

Draft EIS - Chapter 2

In Subpart 4140, the present regulations have several provisions dealing with the consequences of committing certain specified prohibited acts. Some of the prohibited acts apply only to grazing permittees or lessees whereas others apply to anyone who commits those acts while on lands administered by the BLM.

There are three categories of prohibited acts in the present regulations.

The first category is found in §4140.1(a) and states that permittees and lessees who perform the prohibited acts listed under this section may be subject to civil penalties (e.g., withdrawal of issuance, suspension or cancellation of permit or lease). Six prohibited acts are identified in this section including:

- violations of terms and conditions of permits or leases;
- failing to make substantial grazing use as authorized for 2 consecutive years;
- placing supplemental feed on public lands without authorization;
- failing to comply with terms, conditions and stipulation of cooperative range improvement agreements or range improvement permits;
- refusing to install, maintain, modify, or remove range improvements when so directed by the BLM; and
- unauthorized leasing or subleasing.

This first category of prohibited acts allows BLM to address grazing violations and to take direct action against violations under a permit or lease.

A second category of prohibited acts are found in §4140.1[b]. Any person (not just a permittee or lessee) who commits any of the eleven prohibited acts in this section will be subject to civil and criminal penalties. The prohibited acts identified in this section include:

- allowing livestock or other privately owned or controlled animals to graze on or be driven across public lands without a permit or lease and an annual grazing authorization or in violation of any authorization;
- installing, using, maintaining, modifying, or removing range improvements without authorization;
- cutting, burning, spraying, destroying, or removing vegetation without authorization;
- damaging or removing U.S. Property without authorization;
- molesting, harassing, injuring, poisoning, or causing death of livestock authorized to graze on these lands and removing authorized livestock without the owner's consent;
- littering;
- interfering with lawful uses or users including obstructing free transit through or over public lands by force, threat, intimidation, signs, barrier or locked gates;
- knowingly and willfully making a false statement or representation in base property certifications, grazing applications, range improvement permit applications, cooperative range improvement agreements, actual use reports or amendments thereto;
- failing to pay any fee required by the authorized officer pursuant to the part, or making payment of grazing use of public lands with insufficiently funded checks on a repeated and willful basis;

- failing to reclaim and repair any lands, property, or resources when required by the authorized officer; and
- failing to reclose any gate or other entry during periods of livestock use.

This second category of prohibited acts allows generally applicable enforcement actions on BLM public lands.

The third category of prohibited acts is found in §4140.1(c). Under this provision, the BLM may take civil action against a grazing permittee or lessee that commits these prohibited acts if the following four conditions are met: (1) public land is involved or affected; (2) the action is related to grazing use authorized by a BLM-issued permit or lease; (3) the permittee or lessee has been convicted or otherwise found to be in violation of any of these laws or regulations by a court or by final determination of any agency charged with the administration of these laws; and (4) no further appeals are outstanding.

For this category of prohibited acts, unlike the first two categories, the primary responsibility for enforcement generally rests with another Federal or State agency, not the BLM.

Prohibited acts in this category include:

- Violation of Federal or State laws or regulations pertaining to the:
 - placement of poisonous bait or hazardous devices designed for the destruction of wildlife;
 - application or storage of pesticides, herbicides, or other hazardous materials;
 - alternation or destruction of natural stream courses without authorization;
 - pollution of water sources;
 - illegal take, destruction, or harassment, or aiding and abetting in the illegal take, destruction or harassment of fish and wildlife resources; and
 - illegal removal or destruction of archeological or cultural resources.
- Violation of the:
 - Bald Eagle Protection Act;
 - Endangered Species Act; or
 - the regulations concerning the protection and management of wild horses and burros.
- Violation of State livestock laws or regulations relating to:
 - the branding of livestock;
 - breed, grade, and number of bulls;
 - health and sanitation requirements; and
 - violating State, county, or local laws regarding the stray of livestock to areas that have been formally closed to open range grazing.

Under this category, the BLM-issued permit or lease is not required to be related

geographically to the location where the prohibited act occurred.

2.1.17 Grazing Use Pending Resolution of Appeals When Decision Has Been Stayed

BLM would continue to operate under the administrative remedies regulations set forth in Subpart 4160. Described in detail are the procedures for issuing and protesting proposed decisions (§4160.1 and §4160.2) and issuing and appealing final decisions (§4160.3 and §4160.4). Procedures for requesting a stay of a final decision and allowable grazing use if a final decision is stayed are identified in §4160.3.

When the Office of Hearing and Appeals stays a final decision regarding an application for grazing authorization, an applicant who was granted grazing use in the year preceding the time the decision is stayed may continue at the level of use authorized under the permit or lease previously in effect. This provision does not apply if the grazing use in the preceding year was authorized on a temporary nonrenewable basis. Where the applicant had no authorized grazing use during the previous year, or the application is for designated ephemeral or annual rangeland grazing use, the grazing use under the stay is consistent with the final decision pending a final determination on the appeal (§4160.3(d)).

When the Office of Hearing and Appeals stays a final decision to change the authorized grazing use, the grazing use authorized to the permittee or lessee during the time that the decision is stayed shall not exceed the permittee's or lessee's authorized use in the last year during which any use was authorized (§4160.3(e)).

2.1.18 Treatment of Biological Assessments and Evaluations in the Grazing Decision-Making Process

The present regulations do not specifically address biological assessments or biological evaluations prepared in compliance with consultation requirements of the Endangered Species Act. A biological assessment (BA) is prepared when a project is likely to adversely affect a listed species, critical habitat, or proposed critical habitat and may require formal consultation. Where listed species are not likely to be adversely affected and formal consultation is not anticipated, a biological evaluation (BE) provides the basis of evaluation during informal consultation.

In its 2002 Blake et al. v. Bureau of Land Management decision (156 IBLA 280 (2002)), the IBLA affirmed its ruling in a 1998 opinion that a biological assessment prepared under section 7 of the Endangered Species Act (ESA) for a proposed action to permit grazing must be treated as a BLM decision subject to protest and appeal.

Thus under the no action alternative, biological assessments and evaluations would be treated as decisions subject to protest and appeal.

2.2 ALTERNATIVE TWO: PROPOSED ACTION

Alternative Two is the BLM's Proposed Action which responds to the purpose and need described in Chapter 1 by changing certain elements of the agency's present grazing regulations. The proposed changes are described below by element. In addition to the key elements, there are several nonsubstantive or editorial changes that would be made under this alternative. Nonsubstantive or editorial changes are shown in the strike and replace copy of the proposed regulations in Appendix A.

2.2.1 Social, Economic, and Cultural Considerations

The Proposed Action would add a provision in §4110.3 that would require BLM to analyze and, if appropriate, document the relevant social, economic and cultural effects of the proposed action to change grazing preference. Such documentation would be incorporated in the appropriate NEPA document. The regulation would promote consistent treatment of effects when analyzing proposed grazing changes.

2.2.2 Implementation of Changes in Grazing Use

BLM would modify how changes in active use are implemented through the proposed regulation. This modification to §4110.3-3 would provide that changes in active use of more than 10% would be phased in over a 5-year period unless the affected permittee or lessee agrees to a shorter period or the changes must be made before 5 years have passed to comply with applicable law. For example, if a biological opinion issued under Section 7 of the Endangered Species Act (ESA) required immediate implementation of a change in active use, then compliance with ESA would take precedence and there would not be a 5-year phase-in in that case.

It is anticipated that, in practise, portions of the total change would be applied in years one, three, and five. The 5-year phase in period for changes in active use would provide time for more gradual operational adjustments by grazing permittees or lessees to lessen sudden adverse economic effect that may arise from a reduction, or to allow time to plan livestock management changes or to adjust herd size. The phase in period would also allow BLM to monitor and observe the effects of the changes in increments. This 5-year phase in period is similar to the regulations in effect in 1994.

2.2.3 Range Improvement Ownership

Under the proposed action, title to new, permanent, structural grazing-related range improvements such as fences, wells, and pipelines authorized under a Cooperative Range Improvement Agreement and constructed on public lands would be shared between the cooperator(s) and the United States in proportion to their initial contribution to on-the-ground project development and construction costs (§4120.3-2(b)). Cooperators would include any individual or organization that contributes funding, materials or labor to the construction or development of a range improvement.

