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## **Grazing Regulations: Changes by the Bureau of Land Management**

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# Grazing Regulations: Changes by the Bureau of Land Management

## Summary

The Bureau of Land Management (BLM) is taking a two-pronged approach to grazing reform, by proposing changes to grazing regulations (43 C.F.R. Part 4100) and considering other changes to grazing policies. On June 17, 2005, BLM issued a final environmental impact statement (FEIS) that analyzes the potential impact of proposed changes in the regulations, a slightly different alternative, and the status quo. On August 9, 2005, BLM announced its intent to prepare a supplement to the FEIS. The delay is intended to allow the agency time to address public comment received after the closing date of March 2, 2004, primarily from the Fish and Wildlife Service. The agency anticipates developing the supplement in the fall of 2005, soliciting and reviewing public comment, and issuing it in final form in the spring of 2006. No deadline for the final rule has been announced.

BLM asserts that regulatory changes are needed to increase flexibility for grazing managers and permittees, to improve rangeland management and grazing permit administration, to promote conservation, and to comply with court decisions. The possibility of rules changes, and the particular changes proposed, have been lauded by some but criticized by others. The last major revision of grazing rules, which took effect in 1995 after a lengthy development process, was highly controversial. BLM is currently reexamining many of the changes made at that time.

The current proposal would make many changes. The BLM and a permittee could share title to structural range improvements, such as a fence. Permittees could acquire water rights for grazing, consistent with state law. The occasions on which BLM would be required to get input from the public on grazing decisions would be reduced. The administrative appeals process on grazing decisions would be modified and the extent to which grazing could continue in the face of an appeal or stay of a decision would be delineated. The definition of *grazing preference* would be broadened to include a quantitative meaning — forage on public land — measured in Animal Unit Months. Changes would be made to the timeframe and procedures for changing grazing management after a determination that grazing is a significant factor in failing to achieve rangeland health standards. The current three-year limit on temporary nonuse of a permit would be removed, and permittees would be able to apply for nonuse of a permit for up to one year at a time. Conservation use grazing permits would be eliminated. BLM considered, but did not propose, certain changes due to adverse public reaction or other considerations.

BLM also is considering changes to its grazing policies, which the agency believes can be carried out under existing rules. Potential policy changes, to follow the rulemaking process, relate to: the establishment of reserve common allotments to serve as backup forage when permittees' regular allotments are unavailable; conservation partnerships between the BLM and permittee whereby permittees work to improve environmental health in return for certain benefits; voluntary allotment restructuring to allow multiple permittees to merge allotments; and landscape habitat improvement to promote species conservation and facilitate consultations under the Endangered Species Act. This report will be updated as events warrant.

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# Grazing Regulations: Changes by the Bureau of Land Management

## History

The Bureau of Land Management (BLM) has proposed changes to grazing regulations (43 C.F.R. Part 4100) and is considering related policy changes. The last major revision of grazing regulations culminated in comprehensive changes effective August 21, 1995. The changes were the result of a several-year process of evaluating ideas and shaping alternatives, and occurred in the midst of a decades-long dispute over the ownership, management, and use of federal rangelands.

The 1995 changes were highly controversial, with criticism from many ranching interests that those new rules weakened grazing privileges and would reduce livestock grazing on federal lands, and from environmental organizations that the changes did not go far enough in protecting public lands. Supporters saw the changes as improving resource and range management and broadening participation in public land decisionmaking. Congress has considered many of the 1995 changes, as part of legislative proposals or committee oversight, and may examine the proposed regulatory and policy changes.

