FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

K. JOHN CORRIGAN; M. MARTHA CORRIGAN; HANLEY RANCH PARTNERSHIP; MICHAEL F. HANLEY IV; LINDA LEE HANLEY,

Plaintiffs-Appellants,

v.

DEB HAALAND,* Secretary of the U.S. Department of the Interior; WILLIAM PERRY PENDLETON, Director of the BLM; JOHN RUHS, Idaho State Director of the BLM; LARA DOUGLAS, Boise District Manager in her capacity as manager for the Boise District of the BLM; DONN CHRISTIANSEN, Owyhee Field Office Manager in his official capacity as manager for the Owyhee FO of the Boise District of the BLM,

Defendants-Appellees,

and

WESTERN WATERSHEDS PROJECT,

Intervenor-Defendant-Appellee.

No. 20-35393

D.C. No. 1:18-cv-00512-BLW

OPINION

* Pursuant to Rule 43(c)(2) of the Federal Rules of Appellate Procedure, the Court substitutes as defendant the current Secretary of the U.S. Department of the Interior, Deb Haaland, for the former Secretary, David Bernhardt.

App. 2

Appeal from the United States District Court
for the District of Idaho
B. Lynn Winmill, District Judge, Presiding

Argued and Submitted May 3, 2021
Seattle, Washington

Filed September 2, 2021

Before: Morgan Christen and Mark J. Bennett, Circuit Judges, and Paul L. Friedman,** District Judge.

Opinion by Judge Friedman

SUMMARY*

Grazing Permits

The panel affirmed the district court's grant of summary judgment in favor of the Department of the Interior and Intervenor Western Watersheds Project in appellants' action challenging the Bureau of Land Management's denial of their request to transfer a "preference" to receive a permit to graze on certain federal land allotments.

Appellants Michael Hanley, IV, Linda Hanley, and Hanley Ranch Partnership sought to transfer to Appellants K. John Corrigan and M. Martha Corrigan the preference. The BLM denied the preference

---

** The Honorable Paul L. Friedman, United States District Judge for the District of Columbia, sitting by designation.

*** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

transfer application based on its conclusion that Hanley Ranch Partnership did not hold any preference that it could transfer. The Department of the Interior's Interior Board of Land Appeals ("IBLA") upheld the BLM's denial.

The panel upheld the IBLA's decision at step one of the *Chevron* framework because the IBLA correctly applied the clear and unambiguous language of the Taylor Grazing Act of 1934 and the Federal Land Policy and Management Act of 1976, which established that a grazing preference could not be exercised after the corresponding grazing permit was not renewed for bad behavior. The panel rejected the ranchers' contention that a grazing preference remains attached to base property until separately cancelled. Because the IBLA correctly interpreted and applied the statutory authorities, and therefore did not act "contrary to law," the decision was not arbitrary and capricious in violation of the Administrative Procedure Act. The panel noted that it was clear that the ranchers would fare no better under the Grazing Regulations, which were wholly consistent with the statutes they implemented.

COUNSEL

W. Alan Schroeder (argued), Schroeder Law, Boise, Idaho; Laura A. Schroeder, Schroeder Law Offices P.C., Portland, Oregon; for Plaintiffs-Appellants.

Christine G. England (argued) and Robert B. Firpo, Assistant United States Attorneys; Bart M. Davis,

United States Attorney; United States Attorney's Office, Boise, Idaho; for Defendants-Appellees.

Talasi B. Brooks (argued), Western Watersheds Project, Boise, Idaho; Paul D. Ruprecht, Western Watersheds Project, Reno, Nevada; for Intervenor-Defendant-Appellee.

OPINION

FRIEDMAN, District Judge:

Appellants Michael F. Hanley, IV, Linda Lee Hanley, and Hanley Ranch Partnership sought to transfer to Appellants K. John Corrigan and M. Martha Corrigan a "preference" to receive a permit to graze on certain federal land allotments. The Bureau of Land Management ("BLM") denied the preference transfer application, concluding that Hanley Ranch Partnership did not hold any preference that it could transfer. The Interior Board of Land Appeals ("IBLA"), an appellate tribunal within the Department of the Interior, upheld the BLM's denial, concluding that after Hanley Ranch Partnership's grazing permit expired, and the BLM declined to issue a new permit due to unsatisfactory performance, Hanley Ranch Partnership did not hold any residual preference. The district court agreed.

Appellants now ask us to reverse the district court's decision, arguing that a grazing preference survives the expiration of a corresponding permit and continues to exist until the BLM cancels it. Because

the BLM never canceled their grazing preference through any formal process, Appellants ask us to conclude that they retained a preference even after their grazing permit expired.

We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm the district court's grant of summary judgment in favor of Appellee the Department of the Interior and Intervenor-Appellee Western Watersheds Project ("WWP").

I. FACTUAL AND PROCEDURAL BACKGROUND

Beginning in 1934, Congress has passed laws that govern grazing privileges on the public rangelands. The Taylor Grazing Act of 1934 ("TGA"), 43 U.S.C. § 315 *et seq.*, seeks to "promote the highest use of the public lands" and "stop injury" from "overgrazing and soil deterioration." 43 U.S.C. § 315; *see generally Pub. Lands Council v. Babbitt*, 529 U.S. 728, 731-33 (2000). Under the system established by the TGA, the Secretary of the Interior is authorized to divide public rangelands into grazing districts and to issue permits to private parties to graze livestock on the land. The TGA and its companion statute, the Federal Land Policy and Management Act of 1976 ("FLPMA"), 43 U.S.C. § 1701 *et seq.*, provide that individuals who control land within or near a grazing district may receive a "preference" or "priority" to stand first in line in applying for a grazing permit. *See Pub. Lands Council*, 529 U.S. at 733-38.

Since at least 1988, Hanley Ranch Partnership ("HRP") received a series of ten-year permits to graze on two allotments in southwestern Idaho: the Trout Springs Allotment and the Hanley Fenced Federal Range Allotment. HRP also held preferences based on its control of private land adjoining the two allotments. On March 12, 2002, the BLM issued HRP's last ten-year permit, which authorized HRP to graze on the allotments through February 28, 2012.

In 2009, the BLM informed HRP that it would not renew HRP's permit pursuant to 43 C.F.R. § 4110.1(b), explaining that it had "identified numerous and continuous instances of non-compliance with the terms and conditions of the existing federal grazing permit, as well as a number of violations (trespasses) in the Trout Springs Allotment." HRP appealed the BLM's decision to two appellate tribunals within the Department of the Interior, first to the Departmental Cases Hearings Division ("Hearings Division"), and next to the IBLA. Both tribunals affirmed, and HRP did not seek review in federal court.

On August 1, 2013, HRP leased several plots of "base property" attached to the Trout Springs and Hanley Fenced Federal Range Allotments to K. John and M. Martha Corrigan, for a period extending through February 28, 2024.[1] Relying on this lease, the Corrigans submitted an application to the BLM to transfer a grazing preference from HRP to the

[1] Ms. Corrigan is the daughter of Michael F. Hanley, IV, one of the partners in HRP.

Corrigans. The BLM denied the application on November 22, 2013, explaining that HRP no longer possessed any grazing preference. The Hanleys and the Corrigans (collectively, "Ranchers") appealed the BLM's decision to the Hearings Division, which affirmed on January 25, 2016. Ranchers subsequently appealed to the IBLA.

On August 10, 2017, the IBLA issued the opinion that is the subject of this appeal, affirming the ruling of the Hearings Division and the underlying decision by the BLM to deny the preference transfer application. The IBLA analyzed the TGA, the FLPMA, and the Department of the Interior's grazing regulations, codified at 43 C.F.R. 4100 *et seq.* ("the Grazing Regulations").[2] The IBLA concluded that "there is no basis in law supporting appellants' view that Hanley Ranch's grazing preference . . . can exist in a vacuum, without a grazing permit." The IBLA determined that once a permit expires and the BLM declines to renew it, the BLM need not separately cancel the associated preference, which expires alongside the permit. As a

[2] The Department of the Interior last amended the Grazing Regulations in 2006. 71 Fed. Reg. 39402, 39503 (July 12, 2006). In 2008, however, the U.S. District Court for the District of Idaho enjoined those amendments from taking effect. *See W. Watersheds Project v. Kraayenbrink*, 538 F. Supp. 2d 1302 (D. Idaho 2008), *aff'd in relevant part, vacated in part, remanded*, 632 F.3d 472 (9th Cir. 2011). All citations in this opinion to the Grazing Regulations are to the version in effect prior to the 2006 amendments. *See* Grazing Administration—Exclusive of Alaska, 60 Fed. Reg. 9894, 9901 (Feb. 22, 1995).

result, the IBLA concluded that the BLM correctly rejected the Corrigans' preference transfer application.

Ranchers sought judicial review of the IBLA's decision. On February 26, 2020, the U.S. District Court for the District of Idaho denied Ranchers' motion for summary judgment and granted summary judgment in favor of the Department of the Interior and WWP. This appeal followed.

II. STANDARDS OF REVIEW

A. Summary Judgment

"We review de novo a challenge to a final agency action decided on summary judgment and pursuant to Section 706" of the Administrative Procedure Act ("APA"). *Ctr. for Biological Diversity v. Esper*, 958 F.3d 895, 903 (9th Cir. 2020). "De novo review of a district court judgment concerning a decision of an administrative agency means the court views the case from the same position as the district court," *Turtle Island Restoration Network v. Nat'l Marine Fisheries Serv.*, 340 F.3d 969, 973 (9th Cir. 2003), and "review[s] directly the agency's action under the Administrative Procedure Act's [] arbitrary and capricious standard," *Alaska Wilderness League v. Jewell*, 788 F.3d 1212, 1217 (9th Cir. 2015) (quotation marks omitted). The Court "may affirm on any ground supported by the record." *Lima v. U.S. Dep't of Educ.*, 947 F.3d 1122, 1125 (9th Cir. 2020).

Under the APA, we "will reverse the IBLA's decision only if that decision is arbitrary, capricious, not supported by substantial evidence, or contrary to law." *Hjelvik v. Babbitt*, 198 F.3d 1072, 1074 (9th Cir. 1999). An agency decision construing a statute is not in violation of the APA where the agency accurately applies an unambiguous statute, or permissibly construes an ambiguous statute, and its conclusion is "well supported by substantial evidence in the record." *Akootchook v. United States*, 271 F.3d 1160, 1168 (9th Cir. 2001); *see also W. Watersheds Project v. Interior Bd. of Land Appeals*, 624 F.3d 983, 986-87 (9th Cir. 2010).

B. *Chevron* Framework

Ranchers' argument calls into question the IBLA's interpretation of the TGA and the FLPMA. When a party challenges agency action as inconsistent with the terms of a statute, courts apply the familiar analytical framework set forth in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

In step one, a court must determine "whether Congress has directly spoken to the precise question at issue," or, instead, whether the statute is ambiguous. *Chevron*, 467 U.S. at 842. In determining whether Congress has directly spoken, a court uses "traditional tools of statutory construction," including an examination of the statute's text, the structure of the statute, and (as appropriate) legislative history. *Id.* at 843 n.9. "Whether statutory language is sufficiently plain or

not is 'determined by reference to the language itself, the specific context in which the language is used, and the broader context of the statute as a whole.'" *W. Watersheds Project*, 624 F.3d at 987 (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997)). "If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Chemehuevi Indian Tribe v. Jewell*, 767 F.3d 900, 903 (9th Cir. 2014) (quoting *Chevron*, 467 U.S. at 842-43).

If a court determines that the "statute is silent or ambiguous with respect to the specific issue," *Chevron*, 467 U.S. at 843 — that is, if the disputed language is "reasonably susceptible of different interpretations," *Nat'l R.R. Passenger Corp. v. Atchison, Topeka & Santa Fe Ry. Co.*, 470 U.S. 451, 473 n.27 (1985) — the court must proceed to step two. At step two, "the question for the court is whether the agency's [action] is based on a permissible construction of the statute." *Chevron*, 467 U.S. at 843. At this step, a court need not determine that an agency's construction is "the best interpretation of the statute," *United States v. Haggar Apparel Co.*, 526 U.S. 380, 394 (1999) (quoting *Atl. Mut. Ins. Co. v. Comm'r*, 523 U.S. 382, 389 (1998)), or that it is "the only [construction that the agency] permissibly could have adopted," *Rust v. Sullivan*, 500 U.S. 173, 184 (1991) (quoting *Chevron*, 467 U.S. at 843 n.11). Instead, courts defer to an agency's construction "if it is a reasonable one," even if "it is not the [construction the court] would arrive at." *Dep't of Treasury, I.R.S. v. Fed. Lab. Rels. Auth.*, 494 U.S. 922, 928 (1990).

III. STATUTORY FRAMEWORK

Two statutes at issue in this case govern grazing privileges on public lands: the TGA and the FLPMA.

A. Taylor Grazing Act of 1934

The TGA authorizes the Secretary of the Interior "to divide the public range-lands into grazing districts, to specify the amount of grazing permitted in each district, to issue leases or permits 'to graze livestock,' and to charge 'reasonable fees' for use of the land." *Pub. Lands Council*, 529 U.S. at 733 (quoting 43 U.S.C. §§ 315, 315a, 315b). It provides in relevant part:

> The Secretary of the Interior is authorized to issue or cause to be issued permits to graze livestock on such grazing districts . . . . Preference shall be given in the issuance of grazing permits to those within or near a district who are landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water rights, as may be necessary to permit the proper use of lands, water or water rights owned, occupied, or leased by them . . . . Such permits shall be for a period of not more than ten years, subject to the preference right of the permittees to renewal in the discretion of the Secretary of the Interior.

43 U.S.C. § 315b.

B. Federal Land Policy and Management Act of 1976

The FLPMA reinforced the Department of the Interior's authority "to remove or add land from grazing use . . . while specifying that existing grazing permit holders would retain a 'first priority' for renewal so long as the land use plan continued to make land 'available for domestic livestock grazing.'" *Pub. Lands Council*, 529 U.S. at 738 (quoting 43 U.S.C. § 1752(c)). At the time HRP sought to transfer its grazing preference to the Corrigans, the relevant portion of the FLPMA provided:

> So long as (1) the lands for which the permit or lease is issued remain available for domestic livestock grazing in accordance with land use plans prepared pursuant to section 1712 of this title or section 1604 of title 16, (2) the permittee or lessee is in compliance with the rules and regulations issued and the terms and conditions in the permit or lease specified by the Secretary concerned, and (3) the permittee or lessee accepts the terms and conditions to be included by the Secretary concerned in the new permit or lease, the holder of the expiring permit or lease shall be given first priority for receipt of the new permit or lease.

43 U.S.C. § 1752(c).[3] The FLPMA did not eclipse the previously enacted TGA but rather "strengthened the

[3] Congress amended the FLPMA in 2014, after the BLM denied Ranchers' preference transfer application. *See* National Defense Authorization Act for Fiscal Year 2015, Pub. L. No.

Department[of the Interior]'s existing authority" under the TGA. *Pub. Lands Council*, 529 U.S. at 738. The two statutes are therefore consistent and should be read together.

IV. DISCUSSION

Ranchers ask us to conclude that a grazing preference does not automatically expire when an associated permit expires, and therefore, that the IBLA's decision upholding the denial of the Corrigans' preference transfer application contravenes applicable law. They maintain that the TGA, the FLPMA, and the

---

113-291, § 3023, 128 Stat. 3229, 3762-63. Ranchers' contention that the IBLA and the district court should have considered this revised version of the FLPMA is misguided. "A reviewing court must review the administrative record before the agency at the time the agency made its decision." *Nat'l Wildlife Fed'n v. U.S. Army Corps of Eng'rs*, 384 F.3d 1163, 1170 (9th Cir. 2004). The 2014 amendments to the FLPMA include no indication that they were intended to apply retroactively to the BLM's 2013 decision. *See Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) ("[C]ongressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result."). We therefore analyze the pre-2014 version of the FLPMA, and all references in this opinion are to the FLPMA as it was in effect in 2013.

Even if the amended version of the FLPMA applied, this would not alter the outcome. The revised language still limits the "first priority" for renewal to the "holder of the expiring permit or lease" who "is in compliance with the rules and regulations issued and the terms and conditions in the permit or lease." 43 U.S.C. § 1752(c)(1) (2014). As discussed *infra* in part IV(A), this unambiguously precludes Ranchers' theory that a former permittee's preference continues to exist indefinitely until it is formally canceled.

Grazing Regulations unambiguously support their position, but that if we find ambiguity, we should not defer to the IBLA's interpretation. The government and WWP counter that the IBLA correctly interpreted the unambiguous statutes and regulations in reaching its conclusions, but that if we find ambiguity, we should defer to the IBLA.

We agree with the government and WWP. The facts are undisputed and the IBLA's decision rests on its interpretation of the TGA, the FLPMA, and the Grazing Regulations.[4] Whether to uphold the IBLA's decision therefore depends in the first instance on whether the IBLA correctly interpreted and applied the statutes, which we evaluate under the *Chevron* framework. Here, our analysis begins and ends with *Chevron* step one. The TGA and the FLPMA are unambiguous and are consistent with the IBLA's conclusions.

---

[4] The parties' briefs raise a single point of factual dispute. The government and WWP assert that the Corrigans submitted an invalid permit with their preference transfer application, which they say shows that the Corrigans believed a valid permit must accompany any preference. Ranchers respond that the Corrigans attached this document only "to show the terms that they would likely need to accept should their Grazing permit application be approved." The Corrigans' true motive for attaching this document is immaterial; it does not alter the outcome of this case when the statutes are properly construed and applied to the other, undisputed facts.

A. *Chevron* Step One: The Statutes are Unambiguous

The "precise question at issue" in this case, *Chevron*, 467 U.S. at 842, is whether a former permittee's preference continues to exist after the associated grazing permit expires and is not renewed due to bad behavior. The TGA and the FLPMA unambiguously answer this question in the negative. After a permit expires, a former permittee does not retain any preference to stand first in line for a future permit.

1. Plain Text

In construing "what Congress has enacted," a court must "begin, as always, with the language of the statute." *Navajo Nation v. HHS*, 325 F.3d 1133, 1136 (9th Cir. 2003) (en banc) (quoting *Duncan v. Walker*, 533 U.S. 167, 172 (2001)). The TGA provides that "[p]reference shall be given in the issuance of grazing permits to those within or near a district who are landowners engaged in the livestock business," and that "permits shall be for a period of not more than ten years, subject to the preference right of the permittees to renewal in the discretion of the Secretary of the Interior." 43 U.S.C. § 315b. This language neither states nor implies that a preference may exist as a stand-alone interest or be held by a former permittee. Instead, it describes a preference as something that informs the agency's decision concerning issuance of a grazing permit, suggesting that a preference is first

and foremost a means by which the agency determines a permittee's relative place in line.

This language also indicates that, following the very first round of permits issued upon passage of the TGA, Congress anticipated that "preference" would be a privilege exercised in conjunction with the renewal process and alongside a valid permit. The TGA provides that "permits shall be for a period of not more than ten years, subject to the preference right of the *permittees* to *renewal*." 43 U.S.C. § 315b (emphasis added). This statutory language supports the IBLA's conclusion, because applicants are only "permittees" and only have something to "renew[]" if they hold valid permits at the time they seek to exercise their preferences.

The text of the TGA becomes even clearer when read in conjunction with the subsequently enacted FLPMA, which reinforces Congress's intent to limit renewal preferences to existing permit holders. The FLPMA sets forth three requirements for the exercise of a preference or "first priority": (1) the lands for which a permit was previously issued "remain available for domestic livestock grazing"; (2) "the permittee or lessee is in compliance with the rules and regulations issued and the terms and conditions in the permit or lease"; and (3) "the permittee or lessee accepts the terms and conditions to be included by the Secretary concerned in the new permit or lease." 43 U.S.C. § 1752(c). If these conditions are satisfied, "the holder of the expiring permit or lease shall be given first priority for receipt of the new permit or lease." *Id*.

The second and third requirements of Section 1752(c) of the FLPMA make explicit that only an *existing* permittee may exercise a preference right as part of the permit renewal process. Both refer in the present tense to "the permittee or lessee," underscoring that Congress expected renewal priority to be exercised by individuals who hold valid permits or leases at the time of application. The second requirement refers to "the terms and conditions in the permit or lease," pointing to the existence of a still-valid permit or lease. The second requirement also mandates that an applicant be "in compliance" with the terms of the permit, underscoring that a former permittee such as HRP, whose permit was not renewed after the BLM determined it was *not* in compliance with the terms and conditions of its permit, is ineligible to exercise a priority for renewal. Finally, the language that follows the three requirements confirms that the priority for renewal may be exercised by "the holder *of the expiring permit or lease*." 43 U.S.C. § 1752(c) (emphasis added).

Ranchers fail to offer any textually grounded explanation of how a former permittee whose permit expired and was not renewed for bad behavior could exercise a preference. Ranchers make much of the fact that the statutes do not explicitly state that a preference expires upon non-renewal of a permit. Yet the statutes also do not require the agency to formally cancel a preference, separate and apart from its non-renewal decision. This latter omission is more significant, because the other statutory language discussed

above supports the conclusion that a preference cannot be exercised after a permit expires.

Ranchers' view "would require us to assume that Congress chose a surprisingly indirect route to convey an important and easily expressed message." *Landgraf v. USI Film Prods.*, 511 U.S. 244, 262 (1994). The Supreme Court has "frequently cautioned that it is at best treacherous to find in congressional silence alone the adoption of a controlling rule of law," *United States v. Wells*, 519 U.S. 482, 496 (1997) (citations, brackets, and quotation marks omitted), and we "avoid reading in unstated statutory requirements" concerning cancellation of a preference, *Chemehuevi Indian Tribe v. Newsom*, 919 F.3d 1148, 1153 (9th Cir. 2019).

2. Statutory Structure

In making the threshold determination under *Chevron* step one, "a reviewing court should not confine itself to examining a particular statutory provision in isolation. Rather, the meaning — or ambiguity — of certain words or phrases may only become evident when placed in context." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 666 (2007) (citations, brackets, and quotation marks omitted). Here, the statutory scheme that the TGA and the FLPMA establish further supports the IBLA's conclusion that a preference does not survive non-renewal of a permit.

The TGA introduces the concept of "preference" in a section entitled "Grazing permits; fees; vested water rights; permits not to create right in land." 43 U.S.C.

§ 315b. This title reinforces the view that a preference is not a stand-alone entitlement, but instead a concept that has meaning only as part of the permitting process. The FLPMA refers to "first priority" for renewal, a term which is interchangeable with the term "preference" in the TGA. *See Pub. Lands Council*, 529 U.S. at 738. As the Supreme Court has explained, the FLPMA expanded upon the framework in the TGA by "specifying that *existing* grazing permit holders would retain a 'first priority' *for renewal*.'" *Id*. (quoting 43 U.S.C. § 1752(c)) (emphasis added). In so doing, the FLPMA tied the "first priority" associated with a previously issued permit to the permit renewal process.

Neither the TGA nor the FLPMA mention a process for canceling a grazing preference. Yet both statutes *do* address circumstances under which the agency may cancel a *permit* prior to its scheduled expiration. *See* 43 U.S.C. § 315q; 43 U.S.C. § 1752(g). The explicit provision for cancellation of a permit, and the omission of any corresponding provision for cancellation of a preference, is "imbued with legal significance," *Pit River Tribe v. Bureau of Land Mgmt.*, 939 F.3d 962, 971 (9th Cir. 2019) (quoting *SEC v. McCarthy*, 322 F.3d 650, 656 (9th Cir. 2003)), for "it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion," *id*. (quoting *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 452 (2002)). If Congress intended grazing preferences to exist indefinitely until canceled, as Ranchers urge, we would expect the statutes to at least mention

cancellation of preferences. This is particularly true because the drafters of the statutes made express provision for cancellation of grazing permits.

Several "words [and] phrases" of the TGA and the FLPMA, "when placed in context," *Nat'l Ass'n of Home Builders*, 551 U.S. at 666 (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132 (2000)), illuminate a defining characteristic of the statutory scheme: to preserve the agency's discretion over grazing privileges and to avoid establishing any indefinite entitlements for private parties. The TGA specifies that the agency retains "discretion" over whether to grant a permit even when an applicant seeks renewal subject to a preference, and admonishes that grazing privileges "shall not create any right, title, interest, or estate in or to the lands." 43 U.S.C. § 315b. The FLPMA reinforces this theme, clarifying that permits are "subject to such terms and conditions the Secretary concerned deems appropriate and consistent with the governing law, including, but not limited to, the authority of the Secretary concerned to cancel, suspend, or modify a grazing permit . . . or to cancel or suspend a grazing permit or lease for any violation of a grazing regulation or of any term or condition of such grazing permit or lease." 43 U.S.C. § 1752(a). Both statutes also clarify that permits grant only temporary grazing privileges. *See* 43 U.S.C. § 315b; 43 U.S.C. § 1752(a).

Ranchers nonetheless contend that "the Grazing preference remains attached to base property until separately canceled," suggesting that a grazing preference is a stand-alone interest that runs with the base

property. This is incorrect. As the Supreme Court has explained, the statutory scheme reflects a congressional decision to vest the agency with control over the public lands, including discretion to revoke use of those lands. *See Pub. Lands Council*, 529 U.S. at 742-43 ("[T]he Secretary has always had the statutory authority under the Taylor Act and later FLPMA to reclassify and withdraw rangeland from grazing use . . . . [and] has consistently reserved the authority to cancel or modify grazing permits accordingly."); *United States v. Fuller*, 409 U.S. 488, 494 (1973) ("The provisions of the Taylor Grazing Act . . . make clear the congressional intent that no compensable property might be created in the permit lands themselves as a result of the issuance of the permit.").

This Court and other federal courts have likewise underscored that the agency's discretion over public lands supersedes any preference right. *See United States v. Est. of Hage*, 810 F.3d 712, 717 (9th Cir. 2016) (ownership of water rights adjacent to an allotment "has *no effect* on the requirement that a rancher obtain a grazing permit" which " 'has always been a revocable privilege' and is not a 'property right[ ]' " (quoting *Swim v. Bergland*, 696 F.2d 712, 719 (9th Cir. 1983))); *Fed. Lands Legal Consortium ex rel. Robart Est. v. United States*, 195 F.3d 1190, 1198 (10th Cir. 1999) ("Although FLLC may have a priority during renewal, this court has repeatedly held that the decision whether to issue or deny a permit is a discretionary one[.]"), *abrogated on other grounds as recognized in Onyx Props. LLC v. Bd. of Cnty. Comm'rs of Elbert Cnty.*, 838 F.3d 1039,

1043 n.2 (10th Cir. 2016); *Alves v. United States*, 133 F.3d 1454, 1457 (Fed. Cir. 1998) ("[T]he distinction between grazing 'permits' and grazing 'preferences' is irrelevant because neither constitutes a property interest compensable under the Fifth Amendment.").

Ranchers' argument that a grazing preference runs with the base property also misses the mark because it overlooks the fact that this appeal stems from the BLM's denial of the Corrigans' preference transfer application. As the IBLA correctly concluded, with no valid permit, there was no preference to transfer, irrespective of who controlled the base property.[5]

3. Statutory Purpose

In interpreting a statute, a court must also account for that statute's history and purpose. *See Zuni Pub. Sch. Dist. No. 89 v. Dep't of Educ.*, 550 U.S. 81, 90-93 (2007). The stated purpose of the TGA is to "promote the highest use of the public lands." 43 U.S.C. § 315. Congress described the specific objectives of the TGA as being "[t]o stop injury to the public grazing lands by preventing overgrazing and soil deterioration, to provide for their orderly use, improvement, and development, [and] to stabilize the livestock industry dependent upon the public range." TGA, 48 Stat. 1269 (1934). These objectives are consistent with Congress's

[5] We leave open the possibility that if a permit terminates and the base property is sold in an arm's length transaction, the new owner of the base property might be entitled to a preference in applying for a new grazing permit.

reservation of discretion in the agency. In order to carry out the purpose of the TGA by acting as "landlord of the public range," *Pub. Lands Council*, 529 U.S. at 735, the Secretary of the Interior must be able to prevent former permittees from continuing any pattern of conduct that causes "injury to the public grazing lands," 48 Stat. 1269.

Ranchers' proposed interpretation contravenes this purpose. It would empower those private parties who have acted in a manner that causes damage to the lands to reserve certain grazing privileges, even after the agency has determined that their bad behavior justifies denying them the privileges of receiving new grazing permits. As WWP points out, "[a]ccepting Ranchers' theory would mean that a rancher whose record of performance disqualifies it from holding a grazing permit nevertheless could hold a transferable, non-expiring privilege to stand first in line for a new permit." According to WWP, this would enable HRP to "dictate use of the public lands despite its abuse of its grazing privileges," and "would interfere with the Secretary's exclusive discretion granted by Congress to determine who may graze the public lands and under which conditions."

We agree; this interpretation makes no sense. Where Congress has expressly empowered the Secretary of the Interior to manage the public lands and has declined to limit the Secretary's discretion to revoke grazing privileges, it strains credulity that a former permittee such as HRP — whose permit the BLM declined to renew after "numerous and continuous

instances of non-compliance" — should retain a preference right that it can transfer to a party of its choosing.

In sum, the text, structure, and purpose of the TGA and the FLPMA, when viewed together, make clear that Congress intended preferences for renewal to be exercised only by individuals who hold valid grazing permits and are in compliance with the terms of those permits. Ranchers "offer[] no persuasive authority compelling [their] preferred conclusion." *W. Watersheds Project*, 624 F.3d at 989. The intent of Congress is clear, and we affirm at *Chevron* step one.

B. The Grazing Regulations do not Support Ranchers' Position

Because a plain reading of the statutory language of the TGA and the FLPMA resolve this case, there is no reason for the Court to consider the Grazing Regulations. But it is clear that Ranchers would fare no better under the Regulations, which — contrary to Ranchers' argument — are wholly consistent with the statutes they implement.

Ranchers' theory depends on their reading of Section 4110.1(b)(1)(i) and Section 4170.1-1(a) of the Grazing Regulations. Section 4110.1(b)(1)(i) describes the qualifications for permit renewal, and Section 4170.1-1(a) describes a process by which the agency may cancel a grazing permit before its scheduled expiration. 43 C.F.R. §§ 4110.1(b)(1)(i), 4170.1-1(a). According to Ranchers, Section 4170.1-1(a) shows that,

in some instances, the BLM formally cancels a grazing preference, but here, the BLM relied only on Section 4110.1(b)(1)(i) in declining to renew HRP's grazing permit. Because Section 4110.1(b)(1)(i) makes no mention of grazing preferences, Ranchers would have us conclude that the decision pursuant to Section 4110.1(b)(1)(i) did not cancel HRP's grazing preference.

This argument is unpersuasive. Not only is there a complete absence of authority for the notion that a preference exists until it is canceled under Section 4170.1-1(a), but Section 4170.1-1(a) is not even at play in this case. Ranchers ask the Court to elide the distinction between non-renewal of a permit and cancellation of a permit. But the distinction they ask us to ignore bears directly on the continued existence of a preference.

As the government explained at oral argument, when the BLM issues a grazing permit, that permit may include a preference for renewal. When the term of that permit is set to expire, the permittee may exercise its preference in applying for a new permit. If the BLM grants this application, the new permit may be accompanied by a new, separate preference for future renewal. Whether or not the BLM issues a new permit, however, the original preference disappears after being exercised. Within the context of non-renewal of a permit, therefore, the Grazing Regulations make no specific provision for cancellation of a preference, because that preference ceases to exist in the normal course. By contrast, where the BLM cancels

a permit prior to the normal expiration of its term — and before the permittee has had an opportunity to exercise the associated preference — a question might arise as to whether the preference continues to exist even after the BLM cancels the permit. For this reason, Section 4170.1-1(a) specifically provides for cancellation of a preference in conjunction with cancellation of a permit.

The BLM did not cancel HRP's permit pursuant to Section 4170.1-1(a); rather, it declined to renew the permit upon the expiration of its term pursuant to Section 4110.1(b)(1)(i). Accordingly, we agree with the government's statement that "the Grazing Regulations' cancellation procedures were not applicable in this case," because of the simple fact that neither HRP's permit nor HRP's preference was canceled prior to their scheduled expiration. As the district court correctly explained, the statutory and regulatory framework make clear that "once the permit is not renewed due to noncompliance, the preference disappears at the same moment the permit disappears."[6]

---

[6] Ranchers contend that the BLM's conduct in an unrelated case contradicts this conclusion because it shows that in at least one instance, the BLM canceled a former permittee's preference after the corresponding permit had expired. In that case, E. Wayne Hage declined to sign a permit renewal that the BLM sent to him in 1997 and the BLM therefore did not renew his permit. Twelve years later, the BLM issued a separate decision formally canceling Mr. Hage's preference pursuant to 43 C.F.R. § 4170.1-1(b). Yet Ranchers present no evidence that this decision was ever appealed to or affirmed by the IBLA, whose decisions represent the agency's official position. *See* 43 C.F.R. §§ 4.403(a), 4.1(b)(2). This is much more akin to an "ad hoc statement not reflecting the

Even if Section 4170.1-1(a) were at all relevant, it would not have been possible for the BLM to cancel HRP's grazing preference pursuant to that provision, which provides for cancellation of a "grazing permit or lease *and* grazing preference." 43 C.F.R. § 4170.1-1(a) (emphasis added). Because of the conjunction "and," Section 4170.1-1(a) is most naturally read to mean that the BLM only cancels a preference when it simultaneously also cancels a permit or lease. HRP did not retain any grazing permit after February 28, 2012, so the BLM could not have canceled HRP's preference pursuant to this provision after HRP's permit expired.

V. CONCLUSION

We uphold the IBLA's decision at *Chevron* step one because the IBLA correctly applied the clear and unambiguous language of the TGA and the FLPMA, which establish that a grazing preference cannot be exercised after the corresponding grazing permit is not renewed for bad behavior. Because the IBLA correctly interpreted and applied the statutory authorities, and therefore did not act "contrary to law," it follows that the decision is not arbitrary and capricious in violation of the APA. The district court's grant of summary judgment was therefore proper.

The judgment of the district court is **AFFIRMED**.

---

agency's views," *Kisor v. Wilkie*, 139 S. Ct. 2400, 2416 (2019), and does not carry the force of law.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

K. JOHN CORRIGAN, M. MARTHA CORRIGAN, HANLEY RANCH PARTNERSHIP, MICHAEL F. HANLEY, IV, AND LINDA LEE HANLEY, Plaintiffs, v. DAVID L. BERNHARDT, Secretary of the Interior; BRIAN STEED, Acting Director, Bureau of Land Management; JOHN F. RUHS, Idaho State Director, Bureau of Land Management; LARA DOUGLAS, Boise District Manager, Bureau of Land Management; and DONN CHRISTIANSEN, Owyhee Field Manager, Bureau of Land Management, Defendants. and WESTERN WATERSHEDS PROJECT, Intervenor	Case No. 1:18-CV-512-BLW MEMORANDUM DECISION AND ORDER (Filed Feb. 26, 2020)

INTRODUCTION

The Court has before it cross-motions for summary judgment. The Court heard oral argument on February 19, 2020, and took the motions under advisement. For the reasons expressed below, the Court will grant the motions filed by the defendants and intervenors, and deny the motion filed by plaintiffs.

FACTUAL BACKGROUND

Plaintiffs filed this lawsuit challenging the BLM's cancellation of their grazing preferences on two allotments – known as the Hanley FFR and Trout Springs allotments – on BLM lands in Idaho. This controversy began when BLM concluded that Hanley Ranch had failed to comply with the terms of its grazing permits for many years. *See Corrigan v. BLM*, 190 IBLA 371, 374 (2017); *Hanley Ranch P'ship v. BLM*, 183 IBLA 184, 189-91, 202-07, 211-14 (2013). The BLM found that Hanley Ranch exceeded usage limits, ruined riparian areas, removed vegetation on BLM land without permission, and used pastures closed by the BLM, among other permit violations. *Id.*

Based on these findings, the BLM denied Hanley Ranch's application to renew their grazing permit. Hanley Ranch appealed that decision. In 2011 an Administrative Law Judge granted BLM's motion for summary judgment affirming the BLM's decision to not renew the grazing permit. That decision was affirmed by the Interior Board of Land Appeals (IBLA) on March 12, 2013.

A few months later, Hanley Ranch leased its "base property" – private lands totaling about 1,900 acres – to Martha Corrigan (plaintiff Michael Hanley's daughter) and her husband John Corrigan. The Corrigans then applied to the BLM for a transfer of Hanley Ranch's "grazing preference" and a grazing permit for the Trout Springs and Hanley FFR allotments. The Corrigans argued that even though Hanley Ranch's grazing permit had been terminated, the grazing preference continued to exist and attached to the base property that the Corrigans now leased.

The BLM disagreed, holding that the termination of the grazing permit also terminated whatever rights Hanley Ranch had to a grazing preference. The Corrigans appealed that decision but it was affirmed by the Interior Board of Land Appeals (IBLA). *Corrigan*, *supra*, at 375-76, 394. The IBLA explained that under BLM regulations, "grazing preference" does not constitute any kind of "indefinite entitlement" or "property-based right[]," and agreed with BLM that a "grazing preference" does not exist independently of a grazing permit. *Id*. at 388. Consequently, "if a person ceases to be a 'permittee' he or she ceases to control preference." *Id*.

In response, the Hanley Ranch and Corrigans filed this lawsuit under the Administrative Procedures Act (APA) seeking judicial review of the IBLA decision. On the merits of the IBLA decision, the plaintiffs argue that a grazing preference is separate from a grazing permit and that the preference does not disappear just because the permit is denied. As to the remedy,

plaintiffs seek reversal of the agency decisions to deny the Corrigan's applications for (1) an approval of the transfer of the preference and (2) a grazing permit.

ANALYSIS

Congress has passed two statutes that govern the analysis in this case: The Taylor Grazing Act (TGA) passed in 1934, and the Federal Land Policy and Management Act (FLPMA), passed in 1976. Both give an existing permit holder the right to stand first in line when it comes time to renew that permit. This is referred to as a "preference" by the TGA and a "first priority" by FLPMA. *See* 43 U.S.C. § 315b (TGA); 43 U.S.C. § 1752(c) (FLPMA). No ambiguity results from the different usage because both terms mean the same thing: The existing permit holder stands first in line when seeking to renew his expired permit. Indeed, the regulations use the terms interchangeably: The term "preference" is defined as a "superior or priority position against others for purpose of receiving a grazing permit or lease." *See* 43 C.F.R. § 4100.0-5.

The Supreme Court has made it clear that FLPMA simply carried through the identical "first-in-line" intent of the TGA. In *Pub. Lands Council v. Babbitt*, 529 U.S. 728 (2000), the Supreme Court identified some of the changes FLPMA made to the TGA but then described one of the similarities, stating that FLPMA specified "that existing grazing permits holders would *retain* a 'first priority' for renewal." *Id.* at 738 (emphasis added). In other words, FLPMA's use of the term

"first priority" simply retains the meaning of the word "preference" in the TGA. *See generally* 60 Fed.Reg. 9894, 9907 (stating that FLPMA "did not repeal the TGA but did provide additional management direction").

The Court can find no support for plaintiffs' argument that the terms "preference" in the TGA and "first priority" in FLPMA should be interpreted differently, or that one should be ignored. The Court finds that both terms unambiguously mean that the permit holder stands first in line when seeking to renew an expired permit.

