

10032). These notices requested public comment and input to assist BLM with the scoping process for this proposed rule and the EIS. The comment period on the ANPR and the NOI ended on May 2, 2003.

During the scoping process, BLM held four public meetings to elicit comments and suggestions for the proposed rule and development of the draft environmental impact statement. The meetings were held during March 2003 in Albuquerque, New Mexico; Reno, Nevada; Billings, Montana; and Washington, DC.

We received approximately 8,300 comments on the ANPR and the NOI. The majority of these were varying types of form letters. In response to the ANPR, the majority of commenters opposed allowing livestock operators to temporarily lock gates on public lands in order to protect private property in specific limited situations. We have dropped this proposal from this proposed rule. Many commenters also opposed making any changes to the 1995 grazing regulations and several questioned why BLM was proposing amendments to the grazing regulations so soon after the 1995 changes. Some members of the ranching industry commented that they supported allowing categorical exclusions for routine activities during National Environmental Policy Act (NEPA) compliance; however, this is outside the scope of the rulemaking and is not addressed in today's proposed rule. Many commenters urged BLM to consider increasing monitoring efforts on grazing allotments. Some commenters recommended raising the grazing fees to reflect current market values for livestock. BLM is not addressing grazing fees in today's proposed rule.

We will distribute the Draft EIS (DEIS) on approximately December 19, 2003. Copies will be available on the Internet at <http://www.blm.gov/grazing>, and at the Department of the Interior Library, C Street Lobby, 1849 C Street, NW, Washington, DC 20240. Copies of the DEIS will also be available at BLM State Offices. BLM will publish a Notice of Availability of the DEIS in a separate publication in the **Federal Register**. The DEIS examines the impact of the proposed regulatory changes and alternatives for improving the management of the Nation's public rangelands.

This proposed rule would make changes in several sections of BLM's existing regulations, including revising and creating definitions for key terms pertinent to the grazing administration program. Such changes would include

modifying the public participation requirements relating to some day-to-day grazing management matters, and removing provisions authorizing conservation use permits to comply with a Federal Court decision.

The 1995 rule greatly expanded the list of situations in which BLM solicits public comment on pending grazing management decisions. This has led to BLM focusing scarce staff resources and time primarily on managing the public participation process, including organizing and updating mailing lists and handling mailings, rather than on conducting necessary day-to-day grazing management work such as monitoring resource conditions. BLM proposes to retain the interested public consultation requirements for the following specific BLM actions:

1. Apportioning additional forage on BLM managed lands;
2. Development or modification of a grazing activity plan and other BLM land use plans;
3. Planning of the range development or improvement program; and
4. Reviewing and commenting on grazing management evaluation reports.

Also retained in the regulations will be the requirement that BLM provide the interested public with copies of proposed and final grazing decisions and allow them respectively to protest and appeal such grazing decisions.

Although this proposed rule would remove the requirement that BLM consult with the interested public about the following administrative day-to-day actions, BLM could still consult voluntarily on these matters before:

1. Adjusting allotment boundaries,
2. Changing grazing preference,
3. Issuing emergency closures,
4. Renewing or issuing a grazing permit or lease,
5. Modifying permits and leases, or
6. Issuing temporary and non-renewable grazing permits.

BLM may also consult with permittees and lessees, state and local officials, and the interested public on any other matter where the authorized officer finds that such consultation would facilitate management of grazing on the public lands.

This change would require consultation with the interested public where such input would be of the greatest value, such as when deciding vegetation management objectives in an allotment management plan, or preparing reports evaluating range conditions. BLM in cooperation with the grazing operator, would retain the discretion to determine and implement the most appropriate on-the-ground

management actions to achieve the objectives and/or respond to the conditions. BLM values productive consultation with the interested public. However, BLM needs some flexibility in order to take responsive, timely, and efficient management action without being required to first undertake mandatory consultation.

We received comments asking BLM to remove the term "interested public" from the regulations and replace the term with "affected interests" as it appeared prior to the 1995 grazing regulation changes. Commenters stated that the involvement of "interested public" is more appropriate for the broader land use plan process and that increased participation from the interested public in day-to-day grazing management matters created more work for BLM and resulted in substantial program-related backlogs. As discussed above, our proposal attempts to address these issues through a change to the definition and modifications in requirements to consult with the interested public.

In order to comply with the 10th Circuit Court of Appeals decision in *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) the proposed rule would remove language from the 1995 regulations that allowed BLM to issue conservation use permits. The court ruled that the TGA does not authorize BLM to grant conservation use permits.

BLM issues grazing permits and leases to authorize livestock grazing on public lands. In contrast, conservation use permits allowed a permittee to elect not to graze allotments for the duration of the permit, which is typically 10 years. The TGA requires BLM to issue a grazing permit expecting a permittee or lessee to use it to graze livestock. (167 F.3d at 1307-1308). If the permittee or lessee does not plan to graze livestock, BLM can cancel the permit and issue one for that allotment to someone who will use it for its intended purpose. There are circumstances, however, where it is desirable to allow the land to be rested from grazing to protect or improve the condition of resources or to allow relatively short periods of nonuse for the personal or business needs of the operator.

The Tenth Circuit Court's decision in *Public Lands Council v. Babbitt* affects another regulatory provision related to "not grazing under a permit." BLM can authorize, on an annual basis, permittees and lessees to graze less than what is provided for in their permit, including not grazing at all. BLM calls