Among the changes made in 1995, many of which are being reexamined currently by BLM, are those that:

- separated grazing *preference* from *permitted use*, so that a permittee's<sup>1</sup> preference for receiving a grazing permit was not tied to a specific amount of grazing based on historic levels (described as *Animal Unit Months*, or *AUMs*);
- allowed permittees up to three years of nonuse of their permits;
- authorized the suspension or cancellation of a permit if a permittee is convicted of violating certain state or federal environmental laws;
- eliminated the express requirement that a permittee be engaged in the livestock business;
- replaced the term *affected interest* with *interested public*;
- allowed *conservation use* for the term of a grazing permit, thereby excluding livestock grazing from all or a portion of an allotment;
- required title of permanent structural improvements to be held in the name of the United States;
- required that water rights for livestock grazing be held in the name of the United States, to the extent allowed by state law;

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<sup>1</sup>The term permittee is used throughout to refer to both permittees and lessees, and permit refers to both permits and leases.

- imposed a surcharge on a permittee who allows livestock not owned by the permittee or the permittee's children to graze on public land;
- eliminated Grazing Advisory Boards and replaced them with the broader interest Resource Advisory Councils; and
- adopted rangeland management standards called *Fundamentals of Rangeland Health*.

In issuing these changes, the Secretary of the Interior dropped the most contentious proposal — to increase the grazing fee — due to the rancor this issue generated.<sup>2</sup> However, dissatisfaction with the 1995 changes among ranching interests led to a lawsuit ultimately decided by the U.S. Supreme Court.<sup>3</sup> The regulations, challenged on their face, were upheld by the courts as not exceeding the authority of the Secretary, with one exception. The courts struck down the rule pertaining to conservation use for the term of a permit on the grounds that a grazing permit was for grazing and the Secretary could more appropriately accomplish conservation use through the land use planning process.

## Current Efforts to Change Grazing Rules and Policies

BLM is taking a two-pronged approach to this iteration of grazing reform on public lands, by proposing changes to grazing regulations and considering changes to grazing policies. Under this *Sustaining Working Landscapes* initiative, first announced in March 2003, BLM seeks to create *working landscapes* that are both economically productive and environmentally healthy. Changes to grazing regulations and policies could affect more than 18,000 grazing permits on 162 million acres of BLM land. The specific regulatory proposals and policy alternatives are discussed under separate headings below.

Conflict over livestock grazing on public lands has become common. Critics of the current reform effort assert that the 1995 regulations have not been in effect long enough to assess their effectiveness and that the policy issues are too vague to assess their potential effects. They also contend that BLM has not justified a need for regulatory and policy changes. One concern is that the changes would require more monitoring than is feasible, thus possibly preventing changes. Another is that BLM and the Forest Service (FS) are not developing joint rules, given that many BLM and FS lands are similar and adjoining and permittees often have permits for livestock grazing on both agencies' lands. There is also some disappointment among environmentalists that the reform effort does not encompass certain important issues such as altering grazing fees, controlling noxious weeds, retiring grazing permits, and establishing processes for identifying lands suitable for grazing.

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<sup>2</sup>For more information on grazing fees, see CRS Report RS21232, *Grazing Fees: An Overview and Current Issues*, by Carol Hardy Vincent.

<sup>3</sup>For more information on the legal challenge to the 1995 regulations on livestock grazing, see CRS Report RS20453, *Federal Grazing Regulations: Public Lands Council v. Babbitt*, by Pamela Baldwin.

## Overview of Regulatory Process

BLM proposed changes to its grazing regulations on December 8, 2003 (68 *Fed. Reg.* 68451), and on January 2, 2004, issued a draft environmental impact statement (DEIS) analyzing the potential impact of the proposed changes. The DEIS also assessed the impacts of a slightly different alternative and of keeping the current grazing rules. Prior to proposing the changes, BLM reviewed more than 8,000 public comments on regulatory issues that were submitted in response to a March 3, 2003 advanced notice of proposed rulemaking.

BLM asserts that regulatory changes are needed to increase flexibility for grazing managers and permittees, to improve rangeland management and permit administration, to promote conservation, and to comply with court decisions. The possibility of regulatory changes has been supported by some livestock organizations and range professionals as helping both ranchers and the range. By contrast, others have criticized the proposed changes as removing important environmental protections and opportunities for public input.

