



March 6, 2020

Mr. Seth Flanigan  
Project Manager  
Bureau of Land Management  
3948 S. Development Ave  
Boise, ID 83702

**RE: Response to the Bureau of Land Management's Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Revision of Grazing Regulations for Public Lands (85 Fed. Reg. 3410) Docket No.: 20XL.LLWO220000.L10200000.P**

Submitted via BLM e-planning portal: (<https://go.usa.gov/xyMqb>)

Dear Mr. Flanigan:

On behalf of the United States Cattlemen's Association (USCA), our nationwide membership of independent cow-calf producers, feedlot operators, backgrounders, and livestock haulers, please find the following comments regarding Bureau of Land Management's (BLM) Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Revision of Grazing Regulations for Public Lands (85 Fed. Reg. 3410) (Docket No.: 20XL.LLWO220000.L10200000.P). Established in 2007, USCA represents U.S. cattle producers from across the country on issues affecting their bottom line.

USCA was founded on the principle that a grassroots effort can work positively and effectively with the U.S. government to reform U.S. agriculture policy and ensure a fair, competitive marketplace.

USCA members graze livestock (primarily cattle) on private lands throughout the United States and public lands throughout the West. We understand that working lands are critical to providing America and the world with high quality food and fiber, while at the same time protecting clean water, clean air and healthy soils. To do this, we need BLM regulations that work for the land, the public and the permittee. We appreciate the opportunity to cooperate with BLM on improving regulations for the benefit of all parties involved in public land management. These public lands are important for our members' livelihoods and for the services we provide the public.

BLM grazing regulations have been revised in the past and we appreciate BLM's effort to continue to revise and improve them. Parts of the regulations work well, but there are other parts that need refinement. BLM grazing regulations must be updated to reflect changes in legislation and be refined to reflect improved science and shared experience with the existing regulations. We offer the following input to reflect what our members have learned by trying to make the current regulations work in the real world.

Passages taken from 43 CFR 4100 will appear in *italicized* text. Our recommendations will appear as underlined text. Recommended deletions will appear as ~~strikethrough~~ text. **Bold** text is for emphasis only. Comments follow in numerical order from 43 CFR 4100. In order to improve the grazing regulations in 43 CFR 4100, USCA suggests the following changes:

### **43 C.F.R. § 4100.0-5 Definitions.**

Grazing preference and preference: Restore pre-1995 definitions including a priority position for renewal of a grazing permit. Permits should recognize and restore AUMs levels reduced solely as a result of application of the 1995 change in definition. This does not suggest that AUM changes made as a result of monitoring or other range conditions should not be changed without proper analysis.

Suggested language:

*“Grazing preference or preference means 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, and other authorized forms of use. Grazing preference holders have a superior or priority position against others for the purpose of receiving a grazing permit or lease. The Preference number of AUMs should be documented and shown for **each** grazing permit in the respective Land Use Plans.”*

Carrying capacity: The phrase “carrying capacity” should be changed to “Domestic livestock carrying capacity” and be defined as:

Domestic livestock carrying capacity is a quantifiable number of Animal Unit Months as determined by rangeland studies on a sustainable yield basis that will not induce damage to vegetation or related resources.

Domestic livestock carrying capacity should refer to only the forage appropriated to livestock not total forage availability. Distinction must be made between livestock forage and forage appropriated to wildlife, wild horses and burros, and other conservation purposes in order to comply with the Bureau’s multiple-use mandate. This will allow BLM to better determine the causal factors of adverse range conditions.

Conservation use: Conservation use should be removed from the regulations to comply with the opinion of the U.S. District Court for the District of Wyoming (*Public Lands Council v. Babbitt*, 929 F. Supp. 1436 (D. Wyo. 1996), and upheld by the Tenth Circuit Court of Appeals (*Public Lands Council v. Babbitt*, 167 F.3d 1287 (10<sup>th</sup> Cir. 1999), which found that the term supersedes the BLM’s authorities under the Taylor Grazing Act.

Consultation, cooperation, and coordination: The definition should be returned to BLM’s pre-1995 grazing regulations to maintain consistency with the language in the Federal Land Policy and Management Act (FLPMA).

