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QUESTIONS AND ANSWERS
re: the BLM's New Grazing Regulations
(Final Grazing Rule)

What is the basic purpose of the Bureau of Land Management's new grazing regulations?

The BLM's set of new grazing regulations – collectively known as a final "rule" – is intended to:

- improve the agency's working relationships with public lands ranchers (BLM grazing permittees and lessees);
- conserve rangeland resources; and
- enhance administrative efficiency.

The rule, which the BLM is publishing in final form today (July 12, 2006) and which takes effect in 30 days, underscores grazing's standing as one of the authorized uses of BLM-managed lands. This regulatory initiative recognizes the economic and social benefits of public lands grazing, as well as the role of ranching in preserving open space and wildlife habitat in the rapidly growing West.

What does the final rule do to improve the BLM's working relationships with its grazing permit and lease holders?

To improve such relationships, the rule:

- authorizes the BLM and a grazing permittee or lessee (or other cooperating party) to share title to future range improvements – permanent structures such as fences, wells, or pipelines – if they are constructed under what is known as a Cooperative Range Improvement Agreement. (Such an agreement describes the terms and conditions under which the BLM and a livestock operator or other cooperating party would construct, use, and maintain specific range improvements.) This shared-title provision, which had existed before 1995 – when the "Rangeland Reform '94" regulations took effect – reflects this Administration's view that ranchers, when contributing financially to the construction of range improvements, should be able to share ownership in proportion to their investment of labor, material, or equipment. In addition, shared title may help some ranchers qualify for loans for their operations, and may serve as an incentive for livestock operators to undertake range improvements.

- phases in grazing-use decreases (as well as increases) of more than 10 percent over a five-year period unless a livestock operator agrees to a shorter period, or unless a quicker phase-in is necessary under existing law to protect the land's resources. The phase-in will provide sufficient time for ranchers to make gradual adjustments in their operations, particularly so they can reduce adverse economic impacts resulting from any grazing reductions. The Bureau will retain its full authority to respond as necessary to drought, fire, and any other factors affecting grazing allotment conditions.

- promotes a consistent approach by BLM managers in considering and documenting the social, cultural, and economic effects of decisions that determine levels of authorized grazing use. The impact analyses resulting from this consistent approach will then be incorporated into the relevant documents required under the 1969 National Environmental Policy Act (NEPA). The intent is to

ensure that BLM managers across the West, before making decisions affecting grazing levels, consistently consider and document the factors they took into account in assessing the potential impacts of such decisions on the human environment.

- requires the BLM, in reviewing range improvements and grazing allotment management plans, to cooperate with grazing boards established by Tribes, states, counties, and local governments.

What does the rule do to advance the BLM's efforts in assessing and protecting rangelands?

To advance these efforts, the rule:

- removes a restriction that has limited temporary non-use of a grazing permit to three consecutive years. The new rule instead allows livestock operators to apply for non-use each year, whether for conservation or business purposes, with no limit on the number of consecutive years. Before giving approval, the BLM will examine the need for non-use to make sure it is justified. The removal of this three-consecutive-year limit will promote rangeland health by giving the BLM more flexibility to cooperate with grazing permittees to rest the land as needed or to respond to changing business needs.

- requires use of existing or new monitoring data in cases where the BLM has found, based on its initial assessment, that a grazing allotment is failing to meet rangeland health standards. By using monitoring data, which shows land-condition trends in significant detail, the BLM will be better able to determine the reasons for an allotment's failure to meet such standards, and to what extent, if any, grazing practices are at issue.

- allows up to 24 months – instead of prior to the start of the next grazing season – for the BLM to analyze and formulate an appropriate course of action in cases where grazing practices are at issue. The management action would address and correct the grazing practices that have contributed to the rangeland's failure to meet health standards. This deadline could be extended when legally required processes (such as the issuance of a biological opinion) that are the responsibility of another agency prevent the BLM's completion of all legal obligations within the 24-month timeframe. Existing regulations – which will be revised in 30 days, when the new rule takes effect – have required implementation of an appropriate course of action before the start of the next grazing season, which is often an unrealistic timeframe in light of certain legal requirements, such as environmental analysis under NEPA.

What does the rule do to address legal issues while enhancing administrative efficiency?

In this category of actions, the rule:

- eliminates, in compliance with Federal court rulings, a 1995 "Rangeland Reform" regulatory provision allowing the BLM to issue long-term "conservation use" permits. The need to eliminate such permits was prompted by litigation in the case Public Lands Council v. Babbitt, which led to a 10th Circuit Court of Appeals ruling in 1999 that the 1934 Taylor Grazing Act does not authorize such permits.

- expands the definition of "grazing preference" to include an amount of forage on public lands that is linked to a rancher's private "base" property, which can be land or water. This expanded definition, similar to one that existed from 1978 to 1995, when the "Rangeland Reform" regulations took effect, makes clear that grazing preference has a quantitative meaning (forage amounts, measured in Animal Unit Months), as well as a qualitative one (precedence of position in the "line" for grazing privileges).