Structural improvements include wells, pipelines, or fences constructed on BLM-managed public lands. This would return the provision on how title for improvements constructed under Cooperative Range Improvement Agreements was shared before the 1995 change in regulations. Granting title to a structural improvement on public lands does not grant exclusive right to use the improvement or title to the underlying lands themselves. Cooperative Range Improvement Agreements will continue to include provisions that protect the interests of the United States in its lands and resources. The ownership of existing range improvements would not be affected. This provision would provide incentive for permittees and lessees to cooperate in the development of range improvements to achieve management or resource condition objectives.

Permittees would continue to own temporary structures such as dip tanks, loading chutes, or portable water troughs placed on public lands under a Range Improvement Permit. The United States would continue to have title to nonstructural range improvements (e.g., seeding).

2.2.4 Cooperation with State, Local, and County Established Grazing Boards

BLM is proposing to amend §4120.5-2 by adding State, local, and county-established grazing boards to those groups we would routinely cooperate with in administering laws and regulations relating to livestock, livestock diseases, sanitation, and noxious weed eradication and control. The proposed provision would require that BLM cooperate with such grazing boards in reviewing range improvements and allotment management plans on public lands. In many States there are State, county, or locally established grazing advisory boards whose function is to provide guidance on grazing administration, generally focusing on range improvements, on public lands. These locally established grazing boards, where they exist, would be a valuable tool for gathering additional local input for BLM's decision-making processes.

2.2.5 Review of Biological Assessments and Evaluations

Under the proposed regulations at §4130.3-3, specific language would be added stating that when a biological assessment or biological evaluation prepared under the Endangered Species Act (ESA) is used to support decisions that modify grazing use, BLM will, to the extent practical, provide an opportunity to the affected permittee or lessee, the State, and the interested public to review and provide input to the biological assessment or evaluation during its preparation.

Biological assessments/evaluations are part of the Section 7 consultation process under the ESA that federal agencies undertake when they have determined that an action "may effect" a listed species. A biological assessment (BA) is prepared when a project is likely to adversely affect a listed species, critical habitat, or proposed critical habitat and may require formal consultation. Where listed species are not likely to be adversely affected and formal consultation is not anticipated, a biological evaluation (BE) provides the basis of evaluation during informal consultation.

The new regulatory language would add a specific reference to biological assessments and biological evaluations, clarify and highlight the need to allow review on biological assessments or evaluations and other reports used as part of the decision process, and promote consistent application bureau-wide. The change would also clarify that biological assessments or evaluations and other reports are analysis documents used for decision making, and thus subject to review to the extent practical during their preparation.

The proposed regulations are also modified to clarify that although biological assessments and evaluations and other reports prepared in support of the decisions to modify grazing use are subject to review during preparation, the review opportunity does not include a regulatory obligation for comment. Reviewing parties may still elect to provide comments during preparation of reports, biological assessments or biological evaluations.

Public participation in BLM's decision making, usually as part of the NEPA process on a proposed action, also provides opportunities for public review, comment and input. Because biological assessments or evaluations are typically used to supplement grazing management evaluations, they are generally available through these processes.

2.2.6 Temporary Nonuse

BLM proposes to move provisions addressing approval of "temporary nonuse" from §4130.2 to §4130.4 and revise them to allow BLM to have the discretion to approve applications to temporarily not use all or part the grazing use authorized by a permit or lease on a year-to-year basis when the nonuse is warranted by rangeland conditions or the personal or business needs of the permittee or lessee. There would be no limit on the number of years of consecutive nonuse allowed under the proposed regulations, however nonuse would only be approved by the BLM for a legitimate purpose or need to provide for: (1) natural resource conservation, enhancement or protection, including more rapid progress toward meeting resource condition objectives or attainment of rangeland health standards; or (2) the business or personal needs of the permittee or lessee.

Events such as drought, fire or less than average forage growth typically result in "rangeland conditions" that will prompt the need for temporary nonuse of all or part of the grazing use allowed by the permit or lease. When the BLM, in consultation with the operator, determines rangeland conditions are such that less grazing use would be appropriate, BLM encourages operators, if they have not done so already, to apply for nonuse for "conservation and protection of rangeland resources." This is the simplest way to temporarily reduce use to respond to rangeland conditions. In some cases, approval of an application for temporary nonuse also precludes the need for BLM to issue a decision to temporarily suspend use under §4110.3-3(b), although BLM retains the discretion to do this. "Personal and business needs" of the grazing operator are actions operators take in the course of managing their business, such as livestock sale, that result in temporary herd size reductions.

2.2.7 Basis for Rangeland Health Determinations

Under the new regulations in §4180.2, determinations that existing grazing management practices or levels of grazing use are significant factors in failing to achieve standards and conform with guidelines would be based on the results of standards assessment and monitoring data.

While current policy and procedural guidance recommends that both standards assessments and monitoring data be used as the basis for making such determinations, use of both is not required either by policy or regulation. This proposed revision would require use of both assessments and monitoring as a basis for determinations.

2.2.8 Timeframe for Taking Action to Meet Rangeland Health Standards

Under the proposed regulations at §4180.1, BLM would be required to take action to assist in achieving the fundamentals of rangeland health only if no applicable standards and guidelines are in place. Most BLM States have completed establishment of standards and guidelines, therefore this section would have limited applicability under present circumstances. The Proposed Rule would also provide for implementation of appropriate action no later than the start of the next grazing year after completing all consultation requirements and compliance with other laws and requirements.

Changes in timeframes would also be implemented through modifications in §4180.2(c). To allow sufficient time to complete all consultation and other legally mandated requirements, the Proposed Action would require the BLM to formulate, propose, and analyze appropriate actions to address the failure to meet the rangeland health standards or to conform to the guidelines for grazing management no later than 24 months after the determination. The conclusion of this process would be documented by either execution of an applicable and

relevant documented agreement or issuance of an applicable final decision. Upon executing the agreement or in the absence of a stay of the final decision, the authorized officer will implement the appropriate action as soon as practicable but not later than the start of the next grazing year (§4180.2(c)).

The timeframe adjustments in both §4180.1 and §4180.2(c) are based on the need for providing adequate time for BLM to complete mandated consultation and other legal requirements prior to taking action. BLM has certain specific requirements for consultation, cooperation and coordination prior to issuing any proposed decisions including those proposed decisions related to changes in active use, renewal, issuance or modification of grazing permits and leases, changes in allotment boundaries, preparation and modification of allotment management plans and resource activity plans, and plans for range improvements. As part of the planning and decision-making process, the BLM is also required to comply with applicable laws and regulations, including but not limited to the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), and the Archeological Resources Protection Act (ARPA). After a determination has been made that livestock grazing management practices or levels of use are significant factors in the failure to achieve the rangeland health standards or conform with the guidelines for grazing administration, the BLM must comply with the above analysis and consultation requirements mandated by these laws and regulations prior to implementing any decision.

2.2.9 Conservation Use

Under the Proposed Action, all references to and provisions on "conservation use" would be deleted from the regulations. This would bring the regulations into conformance with the 1999 10th Circuit Court decision (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)).

2.2.10 Definition of Preference, Permitted Use, and Active Use

BLM would define "grazing preference" or "preference" as "the total number of animal unit months 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 how the term was defined when it first was defined in the grazing regulations in 1978, and to how it was defined before 1995. The concept of grazing preference as it would be defined in this rulemaking includes two elements: (1) a livestock forage allocation on public lands; and (2) that priority for receipt of that allocation is attached base property. Ownership or control of base property gives the owner preference for receipt of a grazing permit or lease authorizing grazing use to the extent of the active preference, as well as priority for receipt of forage that may later be determined to be available for livestock grazing to the extent of any preference that is in suspension.

Under the proposed regulations, BLM would also remove the term "permitted use" from the definitions (4100.0-5) and generally replace this term wherever it occurs in the regulations with either "grazing preference" or "preference," or "active use" depending on the regulatory context.

