

U.S. Department of the Interior  
Director (630)  
Bureau of Land Management  
1849 C St NW, Room 5646  
Washington, D.C. 20240  
Attention: Director Pearce

Submitted via <https://www.regulations.gov>, BLM-2026-0001- JULY 13, 2026  
*A hard copy of these comments and electronic copies of all attachments and scientific references submitted via the U.S. Mail.*

**COMMENTS ON REVISION OF REGULATIONS FOR GRAZING ADMINISTRATION,  
EXCLUSIVE OF ALASKA; A proposed rule by the Bureau of Land Management,  
published 5/12/2026 (91 FR 26852)**

Director Pearce,

The following comments are submitted on behalf of the staff and members of Western Watersheds Project, 350 Seattle, Advocates for Snake Preservation, Alliance for the Wild Rockies, American Wild Horse Conservation, Animal Legal Defense Fund, Blue Mountains Biodiversity Project, Buffalo Field Campaign, Cascadia Climate Action Now, Center for Biological Diversity, Central Oregon LandWatch, Central/Eastern Chapter of The Great Old Broads for Wilderness (Bitterbrush Broadband), Climate Writers, Colorado Native Plant Society, Continental Divide Trail Coalition, Endangered Species Coalition, Environmental Protection Information Center (EPIC), FOUR PAWS USA, Friends of Merrymeeting Bay, Friends of Nevada Wilderness, Great Old Broads for Wilderness Greater Hells Canyon Council, Heartwood, High Country Conservation Advocates, Indivisible Bend, Izaak Walton League Rapid City South Dakota Chapter, John Muir Project, Kettle Range Conservation Group, Klamath Forest Alliance, Klamath Siskiyou Wildlands Center, Large Carnivore Fund, Lattin Consulting, Lone Star Humane Association, Los Padres ForestWatch, Minnesota Division Izaak Walton, League of America, Mount Shasta Bioregional Ecology Center, Next 100 Coalition, North, Central Washington Audubon Society, Northwest Animal Rights Network (NARN), Oregon Natural Desert Association, Oregon Wild, Partnership for Policy Integrity, Public Employees for Environmental Responsibility (PEER), People & Pollinators Action Network, People and Carnivores, Prairie Hills Audubon Society, Predator Defense, Project Coyote, Project Eleven Hundred, Resource Renewal Institute, Sage Steppe Wild, Sagebrush Habitat, Conservation Fund, Inc., Sawtooth Science Institute, Science for Colorado Wildlife, Seven Generations Innovation, Sheep Mountain Alliance, Silvix Resources, Soda Mountain Wilderness Council, Southern Utah Wilderness Alliance, Species Unite, SWEET Grass Advocacy for North, American Equisetum, The Cloud Foundation, The Confluence Series, The Ocean Project, The Rewilding Institute, The Wild Beauty Foundation, Upper Gila Watershed Alliance, Western Wildlife Outreach, White Mountain Conservation League, Wild Arizona, WildEarth Guardians, Wilderness Watch, WildLands Defense, Wildlife for All, Wolf Conservation Center, Wyoming Coalition For Animal Protection, Wyoming Untrapped, Wyoming Wildlife Advocates, and Yellowstone to Uintas Connection. Our

organizations collectively represent the interests of millions of people concerned with the management of public lands and who have aesthetic, spiritual, scientific, cultural, and recreational interests in the lands affected by the proposed changes.

## INTRODUCTION

We are concerned that the Bureau of Land Management (“Bureau”) is attempting a wholesale revision of regulations for the most extensive use of western public lands with no more than a categorical exclusion in place of a hard look. Livestock grazing has significant impacts to the water, air, soil, cultural, paleontological, recreational, scientific, and wildlife habitats on 155 million acres of Bureau-managed lands. While the overview of the proposed rule claims that the Bureau intends to modernize the grazing program with the changes, it is clear that the real agenda is to wrest control of these lands from the American public and hand more authority to the very industry that will benefit from these weaker regulations. It is a bald-faced attempt to salvage the unlawful 2006 regulations overturned by federal courts earlier in this century,<sup>1</sup> and also a shameless attempt to set public lands grazing management back even further by recreating the opportunities for excess and degradation that led to the very origins of the Bureau itself. We vigorously oppose nearly all of the proposed changes.

These grazing regulation revisions are being proposed by the Bureau to benefit the livestock industry at local and national levels, at the expense of the natural resources and public interest, and in violation of the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), the Public Lands Improvement Act (PRIA), the Taylor Grazing Act (TGA), the Endangered Species Act (ESA), the Wilderness Act, Clean Water Act (CWA), and the Administrative Procedure Act (APA). As before, the proposed rules, if put into effect, will cause “a low long-term adverse effect on wildlife and biological diversity in general.” *WWP v. Kraayenbrink* 632 F.3d 472 (9th Cir. 2011).

This is not to say we fully support the current, existing regulations, and indeed, we attach hereto comments we submitted in 2020 recommending a conservation-oriented alternative set of regulations as well as numerous scientific studies about the impacts of livestock grazing on public lands resources.<sup>2</sup> We believe there is room for improvement in grazing management on Bureau lands, but these proposed changes aren’t the path to get there.

### A. CONFORMANCE WITH FEDERAL LAWS

#### 1. The National Environmental Policy Act requires an environmental impact statement.

This regulatory proposal requires an environmental impact statement, and failing to conduct such an analysis will violate the National Environmental Policy Act (NEPA). NEPA requires federal

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<sup>1</sup> Attachment A. *W. Watersheds Proj. v. Kraayenbrink*, 632 F.3d 472-2 (9th Cir. 2011)

<sup>2</sup> Attachment B. WWP et al comments 2020. Scoping Comments and proposed alternative for the 2020 Proposed BLM Grazing Regulations.

agencies to "include in every recommendation or report on ... major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official" evaluating the environmental impact of the proposal, 42 U.S.C. § 4332(2)(C). This requirement is known as the environmental impact statement.

The comprehensive and interconnected proposal of revised grazing regulations is a major federal action that will significantly affect the quality of the environment. For example and discussed in greater detail below, these proposed regulations will eliminate water quality controls, remove the requirement to measure land health and compliance at a site-specific allotment level, allow a delay in addressing a failure to address land-health standards for multiple years, remove the objective to improve or restore ecological conditions, and broaden the carrying capacity definition for forage.

The Bureau notified the public that it intends to apply the categorical exclusion, 43 C.F.R. 46.210(i), applicable for two situations: "Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case." Of these two situations, the Bureau stated the first of the two applied: "The proposed rule is administrative and procedural in nature," and states that it would analyze planning decisions and individual permitting decisions on a "case by case basis." 91 Fed. Reg. 26867 (May 12, 2026).

Neither of the two prongs of this categorical exclusion apply here. This is not merely "administrative and procedural in nature," as illustrated by the handful of examples above that also illustrate why this regulatory proposal is a significant federal action. Eliminating standards and changing goals is not procedural. Nor is this traditionally how the Bureau changes land-management regulations. The agency has a history of analyzing potential impacts of proposed grazing regulations with an environmental impact statement. The Bureau completed an environmental impact statement in the 1992 rangeland reform. 59 FR 11364 (May 13, 1994) and 59 FR 14314 (February 22, 1995). The Bureau, under the Bush administration, conducted an environmental impact statement when it revised the regulations in 2006. 71 FR 39402 (July 2006) The first Trump administration published a notice of intent to conduct an environmental impact statement when it sought to revise the grazing regulations. See 85 Fed. Reg. 3410 (Jan 21, 2020). Three different presidential administrations have considered grazing regulation revisions to be major federal action requiring environmental impact statements.<sup>3,4</sup>

Secondly, the environmental impacts of the proposed revisions are not too broad or speculative to lend themselves to meaningful analysis. The choice to conduct a site-specific versus a broader

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<sup>3</sup> When the Biden administration's public land rule deviated from this tradition (and before the BLM repealed the rule), the administration's failure to comply with NEPA was a claim in resulting lawsuits. See, e.g., [Utah v. Haaland](#), case no. 2:24-cv-00438 (D. Utah); [Am. Farm Bureau Fed'n v. US Dept. of the Interior](#), case no. 2:24-cv-00136 (D. Wyo.).

<sup>4</sup> See *also*, Attachment C. "Matrix of Impacts" in which the Bureau assessed the 2006 regulations and identified a number of potential direct and indirect impacts from many of the same changes it is proposing here. The Bureau's failure to conduct such an analysis here is arbitrary and capricious.

analysis of environmental impacts is not an either-or choice; both can and should be done. (In many cases, most of current allotment renewals are done without site specific renewal,<sup>5</sup> so the site-specific analysis the Bureau claims it will rely on will never actually occur.)

General discussions with prior, broader environmental impact statements from a programmatic level EIS inform the further, site-specific environmental analyses. Public-land grazing has indisputable impacts common across Western public lands, addressed throughout these comments. For example, grazing as a general practice displaces native vegetation and animal species, spreads weeds, pollutes streams, erodes soils, exacerbates wildfire risk and intensity, and degrades Wilderness characteristics. The Fish and Wildlife Service has cited habitat impacts from livestock grazing as a contributing factor in the listing of species such as Mojave desert tortoise, southwestern willow flycatcher, and western yellow-billed cuckoo. See Determination of Threatened Status for the Mojave Population of the Desert Tortoise, 55 FR 12178 12191; Final Rule Determining Endangered Status for the Southwestern Willow Flycatcher, 60 FR 10695 10715; Determination of Threatened Status for the Western Distinct Population Segment of the Yellow-billed Cuckoo (*Coccyzus americanus*), 79 FR 59992 60038. Grazing remains a primary cause as to why public land across the West fails to meet basic land health standards.

The extraordinary circumstances present also render the Bureau's use of a categorical exclusion here completely inappropriate. The Bureau states that it "expects that the proposed rule would not implicate any of the extraordinary circumstances listed in 43 CFR 46.215." 91 Fed. Reg. 26867 (May 12, 2026). This is inaccurate and the proposed revised regulations implicate most of the extraordinary circumstances, from subsection (a) to subsection (i). For example, grazing deteriorates water quality; reducing monitoring and control over water quality (one effect of these regulations) could have literal downstream effects for the communities whose water source comes from public lands. Grazing is "grandfathered" into Wilderness where it exists at the time Congress designated the Wilderness; various revisions proposed risk significantly impacting Wilderness character. Reducing how often land-health is assessed and delaying how the agency addresses the problem may very well impact species listed under the Endangered Species Act or their critical habitat. These regulations may very well increase non-native invasive grasses that exacerbate wildfires. While these are only some examples, enough extraordinary circumstances are implicated that a categorical exclusion is unsupportable. For the below reasons, articulated in detail, an environmental impact statement is absolutely necessary to assess the impacts of the changes being proposed in the grazing regulations.

We note here that in avoiding an environmental impacts statement, the Bureau has also failed to identify a purpose and need for this proposed action. The proposed rule claims, "While the operative regulations allow the Bureau to facilitate some degree of flexibility within the terms and conditions of grazing permits, the proposed rule is intended to expand and otherwise make concrete and explicit in regulation those opportunities for flexibility." 91 FR 26853. This doesn't identify the conditions requiring this expanded flexibility, and nor does it admit that what the Bureau is also proposing weakens accountability by not affixing certain limits to grazing use on public lands through many of the proposed changes. The environmental impacts of weakened

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<sup>5</sup> <https://www.propublica.org/article/grazing-environment-public-lands-oversight>

environmental oversight opportunities should be analyzed, especially since this issue was raised by the government's own experts during previous attempts to weaken the grazing regulations. .

In Sections B and C, below, we explain the difference between existing and proposed regulations and provide examples of how the changes are significant and merit further analysis.

## **2. Federal laws require public participation in grazing management.**

The grazing program is a program for management of public lands requiring notice and comment under the Federal Lands Policy and Management Act (FLPMA), which requires that land use plans (known as Resource Management Plans ("RMPs") for Bureau lands) be developed with "public involvement" and then be used in managing the public lands. See 43 U.S.C. § 1712(a). FLPMA Section 309(e) further directs that: In exercising [their] authorities under this Act, the Secretary, by regulation, shall establish procedures, including public hearings where appropriate, to give . . . the public adequate notice and an opportunity to comment upon the formulation of standards and criteria for, and to participate in, the preparation and execution of plans and programs for, and the management of, public lands. 43 U.S.C. § 1739(e); see also 43 U.S.C. § 1701(a)(5). It emphasizes at every level the need to accommodate and incorporate public comments.

The issuance of grazing permits is a major federal action, perpetuating unnecessary and irreparable harms on the landscape, and the agency cannot rewrite FLPMA to create exemptions with regard to this program. The proposed revisions improperly downplay the environmental impacts of grazing on the landscape and prioritize this land use above others.

FLPMA also directs the Bureau to manage the public lands for "the use of some land for less than all 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) (defining "multiple use"). "In other words, FLPMA requires that the public lands be managed for many purposes in addition to grazing and for many members of the public in addition to the livestock industry." *Pub. Lands Council v. Babbitt*, 167 F.3d 1287, 1299–300 (10th Cir. 1999), *aff'd*, 529 U.S. 728 (2000).

FLPMA was a comprehensive statement of national public policy, mandating that the public lands be managed to protect their scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values; and to provide food and habitat for fish and wildlife and domestic animals as well as outdoor recreation and human occupancy use. 43 U.S.C. § 1701(a)(8). FLPMA did not, nor does it now, give a "free pass" to livestock grazing.

The proposed regulations include major changes in public input requirements including a substantial narrowing of the BLM's duty to consult, cooperate, and coordinate (CCC) with the interested public. The new rules would no longer require the BLM to CCC with the interested public when it increases or decreases permitted use, when it prepares allotment management plans or their equivalent, in the planning of range developments, in the modification or permits, and in the issuance of non-renewable grazing permits, among others. These are not minor

modifications; they are integral parts of how public lands are managed for livestock grazing and the public should have an opportunity to participate in these decisions under federal law. In fact, the elimination of public participation opportunities in many of these same provisions led the Ninth Circuit to affirm the District Court's permanent injunction of the 2006 grazing regulations. *W. Watersheds Proj. v. Kraayenbrink*, 632 F.3d 472, 479-80, 487-89, 492-95 (9th Cir. 2011)(See Attachment A.

FLPMA Sec. 201(a), and PRIA Sec. 4, require the Secretary to conduct and maintain an inventory of the public lands and resource values. Those inventories *"shall be kept current on a regular basis so as to reflect changes in range conditions, and shall be available to the public."* Here, rather than writing regulations that will support the public lands and resource values, the Bureau is writing its own "get out of jail free" cards for nonconformance with current laws. The BLM last conducted an inventory of its range lands in the SVIM inventory of the late 1970s and 1980s, over 40 years ago. There has been nothing done to update these inventories and much of the information has gone missing and is not available to the public. This is a particularly concerning issue given the general warming and drying occurring throughout the west in the intervening period. Lower precipitation and warming is directly correlated to declines in ecological productivity and hence livestock forage availability. Most of the active grazing preference on today's permits were established through a range inventory conducted in the early through mid 1960s.

The Bureau also just recently re-committed itself to coordinating with "Federal, State, county, Indian tribal and local governmental identities, institutions, organizations, associations and individuals when authorizing grazing on public lands." See, e.g. Appendix 5, "Livestock Grazing Best Management Practices and Design Features and Supplemental Information," Idaho Greater sage grouse ROD-ARMPA, 2025.<sup>6</sup> In that document, the Bureau pledged consultation, cooperation, and coordination consistent with BLM Handbook H-4180-1, to implement modifications to grazing management. The handbook relies on the existing definition of Interested Public. Thus, with the proposed regulations, and with changing the definition of Interested Public and the range of actions in which Interested Public would be consulted, the Bureau is undermining its own recent commitments on 68 million acres of sage grouse habitat.

### **3. These grazing-regulation revisions will degrade Wilderness, in violation of federal law.**

At least 50 percent of all Bureau-administered Wilderness acres are grazed by livestock. Grazing as an activity is fundamentally at odds with the concept of Wilderness. Congress passed the

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<sup>6</sup> Available online:

<https://eplanning.blm.gov/Documents/?id=d8b882cc-a7f2-f011-8406-001dd8008d46&spid=a26c137d-a8f2-f011-8407-001dd80c29f3#>; See also, 80 FR 59858: "Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List Greater Sage-Grouse (*Centrocercus urophasianus*) as an Endangered or Threatened Species" (<https://www.federalregister.gov/d/2015-24292/p-239>) which expresses an ESA-reliance on Bureau grazing management being implemented for livestock grazing at the allotment-specific level.

Wilderness Act because it was concerned about expanding settlement and growing mechanization occupying and modifying all areas of the United States, where the country might fail to preserve or protect anything in its natural condition. See 16 U.S.C. §1131(a). In creating the National Wilderness Preservation System, Congress defined “wilderness” as “an area where the earth and its community of life are untrammelled by man,...protected and managed so as to preserve its natural conditions.” 16 U.S.C. §1131(c). As reiterated throughout these comments, grazing displaces wildlife, reduces native vegetation, increases invasive weeds, and erodes soil among other environmental impacts.

Grazing exists in Wilderness because Congress legislated it as an exception, but it is not a carte blanche exception. Grazing is only allowed as an exception in designated Wilderness if grazing existed at the time Congress designated that Wilderness, and grazing must abide by the Congressional Grazing Guidelines. Additionally, the BLM has a statutory duty—the overarching mandate of the Wilderness Act is to preserve wilderness character. See, e.g., 16 U.S.C. §1133(b). In Wilderness, non-degradation is the overriding principle.

The Congressional Grazing Guidelines (CGG) further govern grazing in Wilderness. The CGG stated that adjustments to livestock in Wilderness “should be made as a result of revisions in the normal grazing and land management planning and policy setting process, giving consideration to legal mandates, range condition, and the protection of the range resource from deterioration.” The CGG continues to place restrictions on grazing activities in Wilderness. Important in the Congressional Grazing Guidelines is that it reiterated the principle of non-degradation. H. Rep. 101-405, Appendix A (Feb. 21, 1990). These guidelines were developed with a certain understanding of “animal unit months” and congressional understanding that BLM would consider its legal mandates, range conditions, and protecting allotments from deterioration. The proposed regulations cannot deliver on these assumptions.

There is good reason to believe these regulations, individually and cumulatively through their interconnected nature, will degrade wilderness characteristics in Wildernesses where grazing is allowed. For example, as further discussed below, proposed revisions that strike “conservation use” as an authorized use, that change the definitions of “carrying capacity” and “animal unit month” so they no longer reflect forage production or consumption, that change the definition of “sustained yield,” that introduce “targeted grazing” to manipulate vegetation cover, that eliminate measurable standards to supervise the impacts of grazing, and that exclude considering ecological impacts or capability of an area for grazing will have negative ecological impacts.

The Bureau has also proposed revisions, discussed in greater detail below, that would create a program that is easily abused, and this will also consequently degrade wilderness character. Examples of these proposed revisions include—but are not limited to—the following: removing the agency’s ability to permanently decrease permitted use to address unacceptable resource issues; eliminating required compliance with rangeland health standards or allotment management plans; changing grazing fees to allow permittees to pay for multiple years; disallowing temporary non-use for conservation purposes; allowing a permittee to regain suspended use without demonstrating that necessary criteria have been satisfied; and

weakening or eliminating fundamentals of land-health standards, such as the fundamental for water quality. Restricting public participation, as discussed below, will very likely exclude those wanting to participate who understand the agency's obligations under the Wilderness Act and the Congressional Grazing Guidelines, and those who care about Wilderness.

Allowing more negative ecological impacts does not protect or manage a place so as to preserve the natural conditions that persist despite grazing. These are just examples. To the extent the proposed revisions discussed below have negative ecological impacts or create a program where permittees can abuse the public's land without discovery or accountability—whether that be impairing, further impairing, or preventing recovery from grazing damage—in Wilderness, these proposed revisions will degrade wilderness character.

#### **4. Formal consultation is required under the Endangered Species Act and the proposed revisions may harm ESA listed species and critical habitat**

The Bureau must consult the US Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) about impacts to species listed under the Endangered Species Act. These proposed revisions create circumstances that will absolutely impact, likely harm, and possibly jeopardize various species protected under the Endangered Species Act.