In late January and early February of 2004, BLM held public meetings in the West and in Washington, DC, to gather public comments on the regulatory proposal and DEIS. The proposal and DEIS were open for public comment through March 2, 2004, during which time the agency received more than 18,000 comments. The BLM considered these comments, and on June 17, 2005, issued a final environmental impact statement (FEIS) on proposed changes and alternatives.<sup>4</sup>

The proposed revisions in the FEIS met with mixed reaction, like those in the earlier DEIS. A number of the key proposals are discussed under “Proposed Changes to Grazing Regulations” below. With regard to the environmental effects of the preferred alternative, the FEIS stated (p. ES-5) that “most of the proposed regulatory changes have little or no adverse effects on the human environment. Some short-term adverse effects may not be avoided because of increases in timeframes associated with several components of this proposed rulemaking.” This statement has fueled concerns among environmentalists that the proposed changes could eliminate public land protections and lead to unsustainable grazing practices. The FEIS stated that to minimize the potential for adverse affects in the short-term, the BLM could “curtail grazing if resources on the public lands require immediate protection or if continued grazing use poses an imminent likelihood of significant resource damage.” Further, the BLM asserts that the long-term outcome of the proposed changes would be better and more sustainable grazing decisions, and that the changes “would be beneficial to rangeland health.”

A particular controversy surfaced recently over assertions by two members of the draft EIS team, a BLM hydrologist and a BLM biologist (both now retired), that their scientific conclusions were reversed by BLM because they did not support the new rules. Those conclusions apparently had asserted that the proposed new rules

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<sup>4</sup>The FEIS, together with a fact sheet and questions and answers on the new grazing regulations that are in development, are available at [<http://www.blm.gov/grazing/>], visited August 16, 2005.

could harm water quality and wildlife, including endangered species. A BLM official is reported to have called the changes to the views of the two scientists a part of the standard editing and review process.<sup>5</sup> Further, a statement by the BLM contended that the EIS team found their work to be “seriously lacking in the quality expected from each contributor to the environmental impact analysis.” The statement alleged that the conclusions of the two team members were “based on personal opinion and unsubstantiated assertions rather than sound environmental analysis. As a result, the work submitted by the two former BLM employees was rewritten.”<sup>6</sup>

BLM initially intended to publish a final grazing rule in the *Federal Register* in mid-July, with an effective date in mid-August. However, on August 9, 2005, BLM announced its intent to prepare a supplement to the FEIS. BLM currently anticipates issuing a draft supplemental environmental impact statement (SEIS) in the fall of 2005, soliciting and reviewing public comment, and issuing a final SEIS in the spring of 2006. No deadline for a final grazing rule has been announced.

The delay is intended to allow the agency to address public comment received after the comment period ended on March 2, 2004, primarily the views of the Fish and Wildlife Service (FWS), according to BLM. In a 16-page draft comment submitted to BLM, the FWS asserted that the proposed changes would “fundamentally change the way BLM lands are managed temporally, spatially, and philosophically. These changes could have profound impacts on wildlife resources.”<sup>7</sup> The FWS expressed overall concern that the proposed revisions would make grazing a priority over other land uses, which could be detrimental to fish and wildlife habitats and populations, for instance, management of sage-grouse habitat. The agency further contended that the proposed changes could “constrain biologists and range conservationists from recommending and implementing management changes based on their best professional judgment in response to conditions that may compromise the long-term health and sustainability of rangeland resources.”<sup>8</sup>

While supporting some of the proposed changes, the FWS identified a number of areas of particular concern. They included potential effects of administrative inconsistencies between BLM and the Forest Service on their management of fish and wildlife resources across boundaries;<sup>9</sup> diminished requirements for public

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<sup>5</sup>Julie Cart, “Land Study on Grazing Denounced; Two Retired Specialists Say Interior Excised their Warnings on the Effects on Wildlife and Water,” *Los Angeles Times*, June 18, 2005, sec. A, p. 1.