The privilege of renewal depends on the permittee being in compliance with the terms of the permit. Under § 1752(c) of FLPMA, an existing permittee, who is "in compliance with the rules and regulations issued and the terms and conditions in the permit . . . shall be given first priority for receipt of the new permit." *See* 43 U.S.C. § 1752(c). The plain meaning of this provision is that a permittee who fails to comply with the terms of his permit forfeits that priority.

In this case, the BLM found that on numerous occasions Hanley Ranch failed to comply with the terms of its permit. Those findings have not been challenged by plaintiffs in this case and are therefore taken as established facts. Under § 1752(c) Hanley Ranch forfeited its priority.

Hanley Ranch and the Corrigans argue, however, that the priority cannot be automatically forfeited but must be cancelled by the formal process set forth in

43 U.S.C. § 4170.1-1(a). That regulation states that the BLM may "cancel a grazing permit or lease and grazing preference . . . under subpart 4160 of this title, for violation by a permittee or lessee of any of the provisions of this part." Subpart 4160 requires the BLM to provide a written proposed decision to the permit holder and to allow the permit holder to protest the proposed decision.

Plaintiffs argue that the BLM never provided a proposed decision cancelling their preference and never allowed them to protest the cancellation of the preference. This argument assumes that a preference or priority continues to exist after the permit is not renewed. To support their argument that the priority is separate from the permit, plaintiffs cite 43 C.F.R. § 4100.0-5, which states that "[t]his priority is attached to base property owned or controlled by a permittee," and then point out that if the base property is sold, any existing permit held by the permit holder "shall terminate immediately without further notice . . . [but] the grazing preference shall remain with the base property and be available through application and transfer procedures . . . to the new owner . . . of that base property." *See* 43 C.F.R. § 4110.2-1(d). Plaintiffs argue that this regulatory framework shows that the priority is separate from the permit and continues to exist even after the permit is not renewed.

The Court disagrees for two reasons: (1) These regulations say nothing about nonrenewal – they are only triggered when an *existing permit* is attached to base property being sold; and (2) These regulations state

that the permit is immediately terminated without notice when the property is sold, obviously an exception to the requirements of notice and a hearing under § 4160 and § 4170 that plaintiffs are trying to apply here.

What the regulations do mean is that if Hanley Ranch had sold the base property to the Corrigans *while the grazing permit was still in good standing*, the permit would have terminated without notice and the preference would have remained with the base property subject to the BLM's application and transfer procedures. But that is not the situation here. Hanley Ranch did not lose its permit because it sold the property; instead its permit was not renewed at the end of its term because Hanley Ranch failed to comply with the permit's terms. Under FLPMA – § 1752(c) quoted above – a permittee has a preference only so long as he complies with the terms of his permit. The BLM's regulations follow this dictate: "Applicants for the renewal . . . must be determined by the authorized officer to have a satisfactory record of performance." *See* 43 C.F.R. § 4110.1(b). "The authorized officer will not renew . . . a permit . . . unless the applicant and all affiliates have a satisfactory record of performance." *Id*. § 4130.1-1(b). Unable to renew its permit due to noncompliance, Hanley Ranch no longer stood in a "superior or priority position against others" in seeking renewal – it had no ability to seek renewal and hence had no preference.

The provisions of § 4160 and § 4170 regarding cancellation never came into play in this case. A

preference is not some self-contained privilege that needs to be separately cancelled with notice and a hearing. It is instead a privilege *to renew a permit* – once the permit is not renewed due to noncompliance, the preference disappears at the same moment the permit disappears. There is no need for a separate cancellation process under § 4170.1-1 or subpart 4160. Those regulations say nothing about the nonrenewal of permits due to noncompliance and hence do not govern this case.

Plaintiffs concede that they are not arguing that the "attachment to the base property" language somehow elevates the priority to a property right, and indeed the TGA and FLPMA clearly bar such an argument. *See* 43 U.S.C. § 315b ("the issuance of a permit pursuant to the provisions of this subchapter shall not create any right, title, interest, or estate in or to the lands"); 43 U.S.C. § 1752(h) ("Nothing in this Act shall be construed as modifying in any way law existing on October 21, 1976, with respect to the creation of right, title, interest or estate in or to public lands . . . by issuance of grazing permits . . . .").

The issue in this case is narrow. It is whether a permit holder who is not allowed to renew his permit at the end of its terms due to noncompliance with the permit's terms nevertheless continues to hold a preference that can be transferred to a buyer, allowing that buyer to have a priority over all others is applying for a permit. The Court holds that under the TGA, FLPMA, and the BLM regulations, the preference ceases to exist when the agency denies the application

for renewal due to noncompliance, and no separate notice and opportunity to protest regarding the priority is required. Consequently, the Court cannot find that the IBLA's decision was arbitrary and capricious under the APA.[1] The Court will therefore grant the motions for summary judgment filed by defendants and intervenor WWP, and deny the motion filed by plaintiffs.

ORDER

In accordance with the Memorandum Decision set forth above,

NOW THEREFORE IT IS HEREBY ORDERED, that the motion for summary judgment filed by plaintiffs (docket no. 24) is DENIED.

IT IS FURTHER ORDERED, that the motions for summary judgment filed by defendants and intervenors (docket nos. 28 & 29) are GRANTED.

IT IS FURTHER ORDERED, that the Clerk shall close this case.

DATED: February 26, 2020

[SEAL] /s/ B. Lynn Winmill
B. Lynn Winmill
U.S. District Court Judge

[1] The Court has found the statutes and regulations unambiguous and gave no deference to the IBLA decision.

[SEAL] United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
801 N. Quincy St., Suite 300
Arlington, VA 22203

703-235-3750 703-235-8349 (fax)

K. JOHN AND M. MARTHA CORRIGAN, *ET AL.*
v.
BUREAU OF LAND MANAGEMENT

IBLA 2016-175 Decided August 10, 2017

Interlocutory appeal from an Administrative Law Judge order granting summary judgment to the Bureau of Land Management, and ruling that a former permittee's grazing preference and permitted use were extinguished when the permittee's grazing permit expired.

Affirmed.

1. Administrative Procedure: Burden of Proof

When appealing an administrative law judge's order to the Board, the. appellant's burden is to demonstrate error in the ALJ's decision

2. Grazing Permits and Licenses: Adjudication

Grazing privileges on the public lands are temporary and granted at the sole discretion of the Secretary of the Interior. Grazing preference and permitted use are directly related to a permittee's grazing permit, and do not create any indefinite entitlements or property-based rights.

3. Grazing Permits and Licenses: Adjudication

A grazing preference is not an independent entitlement or property right that exists without a grazing permit. When a grazing permit expires, preference is lost.

4. Grazing Permits and Licenses: Adjudication

Once a grazing permit expires after BLM decides not to renew it under the regulation governing renewals, at 43 C.F.R. § 4110.1(b)(1), preference is lost. BLM is not required to separately cancel a permittee's grazing preference under the regulation governing penalties, at 43 C.F.R. § 4170.1-1.

5. Grazing Permits and Licenses: Adjudication

Neither section 402(c) of the Federal Land Policy and Management Act nor the Administrative Procedure Act, 5 U.S.C. § 558(c), requires renewal of a grazing permit that has expired since those provisions apply only when there is a valid permit in existence.

APPEARANCES: W. Alan Schroeder, Esq. and Brian G. Sheldon, Esq., Boise, Idaho, for K. John and M. Martha Corrigan, Hanley Ranch Partnership, Michael F. Hanley, IV, and Linda Lee Hanley; Elizabeth E. Howard, Esq., Portland, Oregon, for Oregon Cattlemen's Association and Public Lands Council; Robert B. Firpo, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Boise, Idaho, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE SOSIN

K. John and M. Martha Corrigan, Hanley Ranch Partnership (Hanley Ranch), Michael F. Hanley, IV, and Linda Lee Hanley (appellants) petitioned for interlocutory review of a January 25, 2016, order issued by Administrative Law Judge (ALJ) Harvey C. Sweitzer. In his order, the ALJ ruled, among other things, that Hanley Ranch's grazing preference and permitted use were extinguished when its grazing permit expired and therefore could not be transferred or provide the basis for a new grazing permit. We granted appellants' petition for interlocutory appeal and now affirm the ALJ's ruling.

SUMMARY

A grazing permit allows the permittee to utilize the public lands for livestock purposes, and the regulatory framework governing grazing provides that a grazing permit specifies grazing preference, which gives the permittee a priority position against others for purposes of permit renewal, and permitted use. But neither a grazing permit, nor the grazing preference or permitted use associated with the permit, creates any kind of indefinite entitlement or property right. As a result, when a grazing permit is canceled or expires, the associated grazing preference and permitted use are automatically and simultaneously extinguished.

Here, the Bureau of Land Management (BLM) decided not to renew Hanley Ranch's grazing permit

based on an unsatisfactory record of performance and as a consequence, the permit expired at the end of its term. As a result of the permit expiring, Hanley Ranch's grazing preference and permitted use were extinguished. BLM therefore properly rejected Hanley Ranch's application for grazing use. BLM also was correct in denying the Corrigans' applications for a transfer of Hanley Ranch's grazing preference and for a grazing permit based on that preference because the Hanley Ranch permit had expired and there was no preference to transfer that would give the Corrigans priority for a grazing permit over other applicants. Because BLM's decisions were proper under the law, we affirm the ALJ's order.

BACKGROUND

A. Proceedings Related to Hanley Ranch's Grazing Permit Between 2009 and 2014

This case involves grazing privileges on two allotments administered by BLM's Owyhee Field Office, within the Boise District, in Idaho – the Hanley Fenced Federal Range and Trout Springs Allotments.[1] Hanley Ranch held a grazing permit issued by BLM under the Taylor Grazing Act (TGA)[2] and its implementing regulations,[3] authorizing grazing on these allotments

---

[1] Petition to File Interlocutory Appeal/Statement of Reasons (SOR) at 3; Answer at 1; ALJ Sweitzer Order (Jan. 25, 2016) at 3-4.

[2] 43 U.S.C. § 315b (2012).

[3] 43 C.F.R. Part 4100 (2005). BLM amended its grazing regulations in 2006, but the United States District Court for the

for the 10-year period from March 1, 2002, through February 28, 2012.[4]

In 2009, BLM issued a decision in which it declined to renew Hanley Ranch's permit based on the Bureau's determination, under applicable regulations,[5] that Hanley Ranch was not qualified to hold a grazing permit because it had an unsatisfactory record of performance from 2002 through 2009.[6] Hanley Ranch appealed BLM's decision to the Departmental Cases Hearings Division, and on April 6, 2011, ALJ

District of Idaho enjoined the regulations from taking effect. *Western Watersheds Project v. Kraayenbrink*, 538 F. Supp. 2d 1302 (D. Idaho 2008), *aff'd in relevant part, vacated in part, and remanded*, 632 F.3d 472 (9th Cir. 2011). All citations to the grazing regulations, unless otherwise noted, are to the regulations in effect prior to the 2006 amendments.

[4] *Hanley Ranch Partnership*, 183 IBLA 184, 187 (2013); BLM Final Grazing Decision to Hanley Ranch (Nov. 22, 2013) at 2.

[5] 43 C.F.R. §§ 4110.1(b) ("Applicants for the renewal or issuance of new permits must be determined by the authorized officer to have a satisfactory record of performance."), 4110.1(b)(1)(i) ("The applicant for renewal of a grazing permit or lease, and any affiliate, shall be deemed to have a satisfactory record of performance if the authorized officer determines the applicant and affiliates to be in substantial compliance with the terms and conditions of the existing Federal grazing permit or lease for which renewal is sought, and with the rules and regulations applicable to the permit or lease.").

[6] BLM Proposed Decision (Dec. 16, 2009) (identifying "numerous and continuous instances of non-compliance with the terms and conditions of the existing federal grazing permit, as well as a number of violations (trespasses)"); *see also Hanley Ranch Partnership*, 183 IBLA at 197.

Robert G. Holt granted summary judgment to BLM.[7] Hanley Ranch then appealed the ALJ's decision to this Board. On March 12, 2013, in *Hanley Ranch Partnership*,[8] we affirmed the ALJ's decision.

In February 2013, while the Board's decision was pending, Hanley Ranch submitted to BLM an application for annual grazing use.[9] Beginning in August 2013, Hanley Ranch leased its "base property" – private ranch lands totaling approximately 1,900 acres – to the Corrigans, who then submitted to BLM an application seeking a transfer of Hanley Ranch's grazing preference and an application to graze on the Hanley Fenced Federal Range and Trout Springs Allotments.[10]

On November 22, 2013, BLM issued two separate decisions: One rejecting Hanley Ranch's application for annual grazing use, and one denying the Corrigans' application for the transfer of preference and for a grazing permit based on the transfer of Hanley Ranch's preference. In the first decision, BLM denied Hanley Ranch's request to graze during the 2013 season because the company no longer had a valid grazing permit. BLM explained:

Because the IBLA affirmed the BLM'S decision that you were unqualified to hold a renewed grazing

---

[7] ALJ Holt Order (Apr. 6, 2011).

[8] *Hanley Ranch Partnership*, 183 IBLA 184.

[9] Answer at 4 & n.1.

[10] SOR at 6-7 (citing to the Lease Agreement between Hanley Ranch and the Corrigans); BLM Answer at 5; BLM Final Decision to K. John and M. Martha Corrigan (Nov. 22, 2013) at 1-2.

permit, your grazing preference, or priority for permit renewal, terminated by operation of law. In addition, it is now undisputed that you do not hold a valid grazing permit for either the Trout Springs or the Hanley [Fenced Federal Range] Grazing Allotments.[11]

In the second decision, BLM denied the Corrigans' applications. BLM stated that after the Board's decision in *Hanley Ranch Partnership*, Hanley Ranch no longer possessed a grazing permit for the Allotments, and as a result Hanley Ranch no longer possessed a grazing preference that could be transferred.[12] BLM therefore denied the Corrigans' application for the transfer of Hanley Ranch's preference. And because the Corrigans could not receive Hanley Ranch's preference, BLM denied their permit application, explaining that it would not give their grazing permit application "preferential consideration as against other applicants for grazing use within the Trout Springs and Hanley [Fenced Federal Range] allotments."[13] BLM stated that it had issued a proposed decision to authorize 699 animal unit months (AUMs) for the Trout Springs Allotment to another entity (Payne Family Grazing Association LLC), and no additional AUMs would be permitted in the allotment at that time.[14] BLM stated that if additional AUMs became

---

[11] BLM Final Grazing Decision to Hanley Ranch (Nov. 22, 2013) at 2,

[12] BLM Final Decision to K. John and M. Martha Corrigan (Nov. 22, 2013) at 2.

[13] *Id.*

[14] *Id.*

available in the future, the Corrigans could then apply for a permit.[15]

Appellants appealed BLM's November 22, 2013, decisions to the Hearings Division. They argued that a grazing permit is distinct from grazing preference and permitted use, and that "BLM inappropriately collapses" this distinction.[16] Specifically, they argued first that a grazing preference is a "usufructory right" that is attached to base property and is "alienable, heritable, and taxable."[17] According to appellants, this means that the grazing preference and permitted use associated with Hanley Ranch's base property continued to exist and therefore was available for transfer, even after the Board's decision in *Hanley Ranch Partnership*, affirming BLM's decision not to renew the grazing permit.[18] Next, appellants argued that absent an affirmative cancellation by BLM of Hanley Ranch's grazing preference under 43 C.F.R. § 4170.1-1,[19] Hanley Ranch

---

[15] *Id.*

[16] Appellants' Motion for Summary Judgment (May 30, 2014) at 16.

[17] *Id.* at 16, 17; *see also* ALJ Sweitzer Order (Jan. 25, 2016) at 15 ("Appellants have characterized grazing preferences as entitlements, usufructory rights, quasi-property rights, and indefinite continuing rights.").

[18] Appellants' Motion for Summary Judgment (May 30, 2014) at 16.

[19] *See* 43 C.F.R. § 4170.1-l(b) ("The authorized officer . . . shall cancel a grazing permit or lease and grazing preference . . . for repeated willful violation by a permittee or lessee of § 4140.1(b)(1) of this title.").

still possessed a preference that could be transferred.[20] Again relaying on the distinction between a grazing permit and preference, they stated: "[W]hile 'a grazing permit or lease *and* grazing preference' can be cancelled under 43 C.F.R. § 4170.1-1 (emphasis added), only grazing *permits* are subject to (non)-renewal under 43 C.F.R. § 4110.1(b)."[21]

Appellants also argued that provisions in Consolidated Appropriations Acts for the Department of the Interior mandated that BLM approve the transfer of Hanley Ranch's preference to the Corrigans and issue to the Corrigans a grazing permit.[22] Those provisions stated that a grazing permit "that is the subject of a request for a grazing preference transfer shall be issued, without further processing, for the remainder of the time period in the existing permit or lease using the same mandatory terms and conditions,"[23] and the terms and conditions contained in an expired or transferred permit "shall continue in effect under the renewed permit . . . until such time as the Secretary of the Interior . . . completes processing of such permit."[24] Appellants also argued that similar language added by

---

[20] Appellants' Motion for Summary Judgment (May 30, 2014) at 17.

[21] *Id.*

[22] *Id.* at 20-21.

[23] *Id.* (quoting Consolidated Appropriations Act of 2012, Pub L. No. 112-74, Div. E, Title IV, § 415, 125 Stat. 786,1043 (2011)).

[24] *Id.* at 22 (quoting Department of the Interior and Related Agencies Appropriations Act of 2004, Pub. L. No. 108-108, § 325, 117 Stat. 1241, 1307 (2003)).

Congress in 2014 to section 402(c) of the Federal Land Policy and Management Act of 1976 (FLPMA)[25] directed the same result.[26]

B. The January 25, 2016, ALJ Order on Appeal

On January 25, 2016, ALJ Sweitzer issued an order in which he denied appellants' motion for summary judgment, and granted (in relevant part to this interlocutory appeal) BLM's motion for summary judgment. The ALJ ruled that Hanley Ranch's grazing preference and permitted use ceased to exist after Hanley Ranch's grazing permit expired. The ALJ explained that "once the Board affirmed BLM's decision not to renew Hanley Ranch's permit for failing to substantially comply with the grazing regulations and for unsatisfactory performance, Hanley Ranch no longer had a grazing permit and no longer held a priority position for purposes of renewal."[27]

The ALJ specifically rejected appellants' argument that grazing preference and permitted use are separate and distinct from a grazing permit, and constitute some sort of property-based right. He stated: "Contrary to Appellants' assertions, grazing preferences do not create entitlements or establish a right to use the public lands because neither the [Taylor

---

[25] 43 U.S.C. § 1752(c) (2015 Supp.).

[26] Appellants' Memorandum on Supplemental Authority (July 13, 2015) (citing Pub. L. No. 113-291, Div. B., Title XXX, Subtitle B, § 3023, 128 Stat. 3762 (2014)).

[27] ALJ Sweitzer Order (Jan. 25, 2016) at 17.

Grazing Act] nor the grazing regulations require the issuance of permits to preference holders."[28] The ALJ also rejected appellants' argument that BLM was obligated to cancel Hanley Ranch's preference under the processes set forth in 43 C.F.R. § 4170.1-1, and that its decision not to renew Hanley Ranch's permit under 43 C.F.R. § 4110.1 did not operate to extinguish the preference once the permit expired. The ALJ concluded that BLM had no such obligation under the regulations:

> Although BLM could have taken action to immediately cancel Hanley Ranch's grazing permit and preference during the term of the prior permit, it was not required to do so. Instead, BLM properly considered Hanley Ranch as a permittee entitled to first priority consideration for renewal, determined that Hanley Ranch did not meet the qualifications for renewal under 43 C.F.R. § 4110.1, and then issued a decision declining to renew the permit.[29]

The ALJ therefore concluded that BLM's 2009 decision not to renew the permit, as affirmed by the Board in 2013, had the same effect as if BLM had cancelled the permit, except that implementation did not occur until the end of the permit term.[30]

Because the ALJ determined that once Hanley Ranch's permit expired, Hanley Ranch no longer had a

---

[28] *Id.* at 15.

[29] *Id.* at 17.

[30] *Id.* at 18.

preference that it could transfer, he also concluded that the Corrigans could not receive a grazing permit based on a preference transfer since a "transfer must occur while a valid grazing permit still exists."[31] The ALJ explained: "By the time Hanley Ranch executed the agreement leasing its base property to the Corrigans and transferring the associated grazing preferences in August of 2013, the prior grazing permit no longer existed."[32] But the ALJ did not determine whether BLM properly denied the Corrigans' grazing application based on the already issued proposed decision authorizing the Payne Family Grazing Association LLC to graze on the Trout Springs Allotment. The ALJ stated:

> BLM arguably should have considered the Corrigans' grazing application as a request for a new permit under the conflicting application provisions at 43 C.F.R. § 4130.1-2. Because the parties did not address this issue in their motions and the record has not been adequately developed, it would be premature . . . to issue a ruling regarding whether BLM properly exercised its discretion when issuing the 2013 Corrigan decision denying the Corrigan[s'] application for a grazing permit in its entirety and in issuing the related 2013 Payne Decision.[33]

---

[31] *Id.*

[32] *Id.*

[33] *Id.* at 22.

The ALJ therefore declined to rule on this precise issue and it is not before us in this interlocutory appeal.

Finally, the ALJ rejected appellants' arguments that provisions in the Consolidated Appropriations Acts and section 402(c) of FLPMA prevented Hanley Ranch's permit from expiring. First, the ALJ stated that the Appropriations Act provisions "only apply to the transfer or renewal of an existing permit," and here, "Hanley Ranch's permit ceased to exist based upon an affirmative decision not to renew issued well before the filing of a transfer application with BLM. Thus, there was no permit to 'continue' pending the completion of processing."[34] Second, the ALJ concluded that the 2014 amendment to section 402(c) of FLPMA was inapplicable in this case since it was enacted after issuance of the decisions on appeal.[35] But even if section 402(c) of FLPMA was applicable, the ALJ concluded it would change nothing:

> Like the prior Appropriations Act provisions, this amendment provides for continuity of grazing when expiring permits or transfer applications cannot be fully adjudicated until the requisite environmental analyses are complete. Therefore, this amendment, even if applicable, would not allow the Corrigans to revive a permit that ceased to exist – based

[34] *Id.* at 20-21.

[35] *Id.* at 21.

upon an affirmative decision not to renew it – well before the requested transfer.[36]

C. Appellants' Motion for Interlocutory Appeal

Appellants filed a motion requesting interlocutory appeal of ALJ Sweitzer's January 25, 2016, Order. ALJ Sweitzer certified his order for interlocutory appeal on May 6, 2016, stating that appellants had raised a controlling question of law concerning whether the grazing regulations "authorize a former permittee to transfer grazing privileges (including grazing preference) to another following a fully adjudicated decision not to renew the prior permit due to an unsatisfactory record of performance."[37]

On July 1, 2016, we granted appellants' request for interlocutory appeal.[38] On August 16, 2016, we granted a joint motion by the Oregon Cattlemen's Association and Public Lands Council to participate in this appeal as *amici curiae*.[39] The parties have submitted briefs and we now resolve the interlocutory appeal.

---

[36] *Id*.

[37] ALJ Sweitzer Order (May 6, 2016) at 4.

[38] *See* 43 C.F.R. § 4.28.

[39] *See id.* § 4.406(d).

DISCUSSION

A. Appellants' Burden of Proof on Interlocutory Appeal

[1] On appeal to the Board, appellants' burden is to demonstrate that ALJ Sweitzer issued his order affirming BLM's decisions in error.[40] What this Board must therefore determine is whether appellants have shown reversible error in the ALJ's determination that when Hanley Ranch's grazing permit expired, its grazing preference was extinguished. Because we conclude that the answer to this question is no, we affirm the ALJ's Order.

B. Summary of Appellants' Argument: Grazing Permits Are "Personal-Based" and Grazing Preferences and Permitted Use Are "Property-Based"

Foundational to appellants' arguments on appeal is their view that grazing permits are "*personal-based*," while grazing preference and permitted use are "*property-based*."[41] Appellants state: "[P]reference and the related concept of permitted use are defined as being attached to 'base property.' Grazing permits are issued to individual persons, not parcels of property."[42] Appellants argue that the distinction between grazing permits and preference and permitted use is reflected in

---

[40] See Hammond Ranches, Inc. v. BLM, 189 IBLA 41, 42 (2016).

[41] SOR at 12.

[42] Reply at 7.

the grazing regulations, which define grazing preference and permitted use as "attached to base property" and without any specified duration.[43] Appellants contrast this with grazing permits: "[P]ermitted use and preference attach to base property (while a permit does not) and [are] property-based entitlements . . . designed to 'support' a permit."[44]

According to appellants, this distinction mandates that preference and permitted use "must be managed and regulated separately" from grazing permits.[45] Appellants therefore argue that BLM could not lawfully cancel Hanley's grazing preference simply by declining to renew the grazing permit. Specifically, appellants state that BLM's decision not to renew Hanley Ranch's permit was an action authorized by 43 C.F.R. § 4110.1(b)(1), which provides for permit renewal based on a permittee's satisfactory record of performance, but that cancellation of preference must occur according to the procedures and standards in 43 C.F.R. § 4170.1-1(a), which provides that cancellation of a permit or preference may be the consequence if a permittee violates the regulations.[46] They state: "[T]he

---

[43] SOR at 17.

[44] Reply at 12-13.

[45] SOR at 12, 16 ("[I]t was erroneous of the January 25th ALJ Order to effectively eliminate the concept of preference by making it nothing more than another term and condition of Hanley's Grazing permit rather than a grazing privilege that is separately managed and regulated").

[46] *See* SOR at 13; Reply at 13.

authorities exercised under Sections 4110 and 4170 are not synonymous."[47]

Based on their view, appellants assert that a grazing preference can exist "apart from a grazing permit."[48] And therefore appellants argue that when BLM declined to renew Hanley's grazing permit, but did not specifically and separately cancel Hanley's grazing preference, the grazing preference continued to exist and was available for transfer to the Corrigans.[49] Appellants state:

> Although it is clear that BLM concluded that Hanley did not qualify for a renewed permit under 43 C.F.R. § 4110.1(b)(1), BLM's conclusion did not take away or otherwise cancel the Hanley FFR and Trout Springs Grazing preferences and Permitted use attached to the base property, and remained available to transfer to another permittee that *could*, absent a cancellation under 43 C.F.R. § 4170.1-1.[50]

---

[47] SOR at 13.

[48] Reply at 13; *see id.* at 14 ("[I]t is possible for BLM to in some way deauthorize a grazing permit without necessarily cancelling a grazing preference.").

[49] SOR at 17.

[50] *Id.*; *see also* Reply at 14 (stating that a grazing preference "'is of indefinite duration and continues until canceled or revoked'"), quoting *Shufflebarger v. Commissioner*, 24 T.C. 980, 992 (1955).

C. Grazing Privileges on the Public Lands Do Not Create Any Indefinite Entitlements or Property-based Rights

Although appellants urge us to conclude that grazing preference and permitted use are "indefinite entitlements" or "property-based" rights, we find no support for their view in the law.

[2] Grazing privileges on the public lands are temporary and granted at the sole discretion of the Secretary. The TGA specifies that "permits shall be for a period of not more than ten years" and may be renewed "in the discretion of the Secretary of the Interior."[51] When FLPMA was enacted over 40 years after the TGA, Congress confirmed the temporary nature of a grazing permit, stating that "permits and leases for domestic livestock grazing on public lands . . . shall be for a term of ten years."[52] Congress also confirmed that a grazing permit is renewable at the discretion of the Secretary, but that grazing permittees have a preference for receiving a renewed permit.[53] The United States Supreme Court has emphasized the "leasehold nature of grazing privileges," explaining that "Congress had made the Secretary the landlord of the

---

[51] 43 U.S.C. § 315b (2012); *see also* Answer at 23 ("The TGA never authorized the Secretary of the Interior to grant a putative grazer any kind of 'indefinite' or unlimited entitlement to graze or control grazing privileges on the public lands.").

[52] 43 U.S.C. § 1752(a) (2012); *see also* Answer at 23 ("FLPMA confirms the basic time limited-nature of grazing privileges being offered by the Department.").

[53] 43 U.S.C. §§ 1752(c) (2012), 1752(c)(1) (2015 Supp.).

public range and basically made the grant of privileges discretionary,"[54]

Further, the language of the TGA and FLPMA make clear that a permittee's preference is directly related to the permittee's grazing permit. The TGA specifies that renewal of a grazing permit is "subject to the preference right of the permittees."[55] And FLPMA echoes this linkage, providing that "the holder of the expiring permit or lease shall be given first priority for receipt of the new permit or lease."[56] Moreover, while neither the TGA nor FLPMA specifically mentions the phrase "permitted use," the TGA, in describing grazing permits, provides that the Secretary "shall specify from time to time numbers of stock and seasons of use."[57]

BLM's grazing regulations further reflect the close relationship between a grazing permit and grazing preference. First, BLM defines "grazing permit" as a document that specifies both preference and permitted use: "*Grazing permit* means a document that authorizes grazing use of the public lands. . . . A grazing permit specifies grazing preference and the terms and conditions under which permittees make grazing use during the term of the permit."[58] Moreover, the regulations define "preference" in the context of an existing permit as "a superior or priority position against

---

[54] *Public Lands Council v. Babbitt*, 529 U.S. 728, 735 (2000).

[55] 43 U.S.C. § 315b (2012).

[56] *Id.* §§ 1752(c) (2012), 1752(c)(1) (2015 Supp.).

[57] *Id.* § 315b (2012).

[58] 43 C.F.R. § 4100.0-5.

others *for the purpose of receiving a grazing permit or lease*."[59] When BLM adopted this definition of "preference" in a 1995 rulemaking, it eliminated language in the previous definition of "grazing preference" that referred to a specified quantity of forage (AUMs).[60] BLM explained in the preamble to the final rule that "preference" refers to "the relative standing of an applicant" and that although over time "common usage of the term evolved to mean the number of AUMs attached to particular base properties[,] . . . this usage dilutes the original statutory intent of the term as an indication of relative standing."[61]

In the same 1995 rulemaking, BLM added a new definition of "permitted use." And similar to the regulatory definition of "preference," "permitted use" is defined in the context of a grazing permit, 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."[62]

Although ranchers challenged these new definitions (among other provisions of the 1995 rulemaking) as violative of the TGA's direction to the Secretary of the Interior to "safeguard" grazing privileges,[63] the

---

[59] *Id.* (emphasis added).

[60] See Public Lands Council v. Babbitt, 529 U.S. at 740.

[61] 60 Fed. Reg. at 9894, 9922 (Feb. 22, 1995); *see also* ALJ Sweitzer Order (Jan. 25, 2016) at 13.

[62] 43 C.F.R. § 4100.0-5 (emphasis added); *see also id.* § 4110.2-2(a) ("Permitted use is granted to holders of grazing preference and shall be specified in all grazing permits and leases.").

[63] *See* 43 U.S.C. § 315b (2012).

United States Supreme Court upheld the definitions as within the Secretary's authority under the TGA. In *Public Lands Council*, the court reaffirmed the broad authority of the Secretary to manage grazing on the public lands, concluding that the TGA "make[s] clear that the ranchers' interest in permit stability cannot be absolute; and that the Secretary is free reasonably to determine just how, and the extent to which, 'grazing privileges' shall be safeguarded, in light of the Act's basic purposes."[64] Echoing the Supreme Court in *Public Lands Council*, the Board has similarly stated that "[o]ne who owns or controls base property does not have an absolute right to graze livestock on the public land; such grazing is subject to the reasonable discretion of BLM."[65]

Even before *Public Lands Council*, the Federal Circuit Court of Appeals held, based on an earlier Supreme Court case interpreting this language in the TGA, that "grazing preferences that are attached to fee simple property are not compensable property interests under the Fifth Amendment."[66] The Federal Circuit stated that the distinction between a grazing preference, which is attached to base property, and a grazing permit "is irrelevant from a Fifth Amendment

---

[64] Public Lands Council v. Babbitt, 529 U.S. at 741-42.

[65] *Holmgren v. BLM*, 175 IBLA 321, 346 (2008).

[66] *Alves v. United States*, 133 F.3d 1454, 1457 (Fed. Cir. 1998) (citing *United States v. Fuller*, 409 U.S. 488 (1973)); *see also* ALJ Sweitzer Order (Jan. 25, 2016) at 15 ("Courts have also rejected the notion that grazing preference and permits establish compensable property rights.").

perspective, and neither constitutes a compensable property interest."[67]

Like the Federal Circuit Court of Appeals, and contrary to appellants' view, we find no legal significance in the fact that preference and permitted use are attached to a permittee's base property. This does not make them property rights or indefinite entitlements; such would be in direct contravention of the TGA's mandate that a grazing permit does "not create any right, title, interest or estate in or to the lands."[68] We agree with ALJ Sweitzer that, at bottom, no such rights or entitlements can exist because "neither the TGA nor the grazing regulations require the issuance of permits to preference holders."[69] As the Solicitor of the Department of the Interior explained a few years after the TGA was enacted, preference "means simply that all persons with certain qualifications are to be considered [for a grazing permit] before persons lacking those qualifications, but it does not mean necessarily that the applications of all those in the first class must be granted."[70]

We also reject, as did ALJ Sweitzer, appellants' reliance on *Shufflebarger v. Commissioner*, a 1955 U.S.

---

[67] *Alves v. United States*, 133 F.3d at 1457.

[68] 43 U.S.C. § 315b (2012); *see also Public Lands Council*, 529 U.S. at 741-42.

[69] ALJ Sweitzer Order (Jan. 25, 2016) at 15 (citing *Holmgren v. BLM*, 175 IBLA at 346)).

[70] 56 I.D. 62, 64 (1937).

Tax Court case.[71] Appellants argue that the Tax Court's "recognition" that a grazing preference is "potentially unlimited in duration" supports their view that the "indefinite" nature of a grazing preference somehow turns the preference into a property right.[72] In *Shufflebarger*, the court addressed whether a rancher who purchased additional base property and grazing privileges could claim tax deductions associated with depreciation of the lease over the remaining term of his U.S. Forest Service grazing permit. The Tax Court rejected the rancher's argument, concluding that his grazing preference was not the kind of property subject to the "exhaustion allowance" provided under the tax code provision at issue.[73] In so concluding, the Tax Court noted that while a preference could be cancelled or revoked, it is of "indefinite duration" since the conditions under which cancellation or revocation would occur "may never happen."[74]

But the Tax Court's acknowledgement that a grazing preference is not limited to the term of a grazing permit was made in the context of interpreting the tax code.[75] Further, the Tax Court explained that although

---

[71] 24 T.C. 980 (1955).

[72] *See* SOR at 14-15; *see also* Amici Brief at 10 ("As further evidence of their unique and separate purposes, grazing permits carry a specified term of use beginning at issuance, but grazing preference and permitted use have no such condition or reference to a temporal expiration.") (citing *Shufflebarger v. Commissioner*, 24 T.C. at 992, 994).

[73] 24 T.C. at 996.

[74] *Id.* at 995.

[75] *See* ALJ Sweitzer Order (Jan. 25, 2016) at 15-16.

a grazing preference is of indefinite duration, it "does not itself convey a legal right to the use of the national forest range."[76] More significantly, however, the court's decision in *Shufflebarger* predates FLPMA, the grazing regulations, and the Supreme Court's decision in *Public Lands Council*, all of which confirm that neither a grazing permit, nor any of the privileges it provides, confers upon a permittee an entitlement or property right. As ALJ Sweitzer concluded, "a grazing preference provides no additional rights beyond what has been specifically provided for in the regulations – and those regulations define preference as 'a superior or priority position against others for the purpose of receiving a grazing permit or lease.' "[77]

We therefore conclude that grazing preference and permitted use do not constitute any kind of indefinite entitlement or property-based rights. Appellants have not met their burden to show error in the ALJ's decision.

D. Grazing Preference Does Not Exist Without a Grazing Permit; Therefore, Hanley Ranch's Grazing Preference Was Lost When Its Grazing Permit Expired

[3] Just as we conclude, as did ALJ Sweitzer, that there is no basis in law supporting appellants' view that grazing preference and permitted use are entitlements or property-based rights, we also conclude, as

---

[76] 24 T.C. at 995.

[77] ALJ Sweitzer Order (Jan. 25, 2016) at 16.

did ALJ Sweitzer, that there is no basis in law supporting appellants' view that Hanley Ranch's grazing preference (or permitted use) can exist in a vacuum, without a grazing permit.

In his January 25, 2016, Order, the ALJ rejected appellants' argument that a grazing preference can exist without a grazing permit. Because a grazing preference does not constitute any sort of entitlement or property right, and is instead a "first priority" for permit renewal, the ALJ concluded that "once the Board affirmed BLM's decision not to renew Hanley Ranch's permit for failing to substantially comply with the grazing regulations and for unsatisfactory performance, Hanley Ranch no longer had a grazing permit and no longer held a priority position for purposes of renewal."[78] The ALJ further noted that under the regulations, to receive a permit based upon a preference transfer, the transfer must occur while a valid permit still exists.[79] And here, Hanley Ranch's permit expired after BLM declined to renew it, so there was no existing permit at the time Hanley Ranch attempted to transfer its preference.[80]

---

[78] *Id.* at 17.

[79] *Id*. at 18 (citing 43 C.F.R. § 4110.2-3, which provides that a "transferee shall accept the terms and conditions of the terminating grazing permit or lease").

[80] *Id.* ("By the time Hanley Ranch executed the agreement leasing its base property to the Corrigans and transferring preferences in August 2013, the prior grazing permit no longer existed.").

On appeal, appellants continue to argue that Hanley Ranch's grazing preference did not terminate when the grazing permit expired. Appellants acknowledge that the grazing regulations define grazing preference as a relative priority position, but then allege that the ALJ, in his January 25, 2016, order, "recognized that the 1995 regulations retained the concept of preference as a separately authorized statutory and regulatory entitlement."[81] Based on this assertion, appellants argue that the ALJ erred by "effectively eliminat[ing] the concept of Grazing preference by making it nothing more than another term and condition of Hanley's Grazing permit rather than a grazing privilege that is separately managed and regulated."[82]

But the 1995 regulations do not recognize preference as a "'separately authorized statutory and regulatory entitlement.'"[83] We agree with the ALJ, who stated explicitly that characterizing grazing preference as any sort of entitlement or indefinite continuing right "cannot be reconciled with the 1995 regulatory amendments or applicable case law."[84] Moreover, the 1995 regulations themselves in no way indicate that grazing preference is an entitlement that can exist outside of a valid grazing permit. To the contrary, and as we noted above, the grazing regulations reflect the close relationship between a grazing permit and

---

[81] SOR at 16.

[82] *Id.*

[83] Answer at 29 (quoting SOR at 16).

[84] ALJ Sweitzer Order (Jan. 25, 2016) at 15.

grazing preference and permitted use, defining preference in the context of an existing permit.[85] We agree with BLM that the regulations confirm the "intertwined nature of permits and preference," and that "if a person ceases to be a 'permittee,' he or she ceases to control preference. . . ."[86]

In briefing before the ALJ, and again on appeal, appellants cite to our decision in *Katsilometes v. BLM*,[87] as support for the proposition that preference can exist without a grazing permit.[88] The ALJ rejected appellants' reliance on *Katsilometes*, stating that the case addressed "issues unique to testamentary transfers, generally applied an earlier version of the grazing regulations, and did not address whether any preference remains after BLM effectively cancels a grazing permit due to unsatisfactory performance."[89] We agree. Our decision in *Katsilometes* concerned the testamentary disposition of base property and associated grazing preference and did not in any way address the

---

[85] 43 C.F.R. § 4100.0-5 (defining "grazing permit" as a document that specifies both preference and permitted use; defining "preference" as "a superior or priority position against others for the purpose of receiving a grazing permit or lease.").