The ESA requires that agencies ensure their actions will not jeopardize listed species. Section 7(a)(2) mandates that “[e]ach Federal agency shall, in consultation with and with the assistance of [the FWS or the NMFS], insure that any action authorized, funded, or carried out by such an agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species.” 16 U.S.C. § 1536(a)(2). The plain meaning of “action” under the ESA includes promulgating regulations. Additionally, the joint USFW or NMFS regulations for administering the ESA also specifically lists programs as actions: “Action means all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies in the United States,” including “the promulgation of regulations” and “actions directly or indirectly causing modifications to the land, water, or air.” 50 C.F.R. § 402.02. Proposing revisions to a regulatory scheme is promulgating regulations, and these revisions change the federal grazing program. Grazing directly and indirectly modifies the land and water. For these reasons, consultation is necessary.

The Bureau has not indicated in the Federal Register notice that it has either considered or engaged in consultation with the USFWS or the NMFS about any listed species impacted by the grazing program and the proposed regulation revisions. Formal consultation is very likely necessary for all the listed species and their critical habitat that overlap with grazing allotments or may otherwise be impacted by changes proposed for the regulatory scheme. The proposed revisions below, to the extent that they individually and cumulatively halt or reverse habitat recovery or further impair habitat (including designated critical habitat), risk jeopardizing and harming listed species.

There is no doubt that livestock grazing management “may affect” numerous listed species. A 1994 report found that the US Fish and Wildlife Service identified livestock grazing as a

contributing factor to the endangerment of 187 of 667, or more than 28%, of all then-listed species in the US. This made livestock grazing the fourth most-often cited factor after agricultural development, the introduction of invasive, exotic species, and the development of rural, residential and industrial areas.<sup>7</sup> The listed species driven to near-extinction by livestock grazing included 104 plants, 31 birds, 19 fish, 10 mammals, 9 insects, 6 reptiles, 4 snails, and 4 amphibians.<sup>8</sup> “Grazing was the most frequent reason cited [for listing of ESA-listed species] in both the Arizona Basin and the Colorado/Green River Plateaus.”<sup>9</sup>

Recent reports demonstrate that livestock grazing continues to imperil listed species and their critical habitat on public lands in the American Southwest, where more than half of such habitat on public lands for the threatened western yellow-billed cuckoo and the northern Mexican gartersnake continues to be degraded by Bureau-authorized livestock grazing.<sup>10</sup> Additionally, forty-six percent of greater sage-grouse habitats are in grazing allotments that fail to meet Bureau land health standards.

The proposed regulations changes to the response time for failing to meet land health standards ensure that grazing degradation will continue to adversely impact imperiled species for longer than the current requirement to change management before the “next grazing season.” By allowing ranchers to determine grazing timing and parameters outside of the public process and without specificity in the grazing permits themselves, the new regulations will result in adverse impacts to listed species, especially in cases where grazing temporal limits are in place to prevent these harms. These kinds of harms were articulated by the Bureau’s own scientists when the agency sought similar revisions in 2006.<sup>11</sup>

For these and other reasons, these proposed revisions will violate the Endangered Species Act.

##### **5. Expansion of the use of Bureau's Land Health Evaluations and AIM data as management tools from solely considering grazing allotments to all public lands at a watershed and landscape level scale is problematic**

The Proposed Rule moves Subpart 4180 in the current grazing (Fundamentals of Land Health and Land Health Standards) to Part 1700 and proposes that the management and assessment process will apply to all public lands and not just to grazed lands. After nearly 30 years, the

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<sup>7</sup> Attachment D. C.H. Flather et. al., Species Endangerment Patterns in the United States (Jan. 1994) at 11, Forest Service General Technical Report RM-241, available at [https://www.fs.usda.gov/rm/pubs\\_series/rm/gtr/rm\\_gtr241.pdf](https://www.fs.usda.gov/rm/pubs_series/rm/gtr/rm_gtr241.pdf).

<sup>8</sup> *Id.* at 11-12.

<sup>9</sup> *Id.* at 22-23.

<sup>10</sup> Attachment E. Center for Biological Diversity, *Grazed to Death: Livestock Production Adversely Modifying Most Critical Habitat for Northern Mexican Garter Snakes on Public Lands in Arizona* (Sep. 2024) (describing surveys that found that “[l]ivestock grazing has adversely modified at least 58% of the threatened northern Mexican garter snake’s designated critical habitat on public lands in Arizona and New Mexico”). See also Attachment F. Center for Biological Diversity, *Grazed to Death: Livestock Production Adversely Modifying Majority of Drought-Stricken Western Yellow-Billed Cuckoo Critical Habitat on Public Lands in Arizona and New Mexico* (June 2024) (describing surveys that found that “livestock grazing has adversely modified at least 57% of designated critical habitat of western yellow-billed cuckoo ... within public lands grazing allotments in Arizona and New Mexico”).

<sup>11</sup> Attachment G, FWS comments on proposed changes, 7/18/2005.

Bureau’s goal of “promoting healthy rangelands” has resulted in inconsistent and insufficient evaluation and for those grazed lands that have been evaluated, almost half are failing land health conditions. The current management process isn’t working, so it is problematic to expand it and expect different outcomes.

Currently the Bureau’s own data shows that rangelands are in poor condition/unhealthy, and the majority are affected by invasive plants, failing to meet land health standards, and that much of it has been unassessed by the agency. Using these same tools to perpetuate ongoing neglect and degradation of federal lands breaks the basic provisions of land protection laws.

Since 2011, the Bureau has operated the Assessment, Inventory, and Monitoring (AIM) program. It has grown to be one of the major land assessment tools used by the Bureau for science-based stewardship on millions of acres of federal rangelands. AIM provides critical data on land health, invasive species, and native plant communities. Bureau field crews collect repeatable, standardized measurements on randomly selected plots, allowing the Bureau to assess conditions across entire states and regions. AIM data detect trends, plan adaptive management, and evaluate grazed lands. AIM data are increasingly used for Land Health Standards evaluations, grazing permit renewals, and National Environmental Policy Act analyses.

Recent AIM reports show troubling declines in land health. Bureau statistics compiled from AIM assessments state that the percentage of Bureau lands classified as healthy dropped from 72% in 2022 to 58% in 2024.<sup>12</sup> According to the most recent Bureau Public Lands Statistic report from June 2025, only 53% of Bureau lands have intact native plant communities, while 59% of acres are affected by invasive plants.<sup>13</sup>

The Bureau’s current set of Land Health Evaluations also show a degraded rangeland. PEER reviewed Bureau Land Health Evaluation records from 2019 through 2023 of more than 21,000 Bureau grazing allotments in ten western states.<sup>14</sup> Significantly, more than 56 million acres (an area larger than Idaho) fail Bureau Land Health Standards. Livestock is identified as the major cause of failure for at least 37 million acres making overgrazing by far the biggest cause of landscape health failure across the West.

| <b>Acreage breakout of land health standards status associated with livestock and wild horses as recorded by Bureau field office through 2023</b> |                            |
|---------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|
| <b>Description of breakout</b>                                                                                                                    | <b>Public Land (acres)</b> |
| Total allotments meeting land health standards                                                                                                    | 57,820,276                 |
| Total allotments failing land health standards                                                                                                    | 56,751,898                 |
| Failing due to livestock                                                                                                                          | 37,885,522                 |

<sup>12</sup> Attachment H. PEER 2024. Factsheet on Rangeland Health.

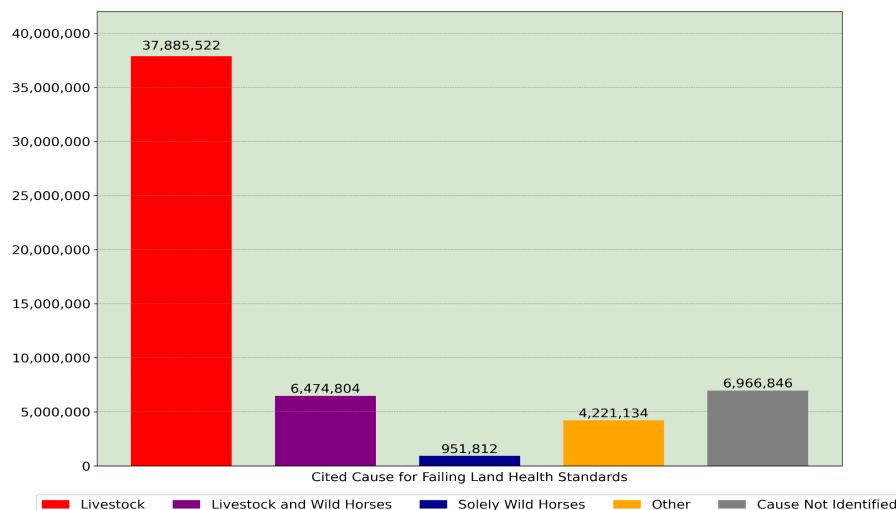
<sup>13</sup> Attachment I. AIM composition data from 2022-2024.

<sup>14</sup> Attachment J. Evaluating trends rangeland health on Bureau of Land Management Lands (PEER)

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|---------------------------------------------------------------|------------|
| Failing due to causes other than livestock                    | 11,899,530 |
| Failing due to livestock in conjunction with wild horses      | 6,474,804  |
| Failing solely due to wild horses (no reference to livestock) | 951,812    |
| Failing due to causes other than livestock or wild horses     | 4,221,134  |
| Failing but cause not identified                              | 6,966,846  |

The Bureau has not evaluated many of the grazing allotments that it is charged with managing. As of 2023, 38 million acres of grazing allotments do not have completed land health assessments. This lack of assessments may mask even more extensive landscape damage, especially in a state like Nevada, which has the biggest slice of public range among any state. For each acre found to be meeting minimum Land Health Standards, more than three acres of Nevada are failing. Nevada also has the biggest share of unassessed range.

Bureau Land Health Standards data indicate that livestock are by far the most frequently cited as the cause of failure to meet standards, for quality of water, vegetation, and soils, as well as the ability to support wildlife nationwide, including allotments within wild horse Herd Management Areas.



The Bureau is proposing to expand a program that is currently failing to meet its goals while also experiencing huge reductions in resources. In just the first year of Trump's second term, the Bureau lost nearly one-fifth of its entire staff. This has led to steep losses in the number of range specialists, scientists, and technical specialists available to conduct and analyze AIM surveys and complete land health evaluations.

This proposed expansion – to use Land Health Evaluations across the landscape to assess all land uses - will have environmental implications due to its scale, speed, and lack of

site-specificity. What the Bureau claims will increase efficiency is really just an opportunity to legitimize its ongoing efforts to gloss over the impacts of livestock grazing.

In addition to reducing the value of Land Health Evaluations for assessing the effects of livestock management schemes on various allotments by scaling up to the watershed level, the Bureau has been exploiting the loophole provided by Section §402(c)(2) of the Federal Land Policy and Management Act (FLPMA) which permits the Bureau to renew grazing permits and leases for ten years without conducting an environmental review under the National Environmental Policy Act (NEPA) or evaluating whether the allotment meets Land Health Standards.

This provision, originally intended to provide time for the agencies to “catch up” with their obligations under NEPA, has instead given land managers a way to repeatedly, deliberately circumvent NEPA requirements. See Table 1, below.

| State | 2023               | 2023    | 2021    | Change  |
|-------|--------------------|---------|---------|---------|
|       | Livestock<br>AUM % | Allot % | Allot % | Allot % |
| AZ    | 84%                | 81%     | 76%     | -5%     |
| CA    | 82%                | 65%     | 57%     | -8%     |
| CO    | 71%                | 53%     | 46%     | -7%     |
| ID    | 85%                | 89%     | 75%     | -14%    |
| MT    | 31%                | 31%     | 27%     | -5%     |
| NM    | 56%                | 52%     | 44%     | -9%     |
| NV    | 93%                | 93%     | 84%     | -9%     |
| OR    | 88%                | 84%     | 70%     | -13%    |
| UT    | 80%                | 79%     | 62%     | -17%    |
| WY    | 72%                | 67%     | 68%     | 0%      |

*Table 1. Use of §402(c)(2) by year, demonstrating the percentage of AUMs being allocated without environmental review.*

States like Nevada (93%), Idaho (85%), and Oregon (88%) show exceedingly high percentages of AUMs authorized under §402(c)(2), indicating a significant use of the regulatory exception to permit more livestock grazing on public lands in these states. Nevada and Idaho not only have high reauthorization rates but also show large increases in allotment percentages from 2021 to 2023 (-9% and -14% respectively), indicating a growing trend of using the exception to support increased livestock grazing.

### Notable findings by WWP

- In 2023, 1.9 million AUMs on 1,342 allotments failed land health standards due to livestock and were reauthorized with FLPMA §402(C)(2).
- In 2023, 65 million acres of allotments had failing land health standards, and those lands host 3.7 million AUMs.
- FLPMA §402(c)(2) authorized allotments with failing land health standards include 54m acres and 3.0m AUMs.

The proposed regulations, rather than provide a deadline or directive for the Bureau to accomplish its goals of land health evaluations and meaningful permit renewals, instead seeks to jettison the most important parts of the process, significantly weakening agency and public oversight of this private use of public lands. These proposed regulations, individually and collectively, must be thoroughly analyzed and considered in an EIS that considers the agency's current baseline to be a problem to be solved rather than enshrined.

### **6. The proposed regulations fail to properly address Tribal interests in the management of these lands.**

First, the proposed regulations do not meet the BLM's burden to consult with federally recognized tribes. Executive Order 13175 requires agencies to "ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." Exec. Order No. 13175, 65 C.F.R. 67249 (2000)(emphasis added). The E.O. also requires the BLM to "consult[] with tribal officials early in the process of developing the proposed regulation" before an agency can promulgate any regulation that has tribal implications. *Id.* at (5)(b)(2)(A).

The agency clearly did not consult tribes while the proposed regulations were being developed. The proposed regulations state "[t]hrough this notice we invite Tribes" to participate in consultation on this proposed rule. Using a public notice in the Federal Register to invite Tribes to tribal consultation is not meaningful communication, and does not meet the agency's clear burden under E.O. 13175 to consult tribes while regulations are being developed.. Instead, the agency treats Tribes on par with the general public, with whom the government has no heightened consultation or communication burden. This is legally inadequate.

Second, the regulations themselves would lead to systematic failure by the BLM to meet its burden under E.O. 13175 to regularly and meaningfully consult and collaborate with tribal officials in the development of Federal policies that have tribal implications. E.O. 13175(1)(a) defines "policies that have tribal implications" to include "actions that have substantial direct effects on one or more Indian Tribes." Thus, when the BLM takes actions that may have such effects, the agency must consult with tribal officials. Several such actions that could occur under

the proposed regulations include restocking vacant allotments, changing terms of use, temporary use, or revoking permits for grazing the agency doesn't consider "production oriented," among other actions. The agency is required to consult tribal officials when it takes such actions. Yet the proposed definition of "interested public"---defining who the agency will allow to participate in decision-making about grazing---will cut Tribes out of decision-making processes and it may mean they are not consulted at all, even when the agency takes actions that could have direct effects on one or more Indian Tribes.

The regulations propose to revise the definition of "interested public to make explicit that anyone wishing to participate in the management of livestock grazing on public lands must have a cognizable interest" aside from a mere interest in "public lands management or the health of the range." Proposed Regulations, p. 26856. Many Tribes have interests in how public lands are managed that may not meet this threshold. For example, many treaties between Tribes and the United States affirm Tribal rights to usual and accustomed hunting and fishing grounds. Where these lands overlap or are near livestock allotments, Tribes may have an interest in grazing-related decisions for those allotments as grazing can impact a Tribe's rights or ability to harvest fish and wildlife on usual and accustomed lands. But under the proposed definition of 'interested public,' this interest is not enough to give Tribes an opportunity to be consulted or be able to participate in the management of livestock grazing because this interest could be construed as an "interest in public lands management or the health of the range," as opposed to "an articulable interest in those matters as applied to the allotment at issue." Proposed Regulations, p. 26856. Cutting Tribes out of decision-making processes could thus violate treaty rights.

## **7. The Bureau Fails to Consider the Serious Reliance Interests Created by the Existing Regulatory Framework.**

The Bureau's proposed rule fails to satisfy the Administrative Procedure Act because BLM does not adequately account for the substantial reliance interests created by the existing grazing regulations. Although an agency may revise its policies, it must acknowledge that it is changing position, provide a reasoned explanation for doing so, and, where the existing policy has engendered serious reliance interests, meaningfully evaluate those interests before adopting a contrary approach. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009). As the Supreme Court later emphasized in *Department of Homeland Security v. Regents of the University of California*, an agency must determine whether reliance interests exist, assess whether they are significant, weigh them against the agency's competing policy objectives, and consider whether less disruptive alternatives are available. 591 U.S. 1 (2020). The proposed rule does none of these things.

As discussed herein, the proposal repeatedly characterizes its revisions as merely improving efficiency, modernizing administration, or codifying current practice. But many of the proposed amendments are not incremental refinements. They reverse regulatory choices that have governed Bureau grazing administration for decades and upon which regulated parties (including

undersigned), state governments, local governments, Tribes, conservation organizations, and other stakeholders have reasonably relied.

The Bureau proposes significant substantive changes affecting permit administration without evaluating the investments made in reliance upon the existing rules. Among other things, the proposal would redefine eligibility for grazing permits by limiting permits to "production-oriented livestock," revise standards governing permit transfers and permit administration, alter the default rules governing administrative appeals, and modify numerous aspects of permit management. Some permit holders have made substantial long-term investments based upon the existing regulatory framework. Indeed, no fewer than 200 BLM permit holders – totalling more than 6,000 animal unit months of livestock use across millions of acres of federal public lands in 10 western states (Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, and Wyoming) – who currently enjoy the privilege of holding a BLM grazing permit, but whose permits may be at risk of revocation or cancellation under these new regulations.<sup>15</sup> Yet, Bureau's proposed rule contains no meaningful discussion of those reliance interests or the extent to which these regulatory changes may disrupt settled expectations.

Moreover, the Bureau's proposed rule never considers obvious alternatives that would preserve reliance interests while advancing the agency's stated objectives. *Regents* makes clear that where significant reliance interests exist, agencies must consider reasonably available alternatives that would mitigate disruption. Here, the Bureau does not analyze phased implementation, grandfathering existing practices, retaining existing consultation requirements for ongoing allotment management, or other less disruptive approaches. The complete absence of such analysis further demonstrates that the agency has not undertaken the reasoned decisionmaking required by the APA.

In short, the Bureau's proposed grazing regulations repeatedly assert that the amendments will improve efficiency, flexibility, and program administration. But neither *Fox* nor *Regents* permits an agency simply to invoke a new policy preference while ignoring the substantial reliance interests fostered by the policy it seeks to replace. Because the Bureau fails to identify those reliance interests, evaluate their significance, weigh them against its asserted policy objectives, or consider less disruptive alternatives, the proposed rule is arbitrary and capricious and cannot be finalized without substantial additional analysis.

## **B. REVISIONS TO PART 4100.**

In this section, our organizations will elaborate upon the specific changes under each section where there are significant and/or statutory changes being proposed by comparing the proposed

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<sup>15</sup> According to data publicly available in the Rangeland Administration System, the Bureau currently authorizes "Indigenous Livestock" on at least 64 grazing allotments on the following field offices: Little Snake (CO), Royal Gorge (CO), Miles City (MT), Malta (MT), Lewiston (MT), Billings (MT), Dillon (MT), South Dakota, Las Cruces (NM), Casper (WY), and Newcastle (WY). The Bureau also authorizes at least 191 "horse only" permits (without associated livestock authorizations) in Arizona, California, Colorado, Idaho, Montana, New Mexico, Nevada, Oregon, Utah and Wyoming.

language to the existing regulations and providing a reasoned explanation for what the change could affect.