The definition of "active use" would also be modified to mean that portion of the grazing preference that is available for livestock grazing use based on rangeland carrying capacity

and resource conditions in an allotment under a permit or lease, and that is not in suspension (4100.0-5). This change would remove the term "conservation use" and "livestock use" and make it clear that "active use" refers to a forage amount that it is based on the carrying capacity of, and resource conditions in, an allotment and that it does not refer to forage that had been allocated at some point in the past, but has since been determined to no longer be present and which now is held in suspension.

Although the connection between land use plans and grazing preference would not be stated in the definition of "grazing preference" as it is being proposed, the regulatory text would reflect the relationship between "active use" and land use plans at §§ 4110.2-2, 4110.3(a)(3), 4110.3-1 and between grazing permits and leases and land use plans at §4130.2.

The forage amount available on public lands that is available for livestock grazing use would continue to fluctuate because of changed resource conditions, or changed administrative or management circumstances. It is well settled that livestock forage allocations made before enactment of the Federal Land Policy and Management Act of 1976 may be adjusted based on BLM land use planning decisions, or the need to change grazing use to meet objectives specified in land use plans (see, for example, Public Lands Council v. Babbitt, 529 U.S. 728 (2000)).

2.2.11 Definition and Role of the Interested Public

BLM proposes amending the present definition of "interested public" to mean an individual, group, or organization that has either: (1) submitted a written request to authorized officer to be given an opportunity to be involved in the BLM decision-making process for the management of livestock grazing on public lands and who has followed up on that request by commenting on or otherwise participating in the decision-making process as to the management of a specific allotment; or (2) submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment as part of the process leading to a BLM decision on the management of livestock grazing on the allotment.

Under the proposed rule, BLM would retain requirements for consultation, cooperation and coordination with the interested public for the following BLM actions:

1. Apportioning additional forage on BLM managed lands;
2. Developing or modifying an allotment management plan or grazing activity plan;
3. Planning of the range development or improvement program; and
4. Reviewing and commenting on grazing management evaluation reports.

In addition, the requirement for the authorized officer to provide copies of proposed and final grazing decisions would be retained.

This proposed rule would remove the regulatory requirement that the authorized officer consult, cooperate and coordinate with the interested public on the following actions:

1. Designating and adjusting allotment boundaries;
2. Changing active use;
3. Issuing emergency closures or modifications;
4. Issuing or renewing a grazing permit or lease;

5. Modifying a grazing permit or lease; and
6. Issuing temporary nonrenewable grazing permits.

Generally, the above actions involve the day-to-day operational aspects of the grazing program. These changes would not remove the BLM's discretion to consult at its option on these actions.

This change would not affect the requirement to consult with the interested public where such input would be of the greatest value in setting management direction for public lands, such as when planning vegetation management objectives in an allotment management plan, or by providing input to reports evaluating range conditions. The change would allow the authorized officer and the grazing operator the discretion to determine appropriate on-the-ground management actions to achieve plan objectives or respond to variable resource conditions. BLM would retain the discretion to consult, cooperate and coordinate on any item if the authorized officer determined that value would be added to grazing management decisions or actions, above and beyond what the regulation requires. Also, this proposed revision will not affect BLM's practise of making all NEPA documents available to the public in accordance with CEQ regulations. As previously indicated, the interested public will be provided a copy of the proposed decision and associated NEPA documents and will be able to protest proposed decisions. The interested public will also receive a copy of the final decision.

2.2.12 Water Rights

BLM proposes to amend this section by removing the reference to the effective date of this provision in the first sentence and removing the second sentence. This would remove the provision stating that the United States must acquire livestock water rights. The proposed provision would read as follows: Any right acquired by the United States to use water on public land for the purpose of livestock watering shall be acquired, perfected, maintained, and administered under the substantive and procedural laws of the state within which such land is located. Under the revised provision, BLM would have whatever flexibility State law provides.

2.2.13 Satisfactory Performance of Permittee or Lessee

BLM would move provisions regarding what constitutes "satisfactory performance" of an applicant for a permit or lease from §4110.1, Mandatory qualifications, to §4130.1-1, Filing applications, to better organize the regulations. The provisions addressing what constitutes satisfactory performance for applicants for new permits and leases would also be revised.

The present rule provides that applicants for renewal of permits and leases would be deemed *to have* a satisfactory record of performance if they have substantially complied with the terms and conditions of the expiring permit or lease and other rules applicable to the permit or lease, while applicants for new permits or leases would be deemed *to not have* a satisfactory record if they have had a Federal or State lease cancelled within the previous 36 months, or have been legally barred from holding a grazing permit or lease. The existing sentence construction does not limit the circumstances under which BLM will consider an applicant for a new permit or lease to not have a satisfactory record of performance.

The changes proposed would clarify that the scope of the criteria that BLM would consider when determining whether an applicant for a new permit has a satisfactory record of performance is limited to the criteria stated in the regulations. The proposed rules do this by

changing the sentence construction for applicants for new permits or leases to reflect what would be required for an applicant for a new permit or lease **to have** a satisfactory record of performance. Basically the regulations would state that BLM would deem applicants for new permits or leases to have a record of satisfactory performance when the applicant or affiliate has not had any Federal grazing permit or lease cancelled for violations of the permit or lease within the 36 months immediately preceding the date of the application; or 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 for violation of the permit or lease within 36 months of the date of the application; or the applicant or affiliate is not barred from holding a Federal grazing permit or lease by order of a court of competent jurisdiction.

2.2.14 Changes in Grazing Use Within the Terms and Conditions of Permit or Lease

BLM would amend section §4130.4 to indicate what is meant by the phrase "within the terms and conditions of the permit or lease." BLM would define "temporary changes within the terms and conditions of the permit or lease," to mean changes to the number of livestock and period of use that may be granted in any one grazing year either: (1) in response to annual fluctuations in time and amount of forage production; or (2) to meet locally established range readiness criteria.

BLM would allow such changes if they:

1. do not result in removing more forage than the "active use" specified by the permit or lease;
2. provide that grazing use begins no earlier than 14 days before the grazing begin date specified by the permit or lease, and
3. provide that grazing use ends no later than 14 days after the grazing end date specified by the permit or lease.

The new provisions would also require that BLM consult, cooperate and coordinate with the permittees or lessees regarding their applications for changes within the terms and conditions of their permit or lease.

Livestock periods-of-use established by the grazing permits are based on the anticipated average dates that the range is "ready" to be grazed. "Range readiness" is the stage of plant growth at which grazing may begin without doing permanent damage to vegetation or soil. The point where the range is "ready" for grazing use can and does vary from year to year around a long-term average date of readiness. BLM believes that a 14-day flexibility period on either side of the grazing begin and end dates specified by the permit or lease is a reasonable way to allow for minor adjustments in grazing use in response to these variations.

BLM would consider applications for changes in grazing use "within the terms and conditions of the permit or lease" on a case-by-case basis. If BLM approves the change, no formal action other than the issuance and payment of a relevant grazing fee billing would be required. The change would not constitute a formal permit or lease modification. In other words, a temporary change that was allowed in one year to respond to the conditions of that year would not be carried forward to the next year. An application for grazing use that falls outside of this flexibility would be not be considered "within the terms and conditions" of the authorizing permit or lease.

Temporary changes in grazing use that are determined to be "within the terms and conditions of the permit or lease" would not typically require additional NEPA analysis because the

impacts would fall within the scope of those impacts analyzed in the existing applicable NEPA document for the permit or lease. Exceptions would only occur if the 14 day period overlapped some critical time periods that were not addressed or were such time periods were required to be avoided in the existing NEPA document (e.g., desert tortoise emergence in the spring or fall).

2.2.15 Service Charges

Under the proposed regulations at Section §4130.8-3, the service charge for processing various actions would more closely reflect the processing costs. Except when initiated by the BLM, the following service charges would be assessed for the processing of the following actions:

- Issuance of a crossing permit—\$75
- Transfer of grazing preference—\$145
- Cancellation and replacement of a grazing fee billing—\$50

A crossing permit may be issued to any applicant showing a need to cross the public land or the land under BLM control with livestock for proper and lawful purposes. A crossing permit for trailing livestock would contain terms and conditions deemed necessary by the authorized officer for temporary grazing use that would occur (§4130.6-3).

