



The Wyoming Department of Agriculture is dedicated to the promotion and enhancement of Wyoming's agriculture, natural resources and quality of life.

March 2, 2020

Bureau of Land Management
Seth Flanigan
3948 S. Development Avenue
Boise, ID 83702

Dear Mr. Flanigan,

Following are the Wyoming Department of Agriculture's (WDA) comments pertaining to the Bureau of Land Management's (BLM) Notice of Intent to Prepare an Environmental Impact Statement (EIS) for the Proposed Revisions of Grazing Regulations (Regulations) for Public Lands.

Our comments are specific to our mission: dedication to the promotion and enhancement of Wyoming's agriculture, natural resources, and quality of life. As these regulations have the potential to affect our agriculture industry, our natural resources, and welfare of our citizens, it's important you continue to inform us of proposed actions and decisions and continue to provide us the opportunity to express pertinent issues and concerns.

The WDA appreciates the opportunity to comment on the regulations to allow the BLM to streamline the permitting and leasing process, increase flexibility, clarify areas of confusion, and continue to promote rangeland health. We fully support updating and modernizing the 1995 (October 1, 2005) regulations and eliminating any reference to the 2006 or newer publication of the BLM regulations.

The WDA provide the following comments to the 1995 (October 1, 2005) regulations:

4100.5 - Definitions

- *"Livestock or kind of livestock means species of domestic livestock --cattle, sheep, horses, burros, and goats."* We would support making this much more flexible, and include other species such as bison and llama. There are a number of bison ranches in eastern Wyoming where producers could potentially benefit from BLM permits. Llama are regularly used in conjunction with sheep for guardian animals.
- *Grazing Preference or preference "means 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."* We ask for clarity on the grazing preference definition to clearly include active use and use held in suspension as part of the definition. This is especially applicable to 4110.3, which goes beyond base property and requires monitoring, documented field observations, ecological site inventory, or other data acceptable to the authorized officer as well as the National Environmental Policy Act (NEPA).

4110.2-3 - Transfer of Grazing Preference

- We support the streamlining of the permit and lease renewal process and reduction of staff workload by making

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transfer of a grazing preference to another permittee/lessee an Administrative Decision. We support the ability of the authorized officer to make these decisions administratively and be effective immediately and not subject to the Proposed Decision and Protest process.

4110.4-2 Decreased Land acreage

- We urge the BLM update and clarify the disposal and devotion of public lands to other purposes. We are concerned the rise in new land designations and public interest to remove livestock grazing will negatively impact our industry. Additionally, we believe NEPA should analyze the actions prior to any disposal, devotion to other purposes, or proposed allotment closures.

4120.2 Allotment Management Plans.

- Allotment Management Plans (AMPs) are often outdated and do not reflect change in conditions or current management. We request BLM revise the AMP process to not prohibit flexibility as found in 4120.2(a)(3) *"Specify the limits of flexibility, to be determined and granted..."* but rather develop a wide array of options to guide livestock management to meet desired resource conditions. We also believe NEPA should only analyze the permit, not the AMP. The BLM prohibits themselves and the grazing permittees from making changes to livestock grazing management on an annual basis due to the limited flexibility and Record Decision. Ultimately this lack of flexibility hinders the grazing permittees from making progress towards rangeland health standards.

4130.2 Grazing permits of leases

- 4130.2(d) *"The term of grazing permits or leases authorizing livestock grazing on the public lands...shall be 10 years unless..."* We understand permits have always been on a ten year timeline, but we would urge BLM to reconsider this binding timeline and increase the permits from 10 to 20 years. We are aware of very few permits actively reanalyzed and updated every ten years. Realistically, most permits are pushing 20 years with no new NEPA and with old and outdated AMPs. To exacerbate the delay there is an ever increasing national requirement for agency staff to collect additional data, such as sage-grouse habitat and AIM data on top of annual utilization and trend monitoring for standards and guidelines.

