

TGA, and that these leases include both mandatory terms and conditions (livestock number, place of use, period of use, and amount of forage removal), and other terms and conditions of grazing use.

Grazing permit: In addition to removing conservation use, BLM proposes editorial changes in this definition to make the section easier to read. BLM intends to make it clear that BLM issues grazing permits authorizing grazing within grazing districts established under the TGA. These permits include both mandatory terms and conditions (livestock number, place of use, period of use and amount of forage removal), and other terms and conditions of grazing use. Several environmental and conservation advocacy groups said this term was adequately addressed in the last rulemaking effort and they do not think BLM is justified in changing it now. As with the term “grazing lease,” this change is only to clarify and standardize, not substantively change, this definition. We are not making substantive changes to this definition other than removing the term conservation use.

Grazing preference or preference: BLM is proposing to define “grazing preference” or “preference” as: “the total number of animal unit months (AUMs) on public lands apportioned and attached to base property owned or controlled by a permittee, lessee, or an applicant for a permit or lease. Grazing preference includes active use and use held in suspension. Grazing preference holders have a superior or priority position against others for the purpose of receiving a grazing permit or lease.”

This definition is similar to the definition in the grazing regulations in 1978, which was used until the 1995 rule changes. The 1995 definition, which changed preference from a term having a quantitative meaning (number of AUMs) to a qualitative meaning (superior position), has proven to be confusing. We believe that returning to its long standing meaning will provide greater clarity throughout the regulations.

The concept of grazing preference, as we would define it in this rulemaking, includes two elements:

1. Livestock forage allocation on public lands.
2. Priority for receipt of that allocation, as determined through ownership or control of attached base property.

BLM is proposing to define grazing preference as the total number of AUMs within a grazing allotment that BLM has allocated for livestock use. This forage

amount would include “active use,” use that is currently available, and “suspended use,” that is, use that had been allocated and used by the permittee or lessee, or a predecessor, but that currently is not available and therefore the subject of a BLM suspension. These apportioned forage amounts would be attached to base property. Base property, in turn, is land or water owned or controlled by a permittee, lessee, or party who holds or has applied for a permit or lease.

Ownership or control of base property gives the owner or person controlling the property a preference for receiving a grazing permit or lease authorizing grazing use to the extent of the active preference already “attached” to that property, and priority for receipt of forage that BLM may later determine to be available for livestock grazing to the extent of any suspended preference that may be attached to that property. Attaching or associating a public land forage allocation to or with base property provides a reliable and predictable way to connect ranch property transactions with the priority for use of the public land grazing privileges that BLM associates with that property. This has been the basis for BLM’s system of tracking who has priority for receipt of public land grazing privileges since the enactment of the TGA.

The ranch property transaction alone, however, does not provide absolute assurance of receiving the privileges, for two reasons:

(1) TGA provides that only certain parties qualify for grazing use on public lands. Therefore, if an unqualified party acquires a base property, BLM would not issue the party a term grazing permit or lease, regardless of the preference for public land grazing use associated with the base property that the party acquired; and

(2) The forage amount available for livestock grazing use on public lands can fluctuate because of changed resource conditions or changed administrative or management circumstances. When necessary, BLM may adjust the amount of forage available for livestock grazing. Case law has determined that BLM land use planning decisions may adjust livestock forage allocations made before enactment of the Federal Land Policy and Management Act of 1976 to change grazing use to meet objectives specified in land use plans (*see, for example, Public Lands Council v. Babbitt*, 529 U.S. 728, 739–744 (2000)).

The 1978 definition of “grazing preference” was crafted to meet a specific need. Pre-FLPMA public land

livestock forage allocations were linked to base property productivity. This means that among applicants competing for grazing privileges on public lands BLM would not grant privileges to support livestock in excess of the number that they could support on their base property during the time that their livestock were not allowed on public lands. The connection between this base property productivity, called “commensurability,” and the amount of grazing privileges granted on public lands was severed by the 1978 regulation change (the same change that defined, for the first time, the term “grazing preference”). The 1978 rule provided that BLM would associate public land grazing privileges with private base properties on a pro-rata acreage basis, rather than on base property productivity.

This change simplified BLM’s record-keeping needs. However, the commensurability requirement served as a guidepost for fair and consistent allocation of available forage. To ensure that the record of allocation was preserved, BLM defined the term “grazing preference.” Attaching Federal grazing privileges to base properties has been and continues to be the foundation for adjudicating these privileges. BLM has always had the authority and discretion to adjust grazing levels on public lands. The proposed change will once again associate the term “preference” with an amount of allocated forage on public land.

Today’s proposed change would ensure that the term “preference” is used consistently. For example, 43 CFR 4110.2–3 (4) states, regarding the transfer of preference, that “The transferee shall file an application for a grazing permit or lease to the extent of the transferred preference * * *” although preference is defined in the same regulations as a “priority position,” that is, a singular quality. One either has a priority position or one does not. It is not possible to define the “extent” of a “priority position” in terms of anything but a level or amount, and in the context of the remainder of the rule, that would mean a level or amount of forage.

Another inconsistency arises if one considers the circumstance of a parcel of base property owned by one party, giving that party a priority position (preference), which is subdivided and half sold to another party. Then, the single “preference” accorded the sole owner now is split into two “preferences” because the second party now is accorded preference due to its ownership of base property. The proposed change to this definition and