[86] Answer at 14.

[87] 157 IBLA 230 (2002).

[88] *See* SOR at 15 n.6 (stating the decision "highlights the *property-based* nature of grazing preferences, in distinction *to the personal-based nature* of grazing permits").

[89] ALJ Sweitzer Order (Jan. 25, 2016) at 18.

nature of a grazing preference as a stand-alone interest in the absence of a grazing permit.[90]

We simply find no support for appellants' argument that a grazing preference exists as an independent entitlement or property right, separate and apart from a grazing permit.

E. Once a Grazing Permit Expires After BLM Decides Not to Renew It, BLM Is Not Required to Separately Cancel a Permittee's Grazing Preference

[4] Because we conclude that grazing preference is not an entitlement or property right and is not required to be separately managed and regulated, we also reject appellants' arguments that BLM's decision not to renew Hanley Ranch's grazing permit cannot result in the expiration of the grazing preference once the permit expires.

Appellants continue in their reliance on the "property-based" nature of a grazing preference, in contrast to the "personal-based" nature of a grazing permit, and argue that this distinction means that BLM erred by "conflat[ing] Sections 4110.1(b)(1) [qualifications for renewal of a permit] and 4170.1-1 [penalty for violations]."[91] Appellants state further: "[T]here is no language in the regulations or relevant statutes that say that the non-renewal of a grazing permit has 'the same

---

[90] *See* 157 IBLA at 252-53.

[91] SOR at 19.

effect as cancellation' of a Grazing preference, as well as Permitted use."[92] Appellants argue that because BLM did not use section 4170 to cancel the preference, it continues to exist and was therefore available for transfer.[93]

We concur with the ALJ, who rejected this argument. There is nothing in the TGA, FLPMA, or the grazing regulations that requires BLM to separately cancel Hanley Ranch's grazing preference in accordance with 43 C.F.R. § 4170.1-1's penalty provisions.[94] As ALJ Sweitzer stated: "Although BLM could have taken action to immediately cancel Hanley Ranch's grazing permit and preference during the term of the prior permit, it was not required to do so."[95] After BLM decided not to renew the permit, and once the permit expired at the end of its term, the grazing preference associated with the permit no longer existed. Thus, "the decision not to renew the permit had the same effect as cancellation, except that implementation did not occur until the end of the permit term."[96]

Appellants additionally assert that BLM's failure to separately cancel Hanley Ranch's grazing preference under 43 C.F.R. § 4170 contradicts the Board's decision in *Eldon Brinkerhoff*.[97] That case involved a

---

[92] *Id.* at 16 (quoting ALJ Sweitzer Order (Jan. 25, 2016)).

[93] *Id.* at 18-19.

[94] *See* ALJ Sweitzer Order (Jan. 25, 2016) at 17.

[95] *Id.*

[96] *Id.* at 18.

[97] *See* Reply at 18.

grazing permittee's appeal from an ALJ's decision finding the permittee guilty of repeated trespass, fining him for damages, and reducing his grazing privileges.[98] In affirming the ALJ's decision, the Board articulated four factors to consider when limiting a permittee's grazing privileges:

> Generally, the Department has limited severe reductions of a licensee's or permittee's grazing privileges to cases involving the following elements: (1) the trespasses were both willful and repeated; (2) they involved fairly large numbers of animals; (3) they occurred over a fairly long period of time; and (4) they often involved a failure to take prompt remedial action upon notification of the trespass.[99]

Appellants argue that BLM's failure to separately cancel Hanley Ranch's grazing preference under 43 C.F.R. § 4170 "nullifies the Department of the Interior's *Brinkerhoff* holding."[100] Appellants allege that BLM used section 4110 "as a means to the end of the penalty provisions of Section 4170."[101] Appellants made a similar argument in *Hanley Ranch Partnership*, arguing that BLM's decision not to renew Hanley Ranch's grazing permit due to unsatisfactory

---

[98] 24 IBLA 324, 337, 83 I.D. 185, 190 (1976).

[99] 24 IBLA at 337, 83 I.D. at 190.

[100] Reply at 18 ("If BLM can surreptitiously cancel a grazing preference every time it decides to not renew a grazing permit, the opportunities for mitigation afforded by this Board in the Brinkerhoff standard will be nullified and unavailable to any permittee.").

[101] *Id.* at 19.

performance amounted to a "penalty" requiring application of the Brinkerhoff factors.[102]

But as we explained in *Hanley Ranch Partnership*, "[t]he *Brinkerhoff* factors apply solely to a determination by BLM, pursuant to 43 C.F.R. § 4170.1-1(a) and (b), to suspend or cancel an existing permit, and thus impose 'severe reductions' in grazing privileges, where the permittee has engaged in unauthorized grazing use or other acts of noncompliance on one or more occasions."[103] We further explained that these factors "are intended to ensure that BLM takes actions commensurate with the nature of the trespass/noncompliance at issue, taking into account the nature and severity of the offense(s) and the likelihood that the corresponding penalty will bring the permittee back into compliance."[104] This is in contrast to the renewal regulation, 43 C.F.R. § 4110.1(b), under which, as stated by the Board, "BLM's only function is to determine" whether a permittee has a satisfactory record of performance."[105]

Here, BLM decided not to renew Hanley Ranch's grazing permit. BLM properly did so under the renewal regulation. Appellants' argument that BLM must separately cancel grazing preference is not

---

[102] 183 IBLA at 217-18.

[103] *Id.* at 217 (citing *Holmgren v. BLM*, 175 IBLA at 353-54; *Granite Trust Organization v. BLM*, 169 IBLA 237, 256-57 (2006); *Baltzor Cattle Co. v. BLM*, 141 IBLA 10, 23-24 (1997)).

[104] *Id.*

[105] *Id.* (quoting in part 43 C.F.R. § 4110.1(b)).

supported by law and stems from their view – which we have rejected – that grazing preference is an indefinite "property-based" entitlement. As BLM states: "There is no need to cancel privileges that are not guaranteed or indefinite."[106]

In addition to arguing that BLM was required under the regulations to separately cancel Hanley Ranch's grazing preference under 43 C.F.R. § 4170.1-1, appellants allege that BLM's failure to do so violated their due process rights. Appellants allege that "allowing BLM to cancel a Grazing preference and Permitted use . . . by bootstrapping the preference and permitted use cancellation via a permit non-renewal . . . denies a grazing operation the due process rights of adjudicating the loss of a preference and permitted use that would be afforded in a penalty proceeding under 43 C.F.R. § 4170.1-1 and 43 C.F.R. subpart 4160."[107] Because we conclude that BLM was not required to take action under the penalty provisions of 43 C.F.R. § 4170.1-1, however, we also reject appellants' due process argument. But even so, there can be no question that appellants were afforded due process: they appealed BLM's decision not to renew their permit to the Hearing Division and ultimately to the Board, and now are again before the Board on the precise issue of whether a grazing preference may exist after

---

[106] Answer at 34.

[107] SOR at 18-19; *see also* Amici Brief at 14-15 ("When BLM engages in a penalty action, such as cancellation of preference, there are rules in place to ensure that the preference holder is fully aware of that process and the reasons for it.").

expiration of a grazing permit. As BLM stated, the Bureau "afforded Hanley Ranch Partnership a proposed decision, opportunity to protest, and a final decision with appeal rights when it decided not to renew the company's grazing privileges in 2009."[108]

F. Neither FLPMA Nor the APA Requires Renewal of Hanley Ranch's Grazing Permit

Finally, appellants argue that Congress's amendment to FLPMA in 2014 required that BLM issue a grazing permit to the Corrigans, even after BLM' decision not to renew Hanley Ranch's grazing permit. According to appellants, the language added by Congress to section 402(c) of FLPMA "effectively and permanently codif[ied] the intent of" previously enacted appropriations act provisions that automatically renewed expiring grazing permits subject to a pending application for renewal until such time as the Secretary of the Interior completed any required environmental analysis and documentation for renewal.[109] That section of FLPMA provides: "The terms and conditions in a grazing permit or lease that has expired, or was terminated due to a grazing preference transfer,

---

[108] BLM Response to Amici Brief at 7.

[109] SOR at 20 (citing Pub. L. 113-291, § 3023, 128 Stat. 3292, 3762, 3762-64 (Dec. 2014), codified at 43 U.S.C. § 1752(c)(2) (2015 Supp.); Department of the Interior and Related Agencies Appropriations Act, 2004, Pub. L. 108-108. § 325, 117 Stat. 1241, 1307-08 (Nov. 10, 2003); Consolidated Appropriations Act, 2012, Pub. L. 112-74. § 415, 125 Stat. 786, 1043 (Dec. 23, 2011); Consolidated Appropriations Act, 2014, Pub. L. 113-76, § 411, 128 Stat. 5, 339 (Jan. 17, 2014)).

shall be continued under a new permit or lease until the date on which the Secretary concerned completes any environmental analysis and documentation for the permit or lease. . . ."[110]

At the Hearings Division, the ALJ rejected appellants' arguments about FLPMA, stating that the prior appropriations acts and section 402(c) only apply to the transfer or renewal of an *existing permit*.[111] The ALJ explained that Hanley Ranch's grazing permit expired, based upon BLM's affirmative decision not to renew it, "well before the filing of a transfer application with BLM."[112] As a result, there was no permit to "continue" pending the completion of processing under the appropriations acts.[113] The ALJ also concluded that the 2014 amendment to FLPMA did not apply because it occurred after issuance of the BLM decisions on appeal.[114] But even if the new FLPMA provisions did apply here, the ALJ concluded that, just as with the prior appropriations acts, it "would not allow the Corrigans to revive a permit that ceased to exist – based upon an affirmative decision not to renew it – well before the requested transfer."[115]

Appellants argue that the ALJ erred because Hanley Ranch's grazing permit did not expire after the

---

[110] 43 U.S.C. § 1752(c)(2) (2015 Supp.).

[111] ALJ Sweitzer Order (Jan. 25, 2016) at 20.

[112] *Id.* at 21.

[113] *Id.*

[114] *Id.*

[115] *Id.*

Board's March 2013 decision in *Hanley Ranch Partnership*. Appellants state that the Board's decision in that case "*did not adjudicate the merits of Hanley's application dated February 15, 2013,*" referring to Hanley Ranch's application for annual grazing use for the 2013-2014 grazing season, and thus, the litigation associated with the permit was still ongoing at the time the Corrigans applied for grazing privileges.[116] Appellants place great emphasis on what they deem to be the "parallels" between this language and the language of section 9(b) of the Administrative Procedure Act (APA).[117] Section 9(b) of the APA provides that "a license with reference to an activity of an ongoing nature does not expire until the application has been finally determined by the agency."[118] Appellants argue that when the Corrigans applied for the transfer of Hanley Ranch's preference and a grazing permit in August of 2013, the litigation associated with Hanley Ranch's grazing permit had not yet been finally determined by BLM.[119] Therefore, according to appellants, "[t]his means that Hanley's permit application process was an 'activity of a continuing nature' that consequently did not 'expire' within the meaning of the APA" and was subject to automatic renewal under

---

[116] SOR at 24.

[117] SOR at 21 (citing 5 U.S.C. § 558(c)(2) (2012)).

[118] 5 U.S.C. § 558(c)(2) (2012).

[119] SOR at 25 ("[T]he litigation associated with Hanley's permit continues to this day . . . Hanley's February 2013 grazing application was never adjudicated until the Hearings Division issued its January 25th ALJ Order ruling on the cross-motions for summary judgment – which is currently under appeal.").

FLPMA section 402(c)(2).[120] Appellants similarly argue that the APA "applies in the context of" Hanley Ranch's grazing preference and permitted use "since the grazing use which a preference and permitted use enables is 'an activity of a continuing nature.' "[121]

[5] But Hanley Ranch's grazing permit expired on February 28, 2012, and its application for permit renewal was finally adjudicated by the Department in *Hanley Ranch Partnership*, issued on March 12, 2013. Moreover, contrary to appellants' claim, Hanley Ranch's February 2013 application for grazing use did not prevent its grazing permit from expiring in February 2012 – either under FLPMA or the APA – once the Board affirmed BLM's decision not to renew the permit. That application was an application "for annual grazing use, and . . . not an application for a new 10-year permit."[122] And applications for annual grazing use can be made only when there is a valid permit in existence.[123] Further, we reject appellants' argument that the APA somehow operates to keep Hanley Ranch's *grazing preference and permitted use* from

---

[120] *Id.*

[121] *Id.* at 26.

[122] Answer at 4-5 n.1 (citing BLM Nov. 22, 2013 Decision); *see also* ALJ Sweitzer Order (Jan. 25, 2016) at 16 ("[A]ppellants apparently reapplied for annual grazing use in February of 2013 (about one month before the Board issued its ruling [in *Hanley Ranch Partnership*].)").

[123] *See* 43 C.F.R. § 4130.4 (providing that a permittee can apply for a change in grazing use "*within the terms and conditions of permits and leases")* (emphasis added).

expiring when the grazing permit expired.[124] As BLM states, preference and permitted use are not "separate APA licenses authorizing activities of a continuing nature."[125]

Therefore, once the Board affirmed BLM's decision not to renew Hanley Ranch's grazing permit, the permit expired as of February 2012, and BLM properly denied Hanley Ranch's February 2013 application for annual grazing use because its grazing permit had "terminated by operation of law."[126] For the same reason, BLM also properly denied the Corrigans' August 2013 transfer application: "[A]s of March 12, 2013, Hanley Ranch Partnership's permit status was closed, and appellants' August 2013 transfer application was too late to invoke application of the APA or FLPMA Amendments."[127] We thus affirm the ALJ's decision.

CONCLUSION

Neither a grazing permit, nor the grazing preference or permitted use associated with the permit, creates any kind of indefinite entitlement or property right. Thus, when a grazing permit expires, the associated grazing preference and permitted use are

---

[124] *See* SOR at 26 ("Section 558(c) applies in the context of Hanley's Grazing preferences and Permitted use. . . .").

[125] Answer at 36.

[126] Final Grazing Decision to Hanley Ranch (Nov. 22, 2013) at 2.

[127] Answer at 36.

automatically and simultaneously extinguished. Appellants' arguments to the contrary are unavailing.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,[128] we affirm the 2016 ALJ Order with respect to the issue heard on interlocutory appeal.

/s/ Amy B. Sosin
Amy B. Sosin
Administrative Judge

I concur:

/s/ James F. Roberts
James F. Roberts
Deputy Chief Administrative Judge

[128] 43 C.F.R. § 4.1.

[SEAL] United States Department of the Interior
OFFICE OF HEARINGS AND APPEALS
Departmental Cases Hearings Division
351 South West Temple, Suite 6.300
Salt Lake City, Utah 84101
TELEPHONE (801) 524-5344
FACSIMILE (801) 524-5539

January 25, 2016

ORDER

JOHN and M. MARTHA CORRIGAN, HANLEY RANCH PARTNERSHIP, MICHAEL F. HANLEY, IV, and LINDA LEE HANLEY, Appellants v. BUREAU OF LAND MANAGEMENT, Respondent	)	ID-BD-3000-2014-002 Appeal from Field Manager's Final Decision dated November 13, 2013, issued to Payne Family Grazing Association, LLC, involving the Trout Springs Allotment, Owyhee Field Office, Idaho
JOHN and M. MARTHA CORRIGAN, HANLEY RANCH PARTNERSHIP, MICHAEL F. HANLEY, IV, and LINDA LEE HANLEY, Appellants v. BUREAU OF LAND MANAGEMENT, Respondent	)	ID-BD-3000-2014-003 Appeal from Field Manager's Final Decision dated November 22, 2013, issued to K. John and M. Martha Corrigan, involving the Trout Springs and Hanley FFR Allotments, Owyhee Field Office, Idaho

JOHN and M. MARTHA CORRIGAN, HANLEY RANCH PARTNERSHIP, MICHAEL F. HANLEY, IV, and LINDA LEE HANLEY, Appellants v. BUREAU OF LAND MANAGEMENT, Respondent	ID-BD-3000-2014-004 Appeal from Field Manager's Final Decision dated November 22, 2013, issued to Hanley Ranch Partnership, involving the Trout Springs and Hanley FFR Allotments, Owyhee Field Office, Idaho
WESTERN WATERSHEDS PROJECT, Appellant v. BUREAU OF LAND MANAGEMENT, Respondent PAYNE FAMILY GRAZING ASSOCIATION, LLC Intervenor	ID-BD-3000-2014-006 Appeal from Field Manager's Final Decision dated November 13, 2013, issued to Payne Family Grazing Association, involving the Trout Springs Allotment, Owyhee Field Office, Idaho

PAYNE FAMILY GRAZING ASSOCIATION, LLC, Appellant v. BUREAU OF LAND MANAGEMENT, Respondent	ID-BD-3000-2014-007 Appeal from Field Manager's Final Decision dated November 13, 2013, issued to Payne Family Grazing Association, involving the Trout Springs Allotment, Owyhee Field Office, Idaho

Appellants' Motions for Summary Judgment Denied; Respondent's Cross-Motion for Summary Judgment Granted in Part;

I. Introduction

The Trout Springs and Hanley FFR Allotments are located in southwestern Idaho within the administrative boundaries of the Owyhee Field Office of the Bureau of Land Management ("BLM"). In November of 2013, BLM issued three separate decisions involving these allotments:

(1) On November 13, 2013, BLM issued a Final Decision to the Payne Family Grazing Association, LLC ("Payne Family LLC") authorizing grazing use and the construction of certain range improvement projects within the Trout Springs Alltoment ("2013 Payne Decision");

(2) On November 22, 2013, BLM issued a Final Decision to the Hanley Ranch Partnership ("Hanley Ranch" or "HRP") denying its

February 15, 2013, application for annual grazing use ("2013 Hanley Decision"); and

(3) On November 22, 2013, BLM issued a Final Decision to K. John and M. Martha Corrigan ("the Corrigans") denying their application for a preference transfer from Hanley Ranch as well as their application for a grazing permit ("2013 Corrigan Decision").

The Corrigans, Hanley Ranch, Michael F. Hanley IV, and Linda Lee Hanley ("Corrigan and Hanley Appellants" or "Appellants") appealed all three decisions and have filed motions for summary judgment as to the 2013 Corrigan and Hanley Decisions and a motion for partial summary judgment as to the 2013 Payne Decision. BLM responded by filing its own cross-motion for summary judgment relating to the appeals filed by the Corrigan and Hanley Appellants.

Based upon a review of the record and pleadings, and for the reasons discussed in detail herein, Appellants' motions for summary judgment are denied. BLM's cross-motion for summary judgment is granted, in part, insofar as: (1) BLM properly denied Hanley Ranch's February 15, 2013, grazing application; and (2) BLM correctly determined that the Corrigans were not entitled to receive a grazing permit based upon the attempted transfer from Hanley Ranch that occurred after the Interior Board of Land Appeals ("IBLA" or "Board") affirmed a decision not to renew the Hanley Ranch permit due to an unsatisfactory record of performance. However, none of the parties addressed whether BLM properly considered the Corrigans'

application for a grazing permit under the conflicting application provisions of the grazing regulations at 43 C.F.R. § 4130.1-2. Until the record relating to this issue has been fully developed, this tribunal cannot render a final ruling either affirming or reversing BLM's 2013 Corrigan Decision which completely denied all grazing use.

II. Background

The Trout Springs Allotment is located in the Owyhee Mountains and consists of approximately 27,961 acres of public land, 67 acres of state land, and 1,447 acres of private land. Elevations within the allotment range from 4,900 feet near the Fairylawn Pasture to over 6,700 feet at Stauffer Flat on Juniper Mountain. The Hanley FFR Allotment is situated approximately two miles north of the Trout Springs Allotment. It is significantly smaller, with only 63 acres of public land and 598 acres of private land. Over the years, various members of the Payne and Hanley families have been permitted to graze within these allotments. *See* Environmental Assessment ("EA") at 1-2, 9-12.

In 1999, a U.S. District Court in Idaho issued a Memorandum Decision and Order finding that BLM had violated the National Environmental Policy Act ("NEPA") when it issued 68 grazing permits (including the permit for the Trout Springs Allotment). As a consequence of that order, four interim terms and conditions were added to the grazing permit for the Trout

Springs Allotment pending completion of a new EA and issuance of a new grazing decision. EA at 9.

In 2002, the Owyhee Field Manager issued a new decision for the Trout Springs and Hanley FFR Allotments which authorized grazing for a term of ten years. The 2002 decision was appealed and ultimately resulted in a stipulated settlement requiring BLM to analyze and re-issue a new grazing decision for the Trout Springs Allotment. Although BLM's field manager proposed a new decision in November of 2003, it never became final. In the absence of a new decision, grazing use continued under annual authorizations in accordance with the 2002 decision and the terms of the settlement agreement. EA at 10-11; Ex. A-8; *see also Hanley Ranch Partnership v. BLM*, 183 IBLA 184, 187-89 (2013).

As a consequence of various transfers between 2002 and 2006, both Hanley Ranch and the Payne Family LLC received authorizations to graze livestock within the Trout Springs Allotment during the 2007 season. EA at 11. By 2008, however, BLM had collected monitoring data that demonstrated excessive utilization in the Trout Springs Allotment. As a result, BLM issued a decision closing Pastures 1, 2, and 3 (but leaving the Fairylawn Pasture open) for the 2008 and 2009 grazing seasons. In a subsequent settlement with Western Watersheds Project ("WWP") in Federal District Court, BLM agreed that no livestock grazing would occur in Pastures 1, 2, and 3 of the Trout Springs Allotment until BLM completed "the appropriate environmental analysis and issued a new final grazing

decision and grazing permit." *See WWP v. Dyer*, No. 97-0519-S-BLW (D. Idaho May 15, 2008 & June 26, 2008);[1] *see also* EA at 11-12.

In 2009, BLM began considering whether to renew livestock grazing within the Trout Springs and Hanley FFR Allotments. Following a record of performance review, BLM determined that the Payne Family LLC was a qualified applicant for purposes of permit renewal. EA at 12; *see also* 2013 Payne Decision at 3, 11. In contrast, BLM found that Hanley Ranch had an unsatisfactory record of performance and issued a decision declining to renew Hanley Ranch's grazing permit. EA at 12.

Administrative Law Judge ("ALJ") Robert G. Holt affirmed BLM's decision on April 6, 2011. *Hanley Ranch Partnership v. BLM*, ID-BD-3000-2010-004 (April 6, 2011). The Board upheld ALJ Holt's decision on March 12, 2013, concluding that:

> Based upon our review of the record, we conclude that HRP's history of grazing the [Trout Springs Allotment], as reflected in its own Actual Use Reports, demonstrates a pattern of noncompliance upon which BLM could justifiably rely to deny HRP's permit renewal. Alternatively, the adjudicated incidents of trespass would alone provide a rational basis for denying HRP's permit renewal. We therefore hold that ALJ Holt properly affirmed BLM's December 2009 Decision, concluding that HRP

[1] Idaho District Court electronic filings are available at: http://www.pacer.gov/.

> failed to substantially comply with the grazing regulations and thus had an unsatisfactory record of performance within the meaning of 43 C.F.R. § 4110.1(b), justifying denial of permit renewal.

Hanley Ranch Partnership, 183 IBLA at 220-21.

While the litigation associated with Hanley Ranch's renewal remained ongoing, BLM moved forward with its evaluation of grazing use on the Trout Springs and Hanley FFR Allotments. Based upon comments received during the scoping process, BLM determined that resource conditions within the allotments required improvement. Using monitoring data collected between 2003 and 2008, BLM completed a new rangeland health assessment which found that the Trout Springs Allotment failed to meet any of the applicable standards. BLM also found that the Hanley FFR Allotment failed to meet the three standards applicable to that allotment. According to the assessments, livestock grazing and juniper expansion were causal factors contributing to the failures. EA at 4-7; *see also* 2013 Payne Decision at 3-4.

BLM then prepared an EA to analyze alternative grazing management practices within the Trout Springs and Hanley FFR Allotments that would allow for attainment of the standards and guidelines for rangeland health. Although BLM originally considered thirteen possible alternatives, only five were carried forward for detailed analysis. A draft version issued on July 12, 2012, and the final version issued in August of 2013. *See* EA at 7-8.

On or about August 1, 2013, the Corrigans[2] filed a document titled "Grazing Preference Application and Preference Transfer Application." They attached a copy of a Lease Agreement (effective August 1, 2013) in which Hanley Ranch agreed to lease the base property that has historically been associated with the Trout Springs and Hanley FFR Allotments and to transfer the grazing preferences to the Corrigans. At the same time, they also submitted a grazing application and schedule (dated August 1, 2013) requesting grazing use within the Trout Springs and Hanley FFR Allotments. *See* Ex. A-4.

Shortly thereafter, on September 20, 2013, BLM issued three separate proposed decisions to: the Payne Family LLC, Hanley Ranch, and the Corrigans. BLM received a number of protests from various entities, including Hanley Ranch and the Corrigans. Following consideration of those protests, BLM issued three final decisions in November of 2013.[3]

First, on November 13, 2013, BLM issued a decision to the Payne Family LLC. In that decision, BLM renewed the Payne Family LLC's permit for the Trout Springs Allotment for a ten-year term. It authorized

---

[2] Martha Corrigan is Michael Hanley's daughter. *See* Corrigan and Hanley Reply to BLM at 25; *see also* BLM's Cross-Motion for Summary Judgment at 6 n.1. The transfer application is signed by Martha Corrigan and her husband. *See* Ex. A-4.

[3] Although the Juni Fire ignited on August 15, 2013, and burned 2,165 acres of public land within the Trout Springs Allotment, the final grazing decisions did not address the fire closures which BLM considered separately. *See* 2013 Payne Decision at 4.

grazing use at 699 active animal unit months ("AUMs") and established a seven pasture rest-rotation grazing scheme with cattle grazing to occur between September 15 and December 5. In addition, BLM authorized the construction of six range improvement projects over a five-year period. *See* 2013 Payne Decision at 10-11, 17-20. The 2013 Payne Decision has been partially stayed as to that portion of the decision authorizing the construction of range improvement projects. *WWP v. BLM*, ID-BD-3000-2014-006 (Jan. 30, 3014 [sic]).

Second, on November 22, 2013, BLM issued a decision to Hanley Ranch which denied the grazing application submitted on February 15, 2013. *See* Ex. A-16 (grazing application). BLM reasoned, in part, as follows:

> On August 4, 2009, you exercised your grazing preference (or priority for grazing permit renewal) and timely applied for renewal of your grazing permit. The Bureau of Land Management (BLM) thereafter processed your permit renewal application. During the processing of your permit renewal application, the BLM determined that you were not qualified to receive a new permit based on your unsatisfactory record of performance under your last grazing permit. As a result of that finding, the BLM issued a decision dated December 16, 2009, denying your August 4, 2009, application to renew your grazing permits for the Trout Springs and Hanley Fenced Federal Range (FFR) grazing allotments. This action was taken in accordance with 43 CFR

4110.1(b)(1) and 43 CFR Subpart 4160. See BLM's Decision of December 2009.

Pending resolution of your appeal of the BLM's December 2009 decision, you were authorized to graze Pasture 5 (Fairylawn Pasture) of the Trout Springs Allotment and the Hanley FFR Allotment during the term of your grazing permit as it then existed. However, that grazing permit expired February 28, 2012. Per Interior Board of Land Appeals (IBLA) Order dated May 31, 2012, your ability to make application and graze as specified under that permit was "extended until such time as the Board issued its decision on the merits . . . " of the appeal pending in *Hanley Ranch Partnership et al. vs. Bureau of Land Management*, IBLA 2011-147.

Although you timely applied for grazing use for the 2013-2014 grazing year, the BLM's December 2009 decision was affirmed by the IBLA on March 12, 2013. Because the IBLA affirmed the BLM's decision that you were unqualified to hold a renewed grazing permit, your grazing preference, or priority for permit renewal, terminated by operation of law. In addition, it is now undisputed that you do not hold a valid grazing permit for either the Trout Springs or the Hanley FFR Grazing Allotments.

. . . .

The IBLA, by Order dated March 12, 2013, affirmed that the BLM correctly decided not to issue you a renewed grazing permit for the

> Trout Springs and Hanley FFR Allotments due to your unsatisfactory record of performance under your last permit. Accordingly, you do not currently qualify for grazing use on the public lands. Therefore, I deny your February 15, 2013 application for annual grazing use.

2013 Hanley Decision at 1-2.

Third, on November 22, 2013, BLM issued a decision to the Corrigans in response to their August 1, 2013, applications requesting: (1) a transfer of the grazing preference for the Trout Springs and Hanley FFR Allotments, and (2) grazing permits for both allotments. With respect to the preference transfer, BLM informed the Corrigans that:

> Hanley Ranch Partnership (HRP) no longer possesses grazing preference for the Trout Springs or Hanley FFR grazing allotments. Accordingly, BLM cannot approve your request for preference transfer. That request is hereby denied.

2013 Corrigan Decision at 1. With respect to the application for a grazing permit, BLM explained:

> Your application for a new grazing permit was filed along with your application to transfer grazing preference from HRP to yourselves. As has been noted in this final decision, HRP does not hold preference that can be transferred. Thus, the BLM will not give your application for a permit preferential consideration as against other applicants for

> grazing use within the Trout Springs and Hanley FFR allotments. On September 20, 2013, the BLM issued a proposed decision to authorize a total of 699 active AUMs for the Trout Springs Allotment to Payne Family Grazing Association, LLC. That proposed decision provided that at this time no additional AUMs beyond the 699 AUMs will be permitted on the Trout Springs allotment due to impacts associated with fires in 2012 and 2013, along with past unauthorized use. Permitted use for the Hanley FFR allotment will not be authorized until BLM solicits applications for the preference and term permit for this allotment. Therefore, at this time I am denying your application for a grazing permit in the Trout Springs and Hanley FFR allotments. You are free to apply for an additional permit in the future should AUMs be available.

2013 Corrigan Decision at 2.

III. Standards of Review

A. Summary Judgment

Although the regulations do not specifically authorize motions for summary judgment, the IBLA has long recognized the procedure as an appropriate means for resolving issues without a hearing. *See, e.g.*, *Larson v. BLM*, 129 IBLA 250, 252 (1994); *Stamatakis v. BLM*, 115 IBLA 69, 74 (1990). Federal courts provide that a party is entitled to summary judgment if there are no genuine issues of material fact and, as a matter of law, judgment is appropriate. *Celotex Corp. v. Catrett*,

477 U.S. 317, 322-23 (1986) (construing Rule 56 of the Federal Rules of Civil Procedure). Once the moving party has met its burden, the burden then shifts to the non-moving party to establish the presence of a genuine issue of material fact or that legally, the moving party is not entitled to judgment. *T. W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987).

"An issue is 'genuine' only if there is sufficient evidence for a reasonable fact finder to find for the non-moving party." *Far Out Prods., Inc. v. Oskar*, 247 F.3d 986, 992 (9th Cir. 2001). "A fact is 'material' if the fact may affect the outcome of the case." *Id.* When evaluating a motion for summary judgment, all factual inferences must be viewed in the light most favorable to the party opposing the motion. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

B. Grazing Decisions

As recognized by the Board, BLM enjoys broad discretion in managing grazing privileges, and on appeal, grazing decisions are narrowly reviewed and reversed only if they are not supportable on any rational basis:

> While compliance with the provisions of the Taylor Grazing Act, *as amended*, 43 U.S.C. §§ 315, 315a-315r (1994), is committed to the discretion of the Secretary of the Interior, implementation is delegated to his duly authorized representatives in BLM. *Kelly v. BLM*, 131 IBLA 146, 151 (1994); *Yardley v. BLM*, 123 IBLA 80, 89 (1992), and cases cited therein.

> The Bureau enjoys broad discretion in determining how to manage and adjudicate grazing preferences. *Yardley v. BLM*, 123 IBLA at 90. Under 43 CFR 4.478(b), BLM's adjudication of grazing privileges will not be set aside on appeal if it is reasonable and substantially complies with Departmental grazing regulations found at 43 CFR Part 4100. In this manner, the Department has considerably narrowed the scope of review of BLM grazing decisions by an administrative law judge and by this Board, authorizing reversal of such a decision as arbitrary, capricious, or inequitable only if it is not supportable on any rational basis. *Yardley v. BLM*, 123 IBLA at 90. This scope of review recognizes the highly discretionary nature of the Secretary's responsibility for Federal range lands. *Kelly v. BLM*, *supra; Claridge v. BLM*, 71 IBLA 46, 50 (1983).

Smigel v. BLM, 155 IBLA 158, 164 (2001) (reconsideration denied). The person who appeals bears the burden of proving by a preponderance of the evidence that BLM's decision is unreasonable or improper. *Id.*

IV. Discussion

In their motions for summary judgment, the Corrigan and Hanley Appellants assert that the grazing preference and permitted use associated with Hanley Ranch's base property continued to exist despite BLM's fully-adjudicated decision not to renew the grazing permit for Hanley Ranch. As a consequence, the Appellants maintain that BLM committed error

when it denied the preference transfer and the Corrigans' application for a grazing permit. BLM argues that Hanley Ranch had nothing to transfer once it exercised its preference for renewal and then lost that permit based on an unsatisfactory record of performance. BLM's cross-motion requests that this tribunal affirm the decisions denying the transfer and the grazing applications submitted Hanley Ranch and the Corrigans.

Because a key aspect of this dispute surrounds the relationship between grazing preferences and grazing permits, this analysis begins with an examination of those concepts before discussing the relative merits of the parties' motions.

A. Grazing Preferences and Grazing Permits

BLM authorizes grazing use by issuing grazing permits. In accordance with Section 3 of the Taylor Grazing Act ("TGA"),

> . . . Preference shall be given in the issuance of grazing permits to those within or near a district who are landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water rights, as may be necessary to permit the proper use of lands, water or water rights owned, occupied, or leased by them. . . . Such permits shall be for a period of not more than ten years, subject to the preference right of the permittees to renewal in the discretion of the Secretary of the

> Interior, who shall specify from time to time numbers of stock and seasons of use. . . .

43 U.S.C. § 315b. Although grazing privileges are to be "adequately safeguarded," the TGA specifically provides that "the creation of a grazing district or the issuance of a permit pursuant to the provisions of this Act shall not create any right, title, interest, or estate in or to the lands." *Id.*

Soon after passage of the TGA in 1934, the Department promulgated rules for allocating grazing privileges and issuing grazing permits. *See generally Public Lands Council v. Babbitt*, 529 U.S. 728, 734-39 (2000) (describing statutory and regulatory history). Because grazing privileges remained discretionary, "[t]he grazing regulations in effect from 1938 to the present day made clear that the Department retained the power to modify, fail to renew, or cancel a permit or lease for various reasons." *Id.* at 735.

In 1976, Congress enacted the Federal Land Policy and Management Act ("FLPMA"), Pub. L. No. 94-579, 90 Stat. 2743 (1976) (codified, as amended, at 43 U.S.C. §§ 1701-87). "FLPMA strengthened the Department's existing authority to remove or add land from grazing use, allowing such modification pursuant to a land use plan, §§ 1712, 1714, while specifying that existing grazing permit holders would retain a 'first priority' for renewal so long as the land use plan continued to make land 'available for domestic livestock grazing.' § 1752(c)." *Public Lands Council*, 529 U.S. at 738. First priority for renewal also depended on compliance by the permittee

with the "rules and regulations" and "the terms and conditions in the permit." Pub. L. No. 94-579, § 402(c) (codified at § 1752(c)).

In 1995, BLM made significant modifications to the grazing regulations codified at 43 C.F.R. part 4100.[4] *See* 60 Fed. Reg. 9894 (Feb. 22, 1995) (with corrections at 61 Fed. Reg. 4227 (Feb. 5, 1996)). The most notable change, for purposes of this analysis, involved revisions to the definitions of "grazing preference" and "grazing permit." The changes were intended to clarify and resolve the confusion surrounding these concepts that had developed over the years. *See* 60 Fed. Reg. at 9928.

According to the regulations, "grazing permits" specify the number of AUMs authorized for livestock grazing and "grazing preferences" refer to the priority position held for purposes of receiving a grazing permit (or lease). As currently defined, a "grazing 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

---

[4] Although BLM amended the grazing regulations in 2006, *see* 71 Fed. Reg. 39402 (July 12, 2006), a subsequent court order enjoined implementation of those amendments in their entirety. *Western Watersheds Project v. Kraayenbrink, et al.*, 538 F. Supp. 2d 1302 (D. Idaho 2008), *aff'd in relevant part*, 632 F.3d 472 (9th Cir. 2011), *cert. denied*, 132 S. Ct. 366 (2011). Thus, this Decision cites the applicable grazing regulations as last codified in the 2005 Code of Federal Regulations, unless otherwise specified.

> property owned or controlled by the permittee or lessee.

43 C.F.R. § 4100.0-5. Base property includes: (1) land that is capable of producing crops or forage; or (2) water that is suitable for consumption by livestock and is available and accessible when the public lands are used for grazing. *Id.* A "grazing permit" means:

> a document authorizing use of the public lands within an established grazing district. Grazing permits specify all authorized use including livestock grazing, suspended use, and conservation use. Permits specify the total number of AUMs apportioned, the area authorized for grazing use, or both.

43 C.F.R. § 4100.0-5. Relatedly, "permitted use" refers to "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." *Id.*

Prior to the 1995 amendments, the grazing regulations defined the term "grazing preference" to mean "the total number of animal unit months of livestock grazing on public lands apportioned and attached to base property owned or controlled by a permittee or lessee." 43 C.F.R. 4100.0-5 (1994). The commentary accompanying the 1995 amendments explained the rationale for changing the definition as follows:

> *Grazing preference* is redefined to mean the priority to have a Federal permit or lease for a public land grazing allotment that is

> attached to base property owned or controlled by a permittee, lessee, or applicant. The definition omits reference to a specified quantity of forage, a practice that was adopted by the former Grazing Service during the adjudication of grazing privileges. Like the Forest Service, BLM will identify the amount of grazing use (AUMs), consistent with land use plans, in grazing use authorizations to be issued under a lease or permit.

60 Fed. Reg. at 9921. The commentary went on to explain that:

> The Department has changed "grazing preference" to *preference* or *grazing preference* because the terms are used interchangeably and to clarify that the term refers only to a person's priority to receive a permit or lease, and not to a specific number of AUMs. The term "preference" was used during the process of adjudication of available forage following the passage of TGA to establish an applicant's relative standing for the award of a grazing privilege. At one time in the evolution of grazing administration preference was the amount of use expressed in AUMs that any particular permittee may have made during the "priority period" – the four years following passage of the TGA. Preference is still defined as the relative standing of an applicant as reflected in historic records. Through time, common usage of the term evolved to mean the number of AUMs attached to particular base properties. But this usage dilutes the original statutory intent of the term as an indication

> of relative standing. The term "permitted use" captures the concept of total AUMs attached to particular base properties, and use of this term does not cancel preference. The change is merely a clarification of terminology. . . .

Id. at 9922.

