

(c) Where a permittee or lessee cannot make use of the forage available for livestock and an application for temporary nonuse 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).

* * * * *

20. Amend § 4120.3–8 by removing the misspelling “whith” from where it appears in the last sentence of paragraph (b) and adding in its place the word “which”.

21. Revise § 4120.3–9 to read as follows:

§ 4120.3–9 Water rights for the purpose of livestock grazing on public lands.

Any right that the United States acquires to use water on public land for the purpose of livestock watering on public land will be acquired, perfected, maintained, and administered under the substantive and procedural laws of the state within which such land is located.

22. Amend § 4120.5–2 by removing the word “and” after the semicolon at the end of paragraph (a), removing the period at the end of paragraph (b) and adding in its place a semicolon and the word “and”, and adding paragraph (c) to read as follows:

§ 4120.5–2 Cooperation with state, county, and Federal agencies.

* * * * *

(c) State, local, or county-established grazing boards in reviewing range improvements and allotment management plans on public lands.

23. Revise § 4130.1–1 to read as follows:

§ 4130.1–1 Filing applications.

(a) Applications for grazing permits or leases (active use and nonuse), free-use grazing permits and other grazing authorizations shall be filed with the authorized officer at the local Bureau of Land Management office having jurisdiction over the public lands involved.

(b) The authorized officer will determine whether applicants for the renewal or issuance of new permits and leases and any affiliates have a satisfactory record of performance. The authorized officer will not approve such renewal or issuance unless the applicant and all affiliates have a satisfactory record of performance.

(1) *Renewal of permit or lease.*

(i) The authorized officer will deem the applicant for renewal of a grazing

permit or lease, and any affiliate, to have a satisfactory record of performance if the authorized officer determines the applicant and affiliates to be in substantial compliance with the terms and conditions of the existing Federal grazing permit or lease for which renewal is sought, and with the rules and regulations applicable to the permit or lease.

(ii) The authorized officer may take into consideration circumstances beyond the control of the applicant or affiliate in determining whether the applicant and affiliates are in substantial compliance with permit or lease terms and conditions and applicable rules and regulations.

(2) *New permit or lease.* The authorized officer will deem applicants for new permits or leases, and any affiliates, to have a record of satisfactory performance when—

(i) The applicant or affiliate has not had any Federal grazing permit or lease canceled, in whole or in part, for violation of the permit or lease within the 36 calendar months immediately preceding the date of application; and

(ii) The applicant or affiliate has not had any state grazing permit or lease, for lands within the grazing allotment for which a Federal permit or lease is sought, canceled, in whole or in part, for violation of the permit or lease within the 36 calendar months immediately preceding the date of application; and

(iii) A court of competent jurisdiction does not bar the applicant or affiliate from holding a Federal grazing permit or lease.

(c) In determining whether affiliation exists, the authorized officer will consider all appropriate factors, including, but not limited to, common ownership, common management, identity of interests among family members, and contractual relationships.

24. Amend § 4130.2 as follows:

A. By adding the word “and” after the semicolon at the end of paragraph (e)(2);

B. By removing paragraphs (g) and (h) and redesignating paragraphs (i) and (j) as paragraphs (g) and (h), respectively;

C. In redesignated paragraph (g), by revising the reference “(see § 4130.3–2)” to read “(see § 4130.3–2(g))”; and

D. By revising paragraphs (a), (b), and (f) to read as follows:

§ 4130.2 Grazing permits and leases.

(a) Grazing permits and leases authorize use on the public lands and other BLM-administered lands that are designated in land use plans as available for livestock grazing. Permits and leases will specify the grazing preference, including active and suspended use. These grazing permits

and leases will also specify terms and conditions pursuant to §§ 4130.3, 4130.3–1, and 4130.3–2.

(b) The authorized officer will consult, cooperate, and coordinate with affected permittees and lessees, and the state having lands or responsibility for managing resources within the area, before issuing or renewing grazing permits and leases.

* * * * *

(f) A permit or lease is not valid unless both the BLM and the permittee or lessee have signed it.

* * * * *

25. Amend § 4130.3 by redesignating the existing text as paragraph (a) and adding paragraphs (b) and (c) to read as follows:

§ 4130.3 Terms and conditions.

* * * * *

(b) Upon a BLM offer of a permit or lease, the permit or lease terms and conditions may be protested and appealed under part 4 and subpart 4160 unless:

(1) The terms and conditions of the permit or lease, such as terms and conditions mandated by a biological opinion prepared under the Endangered Species Act, are not subject to review by the Office of Hearings and Appeals; or

(2) The offer of permit or lease responds to an application for a permit or lease for grazing use on additional land acreage (see § 4110.4–1).

(c) If any of the terms and conditions of a BLM-offered permit or lease are stayed pending appeal, BLM will authorize grazing use as provided in § 4160.4.

26. Amend § 4130.3–2 by adding the word “and” after the semicolon at the end of paragraph (f), by removing the semicolon and the word “and” at the end of paragraph (g) and adding in their place a period, and by removing paragraph (h).

27. Revise § 4130.3–3 to read as follows:

§ 4130.3–3 Modification of permits or leases.

(a) Following consultation, cooperation, and coordination with the affected lessees or permittees and the state having lands or responsibility for managing resources within the area, the authorized officer may modify terms and conditions of the permit or lease when the active use or related management practices:

(1) Do not meet management objectives specified in:

(i) The land use plan;

(ii) The pertinent allotment management plan or other activity plan; or