Monitoring: the regulations should specify “quantitative data” so that the definition reads:

*“Monitoring means the periodic observation and orderly collection of quantitative data to evaluate:*

*(1) Effects of management actions; and*

*(2) Effectiveness of actions in meeting management objectives.*

USCA supports requiring monitoring to consider ecological site and current ecological site potential, as shown by state and transition modeling, when assessing effects of management actions and effectiveness of management actions in reaching objectives.

BLM should base grazing decisions that have economic and practical implications to permittees on quantitative data, not “best guesses” or anecdotal observations. BLM should base actions on replicable, high-quality scientific data and include cooperatively collected quantitative data.

Utilization: Refine the definition of “utilization” to read as follows:

*“Utilization means the proportion of current year’s forage production that is consumed or destroyed by grazing animals measured at the end of the annual growing season or end of the annual grazing season, whichever comes later. Utilization may refer either to a single species or to the vegetation as a whole.”*

The definition should remove the phrases “specific period” “pattern of use.”

**43 C.F.R. § 4110.1 Mandatory qualifications.**

The Taylor Grazing Act, grazing districts, and Public Rangelands Improvement Act all require that grazing permits be issued to entities that own or control base property and actually graze livestock on the range. The regulations should be amended to require that a permittee must be actively engaged in the livestock business and intend to use the permitted allotments to graze livestock:

*“§ 4110.1 Mandatory Qualifications.*

*(a) Except as provided under §§ 4110.1-1, 4130.5, and 4130.6-3, to qualify for grazing use on the public lands an applicant must own or control land or water base property, be engaged*

in, or facilitating the production of, livestock and will use the public lands to graze livestock, and must be..."

**43 C.F.R. § 4110.3-2(b) Decreasing active use.**

BLM has used rangeland health determinations under Section 4180.2(c) and/or made land use plan objective determinations under Section 4100.0-8 or Section 4130.3-3 that unnecessarily reduced grazing. The grazing regulations should not obligate, nor imply, that BLM must impose automatic decreases in AUMs. Instead, active use should be reduced only if other management practices (rotation, duration of deferment, improvement of distribution) do not work. Reduction of active use AUMs should only occur after modification of management practices fails to provide a solution and should only reduce AUMS to a level necessary to meet objectives with the implementation of the new practices.

If quantitative data shows a need to reduce active AUMs, those AUMs should be held as suspended use AUMs. A permanent reduction in Preference AUMs must not occur unless the Land Use Plan conveys that these AUMs are no longer available for livestock grazing and the AO makes a formal finding on the basis of long-term quantitative monitoring data that there is no "realistic expectation that the AUMs can be returned to active livestock use in the foreseeable future." See 60 Fed. Reg. 9931 (2/22/1995).

*"§ 4110.3-2 Decreasing "Permitted" Use*

*(b) When monitoring trends show grazing use is not consistent with the provisions of these Regulations, or, when use exceeds the domestic livestock carrying capacity, as determined through quantitative monitoring, ecological site inventory or other acceptable science-based methods, the authorized officer shall, if necessary to maintain or improve rangeland productivity, modify management practices to achieve management objectives. If modification of management practices does not achieve management objectives, then the authorized officer may reduce active use in direct proportion to the quantity of excess grazing documented by quantitative monitoring.*

(c) Any decrease in active use shall be classified as suspended use.

**43 C.F.R. § 4130.1-2 Conflicting applications.**

Granting public access across private land should not be required to obtain approval of an application for grazing use and/or a grazing permit. The portion of 43 C.F.R. § 4110.1-2(d) which provides as a factor "public ingress or egress across privately owned or controlled land to public lands" should be deleted.