A grazing preference transfer occurs when base property is sold or leased and an application is made to the BLM for the transfer of the grazing preference to the new owner or lessee. A grazing preference may also be transferred from one base property to another.

The service charge for cancellation and replacement of a grazing fee billing is intended to cover the administrative costs associated with canceling and issuing a new billing when a permittee or lessee requests changes in grazing use after the bill has been issued.

2.2.16 Prohibited Acts

As indicated in the discussion of the No Action Alternative, there are three categories of prohibited acts. Under the proposed change, the third category of prohibited acts found in §4140.1(c) would be changed to clarify that this section would be applicable only when the permittee or lessee commits a prohibited act on an allotment for which he holds a permit or lease from the BLM. Otherwise, permittees or lessees would be treated similarly to any other individual committing a similar prohibited act (i.e., other laws or regulations may apply). The effect of this change is to limit applicability of the section to circumstances where there is a geographical connection between the prohibited act and the grazing permit or lease. This change is also intended to ensure that the performance of the prohibited act is related to the operator's permit or lease.

Editorial changes to improve the clarity of the regulations are also incorporated in the proposed changes for this section.

2.2.17 Grazing Use Pending Resolution of Appeals When Decision Has Been Stayed

Although the present regulations address what actions would be taken by the BLM when a stay is granted on an appeal of a decision to modify or renew a permit or lease, they do not address actions that would be taken when a stay is granted on an appeal of a decision on a permit or lease application submitted in conjunction with a preference transfer.

The proposed action in §4160.4 provides that if OHA stays a BLM decision that changes the terms and conditions of a permit or lease during its current term, or offers a preference transferee a permit or lease with terms and conditions that are different from the previous permittee or lessee, or renews a permit or lease with changed terms and conditions, then the immediately preceding authorization and any terms and conditions therein would not expire, and grazing would continue under the immediately preceding authorization, subject to the provisions of the stay order and provisions of other applicable law, pending resolution of the appeal.

The proposed action also provides that if OHA stays a BLM decision that modifies a permit or lease because of less land available for grazing, affects an application for ephemeral or annual rangeland, affects an application for temporary and nonrenewable grazing use, or affects an application for a permit or lease that is not made in conjunction with a preference transfer, then the BLM would authorize grazing use consistent with the decision pending resolution of the appeal.

In addition, some procedural requirements from Subpart 4160 would be removed and replaced with a cross-reference to the regulations governing the Office of Hearing and Appeals in 43 CFR Part 4. Many of the procedural requirements set forth in existing §4160.4 are restatements of the requirements found in §4470 et seq. for appealing grazing decisions, and it is not necessary to restate them in the grazing regulations in Subpart 4100.

2.2.18 Treatment of Biological Assessments and Evaluations in the Grazing Decision-Making Process

The Proposed Rule, at §4160.1(d), would clarify that a biological assessment or biological evaluation prepared in accordance with Section 7 of the Endangered Species Act would not be a decision for purposes of protest or appeal.

This regulatory revision would address concerns regarding the 2002 IBLA Blake decision (Blake et al. v. Bureau of Land Management, 156 IBLA 280 (2002)) wherein the court ruled that BAs were to be treated as decisions subject to the protest and appeals provisions of §4160. The Blake ruling raised concerns about the potential for major delays in the decision-making process as a result of this requirement.

The proposed regulations at §4130.3-3(b) would clearly state that BAs and BEs are similar to other reports used by BLM in decision making and, therefore, the affected permittees or lessees, States, and the interested public would have an opportunity to review BAs and BEs. Clarification of this review opportunity, plus the clarification that BAs and BEs are not decisions subject to protest and appeal, would eliminate confusion and concerns created by the Blake ruling.

A biological assessment (BA) is prepared when a project is likely to adversely affect a listed species, critical habitat, or proposed critical habitat and may require formal consultation. Where listed species are not likely to be adversely affected and formal consultation is not anticipated, a biological evaluation (BE) provides the basis of evaluation during informal consultation.

2.3 ALTERNATIVE THREE: MODIFIED ACTION

Alternative Three is essentially the same as Alternative Two (Proposed Action) with

modifications to four key elements. Modifications involve the following elements: Implementation of Grazing Decisions, Temporary Nonuse, the Basis for Rangeland Health Determinations, and Prohibited Acts.

2.3.1 Implementation of Changes in Grazing Use

This provision is the same as the proposed action, except that the 5-year phase-in of changes in use would be discretionary rather than mandatory. In other words, changes in active use in excess of 10% may not have to be implemented over a 5-year period. The BLM-authorized officer may, at his or her discretion, determine that a shorter period is appropriate or no phase-in period is warranted. For example, if a special status species that is not presently covered by the Endangered Species Act is being affected by levels of active use, the BLM could decide to immediately implement a reduction in active use without agreement of the affected permittees, following the required consultations and allowing for protest and appeal of the decision.

2.3.2 Temporary Nonuse

Under this proposal, permittees or lessees could submit and BLM could approve applications for nonuse for no more than 5 consecutive years. All other provisions related to the authorization of temporary nonuse would be the same as for the Proposed Action.

2.3.3 Basis for Rangeland Health Determinations

This provision would be the same as the proposed action except that the BLM would not be required to use both assessments and monitoring as bases for determinations; that is, rangeland health determinations could be based on either standards assessments or monitoring data, or both. This would increase BLM manager flexibility and discretion, allowing that some rangeland health determinations would not be as rigorously developed as a result of priorities and funding for monitoring.

2.3.4 Prohibited Acts

Section 4140, Prohibited Acts, would be the same as the proposed action except for changes described below.

The following would be **added** to the second category of prohibited acts (§4140.1(b)):
"Failing to comply with the use of certified weed seed free forage, grain, straw or mulch when required by the authorized officer." This would enable the BLM to enforce weed seed free requirements in states which do not have weed seed free certification programs.

The following would be **deleted** from the third category of prohibited acts (§4140.1(c)):
Violation of Federal or State laws or regulations pertaining to the placement of poisonous bait or hazardous devices designed for the destruction of wildlife; application or storage of pesticides, herbicides, or other hazardous materials; alteration or destruction of natural stream courses without authorization; pollution of water sources; illegal take, destruction or harassment, or aiding and abetting in the illegal take, destruction or harassment of fish and wildlife resources; and illegal removal or destruction of archaeological or cultural resources. Such acts would still be prosecuted by the appropriate Federal or State agency, however, after conviction, the permittee or lessee could not be additionally penalized by having his permit or lease denied, suspended, or canceled.

2.4 ALTERNATIVES CONSIDERED BUT NOT ANALYZED IN DETAIL

Many substantive issues and recommendations were provided by the public during the scoping period. Public comments were fully considered and many of their recommendations are reflected in the proposed action or in the modified action alternative. Many other issues raised or recommendations made were considered but not analyzed in detail in this Draft EIS, because they are either beyond the scope of the document, did not meet the basic purposes of these proposed changes to the regulations, or the BLM decided it could better address the issues through the development of policy.

