the “1998 Comb Wash Decision” affected BLM’s ability to implement management changes as described in Nevada S&G preamble (and, it can be argued, as envisioned by the grazing regulations).



1998 Comb Wash Decision

- Up through 1998, the BLM routinely renewed grazing permits as they expired without further process or analysis.
- Grazing EIS's developed at the Field Office or Resource Area level were thought to satisfy NEPA requirements for grazing.
- In 1992, Moab FO renewed a permit and implemented an AMP for the Comb Wash allotment in Utah in 1992, and claimed that the Moab EIS provided sufficient NEPA analysis to support that action.
- National Wildlife Federation and others challenged. Legal wrangling at the administrative court level for six years.



1998 Comb Wash Decision

- In 1998, the Interior Board of Land Appeals ruled that site-specific NEPA analysis is needed for permit renewal.
- Generally, BLM grazing EISs were at the broad scale and did not contain analysis that could be considered “site specific” enough to satisfy this standard.
- So began an emphasis on “permit renewal” as a significant workload driver for the BLM rangeland program.
- This was (is) an overwhelming workload to do permit renewal analysis that satisfies the evolving standard of what NEPA requires.
- Not coincidentally, the first “grazing rider” requiring BLM to renew permits upon their expiration pending compliance with environmental law was enacted in 1999 (and has been in place ever since).



Historical Context (Before S&G's)

- Before 1995, different key grazing regulations
 - Changes in permits “must be supported by monitoring, as evidenced by rangeland studies conducted over time.”
 - Authorized grazing use shall not exceed livestock carrying capacity “as determined through monitoring”
 - Permits may be modified “if monitoring data show that present grazing use is not meeting land use plan or management objectives.”
 - Changes in forage use levels “in excess of 10% shall be implemented over a 5-year period.”



Historical Context (Before S&G's)

- Before 1995, no national precepts as regards expectations for resource conditions and the grazing management practices needed to achieve them.
 - Regional management objectives specified in individual land use plans (approximately 167 of them, or so).
 - Allotment specific resource objectives stated in grazing activity plans (Allotment Management Plans) where they existed (minority of allotments).
 - Permit changes implemented by grazing decision supported by an Allotment Evaluation based on a analysis, interpretation and evaluation of monitoring data and other relevant management information.



Historical Context (Before S&G's)

- 1991: National Public Lands Resource Advisory Council (NPLRAC) asked by BLM Director to make recommendations to guide the BLM's rangeland program.
- NPLRAC then tasked a smaller panel – called the “Blue Ribbon Panel” to review the program and make recommendations.
- The Blue Ribbon Panel wrote a report: “Rangeland – Initiatives and Strategies” and presented it to the BLM Director and Secretary of Interior in March, 1992.



Historical Context (Before S&G's)

- The report identified six issues – foremost among them being the need for well-defined rangeland program goals and objectives embracing the diversity and sustainability of natural resources and the multitude of issues, values and interests associated with the public lands of the west.
- The panel also concluded that BLM's primary concern should be the protection of the basic rangeland components of soil, water and vegetation.
- Based on the panel's recommendations, S&G's were developed to articulate, at the national level, what resource conditions should be present to consider a rangeland "healthy."



Rangeland Reform '94

- In 1993, the BLM announced an effort to make significant changes to the BLM grazing program: "Range Reform 94."
- The creation of S&Gs was one component of a larger set of grazing program changes implemented with "Range Reform 94."
- The other program changes involved numerous aspects – including abolishment of Grazing Advisory Boards, establishment of RACs, grazing fees, subleasing of grazing permits, permittee performance record, grazing appeals and several more.



Standards and Guidelines - Intent

“In implementing the Rangeland Reform ‘94 initiative, the Department:

- intends to develop standards and guidelines for livestock grazing in rangeland ecosystems...
- to be incorporated in land use plans, allotment management plans or other activity plans, range improvement permits and as terms and conditions of all permits and leases.

These standards and guidelines would be developed:

- to reflect the best available science for specific ecosystems or ecoregions, and
- to provide greater consistency in rangeland management from office to office and agency to agency within each rangeland ecosystem.

The standards and guidelines would reflect:

- properly functioning conditions, or
- those conditions that must be met to ensure sustainability and healthy, productive ecosystems.”

-- From: “Advanced Notice of Proposed Rulemaking” (ANPR) 58 F.R. 43212 (8/13/93) [Formatting edited.]



Standards and Guidelines - Intent

“The Department believes that it would be inconsistent with its mandate to manage the public rangelands to allow an allotment to deteriorate while prolonged monitoring studies are conducted in those instances where other reliable measures of rangeland health indicate a need for action.”