#### **§ 4100.0-2 Objectives**

*PROPOSED: Objectives. The objectives of these regulations are to promote healthy sustainable rangeland ecosystems; 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. These objectives shall be realized in a manner consistent with land use plans, multiple use, sustained yield, environmental values, and economic and other objectives set by relevant law and policy.*

The Bureau is proposing to strike the currently included clause, “To accelerate restoration and improvement of public rangelands to properly functioning condition,” from the objectives.

This proposed change signals the Bureau’s intention to simply allow the status quo to persist, rather than to seek active improvement in range conditions. This is appalling, given that the Bureau’s own data show that nearly 60 million acres are failing even the low bar set by land health standards and more than half of these acres are failing land health standards due to livestock grazing.<sup>16</sup> This is also contrary to the provisions of FLPMA, which requires, “the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use[.]” 43 USC 1701(a)(8) and that the Bureau has an ongoing duty to “prevent unnecessary of undue degradation” to the public lands. 43 USC 1732(b).

The Bureau rationalizes this proposed change by claiming, “While restoration and improvement of public lands is important, it is properly understood, consistent with the proposal to apply land health provisions more broadly, to be an objective of the BLM’s overarching management of the public lands, not just its administration of the grazing program.” 91 FR 26855. But the TGA specifically intended to stop injury to the public grazing lands by preventing overgrazing and soil deterioration, and the Bureau here has not provided any reason why grazing-specific land health regulations are no longer appropriate.

This fundamental shift from restoration and improvement has significant environmental consequences that must be fully analyzed in an EIS, may possibly jeopardize ESA-listed species, and may lead to degraded wilderness characteristics.

Moreover, the proposed regulations fail to meaningfully define the “communities” that are dependent upon productive, healthy public rangelands. Has the Bureau considered that productive, healthy rangelands may be increasingly beneficial for communities beyond their use

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<sup>16</sup> Attachment J. Evaluating trends rangeland health on Bureau of Land Management Lands (PEER)

as subsidized forage for a small percentage of the country's livestock operations? Certainly, the recreational community, the wildlife-watching community, hunters and anglers, nature lovers and more benefit from healthy ecosystems that would also benefit from stability for their purposes, including more regulatory oversight to guard against environmental degradation. The Bureau's objective here is too narrow, defined to accommodate only a certain group of people, in violation of the multiple-use mandates.

#### **§ 4100.0-5 Definitions**

- A. *PROPOSED: Allotment management plan (AMP) means a documented program developed as an activity plan, consistent with the definition at 43 U.S.C. 1702(k), or its functional equivalent, such as a grazing management plan that incorporates flexibility, monitoring and objectives or other components and 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.*

The Bureau is proposing to include the language that creates functionally-equivalent plans to an allotment management plan, such as a grazing management plan that “incorporates flexibility, monitoring, and objectives or other components.”

First and foremost, allowing for “functionally-equivalent plans” to replace allotment management plans oversteps the plain language of FLPMA, which has a specific definition of allotment management plan at §402 (d).

Moreover, we're concerned that the Bureau is planning to allow “outcome based grazing authorizations” (OBGAs) to replace the AMPs. The Bureau's rhetoric around outcome-based grazing mirrors many of the agency statements in support of in the current proposed revisions, claiming that outcome-based grazing also makes public lands management “more efficient.” But by allowing “functionally equivalent plans” to replace AMPs will make management oversight more difficult and could result in considerable negative impacts to native ecosystems and associated streams and riparian areas and the rare species that depend on them—e.g., sage-grouse, pygmy rabbits, willow flycatchers, cutthroat trout, redband trout, and many rare plants. Such negative impacts in designated Wilderness will also degrade wilderness character. Permittees would apparently be allowed to adjust livestock numbers upward, under a permitted maximum, and switch seasons of use, with reduced oversight and unassessed effects.

The Bureau has the duty to “prescribe practices” for grazing on public lands. See *Nat. Res. Def. Council v. Hodel*, 618 F. Supp. 848, 869–70 (E.D. Cal 1985). Among the required terms and conditions of a grazing permit are “numbers of livestock” and “seasons of use.” 43 U.S.C. §§ 315b, 1752(d)-(e); see also 43 C.F.R. §§ 4120.2(a)(1) and 4130.3-1(a) (mandatory terms and conditions of AMP and grazing permit). The Bureau's delegation of its management responsibility to private grazing permittees in the form of “flexibility” by allowing them to choose the number of livestock or time of year to graze violates both the Federal Land Policy and Management Act and the Taylor Grazing Act. See *Hodel*, 848 F. Supp. at 869–70. The Bureau's management must be prescriptive, and therefore an “outcome based grazing” scheme that allows permittees to choose

management that suits them is unlawful. The Bureau must continue to rely on AMPs which specify the management scheme on a specific allotment with consideration of the resources thereupon.

- B. PROPOSED: Animal unit month (AUM) means a month's use and occupancy of range by one (1) cow, bull, steer, heifer, bison, horse (ancillary to livestock production), burro, or mule, or by five (5) sheep or goats.*

The definition of AUM was previously “the amount of forage necessary for the sustenance of one cow or its equivalent for a period of one month.” The changed definition is no longer tied to forage consumption and merely reflects a unit of use, not a quantity of vegetation that is being removed from public lands.

Range science defines an AUM as “The amount of oven-dry forage (forage demand) required by one animal unit for a standardized period of 30 animal-unit-days. Not synonymous with animal month. Abbr. AUM. The term AUM is commonly used in three ways: (a) stocking rate, as in “X acres per AUM”; (b) forage allocations, as in “X AUMs in Allotment A”; (c) utilization, as in “X AUMs taken from Unit B.”<sup>17</sup>

The primary factor of the interaction of livestock on the land is forage consumption. The proposed definition completely divorces the permitting of livestock from the basic physical realities and deviates from the standard definition used through range science for approximately the last century.

An Animal Unit Month (AUM) is a standard unit of measurement in rangeland management. It represents the amount of forage required to feed one “animal unit” (defined as a mature 1,000-pound cow and her suckling calf) for one month. The NRCS National Range and Pasture Handbook defines an AUM as “The amount of forage required by an animal unit for one month. Abbr. AUM.”

This standard is a cornerstone for agricultural planning, allowing land managers to assess pasture capacity, figure out how many livestock a tract of land can sustainably support, and calculate grazing lease rates.

#### The Numbers Behind an AUM

- Forage Weight: One AUM generally equals about 750 to 800 pounds of air-dry forage. This accounts for both what the animal digests (about 2.5% of its body weight daily) and the amount that is naturally wasted or trampled.
- Animal Unit Equivalents (AUE): Not all livestock weigh 1,000 pounds. To use AUMs for other animals, managers use a conversion scale. For example, a 700-pound yearling is 0.7 of an animal unit, while a 1,200-pound cow is about 1.2 animal units.

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<sup>17</sup> <https://rangelandsgateway.org/glossary>

The proposed revised definition runs directly counter to all range science and range management even within the federal government itself.

The change in the definition proposed has major environmental impacts because it treats the forage consumption by a 700 pound yearling as the same as a 1,400 pound cow. Grazing permits are basically permits for the removal of a defined amount of forage, but the proposed change in the definition of an AUM completely disconnects the permits from forage consumption, the direct interaction of livestock with the land.

This change has environmental implications which must be analyzed in an EIS.

*C. PROPOSED: Base property means: (1) Land that contains livestock operation facilities capable of serving as a base of operations for the livestock use of public lands, (2) 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 (3) 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.*

The current definition of base property is, “(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.”

We are concerned that the new definition could be construed so as to allow for a portable corral and trailerable chute in the corner of a parking lot to qualify as a base property. The original intent of base property requirement was to eliminate transient/nomadic livestock operations from public lands. This new definition seems to open the door to transient operations.

At the very least, the definition should specify permanent operations facilities. The ability to actually produce crops and forage to support the livestock for a specified period is part and parcel to the current permittees' total and active grazing preference in AUMs. During the range adjudication of the 1960s the total preference was based on the base property production. The time period the base property had to support the livestock varied among grazing districts was set by the district, generally between two to four months. Frequently, the base property production was more than what was needed to support the herd for more than the specified time. The additional federal AUMs the base property was qualified for was placed in suspended preference. If a base property is no longer required to even have capability of such production, the suspended preference should be adjusted accordingly.

The water base definition needs clarification to assure the water is capable of servicing the area authorized for grazing. One spring at the bottom of a canyon will not serve as a water source for a 100,000 acre pasture with a 1,000 foot elevation gain from the spring. In fact these regulations could be greatly improved by including suitability criteria for slope, distance from water and productivity.

We support stringent requirements for base property qualifications because there should be viable alternatives to public lands grazing allotments for every permitted operation. The proposed regulations could have significant environmental impacts that should be analyzed and disclosed in a full EIS.

*D. PROPOSED: Beginning rancher (mentee) means anyone who has not (1) owned, controlled, or operated a farm or ranch for a period of more than 10 years or (2) previously held a grazing permit, and may include, without limitation, children and grandchildren of grazing permittees.*

This term isn't defined in the current regulations, but its inclusion in the regulations provides an opportunity for abuse. The definition wouldn't preclude the establishment of a new limited-liability corporation to qualify under this definition, even if one or more of the principals of the LLC wouldn't qualify. It also would allow sublessees who aren't necessarily "beginning ranchers" but are instead "new to public lands grazing permits" to avoid the surcharge.

*E. PROPOSED: Carrying capacity means the measurement of how much forage is available on a unit of land.*

The current regulations define "Livestock Carrying Capacity" to mean "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." (Emphasis added.)

The new definition reflects total forage production without a limit related to ecological capacity. It also drops "livestock" from the term, and the definition becomes relevant to all herbivorous animals, rendering it practically meaningless.

The removal of "without inducing damage to vegetation or related resources" and this definition's use throughout the proposed regulations will have significant environmental impacts which must be fully examined in an EIS.

We support the required use of valid carrying capacity analyses to allocate forage for livestock and set stocking rates on Bureau grazing allotments, as well as to decrease active use (see our comments below on proposed changes to Sections 4110.3-2(b) and 4130.3-1(a)).

While current regulations already require permitted use to be based on "forage available," 43 C.F.R. § 4110.2-2(a) (2005), in practice, the Bureau rarely makes this determination based on any analysis. Instead, permitted use is generally carried over from past grazing permits. It is critical that the Bureau uses a process that accurately determines the carrying capacity of an allotment based on the current, actual conditions on the ground rather than expected or historic capacity as described in ecological site descriptions, past forage adjudications, or permitted use. Permitted use is often far above the level of livestock use that can currently occur on a site without impairing ecological and watershed function.

We agree with the Bureau's statement in the introductory discussion that "[c]arrying capacity must include use by all species using the landscape, whether domestic or native." Available

forage must be allocated between all species that consume vegetation, whether domestic or native, including rodents and insects, not just permitted livestock. However, it is also important to specify that “available forage” should generally be a minor subset of all vegetation present, because on Bureau lands, most shrubs, grass, and forbs need to be left intact to protect proper watershed and ecological function.

Here, the Bureau proposes to eliminate the definition of “livestock carrying capacity” and replace it with a new term: “carrying capacity,” which means “the measurement of how much forage is available on a unit of land.” While it makes more sense to define carrying capacity holistically, recognizing all species, the Bureau must also retain the language that prevents damage to vegetation and other natural resources. This concept of maximum use *without ecological damage* is inherent in the concept of ecological carrying capacity.

We also note that if the Bureau adopts this new definition, other provisions of the regulations that rely on and reference the term “carrying capacity” would need to be changed. Importantly, references to “carrying capacity” in §§ 4110.3–2(b), 4130.3–1, and 4130.6–1(c) would need to be changed to “portion of the carrying capacity allocated to permitted livestock.” Otherwise, livestock use would be understood to encompass all the forage available without regard to other species.

The agency needs to reinstate a regular schedule of conducting forage capacity analyses on every allotment. A quantitative, clip-and-weigh assessment of the true amount of forage on an allotment used to be a standard part of the land health assessment process. Setting accurate stocking rates is critical to improving resource conditions on these allotments and limiting long-term liability. An updated, thorough forage capacity analysis should be conducted for each field office RMP and updated every twenty years, or more often if environmental conditions dramatically change forage production. The failure to do this risks unnecessary and undue degradation, in violation of FLPMA.

Many allotments have not had such a carrying capacity analysis in three quarters of a century, if ever, and AUMs are in many cases well out of date. As the climate warms and dries, forage levels are declining but AUM permit numbers are not declining accordingly. The Bureau relies on a subjective “stock and monitor” approach and claims that it’s not necessary to know how much total forage is available as long as overutilization does not occur. However, this method relies too much on back door ad hoc decisions and encourages overstocking. By inflating AUMs, permittees feel they can put more livestock on the ground than it can truly support.

Overestimating forage capacity hinders the Bureau’s ability to enforce limits based on resource condition. It can also lead to undesirable, politicized management decisions. For example, the recent Grand Staircase-Escalante and Bears Ears Monument Management Plans now allow some permittees to graze the fully permitted number of AUMs on their permit, regardless of the fact that the forage those AUMs are based on is no longer there on the ground. The Bureau now has no objective information on which to base the number of AUMs that can be supported on an allotment. It can not manage lands effectively without this critical information. Continuing to

present out of date information on permits as factual is violating transparency and the public trust.

To be meaningful in planning and management, currently available forage needs to be described at the allotment scale or preferably at the soil map unit scale. To meet Bureau range management goals, calculating forage demands should include all uses, including ecological components such as wildlife consumption and maintenance or recovery of ecological processes. Thus the availability of forage for consumptive use needs to be in deference to the requirements to maintain Rangeland Health Standards and protect the ecological values of the planning unit.

Further, AUM calculations are based on average livestock weights that are out of date.<sup>18</sup> The amount of forage required to support one cow/calf pair has increased in recent decades along with increases in the size of livestock. This increase in forage requirements has not been reflected in the numbers on grazing permits. The Bureau should adjust stocking numbers reflecting the increased forage use by today's livestock's weight. Average weight for a cow calf pair today requires an increase in forage (lb/AUM) that is roughly 60% more today than it was 40 years ago based on agricultural statistics. If local cattle weights are known, they can be used to assess AUM forage demand. If not, regional averages should be used, such as the 1,532 lb/AUM forage demand for today's cow calf. *(Note that this may be even higher since average cattle weights have continued to increase since 2016.)*

*F. PROPOSED: Grazing permit means a document that authorizes grazing use of the public lands under section 3 or section 15 of the Act. A grazing permit specifies permitted use and the terms and conditions under which permittees make grazing use during the term of the permit. Permits should specify total AUMs, including active and suspended AUMs.*

Under the current regulations, "Grazing permit" means a document authorizing use of the public lands within an established grazing district. Grazing permits specify 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.

Changing all authorizations, whether they are on Section 3 or Section 15 lands, to "permits" rather than having certain authorizations called "leases" appears to be a step towards streamlining the regulations, but the practical effects of this change must be analyzed in an EIS. The TGA specifically discusses grazing leases *and* permits, so an administrative change to lump these should be thoroughly reviewed. TGA specifies permits are issued within grazing districts. Leases are for areas outside of grazing districts. In other contexts the Bureau seems to treat the establishment of Grazing Districts as sacrosanct.

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<sup>18</sup> Attachment K. Carter, 2016. Updating the Animal Unit Month.

- G. *PROPOSED: Interested public means an individual, group or organization that has an interest in the management of livestock grazing on a particular allotment and has either 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 that allotment or has submitted written comments to the authorized officer regarding the management of livestock grazing on that allotment.*

Under the current regulations, "Interested public" means "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 decisionmaking process for the management of livestock grazing on specific grazing allotments or has submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment."

The Bureau has previously recognized the need for public participation in rangeland management. "An important element of true rangeland reform involves allowing more Americans to have a say in the management of their public lands." Rangeland Reform DEIS at 1-10. It goes on to say that the Bureau "believes that the public interest will be best served if a wide range of interests are represented when decisions are being made. Thus, increased public participation is essential to achieving lasting improvements in the management of our public lands." 60 Fed. Reg. at 9895. The Bureau accomplished this goal by significantly expanding the number of opportunities for public involvement in decision-making, as well as making it easier to participate by adopting a broad definition of "interested public."

Now, however, the Bureau is proposing to restrict opportunities for the public to participate in grazing decisions by defining "interested public" as a person or entity that "has an interest in the management of livestock grazing." The Bureau clarified that it wishes, "to make explicit that anyone wishing to participate in the management of livestock grazing on public lands must have a cognizable interest<sup>19</sup> in such management on the allotment or allotments for which they wish to participate," and goes on, "[a]n interest in public lands management or the health of the range or particular resources on it would not alone be sufficient for the Bureau to grant interested public status; rather, an articulable interest in those matters as applied to the allotment at issue would

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<sup>19</sup> In property law, a cognizable interest is a legal interest or right that the law recognizes as sufficiently real, concrete, and protectable to be enforced in court. A person has a cognizable interest in property when they have some legally recognized stake in the property, such as ownership (full title), a leasehold interest (tenant's rights), an easement, a lien or security interest, a beneficial interest in a trust, and/or certain rights to possess or use property. To the extent the Bureau wishes to define "cognizable interest" in this fashion, we assert that every American has an interest in these public trust resources and a right to use the property managed in trust by the Bureau. However, we suspect that the Bureau's intention here is to exclude non-permittees from participating in grazing management decisions, which would be unlawful for the reasons identified.

be necessary.” 91 Fed. Reg. at 26856.<sup>20</sup> The Bureau intends on granting participation on a discretionary basis, and this is unlawful.

First, the Bureau does not have the authority to choose a subset of individuals or organizations who may participate in decisions the agency makes on public lands. Congress has defined “public involvement” in FLPMA as “the opportunity for participation by affected citizens in rulemaking, decisionmaking, and planning with respect to the public lands, including public meetings or hearings held at locations near the affected lands, or advisory mechanisms, or such other procedures as may be necessary to provide public comment in a particular instance.” 43 U.S.C. § 1702(d). Decisions that the Bureau makes are governed by the Administrative Procedure Act, and in that statute, “person” includes individuals and public or private organizations. 5 U.S.C. §§551(2), 701(b)(2). The Administrative Procedure Act grants a right of review to the interested public: “A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.” 5 U.S.C. §702. NEPA, the ESA, the Wilderness Act, and other environmental laws do not limit the public who are concerned about the health of the range or other particular resources. These laws themselves don’t restrict individuals and organizations from participating in public-land decisions, and they certainly do not delegate power to the Bureau to do so. Limiting the public and allowing participation at agency discretion in the manner proposed is an *ultra vires* exercise of authority.

Second, restricting “interested public” by deciding who has an interest in livestock grazing (and thus may participate) is arbitrary, capricious, and could backfire on the Bureau. Every taxpayer has a “cognizable” interest in grazing decisions on the public lands because taxpayers so heavily subsidize grazing (to the tune of millions of dollars annually)—it’s our money as well as our lands. Additionally, by excluding individuals and organizations from decisionmaking, the Bureau is essentially eliminating the requirement to exhaust administrative remedies for entities that care about rangeland health, endangered species, Wilderness, or other resources. The practical effect of this proposed definition is that the Bureau first learns about how its decisionmaking violated the laws mentioned above through a lawsuit filed by the parties who wanted to participate in the administrative process but whom the Bureau chose to exclude.

The proposed definition of *interested public* would make the Bureau less accountable to the American public, the ultimate owners of public lands. FLPMA directs that public lands be managed “in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use.” 43 U.S.C. 1701(a)(8). These articulated

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<sup>20</sup> When the Bureau considered changing the terminology “interested public” to “affected interest” in the 2006 rule, it considered changing the definition to mean “a party who has established in writing that they may be materially and economically impacted by an agency decision.” See Attachment L. Here, the Bureau is proposing to require the party to have a “cognizable interest” instead, which would have the same effect of limiting consultation, cooperation, and coordination to the permittee/lessee. In 2003, the Bureau decided this would “significantly reduce public participation.” In 2026, the same would be true.

resources and values—even providing food for domestic animals—are public goods, rather than benefits allotted to specific recipients.

Congress made sure with FLPMA to provide the public a significant role in managing the resources and values that public lands provide because it understood that public involvement ensures that decisions regarding public lands reflect the interests of the public in conserving and enhancing the quality of ecological, environmental and water resource values, among others, rather than the narrow interests of permittees.