4130.4 Approval of changes in grazing use within the terms and conditions of permits and leases

- We support the ability of the authorized officer to make administrative changes to permits within the terms and conditions. This is just one reason to broaden the terms and conditions of the permits to allow more flexibility to the agency and the permittees. Narrowly written permits are not conducive to address environmental conditions, such as snow, spring turn out, drought, or changed resource conditions. When permittees are authorized temporary nonuse, we urge the agency to actively pursue other permittees in need of additional forage to temporarily use these AUMs. We also urge the BLM to remove the Conservation Use Permit from the regulations, as this provision was struck down in 1998 by the 10th Circuit Court and never removed from the regulations.

4130.6-2 - Nonrenewable Grazing Permits and Leases:

- Nonrenewable grazing permits and leases are available to the authorized officer to make management decisions to address resource concerns and to maintain healthy rangelands. The authorized officer should be able to address resource concerns, utilize targeted grazing, incorporate vegetation treatments and implement fire recovery efforts in order to adjust to the changing environment in a timely manner. The requirement to consult, cooperate, and coordinate with interested public prior to an authorized officer decision is often not conducive to making time sensitive decisions. We support the ability of the authorized officer to make these decisions administratively and be

effective immediately and not subject to the Proposed Decision and Protest process.

- **Targeted Grazing:** Targeted grazing is an important tool to utilize domestic livestock grazing to treat and manage desired vegetation composition and structure, as well as undesirables including invasive and noxious weeds. Examples of targeted grazing include managing cheatgrass and creating fuel breaks. The authorized officer should have the ability to use Targeted Grazing to quickly adjust to changing environmental conditions.

We are aware of how existing BLM regulations and prohibitive terms and conditions made the projects uncondusive and economically unrealistic for grazing permittees to implement and meet the intent of the targeted grazing project. These projects need absolute flexibility to the terms and conditions, not more restrictions. We also recommend expanding all grazing permits, especially targeted grazing projects to include more than one type of livestock. Existing terms and conditions for existing type of livestock may not actually adequately address the vegetation and should be expanded. We support the ability of the authorized officer to make these decisions administratively and be effective immediately and not subject to the Proposed Decision and Protest process.

4130.6-3 - Crossing Permits:

- We support the streamlining of the crossing authorization process. Crossing authorizations are for the most part Categorical Excluded from NEPA; however, they still require a Proposed Decision and Protest process. We support the ability of the authorized officer to make these decisions administratively and be effective immediately and not subject to the Proposed Decision and Protest process.

4150.1 - Unauthorized Grazing Use-Violations:

- This section needs updated and changed to determine the appropriate path forward when a potential violation is determined as incidental and non-willful. Currently, the regulations do not direct the authorized officer to work with the permittees or lessees. Non-willful and incidental use should not go directly to the violations in sub-part (b), but instead provide flexibility and allow corrective actions between the Authorized Officer and permittees or lessees.

4160.1 - Proposed Decision:

- If there is no Protest period of the Decision Making process then the need for the Proposed Decision is either eliminated or changed to allow only the permittee or lessees the ability to protest the proposed decision, all others would be notified of the Final Decision and offered the opportunity to file an appeal.

4160.2 - Protests:

- Currently, permit renewals require a Proposed Decision and a Protest period. We support streamlining the permit and lease renewal process by eliminating the Protest portion (excluding permittees or lessees) of the Proposed Decision process and issuing a Final Decision. Additionally, WDA would support Mediation being offered to the permittee or lessees to address rangeland health concerns, based on the guidelines offered in BLM's Collaborative Stakeholder Engagement and Appropriate Dispute Resolution document located at: https://www.blm.gov/sites/blm.gov/files/Services_CADREngagementandADRGuide.pdf#page=3&zoom=auto,-205,775

4180 - Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration

- The Fundamentals of Rangeland Health Standards are applicable to all permitted activities on BLM lands, yet the regulations fall only under the livestock grazing section. We urge the BLM to consider moving the 43 CFR 4180 regulations to the planning regulations section to address all permitted activities.
- We support the development and implementation of standards and guidelines on a state by state basis. Given the change in environmental conditions, many of which are outside of the control of livestock grazing management, meeting the standards and guidelines may be well outside of the 10 year permit renewals timelines and require significant inputs to shift the resources in the desired direction.