The following are alternatives the BLM has considered but has not analyzed in detail in this EIS:

- **Increasing grazing fees or providing for competitive bidding for assignment of permits and leases.** In the Advance Notice of Proposed Rulemaking (ANPR) for proposed amendments to BLM's grazing administration regulations, the BLM stated that grazing fees would not be addressed in this rulemaking. However, several commenters raised the issue of fees and requested changes to the grazing fee system. Some commenters asked the BLM to develop a competitive bidding process to replace the present system for assigning grazing permits and allocating grazing preference and the present grazing fee formula. Modifications to the fees and the method for allocating permits or leases would require legislative action. The BLM determined that such proposals are outside the scope of this proposed rule.
- **Removing Grazing Fee Surcharge Requirements.** Several commenters requested that the BLM consider removing the grazing fee surcharge provisions from the regulations. The grazing fee surcharge was added by the 1995 regulations to address concerns raised by the General Accounting Office and Office of the Inspector General regarding the potential for rancher windfall profits arising from BLM's practice of allowing for the subleasing of public land grazing privileges. Some BLM grazing permittees enter pasturing agreements wherein they take temporary control of a third party's livestock and graze them under their permit or lease. The permittee pays the Federal grazing fee and charges the third party an amount negotiated between them for the forage and care of the livestock. The BLM assesses a fee surcharge in this circumstance that equals 35% of the difference between the present Federal grazing fee and the private grazing land lease rate. An exception to the surcharge requirement is provided for children of permittees and lessees. The BLM continues to believe that the surcharge is an equitable way in which to address this issue. In addition, this is a grazing fee issue and, as indicated in the ANPR, the BLM has determined that grazing fees are outside the scope of this rulemaking.
- **Reestablishing BLM Grazing Advisory Boards.** A number of commenters recommended that the BLM reestablish BLM Grazing Advisory Boards to provide local advice and recommendations to BLM on grazing issues. The BLM Grazing Advisory Boards were "sunset" on December 31, 1985, by FLPMA. The 1995 grazing regulation amendments incorporated several requirements for BLM to consult, cooperate, and coordinate with BLM Resource Advisory Councils that were established in 1995 to advise and recommend strategies for managing public lands under the multiple-use mandate. The Resource Advisory Councils have generally assumed the role of the previous Grazing Advisory Boards and it would be duplicative and

unnecessary to establish another advisory body. Although the BLM does not consider the reestablishment of BLM Grazing Advisory Boards in this rulemaking, it is proposing a provision requiring BLM to cooperate with State, County, or locally established grazing boards in reviewing range improvements and allotment management plans on public lands. This review would supplement the advice of Resource Advisory Councils.

- **Changing management of wild horses and burros.** Some commenters identified the need to change how the BLM manages wild horses and burros as necessary to address rangeland health issues. Any changes to the Wild Horse and Burro Act or management regulations are, however, outside the authority and scope of this proposed rule.
- **Changing Conversion Ratio for Sheep for Billing Purposes.** Counting seven sheep, rather than the present five, as the equivalent of one animal unit for the purposes of calculating grazing fee billings was recommended by commenters during scoping. However, as indicated in the ANPR, matters involving grazing fees are outside the scope of this proposed rule.
- **Establishing "Reserve Common Allotments."** In the ANPR, the BLM identified that it was considering proposing provisions to define, establish a regulatory framework, and otherwise support the creation of Reserve Common Allotments. The BLM has decided not to proceed with developing Reserve Common Allotments at this time for several reasons. During the BLM's public scoping period, many commenters expressed concern about adding special provisions for Reserve Common Allotments in the grazing regulations. Many commenters said they did not think such regulatory provisions were warranted or necessary. Ranching interests indicated they would rather have "normal" allotments, whereas environmental interests questioned whether this would be the best use of the land. After considering the unenthusiastic reception to this concept, the BLM determined it was not in the public interest to proceed with this provision through regulations. The BLM will continue to examine the concept of forage reserves through policy making processes.
- **Assigning Burden of Proof.** Several commenters recommended that the BLM consider including a provision in the proposed rule requiring it to assume the burden of proof in an appeal before the Office of Hearings and Appeals. The Administrative Procedure Act (APA) at 5 U.S.C. 556(d) provides that "except as otherwise provided by statute, the proponent of a rule or order has the burden of proof." The burden of proof has recently been clarified by the Supreme Court to mean the "burden of persuasion," which refers to "the notion that if evidence is evenly balanced, the party who bears the burden of persuasion must lose." (Director, Office of Workers' Compensation Program v. Greenwich Collieries, 512 U.S. 267, 272 (1994)). Previously, the burden of proof had been confused with the burden of production, which refers to a party's obligation to come forward with evidence to support its claim. The burden of proving a fact remains where it started, but once the party with this burden establishes a prima facie case, the burden to produce evidence shifts. The burden of persuasion, on the other hand, does not shift except in the case of

affirmative defenses. The APA, as interpreted by the courts, establishes the burden of persuasion and it is not necessary to further treat this issue in these regulations.

- **Monitoring.** Few commenters directly addressed the definition of "monitoring" although many of the comments BLM received pertained to procedural matters; that is, recommendations on how BLM should conduct monitoring. The BLM received many comments from the livestock industry and environmental and conservation groups, asking BLM to increase monitoring efforts on public lands. The BLM considered including new language regarding monitoring intending to provide explicit direction on the development of allotment-specific resource management objectives and short- and long-term monitoring programs in consultation with the permittee or lessee. The present regulations already allow BLM to develop resource management objectives and monitoring plans as part of its allotment management plans. The BLM determined that establishing monitoring methodologies and working with permittees and lessees in collecting and interpreting data and developing monitoring reports are more appropriately handled through BLM's policy guidance in Manuals and Handbooks. The BLM did incorporate a requirement for using monitoring as a basis for rangeland health determinations (see proposed action).
- **Requiring Applications for Permit or Lease Renewals.** The present regulations do not explicitly state whether or not permittees or lessees must submit an application to BLM when their permit expires. Although there is no explicit requirement for an application when a permit expires, the actions involved in processing a renewal are the same as if there were an application, thus it was determined that the regulations did not have to be changed.
- **Providing for Appeals to the State Director.** During the scoping period, the BLM received comments recommending we consider adding another opportunity for administrative remedy by allowing a protesting party to appeal a BLM field office decision to the BLM State Director. Such a provision would allow the BLM State Director to have authority to stay a decision pending further review. The BLM determined it was not advisable to include this provision in the proposed rule as it did not meet BLM's objective of increasing administrative efficiency and effectiveness.
- **Redefining Affected Interest and Interested Public.** Some commenters urged BLM to remove the definition of interested public from the grazing regulations and incorporate the use of "affected interest" as it was defined in the regulations before 1995. Under such a change, the BLM would consider an "affected interest" to be a party who has expressed an interest in management of a specific allotment and that the BLM has determined to be an affected interest. This change would require that the BLM focus its limited resources on determining who is, and who is not, an affected interest. The BLM desires that meaningful public involvement in developing grazing-related resource management objectives or actions not be unduly restricted or hindered by BLM processes and procedures. In working with the interested public provisions of these regulations, the BLM has found that there are interested public who express initial interest in management of a grazing allotment but do not maintain

meaningful involvement in the process leading to creating allotment resource objectives and strategies to achieve those objectives. This proposed rule would modify the definition of interested public to provide that once a party becomes an interested public by expressing an interest in management of an allotment, it maintains that status by continued participation in the decision-making process for that allotment. This modification would also narrow the circumstances in which BLM **must** involve the interested public before taking a management action. The BLM believes that these changes will maintain meaningful public involvement while streamlining BLM processes leading to day-to-day, on-the-ground grazing management decisions.

- **Providing for control of water developments authorized under a range improvement permit.** During the scoping period, the BLM received recommendations that the proposed regulations include provisions explicitly stating that the use of stock ponds, wells, and pipelines authorized under a range improvement permit should be controlled by the permittee or lessee holding the permit. The present rule does not allow for water developments under a range improvement permit. Other commenters asked that the BLM include in the proposed regulation a provision requiring that the permittee or lessee enter into a Memorandum of Understanding with the BLM to allow the use of improvements by livestock owned or controlled by anyone other than the permit holder. This is an administrative detail that is not appropriate for inclusion in a regulation.
- **Establishing criteria for full force and effect decisions.** Some commenters recommended that the BLM develop criteria for decisions implemented under Section 4110.3-3 for immediate implementation (i.e., full force and effect). The specific proposal was to use the same criteria as are applied to a request for a stay. The BLM disagrees that such criteria are necessarily relevant to the decision to issue a full force and effect decision to protect resources.
- **Modifying exchange of use agreements provisions.** The BLM received comments requesting that it remove the requirement that private lands offered in exchange of use be located in the same allotment being permitted for grazing to allow for "trade-of-use" arrangements such as that described below. A possible need for a trade-of-use arrangement, for example, is illustrated by the situation where one permittee or lessee owns or controls unfenced intermingled private lands that are not within his allotment, but are within a second permittee's allotment. Because the first permittee is not authorized to graze in the second permittee's allotment, the first permittee cannot derive economic gain from the grazing use made on his private lands by the second permittee, absent action to proactively control use of his land such as through fencing or through sale of the land or assignment of the land lease to the second permittee. The commentor urged that the BLM facilitate the trade-of-use between these permittee's by collecting a grazing fee from the second permittee for grazing use of lands owned by the first permittee but located in the second permittee's allotment, and by crediting the fees collected from the second permittee for these lands to the first permittee's grazing fee billing. The BLM does not agree that this type of arrangement is best handled through the regulation change suggested by the commentor.