<sup>6</sup>U.S. Department of the Interior, Bureau of Land Management, *Statement of the Bureau of Land Management re: Los Angeles Times Article of June 18, 2005*, unpublished draft received from BLM, Aug. 12, 2005.

<sup>7</sup>U.S. Department of the Interior, Fish and Wildlife Service, *Comments on (1) Proposed Rule for Grazing Administration-Exclusive of Alaska (EC03/0049), and (2) Draft Environmental Impact Statement for the Proposed Revisions to Grazing Regulations for the Public Lands (EC04/0003)*, unpublished draft received from BLM, Aug. 12, 2005, p. 12.

<sup>8</sup>*Ibid.*, p. 1.

<sup>9</sup>A goal of the 1995 regulatory reform was to increase consistency BLM and FS grazing (continued...)

consultation on site-specific actions, which have the greatest potential for impacts to fish and wildlife; a phase-in of decreases (or increases) in livestock use that are greater than 10%, which may not be immediate enough to prevent irreversible harm to vegetation and wildlife; including an amount of forage in the definition of grazing preference, which may not account for other range attributes;<sup>10</sup> allowing shared title to range improvements, which could make it more difficult to reallocate land use, such as to provide quality habitat for wildlife; requiring monitoring of rangeland standards, which has not been achievable due to BLM funding and staffing limitations; and sharing of water rights, as water is the most important resource for fish and wildlife.

## Proposed Changes to Grazing Regulations

BLM asserts that some changes would be substantive while others are clarifications, but it is not clear which potential changes BLM believes fall within each category. This adds to the uncertainty over which proposals are intended to, and likely to, make major changes in public lands grazing. There continues to be disagreement as to the extent of the environmental impact of the changes and whether that impact would be primarily beneficial or damaging in both the short- and long-terms. There also remains a difference of opinion as to the extent to which the regulatory effort should reinstate pre-1995 grazing provisions or substantially modify other current provisions.

Some of the key changes identified in the FEIS are discussed below. They involve ownership of range improvements and water rights, and opportunities for public input and appeals. Other discussed proposals pertain to terms and conditions of permits and rangeland health. These areas have been among the most controversial among affected interests.

**Share Title to Range Improvements.** BLM proposes reestablishing a pre-1995 rule allowing title to a structural range improvement, such as a fence, well, or pipeline, to be shared by the BLM and a permittee (or others) if it is constructed under a Cooperative Range Improvement Agreement. Title would be shared in proportion to each party's contribution to the cost of the improvement. Current regulations require documentation of a permittee's contributions to improvements and compensation if a permit is cancelled or passes to another. However, some advocate that ranchers should receive more direct compensation for improvements, would be encouraged to undertake and maintain improvements if they get title, and should be able to include improvements as assets to secure loans for grazing.

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<sup>9</sup>(...continued)

administration, perhaps reducing administrative costs. The FWS expressed concern that the current regulatory reform effort, in pertaining exclusively to BLM, could lead to inconsistencies between the BLM and the Forest Service in several areas.

<sup>10</sup>Under current BLM regulations, grazing preference is defined as having a superior or priority position against others for the purpose of receiving a grazing permit. The FWS expressed opposition to adding a quantity of forage to that definition without consideration of other features of range resources that are not quantifiable in terms of forage, such as species diversity and soil condition.



Opponents charge that shared title would create private rights on public land and could hinder action to correct grazing abuses. They contend that the government should hold title to improvements as they typically are important for other uses, such as recreation and wildlife habitat. Still others believe that improvements for grazing do not necessarily benefit other land uses, and thus permittees should not be rewarded with title.

**Acquire Private Water Rights.** The proposed regulations would allow permittees to acquire water rights, consistent with state law. Current rules require the federal government to follow state procedural and substantive law regarding livestock watering rights, but direct that title to the rights be held by the United States to the extent state law permits. Before 1995, practices as to water rights for livestock grazing varied and in some states could be acquired in the name of the permittee. Express language allowing private individuals to hold water rights is supported by some as providing an incentive for private water development on public land, and protecting permittees from being denied water. It is opposed by others who believe water rights should be in federal ownership to facilitate multiple uses and to preclude private claims for compensation for water rights, and because states typically do not allow grazing permittees on state lands to obtain water rights. Still others are concerned that public resources will be given away at no cost.