The comments associated with 43 C.F.R. § 4110.2-2 elaborated further, noting that:

> The final rule does eliminate the concept of "preference AUMs" and replaces this term with the term "permitted use." Permitted use is not subject to yearly change. Permitted use will be established through the land use planning process, a process which requires data collection and detailed analysis, the completion of appropriate NEPA documentation, and multiple opportunities for public input. Establishing permitted use through this planning process will increase, not decrease, the stability of grazing operations. The rule clearly defines preference to be a superior or priority position for the purpose of receiving a grazing permit or lease. Therefore, the Department does not anticipate there will be a decrease of financial stability for grazing operations.
>
> There is no need to eliminate the concept of "grazing preference" totally. The concept of assigning first priority to certain persons is well-established in TGA and is an appropriate way to contribute to the stability of dependent livestock operations and the western livestock industry. The redefinition of preference is

> intended to resolve the confusion and misinterpretation of the concept that has developed over the years. In particular, the redefinition eliminates the shorthand jargon of "preference AUMs" that has developed to refer to the number of AUMs included in a permit or lease offered to a holder of a grazing preference.

60 Fed. Reg. 9928.

In a legal challenge to the 1995 regulatory amendments, the Supreme Court in *Public Lands Council v. Babbitt*, 529 U.S. 728 (2000), found that the revised definitions did not violate the requirement in 43 U.S.C. § 315b that "grazing privileges" be "adequately safeguarded." The Court noted that "[g]iven the leeway that the statute confers upon the Secretary, the less-than-absolute pre-1995 security that permit holders enjoyed, and the relatively small differences that the new definitions create, *we* conclude that the new definitions do not violate that law." *Public Lands Council*, 529 U.S. at 744.

Nevertheless, Appellants maintain that a grazing preference must be more than just a "priority." Corrigan/Hanley Reply at 16 n.8. At various places in their pleadings, Appellants have characterized grazing preferences as entitlements, usufructuary rights, quasi-property rights, and indefinite continuing rights. However, these assertions cannot be reconciled with the 1995 regulatory amendments or applicable case law.

Contrary to Appellants' assertions, grazing preferences do not create entitlements or establish a right to

use the public lands because neither the TGA nor the grazing regulations require the issuance of permits to preference holders. *See Holmgren v. BLM*, 175 IBLA 321, 346 (2008). As noted by the Board, "[o]ne who owns or controls base property does not have an absolute right to graze livestock on the public land; such grazing is subject to the reasonable discretion of BLM." *Id.* at 325-26. Courts have also rejected the notion that grazing preferences and permits establish compensable property rights. *See, e.g.*, *Alves v. United States*, 133 F.3d 1454, 1457 (Fed. Cir. 1998) (finding that "the distinction between grazing 'permits' and grazing 'preferences' is irrelevant because neither constitutes a property interest compensable under the Fifth Amendment"); *United States v. Fuller*, 409 U.S. 488, 494 (1973) (finding that the provisions of the TGA "make clear the congressional intent that no compensable property right be created in the permit lands themselves as a result of the issuance of the permit"); *see also* 60 Fed. Reg. 9894, 9908 (Feb. 22, 1995) (noting that even if "cancellation, nonrenewal, suspension, or changes in the terms and conditions of a grazing permit might have some negative effect on the value of the base property, the Supreme Court has made clear this is not a 'taking' ").

Although Appellants cite a tax court case that describes a Forest Service grazing preference as an "indefinite continuing right," reliance on that case is misplaced. *See Shufflebarger v. Internal Revenue Serv.*, 24 T.C. 980, 992 (1955). In *Shufflebarger*, the tax court addressed whether a rancher who purchased

additional base property and grazing privileges could claim deductions associated with depreciation of the lease over the remaining term of the Forest Service permit. The court analyzed the Forest Service regulations and found that unless cancelled, revoked, or terminated, grazing preferences are generally renewed and capable of transfer beyond the term of the grazing permit. It then characterized the preference as an "indefinite continuing right" that precluded the rancher from claiming tax deductions for depreciation over the remaining eight years of the permit. *Id.* at 994. In reaching its decision, the tax court recognized that a preference could be cancelled, revoked, or terminated for a variety of reasons, but found those contingencies were not geared to any specific time period and, therefore, might never happen. *Id.* at 992-93, 995-97, 999. When considered in context, it becomes evident that the tax court's comment about the duration of the preference pertained to the appropriateness of taking tax deductions over the remaining term of the Forest Service permit and had no broader applicability beyond interpretation of the tax code.

In sum, a grazing preference provides no additional rights beyond what has been specifically provided for in the regulations – and those regulations define preference as "a superior or priority position against others for the purpose of receiving a grazing permit or lease." 43 C.F.R. § 4100.0-5. Priority is most often invoked during the permit renewal process to ensure that the permittee receives first consideration. However, because this priority attaches to base

property owned or controlled by the permittee or lessee, it is also important for purposes of transfer.

As such, the next section discusses and analyzes the portions of the grazing regulations applicable to BLM's decision not to renew Hanley Ranch's grazing permit and its decision not to award a grazing permit to the Corrigans based upon the subsequent transfer request.

B. Nonrenewal and Transfer

The motions for summary judgment filed by the Appellants do not contest the Board's 2013 Decision finding that Hanley Ranch "failed to substantially comply with the grazing regulations and thus had an unsatisfactory record of performance within the meaning of 43 C.F.R. § 4110.1(b), justifying denial of permit renewal." *Hanley Ranch Partnership*, 183 IBLA at 221. And, even though Hanley Ranch apparently reapplied for annual grazing use in February of 2013 (about one month before the Board issued its ruling), the Appellants are not contesting BLM's 2013 decision not to renew the Hanley Ranch permit. Instead, Appellants argue that the grazing preference and permitted use associated with Hanley Ranch's base property continued to exist even after the Board's decision issued and that BLM erred as a matter of law when it denied the preference transfer and grazing application submitted by the Corrigans who now lease the base property. For the reasons discussed herein, BLM properly concluded that the Corrigans were not entitled to a grazing

permit based upon the attempted transfer from Hanley Ranch that occurred after the Board affirmed BLM's decision not to renew the Hanley Ranch permit.

1. Decision Not to Renew Hanley Ranch Permit

When considering permit renewals, the grazing regulations provide that permittees holding expiring grazing permits "shall be given first priority for new permits" if: (1) the lands remain available for domestic livestock grazing; (2) the permittee is in compliance with the rules and regulations and the terms and conditions in the permit; and (3) the permittee accepts the terms and conditions to be included in the new permit. 43 C.F.R. § 4130.2(e). This first priority for permit renewal mirrors the language in § 1752(c) of FLPMA which, at the time the decisions issued, provided as follows:

> (c) First priority for renewal of expiring permit or lease. So long as (1) the lands for which the permit or lease is issued remain available for domestic livestock grazing in accordance with land use plans prepared pursuant to section 202 of this Act [43 U.S.C. § 1712] or section 5 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 477; 16 U.S.C. 1601) [16 U.S.C. § 1604], (2) the permittee or lessee is in compliance with the rules and regulations issued and the terms and conditions in the permit or lease specified by the Secretary concerned, and (3) the permitee or lessee accepts the terms and

> conditions to be included by the Secretary concerned in the new permit or lease, the holder of the expiring permit or lease shall be given first priority for receipt of the new permit or lease.

43 U.S.C. § 1752 (2013); *see also* Pub. L. No. 94-579, § 402, 90 Stat. 2743, 2773-74 (1976).[5] Thus, once the Board affirmed BLM's decision not to renew Hanley Ranch's permit for failing to substantially comply with the grazing regulations and for unsatisfactory performance, Hanley Ranch no longer had a grazing permit and no longer held a priority position for purposes of renewal.

Appellants maintain that BLM relied on the wrong regulatory provisions and that, absent a cancellation of Hanley Ranch's grazing preference under 43 C.F.R. § 4170.1-1, Hanley Ranch still possessed a preference that could be separately transferred along with its base property. However, BLM had no obligation to pursue cancellation under the penalty provisions of the grazing regulations. Although BLM could have taken action to immediately cancel Hanley Ranch's grazing permit and preference during the term of the prior permit, it was not required to do so. Instead, BLM properly considered Hanley Ranch as a permittee entitled to first priority consideration for renewal, determined

---

[5] Although Congress amended this statutory provision on December 19, 2014, the provisions governing first priority for renewal remain substantively the same. 43 U.S.C. § 1752(c)(1)(A)-(C); *see also* Pub. L. No. 113-291, Div B, Title XXX, Subtitle B, § 3023, 128 Stat. 3292, 3762 (2014).

that Hanley Ranch did not meet the qualifications for renewal under 43 C.F.R. § 4110.1, and then issued a decision declining to renew the permit. This procedure allowed Hanley Ranch to continue grazing until the 2002 permit expired (which, based upon the extension granted during the pendency of the appeal, occurred no later than when the Board issued its decision).[6] In this way, the decision not to renew the permit had the same effect as cancellation, except that implementation did not occur until the end of the permit term.

Although the Appellants also cite the Board's decision in *Katsilometes v. BLM*, 157 IBLA 230 (2002), for the proposition that grazing preferences may exist without a permit, that decision dealt with issues unique to testamentary transfers, generally applied an earlier version of the grazing regulations, and did not address whether any preference remains after BLM effectively cancels a grazing permit due to unsatisfactory performance. As a result, *Katsilometes* does not support Hanley Ranch's claim to an ongoing grazing preference following a fully-adjudicated decision not to renew the prior grazing permit.

Given the circumstances of this case, Appellants have not demonstrated that any grazing preference remained once BLM decided not to renew Hanley Ranch's prior grazing permit for unsatisfactory performance that would entitle them to receive preferential

[6] The Board apparently allowed Hanley Ranch to continue grazing Pasture 5 of the Trout Springs Allotment and the Hanley FFR Allotment pending issuance of its decision on appeal. *See* 2013 Hanley Decision at 2.

consideration for a permit as against other applicants for grazing use within the Trout Springs and Hanley FFR allotments.

2. Attempted Transfer to the Corrigans

Even assuming, *arguendo*, that some undefined preference (or priority) continued to exist after BLM declined to renew the Hanley Ranch permit and the Board affirmed that decision, application of the transfer regulations would not result in issuance of a permit to the Corrigans. To receive a grazing permit based upon a preference transfer under 43 C.F.R. § 4110.2-3, the transfer must occur while a valid grazing permit still exists.

By the time Hanley Ranch executed the agreement leasing its base property to the Corrigans and transferring the associated grazing preferences in August of 2013, the prior grazing permit no longer existed. As correctly noted by the Appellants, a "grazing preference" is "attached to the base property owned or controlled by the permittee." 43 C.F.R. § 4100.0-5. As a consequence, "[w]hen a permit or lease terminates because of loss of ownership or control of a base property, the grazing preference shall remain with the base property and be available through application and transfer procedures at 43 CFR 4110.2-3, to the new owner or person in control of that base property." 43 C.F.R. § 4110.2-1(d). As demonstrated by the record, Hanley Ranch's grazing permit did not terminate due

to loss of ownership or control of base property. Instead, BLM decided not to renew the permit due to an unsatisfactory record of performance. After lengthy litigation, the Board affirmed that decision in March of 2013 and the grazing permit expired – well before the Corrigans began leasing the base property.

Although the initial motion filed by the Appellants purported to include a permit for the Trout Springs Allotment (with a term from March 1, 2007 to February 28, 2017) signed by the Corrigans on August 1, 2013, there is no evidence in the record to support the existence of a valid permit with an expiration date of 2017. *See* Ex. A-4; *see also* BLM Ex. 3. BLM challenged the validity of this exhibit in its responsive pleadings. *See* BLM's Cross Mtn. for Summary Judgment at 6-7 n.2, 26-27; BLM's Reply at 5 n.4; 13-14. And, even though the Appellants had ample opportunity to address this exhibit in subsequent briefs, they made no attempt to offer additional evidence or argument to show that Hanley Ranch possessed a valid permit at the time of the attempted transfer. Moreover, nothing in the record supports the existence of a valid permit expiring in 2017.[7] Indeed, the Board's decision makes clear that it reviewed BLM's decision not to renew Hanley Ranch's prior permit which covered the period from March 1,

[7] Michael Hanley indicates that he submitted this exhibit to the Board as part of a May 2, 2011, declaration provided during his appeal. *See* Declaration of Michael F. Hanley IV, Ex. A at ¶ 42. In a footnote, Mr. Hanley explains that BLM apparently issued this permit document (dated November 12, 2009) "as a product of a transfer of Trout Springs Grazing Preference between HRP and Payne in 2006". *Id.* at 14 n. 2.

2002, through February 28, 2012. *See Hanley Ranch Partnership*, 183 IBLA at 191-92 n.13 & 14.

As explained in the grazing regulations, transfers of grazing preference require that the transferee meet the necessary qualifications and "accept the terms and conditions of the terminating grazing permit or lease" with any modifications that may be approved or required. 43 C.F.R. § 4110.2-3(a)(1) & (a)(3). Because BLM did not renew the 2002 permit and the permit expired when the Board affirmed BLM's decision, no permit capable of being "accepted" existed in August of 2013 when the Corrigans began leasing the base property. As a consequence, even though the Corrigans filed their application for transfer within 90 days of the lease as required by § 4110.2-3(b), they were not capable of accepting the terms of the terminating permit because the prior permit ceased to exist several months earlier following a lengthy adjudication that determined it would not be renewed.

Like the grazing regulations, the Appropriations Act provisions cited by the Appellants only apply to the transfer or renewal of an existing permit. The relevant portion of the 2012 Consolidated Appropriations Act provides that:

> The terms and conditions of section 325 of Public Law 108-108 (117 Stat. 1307), regarding grazing permits at the Department of the Interior and the Forest Service, shall remain in effect for fiscal years 2012 and 2013. *A grazing permit or lease issued by the Secretary of the Interior for lands administered by the*

> *Bureau of Land Management that is the subject of a request for a grazing preference transfer shall be issued, without further processing, for the remainder of the time period in the existing permit or lease* using the same mandatory terms and conditions. If the authorized officer determines a change in the mandatory terms and conditions is required, the new permit must be processed as directed in section 325 Public Law 108-108.

Consolidated Appropriations Act of 2012, Pub L. No. 112-74, Div. E, Title IV, § 415, 125 Stat. 786, 1043 (2011) (emphasis added). Section 325 of the 2004 Appropriations Act, provided in relevant part that:

> A grazing permit or lease issued by the Secretary of the Interior or a grazing permit issued by the Secretary of Agriculture where National Forest System lands are involved that expires, is transferred, or waived during fiscal years 2004-2008 shall be renewed under section 402 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1752). . . . *The terms and conditions contained in the expired, transferred, or waived permit or lease shall continue in effect under the renewed permit or lease until such time as the Secretary of the Interior or Secretary of Agriculture as appropriate completes processing of such permit or lease in compliance with all applicable laws and regulations*, at which time such permit or lease may be canceled, suspended or modified, in whole or in part, to meet the requirements of such applicable laws and regulations. . . .

Department of the Interior and Related Agencies Appropriations Act of 2004, Pub. L. No. 108-108, § 325, 117 Stat. 1241, 1307 (2003) (emphasis added). Neither of these provisions require the issuance of a permit to the Corrigans, because Hanley Ranch's permit ceased to exist based upon an affirmative decision not to renew issued well before the filing of a transfer application with BLM. Thus, there was no permit to "continue" pending the completion of processing.

Although not applicable to this proceeding, Appellants also cite a recent amendment to FLPMA in a supplemental filing as further support for its position. That provision, enacted in December of 2014 (after issuance of the Decisions at issue) provides that:

> The terms and conditions in a grazing permit or lease that has expired, or was terminated due to a grazing preference transfer, shall be continued under a new permit or lease until the date on which the Secretary concerned completes any environmental analysis and documentation for the permit or lease required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and other applicable laws.

Pub. L. No. 113-291, Div B, Title XXX, Subtitle B, § 3023, 128 Stat. 3762 (2014) (codified at 43 U.S.C. § 1752(c)(2)). Like the prior Appropriations Act provisions, this amendment provides for continuity of grazing when expiring permits or transfer applications cannot be fully adjudicated until the requisite environmental analyses are complete. Therefore, this

amendment, even if applicable, would not allow the Corrigans to revive a permit that ceased to exist – based upon an affirmative decision not to renew it – well before the requested transfer.

As the foregoing analysis demonstrates, once BLM determined that Hanley Ranch's permit could not be renewed and it ceased to exist, there was no permit for the Corrigans to accept, continue, or renew under either the regulations governing transfers or the statutory provisions cited by Appellants. Thus, BLM properly determined that the Corrigans were not entitled to a grazing permit based upon the attempted transfer from Hanley Ranch that occurred after the Board affirmed BLM's decision not to renew the Hanley Ranch permit.

C. Consideration of Conflicting Grazing Applications

Even though the Corrigans did not acquire a priority position or any right to continue the prior permit based upon the regulatory provisions governing preference transfers, they began leasing the base property and filed a separate grazing application before BLM issued its decision authorizing grazing use by the Payne Family LLC. As such, assuming the Corrigans met the mandatory qualifications under 43 C.F.R. § 4110.1 (and any other requirements that may apply), BLM arguably should have considered the Corrigans' grazing application as a request for a new permit under the conflicting application provisions at 43 C.F.R.

§ 4130.1-2. Because the parties did not address this issue in their motions and the record has not been adequately developed, it would be premature for this tribunal to issue a ruling regarding whether BLM properly exercised its discretion when issuing the 2013 Corrigan Decision denying the Corrigan's application for a grazing permit in its entirety and in issuing the related 2013 Payne Decision.

In accordance with the conflicting applications provision of the grazing regulations:

> When more than one qualified applicant applies for livestock grazing use of the same public lands and/or where additional forage for livestock or additional acreage becomes available, the authorized officer may authorize grazing use of such land or forage on the basis of § 4110.3-1 of this title or on the basis of any of the following factors:
>
> (a) Historical use of the public lands (see § 4130.2(e));
> (b) Proper use of rangeland resources;
> (c) General needs of the applicant's livestock operations;
> (d) Public ingress or egress across privately owned or controlled land to public lands;
> (e) Topography;
> (f) Other land use requirements unique to the situation;
> (g) Demonstrated stewardship by the applicant to improve or maintain and protect the rangeland ecosystem; and

> (h) The applicant's and affiliate's history of compliance with the terms and conditions of grazing permits and leases of the Bureau of Land Management and any other Federal or State agency, including any record of suspensions or cancellations of grazing use for violations of terms and conditions of agency grazing rules.

43 C.F.R. § 4130.1-2. The historical use factor cross-references the regulation discussing the first priority position of permittees holding expiring permits. *See* 43 C.F.R. § 4130.2(e).

Section 4110.3-1 applies to the apportionment of additional forage and provides, in pertinent part, that:

> (b) Additional forage available on a sustained yield basis for livestock grazing use shall first be apportioned in satisfaction of suspended permitted use to the permittee(s) or lessee(s) authorized to graze in the allotment in which the forage is available.
>
> (c) After consultation, cooperation, and coordination . . . additional forage on a sustained yield basis available for livestock grazing use in an allotment may be apportioned to permittees or lessees or other applicants, provided the permittee, lessee, or other applicant is found to be qualified under subpart 4110 of this part. Additional forage shall be apportioned in the following priority:

> (1) Permittees or lessees in proportion to their contribution or stewardship efforts which result in increased forage production;
> (2) Permittee(s) or lessee(s) in proportion to the amount of their permitted use; and
> (3) Other qualified applicants under § 4130.1-2 of this title.

43 C.F.R. § 4110.3-1(b)-(c).

According to the 2013 Corrigan Decision, BLM found that Hanley Ranch did not have a preference that could be transferred; therefore, BLM did not give the "application for a permit preferential consideration as against other applicants for grazing use within the Trout Springs and Hanley FFR allotments." 2013 Corrigan Decision at 2. The decision went on to note that the Payne Family LLC had been granted grazing use totaling 699 AUMs and that no additional AUMs would be permitted on the Trout Springs Allotment due to impacts associated with recent fires and past unauthorized use, but that the Corrigans were "free to apply for an additional permit in the future should AUMs be available." *Id.* BLM's decision did not explain whether it considered the Corrigans' qualifications and grazing application based upon the factors enumerated in the conflicting applications provision found at 43 C.F.R. § 4130.1-2.

In the 2013 Payne Decision, BLM determined that the Payne Family LLC had a satisfactory record of performance and was a qualified applicant for the

purposes of permit renewal. 2013 Payne Decision at 11. In terms of AUMs, the decision explained that:

> In the EA the permitted use for "Permit 2" (or Authorization #1101594) was identified as 106 cattle from 9/15 – 12/5; AUMs were identified as 287 Active and 694 Suspended for a total of 981 permitted. In accordance with 43 CFR 4110.3-1(b), Authorization #1101594 will increase Active AUMs to 699 by taking 412 AUMs out of suspension. 699 AUMs will coincide with the Active AUMs Payne Family Grazing Association applied for in August 2009 and April 2, 2010 in the renewal of Authorization #1101594.
>
> No additional AUMs will be permitted for the term of the permit. Although recent wildfires (Grasshopper in 2012 and Juni in 2013) occurred and measures will be taken to ensure resource recovery as identified earlier in this decision document, I find that the BLM needs to take a more conservative approach with the re-introduction of authorized livestock grazing use to further ensure upland and riparian conditions improve. Past unauthorized use has contributed to degraded resource conditions, and although the BLM does not condone such use, it continues to potentially impact resource conditions, in some portions of the allotment, particularly during the period of use outside that prescribed through this Final Grazing Decision. Therefore, I find that authorization of 699 active AUMs as originally applied for by Payne Family Grazing Association, LLC is appropriate for the next

> ten years in order to mitigate impacts from unauthorized use and further ensure that significant progress towards the Idaho Standards for Rangeland Health occur.

2013 Payne Decision at 12. As indicated, the 2013 Payne Decision significantly reduced the overall level of AUMs associated with the Trout Springs Allotment by limiting authorized use to the amount requested by the Payne Family LLC.[8] It also reinstated a portion of the Payne Family LLC's suspended use under the additional forage provisions of 43 C.F.R. § 4110.3-1.

During the summary judgment briefing process, none of the parties included any argument or analysis related to the conflicting application issue. Until the record relating to this issue has been fully developed, it would be premature for this tribunal to issue a ruling regarding whether BLM properly exercised its discretion when it denied the Corrigans' application for grazing use in its entirety and granted the grazing use requested by the Payne Family LLC. While it is possible that the regulatory provisions governing priority and the conflicting application factors may lead to the same result, this tribunal cannot and will not make assumptions based upon the limited information provided as part of the pending motions. Specifically, the

---

[8] The 2013 Payne Decision implemented Alternative E with modifications. That Decision reduced overall permitted use within the Trout Springs Allotment to 699 AUMs as compared to the 1,147 AUMs analyzed in Alternative E and the 1,988 AUMs of estimated average actual use between 2002 and 2007. *See* 2013 Payne Decision at 10; *see also* EA at 31-32, 37-42.

parties have yet to address the Corrigan's qualifications, the nature and extent of the Payne Family LLC's priority, or the rationale underlying BLM's decision to reduce grazing use within the Trout Springs Allotment to coincide with the active AUMs applied for by the Payne Family LLC.

All issues related to whether BLM properly exercised its discretion with respect to the conflicting application provisions of the grazing regulations must await further development of the record and briefing by the parties. Consequently, it is not possible at this time to issue a ruling either affirming or reversing the complete denial of grazing use in the 2013 Corrigan Decision.

V. Conclusion

In accordance with the foregoing analysis, Appellants' motions for summary judgment are denied. BLM's cross-motion for summary judgment is granted, in part, insofar as: (1) BLM properly denied Hanley Ranch's February 15, 2013, grazing application; and (2) BLM correctly determined that the Corrigans were not entitled to receive a grazing permit based upon the attempted transfer from Hanley Ranch that occurred after the IBLA affirmed the decision not to renew the prior permit based upon an unsatisfactory record of performance. However, because the parties' motions failed to address whether BLM properly considered the Corrigans' application for a grazing permit under the conflicting application provisions of the grazing

regulations at 43 C.F.R. § 4130.1-2 and the record relating to this issue has not been fully developed, it is not possible for this tribunal to render a final ruling affirming or reversing the complete denial of grazing use in the 2013 Corrigan Decision.

/s/ Harvey C. Sweitzer
Harvey C. Sweitzer
Administrative Law Judge

[SEAL] United States Department of the Interior
BUREAU OF LAND MANAGEMENT
Owyhee Field Office
20 First Ave West
Marsing, ID 83639
(208) 896-5912

In Reply Refer To: November 22, 2013
4160 ID130

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

K. John & M. Martha Corrigan
P.O. Box 844
Crane, Oregon 97732

NOTICE OF FIELD MANAGER'S FINAL DECISION

Dear K. John & M. Martha Corrigan,

By application dated August 1, 2013, you applied to transfer grazing preference on the Trout Springs and Hanley FFR Allotments from Hanley Ranch Partnership to yourselves. As part of the same application package, you also applied for grazing permits on both allotments. By proposed decision dated September 20, 2013, I proposed to deny your applications for preference transfer and a grazing permit and indicated that if I received no protests of that proposed decision, it would become my final decision without further notice.

You and Hanley Ranch Partnership (HRP) filed timely protests to my proposed decision. I have concluded my review of these protests and have decided not to

change the actions described in the proposed decision. My response to these protests is attached with this final decision.

Final Decision

Preference

I am hereby informing you that Hanley Ranch Partnership (HRP) no longer possesses grazing preference for the Trout Springs or Hanley FFR grazing allotments. Accordingly, BLM cannot approve your request for preference transfer. That request is hereby denied.

Request for Issuance of a New Grazing Permit

Your application for a new grazing permit was filed along with your application to transfer grazing preference from HRP to yourselves. As has been noted in this final decision, HRP does not hold preference that can be transferred. Thus, the BLM will not give your application for a permit preferential consideration as against other applicants for grazing use within the Trout Springs and Hanley FFR allotments. On September 20, 2013, the BLM issued a proposed decision to authorize a total of 699 active AUMs for the Trout Springs Allotment to Payne Family Grazing Association, LLC. That proposed decision provided that at this time no additional AUMs beyond the 669 AUMs will be permitted on the Trout Springs allotment due to impacts associated with fires in 2012 and 2013, along with past unauthorized use. Permitted use for the Hanley FFR allotment will not be authorized until

BLM solicits applications for the preference and term permit for this allotment. Therefore, at this time I am denying your application for a grazing permit in the Trout Springs and Hanley FFR allotments. You are free to apply for an additional permit in the future should AUMs be available.

Rationale

As confirmed by the Interior Board of Land Appeals (IBLA) Order dated March 12, 2013, HRP no longer possesses a grazing permit for the Trout Springs and Hanley FFR allotments. For a variety of reasons, this resulted in HRP not having the ability to transfer the preference or a term grazing permit for the Trout Springs or Hanley FFR Allotments.

Authorized grazing has not occurred within the Trout Springs Allotment since 2008. In reintroducing grazing I have found that BLM needs to take a more conservative approach with the re-introduction of authorized livestock grazing use to further ensure that upland and riparian conditions improve. Measures will be taken to address resource concerns associated with the 2012 and 2013 wildfires; however, past unauthorized use has contributed to degraded resource conditions. Unauthorized use on the Trout Springs allotment continues to impact resource conditions in some portions of the allotment, particularly during the spring and summer months. In order to mitigate these impacts and further ensure that significant progress towards the Idaho Standards for Rangeland Health

will occur, BLM will not consider additional AUMs to be available on a sustainable basis until another assessment and evaluation of range conditions through the permit renewal process is completed, which will be in approximately 10 years.

Should the BLM determine in the future to allow additional grazing use on these allotments, you will be free to apply (along with other members of the public), subject to the requirements at 43 CFR 4110.3-1(b) and (c).

Right of Appeal

Any applicant, permittee, lessee or other person whose interest is adversely affected by the final decision may file an appeal in writing in for the purpose of a hearing before an administrative law judge in accordance with 43 CFR § 4160.3(c), 4160.4, 4.21, and 4.470. The appeal must be filed within 30 days following receipt of the final decision or within 30 days following receipt of the final decision. The appeal may be accompanied by a petition for a stay of the decision in accordance with 43 CFR § 4.471 pending final determination on appeal. The appeal and petition for a stay must be filed in the office of the authorized officer, as noted:

Loretta V. Chandler
Owyhee Field Office Manager
20 First Avenue West
Marsing, Idaho 83639

In accordance with 43 CFR § 4.401, the BLM does not accept fax or email filing of a notice of appeal and

petition for stay. Any notice of appeal and/or petition for stay must be sent or delivered to the office of the authorized officer by mail or personal delivery.

Within 15 days of filing the appeal, or the appeal and petition for stay, with the BLM officer named above, the appellant must also serve copies on other person named in the copies sent to section of this decision in accordance with 43 CFR 4.421 and on the Office of the Regional Solicitor located at the address below in accordance with 43 CFR § 4.470(a) and 4.471(b).

Boise Field Solicitors Office
University Plaza
960 Broadway Ave., Suite 400
Boise Idaho, 83706

The appeal shall state the reasons, clearly and concisely, why the appellant thinks the final decision is in error and otherwise complies with the provisions of 43 CFR § 4.470.

Should you wish to file a petition for a stay, see 43 CFR § 4.471 (a) and (b). In accordance with 43 CFR § 4.471(c), a petition for a stay must show sufficient justification based on the following standards:

(1) The relative harm to the parties if the stay is granted or denied.
(2) The likelihood of the appellant's success on the merits.
(3) The likelihood of immediate and irreparable harm if the stay is not granted, and
(4) Whether the public interest favors granting the stay.

As noted above, the petition for stay must be filed in the office of the authorized officer and served in accordance with 43 CFR § 4.471.

Any person named in the decision that receives a copy of a petition for a stay and/or an appeal, see 43 CFR § 4.472(b) for procedures to follow if you wish to respond.

If you have any questions, please contact me at 208-896-5913

Sincerely,

/s/ Loretta V. Chandler

Loretta V. Chandler
Field Office Manager
Owyhee Field Office

Attachment:
1) Response to Protest Statements

cc: Interested Publics for the Trout Springs and Hanley FFR Allotments

---

Interested Public List Intentionally Omitted

Attachment

Response to Protest Points
Field Manager's Proposed Decision dated
September 20, 2013
Corrigan Application to Transfer Grazing Preference
and Application for Grazing Permit
Trout Springs and Hanley FFR

The Owyhee Field Office (OFO) received two protests regarding the Field Manager's Proposed Decision for

the Corrigan Application to Transfer Grazing Preference and Application for Grazing Permit – Trout Springs and Hanley FFR allotments. Protests were received from:

A. K. John and M. Martha Corrigan (Corrigan) received on October 17, 2013
B. Hanley Ranch Partnership (HRP) received on October 17, 2013

Protest points will be addressed in the order listed above.

Corrigan -

Protest 1. Corrigan protests denial of the application for grazing preference transfer from Hanley to Corrigan. *"The foregoing statement is factually and legally erroneous; to the extent the Corrigan Decision finds or concludes that "Hanley Ranch Partnership no longer possesses grazing preference for the Trout Springs and Hanley FFR grazing allotments. See Hanley Protest Point #3."* (Hanley Protest Point #3: *"The cited 'BLM's December 2009 decision' (aka 'Notice of Field Manager's Proposed Decision' dated December 16, 2009, issued to Hanley Ranch Partnership) and the cited IBLA decision (aka Hanley ranch Partnership et al. v. Bureau of Land Management, 183 IBLA 184 (2013)), did not 'terminate' HRP's Grazing Preferences. HRP's USDI-BLM Grazing Preferences (and associated Permitted use) within the Hanley FFR Allotment and Trout Springs Allotment remain attached to HRP's 'base property'. 43 C.F.R. 4110.2; 43 C.F.R. 4110.2-1; 43 C.F.R. 4110.2-3."*).

BLM Response: HRP's grazing preference "terminated" upon the expiration of the HRP grazing permit because HRP was found to have an unsatisfactory record of performance. This finding was affirmed by Administrative Law Judge Robert G. Holt on April 6, 2011, and further upheld by Administrative Judge James K. Jackson on March 12, 2013.

Grazing preference is identified 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." "Preference" serves as the relative position to receive a grazing permit before any other applicant, but, if the preference holder is not a qualified applicant, the "preference" would have no existence with respect to such an entity, as in this case. You reference 4110.2-1, which identifies the process and requirements for base property. In addition, you reference 4110.2-3, which identifies the transfer process we follow when control or ownership of base property with attached preference changes hands. It is mutually agreed that 1) HRP did NOT lose ownership or control of their base property, and 2) HRP did NOT make application to transfer grazing preference prior to the expiration of their grazing permit. Therefore, the sections of the regulations referenced are irrelevant for this decision.

HRP exercised their preference when they applied for permit renewal on the Trout Springs and Hanley FFR Allotments. This application triggered BLM's inquiry into their record of performance. HRP was

subsequently found to have an unsatisfactory record of performance, resulting in the disapproval of a renewed grazing permit. Because HRP could not realize the basic (and only) benefit of receiving "priority position against others for the purpose of receiving a grazing permit," HRP's preference disappeared when it could no longer take advantage of that priority.

Protest 2. Corrigan protests that BLM's failure to complete the grazing transfer to them, and issue a subsequent bill, was unlawful. *"The Corrigan Decision violates:*

a) Public Law 112-74, Section 415, in not issuing a grazing permit to Corrigan on or about August 1, 2013, pending completion of any future intended permit process;

b) Administrative Procedures Act, 5 U.S.C. 558(c), in not issuing a grazing permit to Corrigan on or about August 1, 2013, pending completion of any future intended permit process; and/or,

c) 43 C.F.R. 4110.2-3, in failing to transfer said Grazing Preferences from HRP to Corrigan, and issuing to Corrigan a Grazing Permit based upon Corrigan 's application for a grazing permit.

BLM should forthwith approve the transfer from HRP to Corrigan and issue Corrigan a Grazing Permit."

BLM Response: Because HRP did not have preference, there was no preference available that could have been transferred. As such, the provisions of P.L.

112-74, Section 415 and the Administrative Procedures Act, 5 U.S.C. 558(c) do not apply and no permit could be issued under the authority of these laws. The Proposed Decision clearly indicates, however, that should the BLM decide to solicit applications because additional AUMs become available, you will be notified along with the interested public. See also BLM Response to Protest 1.

Protest 3. *"Corrigan applied for a 2013 grazing bill via a grazing application dated August 7, 2013. While the Corrigan Decision ignores such point, the Corrigan Decision errs in defacto denying such application. See Corrigan Protest Point #2."*

BLM Response: Because there was no permit, approved grazing application, or permitted grazing, in place for you, there was no need to issue a grazing bill. Also see BLM Response to Protests 1 and 2.

Protest 4. Corrigan states *"The Corrigan Decision, including its associated 2013 FONSI and 2013 EA, errs in failing to consider the comments and alternative submitted by Owyhee Range Service dated August 9, 2012, which Corrigan referenced in its letter to the BLM dated August 7, 2013. The Owyhee Range Service letter dated August 9, 2012, is incorporated herein."*

BLM Response: The transfer applications were denied because there was no preference to transfer. Given the lack of preference or a subsequent grazing permit, the alternative submitted by Owyhee Range Service was not considered for your Decision.

HRP -

Protest 1. Hanley protests denial of the request for transfer. *"The foregoing statement is factually and legally erroneous; to the extent the Corrigan Decision finds or concludes that "Hanley Ranch Partnership no longer possesses grazing preference for the Trout Springs and Hanley FFR grazing allotments. See Hanley Protest Point #3."* (Hanley Protest Point #3: *"The cited 'BLM's December 2009 decision' (aka 'Notice of Field Manager's Proposed Decision' dated December 16, 2009, issued to Hanley Ranch Partnership) and the cited IBLA decision (aka Hanley ranch Partnership et al. v. Bureau of Land Management, 183 IBLA 184 (2013)), did not 'terminate' HRP's Grazing Preferences. HRP's USDI-BLM Grazing Preferences (and associated Permitted use) within the Hanley FFR Allotment and Trout Springs Allotment remain attached to HRP's 'base property'. 43 C.F.R. 4110.2; 43 C.F.R. 4110.2-1; 43 C.F.R. 4110.2-3."*).

BLM Response: See BLM Response to Corrigan Protest 1. As explained, HRP does not have grazing preference; therefore, there is no preference to be transferred.

Protest 2. Hanley protests that the BLM's failure to complete the grazing transfer to Corrigan, and issue a subsequent bill, was unlawful. *"The Corrigan Decision violates:*

a) Public Law 112-74, Section 415, in not issuing a grazing permit to Corrigan on or about

August 1, 2013, pending completion of any future intended permit process;

b) *Administrative Procedures Act, 5 U.S.C. 558(c), in not issuing a grazing permit to Corrigan on or about August 1, 2013, pending completion of any future intended permit process; and/or,*

c) *43 C.F.R. 4110.2-3, in failing to transfer said Grazing Preferences from HRP to Corrigan, and issuing to Corrigan a Grazing Permit based upon Corrigan's application for a grazing permit.*

BLM should forthwith approve the transfer from HRP to Corrigan and issue Corrigan a Grazing Permit."

BLM Response: See BLM Response to Corrigan Protest #2. You hold no preference to transfer and as such, the provisions of P.L. 112-74, Section 415 and the Administrative Procedures Act, 5 U.S.C. 558(c) do not apply. Therefore, no permit or bill could be issued to Corrigan.

Protest 3. *"Corrigan applied for a 2013 grazing bill via a grazing application dated August 7, 2013. While the Corrigan Decision ignores such point, the Corrigan Decision errs in defacto denying such application. See Corrigan Protest Point #2."*

BLM Response: Because there was no permit, approved grazing application, or permitted grazing in place for Corrigan, there was no need to issue a grazing bill. Also see BLM Response to Corrigan Protests 1 and 2.

Protest 4. HRP states *"The Corrigan Decision, including its associated 2013 FONSI and 2013 EA, errs in failing to consider the comments and alternative submitted by Owyhee Range Service dated August 9, 2012, which Corrigan referenced in its letter to the BLM dated August 7, 2013. The Owyhee Range Service letter dated August 9, 2012, is incorporated herein."*

BLM Response: The transfer applications were denied because there was no preference to transfer. Given the lack of preference or a subsequent grazing permit, the alternative submitted by Owyhee Range Service was not considered for the Corrigan Decision.

[SEAL] United States Department of the Interior
BUREAU OF LAND MANAGEMENT
Owyhee Field Office
20 First Ave West
Marsing, ID 83639
(208) 896-5912

In Reply Refer To: November 22, 2013
4160 ID130

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Hanley Ranch Partnership
c/o Michael Hanley
P.O. Box 271
Jordan Valley, OR 97910

NOTICE OF FIELD MANAGER'S FINAL GRAZING DECISION

Dear Mr. Hanley:

This final grazing decision responds to your grazing application dated February 15, 2013 that this office received on February 19, 2013 for the following use in during the 2013 grazing year:

Allotment	Pasture Number	Livestock		Period		% PL Use	Type Use	AUMs
		Number	Kind	Begin	End			
Hanley FFR	-	1	C	6/1/2013	12/30/2013	100	Active	7
Trout Springs	5	4	C	6/15/2013	12/31/2013	100	Active	25
	1-4	410	C	6/15/2013	8/30/2013	100	Non-use	1053

Background

On August 4, 2009, you exercised your grazing preference[1] (or priority for grazing permit renewal) and timely applied for renewal of your grazing permit. The Bureau of Land Management (BLM) thereafter processed your permit renewal application. During the processing of your permit renewal application, the BLM determined that you were not qualified to receive a new permit based on your unsatisfactory record of performance under your last grazing permit. As a result of that finding, the BLM issued a decision dated December 16, 2009, denying your August 4, 2009, application to renew your grazing permits for the Trout Springs and Hanley Fenced Federal Range (FFR) grazing allotments. This action was taken in accordance with 43 CFR 4110.1(b)(1) and 43 CFR Subpart 4160. See BLM's Decision of December 2009.