- **Nonwillful unauthorized livestock use.** The BLM received comment urging that it modify the regulations to allow BLM to have unfettered discretion to determine circumstances that would warrant nonmonetary settlement of a nonwillful grazing trespass. The present regulations identify the following four conditions—all of which must be satisfied before BLM can approve a nonmonetary settlement for nonwillful unauthorized livestock use: evidence shows that the unauthorized use occurred through no fault of the livestock operator; the forage use is insignificant; the public lands have not been damaged; and nonmonetary settlement is in the best interest of the United States. The BLM believes this is a reasonable approach, and therefore has decided not to change this provision.
- **Eliminate Secretarial approval of amendments to regional standards for healthy rangelands.** The BLM received comments urging that it revise the process for approving standards for rangeland health to allow approval of revisions to the standards by BLM State Directors, Resource Advisory Councils, and other advisory boards established by State or local governments. The BLM believes that the requirement for Secretarial approval of Standards developed by BLM State Directors ensures that the basic components of rangeland health are reflected by the regionally developed standards and is not proposing any changes to the applicable provisions of the regulations.
- **Locked gates.** Commenters were nearly unanimously opposed to the idea of the BLM allowing grazing operators to temporarily lock gates on public lands when necessary to protect private property or livestock. This provision was not considered further.
- **Requiring posting of a bond before filing an appeal.** The BLM received comments asking it to require a bond before a party filed an appeal. The BLM considered the implications and challenges to such a provision and has determined that this provision is not feasible. Therefore, it is not included in either the proposed rule or the EIS.
- **Fundamentals of Rangeland Health.** Some commenters recommended that the BLM move the general requirements related to the fundamentals of rangeland health and the standards and guidelines for grazing administration to BLM's planning regulations at 43 CFR 1610. The BLM did not consider the timing of such an action appropriate and therefore it is not included in either the proposed rule or the EIS.

2.5 COMPARISON OF THE ALTERNATIVES

**Table 2.5 Proposed Revisions to Grazing Regulations for the Public Lands
Comparison of Alternatives**

Improving Working Relationship with Permittees and Lessees			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Social, Economic and Cultural Considerations in the Decision-Making Process	* No provisions specifically address NEPA documentation of social, economic and cultural considerations in the regulations regarding changes in permitted use.	* A new provision would be added stating that before changing grazing preference, BLM would undertake appropriate analysis as required by NEPA. The BLM would analyze and document, if appropriate, the relevant social, economic and cultural effects of the proposed action.	* Same as Proposed Action
Implementation of Changes in Grazing Use	* The current regulations do not address the timing of implementation of decisions to change grazing use.	* Changes in active use in excess of 10% would be implemented over a 5-year period unless: an agreement is reached with the permittee or lessee to implement the increase or decrease in less than 5 years; or the changes must be made before 5 years to comply with applicable law (e.g., Endangered Species Act).	* Same as proposed action, except that the 5-year phase in of changes in use would be discretionary , i.e., change in active use in excess of 10% may be implemented over a 5-year period.
Range Improvement Ownership	* Under the current regulations, the United States holds title to permanent range improvements such as fences, wells, and pipelines authorized after August 21, 1995.	* Title to permanent range improvements such as fences, wells, and pipelines authorized under a cooperative range improvement agreement would be shared among cooperators in proportion to their initial contribution to on-the-ground project development and construction costs.	* Same as Proposed Action
Cooperation with State, Local, and County Established Grazing Boards	* Under current regulations, BLM is required to cooperate with State, county, and Federal agencies in the administration of laws and regulations relating to livestock diseases, sanitation, and noxious weeds, including State cattle and sheep sanitary or brand boards and County or other weed control districts.	* Under the proposed regulations, a requirement is added for the BLM to cooperate with State, local, or county established grazing boards in reviewing range improvements and allotment management plans on public lands.	* Same as Proposed Action

Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Review of Biological Assessments and Evaluations	* Current rules do not specifically mention biological assessments or evaluations, however the current regulations require that BLM, to the extent practicable, provide affected permittees or lessees, the State having lands or responsible for managing resources within the 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 provision has been interpreted to include biological assessments.	* Biological assessments and biological evaluations prepared under the Endangered Species Act are specifically identified as reports that BLM would, to the extent practical, provide affected permittees or lessees, the state having lands or responsibility for managing resources within the area, and the interested public an opportunity to review and provide input during their preparation.	* Same as Proposed Action
Protecting the Health of the Rangelands			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Temporary Nonuse	* Grazing permittees or lessees may submit and BLM may approve an annual application for temporary non-use for no more than three (3) consecutive years. Reasons for temporary non-use include financial conditions or annual fluctuations of livestock.	* Grazing permittees or lessees could submit and BLM could approve non-use for no longer than one year at a time for resource reasons as well as for business/personal needs of the permittee or lessee (i.e., there would be no limit on consecutive years of non-use allowed).	* Same as Proposed Action except that permittees or lessees could submit and BLM could annually approve an application for nonuse for no more than five consecutive years.
Basis for Rangeland Health Determinations	* The current regulations do not prescribe how the BLM determines that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the rangeland health standards and conform with the guidelines.	* Determinations that existing grazing management practices or levels of grazing use are significant factors in failing to achieve standards and conform with guidelines would be based on standards assessments and monitoring.	* Same as proposed action except that BLM would not be required to use both assessments and monitoring as basis for determinations, i.e., may be based on assessment and/or monitoring.

Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Timeframe for Taking Action to Meet Rangeland Health Standards	<p>* Under current regulations, the BLM is required to take appropriate action as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management needs to be modified to ensure that the fundamentals of rangeland health conditions exist or progress is being made toward achieving rangeland health</p>	<p>* Under the proposed regulations, where standards and guidelines have not been established,- BLM would take appropriate action as soon as practicable but not later than the start of the next grazing year following completion of relevant and applicable requirements of law, regulations and consultation requirements to ensure fundamentals of rangeland health conditions exist or progress is being made toward achieving rangeland health.</p>	<p>* Same as Proposed Action.</p>
	<p>* Current regulations state that upon determining that existing grazing practices or levels of use are significant factors in failing to achieve standards and guidelines for grazing administration, the authorized officer shall take appropriate action as soon as practicable but not later than the start of the next grazing year.</p>	<p>* Upon determining that existing grazing practices or levels of use are significant factors in failing to achieve standards and guidelines, the BLM would, in compliance with applicable laws and with the consultation requirements, formulate, propose and analyze appropriate action to address failure to meet standards or conform to guidelines no later than 24 months after determination is made. Upon execution of agreement or documented decision, the BLM would implement appropriate action(s) as soon as practicable but not later than start of next grazing year.</p>	<p>* Same as Proposed Action.</p>

Increasing Administrative Efficiency and Effectiveness			
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Conservation Use	*Under the current regulations, conservation use is defined, is identified as a component of permitted use, may be authorized for up to 10 years, and is addressed in other provisions. However, no conservation use permits can or have been issued due to the 10 th Circuit Court decision in 1999 that issuance of conservation use permits exceeds the Secretary’s authority under the Taylor Grazing Act.	* All references to and provisions on conservation use would be deleted.	* Same as Proposed Action.

Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
<p>Definition of Grazing Preference, Permitted Use, and Active Use</p>	<p>* In the current regulations, <u>grazing preference or preference</u> is defined as a superior or priority position against others for the purpose of receiving a grazing permit or lease. This priority is attached to base property owned or controlled by the permittee or lessee.</p>	<p>* Grazing preference or preference would mean the total number of animal unit months 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 would include active use and use held in suspension. Grazing preference holders would have a superior or priority position against others for the purpose of receiving a grazing permit or lease .</p>	<p>* Same as Proposed Action.</p>
	<p>* In the current regulations, <u>permitted use</u> is defined as 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. The term permitted use encompasses authorized use including livestock use, suspended use and conservation use.</p>	<p>* The term permitted use would be dropped from the regulations and replaced with the term grazing preference, preference or active use, depending upon the context, throughout the regulations .</p>	<p>* Same as Proposed Action.</p>
	<p>* In the current regulations, <u>active use</u> means current authorized use, including livestock grazing and conservation use. Active use may constitute a portion, or all, of permitted use. Active use doesn't include temporary nonuse or suspended use within all or a portion of an allotment.</p>	<p>* Active use would be redefined to mean that portion of the current authorized use which is available for livestock grazing based on rangeland carrying capacity and resource conditions in an allotment under a permit or lease and which is not in suspension.</p>	<p>* Same as Proposed Action.</p>

Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Definition and Role of Interested Public	<p>* Under the current regulations, <u>interested public</u> is defined as an individual, groups or organization that has 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 specific allotments or has submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment.</p>	<p>* <u>Interested public</u> would be defined as an individual, group or organization that has: (1) Submitted a written request to BLM to be provided an opportunity to be involved in the process leading to a decision for management of livestock grazing and followed up on that request by commenting on or otherwise participating in the decision-making process on management of a specific allotment; or (2) Submitted written comments to the BLM regarding management of livestock grazing on a specific allotment, as part of the process leading to a BLM decision on the management of livestock grazing on the allotment.</p>	<p>* Same as Proposed Action.</p>
	<p>* The BLM is required to consult, cooperate and coordinate with interested public on the following:</p> <ul style="list-style-type: none"> • Designating/adjusting allotment boundaries. • Apportioning additional forage • Reducing permitted use • Emergency closures or modifications • Development or modification of grazing activity plan. • Planning of the range development or improvement program • Renewing/issuing grazing permit/lease • Modifying a permit/lease • Reviewing/commenting on grazing evaluation reports. • Issuing temporary non-renewable grazing permits. 	<p>* Requirements to consult, cooperate and coordinate with the interested public would be modified as follows:</p> <ul style="list-style-type: none"> • Removed • Retained • Removed • Removed • Retained • Retained • Removed • Removed • Retained/Modified (added review on biological assessments/evaluations; removed specific reference to comment opportunity) • Removed 	<p>* Same as Proposed Action.</p>
	<p>* Under the current regulations, BLM is required to send copies of proposed and final decisions to the interested public.</p>	<p>* Same as existing regulations.</p>	<p>* Same as existing regulations.</p>

Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Water Rights	* Current regulations state that any right acquired on or after 8/21/95 to use water on public land for the purpose of livestock watering shall be acquired, perfected, maintained and administered under the substantive and procedural laws of the State within which land is located. To the extent allowed by State law, any such water right shall be acquired, perfected, maintained, and administered in the name of the United States.	* The phrase – “on or after 8/21/95” - would be dropped from the first sentence. The second sentence of this provision - stating that, to the extent allowed by State law, any water right would be acquired, perfected, maintained, and administered in the name of the United States - would be removed.	* Same as Proposed Action.
Satisfactory Performance of Permittee or Lessee	* Current regulations identify requirements for satisfactory performance for renewal of permits and leases and for new permits or leases.	* The provisions on satisfactory performance would be moved from the section on “mandatory qualifications” to the section on “filing applications”. Minor editorial changes would be made in the definition of “satisfactory performance” for new applicants – basically changing the definition from a negative (what “is not” satisfactory performance) to a positive (what “is” satisfactory performance).	* Same as Proposed Action.

Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Changes in Grazing use Within Terms and Conditions of Permit or Lease	* The current regulations state that changes within the terms and conditions of the permit or lease may be granted by the authorized officer.	* The proposed regulations would provide that BLM may authorize temporary changes in grazing within the terms and conditions of a permit or lease to respond to annual fluctuations in timing and amount of forage production; or to meet locally established range readiness criteria.	* Same as Proposed Action.
	* The current regulations do not include consultation requirements for such changes	*The BLM would consult with the permittee or lessee on such changes.	* Same as Proposed Action.
	* The current regulations do not define what is meant by “within terms and conditions of the permit or lease”.	* “Within terms & conditions” would be defined to mean temporary changes to livestock number, period of use, or both that would result in grazing use that results in forage removal that does not exceed the amount of active use specified in the permit or lease; and occurs either no earlier than 14 days before the begin date specified on the permit or lease, and no later than 14 days after the end date specified on the permit or lease.	* Same as Proposed Action.

Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
Service Charges	* A service charge may be assessed for each crossing permit, transfer of grazing preference, application solely for nonuse and each replacement/supplemental billing notice except for actions initiated by the authorized officer. A specific fee is not identified in the current regulations, however the current fee for these actions is \$10.	* Service charges would be specified as follows: Except where BLM initiates the action, BLM would assess a service charge as shown below: (1) Issuance of crossing permit: \$75; (2) Transfer of grazing preference: \$145; (3) Cancellation and replacement of grazing fee billing: \$50	* Same as Proposed Action.
Prohibited Acts	* There are 3 categories of acts which are prohibited on public lands.	* Same as existing regulations	* Same as existing regulations.
	* The first category provides that permittees or lessees may be subject to civil penalties if they perform any of the 6 prohibited acts listed in this section.	* Same as existing regulations with several minor editorial changes and clarifications.	* Same as Proposed Action.
	* The second category provides that anyone, not just permittees or lessees, shall be subject to civil or criminal penalties if they perform any of the 11 prohibited acts listed in this section. Prohibited acts in this category include actions such as littering, damaging or removing U.S. property without authorization, and failing to reclose any gate or other entry during periods of livestock use.	* Same as existing regulations with some minor editorial changes.	* Same as the Proposed Action plus the following prohibited act would be added to this section: “Failing to comply with the use of certified weed seed free forage, grain, straw or mulch when required by the authorized officer.”
	* The third category provides that permittees or lessees could be subject to civil penalties for performance of acts listed in this section where: public lands are involved or affected; the violation is related to grazing use authorized by BLM; the permittee has been convicted or otherwise found to be in violation of any of these laws or regulations; and no further appeals are outstanding.	* Under the proposed regulation, the performance of prohibited acts in this third category would be further limited to the performance of such acts on an allotment where the permittee or lessee is authorized to graze under a BLM permit or lease. In addition, there would be some minor editorial changes.	* Same as Proposed Action.
	* The third category consists of 3 sets of prohibited acts including: <ul style="list-style-type: none"> • specific laws or regulations (e.g., Endangered Species Act) • Federal or State laws 	* Same as existing regulations.	The third category would consist of only 2 sets of prohibited acts including: <ul style="list-style-type: none"> • specific laws or regulations (e.g., End. Species Act) • Federal or State laws

Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3
	<p>pertaining to natural/ environmental/ cultural resources</p> <ul style="list-style-type: none"> • State laws related to livestock operations 		<p>pertaining to natural/ environmental/ cultural resources - deleted</p> <ul style="list-style-type: none"> • State laws related to livestock operations.
<p>Grazing Use Pending Resolution of Appeals When Decision Has Been Stayed</p>	<p>Under the current regulations, if a decision is stayed, the permittee or lessee will graze in accordance with the authorization issued the previous year. If the applicant had no authorized grazing use the previous year or the application is for ephemeral or annual grazing use, then grazing use will be consistent with the final decision pending resolution of the appeal.</p>	<p>The provisions would be moved and editorial changes would be made to clarify these requirements. In addition, a provision would be added addressing the stay of a decision on a permit or lease offered to a preference transferee. If a stay is granted on a decision to modify or renew a permit or lease or to offer a permit or lease to a preference transferee, then the immediately preceding authorization would not expire, and grazing would continue under the immediately preceding authorization with the same terms and conditions therein.</p>	<p>* Same as Proposed Action.</p>
<p>Treatment of Biological Assessments & Evaluations in the Grazing Decision-Making Process</p>	<p>* Current regulations do not specifically address biological assessments or biological evaluations prepared in compliance with the Endangered Species Act. However, in accordance with the IBLA Blake decision, biological assessments are to be treated as decisions subject to protest and appeal.</p>	<p>* In the proposed regulations it would be stated that a biological assessment or biological evaluation prepared for Endangered Species Act consultation or conference would not be a decision for purposes of protest or appeal.</p>	<p>* Same as Proposed Action.</p>