**Reduce Requirements for Public Involvement.** BLM proposes to reduce the occasions on which it is required to involve the public in its decisions. For instance, the agency would no longer be required to get input from the public regarding designation and adjustment of grazing allotment boundaries, the issuance or renewal of grazing permits, or modification of the terms and conditions of permits that are not meeting management objectives or the fundamentals of rangeland health. The agency also seeks to modify the definition of “interested public” so that only individuals, groups, and organizations who participate in the decisionmaking process on management of a specific allotment are maintained on the list of interested publics. Supporters maintain that the changes will prevent delays and facilitate timely decisions. Also, the agency views additional consultation as redundant, because the public already has opportunities to participate during the planning processes, reviews under the National Environmental Policy Act (NEPA),<sup>11</sup> and the development of reports used by BLM as a basis for increasing or decreasing grazing use and changing the terms of use (under 43 C.F.R. 4130.3-3(b)). The changes are criticized as restricting public input which could lead to ill-considered decisions. They are further opposed because decisions at the planning level are too general and broad to allow specific evaluation and comment. Still others contend that environmental reviews under NEPA are not required for some grazing decisions and where required are backlogged, and as a result public participation under NEPA often is delayed.

**Modify the Administrative Appeals Process.** The agency proposes to modify the administrative appeals process on grazing decisions and define the extent to which grazing should continue in the face of an appeal or stay of a decision. For instance, the proposed rule would provide that when a stay is granted on appeals to

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<sup>11</sup> P.L. 91-190; 42 U.S.C. §§4321-4347.

decisions involving renewing, modifying, suspending, or canceling a permit or on transferring preference, the affected permittee usually would continue grazing under the immediately preceding grazing authorization. Certain decisions would be required to be implemented immediately and not be eligible for a stay, including authorizations to graze temporary forage. The changes are sought to provide permittees with continuity of operations when a decision affecting their operations is appealed. They are opposed by some as limiting the ability of the public to participate in grazing decisions, reducing the flexibility of land managers to take certain actions based on what is best for resource conditions, and potentially continuing damaging grazing practices.

**Broaden the Definition of *Grazing Preference*.** Another proposal would broaden the definition of *grazing preference* to include a quantitative meaning — forage on public lands, measured in AUMs<sup>12</sup> — tied to a permittee's base property of land or water. The definition would continue to include a qualitative meaning — a superior or priority position to obtain a permit. The revised definition, which would be similar to pre-1995 rule language, is intended to link forage allocations to base property, give ranchers certainty as to the size of operations, and eliminate confusion as to the meaning of *preference*. Further, preference would include both *active use*, defined as use currently available for livestock grazing based on livestock carrying capacity and resource conditions, and *suspended use*, which is use that has been allocated for livestock grazing in the past but is currently unavailable. The new definition is opposed as infringing on the discretion of land managers to determine the extent of grazing that should be allowed.

**Remedy Rangeland Health Problems.** The proposal would require both assessments and monitoring of resource conditions to support agency determinations that grazing practices or levels of use are significant factors in failing to achieve rangeland health standards or conform with guidelines on an allotment. It would amend the timeframe and procedures for changing grazing management after a determination that grazing practices or levels are significant factors in failing to achieve standards or conform with guidelines. The change would allow a maximum of 24 months, rather than the current 12-month limit, for developing remedial changes in grazing practices. However, BLM could extend the deadline if responsibilities of another agency prevent completion within 24 months. Further, a change would phase in grazing increases or decreases of more than 10% over a five-year period, unless the changes must be made sooner under law (e.g., the Endangered Species Act (ESA)<sup>13</sup>) or the permittee agrees to a shorter period. BLM maintains that these changes will provide a sound basis for agency determinations and give the agency more time and flexibility in working with permittees who are not meeting the standards. They are opposed as potentially allowing damaging practices to continue and requiring excessive documentation even when damage is obvious. Opponents also claim that BLM lacks staff and funds to collect the necessary information formally.