- modifies the definition of "interested public" to cover only those individuals and organizations that actually participate in the process leading to specific grazing decisions. Under current

regulations, a party might remain indefinitely on the interested public list without ever commenting on or providing input to the decisionmaking process. This change will improve efficiency in the BLM's management of public lands grazing by reducing the occasions in which the Bureau is mandated to involve the interested public in certain administrative matters. Under this provision, the BLM could involve the public in day-to-day grazing administration matters, but would no longer be required to do so. The BLM will continue to involve the public in grazing planning activities, such as allotment management planning and range improvement project planning. *(See further discussion of this provision below.)*

- provides flexibility to the Federal government in decisions relating to livestock water rights by removing a requirement that the BLM seek ownership of these rights to the maximum extent allowed by state law. This provision, in revising the 1995 grazing regulations, gives the BLM greater flexibility in negotiating arrangements for the construction of watering facilities in states where the Federal government is allowed to hold a livestock water right. The BLM will still have the option of acquiring the sole water right, consistent with state water laws.

- increases certain service fees to reflect more accurately the cost of grazing administration. The rule raises current service charges as follows:

Action	**Current Service Charge**	**New Service Charge**
Issuance of livestock crossing permit	$10	$75
Transfer of grazing preference	$10	$145
Cancellation and replacement of grazing fee bills	$10	$50

- clarifies that if a livestock operator is convicted of violating a Federal, state, or other law, and if the violation occurs while he is engaged in grazing-related activities, the BLM may take action against his grazing permit or lease only if the violation occurred on the BLM-managed allotment where the operator is authorized to graze. This provision seeks to make clear that while any illegal acts by a livestock operator are potentially punishable by various legal authorities, such acts may result in permit or lease cancellation only if they occur on the operator's BLM-managed allotment.

- makes clear how the BLM will authorize grazing if implementation of a Bureau decision affecting a grazing permit is "stayed" (that is, temporarily stopped) pending administrative appeal. This provision is aimed at providing a permittee with continuity of operation in the event that the livestock operator or an interested member of the public appeals a BLM grazing decision affecting the permittee's operation.

- clarifies that a biological assessment prepared by the BLM in compliance with the Endangered Species Act is *not* a decision of the Bureau and therefore is not subject to protests and administrative appeals. This provision prospectively supersedes the decision in *Blake v. BLM*, 145 IBLA 154, 166 (1998), aff'd, 156 IBLA 280 (2000), in which the Interior Board of Land Appeals held that a biological assessment or evaluation is reviewable in an administrative appeal. A biological assessment or evaluation is a tool that enables the U.S. Fish and Wildlife Service or the National Oceanic and Atmospheric Administration to prepare a biological opinion. Given the pre-decisional nature of biological assessments and evaluations, the rule makes clear that such assessments and evaluations are neither proposed nor final grazing decisions, and thus are not subject to protest and appeal. While the rule clarifies that biological assessments and evaluations are not subject to administrative appeals, it retains an existing regulation that provides for public input, to the extent practical, on reports that evaluate monitoring and other data that are used as a basis for making decisions to modify grazing use. This provision is applicable to biological assessments and evaluations.

Does the revised definition of "interested public" serve to "lock out" certain stakeholders, such as environmentalists, from participating in the BLM's grazing decisionmaking process?

No. The rule continues to require the Bureau to consult with the interested public in all key matters – such as apportioning additional forage, developing or modifying grazing activity plans, planning rangeland improvement programs, and, to the extent practical, developing technical reports that are used to support BLM decisions affecting grazing permits or leases. The new regulations no longer mandate prior consultation with the interested public before the BLM implements day-to-day management actions, such as designating and adjusting grazing allotment boundaries, reducing permitted grazing use, and implementing emergency closures of allotments because of wildfire or other factors. While the Bureau will not have to consult with the interested public *before* modifying grazing permits or leases, the agency will be required to consult, to the extent practical, with the interested public in developing the technical reports that relate to such modifications. Under the new rule, the BLM is also required to send copies of its proposed and final grazing decisions to the interested public, who have the right of protest and can seek court review of these final decisions. Clearly, there is no "locking out" of the interested public from the BLM's grazing decisionmaking process.

Will the rule "roll back" the "Rangeland Reform '94" provisions (which took effect in 1995) that established the rangeland health standards and guidelines and created the Resource Advisory Council system?

No. The rule leaves intact the existing rangeland health standards and guidelines, and the BLM will continue to receive advice and recommendations from its 24 citizen-based Resource Advisory Councils (RACs) across the West. The Bureau values the input and advice of the RACs.

Will the rule's shared-title provision regarding range improvements and the water rights provision bolster private property claims on public lands, thus making it harder for the BLM to make necessary management changes?

No. The rule does not create an exclusive right, title, or interest for the BLM's grazing permittees, lessees, or cooperating parties; such exclusivity is prohibited by the 1934 Taylor Grazing Act. Since the United States retains its ownership of the public lands, and since joint ownership of a range improvement or water right does not confer an exclusive right on public land ranchers or other cooperators, the BLM's management actions would not be constrained by a private party's interest in a range improvement or a state-administered water right.

Will the rule affect the Federal grazing fee formula?

No. The rule makes no changes in the way the Federal grazing fee is calculated, a formula established by Congress in 1978 that continues under a 1986 Presidential Executive Order.

When does the new rule take effect?

The rule takes effect 30 days after its publication today (July 12, 2006) in the *Federal Register*.