The proposal to narrow the definition of interested public would effectively limit participation in commenting on and protesting allotment management plans and grazing permit approvals to permittees and state and local governments. The Bureau is less likely to balance the public's interest in protecting ecological and environmental resources against the narrower interests of grazing permittees and state and local governments if the public is denied a voice in decision making.

Finally, the Bureau has failed to provide an explanation for the need to change the definition of *interested public*. Though the agency asserts that “[a]n interest in public lands management or the health of the range or particular resources on it would not alone be sufficient for the Bureau to grant interested public status,” it does not explain why such interests are not sufficient to comply with FLPMA’s mandate for public participation in managing public lands, or why “an articulable interest in those matters as applied to the allotment at issue” would be necessary for a member of the public to participate in the agency’s management of the allotment. The Federal Register notice fails to explain why the current definition is flawed and how the proposed definition still satisfies Congress’ instruction to provide for public participation in the management of public lands. A rationale for narrowing public participation is especially necessary when the agency has previously espoused the benefits of wider public participation. See Rangeland Reform DEIS at 1-10.

*H. PROPOSED: Permitted use means the forage allocated for grazing by production-oriented livestock in an allotment under a permit and is expressed in AUMs. Permitted use includes active use and suspended use AUMs.*

Under current regulations, "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.”

Here, the Bureau seems to be divorcing permitted use from the authority of a land use plan, and adding the requirement of “production-oriented livestock.” (See *subsection L, infra, for more about the production requirement*).

Removing the statement regarding the allocations in a land use plan is worrisome. FLPMA requires the development of land use plans that provide for resource allocation. 43 USC § 1712. The regulations require that “(a) all future resource management authorizations and actions, and subsequent more detailed or specific planning, shall confirm to the plan components of the

approved resource management plan.” 43 CFR § 1610.6-3. By specifically proposing to strike this section in the revised regulations, the Bureau is signaling that it will no longer require land use plans to allocate grazing use on allotments. The Bureau does not have the authority under FLPMA to do this. This is further evidence that it intends to reduce accountability (or “provide flexibility”) through outcome-based grazing decisions. The Bureau should have analyzed and disclosed the impacts of this change.

- I. PROPOSED: Production-oriented livestock means animals when they are being used as part of an operation to provide output for various purposes, such as meat, milk, fiber, or other products and any animals when they are being used to assist with management of other animals in connection with such operations ( e.g., horses that are used to assist with cattle management).*

This is a wholly new definition that defines a specific use of livestock that are allowed to be permitted on Bureau lands.<sup>21</sup>

The Bureau cannot simply create a new requirement for permitted livestock on public lands that is not included in the governing laws. As the Supreme Court has noted, the “specific goals” of the TGA “are to ‘stop injury’ to the lands from ‘overgrazing and soil deterioration,’ to ‘provide for their use, improvement and development,’ and ‘to stabilize the livestock industry dependent on the public range.’” *Public Lands Council v. Babbitt*, 529 U.S. 728, 733 (2000) (quoting 48 Stat. 1269) (codified at 43 U.S.C. § 315).

The TGA authorizes the Secretary to issue permits to “stock owners” generally: “The Secretary of the Interior is hereby authorized to issue or cause to be issued permits to graze livestock on such grazing districts to such bona fide settlers, residents, and other stock owners as under his rules and regulations are entitled to participate in the use of the range . . . .” 43 U.S.C. § 315b.

The Supreme Court rejected a challenge to the Bureau’s elimination of a regulatory requirement that grazing permittees must be “engaged in the livestock business,” and arguments that the TGA forecloses issuing grazing permits to those not “engaged in the livestock business.” *Public Lands Council v. Babbitt*, 529 U.S. 745-46 (2000).. The Court explained the TGA authorizes the Secretary “to issue [grazing] permits to ‘settlers, residents, and other stock owners,’” and contains a leasing preference to a narrower class of applicants: “landowners engaged in the livestock business.” *Id.* at 745-46 (quoting 43 U.S.C. § 315b.). The Court observed that limiting the term “other stock owners” to those engaged in the livestock business would impermissibly render meaningless the language giving preference to those engaged in the livestock business.

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<sup>21</sup> We note too that the Bureau proposes to delete § 4130.6-4, “Special grazing permits or leases” in its entirety. This current regulation states, “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.” Thus, the Bureau is not only adding a qualifier to the kind of use by livestock, but it is eliminating the existing special category that would have allowed Indigenous animals like bison to use these public lands.

*Id.* The same analysis applies here and precludes the Bureau's insertion of a new "production" requirement into the TGA.

Nor does FLPMA require a "production" or "production-oriented" livestock operation as a basis for issuing grazing permits either. FLPMA creates the structure for the Department of Interior's management of public lands. FLPMA requires that management of public lands "will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use..." 43 U.S.C. § 1701(a)(8). FLPMA clarifies that the concept of "multiple use" focuses on long-term management that balances productivity with environmental quality and "not necessarily [] the combination of uses that will give greatest economic return or greatest unit output." 43 U.S.C. § 1702(c). Thus, the Bureau's proposed change to require "production-oriented" is at odds with FLPMA.

PRIA allowed, "vast segments of the public rangelands are producing less than their potential for livestock, wildlife habitat, recreation, forage, and water and soil conservation benefits, and for that reason are in an unsatisfactory condition[.]" 43 U.S.C. § 1901(a)(1). Congress recognized the degraded condition of the public range lands presented a risk for soil loss, desertification, and underproductivity for large swaths of public land. 43 U.S.C. § 1901(a)(3).

To the extent that the Bureau seeks to discuss "production-oriented" as a requirement of public lands livestock grazing permits, we suggest that the Bureau adopt a definition of ecological-productivity rather than an economic perspective. The Bureau could require that livestock use "produce" cleaner water, stable soils, native vegetation, and support wildlife habitat.

We note that the Bureau adds the "production-oriented" modifier throughout the proposed regulations, including (but not limited to) under the proposed definitions of permitted use, mandatory qualifications, and grazing permits. We object to each and every instance of this addition on the grounds that it is unlawful, unprecedented, and undefined.

*J. PROPOSED: Stocking rate means the number of specific kinds and classes of animals grazing land over a specific time period per acre. Stocking rate is usually expressed in AUMs/acre.*

This is a newly defined term that doesn't exist in the list of definitions of the current regulations. Nor does it appear outside of the definitions in the proposed regulations. It is unclear what the Bureau intends with this addition.

Stocking rate is a component of the existing definition of livestock carrying capacity, but, as demonstrated above, the Bureau intends to revise this definition and drop "livestock" from its phrasing.

- K. *PROPOSED: Suspension or suspended use means the temporary withholding from active use, through a decision issued by the authorized officer or by agreement, of part or all of the permitted use specified in a grazing permit until specified objectives or actions have been met.*

The current regulations state, "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 permitted use in a grazing permit or lease."

Changing the regulatory language to limit the duration of suspended use "until specified objectives or actions have been met" suggests that long-term reductions in grazing use will no longer be allowed. Because the "specified objectives or actions" are not disclosed here to be based on monitoring data, scientific evidence, or any measurable criteria, it is unknowable what would trigger grazing resumption. It also suggests that total active use would need to be resumed, notwithstanding any other considerations.

The proposed regulations place a *de facto* limit on suspended use by stating, "Long-term (more than 5 years) reduction of AUMs from active use should be accomplished only through a new decision." 91 FR 26857. There is no environmental analysis of this new restriction, and it ignores the reality that many reasons for suspending active use are due to conditions that exceed this timeframe.

- L. *PROPOSED: Sustained yield means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use.*

This is a new definition that doesn't exist in the current regulations, though it is found verbatim in FLPMA. Unfortunately, the Bureau tends to apply "sustained yield" to the production of livestock rather than the maintenance of the ecosystem. We are concerned that the Bureau's failure to make this distinction in the definitions will result in misapplication, in which the Bureau will argue, contrary to plain meaning of FLPMA, that it must manage for the same level of livestock use (and output) in perpetuity.

- M. *PROPOSED: Targeted grazing means using livestock as a tool to create strategic linear fuel breaks, to reduce fine fuel height and fuel loading, and to maintain fine fuels reduction for a specified period under § 4190.1(a)(1) of this part, or to address other resource issues such as control of undesirable plant species.*

This is a newly defined term that doesn't exist in the current regulations and under this definition all livestock grazing would fit in this definition. Combined with the proposed 4190 regulations this definition allows the Bureau to bypass the normal authorization process in nearly any circumstance, given that all forage removal by livestock could be considered a reduction in "fine fuel height and fuel loading." This is entirely too subjective and nonspecific, and leaves open the opportunity for abuse.

The Bureau appears to be seeking to expedite permitting for programs such as “targeted livestock grazing,” also known as “prescribed grazing” or “prescriptive grazing.” Targeted grazing is a relatively new approach to managing vegetation communities, and there is a need for specificity regarding timing, duration, and class of livestock. There are also specific harmful effects associated with targeted grazing: plant secondary chemistry, seed dispersal or endozoochory, and animal welfare. These intrinsic complexities call for greater environmental review and specificity, not less.

Thus, the idea that targeted livestock grazing can universally be used to reduce fuel loads or knock back invasive plant infestations is unsupported by the scientific evidence. There is also very little science showing that grazing is effective at influencing fire behavior. A study conducted in Arizona found that fire-control benefits from targeted grazing occur only when wind speeds are 5 m.p.h. or less. Such conditions generally do not lead to large, out-of-control wildfires. Moreover, the level of grazing needed to affect fire behavior would, in all likelihood, prevent recovery native vegetation and soil crusts.<sup>22</sup>

*N. PROPOSED: Temporary nonrenewable or TNR means a type of gazing [sic] authorization that authorizes additional forage temporarily available for livestock grazing. Examples where a TNR authorization may be issued include: (1) in a vacant allotment without a current grazing authorization where forage is temporarily available; (2) in an allotment with a current grazing authorization where additional forage is temporarily available above active use; (3) in an allotment with a current grazing authorization where forage is available as result of temporary nonuse. In all circumstances the current permittee, if any, will be consulted before use by an additional permittee is authorized.*

This is a newly defined term that doesn't exist in the current regulations.

It would seem that under the proposed revisions, the Bureau could in the future issue TNR authorizations effective immediately, with no ability by interested publics to protest a proposed decision or appeal a final decision, if they are even able to learn of this increased grazing use. The revisions only mention consulting with the current permittee, not the interested public or other users of these public lands. However, this conflicts with court orders finding that the Bureau cannot grant TNR use without further NEPA analysis, as well as proposed and final decisions in accordance with 43 C.F.R. § 4160. See *Committee for High Desert v. Guerrero*, 1:02-CV-521-S-MHW, Dkt. 65 Memorandum Decision and Order (D. Idaho, April 11, 2003).

TNR permits are also only based on forage availability above the amount permitted for active use under an existing permit, but fails to account for the wildlife needs for that same abundance. This is a backdoor way of permitting grazing without environmental analysis, and the proposed change has not been fully considered in an environmental impact statement.

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<sup>22</sup> Attachment M. Launchbaugh and others, 2008, Interactions among livestock grazing, vegetation type, and fire behavior in the Murphy Wildland Fire Complex in Idaho and Nevada, July 2007: U.S. Geological Survey Open-File Report 2008-1214, 42 p.

This language also incentivizes existing permittees to overgraze, for fear that they will have to share the allotment with another user. (The definition specifies only that the current permittee will be “consulted.”) It creates a mindset that maximizes extraction of “forage” rather than prioritizing management that won’t damage the environment or deplete the land’s productivity.

- O. *PROPOSED: Utilization means the portion of the current year’s growth that has been removed during a specified period. The term is also used to refer to the pattern of such use. See Technical Reference 1734-3 or subsequent updates.*

Under the current regulations, “Utilization” means “[T]he percentage 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.”

The Bureau defines utilization as “available forage (weight or numbers of plants, twigs, etc.) that has been consumed or destroyed.” (TR 1734-3). The proposed definition differs meaningfully from the Bureau’s longstanding definition, both in regulation and policy. The current definition is restricted to forage, what livestock actually eat, not “current year’s growth” which would include non-forage species.

The proposed definition contradicts not only the Bureau’s own definition, by using total annual production instead of forage production and removing trampling or other destruction, but also the Society for Range Management’s definition.

The proposed changes have major environmental implications which must be examined in an EIS.

#### **§ 4100.0-8 Land Use Plans**

*PROPOSED: The authorized officer shall manage production-oriented livestock grazing on public lands under the principles of multiple use and sustained yield, and in accordance with applicable land use plans and statutory authority. Land use plans shall establish allowable resource uses (either singly or in combination), 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).*

Under the current regulations, “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).”

Thus, the new section removes “related levels of production or use to be maintained.” The clarifying text of the proposed revision states, “That language has always been intended to call on the Bureau to disclose levels of production in land use planning decisions, not to establish such levels at the planning stage, but its inclusion in the regulation has caused confusion on this point. The Bureau is proposing this change in an effort to eliminate that confusion.” 91 FR 26858. The Bureau appears to be planning to make land use plans non-binding, which would have major implications for subsequent site-specific decisions, especially since subsequent site-specific grazing authorizations are so rarely analyzed with a full environmental assessment.

## **Subpart 4110- Qualifications and Preference**

### **§ 4110.1 Mandatory Qualifications**

*PROPOSED: (a) Except as provided under §§ 4110.1-1, 4130.2(d)(4)(a), and 4130.6-3, to qualify for grazing use on the public lands an applicant must own or control land or water base property, be engaged in a production-oriented livestock business, and 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 who has reached the age at which they are legally considered an adult (age of majority); 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) The authorized officer must determine whether applicants for the renewal of permits or issuance of permits 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 unless the applicant and all affiliates have a satisfactory record of performance and meet the requirements in § 4110.1(a).*

The current regulations state:

“(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.”

Thus, the proposed revisions add the requirement to be engaged in a production-oriented livestock business, to have reached the age of majority, and that any new or transferred permits

or any affiliates, have a satisfactory record of performance. As noted above, there is no such requirement under federal law for the requirement of “production-oriented.”

The Taylor Grazing Act authorizes permits to "bona fide settlers, residents, and other stock owners" (43 U.S.C. § 315b), and the Supreme Court has read that language broadly. In *Public Lands Council v. Babbitt*, 529 U.S. 728 (2000), the Court explained that "other stock owners" cannot be narrowed to mean only those engaged in the livestock business, because the statute separately grants a preference to landowners engaged in the livestock business — and reading the broader phrase to require the same thing would leave that preference doing no work. On the statute's own terms, then, owning stock is enough to be a stock owner; running a production operation is not a precondition. FLPMA points in the same direction. It defines multiple use as balanced, long-term management that is "not necessarily... the combination of uses that will give the greatest economic return or the greatest unit output" (43 U.S.C. § 1702(c)), and it directs the Bureau to manage for ecological, environmental, water, and wildlife values alongside domestic animals (43 U.S.C. § 1701(a)(8)). A rule that screens applicants by a “production” standard runs counter to what FLPMA says multiple use is defined as. PRIA, similarly, is concerned with restoring rangeland health and productivity across all rangeland values, not with output as a condition of entry.

#### **§ 4110.2-1 Base Property**

*PROPOSED: (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) 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 paragraph (a) of this section. A permittee'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 interest in the replacement water shall be deemed sufficient in meeting the requirement that the applicant control base property.*

*(c) If a permittee loses ownership or control of all or part of his/her base property, the permit, 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 requests, in writing, that the permit 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 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.*

*(d) 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 under section 15 of the Act, have a preference right to lease the whole tract under section 15 of the Act.*

The proposed revision entirely eliminates the language under the current regulations that states, “(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 objectives of the public lands.”

Instead, the proposed regulation would allow the authorized officer to set the amount of time a base property must support the livestock, which is contrary to the history of base property. The ability to actually produce crops and forage to support the livestock for a specified period is part and parcel to the current permittees’ total and active grazing preference in AUMs. During the range adjudication of the 1960s the total preference was based on the base property production. The time period the base property had to support the livestock varied among grazing districts was set by the district, generally between two to four months. Frequently, the base property production was more than what was needed to support the herd for more than the specified time. The additional federal AUMs the base property was qualified for was placed in suspended preference. If a base property is no longer required to even have capability of such production, the suspended preference should be adjusted accordingly. The way the proposed regulation is written, the authorized officer could set 15 minutes as the required time the base property must support the herd, thus qualifying a modest suburban backyard as base property for a 300 cow, year-round livestock operation.

#### **§ 4110.2-2 Specifying Permitted Use**

*PROPOSED in subpart (a): Active use will be based upon the amount of forage available for livestock grazing as established in the land use plan, activity plan, or subsequent decision of the authorized officer under § 4110.3-3 and may be expressed as a limit. b) The specified permitted use shall attach to the base property supporting the grazing permit based on: (1) The relative acreage of land base property controlled by the permittee, or (2) The amount of livestock forage production within the service area of water base property.*

The current regulations state instead, “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.” This proposed change replaces the current regulation that says, “(c) The animal unit months of 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.” Thus, the proposed change allows for *subsequent* decisions of the authorized officer to determine active use, and eliminates decisions that set vegetation standards to dictate permitted use.

The proposed change in this section, from setting “permitted use” based on the forage available to instead setting “active use” based on the forage available, is part of a suite of new provisions designed to ensure that no AUMs are ever removed from a grazing permit. Any AUMs that are not considered part of active use will always be moved to suspension instead of cancelled, and suspended AUMs can be reactivated with minimal process under sections 4110.3-1, 4110.3-2, and 4110.3-3. Suspended AUMs can be moved to active AUMs after CCC with only the affected permittees and state on a temporary or permanent basis, and suspended AUMs can also be given to new applicants. This activation of suspended AUMs can be done by an agreement rather than a grazing decision and there is no requirement for NEPA. This change in focus from permitted use to active use has the effect of leaving total permitted AUMs intact, regardless of ecological conditions, fixing in place historic and inflated forage allocations that in many cases are the result of early Taylor Grazing Act adjudications but have no basis in actual, current conditions on the ground. Thus, we advocate for setting permitted use based on actual forage production and permanently cancelling both active AUMs in excess of the current livestock carrying capacity and all suspended AUMs. The Bureau then has the option of adjusting permitted use periodically based on site-specific monitoring and documented field conditions under section 4110.3 if changes to permitted use are warranted in the future.

### **§ 4110.2-3 Transfer of grazing preference**

*PROPOSED i) Following a preference transfer, the authorized officer may:*

*(1) Rely on expiring permit —Issue to the transferee a grazing permit with the same terms and conditions as the transferor's terminated permit for the remaining term of that permit. When the authorized officer issues a permit under this paragraph (1), it is presumed that the officer may, to the extent appropriate and consistent with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), make a determination of NEPA adequacy in support of the permit decision.*

*(2) Issue a new permit —Issue to the transferee a grazing permit with appropriate terms and conditions for a term not to exceed 10 years. When the authorized officer issues a permit under this paragraph (2), the authorized officer should rely on previous documentation of NEPA compliance to the extent appropriate and consistent with NEPA.*

*(3) Continue expiring permit under 43 U.S.C. 1752(c)(2) —Continue under a new permit the terms and conditions of the transferor's terminated permit until such time as any environmental analysis required under NEPA or other applicable laws is completed.*

The proposed revisions would create a new provision that allows a new permit to be issued following a preference transfer under (2) with “appropriate terms and conditions,” as distinct from “the same terms and conditions,” and do so relying on “previous documentation of NEPA compliance. In effect, this means that a transfer of grazing preference with wholly new terms and conditions can be issued for up to ten years with no new environmental review, no public notice, and no specificity about what level of NEPA would have had to be conducted under the prior

authorization (i.e. the previous permit could have been authorized under a CX). This is unlawful—changed terms and conditions of a NEPA permit could have significant environmental impacts.