Pending resolution of your appeal of the BLM's December 2009 decision, you were authorized to graze Pasture 5 (Fairylawn Pasture) of the Trout Springs Allotment and the Hanley FFR Allotment during the term of your grazing permit as it then existed. However, that grazing permit expired February 28, 2012. Per Interior Board of Land Appeals (IBLA) Order dated May 31, 2012, your ability to make application and graze as specified under that permit was "extended until such time as the Board issued its decision

---

[1] "Grazing preference" or "preference" means a superior or priority position against others for the purpose of receiving a grazing permit, and this priority is attached to base property. See 43 CFR 4100.0-5.

on the merits. . . " of the appeal pending in *Hanley Ranch Partnership et. al. vs. Bureau of Land Management*, IBLA 2011-147.

Although you timely applied for grazing use for the 2013-14 grazing year, the BLM's December 2009 decision was affirmed by the IBLA on March 12, 2013. Because the IBLA affirmed the BLM's decision that you were unqualified to hold a renewed grazing permit, your grazing preference, or priority for permit renewal, terminated by operation of law. In addition, it is now undisputed that you do not hold a valid grazing permit for either the Trout Springs or the Hanley FFR Grazing Allotments.

I issued a proposed decision to deny your 2013 grazing application on September 20, 2013. I received timely protests of that proposed decision from you and John and Martha Corrigan. I have concluded my review of these protests and have decided to not change the actions described by the proposed decision. My response to the protests is attached with this final decision.

Final Decision

The IBLA, by Order dated March 12, 2013, affirmed that the BLM correctly decided to not issue you a renewed grazing permit for the Trout Springs and Hanley FFR Allotments due to your unsatisfactory record of performance under your last permit. Accordingly, you do not currently qualify for grazing use on the public lands. Therefore, I deny your February 15, 2013 application for annual grazing use.

You no longer have priority for receipt of a new permit or lease for grazing use on the Trout Springs and Hanley FFR Allotments. Should the BLM determine to allow additional grazing use on these allotments, it will satisfy the requirements at 43 CFR 4110.3-1(b) and (c) regarding apportionment of forage available on a sustained yield basis for livestock. These requirements establish a priority basis for apportioning such additional forage. Satisfaction of these requirements may or may not lead to you and other interested applicants being provided with the opportunity to apply to use the forage under terms and conditions specified by the BLM and authorized by a permit. Should the BLM solicit such grazing applications, all applicants would be required to establish their qualifications to be a permittee in accordance with 43 CFR 4110 and all applications would be carefully and fairly evaluated.

Rationale

Evaluating whether an applicant for a renewed grazing permit has a satisfactory record of performance and declining to give preference for renewal to those applicants who do not, as this decision does, ensures that the BLM complies with relevant law expressed at 43 U.S.C. 1752(c) which provides in relevant part that, "[s]o long as . . . the permittee . . . is in compliance with the rules and regulations issued and the terms and conditions in the permit or lease . . . the holder of the expiring permit or lease shall be given first priority for receipt of the new permit or lease." Not giving preference to renew the permit or lease that they held to

those who were not in substantial compliance with the rules and regulations and the terms and conditions applicable to that permit or lease furthers the intent and desire of the BLM and the Department of Interior to ensure that holders of BLM grazing permits and leases are good stewards of the public lands.

Right of Appeal

Any applicant, permittee, lessee or other person whose interest is adversely affected by the final decision may file an appeal in writing in for the purpose of a hearing before an administrative law judge in accordance with 43 CFR § 4160.3(c), 4160.4, 4.21, and 4.470. The appeal must be filed within 30 days following receipt of the final decision or within 30 days following receipt of the final decision. The appeal may be accompanied by a petition for a stay of the decision in accordance with 43 CFR § 4.471 pending final determination on appeal. The appeal and petition for a stay must be filed in the office of the authorized officer, as noted:

Loretta V. Chandler
Owyhee Field Office Manager
20 First Avenue West
Marsing, Idaho 83639

In accordance with 43 CFR § 4.401, the BLM does not accept fax or email filing of a notice of appeal and petition for stay. Any notice of appeal and/or petition for stay must be sent or delivered to the office of the authorized officer by mail or personal delivery.

Within 15 days of filing the appeal, or the appeal and petition for stay, with the BLM officer named above, the appellant must also serve copies on other person named in the copies sent to section of this decision in accordance with 43 CFR 4.421 and on the Office of the Regional Solicitor located at the address below in accordance with 43 CFR § 4.470(a) and 4.471(b).

Boise Field Solicitors Office
University Plaza
960 Broadway Ave., Suite 400
Boise Idaho, 83706

The appeal shall state the reasons, clearly and concisely, why the appellant thinks the final decision is in error and otherwise complies with the provisions of 43 CFR § 4.470.

Should you wish to file a petition for a stay, see 43 CFR § 4.471 (a) and (b). In accordance with 43 CFR § 4.471(c), a petition for a stay must show sufficient justification based on the following standards:

(1) The relative harm to the parties if the stay is granted or denied.
(2) The likelihood of the appellant's success on the merits.
(3) The likelihood of immediate and irreparable harm if the stay is not granted, and
(4) Whether the public interest favors granting the stay.

As noted above, the petition for stay must be filed in the office of the authorized officer and served in accordance with 43 CFR § 4.471.

Any person named in the decision that receives a copy of a petition for a stay and/or an appeal, see 43 CFR § 4.472(b) for procedures to follow if you wish to respond.

If you have any questions, please contact me at 208-896-5913.

Sincerely,

/s/ Loretta V. Chandler

Loretta V. Chandler
Field Office Manager
Owyhee Field Office

Attachment:
1) Response to Protest Statements

cc: Interested Publics for the Trout Springs and Hanley FFR Allotments

Interested Public List Intentionally Omitted

Response to Protest Points
Field Manager's Proposed Decision dated
September 20, 2013
Hanley Ranch Partnership (HRP) Proposed Decision to deny 2013 grazing use Trout Springs and Hanley FFR

The Owyhee Field Office (OFO) received two protests regarding the Field Manager's Proposed Decision to deny the 2013 grazing application submitted by HRP for the Trout Springs and Hanley FFR allotments. Protests were received from:

A. Hanley Ranch Partnership (HRP) received on October 17, 2013
B. K. John and M. Martha Corrigan (Corrigan) received on October 17, 2013

Protest points will be addressed in the order listed above.

HRP -

Protest 1. HRP protests that they were not issued a bill at the time that the application was submitted. "*HRP applied for grazing use on February 15, 2013, as the HRP decision admits on page 1. On that date, HRP still had an authorization to graze livestock per IBLA Order dated May 31, 2013, as the HRP Decision also admits at page 2. As such, it was legally and factually erroneous that the BLM did not issue to HRP a 2013 grazing billing consistent with its application on or about February 15, 2013.*

BLM Response: HRP filed a grazing application with the BLM on February 19, 2013. The Grazing Schedule submitted as part of the application requested grazing use on the Trout Springs and Hanley FFR allotments, the soonest to begin on the Hanley FFR on June 1, 2013. The BLM's billing system prints grazing bills approximately 45 days before the first scheduled livestock turn-on date that the BLM has approved and the BLM issues them shortly after they are printed (typically within one week). Therefore, assuming the BLM had approved the use, the BLM would not have issued the bill for Mr. Hanley until approximately April 15. Even if the BLM had issued a bill consistent with the

IBLA Stay Order soon after it received the grazing application, it would have cancelled and retracted it in accordance with the IBLA's Merit Order.

Protest 2. HRP states "*HRP applied for grazing use on February 15, 2013, to graze livestock in the Haney FFR Allotment beginning on June 1, 2013 and within Pasture 5 (aka Fairylawn Pasture) of the Trout Springs Allotment beginning June 15, 2013 as the HRP Decision admits at page 1. HRP acknowledges that the IBLA issued a decision on March 12, 2013, which affirmed the non-renewal of HRP's grazing permit. Based thereon, it would seem that the BLM would have had the authority at that time to then cancel any grazing billing which should have been issued before June 1, 2013, as discussed in HRP Protest #1*".

BLM Response: See BLM Response to Protest 1 above.

Protest 3. HRP protests that their preference is terminated with the cancellation of the associated grazing permit. "*The cited "BLM's December 2009 decision" (aka "Notice of Field Manager's Proposed Decision" dated December 16, 2009, issued to Hanley Ranch Partnership) and the cited IBLA decision (aka Hanley ranch Partnership et al. v. Bureau of Land Management, 183 IBLA 184 (2013)), did not "terminate" HRP's Grazing Preferences. HRP's USDI-BLM Grazing Preferences (and associated Permitted use) within the Hanley FFR Allotment and Trout Springs Allotment remain attached to HRP's "base property." 43 C.F.R. 4110.2; 43 C.F.R. 4110.2-1; 43 C.F.R. 4110.2-3."*

BLM Response: Your grazing preference "terminated" upon the expiration of the HRP grazing permit because you were found to have an unsatisfactory record of performance. This finding was affirmed by Administrative Law Judge Robert G. Holt on April 6, 2011, and further upheld by Administrative Judge James K. Jackson on March 12, 2013.

Grazing preference is identified 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." "Preference" serves as the relative position to receive a grazing permit before any other applicant, but, if the preference holder is not a qualified applicant, the "preference" would have no existence with respect to such an entity, as in this case. You reference 4110.2-1, which identifies the process and requirements for base property. In addition, you reference 4110.2-3, which identifies the transfer process we follow when control or ownership of base property with attached preference changes hands. It is mutually agreed that 1) HRP did NOT lose ownership or control of their base property, and 2) HRP did NOT make application to transfer grazing preference prior to the expiration of their grazing permit. Therefore, the sections of the regulations referenced are irrelevant for this decision.

HRP exercised their preference when they applied for permit renewal on the Trout Springs and Hanley FFR Allotments. This application triggered BLM's inquiry into their record of performance. HRP was

subsequently found to have an unsatisfactory record of performance, resulting in the disapproval of a renewed grazing permit. Because HRP could not realize the basic (and only) benefit of receiving "priority position against others for the purpose of receiving a grazing permit," HRP's preference disappeared when it could no longer take advantage of that priority.

Protest 4. HRP states "*Given the lack of cancellation of HRP's grazing permit and grazing preferences by the "BLM's December 2009 decision", HRP's USDI-BLM Grazing Preferences (and associated Permitted use) within the Hanley FFR Allotment and Trout Springs Allotment –*

- *Remained attached to "base property" in accordance with" 43 C.F.R. 4110.2; 43 C.F.R. 4110.2-1; 43 C.F.R. 4110.2-3; and*
- *Remained available for HRP to apply for a grazing permit or to transfer said Grazing Preferences to another applicant."*

BLM Response: As stated above, you did not lose ownership or control of its base property, nor did you transfer grazing preference prior to the expiration of its grazing permit. Therefore the regulations that you referenced are irrelevant to this decision. Additionally, I wish to clarify that the December 16, 2009 Decision did not "cancel" the HRP grazing permit, as claimed by your protest. The BLM determined under 43 CFR 4110.1(b) that HRP's record of performance was unsatisfactory and therefore their permit was not renewed. This action was affirmed by Administrative Law Judge

Robert G. Holt in his April 6, 2011 Order and further upheld by Administrative Judge James K. Jackson on March 12, 2013.

Corrigan -

Protest 1. Corrigan protests that the Hanley Ranch Partnership (HRP) was not issued a bill at the time that the application was submitted. "*HRP applied for grazing use on February 15, 2013, as the HRP decision admits on page 1. On that date, HRP still had an authorization to graze livestock per IBLA Order dated May 31, 2013, as the HRP Decision also admits at page 2. As such, it was legally and factually erroneous that the BLM did not issue to HRP a 2013 grazing billing consistent with its application on or about February 15, 2013.*"

BLM Response: HRP filed a grazing application with the BLM on February 19, 2013. The Grazing Schedule submitted as part of the application requested grazing use on the Trout Springs and Hanley FFR allotments, the soonest to begin on the Hanley FFR on June 1, 2013. The BLM's billing system prints grazing bills approximately 45 days before the first scheduled livestock turn-on date that the BLM has approved and the BLM issues them shortly after they are printed (typically within one week). Therefore, assuming the BLM had approved the use, the BLM would not have issued the bill for Mr. Hanley until approximately April 15. Even if the BLM had issued a bill consistent with the IBLA Stay Order soon after it received the grazing

application, it would have cancelled and retracted it in accordance with the IBLA's Merit Order.

Protest 2. Corrigan states "*HRP applied for grazing use on February 15, 2013, to graze livestock in the Haney FFR Allotment beginning on June 1, 2013 and within Pasture 5 (aka Fairylawn Pasture) of the Trout Springs Allotment beginning June 15, 2013 as the HRP Decision admits at page 1. HRP acknowledges that the IBLA issued a decision on March 12, 2013, which affirmed the non-renewal of HRP's grazing permit. Based thereon, it would seem that the BLM would have had the authority at that time to then cancel any grazing billing which should have been issued before June 1, 2013, as discussed in HRP Protest #1".*

BLM Response: See BLM Response to Protest 1 above.

Protest 3. Corrigan protests that HRP's preference is terminated with the cancellation of the associated grazing permit. "*The cited "BLM's December 2009 decision" (aka "Notice of Field Manager's Proposed Decision" dated December 16, 2009, issued to Hanley Ranch Partnership) and the cited IBLA decision (aka Hanley ranch Partnership et al. v. Bureau of Land Management, 183 IBLA 184 (2013)), did not "terminate" HRP's Grazing Preferences. HRP's USDI-BLM Grazing Preferences (and associated Permitted use) within the Hanley FFR Allotment and Trout Springs Allotment remain attached to HRP's "base property." 43 C.F.R. 4110.2; 43 C.F.R. 4110.2-1; 43 C.F.R. 4110.2-3."*

BLM Response: HRP's grazing preference "terminated" upon the expiration of the HRP grazing permit because HRP was found to have an unsatisfactory record of performance. This finding was affirmed by Administrative Law Judge Robert G. Holt on April 6, 2011, and further upheld by Administrative Judge James K. Jackson on March 12, 2013.

Grazing preference is identified 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." "Preference" serves as the relative position to receive a grazing permit before any other applicant, but, if the preference holder is not a qualified applicant, the "preference" would have no existence with respect to such an entity, as in this case. You reference 4110.2-1, which identifies the process and requirements for base property. In addition, you reference 4110.2-3, which identifies the transfer process we follow when control or ownership of base property with attached preference changes hands. It is mutually agreed that 1) HRP did NOT lose ownership or control of their base property, and 2) HRP did NOT make application to transfer grazing preference prior to the expiration of their grazing permit. Therefore, the sections of the regulations referenced are irrelevant for this decision.

HRP exercised their preference when they applied for permit renewal on the Trout Springs and Hanley FFR Allotments. This application triggered BLM's inquiry into their record of performance. HRP was

subsequently found to have an unsatisfactory record of performance, resulting in the disapproval of a renewed grazing permit. Because HRP could not realize the basic (and only) benefit of receiving "priority position against others for the purpose of receiving a grazing permit," HRP's preference disappeared when it could no longer take advantage of that priority.

Protest 4. Corrigan states "*Given the lack of cancellation of HRP's grazing permit and grazing preferences by the "BLM's December 2009 decision", HRP's USDI-BLM Grazing Preferences (and associated Permitted use) within the Hanley FFR Allotment and Trout Springs Allotment –*

- *Remained attached to "base property" in accordance with" 43 C.F.R. 4110.2; 43 C.F.R. 4110.2-1; 43 C.F.R. 4110.2-3; and*
- *Remained available for HRP to apply for a grazing permit or to transfer said Grazing Preferences to another applicant."*

BLM Response: As stated above, HRP did not lose ownership or control of its base property, nor did HRP transfer grazing preference prior to the expiration of its grazing permit. Therefore the regulations that you referenced are irrelevant to this decision. Additionally, I wish to clarify that the December 16, 2009 Decision did not "cancel" the HRP grazing permit, as claimed by your protest. The BLM determined under 43 CFR 4110.1(b) that HRP's record of performance was unsatisfactory and therefore their permit was not renewed. This action was affirmed by Administrative Law Judge

Robert G. Holt in his April 6, 2011 Order and further upheld by Administrative Judge James K. Jackson on March 12, 2013.

United States Department of the Interior
BUREAU OF LAND MANAGEMENT
[SEAL] Owyhee Field Office [LOGO]
20 First Ave West
Marsing, ID 83639
(208) 896-5912

In Reply Refer To: November 13, 2013
4160 ID130

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Payne Family Grazing Association, LLC
c/o Mr. Ted and Mrs. Dorothy Payne
41691 Juniper Mtn. Rd.
Jordan Valley, Oregon 97910

Notice of Field Manager's Final Grazing Decision
-Trout Springs Allotment Permit
Renewal: Authorization #1101594-

Dear Mr. Ted and Mrs. Dorothy Payne:

As you are aware, the Bureau of Land Management's (BLM) Owyhee Field Office (OFO) recently completed the Fundamentals of Rangeland Health (FRH) in conformance with 43 CFR 4180 in response to your August 2009 Application for Permit Renewal (grazing management proposal) for the Trout Springs Allotment. To complete this process, an interdisciplinary team (IDT) of BLM resource specialists analyzed and summarized available data to identify resource issues and evaluate the Idaho Standards for Rangeland Health (Standards) and Guidelines for Livestock Management (S&Gs), identify causal factors if applicable Standards were not

attained, and completed Environmental Assessment #DOI-BLM-ID-B030-2009-0030-EA (EA)[1], which was made final in August 2013[2].

Through the FRH process, the IDT identified a number of resource issues and concluded that Idaho S&Gs were not met on the Trout Springs Allotment. Current[3] livestock grazing was the significant causal factor for not meeting all applicable Standards while the expansion of Western juniper was identified as an additional significant causal factor for non-attainment of Standards 1, 4, and 8 (both plants and animals). Because current livestock grazing was determined to be a significant causal factor, BLM must take appropriate action to address grazing management before the start of the next grazing year in order to be in conformance with 43 CFR § 4180.1. The "Notice of Field Manager's Proposed Grazing Decision – Trout Springs Allotment Permit Renewal: Authorization #1101594" (Proposed Grazing Decision) was issued on September 20, 2013 and was subsequently protested. In accordance with 43 CFR 4160, I reconsidered the Proposed Decision in light of the protest statements and am now prepared to issue this Final Grazing Decision for your permit

---

[1] EA number DOI-BLM-ID-B030-2009-0030-EA ("Term Permit Renewals for Livestock Grazing in Trout Springs and Hanley FFR Allotments") analyzed 5 alternatives for livestock grazing management practices to fully process permits for the Trout Springs Allotment.

[2] This Final Grazing Decision incorporates by reference the analysis contained in the August 2013 Final EA.

[3] "Current" grazing refers to the most recently authorized livestock use on the Trout Springs Allotment.

renewal and range improvement projects associated with the Trout Springs Allotment.

As identified in the Proposed Grazing Decision, this will be the first of two decisions for the Trout Springs Allotment; this Final Grazing Decision will only address the renewal of your grazing permit (Authorization #1101594), the grazing management associated with the grazing use authorized, and the authorization to construct certain identified range improvement projects[4]. The second decision, which will be issued in the near future, will address Western juniper treatments to improve watershed condition. The decision to move forward with the grazing permit renewal at this time is necessary in order to comply with the regulatory time frames identified through 43 CFR § 4180.1 at a minimum.

This Final Grazing Decision is two-part: 1) to renew your permit to graze livestock within the Trout Springs Allotment, and 2) allow for the construction of range improvements identified in the EA. The Final Grazing Decision will:

- Describe current conditions and issues on the allotment;

[4] While renewal of the Trout Springs permit is part of the larger Owyhee 68 permit renewal process, the OFO began the Trout Springs EA in 2009, thus allowing for full consideration of proposed range improvements and completion of necessary clearances.

- Briefly discuss the alternative grazing management schemes that the BLM considered in the EA;
- Respond to the application for grazing permit renewal for use in the Trout Springs Allotment;
- Outline my final decision, and;
- State the reasons why I made that selection.

Background

Allotment Setting

The Trout Springs Allotment (#00539) is located in southwestern Owyhee County, Idaho, approximately 30 miles south of Jordan Valley, Oregon (Map 1 of the August 2013 EA). The allotment lies in the Owyhee Mountains and includes Juniper Mountain. Elevations range from 4,900 feet near the Fairylawn Pasture to over 6,700 feet at Stauffer Flat on Juniper Mountain. Annual precipitation ranges from approximately 12 to 20 inches. The North Fork of the Owyhee River forms the allotment's northern boundary, the southern boundary lies on the south side of Juniper Mountain, Squaw Creek forms a portion of the western boundary and the eastern boundary is generally near the Mud Flat Road (Map 2 of the August 2013 EA).

Fundamentals for Rangeland Health Process History

Text Intentionally Omitted

Status of AUM Allocation

As part of the FRH and permit renewal process in this case, BLM reviewed past and present AUM allocations for the Trout Springs Allotment. Final allocations after various transfers of grazing preference were 699 active and 0 suspended AUMs to Payne Family Grazing Association, LLC, and 731 active and 3,535 suspended AUMs to Hanley Ranch Partnership (HRP) on the Trout Springs Allotment. However, through the FRH and permit renewal process, BLM found that administrative errors had occurred due to the various transfers; those errors affected the AUM allocation. After discussions with Payne Family Grazing Association, LLC and HRP, all parties agreed that the correct AUM allocations should be as follows (see administrative record):

Operator	Active AUMs	Suspended AUMs	Total Permitted Use
Payne Family Grazing Association, LLC	352	694	1,046
Hanley Ranch Partnership	1,078	2,494	3,572
Total Allocation for Trout Springs	1,430	3,188	4,618

The "Total Allocation for the Trout Springs Allotment" was considered to be the correct AUM allocation for the Trout Springs Allotment and is described as such under Alternative B of the EA. As a result of the March 12, 2013 Interior Board of Land Appeals (IBLA) order (IBLA 2011-147), the HRP permit and preference no longer exist; however, AUMs allocated for the allotment continue to be recognized for the purposes of the analysis of Alternatives B, D and E[7].

Resource Issues and Conditions

Text Intentionally Omitted

Analysis of Alternative Actions

Based on the condition of the Trout Springs Allotment and the issues identified, the BLM considered a number of alternative livestock management practices in the EA to ensure that any renewed grazing permit would result in improved conditions on the allotment. Specifically, the BLM analyzed five alternatives in detail, identified a number of actions common to all alternatives, and considered but did not analyze in detail a number of other possible actions[9]. The BLM considered the following alternatives in detail:

> Alternative A – Current Situation: Alternative A considered continuation of current

[7] The issue of HRP's grazing permit was before the IBLA throughout the development of the EA, and was resolved late in the EA development process.

[9] For more detailed discussion, please refer to EA number DOI-BLM-ID-B030-2009-0030-EA Chapter 2.

livestock management practices as they occurred from 2002 to 2007, and is the No Action alternative. Consideration of this alternative allows the BLM and the public to understand the level and manner of grazing that resulted in the conditions prior to rest from livestock grazing on the Trout Springs Allotment. Alternative A is thus linked to the BLM's description of current conditions on the allotment as outlined in the Affected Environment sections of the EA.

Alternative B – Fall Rest Rotation: This alternative analyzed the implementation of a deferred rest-rotation from September 15 through December 5. A total of 530 cattle would be authorized to graze the Trout Springs Allotment during this timeframe for a total of 1,430 active Animal Unit Months (AUMs). Range improvements would be constructed as identified in Section 2.2.3 of the EA.

Alternative C – No-Grazing Alternative: The BLM would not authorize livestock use on public lands within the Trout Springs Allotment for the next 10 years. The BLM would deny your application for permit renewal (i.e., not reissue the permit) and for the next 10 years not approve any applications to graze public lands in this allotment. After 10 years, the BLM would reevaluate whether to again authorize grazing on the public lands within the allotment, considering such factors as meeting or making significant progress towards meeting Idaho S&G, conformance with the ORMP, and other applicable resource

needs not known at this time. We would not cancel the existing preference for grazing use of this allotment's public lands as part of this action but would continue to administer it under applicable law and regulation. After 10 years, the BLM would grant first priority for receipt of a future authorization, if any, to graze public lands within the allotment to the qualified applicant who holds this preference.

Alternative D – Payne Family Grazing Association, LLC Submittal: This proposal was submitted by the Payne Family Grazing Association, LLC (PFL) to BLM on April 2, 2010. The season of use would be April 15 – September 15. A total of 282 cattle and 1,430 Active AUMs would be authorized to graze in the Trout Springs Allotment annually.

Although not submitted as part of the PFL alternative, Management Objectives outlined in Section 2.2.2 of the EA would apply to ensure conformance with the ORMP. Range improvements would be constructed as identified in Section 2.2.3 of the EA.

Alternative E – Fall Rest Rotation with Reduced Livestock Numbers: A deferred grazing system would be implemented as described in Alternative B with reduced livestock numbers and AUMs. In calculating carrying capacity based off of a maximum 40% utilization rate, a total of 425 cattle[10] and 1,147 Active AUMs

[10] As analyzed under this alternative, up to 466 cattle could be authorized annual to graze in Pastures 1A, 1B, 2A, and 3 of the Trout Springs Allotment. This would require a shorter

> would be authorized to graze in the Trout Springs Allotment annually. This alternative expects the allotment to progress toward meeting Standards at an increased rate in comparison to Alternative B due to limiting the carrying capacity to one that expects no greater than 40% utilization across the allotment. This level of use coupled with dormant season grazing will allow for improvement of upland and riparian systems. Range improvements would be constructed as identified in Section 2.2.3 of the EA.

Proposed Decision and Statement of Reasons for Protest

With completion of the FRH and NEPA processes, I issued a Proposed Grazing Decision on September 20, 2013 that identified the alternative to be selected for implementation. Protest statements were received from Ms. Karen Budd-Fallon on your behalf, Mr. Michael Hanley of Hanley Ranch Partnership (HRP), Mr. and Mrs. John Corrigan, WWP, and Mr. Brett Nelson. I have carefully considered each protestant's statement of reasons as to why the proposed decision was in error in the development of this Final Grazing Decision. My response to the protests is included in Attachment 1 of this Final Grazing Decision.

In review of the statement of reasons for protests I have found that changes to the analysis of the Final

---

duration than scheduled in each pasture. A total of 1,122 AUMs would not be exceeded in these pastures.

EA or the selected grazing management system and construction of specified range improvements identified in the September 20, 2013 Proposed Grazing Decision are not required. However, changes in formatting to the EA were made[11]. After over three years of in-depth background work and analysis, I am prepared to move forward with a Final Grazing Decision that is designed to authorize grazing and other actions in order to make significant progress toward achieving Rangeland Health Standards over the course of the next ten years for the Trout Springs Allotment. These management actions will become effective at the conclusion of the appeal period for this decision.

Final Decision

With careful consideration of the current[12] situation, the March 12, 2013 IBLA order, recommendations of the IDT, comments from the permittee and the interested public, as well as protest statements front those identified above, it is my Final Decision as the Authorized Officer to 1) authorize renewal of Authorization #11010594 as analyzed under Alternative E, with modifications to the permitted Active AUMs to 699 and other Terms & Conditions, and 2) authorize construction of identified range improvement projects as follows:

---

[11] The Final EA is still dated August 2013 and is available on the e-planning website at: http://www.blm.gov/epl-front-office/eplanning/nepa/neap_register.do

[12] As discussed above, "current" grazing refers to the most recently authorized grazing on the Trout Springs Allotment.

Decision 1) Renew your grazing permit (Authorization #1101594) for 10 years that:

- Implements a permitted season of use of September 15 – December 5.
- Establishes seven (7) pastures for the allotment with specific seasons of use and periods of rest.
- Authorizes 699 Active AUMs as applied for by Payne Family Grazing Association, LLC and retain 282 "Historic" Suspended AUMs for a total permitted AUMS of 981. The permitted grazing use will be:

Permit	Livestock No. & Kind	Season of Use	%Public Land	Active AUMs	Suspended AUMs	Permitted AUMs
Trout Springs Allotment (#00539)						
Payne Family Grazing Association LLC	259 cattle*	9/15 - 12/5	100	699	282	981

*Up to 284 cattle could be authorized annually to graze in Pastures 1A, 1B, 2A, 2B, and 3 of the Trout Springs Allotment. This would require a shorter duration than scheduled in each pasture. As analyzed in EA#DOI-BLM-ID-B030-2009-0030-EA, a maximum of 466 head could graze these pastures for a shorter duration than scheduled in each pasture. 259 head represents 61% of the total head allocated as analyzed; therefore, 61% of the maximum allowed is 284.

Permitted Grazing Management System:

Trout Springs Pasture*	**Year 1**	**Year 2**	**Year 3**
1A Middle Fork	REST	9/15 – 10/3	Repeat Cycle
1B Thomas Cr	9/15 – 10/14	REST	
2A Twin Spring	REST	10/4 – 10/14	
2B Grave Cr	10/15 – 11/11	10/15 – 11/11	
3 Cottonwood	11/12 – 12/5	11/12 – 12/5	
4 Fairylawn	9/15 – 12/5		
Hanley Holding Field	9/15 – 12/5		

*See Map 5 of the EA for pasture designations.

Other Terms and Conditions

1. Hanley Holding Field will only be used to gather livestock. 20 Active AUMs will be authorized.
2. Pasture use flexibility would be authorized allowing five days to make pasture moves, provided pastures are cleared of cattle within five days following the annually scheduled pasture move date and as long as AUMs are not exceeded.
3. Changes to scheduled grazing use require prior approval by the Authorized Officer.
4. Grazing is not authorized in the exclosures in the Trout Springs Allotment. These include:

   Trout Springs, Middle Fork Spring, Alto Spring, Three Springs, Loveland Spring, Cottonwood Creek Headwaters, Cottonwood/Albiston Spring exclosures, and North Fork Owyhee River. All other exclosures within the

allotment are also excluded from grazing.

5. Properly complete, sign and date an Actual Grazing Use Report Form (BLM Form 4130-5) annually. The completed form(s) must be submitted to BLM, OFO within 15 days from the last day of authorized annual grazing use.
6. Supplemental feeding is limited to salt, mineral, and/or protein in block, granular, or liquid form. If used, these supplements must be placed at least one-quarter (1/4) mile away from any riparian area, spring, stream, meadow, aspen stand, sensitive plant species, playa, or water development.
7. Pursuant to 43 CFR 10.4(b), the BLM Owyhee Field Manager must be notified by telephone with written confirmation immediately upon the discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony (as defined in 43 CFR 10.2) on federal lands. Pursuant to 43 CFR 10.4(c), any ongoing activities connected with such discovery must be stopped immediately and a reasonable effort to protect the discovered remains or objects must be made.
8. Motorized or mechanized transport and motorized equipment is not allowed in wilderness areas without prior authorization.

RATIONALE FOR PERMITTED GRAZING USE

Text Intentionally Omitted

Conclusion

In conclusion, it is my decision to select Alternative E with modifications, over other alternatives because livestock management practices under this selection best meet the ORMP objectives allotment-wide and the Idaho S&Gs in locations where Standards were not met due to current livestock management practices. Alternative A fails to implement livestock management practices that would meet the objectives and standards. Although Alternatives B and D enable the allotment to make progress towards meeting the Idaho Standards, Alternative E facilitates improvement to watersheds, riparian functionality, and vegetative conditions in less time due to deferred use, periods of rest, and reduced AUMs. Alternative C removes the economic activity of one livestock operation from Owyhee County and southwest Idaho, a region where livestock production and agriculture is a large portion of the economy. That, in conjunction with current resource conditions and the improvement anticipated by implementation of Alternative E, as modified, leads me to believe elimination of livestock grazing from the Trout Springs Allotment is unnecessary at this point. Due to the conditions present at the time the assessments were completed, it is my decision to implement management that will allow for attainment of the S&Gs in as short of a timeframe as reasonably possible, without eliminating grazing from this allotment. Range

improvements authorized through this decision will further aid in the efficiency of the grazing management system implemented.

Authority

The authorities under which this decision is being issued include the Taylor Grazing Act of 1934, as amended, and the Federal Land Policy and Management Act of 1976, as promulgated through Title 43 of the Code of Federal Regulations (CFR) Subpart 4100 Grazing Administration – Exclusive of Alaska. My decision is issued under the following specific regulations:

- 4100.0-8 Land use plans: the ORMP designates the Trout Springs Allotment available for livestock grazing;
- 4120.3(f) Range Improvements. 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.
- 4130.2 Grazing permits or leases. Grazing permits may be issued to qualified applicants on lands designated as available for livestock grazing. Grazing permits shall be issued for a term of 10 years unless the authorized officer determines

that a lesser term is in the best interest of sound management;

- 4130.3 Terms and Conditions. Grazing permits must specify the term and conditions that are needed to achieve desired resource conditions, including both mandatory and other terms and conditions;
- 4160.3 Final Decisions. The Authorized Officer shall reconsider the proposed decision in light of the protestant's statements of reasons for protest and in light of other information pertinent to the case. After a review of protest received and other information pertinent to the case, the authorized officer shall issue a final decision.
- 4180 Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration. This proposed decision will result in taking appropriate action to modifying existing grazing management in order to make significant progress toward achieving rangeland health.

Right of Appeal

Any applicant, permittee, lessee or other person whose interest is adversely affected by the final decision may file an appeal in writing in for the purpose of a hearing before an administrative law judge in accordance with 43 CFR § 4160.3(c), 4160.4, 4.21, and 4.470. The appeal must be filed within 30 days following receipt of the

final decision or within 30 days following receipt of the final decision. The appeal may be accompanied by a petition for a stay of the decision in accordance with 43 CFR § 4.471 pending final determination on appeal. The appeal and petition for a stay must be filed in the office of the authorized officer, as noted:

Loretta V. Chandler
Owyhee Field Office Manager
20 First Avenue West
Marsing, Idaho 83639

In accordance with 43 CFR § 4.401, the BLM does not accept fax or email filing of a notice of appeal and petition for stay. Any notice of appeal and/or petition for stay must be sent or delivered to the office of the authorized officer by mail or personal delivery.

Within 15 days of filing the appeal, or the appeal and petition for stay, with the BLM officer named above, the appellant must also serve copies on other person named in the copies sent to section of this decision in accordance with 43 CFR 4.421 and on the Office of the Regional Solicitor located at the address below in accordance with 43 CFR § 4.470(a) and 4.471(b).

Boise Field Solicitors Office
University Plaza
960 Broadway Ave., Suite 400
Boise Idaho, 83706

The appeal shall state the reasons, clearly and concisely, why the appellant thinks the final decision is in error and otherwise complies with the provisions of 43 CFR § 4.470.

Should you wish to file a petition for a stay, see 43 CFR § 4.471(a) and (b). In accordance with 43 CFR § 4.471(c), a petition for a stay must show sufficient justification based on the following standards:

(1) The relative harm to the parties if the stay is granted or denied.

(2) The likelihood of the appellant's success on the merits.

(3) The likelihood of immediate and irreparable harm if the stay is not granted, and

(4) Whether the public interest favors granting the stay.

As noted above, the petition for stay must be filed in the office of the authorized officer and served in accordance with 43 CFR § 4.471.

Any person named in the decision that receives a copy of a petition for a stay and/or an appeal, see 43 CFR § 4.472(b) for procedures to follow if you wish to respond.

If you have any questions, please contact me at 208-896-5913.

Sincerely,

/s/ Loretta V. Chandler

Loretta V. Chandler
Field Manager
Owyhee Field Office

Attachment:
1) Response to Protest Statements

cc: Trout Springs Allotment Interested Public

Literature Cited

Text Intentionally Omitted

ATTACHMENT 1

Response to Protest Points
Field Manager's Proposed Decision dated
September 20, 2013
Payne Family Grazing Association, LLC –
Authorization #1101594
Trout Springs Allotment Permit Renewal

The Owyhee Field Office (OFO) received five protests regarding the Field Manager's Proposed Decision for the Trout Springs Allotment issued to the Payne Family Grazing Association, LLC. Protests were received from:

A. K. John and M. Martha Corrigan (Corrigan)
B. Hanley Ranch Partnership (HRP)
C. Brett Nelson (Nelson)
D. Karen Budd-Falen for Payne Family Grazing Association, LLC (Payne)
E. Katie Fite – Western Watersheds Project (WWP)

Corrigan, Nelson, Payne and WWP submitted multiple documents, all of which will be combined into one section of the document. Protest points will be addressed in the order listed above.

A. Corrigan Protest

Protest 1. Corrigan states *"The Payne Decision states at page 5 that "the HRP . . . preference no longer exist." However, such statement is factually and legally erroneous." See Hanley Protest Point #3, Corrigan Protest Point #1."*

BLM Response: HRP grazing preference "terminated" upon the expiration of the HRP grazing permit because they were found to have an unsatisfactory record of performance. This finding was affirmed by Administrative Law Judge Robert G. Holt on April 6, 2011, and further upheld by Administrative Judge James K. Jackson on March 12, 2013.

Grazing preference is identified 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." "Preference" serves as the position to receive a grazing permit before any other applicant, but, if the preference holder is not a qualified applicant, the "preference" would have no function or basis, as in this case. You reference 4110.2-1, which identifies the process and requirements for base property. In addition, you reference 4110.2-3, which identifies the transfer process we follow when control or ownership of base property with attached preference changes hands. It is mutually agreed that 1) HRP did NOT lose ownership or control of their base property, and 2) HRP did NOT make application to transfer grazing preference prior to the expiration of their grazing permit. Therefore, the

parts of the regulations referenced are irrelevant for this decision.

HRP was however, found to have an unsatisfactory record of performance, resulting in the disapproval of a renewed grazing permit. Because HRP could not realize the basic (and only) benefit of receiving "priority position against others for the purpose of receiving a grazing permit," their preference disappeared when they could no longer take advantage of that priority. HRP lost their preference only after they exercised their priority. In other words, HRP actually attempted to exercise their preference when they applied for a permit renewal for the Trout Springs and Hanley FFR Allotments. It was their attempt to exercise their preference (i.e. apply for a permit renewal before any other person could request privileges) that triggered BLM's inquiry into their record of performance.

Protest 2. Corrigan states *"The Payne Decision correctly expresses at page 5 the Permitted Use of HRP, as being 3,572 AUMs of Permitted Use, of which 1,078 AUMs is Active Use and 2,494 AUMs is Suspended Use, within the Trout Springs Allotment. See also W Alan Schroeder's Letter to BLM dated January 12, 2012."*

BLM Response: While BLM agrees that the AUMs are correctly calculated, these AUMs are not associated with Hanley, for the reasons outlined in Protest 1 above.

Protest 3. Corrigan protests the implication that Payne owns or controls any Grazing Preference in Pasture 5 (Fairylawn). *"As such, Payne owns and holds no*

Grazing Preference and associated Permitted use within Pasture 5 of the Trout Springs Allotment, and the Payne Decision otherwise errs in allocating grazing use in "Pasture 4 Fairylawn", at page 11 of the Payne Decision."

BLM Response: BLM does not assign Payne preference specifically to the Fairylawn Pasture in the proposed decision, nor do they authorize Payne to use private land within said pasture. However, BLM does authorize Payne use of BLM land within the Fairylawn Pasture.