**43 C.F.R. § 4130.3-1 Mandatory terms and conditions.**

Quantitative data should be used to determine carrying capacity. The following changes to the mandatory terms and conditions should be made:

*"§ 4130.3-1 Mandatory terms and conditions.*

*(a) The authorized officer shall specify the kind and number of livestock, the period(s) of use, the allotment(s) to be used, and the amount of use, in animal unit months, and the amount of flexibility authorized for every grazing permit or lease. The authorized livestock grazing use shall not exceed the livestock carrying capacity of the allotment as determined from quantitative data.*

**43 C.F.R. § 4130 Free-use grazing permits.**

Wildfire has increased in frequency and intensity. It is the most damaging factor to habitat values and forage production. The regulations should support responsible use of livestock grazing as a tool for fine-fuel reduction. The following changes will facilitate better use of free-use grazing permits and targeted grazing. Delete from 43 CFR 4131.3-1:

~~*“Permits and leases shall incorporate terms and conditions that ensure conformance with subpart 4180 of this part.*~~

Revise 43 CFR 4130.3-2 as follows:

*“§ 4130 Free-use grazing permits.*

*(b) The authorized officer may also authorize free use under the following circumstances:*

*(1) The primary objective of authorized grazing use ~~or conservation use~~ is the management of vegetation to meet resource objectives other than the production of livestock forage and such use is in conformance with the requirements of this part;*

*(2) The primary purpose of grazing use is for scientific research or administrative studies; or*

*(3) The primary purpose of grazing use is the control of noxious weeds and/or annual grasses.*

*(4) The primary purpose of grazing use is fuel reduction to help avoid the spread of future wildfire.”*

*(5) Targeted grazing by livestock to accomplish a specific purpose as determined and authorized by an AO.*

Delete subsection (e):

~~*“(e) The kinds of indigenous animals authorized to graze under specific terms and conditions”*~~

Revise subsection (f):

*(f) Provision for livestock grazing temporarily to be delayed, discontinued or modified to allow for the reproduction, establishment, or restoration of vigor of plants, ~~provide for the improvement of riparian areas to achieve proper functioning condition or for the protection of other rangeland resources and values consistent with objectives of applicable land use plans,~~ or to prevent compaction of wet soils, such as where delay of spring turnout is*

*required because of weather conditions or lack of plant growth;*

Add a new subsection:

“(i) Provisions for livestock grazing to be temporarily authorized as a fuels reduction tool shall be authorized under a Categorical Exclusion to help avoid the spread of future wildfire. This action is not subject to Protest or Appeal.”

#### **43 C.F.R. § 4130.6-1 Exchange-of-use grazing agreements.**

Clarification of the exchange of use regulations will reduce confusion and improve use of this tool to best manage intermingled private and public lands. The exchange of use language should be revised as follows:

*“§ 4130.6-1 Exchange-of-use grazing agreements.*

*(a) An exchange-of-use grazing agreement may be issued to an applicant who owns or controls lands that are unfenced and intermingled with public lands ~~in the same allotment~~ when use under such an agreement will be in harmony with the management objectives for the allotment and will be compatible with the existing livestock operations. The agreements shall contain appropriate terms and conditions required under § 4130.3 that ensure the orderly administration of the range, including fair and equitable sharing of the operation and maintenance of range improvements. The term of an exchange-of-use agreement may not exceed the length of the term for any leased lands that are offered in exchange-of-use.”*

#### **43 C.F.R. § 4130.6-3 Crossing Permits.**

Crossing (or trailing) permits are useful tools for grazing management. Revisions in the language will improve use of the permits and better incorporate provisions passed by Congress in P.L. 113-291. 43 CFR §4130.6-3 should be modified as below:

*§ 4130.6-3 Crossing permits*

After consultation and coordination with existing permittees/lessees and any owners of private lands to be crossed,”

*“A crossing permit may be issued by the authorized officer to any applicant showing a need to cross the public and or other land under Bureau of Land Management control, or both, with livestock for proper and lawful purposes. A temporary use authorization for trailing livestock shall contain terms and conditions for the temporary grazing use that will occur as deemed necessary by the authorized officer to achieve the objectives of this part. Crossing, or trailing, authorizations shall be authorized under a Categorical Exclusion if the forage to be consumed during the trailing does not reduce or otherwise affect the existing permitted use of the area within the crossing permit. The Bureau of Land Management’s approval of trailing practices shall not be subject to review under Section 102 (2)(C) of the National Environmental Policy Act (42 U.S.C. 4332 (2) (C)).”*