#### **§ 4110.3-1 Increasing permitted use [Proposed “Increasing Active Use”]**

*PROPOSED: (d) The authorized officer may apportion additional forage on a sustained yield basis as available for grazing by production-oriented livestock, or extend the season of use, or both in an allotment after consultation, cooperation, and coordination with the affected permittees and the state having lands or managing resources within the area; provided the permittee or other applicant is found to be qualified under subparts 4110 and 4130 of this part.*

The current regulations state that this additional forage may be apportioned, “(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...” The proposed revision removes the need to consult with the interested public and adds “production-oriented livestock” as the qualifier throughout.

In addition to our comments on Sec. 4110.2-2 above, we note that the Interested Public have a right to participate in decisions regarding increase of grazing use, and play an integral role in those determinations.

#### **§ 4110.3-2 Decreasing permitted use [Proposed “Decreasing Active Use”]**

*PROPOSED: (b) The authorized officer will reduce active use through suspension or otherwise modify management practices when the site-specific analysis described in § 4110.3(b) shows active grazing use is causing an unacceptable level or pattern of utilization, or when use exceeds the carrying capacity as determined through accepted monitoring methods.*

The current regulations specify that permitted use will be reduced: “(b) When monitoring or 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 shall reduce permitted grazing use or otherwise modify management practices.”

Thus, the agency is requiring that the full § 4110.3(b) analysis be indicated of unacceptable impacts rather than when monitoring or field observations should non-conformance with the standards of rangeland health at § 4180. It also changes the language from “shall” to “will.”

Under the new definition of “carrying capacity,” which is the total forage production available to all species, it is physically impossible to exceed total forage production making the concluding clause of this revision nonsensical. Therefore, “carrying capacity” as used in this provision should be changed to “the portion of the carrying capacity allocated to permitted livestock.”

The proposed regulation eliminates the need for compliance with rangeland health standards, essentially exempting permits from compliance with 43 CFR 4180 or the new 1700.

These changes have major environmental impacts which require full examination in an EIS.

The proposed changes to this section fundamentally change the intent and outcome in major ways. As we noted above in our comments on Sec. 4110.2-2, these proposed regulations eliminate the distinction between temporary suspension of AUMs and permanent decrease of permitted AUMs that was clearly established in the regulation previously. By changing the section so that it only addresses “active” use rather than “permitted” use, the Bureau removes its ability to permanently decrease permitted use to address unacceptable resource issues. Instead, under the proposed changes, the Bureau can only decrease grazing levels by temporarily moving AUMs into suspension, where they remain on the permit and may be reactivated at a later time. This is problematic because one of the current bases for reducing use is exceeding the carrying capacity, which is unlikely to change, especially within the duration of a permit term. Livestock use that exceeds the carrying capacity should result in permanent reduction of AUMs to sustainable levels of permitted use, not temporary reduction of active use through suspension. Further, the proposed changes remove noncompliance with rangeland health standards as a basis for reducing livestock use.

*PROPOSED: (c) Where active use is reduced under paragraphs (a) and (b) of this section it will be held in suspension until the permittee applies for active use to resume, and the authorized officer approves that application.*

No related language is included in the current regulations, but the proposed language creates a loophole that allows the permittee to regain suspended use with no criteria being met, it is purely at the discretion of the authorized officer with no sideboards or limits.

**§ 4110.3-3 Implementing reduction in permitted use [Proposed “Implementing changes in active use”]**

*PROPOSED: (a) After consultation, cooperation, and coordination with the affected permittee 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 decision.*

Current regulations specify that the “Interested public” will also be included in the consultation, cooperation, and coordination process.

Interested Public should be consulted in all changes to livestock grazing use levels because the public has a right to participate in decisions that affect the public lands. The Interested Public may have substantial information to contribute to a decision whether or how to modify grazing use or close allotments to protect resources, as well as current and useful information on the status of public resources on an allotment. Removing public participation and limiting the participants raises the same issues as discussed under the proposed definition for “interested public” above.

*PROPOSED: (2) After consultation, cooperation, and coordination with affected permittees 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 other provisions of this paragraph (a) when the authorized officer determines and documents that an emergency exists and—*

*(i) The soil, vegetation, or other resources on the public lands require immediate protection because of conditions such as drought, fire, flood, or insect infestation; or*

*(ii) Continued production-oriented livestock grazing use poses an imminent likelihood of significant resource damage.*

The current regulations state instead, “(b) 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, or insect infestation, or when continued grazing use poses a significant risk of resource damage, after consultation with, or a reasonable attempt to consult with, affected permittees or lessees, the interested public, and the State having lands or responsible for managing resources within the area, the authorized officer shall close allotments or portions of allotments to grazing by any kind of livestock or modify authorized grazing use...”

Thus, the new regulations propose that closures are prompted by an “emergency” AND “*imminent likelihood of significant resource damage*,” and removes the requirement to consult with interested public, and does not provide leeway with the modifier “reasonable attempt to consult with,” making closures dependent upon coordination with the affected permittee and the state.

As in the previous section, the Bureau eliminates its current obligation to permanently reduce grazing use that is causing or likely to cause significant resource damage or is failing to meet rangeland health standards. Under the proposed changes, those excessive AUMs need only be moved from active use to suspension and must therefore be retained on the grazing permit as part of the total permitted use rather than permanently cancelled.

In addition, the proposed changes add a new requirement that the authorized officer declare an emergency before implementing allotment closures or livestock reductions. An emergency declaration is a needless hurdle to taking timely action, and many situations where public lands and resources require immediate protection are not the result of an emergency but rather cumulative degradation from long term authorization of too many livestock.

## **Subpart 4120 – Grazing Management**

### **§ 4120.2 Allotment management plans**

*PROPOSED: All permits may incorporate an allotment management plan for managing livestock grazing.*

The proposed changes provide that permits “may” incorporate an AMP. The AMP is the only instrument that ties an individual permit to specific resource objectives, a monitoring plan, and

conformance with land-health standards, and makes those commitments enforceable as permit terms. By making AMPs optional with no standard governing when one is required, the rule allows permits to be issued with no resource objectives, no monitoring, and no measurable connection to land health. FLPMA does allow the Bureau to manage some allotments through permit terms rather than a full AMP (43 U.S.C. 1752(e)), so the objection is not that every permit must have one, it is that FLPMA ties that choice to the condition of the allotment, requiring that AMPs "shall be tailored to the specific range condition" and be reviewed for whether they are "effective in improving the range condition" (43 U.S.C. 1752(d)). The Bureau should require an AMP wherever an allotment is failing or at risk of failing land-health standards, and should require the monitoring plan in every case so that PRIA's mandate to improve rangeland condition (43 U.S.C. 1901–1903) remains measurable and enforceable. Also, the Bureau must remember its obligations to prevent "unnecessary or undue degradation" (43 U.S.C. 1732(b)).

The Bureau is weakening the currently mandatory requirement of conformance to an AMP. It's true that AMPs are often decades out of date, but that is a reason to propose revisions to standardize their updating, set a schedule, include monitoring regimes, and consider current land health conditions instead of historic conditions.

*PROPOSED: 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, landowners involved, and any state having lands or responsible for managing resources within the area to be covered by such a plan.*

This removes "interested public" from the list of who merits consultation, cooperation, and coordination. Removing "interested public" from participation raises the same issues as discussed under the proposed definition for "interested public" above. The creation of an analog to AMPs is also covered elsewhere in this document.

*PROPOSED: The plans shall –(1) Include terms and conditions under §§ 4130.3, 4130.3-1, 4130.3-2, and 4130.3-3; (2) Prescribe the livestock grazing practices necessary to meet specific resource objectives defined in the allotment management plan and applicable standards developed under part 1700 of this title; and*

These proposed revisions eliminate mandatory compliance with subpart 4180. Current rules require every permit to contain terms that "ensure conformance with subpart 4180" (current §§ 4130.3 and 4130.3-1(c)), and the proposal deletes both mandatory terms. Paragraph (a)(1) still cross-references the terms and conditions sections, but those sections have themselves been stripped of the subpart 4180 requirement. Paragraph (a)(2) then adds that AMP practices must meet "applicable standards developed under part 1700," which might look like a strengthening to those unsuspecting, but is the opposite. Also, part 1700 is materially weaker than subpart 4180. It drops water quality as both a fundamental and a standard (proposed §§ 1700.1, 1700.2(c)), though riparian and water-quality degradation is a major central issue. It relabels the enforceable grazing "guidelines" as "standards," erasing them as a distinct category of directives grazing had to follow. This new process lets the Bureau decline to modify grazing even after finding that grazing is the significant cause of a land-health failure. The Bureau should not treat paragraph

(a)(2) as preserving the status quo, it does the opposite. The Bureau should restore the mandatory conformance term formerly at § 4130.3-1(c), retaining "guidelines" as a distinct enforceable category, and restoring water quality as both a fundamental and a standard.

The current regulations at (c) specify, "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 shall be considered the proposed decision for the purposes of subpart 4160 of this part."

Proposed subpart (d) removes "interested public" for the entities with whom the authorized officer needs to consult, cooperate, or coordinate in revising or terminating allotment management plans. Removing public participation and limiting the participants raises the same issues as discussed under the proposed definition for "interested public" above.

The proposed changes remove the public from every stage of the AMP process. It strikes the "interested public" from the parties consulted when the Bureau develops, revises, or terminates an AMP, leaving only those with a direct economic stake in grazing management. Proposed changes delete current paragraph (c) entirely, which had required public participation in the planning and environmental analysis of grazing plans, required public notice of the related environmental documents before implementation, and treated the post-analysis decision as the proposed decision opening the subpart 4160 protest process. Deleting (c) removes all three at once.

Public notice is how a citizen learns a plan is being developed, and thus how a person becomes an "interested public." The Bureau's defense — that the public may still comment on environmental documents and protest under subpart 4160 — is weak and illusory. Front-end consultation shapes a plan while it is being written, whereas a protest objects after the decision is made. The chance to comment on environmental analysis vanishes whenever a categorical exclusion lets the Bureau skip that analysis. That the replacement language — effective after "complying with applicable laws and the provisions of subpart 4160" — guarantees nothing is confirmed by changed proposed § 4120.3-1(f), which swaps the explicit National Environmental Policy Act citation for the vague phrase "applicable laws." These changes run against FLPMA's policy that the Bureau act only after "considering the views of the general public" and "assure adequate third party participation" (43 U.S.C. 1701(a)(5)), its definition of public involvement in planning and decisionmaking (43 U.S.C. 1702(d)), and its command that plans be developed "with public involvement" (43 U.S.C. 1712(a)). The interested public must be included in the planning process at all stages.

### **§ 4120.3-1 Conditions for range improvements**

*PROPOSED: (f) The authorized officer will review proposed range improvement projects under applicable laws. If the decision following this review falls under the authority of this part, it will follow the procedures of subpart 4160 of this part.*

This proposed revision would replace the existing regulations which requires, “(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 current rule requires that range improvements — fences, wells, pipelines, spring developments, and vegetation treatments such as seeding and chaining — “shall be reviewed in accordance with the requirements of the National Environmental Policy Act.” The proposal replaces this with a review “under applicable laws.” “Applicable laws” guarantee nothing on its own.

Range improvements warrant environmental review, because they physically alter public land and harm wildlife. Fences block and kill sage grouse and ungulates. Water developments dewater springs and riparian areas. Chaining and spraying destroy native sagebrush and shrub communities and can spread invasive species. Removing the explicit review requirement also undercuts paragraph (a) of this same section, which still requires range improvements to be consistent with multiple-use management. Environmental analysis is the tool for determining that consistency. Removing it leaves the requirement without a means of enforcement.

The current rule also gives the public an automatic opportunity to protest every range-improvement decision under subpart 4160. The proposed revisions makes that right conditional, applying only “if the decision falls under the authority of this part,” and gives the Bureau no standard for deciding whether a decision qualifies. This lets the Bureau conduct projects outside of public review by characterizing them as outside part 4100. The change also separates the right to protest from environmental analysis. The current rule ties protest to “the decision document following the environmental analysis,” while the proposal reaches only “the decision following this review,” which may involve no analysis. The Bureau’s stated reason — that some decisions fall outside part 4100 — does not explain why the NEPA requirement was deleted, because NEPA applies based on a project’s effects, not on which regulation authorizes it. That unexplained deletion is a change the Bureau may not make without reasoned justification (5 U.S.C. 706(2)(A)).

As discussed above, the Bureau makes the same move by deleting § 4120.2(c): replacing an explicit environmental-review requirement with “applicable laws” and making the subpart 4160 protest right conditional. This is a pattern of removing guaranteed environmental review and public participation from grazing management. This conflicts with the Bureau’s duty to prevent “unnecessary or undue degradation” of public lands (43 U.S.C. 1732(b)) — which these projects can cause with its duty to manage for multiple use and sustained yield (43 U.S.C. 1732(a)), and with FLPMA’s policy that the Bureau act only after “considering the views of the general public” (43 U.S.C. 1701(a)(5)). The Bureau should retain the explicit requirement that range improvements be reviewed in accordance with NEPA, and restore the automatic protest right

under subpart 4160 for all range-improvement decisions, or provide a thorough environmental analysis of the consequences of this change.

### **§ 4120.3-2 Cooperative range improvements**

*PROPOSED: (b) Subject to valid existing rights, including water rights permitted or authorized under state law, title to permanent range improvements such as fences, wells, and pipelines where authorization is granted after August 21, 1995 shall be in the name of the United States.*

In contrast, the current regulations state, “(b) Subject to valid existing rights, title to permanent range improvements such as fences, wells, and pipelines where authorization is granted after August 21, 1995 shall be in the name of the United States.”

It appears this proposed change would move control of water on Bureau lands from the United States toward permittees. This is alarming. The first change is in § 4120.3-2(b). The current rule requires title to permanent range improvements built after August 21, 1995, including wells and pipelines, to be held in the name of the United States. The proposal makes that requirement “subject to valid existing rights, including water rights permitted or authorized under state law.” The effect is to remove the water right from the federal-title requirement. The United States would hold title to the structure, such as the well or pipe, while the permittee holds the state water right that gives the development its value. The Bureau claims that this only makes explicit what “valid existing rights” are already covered. If that were the case, the added phrase would not be needed.

The second change rewrites § 4120.3-9, the section that governs stockwater rights directly. The current rule applies to “any right acquired on or after August 21, 1995” and directs that such rights be held “in the name of the United States” to the extent state law allows. This reflects a policy, adopted in 1995, of keeping stockwater tied to the public land rather than to the permittee. The proposal changes the scope to “any right adjudicated to the United States based on state law.” The Bureau states that the purpose is to exclude federal reserved water rights. It is unclear whether the Bureau still must seek United States ownership of new stockwater rights, and it may drop that duty and leave new rights to permittees. The proposal also adds “joint ownership” and permittee “coordination, consultation and cooperation” as named options, which shifts the default away from sole United States ownership. A new paragraph (b) provides that the Bureau will not change the purpose of use, place of use, or point of diversion of a stockwater right except in accordance with state law, and must give permittees 30 days’ notice first. Changing the purpose or place of a water right is the method the Bureau would use to move water use/allocation from livestock over to wildlife, fish, or stream/riparian systems. Tying that action to state law, which in many states does not recognize instream flow or wildlife as a beneficial use, and adding a notice step, restricts the Bureau’s ability to put water to public-interest uses.

These changes conflict with the Bureau’s statutory duties and with its own prior positions. Federal law requires the Bureau to manage public lands for multiple use and sustained yield (43 U.S.C. 1732(a)), to prevent unnecessary or undue degradation (43 U.S.C. 1732(b)), and to

protect water-resource values (43 U.S.C. 1701(a)(8)). Water on public land must serve wildlife, fish, and riparian systems, not livestock alone, which is why the Bureau has held stockwater rights that serve both livestock and wildlife. Allocating water primarily or wholly to livestock use and giving up the ability to reallocate it works against these duties. The Bureau has not acknowledged or explained the change, which reasoned decision-making requires (5 U.S.C. 706(2)(A)). The Bureau should remove the water-rights carve-out from § 4120.3-2(b); rewrite § 4120.3-9(a) to exclude federal reserved rights without dropping the duty to seek United States ownership of all new stockwater rights to the extent state law allows; and strike or narrow the new § 4120.3-9(b) so that it does not prevent the Bureau from moving water to wildlife, riparian, or instream uses.

### **§ 4120.3-3 Range improvement permits**

*PROPOSED: (c) If forage available for livestock is not or will not be used by the permittee who is authorized for the associated active use, the authorized officer may issue temporary nonrenewable grazing permits to other qualified applicants to use it under §§ 4130.6-2 and 4130.4(f), or § 4110.3-1(a). Before issuing a temporary nonrenewable permit, the authorized officer will consult, cooperate, and coordinate with the current permittee as provided in § 4130.6-2. If the authorized officer issues such a temporary nonrenewable permit, the preference permittee must cooperate with the temporary authorized use of forage by another operator.*

The current regulations state, “(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).

The current rule allows reallocating a permittee's unused forage to another operator only in a defined situation where the permittee "cannot make use of the forage available for livestock," and either 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 proposal deletes these preconditions and substitutes an overly permissive standard — "If forage available for livestock is not or will not be used by the permittee" — under which the authorized officer "may issue temporary nonrenewable grazing permits to other qualified applicants." "Cannot make use," which describes an inability, becomes "is not or will not be used," which reaches any non-use, including a permittee's deliberate choice to leave the allotment idle. And the requirement of a denied application or an affirmative agency request — the step that gave the reallocation a defined basis and gave the permittee notice — is removed. The effect is to make reallocation the easy default. Whenever forage sits unused, it can be allocated to another operator and grazed rather than left to rest.

Rest is a basic tool for range recovery, and the current rangeland-health guidelines expressly call for "periods of rest from disturbance or livestock use during times of critical plant growth or

regrowth" (current § 4180.2(e)). Making it easier to keep an allotment grazed rather than rested works against the Bureau's duties to manage for sustained yield (43 U.S.C. 1732(a)), to prevent unnecessary or undue degradation (43 U.S.C. 1732(b)), and to improve the condition of the public rangelands (43 U.S.C. 1901–1903). The Bureau should restore a defined predicate for reallocation rather than the open "is not or will not be used" trigger. In addition, the current rule allowed conservation rest to be secured for periods of up to ten years, whereas the proposed rule makes all temporary nonuse annual and requires a fresh application and justification each year (proposed § 4130.4(e)). Long-term, dependable conservation rest is replaced by year-to-year nonuse that can lapse into reallocation if it is not renewed.

The change also removes the public from the decision, through the section it now cross-references. Proposed § 4120.3-3(c) directs that consultation occurs "as provided in § 4130.6-2," and § 4130.6-2 has been separately amended to drop the interested public. The current § 4130.6-2 requires the authorized officer to consult "affected permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public before issuing a nonrenewable permit. The proposed version requires consulting only "affected permittees and the state." Decisions about whether unused forage is grazed or rested are exactly the kind of on-the-ground management choices in which the public has an interest, because they determine whether the range gets a period of recovery. Removing the interested public here is part of the same pattern that appears throughout the proposed rule, including at § 4120.2, § 4120.3-8, and § 4110.2-4. This conflicts with FLPMA's policy that the Bureau act only after "considering the views of the general public" and "assure adequate third party participation" (43 U.S.C. 1701(a)(5)) and with FLPMA's definition of public involvement in agency decisionmaking (43 U.S.C. 1702(d)). The Bureau should keep the interested public a party to the consultation required under § 4130.6-2.

### **§ 4120.3-8 Range Improvement Fund**

*PROPOSED: (c) During the planning of the range development or range improvement programs, the authorized officer shall consult the affected permittees.*

The current regulations in consultation with "the resource advisory council, affected permittees, lessees, and members of the interested public." As stated elsewhere in these comments, removing the broader public from involvement in the management of grazing on public lands is unlawful.

### **§ 4120.3-9 Water rights for the purpose of livestock grazing on public lands.**

*PROPOSED: (a) Any right adjudicated to the United States based on state law to use water on public land for the purpose of livestock watering on public land 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, including, as necessary, through the use of a joint ownership arrangement, principal/agent relationship, or any other legal arrangement allowed or recognized under state law and in coordination, consultation and cooperation with impacted permittees.*

*(b) The Bureau of Land Management will not change the purpose of use, place of use, or place of diversion of a water right acquired, perfected, maintained or administered under paragraph (a) of this section except in accordance with state law. The Bureau of Land Management must give a minimum of 30 days' notice to any grazing permittees who utilize the subject water for their livestock before making any such change.*

The current regulation states, "Any right acquired on or after August 21, 1995 to use water on public land for the purpose of livestock watering on public land 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."