Protest 4. *"The Payne Decision errs in the alternative selected and the grazing permit offered and the grazing management implemented as being irrational and unlawful, for comments previously submitted by HRP, by Corrigan, and by Owyhee Range Services".*

BLM Response: Without further explanation of how this is "irrational and unlawful," I cannot respond any further to this protest point.

B. HRP Protest

Protest 1. *"The Payne Decision states at page 5 that 'the HRP. . . . preference no longer exist.' However, such statement is factually and legally erroneous." See Hanley Protest Point #3; Corrigan Protest Point #1."*

BLM Response: HRP grazing preference "terminated" upon the expiration of the HRP grazing permit because HRP was found to have an unsatisfactory record of performance. This finding was affirmed by

Administrative Law Judge Robert G. Holt on April 6, 2011, and further upheld by Administrative Judge James K. Jackson on March 12, 2013.

Grazing preference is identified 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." "Preference" serves as the position to receive a grazing permit before any other applicant, but, once a preference holder is no longer a qualified applicant, the "preference" would have no function or basis, as in this case. You reference 4110.2-1, which identifies the process and requirements for base property. In addition, you reference 4110.2-3, which identifies the transfer process we follow when control or ownership of base property with attached preference changes hands. It is mutually agreed that 1) HRP did NOT lose ownership or control of their base property, and 2) HRP did NOT make application to transfer grazing preference prior to the expiration of their grazing permit. Therefore, the parts of the regulations referenced are irrelevant for this decision.

HRP was however, found to have an unsatisfactory record of performance, resulting in the disapproval of a renewed grazing permit. Because HRP could not realize the basic (and only) benefit of receiving "priority position against others for the purpose of receiving a grazing permit," their preference disappeared when they could no longer take advantage of that priority. HRP lost their preference only after they exercised their priority. In other words, HRP attempted to

exercise their preference when they applied for a permit renewal for the Trout Springs and Hanley FFR Allotments. It was their attempt to exercise their preference (i.e. apply for a permit renewal before any other person could request privileges) that triggered BLM's inquiry into their record of performance.

Protest 2. *"The Payne Decision correctly expresses at page 5 the Permitted Use of HRP, as being 3,572 AUMs of Permitted Use, of which 1,078 AUMs is Active Use and 2,494 AUMs is Suspended Use, within the Trout Springs Allotment.* *See also* W. Alan Schroeder's Letter to BLM dated January 12, 2012.

BLM Response: While BLM agrees that the AUMs are correctly calculated, these AUMs are not associated with Hanley, for the reasons outlined in Protest 1 above.

Protest 3. HRP protests the implication that Payne owns or controls any Grazing Preference in Pasture 5 (Fairylawn). *"As such, Payne owns and holds no Grazing Preference and associated Permitted use within Pasture 5 of the Trout Springs Allotment, and the Payne Decision otherwise errs in allocating grazing use in "Pasture 4 Fairylawn", at page 11 of the Payne Decision."*

BLM Response: BLM does not assign Payne preference in the proposed decision, nor do they authorize Payne to use, private land within the Fairylawn Pasture. BLM does authorize Payne use of BLM land within the Fairylawn Pasture.

Protest 4. *"The Payne Decision errs in the alternative selected and the grazing permit offered and the grazing management implemented as being irrational and unlawful, for comments previously submitted by HRP, by Corrigan, and by Owyhee Range Services."*

BLM Response: Without further explanation of how this is "irrational and unlawful," I cannot respond any further to this protest point.

C. Nelson Protest

Protest 1. *"I Protest the lack of data to support BLM's grazing periods, numbers of cows, lack of controls/use standards to properly deal with damage, and the overall management scheme."*

BLM Response: The BLM followed its regulatory requirements in utilizing the information available to complete Standards and Guidelines determinations (found in Appendix A of the EA), which did find that "current" livestock grazing was a significant causal factor for non-attainment of Standards 1, 2, 3, 4, 7 and 8. In addition, it was found that grazing management was not in conformance with livestock management Guidelines 1, 3, 4, 5, 6, 7, 8, 9, 10 and 12. BLM Interdisciplinary Teams (IDTs) utilized available data, literature, and professional knowledge to assess the impacts of grazing across a range of alternatives. The selected livestock management system and associated permit was found to allow for attainment of Idaho Standards and Guidelines as well as the Owyhee Resource Management Plan (ORMP).

Protest 2. Nelson states that there will be concentrated use in areas of the allotment due to the season proposed, with removal of cover without allowing for time for it to grow back. *"BLM has not thought this through, but just seems to want to have a lot of cows out when the public might notice their damage less. I Protest all of this."*

BLM Response: BLM has assessed a range of reasonable alternatives with variations for the season of use. The use permitted under the proposed decision (numbers, season, and other terms & conditions), as analyzed in the EA, will improve upland vegetative species, wildlife habitat, and riparian systems as use will not occur during the critical growth period or during the hot season. The permitted AUMs and fall grazing use allowed under the Proposed Decision have been determined to result in appropriate residual cover of vegetation for functional uplands and riparian areas, along with the associated wildlife habitat.

Protest 3. *"I protest that BLM has not found more range health problems, because the land and watersheds show clear evidence of all kinds of cattle damage that is happening."*

BLM Response: Although this protest lacks specific information to address, the information collected by the BLM is based off of areas that represent the allotment as a whole. The BLM findings through the Fundamentals of Rangeland Health (FRH) process identify that there are resource issues that resulted in non-attainment of the Idaho Standards for Rangeland

Health, where current (as defined in the EA and Proposed Decision) livestock grazing was found to be a significant causal factor.

Protest 4. Nelson states, *"I Protest that BLM is splitting the grazing decisions for Trout Springs into 2 parts"* and further concludes that he will not have an idea of the number of cows that will actually graze here, or where the impacts to natural resources and public uses of the land *"that this unrevealed combined herd size and unknown manner and time of use will have"*.

BLM Response: This Protest is unclear. The Proposed Grazing Decision dated September 20, 2013 was a two-part decision; 1) grazing permit and management system and 2) range improvements authorized for construction. Until this permit renewal process completes its administrative process, the allotment is currently closed to *authorized* grazing. Until a renewed grazing permit is issued, it is unnecessary to further close the allotment through the permit renewal process as a result of wildfire, drought, or any other activity that impacts grazing on the landscape.

Closures to livestock grazing and temporary reductions in AUMs as a result of such activities will occur through the appropriate regulatory authority under the grazing regulations. As identified in the Proposed Decision, the interested public will be involved in the closure process in accordance with 43 CFR 4110.3-3, which will allow you to disclose where cattle will not be allowed to graze and/or in reduced amounts.

Protest 5. *"I Protest that BLM is not resting the lands for long enough time after the recent wild fires, the trespass, the past Hanley and Payne grazing impacts, and a lot of fire damage to surrounding lands."*

BLM Response: Through the analysis of alternatives and the rationale brought forward in the September 20, 2013 Proposed Decision, BLM finds that *authorized* livestock grazing can be reintroduced to the Trout Springs Allotment. Measures are in place with the issuance of the grazing permit to allow for improved conditions, with consideration to those items you identify above.

Protest 6. *"I protest the lack of rest, and the lack of information about all of these other problems and fires and planned killing of the juniper trees that provide high recreational, scenic and wildlife values. BLM should not issue this permit until it provides full information on the Juni and other fires, and its combined planned or thought about Pole Creek and Trout Springs fire and tree cutting and killing, and all the grazing that will occur out there".*

BLM Response: BLM considered these past, present, and reasonably foreseeable actions in the Cumulative Effects section of the EA. The Proposed Decision further identified that the Juni fire was assessed by the IDT in consideration of the analysis of the Trout Springs juniper treatment. BLM has not issued the decision for this treatment, but has found that grazing can occur regardless of implementation of such treatment. The EA analyzes reduced grazing upon

implementation of the treatment until identified objectives are met.

Protest 7. *"I Protest that BLM is splitting the decision here even further into the two (at least) separate grazing decisions, and then a separate decision for killing trees and the sagebrush too that will be destroyed in BLM's fires."*

BLM Response: Refer to BLM Response to Protest #4. Although juniper expansion was identified as a significant causal factor for non-attainment of Standards 1, 4 and 8, the issuance of a decision to implement the treatment is not under a regulatory mandated timeframe as is the case with the grazing decision.

Protest 8. *"I Protest that BLM is blaming the native trees (often very old) for causing impacts to the lands, waters and fish and wildlife habitat that grazing is causing."*

BLM Response: BLM has identified that 'current', as described in the FRH and EA documents, livestock grazing was a significant causal factor for non-attainment of the Standards. BLM does not disagree that grazing has caused impacts to the *"lands, waters and fish and wildlife habitat"* as you describe, and the alternatives and proposed decision address grazing management. However, with review of other information available (i.e. ecological site descriptions, repeated historical photographs, and cited literature), the occurrence of Western juniper has exceeded the potential for the dominant ecological sites and has therefore impacted the ecological function of the watersheds and

wildlife habitats across the landscape. See Sections 1.1.1, 3.1.1, 3.2.1, and 3.4.1 of the EA.

Protest 9. *"I Protest that BLM has not really analyzed the climate change part, and how the grazing impacts will become worse under hotter temperatures, reduced snowpack and reduced perennial streamflows."*

BLM Response: Although BLM did not analyze climate change specifically, an assessment was made regarding the additive stressors of livestock grazing and climate change. Although you may disagree with the level of analysis, the EA at page 74 found that "the relatively low intensity of use and generally favorable season of use in Alternative E would provide a reduction of stressors to biotic function, and as such would be anticipated to mitigate the additive stressors induced by climate change, primarily altered precipitation and temperature regimes (Staudinger et al. 2012). Vegetation communities that retain resistance and resilience to the downward trend induced by changing climate would increase and improve (EA at Section 3.2.2.5, page 74).

Protest 10. *"I Protest that there is not enough information on how, where, and when sage grouse use trout springs and the surrounding lands."*

BLM Response: The EA is based on best available information, including habitat inventories, targeted surveys, and incidental wildlife observations. Although comprehensive, site-specific sage-grouse seasonal habitat inventories and telemetry studies have not been conducted within the entire allotment and

surrounding areas, the information available is sufficient to evaluate effects of the alternatives analyzed. Information regarding detailed sage grouse habitation within the Trout Springs Allotment is available at the OFO. This information was synthesized for the purposes of the EA (Section 3.4, pages 93-97).

Protest 11. *"I Protest that BLM should allow a new period for comment on this"*

BLM Response: Per this request, you were granted an extension to submit protest points to the Trout Springs Decision through close of business, October 28, 2013.

D. Payne Protest

Protest 1. Payne protests the season of use and indicates that the grazing system proposed in the decision is not economic for their operation. *"The Proposed Season of Use and Rotation Is Not Economic"*

BLM Response: BLM considered the economic hardship that the selected alternative could have on the permittee in Sections 3.11 (page 159) and 4.8 (page 211) of the EA. Alternative E acknowledges that the permittee may be forced to purchase additional forage or reduce livestock numbers to compensate for the changes the alternative would necessitate in the operation. However, the Authorized Officer must take into consideration resource conditions and select the alternative that best meets the needs of the resource as well. Because the Evaluation and Determination for

the Trout Springs Allotment (Appendix A of the EA) found that all applicable Standards (1, 2, 3, 4, 7 and 8) as well as several Guidelines (1, 3, 4, 5, 6, 7, 8, 9, 10, and 12) were not being met and that livestock grazing was a causal factor, it is evident that changes to grazing management need to occur. In fact, CFR 4180.1 directs that the authorized officer shall "take appropriate action under subparts 4120, 4130 and 4160 of this part as soon as practicable but not later than the start of the next grazing season upon determining that existing grazing management needs to be modified. . . " Based on the analysis of several alternatives analyzed in detail in the EA, it was determined that Alternative E, as modified would best meet the needs of the resource while still providing an economic value to the permittee.

Protest 2. *"[T]he Decision makes no provision for needed maintenance of existing spring developments and some-interior fences. Furthermore, additional spring developments are necessary to improve livestock distribution."*

BLM Response: The BLM acknowledges that many improvements will require more than "normal" maintenance because no authorized livestock grazing has occurred on the allotment since 2008. The BLM would be willing to work with the permittee to address the issue and develop a maintenance schedule to ensure that improvements are brought to standard in a timely, yet reasonable, manner. BLM also acknowledges that the permittee has requested additional sources of water be developed. Many of these requests,

however, have been discussed near or after completion of the EA. The permittee may request additional improvements at a later date.

Protest 3. *"The decision must make ample provision to minimize the impact of fire treatments on Payne's operation, and limit total closure to two growing seasons."*

BLM Response: Although analyzed in the EA, no decision has been issued in regard to fire treatment on the Trout Springs Allotment. Therefore, this protest is outside of the scope of this decision.

Protest 4. *"Payne protests the Decision's determination that the Trout Springs Allotment has failed a number of the Idaho Standards and Guidelines."*

BLM Response: Although you may object to the findings, the Evaluation and Determination completed for the Trout Springs and Hanley FFR Allotments (see EA, Appendix A) was based on information collected from the allotments. The data was collected and analyzed using accepted methodologies by resource professionals.

October 23, 2013 Addendum

Protest 1. *"Payne opposes the failure of the BLM to assign the 1078 AUMs to a permittee to be used by livestock. These AUMs should be made available for use. BLM should not hold AUMs in suspension indefinitely."*

BLM Response: A total of 1,147 active AUMs were analyzed under Alternative E (the selected alternative) of the EA. Of that, 699 Active AUMs were assigned to the Payne Family Grazing Association, LLC, leaving 448 AUMs of active use unassigned. As discussed on page 12 of the Final Decision, the additional Active AUMs associated with this alternative will not be permitted for the term of the permit "due to recent wildfires (Grasshopper in 2012 and Juni in 2013) and past unauthorized livestock use within the Trout Springs Allotment." 43 CFR 4110.3-3(b) authorizes the Authorized Officer to implement reductions in permitted use when continued grazing use poses an imminent likelihood of significant resource damage.

E. WWP Protest

Received October 17, 2013:

Protest 1. *"We Protest the failure to prepare an EIS to assess all the direct indirect and cumulative impacts of grazing, vegetation treatments, fire, and livestock facilities in the Trout Springs allotment, Pole Creek allotment, Castlehead-Lambert allotment, Bull Creek allotment, Nickel Creek allotment and lands affecting the North and Middle Fork Owyhee River."*

BLM Response: The actions identified in this protest point are similar in nature within the analysis area for the Trout Springs Allotment; however, they are completed and analyzed on their own merits. Therefore, they are cumulative (see EA at Section 4.0), but not connected actions. The actions identified in the Trout

Springs Final EA and those authorized for implementation through the September 20, 2013 Proposed Decision were found to not constitute a major federal action that would significantly affect the quality of the human environment; therefore an EIS is not required. This finding was made by considering both the context and intensity of the potential effects of the grazing alternative selected and its season of use, grazing management system and enforcement of objectives.

Protest 2. *"We Protest the reliance on the false NRCS Ecosites, the use of incorrect fire return and disturbance intervals, and other inaccurate information in these assessments."*

BLM Response: Although you believe the NRCS Ecosites and other information is inaccurate, BLM IDTs find this information to be the best available and that it is scientifically based, unbiased, and widely accepted. See Appendix N of the EA (Response to Draft EA Comments), specifically BLM Response to WWP Comments # 4, 5, and 6.

Protest 3. WWP protests the renewal of a term grazing permit for the Payne Family Grazing Association, LLC. *"We do not believe Payne entity should be granted a permit here."*

BLM Response: Although you disagree, BLM found the Payne Family Grazing Association, LLC met all regulatory requirements to have their grazing permit renewed. BLM reviewed the record of performance for this entity and found that they have been in "substantial compliance with the terms and conditions of the

existing Federal grazing permit for which renewal is sought. . . " per CFR 43 4110.1(b)(1)(i).

Protest 4: *"We Protest the lack of a proper carrying capacity, capability, and suitability analysis."*

BLM Response: Section 2.4.5 of the EA discusses how carrying capacity was calculated for Alternative E, which was selected under the September 20, 2013 Proposed Grazing Decision. The BLM analyzed this alternative in response to scoping comments to improve resource conditions with greater consideration to topography and to progress faster towards meeting Standards while meeting the purpose and need of the EA. The methodology utilized is consistent with Technical Reference 4400-07 (1984).

WWP has provided no data or information in their protest to support the claim that use levels far exceed the capability and carrying capacity of the land to support livestock in the Trout Springs Allotment. Moreover, BLM has analyzed several alternatives with regards to livestock carrying capacity and stocking rates that provide a variety of different AUM levels. Four of the five alternatives analyzed in detail are reductions in AUMS from the current situation.

Protest 5. *"We Protest BLM re-imposing grazing use on this fragile wild land area with its greatly damaged and unraveling watershed and diminishing perennial stream flows."*

BLM Response: BLM has carefully analyzed a range of alternatives, including a "No Grazing Alternative".

Through the analysis of alternatives and the rationale brought forward in the September 20, 2013 Proposed Decision, BLM finds that *authorized* livestock grazing can be reintroduced to the Trout Springs Allotment. Measures are in place with the issuance of the grazing permit to allow for improved ecological health and functionality.

Protest 6. *"We Protest the lack of a suitable range of alternatives, a full range of mandatory measurable use standards, and BLM ignoring providing a large-scale livestock free reference area to understand the adverse effects of livestock grazing here."*

BLM Response: BLM analyzed five alternatives that met the Purpose and Need to Take Action along with management objectives for the Trout Springs Allotment. The alternatives analyzed were in response to comments made during the scoping process and the identification of issues. Two of the five alternatives included mandatory measurable use standards as part of the Terms and Conditions of the permit. However, BLM found that terms and conditions identifying mandatory use standards were not required. The design of the grazing management system, reduced active AUMs, and fall use combined, would result in a utilization and degree of bank trampling within the limits of desirable ecological conditions. However, the absence of these terms and conditions from this permit does not eliminate the similar requirements identified under the Owyhee Resource Management Plan (ORMP).

With respect to the large-scale livestock-free reference area *"to understand the adverse effects of livestock grazing here"*: the BLM did authorize the construction of such development through the September 20, 2013 Proposed Grazing Decision. The Cottonwood Headwaters Exclosure would be constructed to allow for a 320 acre upland reference area that would also facilitate protection to an active gully system in the area (page 18 of the Proposed Decision).

Protest 7. *"We Protest BLM ignoring our alternative suggestions and necessary monitoring and mitigation, actions, and de-stocking significant areas."*

BLM Response: BLM did not ignore WWP's alternative suggestions. They were carefully reviewed and considered in the development of the Final EA. Due to the reasons identified in the EA at page 36 BLM found that the alternative suggestion was similar to the No Grazing Alternative and did not require separate analysis.

Protest 8. *"We Protest the failure to address the scale of wildfire, and proposed or past treatment destruction and impacts on native wildlife watersheds, aquatic species, wild land quality."*

BLM Response: BLM addressed these past, present and reasonably foreseeable actions and their impacts to natural resources when coupled with each alternative identified in the EA. Refer to "Cumulative Effects" at page 173 of the EA.

Protest 9. *"The grazing use conflicts with migratory bird needs, elk security needs, and many other values of these lands. It also conflicts with protection of Wilderness and LWC values. We Protest all of this."*

BLM Response: Section 3.4.2.5 of the EA specifically discusses the impacts that the selected alternative will have on wildlife species. Migratory birds are discussed specifically beginning at page 129; elk and other big game are discussed specifically beginning at page 130. Effects of this alternative on wilderness are discussed at page 151 and at page 156 for Lands with Wilderness Characteristics. Effects of Alternative E on other values associated with these lands are discussed throughout Section 3.0. The protest statement does not identify how the grazing use conflicts with migratory bird needs, elk security, Wilderness or LWC values and is therefore is a matter of difference of opinion from BLM findings.

Protest 10. *"We Protest the failure to remove and reduce the livestock facility footprint, and the ecological harms- including potentially West Nile virus- that these facilities are causing."*

BLM Response: BLM found that the alternative submitted by WWP that addressed, in part, the removal of livestock facilities in areas that have been closed to grazing appeared to be larger than the Trout Springs Allotment and was not carried forward for further analysis. However, past, present and reasonably foreseeable development of range improvements,

specifically water developments, did not find that significant ecological harm would occur as a result.

October 28, 2013 Addendum:

Protest 1. WWP protests the failure to take a hard look and consider alternatives and mitigation actions proposed by WWP and the failure *"to develop and analysis and alternatives that take a hard look at just how damaged these lands are, and the perilous status of the sensitive species like redband trout in these watersheds."*

BLM Response: In the Evaluation and Determination for the Trout Springs Allotment (Appendix A of the EA), BLM found that none of the applicable Standards (1, 2, 3, 4, 7 and 8) and several Guidelines (1, 3, 4, 5, 6, 7, 8, 9, 10, and 12) were being met due to current livestock grazing. This document discusses resource conditions and their departure from expected or reference conditions. Additionally, the Trout Springs EA discusses current resource conditions in Section 3.0 – Affected Environment and Environmental Consequences for soils, watershed, vegetation (upland and riparian) and wildlife, among others. The analysis incorporates the findings of the Evaluation and Determination.

The EA analyzed in detail four different alternatives (and considered an additional thirteen that were not carried forward) that addressed changes to grazing management that would lead to improved resource conditions (Alternative A – Continuation of Grazing Practices from 2002 to 2007 established a baseline for

analysis but was found to not improve resource conditions). Section 3.4.1 specifically addresses Columbia River redband trout and other special status species in its current condition and then evaluates changes to those populations based on each alternative in Section 3.4.2. Although not addressed specifically, cumulative effects to fish, along with other special status species, are discussed in Section 4.4 of the EA.

The Proposed Decision also identifies that the Standards and Guidelines listed above are not being met and provides a rationale as to why implementation of the decision, as modified will best fulfill BLM's obligation to manage the public lands under the Federal Land Policy and Management Act's (FLMPA) multiple use and sustained yield mandate, and will result in the Trout Springs Allotment making significant progress towards meeting the Idaho S&Gs and the resource objectives of the ORMP.

Protest 2. WWP protests BLM's *"failure to analyze the full range of impacts of the existing and proposed livestock facilities."*

BLM Response: Section 3.11 of the Trout Springs and Hanley FFR EA discusses existing improvements and the environmental consequences of each alternative related to existing improvements. Section 2.2.3 describes the proposed improvements and Sections 3.0 and 4.0 discuss environmental consequences and cumulative effects, respectively, of the proposed range improvement projects under each alternative for all resources analyzed. In the analysis of past, present and

reasonably foreseeable development of range improvements, it was determined that no significant ecological harm would occur from existing or proposed livestock facilities.

Protest 3. *"There continues to be an ever-growing body of scientific evidence, and on-the ground evidence of the severe conflicts with livestock grazing use across the Juniper Mountain watershed. We Protest that BLM did not address this, and is piecemealing and segmenting post-fire grazing and ESR actions/decisions, grazing separate from more tree and sage treatment killing actions, and separately from Pole Creek grazing, treatment, facility actions."*

BLM Response: BLM relies on peer-reviewed scientific data, including data that was collected in the Juniper Mountain area and in habitats similar to those found on Juniper Mountain (see Section 7 – Literature Cited of the EA). Although the actions identified in this protest point are similar within the analysis area for the Trout Springs Allotment, they are completed and analyzed on their own merits. Therefore, they are cumulative, but not connected actions. See BLM Response to Protest 1 and Protest 8 in WWP Protest received on October 17, 2013.

Protest 4. WWP protests *"the greatly inadequate site-specific analysis of the livestock facilities."*

BLM Response: See BLM Response to Protest 2 in letter received October 28, 2013.

Protest 5. *"There have also been significantly changed on the ground circumstances since this August 2012. The Payne trespass continued. It severely impacted many areas of Trout Springs and Bull Basin in shared watersheds. Pole Creek cattle continued to ravage Pole Creek, and were also present to some degree in Trout Springs. We Protest the failure of BLM to fully assess these imapcts."*

BLM Response: The EA for the Trout Springs and Hanley FFR Allotments acknowledge that livestock trespass and unauthorized use has occurred on the Trout Springs Allotment; in fact Alternative A was built around documented unauthorized use. Sections 3.2.1 – Affected Environment – Upland Vegetation, Noxious and Invasive Weeds and 3.3.1 – Affected Environment – Riparian/Water Quality discuss affects to vegetation based on unauthorized use. In Section 4.0 – Cumulative Effects, grazing management on allotments within the cumulative effects area, including the Bull Basin and Pole Creek Allotments is identified as a past, present and reasonably foreseeable action that is analyzed.

Protest 6. *"The North Fork Owyhee Grasshopper fire and the large areas burned in BLM backfires, firebreaks etc. have significantly changed hydrology, increased runoff events, increased sedimentation, decreased shade in watersheds. [. . .] We Protest the failure of BLM to assess and take a hard look at this, and the completely inadequate mitigation and recovery actions."*

BLM Response: The 2012 Grasshopper Fire, which burned approximately 2,700 acres, is addressed throughout the EA, with a discussion of the effects of that fire occurring primarily in Section 3.2.1. No mitigation or recovery actions for the Grasshopper Fire are identified in the EA. A separate Emergency Stabilization and Burned Area Rehabilitation Plan was prepared shortly after the fire to address the effects of this fire; mitigation and recovery actions in identified in this plan, however, are outside of the scope of this analysis.

Protest 7. *"The Payne Ranch medusahead continues to expand onto surrounding cattle-degraded BLM lands. Weed invasions have been described as a "wildfire in slow motion". However, the rapidfire expansion of medushead, bulbous bluegrass/exotic bromes in Owyhee County south of Jordan Valley in areas previously with fewer weeds, has been anything but slow. We Protest the failure of BLM to take this seriously."*

BLM Response: BLM acknowledges that the spread of noxious and invasive species is a serious threat and addresses both noxious and invasive species in the EA. Noxious and invasive weeds, including medusahead and bulbous bluegrass are addressed in Sections 3.2 and 4.3 of the EA.

Protest 8. WWP believes *"BLM must fully assess the extent and degree of habitat degradation to important watersheds, perennial flows, sensitive redband trout, Columbia spotted frog. We Protest this has not occurred."*

BLM Response: BLM carefully and fully analyzed watershed conditions as well as habitat conditions for Columbia River redband trout and Columbia spotted frog. BLM determined that with the exception of Alternative A, all other alternatives would result in improved watershed condition and would lead to improved habitat conditions for redband trout and Columbia spotted frog. The Proposed Decision also discusses expected improvements and provides rationale for the selected alternative. See also BLM Response to Protest 5 of WWP's letter received October 17, 2013.

Protest 9. WWP protests that *"BLM must prepare a Supplemental EIS to analyze the full battery of changed environmental circumstances, and develop a valid range of modern day management measures and protective mitigations to understand what areas, if any, in the Juniper Mountain landscape – including Trout Springs – can actually withstand any livestock grazing. We Protest the failure to consider this all."*

BLM Response: In the Finding of No Significant Impact (FONSI), BLM determined that the actions analyzed in the EA would not constitute a major federal action that would significantly affect the quality of the human environment; therefore preparation of an EIS was not necessary. This finding was made by considering both the context and intensity of the potential effects of the grazing alternative selected and its season of use, grazing management system and enforcement of objectives. See also BLM Response to Protest Point 1 in WWP letter received October 17, 2013; BLM Response to Protest 1 from their October 28, 2013 letter.

Protest 10. *"We thus Protest the failure to: Provide an adequate site-specific scientific baseline addressing all of these matters, and provide assurance of sustainable use, and conservation, enhancement and restoration of sagebrush and juniper-dependent species habitats, watersheds, water quality, water quantity, wild land values, and practice any form of integrated invasive management at all."*

BLM Response: The EA is based on best available information, including habitat and species inventories, targeted monitoring, and incidental observations. Although comprehensive, site-specific inventories have not been conducted within the entire allotment and surroundings, BLM feels that the available information provides an adequate baseline for the situation. BLM also recognizes that changes to the environment can occur as we proceed through our regulatory process that may result in site-specific adjustments to livestock grazing.

Protest 11. *"We Protest the failure to consider competing views and a full range of evidence and historical information as well as ecological science."*

BLM Response: BLM carefully considered comments and information submitted by the interested public coupled with available monitoring data and review of scientific literature in preparing the draft and final EA along with utilizing this information in selecting the grazing management system to be authorized. This is made evident in the record along with the response to comments for the documents mentioned above.

Protest 12. WWP protests *"the failure to provide updated analysis of all of these issues, and to take a hard look at current ecological. We Protest the failure to 'vet'/verify the Ecosites that BLM is relying upon to constantly scapegoat junipers for problems in its highly flawed 2012 Determination".*

BLM Response: BLM identified the periods of time in which monitoring data would be utilized in assessing rangeland health conditions and determining if Standards and Guidelines were met. BLM utilized the information available for that time period in assessing conditions and further identified changes in conditions as a result of wildfires in the EA. Ecological sites within the Trout Springs Allotment are based on soils mapping, and the scale used is appropriate at this allotment-level analysis. Ecological sites were verified at site-specific locations for the 2001 Trout Springs Allotment Assessment. The ecological site descriptions which state that bunchgrasses and shrubs, rather than juniper, are reference condition vegetation, are based on widely accepted science. See Appendix N of the EA (Response to Draft EA Comments), specifically BLM Response to WWP Comments # 4, 5, and 6. BLM has taken a hard look at current ecological conditions, and identified departures from reference conditions due to both grazing management and an increase in juniper. See the 2012 Determination.

Protest 13. WP protests *"the gaping lack of current ecological information on areas of perennial flow in September."*

BLM Response: The Evaluation and Determination for the Trout Springs Allotment describes information and data sources that were used to assess conditions on perennial stream segments. The EA also discusses this information and identifies the years that data was collected.

Protest 14. WWP protests the selection of an alternative that does not *"protect remaining occupied sage-grouse habitats as well as other important areas to provide enclaves to protect rear, imperiled and sensitive species from chronic grazing disturbance and new development"* that the *"Ecological Recovery Alternative"* would allow for.

BLM Response: BLM finds that the alternative selected would best meet the needs to improve ecological condition while allowing for authorized grazing to resume on the allotment. The alternative allows for protection of sage-grouse habitat and other special status wildlife species within the assessment area. In addition, there are various projects in the area, across various ownerships, which are actively addressing such issues and are analyzed under cumulative effects.

Protest 15. WWP protests the season of use that *"concentrates large numbers of cattle on highly sensitive areas of available water during periods with minimal water"*.

BLM Response: The EA found that Alternative E is expected to make significant progress toward meeting riparian and water quality standards (Section 3.3) because a fall season of use would decrease the likelihood

of cattle in riparian areas. The Proposed Decision, as modified, determined that no more than 284 cattle could graze on the allotment, as opposed to 466 as originally analyzed in Alternative E. Because total AUMs authorized in the Proposed Decision are 39% lower than what was analyzed in the EA under Alternative E, progress toward meeting standards for riparian and water quality should occur faster than analyzed.

Protest 16. *BLM has never systematically inventoried old growth, and must abandon reliance on the flawed ecosites in order to understand the suitability and capability and balance any grazing use with competing forest habitat and other values.* We Protest this.

BLM Response: BLM addresses the age classes and distribution of juniper in Sections 1.1.1 and 3.2.1 of the EA._". Old growth juniper has not been mapped because old growth inclusions are small and scattered across the allotment. See BLM Response to Protest 2, received October 17, 2013, related to "*flawed ecosites*".

Protest 17. WWP protests the authorization of additional range improvements within the Trout Springs Allotment and that *"BLM has never systematically examined each project and minimized and mitigated adverse ecological impacts. This is made even worse by the greatly flawed spring PFC assessments, where BLM cherry-picked a handful of better condition springs – while ignoring collecting any current data on the vast majority of trampled, dying and degraded springs across TS and the rest of the allotments on Juniper Mountain, . [. . .].*

BLM Response: BLM analyzed the impacts of the proposed range improvement projects along with the impacts of past, present and reasonably foreseeable future actions. No range improvements have been proposed that will further develop springs within the Trout Springs Allotment.

PFC assessments were completed within representative areas across the allotment and with those identified in the ORMP. BLM found that current livestock grazing, as described in the FHR documents, was the significant causal factor for non-attainment of Standard 2 & 3, and that changes in management must occur.

Protest 18. WWP protests that BLM did not provide for active restoration in areas most infested with invasive exotics such as cheatgrass, exotic bromes, bulbous bluegrass through recovery of natural vegetation and microbiotic crusts and that BLM did not conduct the "*necessary site-specific analysis to understand these impacts, and the large-scale deleterious impacts to watershed stability, and the increases in sedimentation, likelihood of large-scale erosion in runoff events, etc. resulting from these shallow-rooted flammable weeds.*

BLM Response: BLM selection of Alternative E allows for a grazing management system that will allow for improved vegetative conditions (Section 3.2.2.5 of the final EA). Improved upland vegetative conditions and watershed function will allow desirable species to compete with invasive species, as described in Section 3.2.2.2 of the EA. The active restoration (Ecological

Recovery Alternative) proposed by WWP was considered but not carried forward, as described in Section 2.3 of the EA. Although this decision does not speak to wildfire (natural or prescribed), BLM is responsible for assessing the impacts of wildfire (prescribed or natural) and the associated mitigation needs to reduce *"deleterious impacts to watershed stability, and the increases in sedimentation, likelihood of large-scale erosion in runoff events, etc."* Analysis of Alternative E indicates that the potential for spread of noxious weeds is substantially lower than current grazing because the reduced total use and more beneficial season of use is expected to improve plant vigor and cover of native perennials, reducing bare ground favored by weeds. Because Alternative E was modified to an even lower stocking rate than analyzed under Alternative E, the benefits of Proposed Decision is even greater than originally analyzed.

Protest 19. *BLM is using incorrect NRCS Ecosite and flawed and outdated FRCC/fire return and disturbance modeling information. [. . .] We Protest this.*

BLM Response: See BLM Response to the October 7th WWP Protest #2.

Protest 20. *BLM has not collected necessary systematic, science-based assessments of the current conditions of springs, seeps, streams and uplands across the Juniper Mountain area. [. . .] We Protest this.*

BLM Response: BLM utilized a number of studies to assess range conditions within the Trout Springs Allotment. Studies utilized by the IDT are in

conformance with BLM protocols and were deemed adequate to assess current conditions of the resource values across the Juniper Mountain area.

Protest 21. WWP protests the failure of BLM to take a hard look and fully consider triggers for removal of livestock from a pasture, reductions in stocking if triggers are exceeded, elimination of grazing if standards are exceeded in multiple years, the elimination of the use of salt or supplements on public lands.

BLM Response: BLM clearly analyzed triggers for removal of livestock during any given grazing year. BLM did not speak to reductions in stocking rate upon exceeding such triggers, but is responsible in ensuring deleterious impacts to natural resources do not occur and that annual adjustments within the terms and conditions of the permit occur in order to mitigate such use. If adjustments within the terms and conditions of the permit cannot be made then changes to the permitted use must occur through the Proposed and Final Grazing decision process.

As identified in the September 20, 2013 Proposed Grazing Decision, terms and conditions that provide triggers for removal of livestock were not carried forward. We have carefully considered the inclusion of such terms and conditions within this permit renewal and find that the design of the grazing management system, the reduced number in authorized Active AUMs, and the fall grazing system will result in the necessary outcome to improve resource conditions, including bank trampling and stubble heights that

improve riparian conditions and utilization limits on key upland species of 40% or less.

Protest 22. In addition, WWP protests that the standards are not coupled with avoidance of any grazing during sensitive periods of the year, which includes no grazing during lek and nesting periods in occupied sage-grouse habitat and no grazing in sage-grouse habitat during winter periods. By not doing so, WWP states that BLM is failing to protect wintering wildlife habitats and populations, and study the importance of these habitats.

BLM Response: Through the NEPA process, BLM analyzed a number of alternatives for grazing management within the Trout Springs Allotment that considered periods of time where grazing would not occur during sensitive periods for sage-grouse. The selection of Alternative E eliminates grazing during the leking and nesting periods for sage-grouse, although their habitats and presence in the allotment is limited. In addition, the grazing authorized through the Proposed Decision was designed to result in light use across the landscape, leaving adequate residual herbaceous vegetation and shrub cover for seasonal winter wildlife habitats.

Protest 23. *We Protest the failure of BLM to adequately consider active and passive restoration actions, as described below.*

BLM Response: BLM considered your alternative that included active and passive restoration actions but did not analyze in detail for the reasons identified

in the EA. Specifically, BLM analyzed the No Grazing Alternative, which BLM found to be very similar to the alternative you submitted.

§315. Grazing districts; establishment; restrictions; prior rights; rights-of-way; hearing and notice; hunting or fishing rights

In order to promote the highest use of the public lands pending its final disposal, the Secretary of the Interior is authorized, in his discretion, by order to establish grazing districts or additions thereto and/or to modify the boundaries thereof, of vacant, unappropriated, and unreserved lands from any part of the public domain of the United States (exclusive of Alaska), which are not in national forests, national parks and monuments, Indian reservations, revested Oregon and California Railroad grant lands, or revested Coos Bay Wagon Road grant lands, and which in his opinion are chiefly valuable for grazing and raising forage crops: *Provided*, That no lands withdrawn or reserved for any other purpose shall be included in any such district except with the approval of the head of the department having jurisdiction thereof. Nothing in this subchapter shall be construed in any way to diminish, restrict, or impair any right which has been heretofore or may be hereafter initiated under existing law validly affecting the public lands, and which is maintained pursuant to such law except as otherwise expressly provided in this subchapter nor to affect any land heretofore or hereafter surveyed which, except for the provisions of this subchapter, would be a part of any grant to any State, nor as limiting or restricting the power or authority of any State as to matters within its jurisdiction. Whenever any grazing district is established pursuant to this subchapter, the Secretary shall grant to owners of

land adjacent to such district, upon application of any such owner, such rights-of-way over the lands included in such district for stock-driving purposes as may be necessary for the convenient access by any such owner to marketing facilities or to lands not within such district owned by such person or upon which such person has stock-grazing rights. Neither this subchapter nor the Act of December 29, 1916 (39 Stat. 862; U.S.C., title 43, secs. 291 and following), commonly known as the "Stock Raising Homestead Act", shall be construed as limiting the authority or policy of Congress or the President to include in national forests public lands of the character described in section 471[1] of title 16, for the purposes set forth in section 475 of title 16, or such other purposes as Congress may specify. Before grazing districts are created in any State as herein provided, a hearing shall be held in the State, after public notice thereof shall have been given, at such location convenient for the attendance of State officials, and the settlers, residents, and livestock owners of the vicinity, as may be determined by the Secretary of the Interior. No such district shall be established until the expiration of ninety days after such notice shall have been given, nor until twenty days after such hearing shall be held: *Provided, however*, That the publication of such notice shall have the effect of withdrawing all public lands within the exterior boundary of such proposed grazing districts from all forms of entry of settlement. Nothing in this subchapter shall be construed as in any way altering or restricting the right to hunt

[1] See References in Text note below.

or fish within a grazing district in accordance with the laws of the United States or of any State, or as vesting in any permittee any right whatsoever to interfere with hunting or fishing within a grazing district.

(June 28, 1934, ch. 865, § 1, 48 Stat. 1269; June 26, 1936, ch. 842, title I, §1, 49 Stat. 1976; May 28, 1954, ch. 243, §2, 68 Stat. 151.)

