

practical ways for permittees, lessees, affected state and local officials, and the interested public to engage with BLM in partnerships that will leave improved open space, watershed, and habitat conditions to the next generation.

Without careful consideration of policy decisions affecting ranching, conversion of this rural West to something different is entirely possible. This conversion is frequently in evidence along the expanding urban interfaces of the West: development of ranchland into subdivisions, changes in water use and watershed characteristics, and changes in fire frequency and effects. Some of these changes are necessary as populations grow and shift, but also necessary is retaining large tracts of the rural West. A proper regulatory framework for managing grazing use can contribute to maintaining Western landscapes.

Whenever BLM addresses changes in regulations, we engage in a public dialogue to ensure all points of view are considered. The changes proposed in this rule seek to strike a balance among competing goals, and to keep administrative processes as simple, understandable, and flexible as possible. Meaningful, positive, and sustainable change on the rangelands of the West can best be accomplished through cooperation.

The proposed amendments of the grazing regulations were developed using three primary concepts:

(1) Improving cooperation with all interested persons, especially with directly affected permittees and landowners;

(2) Promoting practical mechanisms for assessing change in rangelands and protecting rangelands by increasing monitoring activities; and

(3) Enhancing administrative efficiency and effectiveness, including addressing legal issues that need clarification.

Applying these three concepts should strengthen the regulations and promote communication oriented toward seeking agreement and working together. Together we can gather more and better information on observed trends in the vegetation communities of the West. We can resolve some legal matters that have been barriers to meaningful dialogue about the issues we need to address. And we can sharpen the focus on the issues that truly need our attention as we seek to ensure proper grazing management as a part of conserving the rural landscapes of the West.

BLM administers livestock grazing on BLM lands within the continental United States under the regulations found at 43 CFR 4100. Statutory

authorities supporting these regulations include the following:

1. The Taylor Grazing Act (TGA) as amended (43 U.S.C. 315, 315a through 315r);

2. The Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1701 *et seq.*) as amended by the Public Rangelands Improvement Act (PRIA) (43 U.S.C. 1901 *et seq.*);

3. Section 4 of the Oregon and California Railroad Lands Act (43 U.S.C. 1181d);

4. Executive orders that transfer land acquired under the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1012) to the Secretary and authorize administration under TGA; and

5. Public land orders, executive orders and agreements authorizing the Secretary to administer livestock grazing on specified lands under TGA or on other lands as specified.

BLM land use plans guide and direct public lands resource management under the multiple-use mandate of the Federal Land Policy and Management Act of 1976. Land use plans specify lands that are available for livestock grazing and the parameters under which grazing is to occur. BLM issues grazing permits or leases for available grazing lands. Grazing permits and leases specify the portion of the landscape BLM authorizes to the permittee or lessee for grazing (*i.e.*, one or more allotments) and establish the terms and conditions of grazing use. Terms and conditions include, at a minimum, the number and class of livestock, when and where they are allowed to graze, and for how long. Grazing use must conform to any applicable allotment management plans, the terms and conditions of the permit or lease, land use plan decisions, and the grazing regulations.

Since the first set of grazing regulations was issued after passage of the TGA in 1934, they have been periodically amended and updated. The last major revision effort was called "Rangeland Reform '94". In February 1995, BLM published comprehensive changes to the grazing regulations and put them into effect in August 1995. Changes made to the rules in 1995 include the following:

1. Revised the term "grazing preference" to mean a priority position against other applicants for receiving a grazing permit, rather than a specified amount of public land forage apportioned and attached to a base property owned or controlled by a permittee or lessee, and added the term "permitted use" to describe forage use amounts authorized by grazing permits or leases;

2. Removed the requirement that one must be engaged in the livestock business to qualify for grazing use on public lands;

3. Required applicants for a new or renewed grazing permit to have a satisfactory record of performance;

4. Provided that BLM could issue a conservation use permit to authorize permittees not to graze their permitted allotments;

5. Limited authorized temporary nonuse to 3 years;

6. Required grazing fee surcharges for permittees who do not own the cattle that graze under their permits;

7. Provided that the United States holds 100 percent of the vested title to permanent range improvements, constructed under cooperative agreements, rather than proportionately sharing title with the cooperators;

8. Required livestock operators and the BLM to use cooperative agreements to authorize new permanent water developments, instead of allowing some water developments to be authorized under range improvement permits;

9. Provided that after August 21, 1995, the United States, if allowed by state water laws, would acquire livestock water rights on public lands;

10. Authorized BLM to approve non-monetary settlement of non-willful grazing trespass under certain circumstances;

11. Expanded the list of prohibited acts applicable to grazing activities;

12. Established Fundamentals of Rangeland Health; and

13. Created a process for developing and applying state or regional standards for land health and guidelines for livestock grazing as a yardstick for grazing management performance.

The Public Lands Council sought judicial review with respect to a number of these provisions. The court upheld all provisions except conservation use (*see* 4, above) (*Public Lands Council v. Babbitt*, 929 F.Supp. 1436 (D. Wyo. 1996), *rev'd in part and aff'd in part*, 167 F.3d 1287 (10th Cir. 1999), *aff'd*, 529 U.S. 728 (2000)).

III. Why We Are Proposing This Rule

The current regulations, issued in 1995, require amending to comply with court decisions, improve working relationships with permittees and lessees, enhance administrative procedures and business practices, and promote conservation of public lands.

BLM published an Advance Notice of Proposed Rulemaking (ANPR) and Notice of Intent (NOI) to Prepare an Environmental Impact Statement (EIS) in the **Federal Register** on March 3, 2003, (68 FR 9964–66 and 10030–