The proposed rule differs substantially from the existing regulation. The exact implications of the change are not clear and are not sufficiently explained in the preamble or the accompanying text. There are several significant changes that may have effects on the human environment and must be analyzed in an EIS.

The proposed rule retroactively applies new restrictions and conditions on existing water rights held by the Bureau in contrast with the current regulations which only applied to water rights acquired after the effective date of the regulations. This change impacts many thousands of water rights, the exact amount unknown because no analysis of the baseline conditions is provided.

The proposed rule adds language concerning the manner in which a water right may be held in the name of the United States including a new requirement for "coordination, consultation and cooperation with impacted permittees." Water rights held by the Bureau are an essential component of public lands management. The current system is centered around the principle that water rights used for livestock are tied to the allotment, not the specific permittee and the water right will need to be maintained for future use of the land regardless of the specific permittee that is authorized to use that allotment. The additional changes related to "principal/agent relationships" may also have significant consequences, particularly in the context of ongoing litigation between the United States and the State of Idaho but these impacts are unknown because no environmental analysis is provided. How many existing water rights may be

impacted by the proposed changes? What impacts may occur if the United States is no longer allowed to hold water rights due to changes in state law?<sup>23</sup>

The proposed rule adds an entirely new section related to the use of water held by the United States that prevents any changes in “the purpose of use, place of use, or place of diversion of a water right acquired, perfected, maintained or administered under paragraph (a) of this section except in accordance with state law.” This is a potentially very significant change as it would restrict the use of water on federal land to support other multiple uses on those lands. In situations where existing stock water rights may far exceed the actual need for water and other purposes for that water may arise, the Bureau could now be restricted in determining the best use of its water. For example, A recent law passed in Idaho, H.B. 592 removed the ability of the State to approve a purpose of use for the water right other than “watering of livestock,” and instead adding language to limit in perpetuity the place of use for a stockwater right currently located on a federal allotment to “the federal grazing allotment that is the place of use for that stockwater right.” H.B. 592, § 5 (modifying LC. § 42-504).

On balance, the proposed changes are potentially far more significant than simply modifications that ensure consistency with state laws, which in some cases, the United States currently considers unconstitutional. The impact of these changes remains unknown because the Bureau has not completed an EIS that would disclose potential impacts which may include reduced water availability for Threatened and Endangered species, changes in water available for recreation, changes in water quality and quantity, in addition to potential economic impacts if the Bureau is forced to forfeit currently held water rights.

## **Subpart 4130 – Authorizing Grazing Use**

### **§ 4130.1-2 Conflicting applications**

Current regulations specify that “(b) Proper use of rangeland resources,” will be considered in conflicting applications; this has been removed from the proposed regulations.

This is a problem because people who do not value the privilege of grazing on public lands and don’t comply with the terms and conditions of their permit should lose priority in conflicting applications. The failure to properly “use” “rangeland resources” should disqualify applicants at the outset.

*PROPOSED: (f) The applicant's demonstrated ability to manage production-oriented livestock to meet resource management objectives;*

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<sup>23</sup> Attachment N. Internal predecisional deliberation document regarding water rights prepared by the Bureau in advance of the preceding, and permanently enjoined, regulation revision. While the proposed changes differ slightly, we are concerned that the outcome of the 2026 proposed changes would have similar effects.

This replaces current regulations, “(g) Demonstrated stewardship by the applicant to improve or maintain and protect the rangeland ecosystem.”

Removing the requirement that an applicant “improves or maintain and protect the rangeland ecosystem” removes the fundamental principles of TGA and FLPMA from the permit application process.

*PROPOSED: (g) Where unresolved violations of terms and conditions of agency grazing rules exist, the applicant may be requested to provide additional information.*

No such language exists in the current regulations, but it appears to provide the permittee an opportunity to justify their violations of terms and conditions and give them an additional opportunity to qualify for grazing authorizations. The Bureau has not demonstrated a need for this provision, and nor has it assessed whether allowing violators an additional opportunity to obtain a permit will have environmental impacts

### **§ 4130.2– Grazing permits**

*PROPOSED: (a) Term grazing permits authorize grazing by production-oriented livestock on the public lands that are designated in land use plans as available for livestock grazing. Permits must specify the permitted use, including active and suspended use. These grazing permits must also specify terms and conditions pursuant to §§ 4130.3, 4130.3-1, and 4130.3-2.*

Current regulations specify that permits will be “issued to qualified applicants to authorize use on the public lands and other lands under the administration of the Bureau of Land Management that are designated as available for livestock grazing through land use plans. Permits or leases shall specify the types and levels of use authorized, including livestock grazing, suspended use, and conservation use. These grazing permits or leases shall also specify terms and conditions pursuant to §§ 4130.3, 4130.3-1, and 4130.3-2.”

This adds a requirement for production-oriented livestock, which is problematic (and unlawful) for reasons discussed elsewhere in this document.

This proposed change removes a requirement for the permits to specify the “types and level of use authorized.” Thus, the Bureau is weakening the application of the permit as a tool of accountability and allowing for vague, unspecific management of these public lands. It becomes impossible to predict or monitor the consequences of livestock grazing managed under such variable regimes.

*PROPOSED: (b) Following the receipt of a complete application, the authorized officer will consult, cooperate and coordinate with affected permittees, and the state having lands or responsibility for managing resources within the area before issuing or renewing grazing permits, except as provided for in the amendments to section 402 of the Federal Land Policy and Management Act by the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 ([PL 113-291](#)).*

The current regulations state instead, “(b) The authorized officer shall consult, cooperate and coordinate with affected permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public prior to the issuance or renewal of grazing permits and leases.”

This removes the interested public from the list of entities required in the CCC process prior to issuing or renewing grazing permits. Removing “interested public” raises the same issues as discussed under the proposed definition for “interested public” above. It also serves to enshrine the auto-renewed permits under 402(c)(2).

*PROPOSED: (i) The Bureau of Land Management will determine the priority and timing for completing each required environmental analysis to support the renewal of a grazing permit based on (1) the standards for the grazing allotment or permit; and (2) the available funding for the environmental analysis.*

This provision appears to be based on FLPMA, 43 U.S.C. 1752(i). However, the regulation language in subpart (1) differs from the language used in (i)(1) the statute. The statutory language says that priority for renewal will be based on “the environmental significance of the grazing, permit, or lease” while this proposed regulation says it will be based on “the standards for the grazing allotment or permit.” It is unclear what the Bureau means by the “standards for the grazing allotment or permit” but the regulation should either rely on the statutory language or the Bureau should remove this proposed addition. Otherwise, the BLM introduces uncertainty and a potentially different standard than the language in FLPMA.

#### **§ 4130.3-1 Mandatory terms and conditions**

*PROPOSED: (a) In every grazing permit, the authorized officer shall specify the kind and number of livestock, the period(s) of use, the allotment(s) to be used, and the permitted use, in animal unit months. The active use shall not at any time during the specified grazing season exceed the carrying capacity of the allotment as determined from a carrying capacity analysis using approved methodologies.*

*(b) All permits shall be made subject to cancellation, suspension, or modification for any violation of these regulations or of any term or condition of the permit.*

*The following subpart is proposed for removal: (c) Permits and leases shall incorporate terms and conditions that ensure conformance with subpart 4180 of this part*

Because of the new definition of “carrying capacity” being divorced from any ecological meaning and the physical impossibility of exceeding “carrying capacity” under the new definition, 43 CFR 4130.3-1 is rendered meaningless. In order to rely on this provision, the first reference to “carrying capacity” in subsection (a) should be changed to “portion of the carrying capacity allocated to permitted livestock.”

This section includes proposed language requiring a “carrying capacity analysis using approved methodologies.” 43 C.F.R. 4130.3-1(a). As noted in our comments above on the definition of “carrying capacity” in section 4100.0-5, we support this requirement because livestock use should be determined based on the actual current conditions on the ground rather than historic

levels of livestock use, which often greatly overestimate available forage.<sup>24</sup> However, the reference to “approved methodologies” is vague, and should be clarified. Whichever methodology is used, certain elements must be part of a carrying capacity analysis for it to be meaningful. The general process is outlined in Ogle and Brazee (2009)<sup>25</sup> and a recent example of a carrying capacity analysis following this process is Appendix 2 in the Land Health Assessment for the Monitor allotment in the Battle Mountain District, Nevada.<sup>26</sup> Critical steps include:

- Determining production for the allotment based on ecological site and soil mapping. For each ecological site, samples must be taken to determine actual production. This must be done by clipping and weighing vegetation, because in most areas of Bureau lands, current production is far below potential or expected values listed in ecological site descriptions. Only palatable species should be included.
- Forage estimates must include low-end values for unfavorable years, such as during drought. In the Monitor allotment, available AUMs during drought were 795, while in normal years, 1,362 AUMs were available. This is more than 40% less available forage during drought.
- Only forage that is available to livestock should be considered. This means excluding areas that are too steep and too far from water to be used (see Ogle and Brazee (2009) reductions for slope and distance from water).
- Areas of low productivity (less than 200 lbs/acre) and rocky or barren areas should also be excluded from calculations, as well as roads, water bodies, mines and quarries, parking lots, burned areas, and similar sites.
- Other areas that should be excluded from the production estimate include: recreational sites like campgrounds, dense timber, wetlands, critical habitat for listed species, wildlife areas, winter big game habitat, private lands, and areas with highly erosive soils.
- Vegetation use from other species, including native grazers, wild horses, insects, and rodents, and damage loss should be subtracted.
- Next, a harvest efficiency/utilization level for livestock is applied. Ogle and Brazee (2009) suggest 25-35% and the Monitor LHA used 30% and 35% depending on vegetation community.
- Residual stubble heights necessary to support certain native species, such as >7 inches of perennial bunchgrasses in sage-grouse habitat and riparian stubble heights where sensitive species are present should also be factored in, and may further reduce harvest efficiency depending on the grass species present.

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<sup>24</sup> Attachment O. Carter, J. Vasquez, E. and Jones, A. 2020. Spatial Analysis of Livestock Grazing and Forest Service Management in the High Uintas Wilderness, Utah. Journal of Geographic Information System, 2020, 12, 45-69. Scientific Research Publishing.

<sup>25</sup> Attachment P. Ogle, D., & Brazee, B. (2009). Technical Note: Estimating Initial Stocking Rates. Boise, ID: USDA - Natural Resource Conservation Service

<sup>26</sup> Available at

<https://eplanning.blm.gov/Documents/?id=a57c7dd8-a7f2-f011-8406-001dd8008d46&spid=dd33d880-a8f2-f011-8407-001dd803d067#> (last accessed July 1, 2026).

- In determining forage consumption based on animal units, modern livestock weights must be used, which may be more than 50% greater than past weights for cattle.<sup>27</sup> A 1,500 lb cow eats significantly more than a 1,000 lb cow.

#### **§ 4130.3-2 Other terms and conditions**

*PROPOSED: (h) Specification of the limits of flexibility within which the permittee(s) may adjust operations without prior approval of the authorized officer.*

No such provision is included in the existing regulations.

To grant “flexibility” to grazing permittees on their own to make changes to grazing management on public lands inherently contradicts with the mandates in both FLPMA and the Taylor Grazing Act which provide that the Bureau will set grazing management through allotment management plans and grazing permit terms and conditions, including numbers of livestock and seasons of use. 43 U.S.C. §§ 315b; 1752(d),(e). The proposed regulations at 4130.3-2(h) and 4120.2(a) (Allotment Management Plans) suggest that flexibility is the ability of a permittee to “adjust operations without prior approval of the authorized officer.” To the extent that this flexibility includes any deviation from Bureau-mandated livestock numbers or seasons of use, it runs plainly afoul of the federal grazing statutes and the Bureau’s “duty to prescribe the manner and extent to which livestock practices will be conducted on public lands” under those statutes. *Nat. Res. Defense Council v. Hodel*, 618 F. Supp. 848, 869–70 (E.D. Cal. 1985). Indeed, this proposed grant of authority for flexibility appears remarkably similar to the Cooperative Management Agreements at issue in *Hodel* over 40 years ago, where the Court stated that they “violate the spirit and letter of federal laws which are intended to preserve and improve the ravaged commons through intensive management and ongoing governmental rights of reentry.” *Id.* at 853.

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<sup>27</sup> Attachment K. Carter, John 2016. Updating the Animal Unit Month. Yellowstone to Uintas Connection. See also Society for Range Management Rangeland Assessment and Monitoring Committee. 2017. Does size matter: Animal Units and Animal Unit Months. Rangelands. Society for Range Management.

### **§ 4130.3-3 Modification of permits**

*PROPOSED: The authorized officer may modify terms and conditions of the permit when the active use or related management practices are not meeting the land use plan, allotment management plan or other activity plan, or management objectives, or are not in conformance with the standards established and maintained under part 1700 of this title. Any such modification will be documented in a written decision prepared under subpart 4160 of this part. Before issuing a decision to modify terms and conditions, but after the receipt of a complete application, where one is required, the authorized officer will consult, cooperate and coordinate with the affected permittees and the state having lands or responsibility for managing resources within the area. To the extent practical, the authorized officer will provide the affected permittees and the state having lands or responsibility for managing resources within the affected area 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.*

The current regulations specify, “Following consultation, cooperation and coordination with the affected lessees or permittees, the State having lands or responsible 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 grazing use or related management practices are not meeting the land use plan, allotment management plan or other activity plan, or management objectives, or is not in conformance with the provisions of subpart 4180 of this part. 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 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 excludes interested public from the process of permit modification. Removing public participation and limiting the participants raises the same issues as discussed under the proposed definition for “interested party” above.

**§ 4130.4 Authorization of temporary changes in grazing use within the terms and conditions of permits, including temporary non-use**

*PROPOSED: (a) The authorized officer may approve temporary changes in grazing use within the terms and conditions of the permit not already allowed under authorized flexibility.*

*(b) For the purposes of this subpart, “temporary changes in grazing use within the terms and conditions of the permit not already allowed under authorized flexibility” means temporary changes in livestock number, period of use, or both, that would:*

*(1) Result in temporary nonuse;*

*(2) Result in forage removal that—*

*(i) Does not exceed the amount of active use specified in the permit; and*

*(ii) Occurs not earlier than 21 days before the begin date specified on the permit, and not later than 21 days after the end date specified on the permit, unless otherwise specified in the appropriate allotment management or other approved 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 regarding their applications for changes within the terms and conditions of their permit.*

*(d) Permittees must apply if they wish—*

*(1) Not to use all or a part of their active use; or*

*(2) To use forage previously authorized as temporary nonuse.*

*(e) Temporary nonuse is authorized only if—*

*(1) The authorized officer approves it in advance; and*

*(2) An application is received for each year in which temporary nonuse is desired.*

*(f) Permittees applying for temporary nonuse must state on their application the reasons supporting nonuse. The authorized officer may authorize nonuse to provide for:*

*(1) Natural resource conservation, enhancement, or protection, including more rapid progress toward meeting resource condition objectives or attainment of land health standards; or*

*(2) The business or personal needs of the permittee not to exceed 4 consecutive years.*

*(g) 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 (f)(2) of this section. The authorized officer will not authorize anyone to graze forage made available as a result of temporary nonuse approved under paragraph (f)(1) of this section.*

*(h) Permittees who wish to obtain temporary changes in grazing use within the terms and conditions of their permit must file an application in writing with the Bureau of Land Management 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.*

This proposed revision replaces the relevant section of the current regulations, “(b) Changes in grazing use within the terms and conditions of the permit or lease may be granted by the authorized officer. Permittees and lessees may apply to activate forage in temporary nonuse or conservation use or to place forage in temporary nonuse or conservation use, and may apply for the use of forage that is temporarily available on designated ephemeral or annual ranges.”

The authorization of temporary changes within the terms and conditions of a grazing permit may have inconsequential effects or may have important impacts that have not been analyzed under NEPA, depending on the change. Therefore, we oppose the broad authority to change grazing use proposed under 4130.4(a). As one example of potential significant impacts, there are many grazing permits that technically have yearlong (or unspecified) seasons of use, but where grazing has historically only been authorized for several months during the fall. Approving grazing in spring and early summer instead may have significantly different impacts on vegetation and native species than fall, such as conflicting with a critical growth period for cold season bunchgrasses or breeding season for native species. As another example, grazing 100 cows for 5 months or grazing 500 cows for one month may equal the same number of AUMs, but could have very different impacts on a site. Therefore, this provision should specify that changes to grazing use, even within the permit terms, will not be allowed unless the impacts of those changes have already been analyzed under NEPA and approved in a fully processed grazing permit.

We support the recognition in this section that nonuse is a valid and important part of grazing management and that nonuse for conservation purposes in particular serves numerous important purposes, including faster ecological recovery. It is therefore appropriate that nonuse for conservation of natural resources can be granted annually each year, with no limitation on the number of consecutive years conservation nonuse may be approved. It is also appropriate that when nonuse for conservation is granted, that no grazing on the allotment will be authorized for other applicants, as indicated in section 4130.4(g).

However, given the benefits of nonuse for conservation, see *Pub. Lands Counc. v. Babbitt*, 167 F.3d 1287, 1307–08 (10th Cir. 1999), we recommend further streamlining the approval process by adding language that makes clear the authorized officer will approve such a request so long as one or more of the reasons stated by the applicant furthers conservation.

While expanding the number of consecutive years that a permittee may request and be granted nonuse for personal or business needs from three to four is an improvement, we recommend an additional increase to five years, consistent with the language we proposed in our 2020 scoping comments.

At the same time, we oppose the allowance in 4130.4(g) of other applicants to graze unused AUMs when the primary permittee is granted personal or business nonuse. For one, a permittee's valid business purpose for requesting nonuse may be to limit impacts on the allotment during drought or to promote more forage availability for their own livestock. Allowing another applicant to graze the unused portion of the primary permittee's active use undercuts that valid business purpose. Additionally, this policy will encourage permittees to graze more than they otherwise would to prevent other ranchers from applying for the unused AUMs. There is no rational policy reason for this outcome.

#### **§ 4130.6-1 Exchange-of-use grazing agreements**

*PROPOSED: a) An exchange-of-use grazing agreement may be issued to an applicant when the applicant owns or controls lands that are unfenced and intermingled with public lands, but does not hold a permit to graze the same allotment that would be subject to such an agreement. (b) The Bureau of Land Management may issue an exchange-of-use grazing agreement to an applicant that meets the criteria in paragraph (a) of this section 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 must 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. (c) An exchange-of-use grazing agreement may be issued to authorize use of public lands to the extent of the carrying capacity of the lands offered in exchange of use. No fee shall be charged for this grazing use. (d) An exchange-of-use agreement does not require the applicant to have grazing preference.*

The current regulations at this section state: "(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.

The proposed changes appear to allow additional opportunities for the Bureau to offer exchange-of-use grazing authorizations. Historically, exchange-of-use permits were only for the allotment permittee who owned or controlled unfenced private or state land within their allotment. It is unclear why the changes are being made to this section and what the environmental consequences may be. One significant difference arises with the changes in the definition of carrying capacity as discussed elsewhere in these comments. In any case, a clear explanation of the impact from this change is required as well as an accounting of any environmental effects.

#### **§ 4130.6-2 Nonrenewable grazing permits**

*PROPOSED: Nonrenewable grazing permits may be issued on an annual basis, as provided in §§ 4110.3-1(a) and 4130.4, 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 and the state having lands or responsible for managing resources within the area prior to the issuance of nonrenewable grazing permits.*

The existing regulations state, “Nonrenewable grazing permits or leases may be issued on an annual basis 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, the State having lands or responsible for managing resources within the area, and the interested public prior to the issuance of nonrenewable grazing permits and leases.”

This regulation should specify that nonrenewable grazing permits must be issued under Section 4160, and may be subject to NEPA compliance. *See Committee for High Desert v. Guerrero*, 1:02-CV-521-S-MHW, Dkt. 65 Memorandum Decision and Order (D. Idaho, April 11, 2003).