§315a. Protection, administration, regulation, and improvement of districts; rules and regulations; study of erosion and flood control; offenses

The Secretary of the Interior shall make provision for the protection, administration, regulation, and improvement of such grazing districts as may be created under the authority of section 315 of this title, and he shall make such rules and regulations and establish such service, enter into such cooperative agreements, and do any and all things necessary to accomplish the purposes of this subchapter and to insure the objects of such grazing districts, namely, to regulate their occupancy and use, to preserve the land and its resources from destruction or unnecessary injury, to provide for the orderly use, improvement, and development of the range; and the Secretary of the Interior is authorized to continue the study of erosion and flood control and to perform such work as may be necessary amply to protect and rehabilitate the areas subject to the provisions of this subchapter, through such funds as may be made available for that purpose, and any willful

violation of the provisions of this subchapter or of such rules and regulations thereunder after actual notice thereof shall be punishable by a fine of not more than $500.

(June 28, 1934, ch. 865, § 2, 48 Stat. 1270.)

§ 315b. Grazing permits; fees; vested water rights; permits not to create right in land

The Secretary of the Interior is authorized to issue or cause to be issued permits to graze livestock on such grazing districts to such bona fide settlers, residents, and other stock owners as under his rules and regulations are entitled to participate in the use of the range, upon the payment annually of reasonable fees in each case to be fixed or determined from time to time in accordance with governing law. Grazing permits shall be issued only to citizens of the United States or to those who have filed the necessary declarations of intention to become such, as required by the naturalization laws, and to groups, associations, or corporations authorized to conduct business under the laws of the State in which the grazing district is located. Preference shall be given in the issuance of grazing permits to those within or near a district who are landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water rights, as may be necessary to permit the proper use of lands, water or water rights owned, occupied, or leased by them, except that until July 1, 1935, no preference shall be given in the issuance of such permits to any such owner, occupant,

or settler, whose rights were acquired between January 1, 1934, and December 31, 1934, both dates, inclusive, except that no permittee complying with the rules and regulations laid down by the Secretary of the Interior shall be denied the renewal of such permit, if such denial will impair the value of the grazing unit of the permittee, when such unit is pledged as security for any bona fide loan. Such permits shall be for a period of not more than ten years, subject to the preference right of the permittees to renewal in the discretion of the Secretary of the Interior, who shall specify from time to time numbers of stock and seasons of use. During periods of range depletion due to severe drought or other natural causes, or in case of a general epidemic of disease, during the life of the permit, the Secretary of the Interior is authorized, in his discretion to remit, reduce, refund in whole or in part, or authorize postponement of payment of grazing fees for such depletion period so long as the emergency exists: *Provided further*, That nothing in this subchapter shall be construed or administered in any way to diminish or impair any right to the possession and use of water for mining, agriculture, manufacture, or other purposes which has heretofore vested or accrued under existing law validly affecting the public lands or which may be hereafter initiated or acquired and maintained in accordance with such law. So far as consistent with the purposes and provisions of this subchapter, grazing privileges recognized and acknowledged shall be adequately safeguarded, but the creation of a grazing district or the issuance of a permit pursuant to the

provisions of this subchapter shall not create any right, title, interest, or estate in or to the lands.

(June 28, 1934, ch. 865, § 3, 48 Stat. 1270; Aug. 6, 1947, ch. 507, § 1, 61 Stat. 790; Pub. L. 94–579, title IV, §401(b)(3), Oct. 21, 1976, 90 Stat. 2773.)

§ 1752. Grazing leases and permits

(a) Terms and conditions

Except as provided in subsection (b) of this section, permits and leases for domestic livestock grazing on public lands issued by the Secretary under the Act of June 28, 1934 (48 Stat. 1269, as amended; 43 U.S.C. 315 et seq.) or the Act of August 28, 1937 (50 Stat. 874, as amended; 43 U.S.C. 1181a–1181j), or by the Secretary of Agriculture, with respect to lands within National Forests in the sixteen contiguous Western States, shall be for a term of ten years subject to such terms and conditions the Secretary concerned deems appropriate and consistent with the governing law, including, but not limited to, the authority of the Secretary concerned to cancel, suspend, or modify a grazing permit or lease, in whole or in part, pursuant to the terms and conditions thereof, or to cancel or suspend a grazing permit or lease for any violation of a grazing regulation or of any term or condition of such grazing permit or lease.

(b) Terms of lesser duration

Permits or leases may be issued by the Secretary concerned for a period shorter than ten years where the Secretary concerned determines that—

(1) the land is pending disposal; or

(2) the land will be devoted to a public purpose prior to the end of ten years; or

(3) it will be in the best interest of sound land management to specify a shorter term: *Provided*, That the absence from an allotment management plan of details the Secretary concerned would like to include but which are undeveloped shall not be the basis for establishing a term shorter than ten years: *Provided further*, That the absence of completed land use plans or court ordered environmental statements shall not be the sole basis for establishing a term shorter than ten years unless the Secretary determines on a case-by-case basis that the information to be contained in such land use plan or court ordered environmental impact statement is necessary to determine whether a shorter term should be established for any of the reasons set forth in items (1) through (3) of this subsection.

(c) First priority for renewal of expiring permit or lease

So long as (1) the lands for which the permit or lease is issued remain available for domestic livestock grazing in accordance with land use plans prepared pursuant to section 1712 of this title or section 1604 of title 16, (2) the permittee or lessee is in compliance with the rules and regulations issued and the terms and conditions in the permit or lease specified by the Secretary concerned, and (3) the permittee or lessee accepts the terms and conditions to be included by the Secretary concerned in the new permit or lease, the holder of the expiring permit or lease shall be given first priority for receipt of the new permit or lease.

(d) Allotment management plan requirements

All permits and leases for domestic livestock grazing issued pursuant to this section may incorporate an allotment management plan developed by the Secretary concerned. However, nothing in this subsection shall be construed to supersede any requirement for completion of court ordered environmental impact statements prior to development and incorporation of allotment management plans. If the Secretary concerned elects to develop an allotment management plan for a given area, he shall do so in careful and considered consultation, cooperation and coordination with the lessees, permittees, and landowners involved, the district grazing advisory boards established pursuant to section 1753 of this title, and any State or States having lands within the area to be covered by such allotment management plan. Allotment management plans shall be tailored to the specific range condition of the area to be covered by such plan, and shall be reviewed on a periodic basis to determine whether they have been effective in improving the range condition of the lands involved or whether such lands can be better managed under the provisions of subsection (e) of this section. The Secretary concerned may revise or terminate such plans or develop new plans from time to time after such review and careful and considered consultation, cooperation and coordination with the parties involved. As used in this subsection, the terms "court ordered environmental impact statement" and "range condition" shall be defined as in the "Public

Rangelands Improvement Act of 1978 [43 U.S.C. 1901 et seq.]".

(e) Omission of allotment management plan requirements and incorporation of appropriate terms and conditions; reexamination of range conditions

In all cases where the Secretary concerned has not completed an allotment management plan or determines that an allotment management plan is not necessary for management of livestock operations and will not be prepared, the Secretary concerned shall incorporate in grazing permits and leases such terms and conditions as he deems appropriate for management of the permitted or leased lands pursuant to applicable law. The Secretary concerned shall also specify therein the numbers of animals to be grazed and the seasons of use and that he may reexamine the condition of the range at any time and, if he finds on reexamination that the condition of the range requires adjustment in the amount or other aspect of grazing use, that the permittee or lessee shall adjust his use to the extent the Secretary concerned deems necessary. Such readjustment shall be put into full force and effect on the date specified by the Secretary concerned.

(f) Allotment management plan applicability to non-Federal lands; appeal rights

Allotment management plans shall not refer to livestock operations or range improvements on non-Federal lands except where the non-Federal lands are intermingled with, or, with the consent of the

permittee or lessee involved, associated with, the Federal lands subject to the plan. The Secretary concerned under appropriate regulations shall grant to lessees and permittees the right of appeal from decisions which specify the terms and conditions of allotment management plans. The preceding sentence of this subsection shall not be construed as limiting any other right of appeal from decisions of such officials.

(g) Cancellation of permit or lease; determination of reasonable compensation; notice

Whenever a permit or lease for grazing domestic livestock is canceled in whole or in part, in order to devote the lands covered by the permit or lease to another public purpose, including disposal, the permittee or lessee shall receive from the United States a reasonable compensation for the adjusted value, to be determined by the Secretary concerned, of his interest in authorized permanent improvements placed or constructed by the permittee or lessee on lands covered by such permit or lease, but not to exceed the fair market value of the terminated portion of the permittee's or lessee's interest therein. Except in cases of emergency, no permit or lease shall be canceled under this subsection without two years' prior notification.

(h) Applicability of provisions to rights, etc., in or to public lands or lands in National Forests

Nothing in this Act shall be construed as modifying in any way law existing on October 21, 1976, with respect to the creation of right, title, interest or estate

in or to public lands or lands in National Forests by issuance of grazing permits and leases.

(Pub. L. 94–579, title IV, §402, Oct. 21, 1976, 90 Stat. 2772, 2773; Pub. L. 95–514, §§7, 8, Oct. 25, 1978, 92 Stat. 1807.)

§ 1752. Grazing leases and permits

(a) Terms and conditions

Except as provided in subsection (b) of this section, permits and leases for domestic livestock grazing on public lands issued by the Secretary under the Act of June 28, 1934 (48 Stat. 1269, as amended; 43 U.S.C. 315 et seq.) or the Act of August 28, 1937 (50 Stat. 874, as amended; 43 U.S.C. 1181a–1181j), or by the Secretary of Agriculture, with respect to lands within National Forests in the sixteen contiguous Western States, shall be for a term of ten years subject to such terms and conditions the Secretary concerned deems appropriate and consistent with the governing law, including, but not limited to, the authority of the Secretary concerned to cancel, suspend, or modify a grazing permit or lease, in whole or in part, pursuant to the terms and conditions thereof, or to cancel or suspend a grazing permit or lease for any violation of a grazing regulation or of any term or condition of such grazing permit or lease.

(b) Terms of lesser duration

Permits or leases may be issued by the Secretary concerned for a period shorter than ten years where the Secretary concerned determines that—

(1) the land is pending disposal; or

(2) the land will be devoted to a public purpose prior to the end of ten years; or

(3) it will be in the best interest of sound land management to specify a shorter term: *Provided*, That the absence from an allotment management plan of details the Secretary concerned would like to include but which are undeveloped shall not be the basis for establishing a term shorter than ten years: *Provided further*, That the absence of completed land use plans or court ordered environmental statements shall not be the sole basis for establishing a term shorter than ten years unless the Secretary determines on a case-by-case basis that the information to be contained in such land use plan or court ordered environmental impact statement is necessary to determine whether a shorter term should be established for any of the reasons set forth in items (1) through (3) of this subsection.

(c) First priority for renewal of expiring permit or lease

(1) Renewal of expiring or transferred permit or lease

During any period in which (A) the lands for which the permit or lease is issued remain available for domestic livestock grazing in accordance with land use plans prepared pursuant to section 1712 of this title or section 1604 of title 16, (B) the permittee or lessee is in compliance with the rules and regulations issued and the terms and conditions in the permit or lease specified by the Secretary concerned, and (C) the permittee or lessee accepts the terms and conditions to be included by the Secretary concerned in the new permit or lease, the holder of the expiring permit or lease shall

be given first priority for receipt of the new permit or lease.

(2) Continuation of terms under new permit or lease

The terms and conditions in a grazing permit or lease that has expired, or was terminated due to a grazing preference transfer, shall be continued under a new permit or lease until the date on which the Secretary concerned completes any environmental analysis and documentation for the permit or lease required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and other applicable laws.

(3) Completion of processing

As of the date on which the Secretary concerned completes the processing of a grazing permit or lease in accordance with paragraph (2), the permit or lease may be canceled, suspended, or modified, in whole or in part.

(4) Environmental reviews

The Secretary concerned shall seek to conduct environmental reviews on an allotment or multiple allotment basis, to the extent practicable, if the allotments share similar ecological conditions, for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and other applicable laws.

(d) Allotment management plan requirements

All permits and leases for domestic livestock grazing issued pursuant to this section may incorporate an allotment management plan developed by the Secretary concerned. However, nothing in this subsection shall be construed to supersede any requirement for completion of court ordered environmental impact statements prior to development and incorporation of allotment management plans. If the Secretary concerned elects to develop an allotment management plan for a given area, he shall do so in careful and considered consultation, cooperation and coordination with the lessees, permittees, and landowners involved, the district grazing advisory boards established pursuant to section 1753 of this title, and any State or States having lands within the area to be covered by such allotment management plan. Allotment management plans shall be tailored to the specific range condition of the area to be covered by such plan, and shall be reviewed on a periodic basis to determine whether they have been effective in improving the range condition of the lands involved or whether such lands can be better managed under the provisions of subsection (e) of this section. The Secretary concerned may revise or terminate such plans or develop new plans from time to time after such review and careful and considered consultation, cooperation and coordination with the parties involved. As used in this subsection, the terms "court ordered environmental impact statement" and "range condition" shall be defined as in the "Public

Rangelands Improvement Act of 1978 [43 U.S.C. 1901 et seq.]".

(e) Omission of allotment management plan requirements and incorporation of appropriate terms and conditions; reexamination of range conditions

In all cases where the Secretary concerned has not completed an allotment management plan or determines that an allotment management plan is not necessary for management of livestock operations and will not be prepared, the Secretary concerned shall incorporate in grazing permits and leases such terms and conditions as he deems appropriate for management of the permitted or leased lands pursuant to applicable law. The Secretary concerned shall also specify therein the numbers of animals to be grazed and the seasons of use and that he may reexamine the condition of the range at any time and, if he finds on reexamination that the condition of the range requires adjustment in the amount or other aspect of grazing use, that the permittee or lessee shall adjust his use to the extent the Secretary concerned deems necessary. Such readjustment shall be put into full force and effect on the date specified by the Secretary concerned.

(f) Allotment management plan applicability to non-Federal lands; appeal rights

Allotment management plans shall not refer to livestock operations or range improvements on non-Federal lands except where the non-Federal lands are intermingled with, or, with the consent of the

permittee or lessee involved, associated with, the Federal lands subject to the plan. The Secretary concerned under appropriate regulations shall grant to lessees and permittees the right of appeal from decisions which specify the terms and conditions of allotment management plans. The preceding sentence of this subsection shall not be construed as limiting any other right of appeal from decisions of such officials.

(g) Cancellation of permit or lease; determination of reasonable compensation; notice

Whenever a permit or lease for grazing domestic livestock is canceled in whole or in part, in order to devote the lands covered by the permit or lease to another public purpose, including disposal, the permittee or lessee shall receive from the United States a reasonable compensation for the adjusted value, to be determined by the Secretary concerned, of his interest in authorized permanent improvements placed or constructed by the permittee or lessee on lands covered by such permit or lease, but not to exceed the fair market value of the terminated portion of the permittee's or lessee's interest therein. Except in cases of emergency, no permit or lease shall be canceled under this subsection without two years' prior notification.

(h) National Environmental Policy Act of 1969

(1) In general

The issuance of a grazing permit or lease by the Secretary concerned may be categorically excluded from the requirement to prepare an environmental assessment or an environmental

impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) if—

(A) the issued permit or lease continues the current grazing management of the allotment; and

(B) the Secretary concerned—

(i) has assessed and evaluated the grazing allotment associated with the lease or permit; and

(ii) based on the assessment and evaluation under clause (i), has determined that the allotment—

(I) with respect to public land administered by the Secretary of the Interior—

(aa) is meeting land health standards; or

(bb) is not meeting land health standards due to factors other than existing livestock grazing; or

(II) with respect to National Forest System land administered by the Secretary of Agriculture—

(aa) is meeting objectives in the applicable land and resource management plan; or

(bb) is not meeting the objectives in the applicable land

resource management plan due to factors other than existing livestock grazing.

(2) Trailing and crossing

The trailing and crossing of livestock across public land and National Forest System land and the implementation of trailing and crossing practices by the Secretary concerned may be categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(i) Priority and timing for completion of environmental analyses

The Secretary concerned, in the sole discretion of the Secretary concerned, shall determine the priority and timing for completing each required environmental analysis with respect to a grazing allotment, permit, or lease based on—

(1) the environmental significance of the grazing allotment, permit, or lease; and

(2) the available funding for the environmental analysis.

(j) Applicability of provisions to rights, etc., in or to public lands or lands in National Forests

Nothing in this Act shall be construed as modifying in any way law existing on October 21, 1976, with respect to the creation of right, title, interest or estate

in or to public lands or lands in National Forests by issuance of grazing permits and leases.

(Pub. L. 94–579, title IV, § 402, Oct. 21, 1976, 90 Stat. 2773; Pub. L. 95–514, §§ 7, 8, Oct. 25, 1978, 92 Stat. 1807; Pub. L. 113–291, div. B, title XXX, §3023, Dec. 19, 2014, 128 Stat. 3762.)

PART 4100—GRAZING ADMINISTRATION—EXCLUSIVE OF ALASKA

Subpart 4100—Grazing Administration—Exclusive of Alaska; General

Subpart 4110—Qualifications and Preference

Subpart 4120—Grazing Management

Subpart 4130—Authorizing Grazing Use

Subpart 4140—Prohibited Acts

Subpart 4150—Unauthorized Grazing Use

Bureau of Land Management, Interior

Subpart 4160—Administrative Remedies

Subpart 4170—Penalties

Subpart 4180—Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration

Subpart 4100—Grazing Administration—Exclusive of Alaska; General

§ 4100.0–1 Purpose.

The purpose is to provide uniform guidance for administration of grazing on the public lands exclusive of Alaska.

[49 FR 6449, Feb. 21, 1984]

§ 4100.0–2 Objectives.

The objectives of these regulations are to promote healthy sustainable rangeland ecosystems; to accelerate restoration and improvement of public rangelands

to properly functioning conditions; to promote the orderly use, improvement and development of the public lands; to establish efficient and effective administration of grazing of public rangelands; and to provide for the sustainability of the western livestock industry and communities that are dependent upon productive, healthy public rangelands. These objectives shall be realized in a manner that is consistent with land use plans, multiple use, sustained yield, environmental values, economic and other objectives stated in 43 CFR part 1720, subpart 1725; the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315, 315a–315r); section 102 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1740).

[60 FR 9960, Feb. 22, 1995]

§ 4100.0–3 Authority.

(a) The Taylor Grazing Act of June 28, 1934 as amended (43 U.S.C. 315, 315a through 315r);

(b) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) as amended by the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 *et seq.*);

(c) Executive orders transfer land acquired under the Bankhead-Jones Farm Tenant Act of July 22, 1937, as amended (7 U.S.C. 1012), to the Secretary and authorize administration under the Taylor Grazing Act.

(d) Section 4 of the O&C Act of August 28, 1937 (43 U.S.C. 118(d));

(e) The Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 *et seq.*); and

(f) Public land orders, Executive orders, and agreements authorize the Secretary to administer livestock grazing on specified lands under the Taylor Grazing Act or other authority as specified.

[43 FR 29067, July 5, 1978, as amended at 49 FR 6449, Feb. 21, 1984; 49 FR 12704, Mar. 30, 1984; 50 FR 45827, Nov. 4, 1985; 61 FR 4227, Feb. 5, 1996]

§ 4100.0–5 Definitions.

Whenever used in this part, unless the context otherwise requires, the following definitions apply:

The *Act* means the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315, 315a–315r).

Active use means the current authorized use, including livestock grazing and conservation use. Active use may constitute a portion, or all, of permitted use. Active use does not include temporary nonuse or suspended use of forage within all or a portion of an allotment.

Activity plan means a plan for managing a resource use or value to achieve specific objectives. For example, an allotment management plan is an activity plan for managing livestock grazing use to improve or maintain rangeland conditions.

Actual use means where, how many, what kind or class of livestock, and how long livestock graze on an allotment, or on a portion or pasture of an allotment.

Actual use report means a report of the actual livestock grazing use submitted by the permittee or lessee.

Affiliate means an entity or person that controls, is controlled by, or is under common control with, an applicant, permittee or lessee. The term "control" means having any relationship which gives an entity or person authority directly or indirectly to determine the manner in which an applicant, permittee or lessee conducts grazing operations.

Allotment means an area of land designated and managed for grazing of livestock.

Allotment management plan (AMP) means a documented program developed as an activity plan, consistent with the definition at 43 U.S.C. 1702(k), that focuses on, and contains the necessary instructions for, the management of livestock grazing on specified public lands to meet resource condition, sustained yield, multiple use, economic and other objectives.

Animal unit month (AUM) means the amount of forage necessary for the sustenance of one cow or its equivalent for a period of 1 month.

Annual rangelands means those designated areas in which livestock forage production is primarily attributable to annual plants and varies greatly from year to year.

Authorized officer means any person authorized by the Secretary to administer regulations in this part.

Base property means: (1) Land that has the capability to produce crops or forage that can be used to support authorized livestock for a specified period of the year, or (2) water that is suitable for consumption by livestock and is available and accessible, to the authorized livestock when the public lands are used for livestock grazing.

Cancelled or cancellation means a permanent termination of a grazing permit or grazing lease and grazing preference, or free-use grazing permit or other grazing authorization, in whole or in part.

Class of livestock means ages and/or sex groups of a kind of livestock.

Conservation use means an activity, excluding livestock grazing, on all or a portion of an allotment for purposes of—

(1) Protecting the land and its resources from destruction or unnecessary injury;

(2) Improving rangeland conditions; or

(3) Enhancing resource values, uses, or functions.

Consultation, cooperation, and coordination means interaction for the purpose of obtaining advice, or exchanging opinions on issues, plans, or management actions.

Control means being responsible for and providing care and management of base property and/or livestock.

District means the specific area of public lands administered by a District Manager.

Ephemeral rangelands means areas of the Hot Desert Biome (Region) that do not consistently produce enough forage to sustain a livestock operation but may briefly produce unusual volumes of forage to accommodate livestock grazing.

Grazing district means the specific area within which the public lands are administered under section 3 of the Act. Public lands outside grazing district boundaries are administered under section 15 of the Act.

Grazing fee year means the year, used for billing purposes, which begins on March 1, of a given year and ends on the last day of February of the following year.

Grazing lease means a document authorizing use of the public lands outside an established grazing district. Grazing leases specify all authorized use including livestock grazing, suspended use, and conservation use. Leases specify the total number of AUMs apportioned, the area authorized for grazing use, or both.

Grazing permit means a document authorizing use of the public lands within an established grazing district. Grazing permits specify all authorized use including livestock grazing, suspended use, and conservation use. Permits specify the total number of AUMs

apportioned, the area authorized for grazing use, or both.

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.

Interested public means an individual, group 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 grazing allotments or has submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment.

Land use plan means a resource management plan, developed under the provisions of 43 CFR part 1600, or a management framework plan. These plans are developed through public participation in accordance with the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C 1701 *et seq.*) and establish management direction for resource uses of public lands.

Livestock or *kind of livestock* means species of domestic livestock—cattle, sheep, horses, burros, and goats.

Livestock carrying capacity means the maximum stocking rate possible without inducing damage to vegetation or related resources. It may vary from year to

year on the same area due to fluctuating forage production.

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

(1) Effects of management actions; and

(2) Effectiveness of actions in meeting management objectives.

Permitted use means 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.

Public lands means any land and interest in land outside of Alaska owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, except lands held for the benefit of Indians.

Range improvement means an authorized physical modification or treatment which is designed to improve production of forage; change vegetation composition; control patterns of use; provide water; stabilize soil and water conditions; restore, protect and improve the condition of rangeland ecosystems to benefit livestock, wild horses and burros, and fish and wildlife. The term includes, but is not limited to, structures, treatment projects, and use of mechanical devices or modifications achieved through mechanical means.

Rangeland studies means any study methods accepted by the authorized officer for collecting data on

actual use, utilization, climatic conditions, other special events, and trend to determine if management objectives are being met.

Secretary means the Secretary of the Interior or his authorized officer.

Service area means the area that can be properly grazed by livestock watering at a certain water.

State Director means the State Director, Bureau of Land Management, or his or her authorized representative.

Supplemental feed means a feed which supplements the forage available from the public lands and is provided to improve livestock nutrition or rangeland management.

Suspension means the temporary withholding from active use, through a decision issued by the authorized officer or by agreement, of part or all of the permitted use in a grazing permit or lease.

Temporary nonuse means the authorized withholding, on an annual basis, of all or a portion of permitted livestock use in response to a request of the permittee or lessee.

Trend means the direction of change over time, either toward or away from desired management objectives.

Unauthorized leasing and subleasing means—

(1) The lease or sublease of a Federal grazing permit or lease, associated with the lease or sublease of base property, to another party without a required transfer approved by the authorized officer;

(2) The lease or sublease of a Federal grazing permit or lease to another party without the assignment of the associated base property;

(3) Allowing another party, other than sons and daughters of the grazing permittee or lessee meeting the requirements of § 4130.7(f), to graze on public lands livestock that are not owned or controlled by the permittee or lessee; or

(4) Allowing another party, other than sons and daughters of the grazing permittee or lessee meeting the requirements of § 4130.7(f), to graze livestock on public lands under a pasturing agreement without the approval of the authorized officer.

Utilization means the portion of forage that has been consumed by livestock, wild horses and burros, wildlife and insects during a specified period. The term is also used to refer to the pattern of such use.

[43 FR 29067, July 5, 1978, as amended at 46 FR 5788, Jan. 19, 1981; 53 FR 10232, Mar. 29, 1988; 60 FR 9961, Feb. 22, 1995]

§ 4100.0–7 Cross reference.

The regulations at part 1600 of this chapter govern the development of land use plans; the regulations

at part 1780, subpart 1784 of this chapter govern advisory committees; and the regulations at subparts B and E of part 4 of this title govern appeals and hearings.

[60 FR 9962, Feb. 22, 1995]

§ 4100.0–8 Land use plans.

The authorized officer shall manage livestock grazing on public lands under the principle of multiple use and sustained yield, and in accordance with applicable land use plans. Land use plans shall establish allowable resource uses (either singly or in combination), related levels of production or use to be maintained, areas of use, and resource condition goals and objectives to be obtained. The plans also set forth program constraints and general management practices needed to achieve management objectives. Livestock grazing activities and management actions approved by the authorized officer shall be in conformance with the land use plan as defined at 43 CFR 1601.0–5(b).

[53 FR 10233, Mar. 29, 1988]

§ 4100.0–9 Information collection.

(a) The information collection requirements contained in Group 4100 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance numbers 1004–0005, 1004–0019, 1004– 0020, 1004–0041, 1004–0047, 1004–0051, and 1004–0068. The information would be

collected to permit the authorized officer to determine whether an application to utilize public lands for grazing or other purposes should be approved. Response is required to obtain a benefit.

(b) Public reporting burden for the information collections are as follows: Clearance number 1004–0005 is estimated to average 0.33 hours per response, clearance number 1004–0019 is estimated to average 0.33 hours per response, clearance number 1004–0020 is estimated to average 0.33 hours per response, clearance number 1004–0041 is estimated to average 0.25 hours per response, clearance number 1004–0047 is estimated to average 0.25 hours per response, clearance number 1004–0051 is estimated to average 0.3 hours per response, and clearance number 1004–0068 is estimated to average 0.17 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing the burden to the Information Collection Clearance Officer (873), Bureau of Land Management, Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project, 1004–0005, –0019, –0020, –0041, –0047, –0051, or –0068, Washington, DC 20503.

[60 FR 9962, Feb. 22, 1995]

Subpart 4110—Qualifications and Preference

§ 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, and must be:

(1) A citizen of the United States or have properly filed a valid declaration of intention to become a citizen or a valid petition for naturalization; or

(2) A group or association authorized to conduct business in the State in which the grazing use is sought, all members of which are qualified under paragraph (a) of this section; or

(3) A corporation authorized to conduct business in the State in which the grazing use is sought.

(b) Applicants for the renewal or issuance of new permits and leases and any affiliates must be determined by the authorized officer to have a satisfactory record of performance.

(1) *Renewal of permit or lease.* (i) The applicant for renewal of a grazing permit or lease, and any affiliate, shall be deemed to have a satisfactory record of performance if the authorized officer determines the applicant and affiliates to be in substantial compliance with the terms and conditions of the existing Federal grazing permit or lease for which renewal is sought, and with the rules and regulations applicable to the permit or lease.

(ii) The authorized officer may take into consideration circumstances beyond the control of the applicant or affiliate in determining whether the applicant and affiliates are in substantial compliance with permit or lease terms and conditions and applicable rules and regulations.

(2) *New permit or lease.* Applicants for new permits or leases, and any affiliates, shall be deemed not to have a record of satisfactory performance when—

(i) The applicant or affiliate has had any Federal grazing permit or lease cancelled for violation of the permit or lease within the 36 calendar months immediately preceding the date of application; or

(ii) The applicant or affiliate has had any State grazing permit or lease, for lands within the grazing allotment for which a Federal permit or lease is sought, cancelled for violation of the permit or lease within the 36 calendar months immediately preceding the date of application; or

(iii) The applicant or affiliate is barred from holding a Federal grazing permit or lease by order of a court of competent jurisdiction.

(c) In determining whether affiliation exists, the authorized officer shall consider all appropriate factors, including, but not limited to, common ownership, common management, identity of interests among family members, and contractual relationships.

(d) Applicants shall submit an application and any other relevant information requested by the

authorized officer in order to determine that all qualifications have been met.

[43 FR 29067, July 5, 1978, as amended at 49 FR 6450, Feb. 21, 1984; 60 FR 9962, Feb. 22, 1995]

§ 4110.1–1 Acquired lands.

Where lands have been acquired by the Bureau of Land Management through purchase, exchange, Act of Congress or Executive Order, and an agreement or the terms of the act or Executive Order provide that the Bureau of Land Management shall honor existing grazing permits or leases, such permits or leases are governed by the terms and conditions in effect at the time of acquisition by the Bureau of Land Management, and are not subject to the requirements of § 4110.1.

[60 FR 9962, Feb. 22, 1995]

§ 4110.2 Grazing preference.

§ 4110.2–1 Base property.

(a) The authorized officer shall find land or water owned or controlled by an applicant to be base property (see § 4100.0–5) if:

(1) It is capable of serving as a base of operation for livestock use of public lands within a grazing district; or

(2) It is contiguous land, or, when no applicant owns or controls contiguous land, noncontiguous land that is capable of being used in conjunction with a livestock operation which would utilize public lands outside a grazing district.

(b) After appropriate consultation, cooperation, and coordination, the authorized officer shall specify the length of time for which land base property shall be capable of supporting authorized livestock during the year, relative to the multiple use management objective of the public lands.

(c) An applicant shall provide a legal description, or plat, of the base property and shall certify to the authorized officer that this base property meets the requirements under paragraphs (a) and (b) of this section. A permittee's or lessee's interest in water previously recognized as base property on public land shall be deemed sufficient in meeting the requirement that the applicant control base property. Where such waters become unusable and are replaced by newly constructed or reconstructed water developments that are the subject of a range improvement permit or cooperative range improvement agreement, the permittee's or lessee's interest in the replacement water shall be deemed sufficient in meeting the requirement that the applicant control base property.

(d) If a permittee or lessee loses ownership or control of all or part of his/ her base property, the permit or lease, to the extent it was based upon such lost property, shall terminate immediately without further

notice from the authorized officer. However, if, prior to losing ownership or control of the base property, the permittee or lessee requests, in writing, that the permit or lease be extended to the end of the grazing season or grazing year, the termination date may be extended as determined by the authorized officer after consultation with the new owner. When a permit or lease terminates because of a loss of ownership or control of a base property, the grazing preference shall remain with the base property and be available through application and transfer procedures at 43 CFR 4110.2–3, to the new owner or person in control of that base property.

(e) Applicants who own or control base property contiguous to or cornering upon public land outside a grazing district where such public land consists of an isolated or disconnected tract embracing 760 acres or less shall, for a period of 90 days after the tract has been offered for lease, have a preference right to lease the whole tract.

[43 FR 29067, July 5, 1978, as amended at 46 FR 5788, Jan. 19, 1981; 49 FR 6450, Feb. 21, 1984; 53 FR 10233, Mar. 29, 1988; 60 FR 9962, Feb. 22, 1995]

§ 4110.2–2 Specifying permitted use.

(a) Permitted use is granted to holders of grazing preference and shall be specified in all grazing permits and leases. Permitted use shall encompass all authorized use including livestock use, any suspended use, and conservation use, except for permits and leases for

designated ephemeral rangelands where livestock use is authorized based upon forage availability, or designated annual rangelands. Permitted livestock use shall be based upon the amount of forage available for livestock grazing as established in the land use plan, activity plan, or decision of the authorized officer under § 4110.3–3, except, in the case of designated ephemeral or annual rangelands, a land use plan or activity plan may alternatively prescribe vegetation standards to be met in the use of such rangelands.

(b) The permitted use specified shall attach to the base property supporting the grazing permit or grazing lease.

(c) The animal unit months of permitted use attached to:

(1) The acreage of land base property on a pro rata basis, or

(2) Water base property on the basis of livestock forage production within the service area of the water.

[53 FR 10233, Mar. 29, 1988, as amended at 60 FR 9963, Feb. 22, 1995; 61 FR 4227, Feb. 5, 1996]

§ 4110.2–3 Transfer of grazing preference.

(a) Transfers of grazing preference in whole or in part are subject to the following requirements:

(1) The transferee shall meet all qualifications and requirements of §§ 4110.1, 4110.2–1, and 4110.2–2.

(2) The transfer applications under paragraphs (b) and (c) of this section shall evidence assignment of interest and obligation in range improvements authorized on public lands under § 4120.3 and maintained in conjunction with the transferred preference (see § 4120.3–5). The terms and conditions of the cooperative range improvement agreements and range improvement permits are binding on the transferee.

(3) The transferee shall accept the terms and conditions of the terminating grazing permit or lease (see § 4130.2) with such modifications as he may request which are approved by the authorized officer or with such modifications as may be required by the authorized officer.

(4) The transferee shall file an application for a grazing permit or lease to the extent of the transferred preference simultaneously with filing a transfer application under paragraph (b) or (c) of this section.

(b) If base property is sold or leased, the transferee shall within 90 days of the date of sale or lease file with the authorized officer a properly executed transfer application showing the base property and the amount of permitted use being transferred in animal unit months.

(c) If a grazing preference is being transferred from one base property to another base property, the transferor shall own or control the base property from which the grazing preference is being transferred and file with the authorized officer a properly completed transfer application for approval. If the applicant

leases the base property, no transfer will be allowed without the written consent of the owner(s), and any person or entity holding an encumbrance of the base property from which the transfer is to be made. Such consent will not be required where the applicant for such transfer is a lessee without whose livestock operations the grazing preference would not have been established.

(d) At the date of approval of a transfer, the existing grazing permit or lease shall terminate automatically and without notice to the extent of the transfer.

(e) If an unqualified transferee acquires rights in base property through operation of law or testamentary disposition, such transfer will not affect the grazing preference or any outstanding grazing permit or lease, or preclude the issuance or renewal of a grazing permit or lease based on such property for a period of 2 years after the transfer. However, such a transferee shall qualify under paragraph (a) of this section within the 2-year period or the grazing preference shall be subject to cancellation. The authorized officer may grant extensions of the 2-year period where there are delays solely attributable to probate proceedings.

(f) Transfers shall be for a period of not less than 3 years unless a shorter term is determined by the authorized officer to be consistent with management and resource condition objectives.

(g) Failure of either the transferee or the transferor to comply with the regulations of this section may

result in rejection of the transfer application or cancellation of grazing preference.

[43 FR 29067, July 5, 1978, as amended at 46 FR 5788, Jan. 19, 1981; 47 FR 41709, Sept. 21, 1982; 49 FR 6450, Feb. 21, 1984; 53 FR 10233, Mar. 29, 1988; 60 FR 9963, Feb. 22, 1995; 61 FR 4227, Feb. 5, 1996]

§ 4110.2–4 Allotments.

After consultation, cooperation, and coordination with the affected grazing permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public, the authorized officer may designate and adjust grazing allotment boundaries. The authorized officer may combine or divide allotments, through an agreement or by decision, when necessary for the proper and efficient management of public rangelands.

[60 FR 9963, Feb. 22, 1995]

§ 4110.3 Changes in permitted use.

The authorized officer shall periodically review the permitted use specified in a grazing permit or lease and shall make changes in the permitted use as needed to manage, maintain or improve rangeland productivity, to assist in restoring ecosystems to properly functioning condition, to conform with land use plans or activity plans, or to comply with the provisions of subpart 4180 of this part. These changes must be supported by monitoring, field observations, ecological site

inventory or other data acceptable to the authorized officer.

[60 FR 9963, Feb. 22, 1995]

§ 4110.3–1 Increasing permitted use.

Additional forage may be apportioned to qualified applicants for livestock grazing use consistent with multiple-use management objectives.

(a) Additional forage temporarily available for livestock grazing use may be apportioned on a nonrenewable basis.

(b) Additional forage available on a sustained yield basis for livestock grazing use shall first be apportioned in satisfaction of suspended permitted use to the permittee(s) or lessee(s) authorized to graze in the allotment in which the forage is available.

(c) After consultation, cooperation, and coordination with the affected permittees or lessees, the State having lands or managing resources within the area, and the interested public, additional forage on a sustained yield basis available for livestock grazing use in an allotment may be apportioned to permittees or lessees or other applicants, provided the permittee, lessee, or other applicant is found to be qualified under subpart 4110 of this part. Additional forage shall be apportioned in the following priority:

(1) Permittees or lessees in proportion to their contribution or stewardship efforts which result in increased forage production;

(2) Permittee(s) or lessee(s) in proportion to the amount of their permitted use; and

(3) Other qualified applicants under § 4130.1–2 of this title.

[53 FR 10233, Mar. 29, 1988, as amended at 60 FR 9963, Feb. 22, 1995]

§ 4110.3–2 Decreasing permitted use.

(a) Permitted use may be suspended in whole or in part on a temporary basis due to drought, fire, or other natural causes, or to facilitate installation, maintenance, or modification of range improvements.

(b) When monitoring or field observations show grazing use or patterns of use are not consistent with the provisions of subpart 4180, or grazing use is otherwise causing an unacceptable level or pattern of utilization, or when use exceeds the livestock carrying capacity as determined through monitoring, ecological site inventory or other acceptable methods, the authorized officer shall reduce permitted grazing use or otherwise modify management practices.

[53 FR 10234, Mar. 29, 1988, as amended at 60 FR 9963, Feb. 22, 1995]

§ 4110.3–3 Implementing reductions in permitted use.

(a) After consultation, cooperation, and coordination with the affected permittee or lessee, the State having lands or managing resources within the area, and the interested public, reductions of permitted use shall be implemented through a documented agreement or by decision of the authorized officer. Decisions implementing § 4110.3–2 shall be issued as proposed decisions pursuant to § 4160.1, except as provided in paragraph (b) of this section.

(b) When the authorized officer determines that the soil, vegetation, or other resources on the public lands require immediate protection because of conditions such as drought, fire, flood, insect infestation, or when continued grazing use poses an imminent likelihood of significant resource damage, after consultation with, or a reasonable attempt to consult with, affected permittees or lessees, the interested public, and the State having lands or responsible for managing resources within the area, the authorized officer shall close allotments or portions of allotments to grazing by any kind of livestock or modify authorized grazing use notwithstanding the provisions of paragraph (a) of this section. Notices of closure and decisions requiring modification of authorized grazing use may be issued as final decisions effective upon issuance or on the date specified in the decision. Such decisions shall remain in effect pending the decision on appeal unless a stay

is granted by the Office of Hearings and Appeals in accordance with 43 CFR 4.21.