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<sup>12</sup>An AUM is defined as the amount of forage necessary for the sustenance of one cow or its equivalent for a period of one month.

<sup>13</sup> P.L. 93-205; 16 U.S.C. §§1531-1540.

**Remove Limit on Permit Nonuse.** The proposed rule would remove the current three-year limit on temporary nonuse of a permit by allowing permittees to apply for nonuse of all or part of a permit for up to one year at a time, for as many years as needed. The change is promoted as allowing for recovery of the land and providing flexibility to ranchers who may not be able to graze for reasons including financial hardship, drought, or overgrazing. Critics argue that the change does not address the underlying problem — permitting grazing that exceeds the capacity of allotments. Others are concerned that conservationists will obtain grazing permits and opt for extended nonuse. However, temporary nonuse is allowed only if authorized by BLM and for no longer than one year at a time.

**Eliminate Conservation Use Grazing Permits.** Regulations allowing BLM to issue long-term *conservation use* grazing permits would be eliminated to comply with court decisions that permits should be issued for grazing and conservation needs should be met through alternatives. Advocates of conservation use observe that the practice allows overgrazed land to be rested and that BLM should develop a legal alternative to the current language.

**Other Proposed Changes.** Other proposed changes include

- restricting BLM to taking action against a permittee convicted of breaking laws while engaged in grazing only if the violation occurred on the permittee's allotment;
- emphasizing that reviews under NEPA will consider the social, economic, and cultural impacts of proposed changes in grazing preference, in addition to the ecological impacts;
- increasing administrative fees for livestock crossing permits, billings, and preference transfers;
- providing that a biological assessment or evaluation by BLM under the ESA is not an agency decision for purposes of protests and appeals;
- specifying that BLM will cooperate with state, tribal, local, and county grazing boards in reviewing range improvements and allotment management plans on public lands;
- stating that the temporary changes that BLM can make within the terms and conditions of permits involve the number of livestock and period of use that would result in temporary nonuse and/or forage removal; and
- requiring BLM to document observations supporting a reduction in grazing intensity, and providing that reductions will be made through temporary suspensions of active use rather than through permanent reductions

**Changes Not Proposed.** BLM considered but has not proposed many other changes to grazing regulations, according to the proposed rule and FEIS. For instance, the agency considered adopting rule language to support establishing and operating a new type of grazing unit, called a *reserve common allotment* (RCA), but did not do so because of negative public reaction to the idea. However, the BLM continues to consider the issue of forage reserves as part of its consideration of policy changes. (See below under “Grazing Policy Changes Under Consideration” for a discussion of reserve common allotments.) The agency also considered allowing permit holders to temporarily lock gates on public lands, for instance to protect private property by preventing cattle from leaving grazing allotments and to minimize disturbances during lambing and calving seasons. The idea was opposed

as preventing access by other land users, such as hunters and recreationists; giving a special privilege to permittees; and being currently prohibited by law.

BLM also did not propose altering the existing provisions under which a grazing fee surcharge is placed on permittees who allow livestock neither they nor their children own to graze on public land. The current surcharge provision was incorporated in 1995 to address concerns regarding the potential for a permittee to make a substantial profit when subleasing grazing privileges. BLM asserts that the current surcharge provision is equitable and that it does not want to address fee-related issues as part of the current reform effort.

## **Overview of Grazing Policy Process**

On March 25, 2003, BLM first announced possible grazing policy changes as a complement to the regulatory changes being considered.<sup>14</sup> According to BLM, the focus is on policy changes that can be carried out under existing rules. The distinction between policies and regulations is not always clear, and when an agency must take action through formal rulemaking can be an issue.<sup>15</sup>

The agency seeks policy reforms to promote citizen stewardship of public lands, provide flexibility to managers of livestock grazing, and increase innovative partnerships. BLM has reviewed the advice and recommendations of its Resource Advisory Councils on policy ideas.<sup>16</sup> Final grazing policy changes will be addressed when the rulemaking process is “substantially completed,” according to BLM.