Examples of management practices might include streambank restoration, reclamation from disturbed sites, soil erosion from large scale wildfires, and more. Many of these actions require additional NEPA well beyond the grazing permit renewal process. In some cases, where livestock grazing is determined as a significant causal factor, range improvement projects, such as stock water development, pipelines, or fences could be used to restore resource conditions. However, these all require additional analysis under NEPA and due to lack of funding, staff changes, or other reasons, many grazing permittees do not see these projects analyzed in a timely manner to assist in maintaining, restoring, or enhancing standards and guidelines.

- We recommend BLM consider large programmatic NEPA decisions for range improvement projects across field offices to tier site specific decisions to streamline NEPA and to address allotments not meeting rangeland health standards and guidelines. We believe grazing improvement infrastructure should belong to the permittees. Due to not holding title, loans for the infrastructure are often times difficult to obtain.
- By evaluating rangeland health standards across large watersheds or landscapes can provide additional mechanisms for BLM to improve efficiencies. Allotments negatively contributing to not meeting the standards and guidelines could implement site specific management changes to address resource conditions.
- When an office develops a rangeland health assessment, the ability for the field office to implement appropriate actions by the start of the next grazing year, according to 4180.2(c)(2) is not appropriate. We recommend revising the standards determination language to issue the determination simultaneously with the Decision Record for the grazing permit renewal.

Further under 4180.(12)(f) the regulations are outdated regarding the lack of established state or regional standards and guidelines. We are unaware of any state where standards and guidelines have not been developed and implemented. We recommend removing this language to reduce redundancy.

- Rangelands across the West are often decadent due to lack of wildfire, prescribed fire, or other vegetation treatments to create mosaics of different vegetation seral stages. The limited parameters for grazing management under existing permits continue to exacerbate the issue. Removing livestock grazing entirely is often proposed as a solution to improve rangeland conditions, which we strongly oppose. Instead, we urge the BLM to consider and utilize domestic livestock, including but not limited to goats, sheep, and cattle to manipulate and reinvigorate decadent vegetation, reduce fine fuels for wildfire, and improve overall rangeland health.
- As with many contingencies under livestock grazing management, BLM requires the agency to demonstrate through monitoring how proposed changes will meet standards and guidelines. We support monitoring to show trends towards meeting desired conditions, however, BLM must take a serious look at the grazing regulations and identify how to streamline decisions. The requirements to collect more data continue to increase, without any additional funding or staff to meet these demands. Grazing permittees and field staff are hindered from implementing new and creative ideas because of the monitoring requirements and fear of litigation without the vast amounts of data.

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- **Outcome Based Grazing:** We support Outcome Based Grazing (OBG) authorizations on BLM lands. OBG is a mechanism to allow flexibility while meeting resource conditions given changes in circumstances and environmental conditions. The requirement for permittees/lessees to meet rangeland health standards remains. The BLM should identify and implement OBG across all field offices where the tool is appropriate.

Categorical Exclusions

- WDA supports the BLM to utilize Categorical Exclusions (Cat Ex) for renewing grazing permits where permittees are meeting standards for healthy rangelands and don't request changes to the permit. However, we also recognize as environmental conditions change, most permits will need to have more flexibility built into the permit. BLM should consider how to incorporate vegetation management, season of use, range improvements, pasture rotations, type of livestock, and more. All of these changes would require an EA. Once flexibility was incorporated, the BLM could again utilize a Cat Ex for future permit renewals.

WDA is appreciative of the opportunity to provide our comments. As a state agency, we would request Cooperating Agency Status review and full inclusion on this project. We look forward to working closely with BLM staff and updating these regulations.

Sincerely,



Doug Miyamoto
Director

DM/jw

CC: Governor's Policy Office
Wyoming Board of Agriculture
Wyoming Stock Growers Association
Wyoming Wool Growers Association
Wyoming Farm Bureau Federation
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