The interested public will no longer be included on the CCC and this raises the issues addressed under the definition of “interested public.”

#### **§ 4130.8-1(a) Payment of Fees**

If there is a current grazing regulation that demands revision it is this one. FLPMA at Section 102(8) states it is the policy, “*the United States receive fair market value of the use of the public lands and their resources unless otherwise provided for by statute;*” FLPMA goes on further to address grazing fees specifically:

Sec 401(a) The Secretary of Agriculture and the Secretary of the Interior shall jointly cause to be conducted a study to determine the value of grazing on the lands under their jurisdiction in the eleven Western States with a view to establishing a fee to be charged for domestic livestock grazing on such lands which is equitable to the United States and to the holders of grazing permits and leases on such lands. In making such study, the Secretaries shall take into consideration the costs of production normally associated with domestic livestock grazing in the eleven Western States, differences in forage values, and such other factors as may relate to the reasonableness of such fees. The Secretaries shall report the result of such study to the Congress not later than one year from and after the date of approval of this Act, together with recommendations to implement a reasonable grazing fee schedule based upon such study. If the report required herein has not been submitted to the Congress within one year after the date of approval of this Act, the grazing fee charge then

in effect shall not be altered and shall remain the same until such report has been submitted to the Congress.

The required report was never submitted to Congress because it was temporarily pre-empted by the passage of PRIA (Public Rangelands Improvement Act of 1978). PRIA established the grazing fee formula as presented in the proposed regulation. The PRIA gives the formula as temporary, expiring in 1985. The formula was extended by Executive Order in 1985. Executive Orders are not statute nor can they override statute. The operative statute is still FLPMA and the report to Congress remains 49 years past due.

FLPMA directs the agencies to come up with a reasonable grazing fee. The current fee formula and resulting fees are anything but reasonable. It is not known why the authors of PRIA chose to use a 12-year-old base price of 1966. It is unconscionable to use the 1966 base price today. In 1966 a loaf of bread was 20 cents, and a pound of ground beef was 50 cents. How does the agency justify to the public that using a 1966 base price, unadjusted for inflation or more recent market conditions provides a fair return for this commercial use of public lands?

We have 46 years of experience using this fee formula. The results are not good. The fee peaked in 1981 at \$2.31/AUM and declined every year until it hit \$1.35 in 1986. From 1985 through 2025, a 41-year period, the fee was \$1.35 for 37 of those years. Fees are even lower than they appear given that 50% is rebated back to the industry by way of the Range Improvement Fund.

The fee formula is not commensurate with other fees charged by the Bureau for commercial and non-commercial uses. No other program uses a fee structure based in the 1960s. Fees for commercial use in all other programs are based on competitive bidding, market appraisal, percentage of gross sales, providing a fairer return for the use and/or consumption of land and resources. Even non-commercial, nonconsumptive public land users pay fees far in excess of the grazing fee for far less use and occupancy. Cedar Mesa in Utah charges \$5/day for day use hiking. An undeveloped campsite in Ruby Horse Thief Canyon is \$20 for no more than 6 people, and campers are required to pack out their feces.

In short, current grazing fees are laughably unsupported to the point of being irrational, arbitrary and capricious. No state charges such low fees for grazing on state land.

To improve this regulation, the Bureau should complete the FLPMA required study. The study should include a variety of fee setting methods including comparisons with state and private fees, competitive bidding, charging a percentage of gross sales adjusted for time on public lands. In the interim, update the fee formula by using a more recent base than 1966.

#### **§ 4130.8-3 Service charge.**

*Proposed: (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.*

This language is unchanged from the existing regulations. It drops the following paragraph (b), which provides a table of service fees for crossing permits, transfers of preference and cancellation or replacement of billing notices.

Service charges for grazing permits are not commensurate with other Bureau programs. In other programs such as lands, commercial recreation, leasable minerals, and timber sales. The service fees are intended to cover administrative costs such as application and permit processing, NEPA and NHPA compliance, and the costs of field monitoring the activity for compliance and environmental effects. The deleted table covers only some office paperwork of the grazing program. Service fees for grazing should account for all costs of permit administration that are caused by or primarily benefiting the permittee. That would include compliance and typical rangeland monitoring, approving, inspecting range improvement projects that are primarily livestock related. The current grazing fee does not even cover the administrative costs of livestock grazing. Those costs can and should be paid for through the cost reimbursement structure used in other Bureau programs.

## **Subpart 4150 - Unauthorized Grazing Use**

### **§ 4150.1 Violations**

*PROPOSED: (a) The authorized officer shall determine whether a violation is nonwillful, willful, or repeated willful. Whenever it appears that a violation exists, the authorized officer will contact the owner of the livestock, if known. Contact must be documented along with the authorized officer's determination of the nature of the violation. If the owner of the livestock cannot be identified, the authorized officer will proceed under § 4150.2(d). (b) A nonwillful violation will be considered incidental when the following criteria are met: (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) the livestock operator promptly corrects the violation to the satisfaction of the authorized officer. (c) 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.*

The current regulations state, "Violation of Sec. 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."

Some of this proposed changes to this section are similar to language currently in § 4150.2, Notice and Order to Remove. For example, the proposed revision "Contact must be documented along with the authorized officer's determination of the nature of the violation," is analogous to the current § 2150.2 (a), "(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 Sec. 4150.3.” The current language about contact between unauthorized user and authorized officer is stronger and more specific.

#### **§ 4150.2 Notice and order to remove.**

*PROPOSED (a) ...The authorized officer may notify the alleged violator through informal means.*

Current regulation does not allow for this.

Unauthorized grazing use on public lands is rampant, and the Bureau should seek ways to disincentivize and prevent trespass, and to enforce its current regulations rather than simply sanction it by removing penalties for unauthorized use, which is the effect of this proposed change.

Under the current regulations, the Bureau does not have discretion not to issue a notice of unauthorized use and notice to remove unauthorized livestock when the owner is known—it must take this action. See *W. Watersheds Proj. v. Clarke*, No. 03-10985 (HKK) at 11 (D.D.C. September 26, 2005) (stating that this provision “set[s] forth a clear and direct mandate. It neither allows the Bureau to decide for itself whether to notify an alleged violator nor leaves the method of notification to the Bureau’s discretion. It plainly states that the Bureau shall serve written notice”). This strict liability is important for several reasons, including because it relieves the authorized officer of making a determination of fault. If livestock are in violation of the permit terms, the permittee receives a notice and must remove them. Ultimately, the permittee should bear the responsibility for their livestock and ensuring they are where they are allowed to be, not the public, nor the Bureau. A simple remedy for a permittee to confirm their livestock are in the correct location and otherwise in compliance with their permit is daily herding and monitoring.

Further, a formal notice, which is placed in the permit file, conveys a message of gravity to the permittee that an informal notice like a phone call does not. Therefore, it acts as a deterrent. A formal notice also documents the incident, which then becomes part of a permittee’s record of performance and is available to the public. Informal contacts like phone conversations may not be recorded, and given high turnover at Bureau offices, personal knowledge about past incidents may be lost over time and not be available later to Bureau employees to help inform their work.

Moreover, under the structure of the regulations—both current and proposed—consequences accrue for permittees for repeated violations, including up to civil and penal penalties for repeat, willful violations under section 4170. A permittee’s record of performance is also reviewed during application for issuance or renewal of a grazing permit, and the Bureau must find the applicant in “substantial compliance” in order to receive a grazing permit. 43 C.F.R. §. 4110.1(b). Undocumented or informal notices of unauthorized use are less likely to be considered by the

authorized officer in making this determination. Consequently, formal notice of each instance of unauthorized use is critical information.

It is important to note here that the GAO has directly addressed this issue, and their recommendation does not require the Bureau to abandon its current enforcement structure. In fact, the only thing that the Bureau needs to do is actually follow its current regulations and issue trespass notices for unauthorized use. As we noted in our 2020 scoping comments on this issue:

The Bureau is only offering a selective read of the GAO's recommendations and is completely ignoring the Department of Interior's official response to the report which contradicts the Bureau's rationale here. Nor does the Bureau provide any significant justification for the change of policy direction on this issue.

The GAO's full recommendation reads:

"To improve the effectiveness of BLM's efforts to track and deter unauthorized grazing, we recommend that the Secretary of the Interior direct the Director of BLM to take the following three actions:

- amend the regulations on unauthorized grazing use—43 C.F.R. Subpart 4150 (2005)—to establish a procedure for the informal resolution of violations at the local level, **or follow the existing regulations by sending a notice of unauthorized use for each potential violation as provided by 43 C.F.R. § 4150.2(a) (2005);** (emphasis added)
- record all incidents of unauthorized grazing, including those resolved informally; and
- revise the agency's Unauthorized Grazing Use Handbook to make it consistent with 43 C.F.R. pt. 4100 (2005)."

In conclusion, abandoning the current framework for mandatory formal notice of unauthorized use and other violations in favor of informal resolution is inappropriate because it removes the personal responsibility of the permittee to control their livestock, reduces accountability, hampers informed decisionmaking on "record of performance," and will worsen the already endemic levels of livestock trespass on public lands.

### **§ 4150.3 Settlement**

*PROPOSED: (a) Notwithstanding the remainder of this section, an authorized officer may exempt a nonwillful violation from the settlement requirements of this section if the authorized officer finds that the livestock operator promptly corrected the violation to the satisfaction of the authorized officer.*

This does not exist in the current regulations, and is too subjective to be enforceable. Because “promptly” is undefined, the discretion of the authorized officer could lead to a lack of accountability. By allowing subjectivity in the regs, the agency is not creating surety that resources will be adequately protected from violations.

Allowing non-monetary settlements denies the public a return on a commercial use of public lands and weakens the accountability and record of trespass. No other Bureau program allows for such easy excusal of what is in effect, theft of public resources. It also weakens the administrative record making it difficult if not impossible to detect patterns of trespass.<sup>28</sup>

## **Subpart 4160—Administrative Remedies**

### **§ 4160.1 Proposed decisions**

*PROPOSED (a) Proposed decisions shall be posted to an agency website and shall be served on any affected applicant, permittee, 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). Acceptable means of service are: (1) registered or certified mail, return receipt requested; (2) personal delivery with written acknowledgment of receipt; (3) delivery service, delivery receipt requested, if the last address of record is not a post office box; or (4) electronic means, such as electronic mail with delivery receipt requested, if the person to be served has previously consented to that means of service in writing.*

The current regulations specify that copies of the proposed decision shall also be served on the interested public. (emphasis added.) The proposed revision removes this requirement, making it difficult if not impossible for the public to know in advance what the Bureau is planning for a specific allotment. Instead, the Bureau proposes to post proposed decisions to an agency website and “it would be the responsibility of the public to keep abreast of Bureau management of the grazing allotments in which they have an interest.”

What the regulations don’t address or specify is which website the proposed decisions will be posted to, and whether they will be posted in a timely manner so as to allow protests of the proposed decision by the interested public. If the Bureau intends to use the E-Planning website, it must upgrade the search functions of that website to make decisions easier to find and install a mechanism whereby the public can register for electronic notification of new documents in any project file. Expecting the public to keep abreast of management decisions – even where they have already demonstrated an interest in the allotments under the “interested public” provisions – is an unnecessary and unlawful barrier to participation in public lands management.

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<sup>28</sup> When the Bureau considered allowing additional discretion for “non-monetary settlements for non-willful unauthorized use” in the 2006 regulations, it ultimately rejected this change stating that it would not be in the best interest of the United States. See Attachment L.

*PROPOSED (c) The authorized officer may issue a final decision, without first issuing a proposed decision, where the authorized officer is: (1) Taking action in accordance with §§ 4110.3-3(a)(2)(ii), 4130.6-3, 4150.2(e), or 4170.1-2; (2) Issuing permits that are 15 percent or less public land or are for 50 or fewer AUMs; (3) Issuing permits in accordance with § 402(h)(1) of the Federal Land Policy and Management Act (43 U.S.C. 1752(h)(1)); (4) Issuing permits when there are no changes to terms and conditions, there is no interested public, and the permittee is the only party receiving the decision; (5) Authorizing range improvements when there is no interested public and the permittee is the only party receiving the decision; (6) Issuing permits in accordance with § 4130.3-2(f) that adjust only the number of livestock to account for a change in the percentage of public land use when ownership or control of unfenced lands within an allotment changes, and make no changes to permitted use or other terms and conditions; (7) Issuing permits under § 4110.2-3(i)(1) or (3); or (8) Issuing permits for the remainder of the existing term to reflect changes in allotment names or configuration, or correct the legal description of allotment boundaries, and that do not result in changes to permitted use, or terms and conditions.*

Proposed revisions (2-8) are entirely without precedent in the existing regulations. They significantly affect public participation by limiting public notice for a wide variety of decisions that could have environmental impacts. The proposed revisions would also remove the opportunity to protest a variety of decisions, requiring an appeal to intervene if there are environmental consequences the agency hasn't considered.

This conflicts with FLPMA's policy that the Bureau take action only after "considering the views of the general public" (43 U.S.C. 1701(a)(5)). Instead, the agency is proposing a whole suite of decisions that perpetuate the potentially harmful status quo or make adjustments based on land tenure or infrastructure without so much as notifying and involving the public.

### **§ 4160.2 Protests**

*PROPOSED: Any applicant, permittee, or other interested public may protest a proposed decision issued under § 4160.1 of this title in person or in writing to the authorized officer within 20 days of the date the proposed decision is issued.*

Current regulations specify, "Any applicant, permittee, lessee or other interested public may protest the proposed decision under Sec. 4160.1 of this title in person or in writing to the authorized officer within 15 days after receipt of such decision."

Thus, the time for a protest is extended, but it extends from the issuance of the proposed decision rather than the receipt of the proposed decision. However, there is no required timeframe for posting to the unspecified Bureau website (as described above), and this makes it more difficult for the public to timely participate in the protest and appeals process. It gives the, "affected applicant, permittee, and any agent and lien holder of record," an unfair advantage in having their concerns considered by the Bureau over the public, because they will have been served and notified about due dates. We do not object to the language that changes the time period from 15 to 20 days, but we do object to the failure to formally include timelines for service to the interested public.

Further, because “interested public” has now been redefined to allow authorized officers to subjectively reject applicants, at will, with no rational basis, that same authorized officer can simply reject protests with the excuse that protestants are not “interested public” further violating FLPMA’s public participation mandate.

### **§ 4160.3 Final Decisions**

*PROPOSED: (c) The final decision shall provide for a period of 30 days after issuance for filing of an appeal. A decision will not be effective during this 30-day period, except that, notwithstanding the provisions of § 4.171(a)(1) 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. An appeal shall suspend the effects of the final decision from which it is taken pending final action on the appeal. Where the appeal is concerned with the grazing use to be granted under the current application, an applicant who was granted grazing use in the preceding year may continue to make that use pending final action on the appeal. However, the authorized officer may provide in the final decision that it shall be in full force and effect pending decision on appeal therefrom unless the Office of Hearings and Appeals grants a stay in accordance with part 4 of this title. Final decisions shall be in full force and effect only if such is required for the protection of range resource values. The authorized officer must explain the rationale for the full force and effect decision if issued as such. See part 4 of this title for general provisions of the appeal process.*

The current regulations state: “(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.”

This proposed change would start the appeal clock at the issuance of a decision rather than the receipt of the decision. It also suspends the decision upon appeal rather than requiring the appellant to seek a stay and strikes sections (d-f) of the current regulations. These changes could have significant environmental impacts; for example, where the Bureau issues a decision to reduce grazing use due to environmental harm, or based on forage availability or changes in suitability, the permittee could appeal that decision and continue to graze at the level causing the destruction pending review by the Office of Hearings and Appeals. These appeals can take years to resolve, and in the meantime, the damage that was supposed to be ameliorated by the management decision will continue to be incurred.

### **§4190.1 Effect of wildfire management decisions**

*PROPOSED: (a) Notwithstanding the provisions of 43 CFR 4.171(a)(1), when the Bureau of Land Management 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, the Bureau of Land Management 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, targeted grazing, 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.*

Under the current regulations, the Bureau may make wildfire management decisions including use of “fuel reduction or fuel treatment such as prescribed burns, and mechanical, chemical, and biological thinning methods”. The proposed regulations add targeted grazing to the list of wildfire management tools. Xu et al. (2026), however, cautions that this method is complex and nuanced, and there is no one-size-fits-all prescription that will be effective in reducing wildfires. They conclude that while carefully controlled grazing may be effective in some ecosystems under some conditions, overgrazing can result in ecosystem disruption and increased fire risk. The resource damage resulting from concentrating livestock may outweigh any benefit from vegetation removal if it results in vegetation trampling, soil compaction and disturbance, weed infestation, or other documented consequences of livestock grazing. In semi-arid and arid lands especially, which make up much of BLM lands in the west, cheatgrass infestation is a common outcome (Vermeire et al. 2023).

The practical implications of implementing targeted grazing have not been considered in the BLM’s rush to adopt it. Animals must graze in conscribed areas, which can be difficult to achieve. That requires expensive fencing, active herding, or attractants like salt blocks. Anyone who has tried to keep livestock in some places and out of others knows how often animals thwart the best intentions of managers. If permittees were willing to consistently attend their livestock and move them in a timely fashion, as would be required under targeted grazing, rangelands in the West would be in better shape than they are. In addition, some techniques don’t lend themselves to the typical public lands grazing operations. Mixed groups of grazers, such as goats and sheep, are indicated in some instances (Xu et al. 2026). This is not a practice that is common among permittees. Also, monitoring is an integral part of this method to assess achievement of goals (Bailey et al. 2019), but it is time-consuming and expensive. Many BLM field offices cannot adhere to current monitoring schedules (e.g., timely land health evaluations for permit renewals). How will additional monitoring demands be met under inadequate funding and staffing?

Perhaps the most difficult concept to adopt is the idea that targeted grazing is only effective if a site is not overgrazed, which is defined by Xu et al. as “the repeated removal of more than 50% of leaf area, particularly during drought conditions or critical growth stages.” We have reviewed many BLM utilization reports over the western states, and over 50% utilization, even during drought, is common. There are no consequences for overuse. This state of affairs makes implementation of targeted grazing impossible.

In short, targeted grazing has not been shown to be effective in practice under our system of public lands grazing. The Bureau must provide more robust data from smaller scale studies to

justify adding this method to its management of wildfire. To enshrine it in the grazing regulations is premature at best.

### **C. REMOVING § 4180: FUNDAMENTALS OF RANGELAND HEALTH.**

The proposed revision moves and truncates the regulations in subpart 4180 to a new section, Part 1700. We are addressing that change here, as a standalone section from the other regulatory revisions, because the Bureau is herein proposing a significant change that merits extra consideration.

In the current regulations, the Bureau defined the “Fundamentals of Rangeland Health” in terms of four broad ecological conditions necessary for healthy rangelands. See 43 C.F.R. § 4180 et seq. In addition, the regulations called for adopting additional Standards and Guidelines For Rangeland Health, on a state-by-state basis, to provide site-specific measures of rangeland health. *Id.*

The Fundamentals of Rangeland Health regulations further provided that the Bureau should use all available data and information to assess whether public lands allotments are meeting the Fundamentals and the Standards and Guidelines. The 1995 regulations also impose a mandatory requirement that, if livestock grazing is found to be causing an allotment to violate these minimum ecological requirements, the Bureau’s authorized officer must change grazing management promptly, and no later than the next grazing year, by adopting cuts in livestock numbers or other measures necessary to meet (or make significant progress toward meeting) the relevant Fundamentals, Standards and Guidelines. *Id.*; see also *Idaho Watersheds Project v. Hahn*, 187 F.2d 1035 (9<sup>th</sup> Cir. 1999).

In the proposed grazing regulations, however, the Bureau is eviscerating these regulatory measures, first, by detaching rangeland health standards from livestock grazing use specifically by moving the 4180 regulations to Section 1700, and by changing the geographic scope of these assessments to limit the scrutiny that any individual allotment will receive. The proposed regulations also remove the requirement to have permit terms and conditions in the grazing permit to comply with the Standards and Guidelines.