## **Grazing Policy Changes Under Consideration**

On March 25, 2003, BLM issued a press release announcing that policy changes under consideration include reserve common allotments (RCAs), conservation partnerships, voluntary allotment restructuring, conservation easement acquisition, and ESA mitigation.<sup>17</sup> BLM also examined the establishment of RCAs as a regulatory change, but did not propose rule language in this area. Some have asserted that other policy options under consideration might necessitate the adoption of new rules, which would require opportunities for public comment.

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<sup>14</sup> The announcement took the form of a press release, now contained on the BLM website at [[http://www.blm.gov/nhp/news/releases/pages/2003/pr030325\\_grazing.htm](http://www.blm.gov/nhp/news/releases/pages/2003/pr030325_grazing.htm)], visited on August 23, 2005.

<sup>15</sup> See 5 U.S.C. §551(4).

<sup>16</sup> BLM has two dozen Resource Advisory Councils (RACs) in western states to provide the agency advice on managing public lands. Each RAC consists of some 12-15 citizens representing diverse interests, including ranchers, environmental groups, tribes, academia, and state and local governments.

<sup>17</sup> For more information on policy options, see the BLM website at [<http://www.blm.gov/nhp/efoia/wo/fy03/im2003-214ch1.htm>] and [<http://www.blm.gov/nhp/efoia/wo/fy03/im2003-214.htm>], visited on August 23, 2005.

BLM solicited public feedback on the policy options under consideration through a series of public workshops. While some support for policy changes was expressed, many members of the public asserted that available information was inadequate to assess the policy changes, raised concerns about the outlined options, or viewed the initial schedule for considering policy and rules changes as too short. In response, BLM announced that it had extended the timeframe for developing policy changes, but did not issue a schedule for completing actions. The agency also developed and published on its website more detailed information on RCAs, conservation partnerships, and voluntary allotment restructuring. It noted that conservation easements were no longer being pursued as a major policy tool, and that the concept of ESA mitigation had evolved to the broader notion of *landscape habitat improvement*.

**Reserve Common Allotments (RCAs).** RCAs would serve as livestock forage for permittees while their normal allotments undergo rest or improvements, and might be used for unplanned needs, such as drought, fire, or flood. The BLM asserts that existing regulations allow the creation of RCAs but with impediments. RCAs are supported as encouraging improvements (such as a prescribed burn) and recovery from heavy grazing, and necessary in emergencies so that ranchers won't have to reduce herd size or sell out for lack of forage. Conservationists are concerned that this approach does not address what they view as the fundamental issue — overstocking or grazing unsuitable lands — and that RCAs will benefit ranchers who mismanaged their allotments. Livestock groups fear a reduction in grazing and loss of water rights through nonuse, coercion to participate, and use of RCAs as a subterfuge for conservation use. Key issues for both supporters and critics include how much land, and which lands, will become part of RCAs (e.g., vacant allotments, areas of nonuse); what will trigger their use; their term; how many permittees will be allowed to graze simultaneously; and how forage will be allocated.

**Conservation Partnerships.** The goal of conservation partnerships between permit holders and the BLM would be to improve environmental health. A permittee could enter into a performance-based contract with BLM to undertake projects to: restore streambanks, wetlands, and riparian areas; enhance water quantity and quality; improve wildlife or fisheries habitat; and support the recovery of threatened and endangered species, among other actions. In return, the permittee could receive management flexibility, increased livestock grazing, and stewardship grants to pay for investments in conservation practices. Advocates note that these arrangements would give permittees credit for improvements they have been making, encourage and reward good stewardship, and enhance the role of permittees in managing grazing allotments. Opponents contend that private property rights could be impaired, the amount of available funding is unclear, the extent of resource improvement is uncertain, permittees might receive benefits for little or no resource improvement, and partnerships may not be entirely voluntary. Differences of opinion exist as to a role for third parties, rewards for permittees, and dealing with intermingled private land.