2.6 COMPARISON OF THE EFFECTS

Table 2.6 - Comparison of the Impacts Across Alternatives

Alternative 1	Alternative 2	Alternative 3
<i>Grazing Administration</i>		
<p>*BLM grazing management would provide some partnership opportunities.</p> <p>*Mechanisms for assessing standards and changing grazing management would be rushed, discourage partnerships, and produce decisions of inconsistent quality.</p> <p>*Inconsistent documentation and consideration of social, economic and cultural effects of grazing decisions.</p>	<p>*BLM would promote greater partnership with grazing permittees, lessees, and grazing advisory boards.</p> <p>*Additional time would be allocated for developing appropriate action following a rangeland health determination. This would delay on-the-ground action but would lead to better, more comprehensive and acceptable decisions and would improve partnerships.</p> <p>*Additional consideration would be given to social, economic, and cultural impacts.</p> <p>*Monitoring data would support partnerships and sustainable decisions.</p>	<p>*Similar to Alternative 2 but with additional flexibility at the local level.</p> <p>*Allowing BLM discretionary authority for phase-in period instead of requiring 5-year time frame could provide additional protection for wildlife or other sensitive resources.</p> <p>*Allowing discretionary use of monitoring data for standards determinations rather than requiring it would allow BLM to focus on high priority allotments.</p> <p>*The provision allowing the requirement to use weed seed free forage, grain, straw or mulch would reduce the spread of noxious weeds.</p>
<i>Vegetation</i>		
<p>*Vegetative cover would increase slowly.</p> <p>*Timelines for management changes may limit vegetation management alternatives and partnerships.</p> <p>*Riparian vegetation would remain static or improve slightly.</p>	<p>*Vegetative conditions would move toward achievement of management objectives.</p> <p>*Potential for short-term adverse effects where vegetative recovery is delayed.</p> <p>*Additional resources would be invested in improvements due to partnerships and improved working relationships.</p> <p>*Riparian vegetation would remain static or improve slightly.</p>	<p>*Similar to Alternative 2 but flexibility in the use of monitoring for standards assessments and the timeframe for implementing management changes would allow BLM to focus on high priority allotments and accelerate short-term vegetative recovery.</p> <p>*Slower weed expansion rates than Alternative 1 or 2.</p>
<i>Fire and Fuels</i>		
<p>*A minimal effect on the ability to reach a more historical fire regime.</p>	<p>*A slight improvement in the ability to reestablish historical fire regimes resulting in vegetation improvements.</p>	<p>*Similar to Alternative 2.</p>

<i>Soils</i>		
<p>*Short-term adverse impacts would be minimal except at the local scale. *Would result in maintenance of or slight improvement in conditions in the long term.</p>	<p>*Short-term adverse impacts would be minimal except at the local scale. *Maintenance or slight improvement would be expected in the long-term due to watershed cover.</p>	<p>*Similar to Alternative 2.</p>
<i>Water Resources</i>		
<p>*The proposed changes would have little or no impact on short-term water resource conditions. *Slow improvement in watershed conditions would be expected for the long term. *Water quality would remain static or improve slowly.</p>	<p>*Similar to Alternative 1.</p>	<p>*Similar to Alternative 1 except the increase in weeds will be slower than Alternative 1.</p>
<i>Air Quality</i>		
<p>*Air quality would be expected to be maintained or improved and within standards.</p>	<p>*Similar to Alternative 1.</p>	<p>*Similar to Alternative 1.</p>
<i>Wildlife</i>		
<p>*Risks and benefits to wildlife and wildlife habitat, are not expected to change. *Current timeframes for developing grazing management changes would impede adequate analysis and consultation, thus resulting in less effective and acceptable decisions on wildlife.</p>	<p>*In the long run, there would be little or no effect on wildlife due to better partnerships with permittees and lessees and longer timeframes for developing effective and acceptable decisions. *Implementation of changes in grazing use and timeframes for taking action could have an adverse effect on wildlife in the short-term. *The elimination of the 3 consecutive year limit on temporary non-use could improve opportunities for cooperation to benefit wildlife resources.</p>	<p>*Changes in temporary non-use over current regulations from 3 to 5 consecutive years would slightly benefit wildlife. *More discretion for BLM managers in phasing in implementation of changes in grazing use would be beneficial to wildlife. * More discretion for BLM managers on the data to use for making rangeland health determinations could be beneficial to wildlife resources. *Reduction in spread of weeds would enhance wildlife habitat.</p>
<i>Special Status Species</i>		
<p>* Risks and benefits to special status species, are not expected to change *Effects similar to wildlife in Alternative 1.</p>	<p>*Little or no effect on special status species. *Effects similar to wildlife effects in Alternative 2</p>	<p>*Similar to wildlife effects in Alternative 3.</p>

<i>Wild Horses and Burros</i>		
*Little change in wild horse and burro populations on public lands.	*Slight long-term positive impact from improved condition of the vegetation on habitat areas through an improved decision making process.	*Similar to Alternative 2.
<i>Recreation</i>		
*Minimal impacts to the Recreation Program. *Slight improvement where the vegetation is improved.	*Minimal impacts to the Recreation Program. *Slight improvement where the vegetation is improved. *Effects could be adverse in the short term if corrective actions are delayed.	*Similar impacts to alternative 2. *The reduction of weed expansion would have an additional benefit to recreation interests.
<i>Special Areas</i>		
*Little impact due to current good conditions.	*Little impact due to existing good conditions.	*Slight improvement of conditions on the long term due to reduction of weed expansion.
<i>Paleontological and Cultural Resources</i>		
*Heritage resources are protected through case-by-case, site specific surveys and analysis. *Prohibited act regarding removal or destruction of cultural resources may act as a deterrent.	*There would be little to no effect on heritage resources. * New on-the-ground projects would be analyzed on a case-by-case basis.	*Similar to Alternative 2 except removal of cultural damage prohibited act may have slight adverse impact.
<i>Economic Conditions</i>		
*Local/regional economic effects would be minor. *On-going effects include: 1) low flexibility; 2) lack of incentive to participate in range improvements; 3) lack of time to implement land health determinations; and 4) lack of cost recovery.	*Local/regional economic effects would be minor. *Primary effects would be: 1) Increased flexibility; 2) Increased BLM costs; 3) reduced adverse impacts on ranchers from herd reductions; 4) increased service charges for ranchers and increased cost recovery for BLM.	*Similar to Alternative 2. *Greater discretion for BLM managers in implementing changes in use and using monitoring data for land health determinations could have an adverse economic impact on ranchers.

<i>Social Conditions</i>		
<p>Ranchers would continue to face increasing stress related to public land grazing. Ranchers would continue to sell ranches for amenity reasons and subdivision.</p>	<p>*Ranching, environmental and recreation interests perceive the monitoring requirements as being positive and believe this provision would provide beneficial social impacts. *Ranchers would experience beneficial social effects as a result of most provisions – particularly phasing in of implementation of changes, required cooperation with grazing boards, focusing water rights provision on following state law and providing more time for developing appropriate action following rangeland health determination. *Ranchers would experience negative social effects from the removal of the limit on consecutive years of nonuse – they perceive this as a form of conservation use and a threat to the economic and social viability of their communities. *Environmental groups would experience adverse social effects from the water rights provision change. *Social effects on environmental interest and recreation interests would generally be minimal or neutral for most of the other proposed revisions.</p>	<p>*There could be minimal social effects on ranchers and conservation groups due to BLM having discretion to use monitoring for rangeland health determinations. *Elimination of certain prohibited acts would have an adverse effect on conservation, environmental and recreation groups.</p>
<i>Environmental Justice</i>		
<p>*No disproportionate effects on low-income, minority, or tribal populations as a result of present regulations.</p>	<p>*Would not result in violation of environmental justice principles.</p>	<p>*Would not result in violation of environmental justice principles.</p>