The Bureau’s justification for this change is described as the 4180 regulations having a disproportionate impact on the grazing program and grazing permittees by not directing adjustments in non-grazing related programs. 91 FR 26853. But this claim makes no sense—grazing permits were only directed to change in response to grazing-caused land health failures. While it is true that failing to meet the standards didn’t direct the Bureau to adjust management in any other program, the proposed change here throws out the baby with the bathwater. The Bureau could have simply added regulations directing conformance in other programs rather than removing the requirement to comply with the land health standards at the allotment level. Moreover, since grazing is the most widespread use of Bureau lands, it makes sense to have compliance nested in the grazing program.

Part 1700 also would apply land health standards to all programs, not just grazing. The stated reason for including other programs is that grazing is “shouldering a disproportionate share of the burden in ensuring achievement of the fundamentals.” [Fed Reg notice, page 26853]. This is not accurate. Assessing whether or not standards are being achieved includes an Evaluation phase, in which the Bureau decides if standards are being met or not. If not, a subsequent Determination phase ascertains whether grazing management is contributing to the poor conditions. If it is, then, and only then, is grazing management required to change (43 CFR § 6100.6103.1.2 - Land Health Evaluations and Determinations.) In other words, the Bureau already has a mechanism built into the land health standards protocol for assigning causal factors to a failure to achieve fundamentals. If the grazing program is not implicated, it will not shoulder any “disproportionate burdens.”

#### **§ 1700.1 (currently 4180.1)**

The current regulations require that specific actions “shall...ensure” that the Fundamentals of Rangeland Health are met. The proposed regulations dramatically weakens that framework and simply requires management to “facilitate” achievement of the Fundamentals.

The proposed regulations also provide a massive loophole, eliminating any permit action “provided that the use conforms to the governing land use plan and the permittee is in compliance with the terms, conditions or stipulations of the land use authorization.”

Land Use Plans don’t have ecologically based requirements for livestock grazing. A typical RMP such as that from the Richfield Field Office in Utah contains only vague aspirations such as, “evaluate grazing allotments to maintain or improve rangeland productivity,” and “permit livestock use on those allotments shown on Map 12 and in Appendix 7.”

Thus, in this example, and in many other cases across the West, it would be essentially impossible not to conform with the RMP’s nonspecific objectives. The proposed change therefore effectively deregulates grazing permits by tiering them to documents (LUPs) that don’t contain specific measures to protect rangeland resources.

Similarly, grazing permit terms and conditions do not typically address the Fundamentals. For example, the Comb Wash allotment on the Bears Ears National Monument contains general terms such as setting the number of AUMs from Exchange of Use, payment of fees, deadline for filing an actual use statement, and requiring field officer authorization to feed livestock hay. None of these terms and conditions ensure ecological conditions are adequate or that the protection of rangeland resources is met.

The proposed 1700 section completely eliminates “guidelines” required under 4180.2(e). The guidelines required a wide suite of ecological parameters specifically related to the common impacts of livestock grazing. The removal of these guidelines, one of the pillars of Rangeland

Reform, and the removal of the requirement that livestock grazing comply with the guidelines has major environmental impacts which must be examined in an EIS.

The proposed § 1700.1 also removes the water quality standard for land health assessments because it claims to be duplicative of state water quality responsibilities. Under the Clean Water Act, the states set water quality standards and conduct monitoring. They also write Total Daily Maximum Load plans to bring waters not meeting standards into compliance. However, in practice, states lack the capacity to write and oversee implementation of these plans and to monitor more than a fraction of state waters. In addition, states do not enforce these types of water quality violations. The EPA does not regulate non-point source pollution.

The Bureau's authorization of private livestock grazing on public lands has the potential to degrade water quality. It is therefore the Bureau's duty to ensure that its permitted activities do not violate the Clean Water Act standards.

Since Bureau staff are closely tied to on-the-ground activities, they can complement and assist state water quality divisions. Under the current regulations, the Bureau has the responsibility to manage water sources on an allotment to meet state Standards for Rangeland Health if the failure to meet is caused by livestock management. In these cases, the Bureau has the quickest, most efficient ability to note declining water quality and change management to improve it.

Clean water is necessary to protect human health, wildlife, fisheries, public drinking water sources, and ecosystem functioning. That's why it was added to the state Standards for Rangeland Health. Removing this land health standard will result in an overall decline in water quality, an impact that must be disclosed and assessed in a complete EIS.

#### **§ 1700.2 Standards (currently § 4180.1)**

Standards (called Fundamentals in the proposed regulations) define the ecological goals for public lands. Guidelines (called standards in the proposed regulations) are the specific techniques and practices by which those standards are achieved. "Standards and guidelines developed by the Bureau of Land Management State Director must provide for conformance with the fundamentals of §4180. 1". The proposed changes to these guidelines will make it less likely that Standards will be achieved. For example:

Threatened, Endangered, and Special Status species habitat (Federal Register page 26869): Both existing and proposed land health standards/fundamentals under § 4180.2 and 1700.1 require that "(c) Habitats are, or are making significant progress toward being, restored or maintained for Federal threatened and endangered, Federal candidate, and other special status species". Under the new regulations, however, the guidelines that are supposed to facilitate the achievement of that standard have removed the phrase "...Federal proposed, Federal candidate, and other special status species." Removing these categories and focusing only on those that are formally listed removes opportunities and incentives to manage habitat to prevent these special status species from being listed. The original language should be retained.

Use of non-native species in restoration (1700.2 Item 11 page 26869) : The Bureau is required to emphasize use of native species in restoration projects (e.g., § 4180.2 (e) (ix) “Emphasizing native species in the support of ecological function”). There are narrow exceptions that allow the use of non-native seed “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” § 4180.2 (e)(xii).

The proposed regulations add another exception. Revisions to the 4180.2 guideline 11 would allow the incorporation of non-native species where a site “has passed an ecological threshold and cannot be returned to a functioning native state.” Please clarify instances in which those conditions apply. In particular, the Bureau must identify the factors responsible for causing a site to pass an ecological threshold (“Bureau is obligated to... address the causes of degradation...”. 43 C.F.R. § 6102.3(d). Identifying and removing the causes of failure to meet standards (e.g., livestock grazing) is fundamental to correcting the causes of degradation at a particular site. It also would prevent similar degradation at other sites that have not yet passed a threshold.

The Bureau overuses the narrow exceptions cited above to justify use of non-native plants, emphasizing short-term goals at the expense of long-term ecosystem health. Adding yet another loophole for using non-natives will encourage management to ignore direction to restore native species as a priority. Ecological sites will continue to be degraded and cross ecological thresholds, resulting in less robust ecological functioning in the long term. For instance, crested wheatgrass, which is a common component of non-native seed mixes, is known to spread into surrounding native habitats, and is therefore invasive (Bakker and Wilson 2004; Jordan et al. 2012). Once established, these aggressive non-native species can prevent reestablishment of non-native vegetation (Lavin et al. 2013; Davies et al. 2013; Gasch et al. 2016; Nafus et al. 2020).

Instead, the Bureau should be incentivized to follow 43 C.F.R. § 6102.3(d) and “...use seeds from native plants and use high quality information”. Restoration plans must be developed consistent with scientifically accepted standards and principles for restoration.<sup>29</sup> Local native seed sources must be made more available.

### **§ 1700.3 Rapid landscape-scale condition assessment (new section).**

This policy would establish a new, comprehensive evaluation/action framework based on Rapid Landscape-Scale Condition Assessments (RLSCA). Analysis would be derived from remote sensing and machine learning, and other GIS-based products. These techniques can be a useful, cost-effective way to set preliminary priorities, but are not intended to replace fieldwork (Shappel 2017).

We are concerned that the Bureau will substitute RLSCA for localized data collection. Even though the regulations mention a requirement to use field-based data, there is nothing that states explicitly that it should be collected at least every ten years. Instead, the new regulations would merely stipulate that the *assessment* should be updated every ten years. Subsection (a) of the

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<sup>29</sup> See, e.g. Attachment Q. National Academy of Sciences, and Attachment R. Gann et al. 2026

proposed regulations states that “Rapid landscape-scale condition assessments assess and synthesize information” and the Bureau must “assess and analyze” already existing data. In effect, the proposed revision eliminates the requirement in the current regulations to gather data.

Section 1700.3 also proposes conducting assessments on a landscape scale. This idea is problematic for several reasons. First of all, it does not define the scale of the landscape on which an assessment would be conducted. BLM defines it as “...a large area encompassing an interacting mosaic of ecosystems and human systems that is characterized by a set of common management concerns. The landscape is not defined by the size of the area, but rather by the interacting elements that are meaningful to the management objectives.” Many of us have conducted land health assessments for and with the BLM. This definition is not specific enough for different field offices to decide what a landscape is for the purposes of land health assessments. We can imagine the difficulty of delineating a landscape to assess land conditions if there are multiple allotments with varying terms and conditions, different range prescriptions to address site-specific issues, diverse livestock use patterns, presence or absence of listed species, etc.. Add information from all the other programs on BLM lands, as is proposed in 1700.1, and the complications expand exponentially. The ambitious 90-day time limit proposed in the new regulations would be difficult to accomplish over such a vast area without severely compromising the quality, and defensibility, of the assessment.

We are concerned that shifting the scale of analysis and compliance from the allotment level to the landscape level could risk overlooking site-specific impacts that should be addressed. Currently, for example, individual springs and riparian zones are assessed during an allotment assessment. These are essential habitats that often are associated with rare or even listed species. Assessments on a landscape scale might aggregate so many of these areas that individual lentic and lotic assessments would be impossible. Small but critical habitats for rare species could be overlooked in these cases. (See further discussion on page 64.)

A better method would be to retain the allotment level analysis (e.g., AIM, IIRH, capacity analysis, stubble height) along with the watershed level analysis. In this way, multiple lines of evidence could validate and reinforce one another, leading to a robust and justifiable conclusion.

Section 1700.4 (Land health evaluation and causal factor determination) reinforces this error by stipulating only that land health evaluations should “(1) Rely on data and information from rapid landscape-scale condition assessments (§ 1700.3).” While it also directs the Bureau to “(2) Consider multiple lines of evidence to evaluate achievement of each standard”, this section does not unambiguously state that timely field data must also be used in land health assessments along with RLSCA information (Federal Register Page 26869.) . Without recent field data, BLM risks relying too much on remote sensing to evaluate whether a landscape is meeting standards or not.

To rectify these serious omissions, the proposed regulations should explicitly state that field data no older than ten years old is an essential part of an accurate land health assessment and will be used in conjunction with (and not be replaced by) remotely sensed data.

#### **§ 1700.4 (§ 4180.1 and § 4180.2(c))**

This proposed section would replace the current § 4180.2(c), which requires management action no later than the start of the next grazing season when grazing practices are a significant factor in an allotment failing standards and guidelines. Under proposed § 1700.4 (c), the Bureau has 6 months to determine the causal factors if an allotment is not meeting standards (or 12 months if more data are needed.) Under (e) of the same section, the Bureau has two years to take appropriate action for factors within the Bureau's control, for a possible maximum of *3 years delay* before action is taken to bring a site into compliance. This is entirely too long to wait to implement management actions while degradation of public lands is ongoing. Neither is it necessary. We have participated in the allotment evaluation and determination process, and making necessary management changes before the start of the next grazing season is entirely feasible. The proposed regulations provide no justification for the delay in instituting management improvements under the control of the Bureau.

Subsection (b) states that "If the authorized officer finds that resource conditions are achieving or making significant progress toward achieving land health standards, no additional analysis under 1700.4 is needed." In other words, if this early, broad scale, cursory, rapid, data-poor process finds no problems then nothing more is required. Everything within that watershed is classified as meeting standards and nothing more needs to be done. This is a dramatic change from the current regulations and will have major environmental impacts that must be examined in an EIS.

Subpart (d)(2) says the Bureau "may" collect information at a finer scale if necessary, but since the Bureau chiefly renews permits under FLPMA section 402(c)(2) this is unlikely to occur. No terms and conditions are required so compliance is voluntary, not mandatory. There is no legal accountability.

Paragraph (e) appears to exempt any areas "managed for recreation or degraded lands prioritized for development" from meeting standards. ("Appropriate action must be consistent with applicable law, regulation, and the governing land use plan and its management objectives, such as where an area is managed for recreation or is degraded land prioritized for development.") Fed Reg page 26871. This introduces a direct conflict between achievement of land health standards and compliance with the LUP and/or permit. Using LUPs in this way is especially harmful if the LUPs are outdated, as they often are, and don't take current conditions and management needs into account. This is also inconsistent with the intent of the new provision requiring all Bureau programs to comply with land health standards in order to "shift the burden" of achieving land health from the livestock program. See Fed. Reg. page 26853.

Further, paragraph (g) allows the Bureau to avoid cancellation or modification of a current authorized use as long as it conforms to the land use plan and the permittee is in compliance. Since grazing is sanctioned in most land use plans and the standards for permittee compliance are minimal, the circumstances under which an allotment could be modified or cancelled are

removed entirely under this proposal (Fed Reg page 26871). Why take this useful tool away from the management toolbox? .

The effect of this change in the 4180 regs also has implications for Endangered Species Act compliance. Numerous existing Biological Opinions that evaluate the impacts of livestock grazing on imperiled plants and animals rely on compliance with the allotment-specific land health evaluations to mitigate grazing's harms. For example, the Biological Opinion for San Pedro Riparian National Conservation Resource Management Plan, Cochise County, Arizona (2019)<sup>30</sup> bases its conclusions on the following:

1. "The Arizona Standards for Rangeland Health will continue, with established schedules and congressional requirements. The Arizona Standards for Rangeland Health and Guidelines for Grazing Administration (BLM 1997) will apply to all livestock grazing on Bureau-administered lands, consistent with the appropriate enabling legislation. The Bureau interdisciplinary land health allotment evaluation process will continue to be used to provide specific guidance and actions for managing livestock grazing. Existing or new allotment management plans and other activity plans will be consistent with achieving the desired future conditions (HCPC), based on ecological site guides provided by the NRCS and Standards for Rangeland Health. They will contain the site-specific management objectives, as well as actions, methods, tools, and appropriate monitoring protocols.
2. Any changes to the existing grazing leases will be based on activity-level planning.
3. Complete land health evaluations before issuing new leases with terms and conditions designed to achieve allotment specific objectives."

SPRNCA BO at 12. If the Bureau changes from allotment-specific health evaluations to watershed-wide rapid evaluations, it will not be able to demonstrate conformation with the terms of the BiOp. This is just one example of many that demonstrates the Bureau's plan to eliminate allotment-level analyses is problematic.

Further, FWS recently issued a biological opinion on the impacts of livestock grazing on allotments along the Big Sandy River in western Arizona, finding that cattle grazing resulted in a "take" of the threatened western yellow-billed cuckoo and the endangered southwestern willow flycatcher. The biological opinion contain mandatory terms and conditions as part of the incidental take statement to minimize that require that:

BLM will conduct a Land Health Evaluation to determine if public rangelands [within the three allotments] meet established ecological standards, such as healthy soil, water quality, and habitat viability. Land Health Evaluations use data from monitoring, such as the BLM's AIM National Aquatic Monitoring Framework (BLM 2024), to evaluate ecosystem function and guide future modifications to

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[https://www.fws.gov/southwest/es/arizona/Documents/Biol\\_Opin/190122\\_SPRNCA\\_RMP\\_FINAL\\_BO.pdf](https://www.fws.gov/southwest/es/arizona/Documents/Biol_Opin/190122_SPRNCA_RMP_FINAL_BO.pdf)

existing grazing permits. The BLM will work with the FWS to develop a schedule to complete a Land Health Evaluation by December 31, 2026.<sup>31</sup>

In another Arizona example, the Bureau's Candidate Conservation Agreement for the Sonoran desert tortoise committed to, "Evaluate plant community condition through Range Health Evaluation – permit renewal process," in order to reduce the identified stressor, "Loss of habitat through grazing management practices that alter shrub cover and/or grass and forb composition, reducing thermal cover and forage availability or quality." The USFWS decision not to list Sonoran desert tortoise under the ESA (80 FR 60321) considered the CCA among the conservation measures already in place sufficient to justify its "Not Warranted" decision. The proposed regulations state that it aims to "decouple management for land health from actions on Bureau permits and other land use authorizations." 91 Fed. Reg. 26852, 26855. If the Bureau moves forward with separating livestock grazing impacts analysis from the permit renewal by removing § 4180 from the grazing regulations, any Endangered Species Act commitments that rely on these kinds of provisions would be at risk.

## CONCLUSION

In sum, the changes to the grazing regulations proposed by the Bureau would have the effect of giving more control of public land resources to private extractive users, in contravention of federal law and policy written to protect this nation's water, wildlife, air, archeological and cultural resources, recreational opportunities, and other irreplaceable assets entrusted to the agency's management. We do not support the Bureau's attempts to weaken ecological oversight and public participation for the perpetuation of grazing damage to 155 million acres of the American West. What the Bureau insists on framing as "flexibility" is actually a lack of accountability, and the tens of thousands of members and supporters our organizations represent disagree with this de facto giveaway of our public lands.<sup>32</sup>

Sincerely,

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<sup>31</sup> Attachment S. USFWS, Biological Opinion for the Greenwood Community, Greenwood Peak Community, and Artillery Range Allotments (May 17, 2026) at 77, 79-80.

<sup>32</sup> Attachment T. Administrative record for Western Watersheds Project v. Kraayenbrink, 632 F.3d 472 (9th Cir. 2010), except public comments.

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John Carter, President

## List of Attachments

- A. Western Watersheds Project v. Kraayenbrink, 632 F.3d 472 (9th Cir. 2010)
- B. Western Watersheds Project et al. 2020 BLM grazing regulations scoping comments, and proposed alternative, submitted to the Bureau on March 6, 2020.
- C. Bureau's impacts matrix of 2006 regulatory changes on various resources and uses.
- D. Flather, CH, LA Joyce, CA Bloomgarden.1994. Species endangerment patterns in the United States. USDA Forest Service Technical Report RM-241
- E. Center for Biological Diversity, 2024. Grazed to Death: Northern Mexican Garter Snake
- F. Center for Biological Diversity, 2024. Grazed to Death: Western Yellow-billed Cuckoo
- G. USFWS draft comments on the Bureau's 2006 grazing regulations
- H. PEER, 2024. Rangeland Health and the BLM grazing program.
- I. PEER. AIM Composite Data from 2022-2024
- J. PEER 2024. Evaluating trends in rangeland health on Bureau of Land Management Lands, Insights from 2023 grazing allotment data
- K. Carter, J. 2016. Updating the Animal Unity Month.
- L. Bureau's internal working document from 2006 grazing regulations, "Grazing regulation issues considered but not carried forward in proposed rule."
- M. Launchbaugh, K. et al 2008. Interactions among livestock grazing, vegetation type and fire behavior in the Murphy Wildlife Fire Complex in Idaho and Nevada, July 2007.
- N. Bureau's predecisional decision document on Water Rights in the 2006 grazing regulations.
- O. Carter, J. et al. 2020. Spatial analysis of livestock grazing and forest service management in the High Uintas Wilderness, Utah.
- P. Ogle and Brazee, 2009. Estimating initial stocking rates. USDA-NRCS
- Q. National Academies of Sciences, Engineering, and Medicine. 2023. *An Assessment of Native Seed Needs and the Capacity for Their Supply: Final Report*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/26618>.
- R. Gann, et al. 2026. International Principles and Standards for the Practice of Ecological Restoration.
- S. USFWS 2026. Biological Opinion for the Greenwood Community, Greenwood Peak Community, and Artillery Range allotments.
- T. Administrative record for Western Watersheds Project v. Kraayenbrink, 632 F.3d 472 (9th Cir. 2010), except public comments.

## APPENDIX I.

Although the current proposed regulations revision failed to rest upon an adequate environmental analysis, we are providing the following scientific studies to supplement the agency's understanding of the impacts of livestock grazing on the public lands it is entrusted to manage. These papers are intended to support future environmental analyses of the regulations and, in submitting them, we're herewith including them in the project record for the Bureau's consideration.

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