**Voluntary Allotment Restructuring.** Voluntary allotment restructuring would allow two or more grazing permittees to merge allotments. One or more of the permittees would not graze temporarily, while the others grazed over the entire area, to achieve lighter grazing. Such restructuring is supported as improving range

conditions while maintaining the economic viability of permittees. Concerns include that restructuring would reduce grazing and can already occur informally, operator to operator. Issues involve when restructuring would be used and whether and how to compensate ranchers who give up grazing privileges.

**Conservation Easements.** Conservation easements — land use restrictions — were being considered to preserve open space. Under this arrangement, BLM would place conservation easements on its land identified for disposal. Permittees would similarly restrict development on their private land in exchange for acquiring the BLM lands with the easements. These easements were advocated as benefitting the land, land managers, and permittees. However, BLM subsequently asserted that because they are limited in their ability to use conservation easements, such easements are not currently a major policy option. Easements have been opposed as reducing land values, limiting the management discretion of private landowners, not necessarily providing a public benefit, and encumbering land disposal.

**Endangered Species Act Mitigation.** BLM viewed the policy options listed above as providing opportunities to mitigate the effects of livestock grazing on species listed under the ESA. Mitigation banks also were contemplated to preserve or create habitat for listed species in exchange for mitigation credits. Such credits could be sold to other land users to offset the impacts of development on listed species. This idea raised concerns among livestock groups that grazing would be subordinated to conservation and private property rights could be weakened, and among environmentalists that permittees would be compensated for something the BLM already is obligated to protect. This concept is now being considered as *Landscape Habitat Improvement*, to promote species conservation and facilitate ESA consultations. Habitat management would be pursued on a landscape basis, perhaps involving lands under various ownerships, which presumes a larger geographic area than a grazing allotment. Grazing permittees could form partnerships to promote species conservation and maintain or improve habitat while continuing to graze public lands.

## Conclusion

More than two years have passed since BLM notified the public of its consideration of changes to both grazing regulations and policies under its *Sustaining Working Landscapes* initiative. During this time, evaluations of possible regulatory and policy changes have been proceeding on separate tracks, and have met with mixed reaction.

Many of the key regulatory changes contained in the FEIS deal with provisions that took effect in 1995, during the last major revision of grazing rules. Among them are proposals to allow shared title to range improvements, allow private acquisition of water rights, reduce requirements for public involvement, modify the administrative appeals process, broaden the definition of grazing preference, change the timeframe and procedures for remedying rangeland health problems, remove the limit on permit nonuse, and eliminate conservation use grazing permits. The revisiting of issues dealt with a decade ago, together with other proposed changes,

has been generally supported by livestock organizations and some range professionals who see benefits both to the range and those grazing on public land. By contrast, many environmental organizations and other range experts oppose the changes on the grounds that a need for change has not been demonstrated and the particular proposals could harm the environment.

Public comment on the proposed regulatory changes, together with the DEIS assessing their impact, was accepted through March 2, 2004. BLM evaluated the comments over many months, before publishing an FEIS on June 17, 2005. BLM postponed developing a final grazing rule to consider public comment allegedly received after the closing date, particularly from the Fish and Wildlife Service. The BLM is preparing a supplement to the FEIS, expected in final form in the spring of 2006. No date for the final grazing rule has been announced.

Public feedback on possible policy changes already has shaped the proposals under examination as well as extended the expected timeframe for considering changes. Key policy issues under consideration relate to RCAs, conservation partnerships, voluntary allotment restructuring, and landscape habitat improvement. Public reaction to policy changes could become more contentious once details of the changes are developed and announced to the public.

BLM has reviewed input from its Resource Advisory Councils on policy options. No timeframe for issuing policy changes has been announced. BLM expects to focus on final policy changes after the completion of the rulemaking process.