#### **43 C.F.R. § 4130.7 Ownership and identification of livestock.**

Having livestock control agreements subject to Freedom of Information Act (FOIA) disclosure

discloses private financial information and serves no public purpose. The language should be revised to permit BLM to review the control agreement but not require that it be included in files subject to FOIA disclosure:

*“§ 4130.7 Ownership and identification of livestock.*

*(d) Except as provided in paragraph (f) of this section, where a permittee or lessee controls but does not own the livestock which graze the public lands, the agreement that gives a permittee or lessee control of the livestock by another individual or business shall be ~~filed~~ with reviewed by the authorized officer for approval prior to any grazing use. The document shall describe the livestock and livestock numbers, identify the owner of the livestock, contain the terms for the care and management of the livestock, specify the duration of the agreement, and shall be signed by the parties to the agreement. The authorized officer shall file a statement in the permit or lease file that ‘the livestock control agreement has been reviewed and approved.’”*

### **43 C.F.R. § 4180.1(a) Fundamentals of rangeland health.**

Part 4180 should be removed from the Grazing Regulations. Current BLM Grazing Regulations 4180 improperly direct BLM to act on qualitative assessments, not quantitative data.

Rangeland health determinations should be based on quantitative data and not focused solely on livestock grazing.

Changes in grazing status 43 CFR 4110.3 should be changed to reflect the above:

*“The authorized officer shall periodically review the level of active use specified in a grazing permit/lease and may make changes to the terms and conditions as needed to accomplish allotment objectives. The AO shall first determine if livestock grazing is the causal factor for not achieving allotment objectives based on long-term rangeland monitoring trends. If the current livestock grazing program is determined to be the causal factor, the AO shall first implement changes in the management program to include, but not be limited to, changes in seasons of use, duration and timing of use, or rangeland improvements to accomplish a trend towards achieving allotment objectives before reducing active AUM’s. Any reductions in active use will be placed in suspension.”*

We support an Instruction Memo to all field offices to assess if rangeland management tools other than reductions in active AUMs will accomplish allotment objectives. BLM should document when other factors, such as fire, roads, wild horses, drought, or invasive species impact rangeland conditions. Changes to BLM management should address the cause of problems, not simply reduce livestock grazing. When grazing plays a role in problems, it is important to use appropriate management, not just reduce AUMs.

### **Grazing Permit Renewals.**

The grazing permit renewal process has become unworkable. The process is too expensive, slow, and complicated. Grazing permits should be considered as continuation of an ongoing process. Unless changes are being made to the permit, they should be renewed as a categorical exclusion. The language should be changed to:

*"§ 4120.3-1(f) Conditions for range improvements.*

*(f) Proposed range improvement projects shall be reviewed in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4371 et seq.). The decision document following the environmental analysis shall be considered the proposed decision under subpart 4160 of this part. Range improvement projects consistent with an allotment management plan shall be documented under the National Environmental Policy Act of 1969 with a categorical exclusion."*

USCA supports targeted grazing as a fine fuel management tool. The regulations will better facilitate use of this tool by incorporating the following changes:

- The issuance of targeted grazing permits should be issued under programmatic NEPA (including this EIS) and site-specific applications categorically excluded from NEPA analysis.
- Targeted grazing authorizations should be separate from regular grazing authorizations. That is, the Animal Unit Months (AUM) authorized by such permits should not reduce the number of AUMs permitted under existing grazing preference or term permit.
- Targeted grazing authorizations should not conflict with existing grazing preference or term permits.
- BLM Instruction Memorandum No. 2018-109 provides direction so that targeted grazing authorizations can be issued and administered with the appropriate flexibility necessary to achieve the desired management objectives.
- 43 CFR 4160 provides BLM with authority to issue decisions authorizing nonrenewable grazing permits in full force and effect.

USCA appreciates this opportunity to provide input to the process and looks forward to continuing our participation. Please contact our Washington, DC office at (202) 870-1552.

Sincerely,



Dr. Brooke Miller, MD  
President, United States Cattlemen's Association