-- From: “Final Rule” 60 F.R. 9894 [9931] (2/22/95)



Court Cases Procedural Challenge

- The 1995 Rulemaking was challenged in the Wyoming District Court by the Public Lands Council and the American Sheep Industry Association, challenging 18 rule change areas and the adequacy of the EIS.
- The Wyoming District Court found the EIS adequate and the U.S. prevailed on 14 points and lost on 4. The District Court ruling then was appealed by both parties to the Tenth Circuit Court.
- The Tenth Circuit affirmed the Wyoming Court on the 14 points, and overturned the District Court on 3 others (finding for the U.S.), leaving the plaintiffs with one area the Courts deemed illegal, namely the issuance of “Conservation Use” permits (issuing permits to not graze allotments to the exclusion of other applicants).



Court Cases Procedural Challenge

- The plaintiffs then appealed the 10th Circuit’s ruling regarding the 3 points it lost to the Supreme Court - “Public Lands Council *et al.* v. Babbitt.” The U.S. did not appeal the 10th Circuit’s finding that the “Conservation Use Permitting” rule was not sanctioned by law.
- In 2000, the Supreme Court unanimously upheld the 10th Circuit’s decision. Thereafter, the new regulations were implemented, except the issuance of Conservation Use permits.
- Although the 1995 rules changes was disputed, the only legal challenge to the S&Gs was in the Wyoming District Court’s decision – wherein the Court stated:



Court Cases Procedural Challenge

*“Public Lands Council concedes that the Bureau of Land Management has the authority to adopt the Fundamentals, but argues that the Bureau of Land Management [*1448] failed to respond adequately to comments criticizing the Fundamentals and the Standards and Guidelines.” [Italics added]*

And --

“The Court thus cannot say that the Bureau of Land Management failed to respond to critical comments. The adoption of the Fundamentals simply was not arbitrary and capricious.”



“As Applied” Challenges

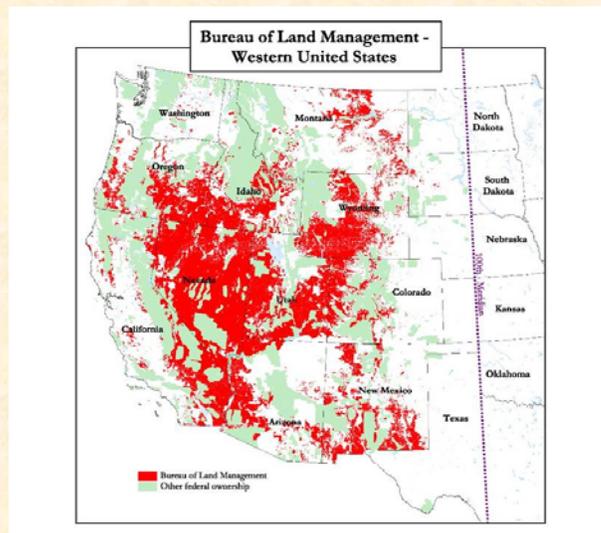
- Generally an “as applied” challenge to S&G implementation would allege particulars regarding BLM violation of 43 CFR Subpart 4180 – for example:
 - “BLM used the wrong indicators to evaluate standards attainment.”
 - “The data BLM used to evaluate the standards or determine causality was flawed.”
 - “BLM made a determination and failed to meet the deadline to ‘take appropriate action’ before the start of the next grazing year.”
 - “There is no evidence to support that the action taken will ‘cure’ the failure to meet the standard.”
- So far, challenges to BLM grazing decisions that take action based on standards non-attainment have primarily been procedural - for example:
 - “BLM violated NEPA – insufficient range of alternatives or analysis failed to consider significant factors or failure to take a ‘hard look’.”
 - “BLM violated FLPMA by failing to consider all relevant factors and taking action that was not supported by the record.”



“As Applied” Challenges

- “As applied” challenges generally are a more difficult case for an appellant to make, given the high deference the Court grants to the government in interpreting and applying the laws and regulations to matters entrusted to it by Congress.
- However, as the BLM continues on its endeavors to cure procedural flaws identified by the Courts, it would not be unusual for “as applied” challenges to come to the forefront.
 - As an example, a March 2014 Administrative Law Judge’s Decision regarding grazing use in the Green Mountain Common allotment in Wyoming (WY-050-11-01-Consolidated) – where BLM generally prevailed – states in part:

2. The preponderance of the evidence shows that the 2011 FGDs constitute appropriate action to ensure that significant progress will be made toward fulfillment of the fundamentals of rangeland health and the Wyoming Standards for Rangeland Health, as required by 43 C.F.R. Subpart 4180, with two exceptions.



Thank you for your attention.