[60 FR 9963, Feb. 22, 1995]

§ 4110.4 Changes in public land acreage.

§ 4110.4–1 Additional land acreage.

When lands outside designated allotments become available for livestock grazing under the administration of the Bureau of Land Management, the forage available for livestock shall be made available to qualified applicants at the discretion of the authorized officer. Grazing use shall be apportioned under § 4130.1–2 of this title.

[53 FR 10234, Mar. 29, 1988]

§ 4110.4–2 Decrease in land acreage.

(a) Where there is a decrease in public land acreage available for livestock grazing within an allotment:

(1) Grazing permits or leases may be cancelled or modified as appropriate to reflect the changed area of use.

(2) Permitted use may be cancelled in whole or in part. Cancellations determined by the authorized officer to be necessary to protect the public lands will be apportioned by the authorized officer based upon the level of available forage and the magnitude of the change in public land acreage available, or as agreed

to among the authorized users and the authorized officer.

(b) When public lands are disposed of or devoted to a public purpose which precludes livestock grazing, the permittees and lessees shall be given 2 years' prior notification except in cases of emergency (national defense requirements in time of war, natural disasters, national emergency needs, etc.) before their grazing permit or grazing lease and grazing preference may be canceled. A permittee or lessee may unconditionally waive the 2-year prior notification. Such a waiver shall not prejudice the permittee's or lessee's right to reasonable compensation for, but not to exceed the fair market value of his or her interest in authorized permanent range improvements located on these public lands (see § 4120.3–6).

[43 FR 29067, July 5, 1978, as amended at 49 FR 6451, Feb. 21, 1984; 49 FR 12704, Mar. 30, 1984; 54 FR 31485, July 28, 1989; 60 FR 9963, Feb. 22, 1995]

§ 4110.5 Interest of Member of Congress.

Title 18 U.S.C. 431 through 433 (1970) generally prohibits a Member of or Delegate to Congress from entering into any contract or agreement with the United States. Title 41 U.S.C. 22 (1970) generally provides that in every contract or agreement to be made or entered into, or accepted by or on behalf of the United States, there shall be inserted an express condition that no Member of or Delegate to Congress shall be admitted to any share or part of such contract or

agreement, or to any benefit to arise thereupon. The provisions of these laws are incorporated herein by reference and apply to all permits, leases, and agreements issued under these regulations.

[43 FR 29067, July 5, 1978. Redesignated at 49 FR 6451, Feb. 21, 1984]

Subpart 4120—Grazing Management

§ 4120.1 [Reserved]

§ 4120.2 Allotment management plans and resource activity plans.

Allotment management plans or other activity plans intended to serve as the functional equivalent of allotment management plans may be developed by permittees or lessees, other Federal or State resource management agencies, interested citizens, and the Bureau of Land Management. When such plans affecting the administration of grazing allotments are developed, the following provisions apply:

(a) An allotment management plan or other activity plans intended to serve as the functional equivalent of allotment management plans shall be prepared in careful and considered consultation, cooperation, and coordination with affected permittees or lessees, landowners involved, the resource advisory council, any State having lands or responsible for managing resources within the area to be covered by such a plan, and the interested public. The plan shall

become effective upon approval by the authorized officer. The plans shall—

(1) Include terms and conditions under §§ 4130.3, 4130.3–1, 4130.3–2 4130.3–3, and subpart 4180 of this part;

(2) Prescribe the livestock grazing practices necessary to meet specific resource objectives;

(3) Specify the limits of flexibility, to be determined and granted on the basis of the operator's demonstrated stewardship, within which the permittee(s) or lessee(s) may adjust operations without prior approval of the authorized officer; and

(4) Provide for monitoring to evaluate the effectiveness of management actions in achieving the specific resource objectives of the plan.

(b) Private and State lands may be included in allotment management plans or other activity plans intended to serve as the functional equivalent of allotment management plans dealing with rangeland management with the consent or at the request of the parties who own or control those lands.

(c) The authorized officer shall provide opportunity for public participation in the planning and environmental analysis of proposed plans affecting the administration of grazing and shall give public notice concerning the availability of environmental documents prepared as a part of the development of such plans, prior to implementing the plans. The decision document following the environmental analysis shall

be considered the proposed decision for the purposes of subpart 4160 of this part.

(d) A requirement to conform with completed allotment management plans or other applicable activity plans intended to serve as the functional equivalent of allotment management plans shall be incorporated into the terms and conditions of the grazing permit or lease for the allotment.

(e) Allotment management plans or other applicable activity plans intended to serve as the functional equivalent of allotment management plans may be revised or terminated by the authorized officer after consultation, cooperation, and coordination with the affected permittees or lessees, landowners involved, the resource advisory council, any State having lands or responsible for managing resources within the area to be covered by the plan, and the interested public.

[60 FR 9964, Feb. 22, 1995, as amended at 61 FR 4227, Feb. 5, 1996]

§ 4120.3 Range improvements.

§ 4120.3–1 Conditions for range improvements.

(a) Range improvements shall be installed, used, maintained, and/or modified on the public lands, or removed from these lands, in a manner consistent with multiple-use management.

(b) Prior to installing, using, maintaining, and/or modifying range improvements on the public lands, permittees or lessees shall have entered into a cooperative range improvement agreement with the Bureau of Land Management or must have an approved range improvement permit.

(c) The authorized officer may require a permittee or lessee to maintain and/or modify range improvements on the public lands under § 4130.3–2 of this title.

(d) The authorized officer may require a permittee or lessee to install range improvements on the public lands in an allotment with two or more permittees or lessees and/or to meet the terms and conditions of agreement.

(e) A range improvement permit or cooperative range improvement agreement does not convey to the permittee or cooperator any right, title, or interest in any lands or resources held by the United States.

(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.

[49 FR 6452, Feb. 21, 1984, as amended at 60 FR 9964, Feb. 22, 1995; 61 FR 4227, Feb. 5, 1996]

§ 4120.3–2 Cooperative range improvement agreements.

(a) The Bureau of Land Management may enter into a cooperative range improvement agreement with a person, organization, or other government entity for the installation, use, maintenance, and/or modification of permanent range improvements or rangeland developments to achieve management or resource condition objectives. The cooperative range improvement agreement shall specify how the costs or labor, or both, shall be divided between the United States and cooperator(s).

(b) Subject to valid existing rights, title to permanent range improvements such as fences, wells, and pipelines where authorization is granted after August 21, 1995 shall be in the name of the United States. The authorization for all new permanent water developments such as spring developments, wells, reservoirs, stock tanks, and pipelines shall be through cooperative range improvement agreements. A permittee's or lessee's interest in contributed funds, labor, and materials will be documented by the Bureau of Land Management to ensure proper credit for the purposes of §§ 4120.3–5 and 4120.3–6(c).

(c) The United States shall have title to nonstructural range improvements such as seeding, spraying, and chaining.

(d) Range improvement work performed by a cooperator or permittee on the public lands or lands administered by the Bureau of Land Management does

not confer the exclusive right to use the improvement or the land affected by the range improvement work.

[60 FR 9964, Feb. 22, 1995, as amended at 61 FR 4227, Feb. 5, 1996]

§ 4120.3–3 Range improvement permits.

(a) Any permittee or lessee may apply for a range improvement permit to install, use, maintain, and/or modify removable range improvements that are needed to achieve management objectives for the allotment in which the permit or lease is held. The permittee or lessee shall agree to provide full funding for construction, installation, modification, or maintenance. Such range improvement permits are issued at the discretion of the authorized officer.

(b) The permittee or lessee may hold the title to authorized removable range improvements used as livestock handling facilities such as corrals, creep feeders, and loading chutes, and to temporary structural improvements such as troughs for hauled water.

(c) Where a permittee or lessee cannot make use of the forage available for livestock and an application for temporary nonuse or conservation use has been denied or the opportunity to make use of the available forage is requested by the authorized officer, the permittee or lessee shall cooperate with the temporary authorized use of forage by another operator, when it is authorized by the authorized officer following consultation with the preference permittee(s) or lessee(s).

(1) A permittee or lessee shall be reasonably compensated for the use and maintenance of improvements and facilities by the operator who has an authorization for temporary grazing use.

(2) The authorized officer may mediate disputes about reasonable compensation and, following consultation with the interested parties, make a determination concerning the fair and reasonable share of operation and maintenance expenses and compensation for use of authorized improvements and facilities.

(3) Where a settlement cannot be reached, the authorized officer shall issue a temporary grazing authorization including appropriate terms and conditions and the requirement to compensate the preference permittee or lessee for the fair share of operation and maintenance as determined by the authorized officer under subpart 4160 of this part.

[49 FR 6452, Feb. 21, 1984; 49 FR 12704, Mar. 30, 1984, as amended at 60 FR 9964, Feb. 22, 1995]

§ 4120.3–4 Standards, design and stipulations.

Range improvement permits and cooperative range improvement agreements shall specify the standards, design, construction and maintenance criteria for the range improvements and other additional conditions and stipulations or modifications deemed necessary by the authorized officer.

[49 FR 6452, Feb. 21, 1984, as amended at 61 FR 4227, Feb. 5, 1996]

§ 4120.3–5 Assignment of range improvements.

The authorized officer shall not approve the transfer of a grazing preference under § 4110.2–3 of this title or approve use by the transferee of existing range improvements, unless the transferee has agreed to compensate the transferor for his/her interest in the authorized improvements within the allotment as of the date of the transfer.

[53 FR 10234, Mar. 29, 1988]

§ 4120.3–6 Removal and compensation for loss of range improvements.

(a) Range improvements shall not be removed from the public lands without authorization.

(b) The authorized officer may require permittees or lessees to remove range improvements which they own on the public lands if these improvements are no longer helping to achieve land use plan or allotment goals and objectives or if they fail to meet the criteria under § 4120.3–4 of this title.

(c) Whenever a grazing permit or lease is cancelled in order to devote the public lands covered by the permit or lease to another public purpose, including disposal, the permittee or lessee shall receive from the United States reasonable compensation for the adjusted value of their interest in authorized permanent improvements placed or constructed by the permittee or lessee on the public lands covered by the cancelled permit or lease. The adjusted value is to be determined

by the authorized officer. Compensation shall not exceed the fair market value of the terminated portion of the permittee's or lessee's interest therein. Where a range improvement is authorized by a range improvement permit, the livestock operator may elect to salvage materials and perform rehabilitation measures rather than be compensated for the adjusted value.

(d) Permittees or lessees shall be allowed 180 days from the date of cancellation of a range improvement permit or cooperative range improvement agreement to salvage material owned by them and perform rehabilitation measures necessitated by the removal.

[49 FR 6452, Feb. 21, 1984; 49 FR 12704, Mar. 30, 1984, as amended at 61 FR 4227, Feb. 5, 1996]

§ 4120.3–7 Contributions.

The authorized officer may accept contributions of labor, material, equipment, or money for administration, protection, and improvement of the public lands necessary to achieve the objectives of this part.

[49 FR 6452, Feb. 21, 1984]

§ 4120.3–8 Range improvement fund.

(a) In addition to range developments accomplished through other resource management funds, authorized range improvements may be secured through the use of the appropriated range improvement fund. One-half of the available funds shall be

expended in the State and district from which they were derived. The remaining one-half of the fund shall be allocated, on a priority basis, by the Secretary for on-the-ground rehabilitation, protection and improvement of public rangeland ecosystems.

(b) Funds appropriated for range improvements are to be used for investment in all forms of improvements that benefit rangeland resources including riparian area rehabilitation, improvement and protection, fish and wildlife habitat improvement or protection, soil and water resource improvement, wild horse and burro habitat management facilities, vegetation improvement and management, and livestock grazing management. The funds may be used for activities associated with on-the-ground improvements including the planning, design, layout, contracting, modification, maintenance for whith the Bureau of Land Management is responsible, and monitoring and evaluating the effectiveness of specific range improvement projects.

(c) During the planning of the range development or range improvement programs, the authorized officer shall consult the resource advisory council, affected permittees, lessees, and members of the interested public.

[60 FR 9965, Feb. 22, 1995, as amended at 61 FR 4227, Feb. 5, 1996]

§ 4120.3–9 Water rights for the purpose of livestock grazing on public lands.

Any right acquired on or after August 21, 1995 to use water on public land for the purpose of livestock watering on public land shall be acquired, perfected, maintained and administered under the substantive and procedural laws of the State within which such land is located. To the extent allowed by the law of the State within which the land is located, any such water right shall be acquired, perfected, maintained, and administered in the name of the United States.

[60 FR 9965, Feb. 22, 1995]

§ 4120.4 Special rules.

(a) When a State Director determines that local conditions require a special rule to achieve improved administration consistent with the objectives of this part, the Director may approve such rules. The rules shall be subject to public review and comment, as appropriate, and upon approval, shall become effective when published in the FEDERAL REGISTER as final rules. Special rules shall be published in a local newspaper.

(b) Where the Bureau of Land Management administers the grazing use of other Federal Agency lands, the terms of an appropriate Memorandum of Understanding or Cooperative Agreement shall apply.

[49 FR 6452, Feb. 21, 1984]

§ 4120.5 Cooperation.

§ 4120.5–1 Cooperation in management.

The authorized officer shall, to the extent appropriate, cooperate with Federal, State, Indian tribal and local governmental entities, institutions, organizations, corporations, associations, and individuals to achieve the objectives of this part.

[60 FR 9965, Feb. 22, 1995]

§ 4120.5–2 Cooperation with State, county, and Federal agencies.

Insofar as the programs and responsibilities of other agencies and units of government involve grazing upon the public lands and other lands administered by the Bureau of Land Management, or the livestock which graze thereon, the Bureau of Land Management will cooperate, to the extent consistent with applicable laws of the United States, with the involved agencies and government entities. The authorized officer shall cooperate with State, county, and Federal agencies in the administration of laws and regulations relating to livestock, livestock diseases, sanitation, and noxious weeds including—

(a) State cattle and sheep sanitary or brand boards in control of stray and unbranded livestock, to the extent such cooperation does not conflict with the Wild Free-Roaming Horse and Burro Act of 1971 (16 U.S.C. 1331 et seq.); and

(b) County or other local weed control districts in analyzing noxious weed problems and developing control programs for areas of the public lands and other lands administered by the Bureau of Land Management.

[60 FR 9965, Feb. 22, 1995]

Subpart 4130—Authorizing Grazing Use

§ 4130.1 Applications.

§ 4130.1–1 Filing applications.

Applications for grazing permits or leases (active use and nonuse), free-use grazing permits and other grazing authorizations shall be filed with the authorized officer at the local Bureau of Land Management office having jurisdiction over the public lands involved.

[43 FR 29067, July 5, 1978, as amended at 49 FR 6453, Feb. 21, 1984. Redesignated at 60 FR 9965, Feb. 22, 1995]

§ 4130.1–2 Conflicting applications.

When more than one qualified applicant applies for livestock grazing use of the same public lands and/or where additional forage for livestock or additional acreage becomes available, the authorized officer may authorize grazing use of such land or forage on the basis of § 4110.3–1 of this title or on the basis of any of the following factors:

(a) Historical use of the public lands (see § 4130.2(e));

(b) Proper use of rangeland resources;

(c) General needs of the applicant's livestock operations;

(d) Public ingress or egress across privately owned or controlled land to public lands;

(e) Topography;

(f) Other land use requirements unique to the situation.

(g) Demonstrated stewardship by the applicant to improve or maintain and protect the rangeland ecosystem; and

(h) The applicant's and affiliate's history of compliance with the terms and conditions of grazing permits and leases of the Bureau of Land Management and any other Federal or State agency, including any record of suspensions or cancellations of grazing use for violations of terms and conditions of agency grazing rules.

[49 FR 6453, Feb. 21, 1984; 49 FR 12704, Mar. 30, 1984, as amended at 53 FR 10234, Mar. 29, 1988; 60 FR 9965, Feb. 22, 1995; 61 FR 4227, Feb. 5, 1996]

§ 4130.2 Grazing permits or leases.

(a) Grazing permits or leases shall be issued to qualified applicants to authorize use on the public

lands and other lands under the administration of the Bureau of Land Management that are designated as available for livestock grazing through land use plans. Permits or leases shall specify the types and levels of use authorized, including livestock grazing, suspended use, and conservation use. These grazing permits and leases shall also specify terms and conditions pursuant to §§ 4130.3, 4130.3–1, and 4130.3–2.

(b) The authorized officer shall consult, cooperate and coordinate with affected permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public prior to the issuance or renewal of grazing permits and leases.

(c) Grazing permits or leases convey no right, title, or interest held by the United States in any lands or resources.

(d) The term of grazing permits or leases authorizing livestock grazing on the public lands and other lands under the administration of the Bureau of Land Management shall be 10 years unless—

(1) The land is being considered for disposal;

(2) The land will be devoted to a public purpose which precludes grazing prior to the end of 10 years;

(3) The term of the base property lease is less than 10 years, in which case the term of the Federal permit or lease shall coincide with the term of the base property lease; or

(4) The authorized officer determines that a permit or lease for less than 10 years is in the best interest of sound land management.

(e) Permittees or lessees holding expiring grazing permits or leases shall be given first priority for new permits or leases if:

(1) The lands for which the permit or lease is issued remain available for domestic livestock grazing;

(2) The permittee or lessee is in compliance with the rules and regulations and the terms and conditions in the permit or lease;

(3) The permittee or lessee accepts the terms and conditions to be included by the authorized officer in the new permit or lease.

(f) The authorized officer will not offer, grant or renew grazing permits or leases when the applicants, including permittees or lessees seeking renewal, refuse to accept the proposed terms and conditions of a permit or lease.

(g) Temporary nonuse and conservation use may be approved by the authorized officer if such use is determined to be in conformance with the applicable land use plans, allotment management plan or other activity plans and the provisions of subpart 4180 of this part.

(1) Conservation use may be approved for periods of up to 10 years when, in the determination of the authorized officer, the proposed use will promote

rangeland resource protection or enhancement of resource values or uses, including more rapid progress toward resource condition objectives; or

(2) Temporary nonuse for reasons including but not limited to financial conditions or annual fluctuations of livestock, may be approved on an annual basis for no more than 3 consecutive years. Permittees or lessees applying for temporary nonuse shall state the reasons supporting nonuse.

(h) Application for nonrenewable grazing permits and leases under §§ 4110.3–1 and 4130.6–2 for areas for which conservation use has been authorized will not be approved. Forage made available as a result of temporary nonuse may be made available to qualified applicants under § 4130.6–2.

(i) Permits or leases may incorporate the percentage of public land livestock use (see § 4130.3–2) or may include private land offered under exchange-of-use grazing agreements (see § 4130.6–1).

(j) Provisions explaining how grazing permits or authorizations may be granted for grazing use on state, county or private land leased by the Bureau of Land Management under "The Pierce Act" and located within grazing districts are explained in 43 CFR part 4600.

[43 FR 29067, July 5, 1978, as amended at 47 FR 41711, Sept. 21, 1982; 49 FR 6453, Feb. 21, 1984; 49 FR 12704, Mar. 30, 1984; 53 FR 10234, Mar. 29, 1988; 53

FR 22326, June 15, 1988; 60 FR 9965, Feb. 22, 1995; 61 FR 29031, June 7, 1996; 61 FR 4227, Feb. 5, 1996]

§ 4130.3 Terms and conditions.

Livestock grazing permits and leases shall contain terms and conditions determined by the authorized officer to be appropriate to achieve management and resource condition objectives for the public lands and other lands administered by the Bureau of Land Management, and to ensure conformance with the provisions of subpart 4180 of this part.

[60 FR 9966, Feb. 22, 1995]

§ 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, for every grazing permit or lease. The authorized livestock grazing use shall not exceed the livestock carrying capacity of the allotment.

(b) All permits and leases shall be made subject to cancellation, suspension, or modification for any violation of these regulations or of any term or condition of the permit or lease.

(c) Permits and leases shall incorporate terms and conditions that ensure conformance with subpart 4180 of this part.

[49 FR 6453, Feb. 21, 1984, as amended at 53 FR 10234, Mar. 29, 1988. Redesignated at 60 FR 9965, Feb. 22, 1995, and amended at 60 FR 9966, Feb. 22, 1995]

§ 4130.3–2 Other terms and conditions.

The authorized officer may specify in grazing permits or leases other terms and conditions which will assist in achieving management objectives, provide for proper range management or assist in the orderly administration of the public rangelands. These may include but are not limited to:

(a) The class of livestock that will graze on an allotment;

(b) The breed of livestock in allotments within which two or more permittees or lessees are authorized to graze;

(c) Authorization to use, and directions for placement of supplemental feed, including salt, for improved livestock and rangeland management on the public lands;

(d) A requirement that permittees or lessees operating under a grazing permit or lease submit within 15 days after completing their annual grazing use, or as otherwise specified in the permit or lease, the actual use made;

(e) The kinds of indigenous animals authorized to graze under specific terms and conditions;

(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;

(g) The percentage of public land use determined by the proportion of livestock forage available on public lands within the allotment compared to the total amount available from both public lands and those owned or controlled by the permittee or lessee; and

(h) A statement disclosing the requirement that permittees or lessees shall provide reasonable administrative access across private and leased lands to the Bureau of Land Management for the orderly management and protection of the public lands.

[49 FR 6453, Feb. 21, 1984; 49 FR 12704, Mar. 30, 1984. Redesignated at 60 FR 9965, Feb. 22, 1995, and amended at 60 FR 9966, Feb. 22, 1995]

§ 4130.3–3 Modification of permits or leases.

Following consultation, cooperation, and coordination with the affected lessees or permittees, the State having lands or responsible for managing resources within the area, and the interested public, the

authorized officer may modify terms and conditions of the permit or lease when the active use or related management practices are not meeting the land use plan, allotment management plan or other activity plan, or management objectives, or is not in conformance with the provisions of subpart 4180 of this part. To the extent practical, the authorized officer shall provide to affected permittees or lessees, States having lands or responsibility for managing resources within the affected 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.

[60 FR 9966, Feb. 22, 1995]

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

(a) Applications for changes in grazing use should be filed with the authorized officer before the billing notices for the affected grazing use have been issued. Applications for changes in grazing use filed after the billing notices for the affected grazing use have been issued and which require the issuance of a replacement or supplemental billing notice shall be subject to a service charge under § 4130.8–3 of this title.

(b) Changes in grazing use within the terms and conditions of the permit or lease may be granted by the

authorized officer. Permittees and lessees may apply to activate forage in temporary nonuse or conservation use or to place forage in temporary nonuse or conservation use, and may apply for the use of forage that is temporarily available on designated ephemeral or annual ranges.

[49 FR 6453, Feb. 21, 1984; 49 FR 12704, Mar. 30, 1984. Redesignated at 60 FR 9965, Feb. 22, 1995, and amended at 60 FR 9966, Feb. 22, 1995; 61 FR 4227, Feb. 5, 1996]

§ 4130.5 Free-use grazing permits.

(a) A free-use grazing permit shall be issued to any applicant whose residence is adjacent to public lands within grazing districts and who needs these public lands to support those domestic livestock owned by the applicant whose products or work are used directly and exclusively by the applicant and his family. The issuance of free-use grazing permits is subject to § 4130.1–2. These permits shall be issued on an annual basis. These permits cannot be transferred or assigned.

(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.

[43 FR 29067, July 5, 1978, as amended at 49 FR 6453, Mar. 30, 1984. Redesignated at 60 FR 9965, Feb. 22, 1995, and amended at 60 FR 9966, Feb. 22, 1995]

§ 4130.6 Other grazing authorizations.

Exchange-of-use grazing agreements, nonrenewable grazing permits or leases, crossing permits, and special grazing permits or leases have no priority for renewal and cannot be transferred or assigned.

[43 FR 29067, July 5, 1978, as amended at 47 FR 41711, Sept. 21, 1982. Redesignated at 60 FR 9965, Feb. 22, 1995]

§ 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.

(b) An exchange-of-use grazing agreement may be issued to authorize use of public lands to the extent of the livestock carrying capacity of the lands offered in exchange-of-use. No fee shall be charged for this grazing use.

[45 FR 47105, July 11, 1980, as amended at 49 FR 6453, Feb. 21, 1984; 53 FR 10234, Mar. 29, 1988. Redesignated at 60 FR 9965, Feb. 22, 1995, and amended at 60 FR 9967, Feb. 22, 1995]

§ 4130.6–2 Nonrenewable grazing permits and leases.

Nonrenewable grazing permits or leases may be issued on an annual basis to qualified applicants when forage is temporarily available, provided this use is consistent with multiple-use objectives and does not interfere with existing livestock operations on the public lands. The authorized officer shall consult, cooperate and coordinate with affected permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public prior to the issuance of nonrenewable grazing permits and leases.

[47 FR 41711, Sept. 21, 1982. Redesignated at 60 FR 9965, Feb. 22, 1995, and amended at 60 FR 9967, Feb. 22, 1995]

§ 4130.6–3 Crossing permits.

A crossing permit may be issued by the authorized officer to any applicant showing a need to cross the public land 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.

[60 FR 9967, Feb. 22, 1995]

§ 4130.6–4 Special grazing permits or leases.

Special grazing permits or leases authorizing grazing use by privately owned or controlled indigenous animals may be issued at the discretion of the authorized officer. This use shall be consistent with multiple-use objectives. These permits or leases shall be issued for a term deemed appropriate by the authorized officer not to exceed 10 years.

[43 FR 29067, July 5, 1978, as amended at 47 FR 41711, Sept. 21, 1982. Redesignated at 60 FR 9965, Feb. 22, 1995]

§ 4130.7 Ownership and identification of livestock.

(a) The permittee or lessee shall own or control and be responsible for the management of the livestock which graze the public land under a grazing permit or lease.

(b) Authorized users shall comply with the requirements of the State in which the public lands are located relating to branding of livestock, breed, grade, and number of bulls, health and sanitation.

(c) The authorized officer may require counting and/or additional special marking or tagging of the authorized livestock in order to promote the orderly administration of the public lands.

(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 the permittee or lessee control of the livestock by the permittee or lessee shall be filed with the authorized officer and approval received 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.

(e) The brand and other identifying marks on livestock controlled, but not owned, by the permittee or lessee shall be filed with the authorized officer.

(f) Livestock owned by sons and daughters of grazing permittees and lessees may graze public lands included within the permit or lease of their parents when all the following conditions exist:

(1) The sons and daughters are participating in educational or youth programs related to animal husbandry, agribusiness or rangeland management, or are actively involved in the family ranching operation and are establishing a livestock herd with the intent of assuming part or all of the family ranch operation.

(2) The livestock owned by the sons and daughters to be grazed on public lands do not comprise greater than 50 percent of the total number authorized to occupy public lands under their parent's permit or lease.

(3) The brands or other markings of livestock that are owned by sons and daughters are recorded on the parent's permit, lease, or grazing application.

(4) Use by livestock owned by sons and daughters, when considered in addition to use by livestock owned or controlled by the permittee or lessee, does not exceed authorized livestock use and is consistent with other terms and conditions of the permit or lease.

[49 FR 6453, Feb. 21, 1984; 49 FR 12704, Mar. 30, 1984, as amended at 50 FR 45827, Nov. 4, 1985. Redesignated at 60 FR 9965, Feb. 22, 1995, and amended at 60 FR 9967, Feb. 22, 1995]

§ 4130.8 Fees.

§ 4130.8–1 Payment of fees.

(a) Grazing fees shall be established annually by the Secretary.

(1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, the calculated fee or grazing fee shall be equal to the $1.23 base established by the 1966 Western Livestock Grazing Survey multiplied by the result of the Forage Value Index (computed annually from data supplied by the National Agricultural Statistics Service) added to the Combined Index (Beef Cattle Price Index minus the Prices Paid Index) and divided by 100; as follows:

$$CF = \$1.23 \times \frac{FVI + BCPI—PPI}{100}$$

CF = Calculated Fee (grazing fee) is the estimated economic value of livestock grazing, defined by the Congress as fair market value (FMV) of the forage;

$1.23=The base economic value of grazing on public rangeland established by the 1966 Western Livestock Grazing Survey;

FVI=*Forage Value Index* means the weighted average estimate of the annual rental charge per head per month for pasturing cattle on private rangelands in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) (computed by the National Agricultural Statistics Service from the June Enumerative Survey) divided by $3.65 and multiplied by 100;

BCPI=*Beef Cattle Price Index* means the weighted average annual selling price for beef cattle (excluding calves) in the 11 Western States (Montana, Idaho, Wyoming, Colorado, New Mexico, Arizona, Utah, Nevada, Washington, Oregon, and California) for November through October (computed by the National Agricultural Statistics Service divided by $22.04 per hundred weight and multiplied by 100; and

PPI=*Prices Paid Index* means the following selected components from the National Agricultural Statistics Service's Annual National Index of Prices Paid by Farmers for Goods and Services adjusted by the weights indicated in parentheses to reflect livestock production costs in the Western States: 1. Fuels and Energy (14.5); 2. Farm and Motor Supplies (12.0); 3. Autos and Trucks (4.5); 4. Tractors and Self-Propelled Machinery (4.5); 5. Other Machinery (12.0); 6. Building and Fencing Materials (14.5); 7. Interest (6.0); 8. Farm Wage Rates (14.0); 9. Farm Services (18.0).

(2) Any annual increase or decrease in the grazing fee for any given year shall be limited to not more than plus or minus 25 percent of the previous year's fee.

(3) The grazing fee for any year shall not be less than $1.35 per animal unit month.

(b) Fees shall be charged for livestock grazing upon or crossing the public lands and other lands administered by the Bureau of Land Management at a specified rate per animal unit month.

(c) Except as provided in § 4130.5, the full fee shall be charged for each animal unit month of authorized grazing use. For the purposes of calculating the fee, an animal unit month is defined as a month's use and occupancy of range by 1 cow, bull, steer, heifer, horse, burro, mule, 5 sheep, or 5 goats, over the age of 6 months at the time of entering the public lands or other lands administered by the Bureau of Land Management; by any such weaned animals regardless of age; and by such animals that will become 12 months of age during the authorized period of use. No charge shall be made for animals under 6 months of age, at the time of entering public lands or other lands administered by the Bureau of Land Management, that are the natural progeny of animals upon which fees are paid, provided they will not become 12 months of age during the authorized period of use, nor for progeny born during that period. In calculating the billing the grazing fee is prorated on a daily basis and charges are rounded to reflect the nearest whole number of animal unit months.

(d) A surcharge shall be added to the grazing fee billings for authorized grazing of livestock owned by persons other than the permittee or lessee except where such use is made by livestock owned by sons and daughters of permittees and lessees as provided in § 4130.7(f). The surcharge shall be over and above any other fees that may be charged for using public land forage. Surcharges shall be paid prior to grazing use. The surcharge for authorized pasturing of livestock owned by persons other than the permittee or lessee

will be equal to 35 percent of the difference between the current year's Federal grazing fee and the prior year's private grazing land lease rate per animal unit month for the appropriate State as determined by the National Agricultural Statistics Service.

(e) Fees are due on due date specified on the grazing fee bill. Payment will be made prior to grazing use. Grazing use that occurs prior to payment of a bill, except where specified in an allotment management plan, is unauthorized and may be dealt with under subparts 4150 and 4170 of this part. If allotment management plans provide for billing after the grazing season, fees will be based on actual grazing use and will be due upon issuance. Repeated delays in payment of actual use billings or noncompliance with the terms and conditions of the allotment management plan and permit or lease shall be cause to revoke provisions for after-the-grazing-season billing.

(f) Failure to pay the grazing bill within 15 days of the due date specified in the bill shall result in a late fee assessment of $25.00 or 10 percent of the grazing bill, whichever is greater, but not to exceed $250.00. Payment made later than 15 days after the due date, shall include the appropriate late fee assessment. Failure to make payment within 30 days may be a violation of § 4140.1(b)(1) and shall result in action by the authorized officer under §§ 4150.1 and 4160.1–2.

[49 FR 6454, Feb. 21, 1984, as amended at 53 FR 2993, Feb. 2, 1988; 53 FR 10235, Mar. 29, 1988; 53 FR 22326, June 15, 1988. Redesignated at 60 FR 9965, Feb. 22,

1995, and amended at 60 FR 9967, Feb. 22, 1995; 61 FR 4227, Feb. 5, 1996]

§ 4130.8–2 Refunds.

(a) Grazing fees may be refunded where applications for change in grazing use and related refund are filed prior to the period of use for which the refund is requested.

(b) No refunds shall be made for failure to make grazing use, except during periods of range depletion due to drought, fire, or other natural causes, or in case of a general spread of disease among the livestock that occurs during the term of a permit or lease. During these periods of range depletion the authorized officer may credit or refund fees in whole or in part, or postpone fee payment for as long as the emergency exists.

[49 FR 6454, Feb. 21, 1984; 49 FR 12705, Mar. 30, 1984. Redesignated at 60 FR 9965, Feb. 22, 1995]

§ 4130.8–3 Service charge.

A service charge may be assessed for each crossing permit, transfer of grazing preference, application solely for nonuse or conservation use, and each replacement or supplemental billing notice except for actions initiated by the authorized officer. Pursuant to section 304(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1734(a)), calculation of the Bureau service charge assessed shall reflect processing costs and shall be adjusted periodically as costs change.

Notice of changes shall be published periodically in the FEDERAL REGISTER.

[49 FR 6454, Feb. 21, 1984; 49 FR 12705, Mar. 30, 1984. Redesignated at 60 FR 9965, Feb. 22, 1995, and amended at 60 FR 9967, Feb. 22, 1995]

§ 4130.9 Pledge of permits or leases as security for loans.

Grazing permits or leases that have been pledged as security for loans from lending agencies shall be renewed by the authorized officer under the provisions of these regulations for a period of not to exceed 10 years if the loan is for the purpose of furthering the permittee's or lessee's livestock operation, *Provided*, That the permittee or lessee has complied with the rules and regulations of this part and that such renewal will be in accordance with other applicable laws and regulations. While grazing permits or leases may be pledged as security for loans from lending agencies, this does not exempt these permits or leases from the provisions of these regulations.

[43 FR 29067, July 5, 1978. Redesignated at 49 FR 6454, Feb. 21, 1984. Further redesignated at 60 FR 9965, Feb. 22, 1995]

Subpart 4140—Prohibited Acts

§ 4140.1 Acts prohibited on public lands.

The following acts are prohibited on public lands and other lands administered by the Bureau of Land Management:

(a) Grazing permittees or lessees performing the following prohibited acts may be subject to civil penalties under § 4170.1:

(1) Violating special terms and conditions incorporated in permits or leases;

(2) Failing to make substantial grazing use as authorized for 2 consecutive fee years, but not including approved temporary nonuse, conservation use, or use temporarily suspended by the authorized officer.

(3) Placing supplemental feed on these lands without authorization.

(4) Failing to comply with the terms, conditions, and stipulations of cooperative range improvement agreements or range improvement permits;

(5) Refusing to install, maintain, modify, or remove range improvements when so directed by the authorized officer.

(6) Unauthorized leasing or subleasing as defined in this part.

(b) Persons performing the following prohibited acts related to rangelands shall be subject to civil and criminal penalties set forth at §§ 4170.1 and 4170.2:

(1) Allowing livestock or other privately owned or controlled animals to graze on or be driven across these lands:

(i) Without a permit or lease, and an annual grazing authorization. For the purposes of this paragraph, grazing bills for which payment has not been received do not constitute grazing authorization.

(ii) In violation of the terms and conditions of a permit, lease, or other grazing use authorization including, but not limited to, livestock in excess of the number authorized;

(iii) In an area or at a time different from that authorized; or

(iv) Failing to comply with a requirement under § 4130.7(c) of this title.

(2) Installing, using, maintaining, modifying, and/or removing range improvements without authorization;

(3) Cutting, burning, spraying, destroying, or removing vegetation without authorization;

(4) Damaging or removing U.S. property without authorization;

(5) Molesting, harassing, injuring, poisoning, or causing death of livestock authorized to graze on these lands and removing authorized livestock without the owner's consent;

(6) Littering;

(7) Interfering with lawful uses or users including obstructing free transit through or over public lands by force, threat, intimidation, signs, barrier or locked gates;

(8) Knowingly or willfully making a false statement or representation in base property certifications, grazing applications, range improvement permit applications, cooperative range improvement agreements, actual use reports and/or amendments thereto;

(9) Failing to pay any fee required by the authorized officer pursuant to this part, or making payment for grazing use of public lands with insufficiently funded checks on a repeated and willful basis;

(10) Failing to reclaim and repair any lands, property, or resources when required by the authorized officer;

(11) Failing to reclose any gate or other entry during periods of livestock use.

(c) Performance of an act listed in paragraphs (c)(1), (c)(2) or (c)(3) of this section where public land administered by the Bureau of Land Management is involved or affected, the violation is related to grazing use authorized by a permit or lease issued by the Bureau of Land Management, and 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 an agency charged with the administration of these laws or regulations, and no further appeals are outstanding, constitutes a prohibited act

that may be subject to the civil penalties set forth at § 4170.1–1.

(1) Violation of Federal or State laws or regulations pertaining to the:

(i) Placement of poisonous bait or hazardous devices designed for the destruction of wildlife;

(ii) Application or storage of pesticides, herbicides, or other hazardous materials;

(iii) Alteration or destruction of natural stream courses without authorization;

(iv) Pollution of water sources;

(v) Illegal take, destruction or harassment, or aiding and abetting in the illegal take, destruction or harassment of fish and wildlife resources; and

(vi) Illegal removal or destruction of archeological or cultural resources;

(2) Violation of the Bald Eagle Protection Act (16 U.S.C. 668 *et seq*.), Endangered Species Act (16 U.S.C. 1531 *et seq*.), or any provision of part 4700 of this chapter concerning the protection and management of wild free-roaming horses and burros; or

(3) 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 from permitted public

land grazing areas onto areas that have been formally closed to open range grazing.

[43 FR 29067, July 5, 1978, as amended at 46 FR 5790, Jan. 19, 1981; 47 FR 41712, Sept. 21, 1982; 49 FR 6454, Feb. 21, 1984; 50 FR 45827, Nov. 4, 1985; 53 FR 10235, Mar. 29, 1988; 53 FR 22326, June 15, 1988; 60 FR 9968, Feb. 22, 1995; 61 FR 4227, Feb. 5, 1996]

Subpart 4150—Unauthorized Grazing Use

§ 4150.1 Violations.

Violation of § 4140.1(b)(1) constitutes unauthorized grazing use.

(a) The authorized officer shall determine whether a violation is nonwillful, willful, or repeated willful.

(b) Violators shall be liable in damages to the United States for the forage consumed by their livestock, for injury to Federal property caused by their unauthorized grazing use, and for expenses incurred in impoundment and disposal of their livestock, and may be subject to civil penalties or criminal sanction for such unlawful acts.

[43 FR 29067, July 5, 1978, as amended at 47 FR 41712, Sept. 21, 1982; 60 FR 9968, Feb. 22, 1995]

§ 4150.2 Notice and order to remove.

(a) Whenever it appears that a violation exists and the owner of the unauthorized livestock is known, written notice of unauthorized use and order to remove livestock by a specified date shall be served upon the alleged violator or the agent of record, or both, by certified mail or personal delivery. The written notice shall also allow a specified time from receipt of notice for the alleged violator to show that there has been no violation or to make settlement under § 4150.3.

(b) Whenever a violation has been determined to be nonwillful and incidental, the authorized officer shall notify the alleged violator that the violation must be corrected, and how it can be settled, based upon the discretion of the authorized officer.

(c) When neither the owner of the unauthorized livestock nor his agent is known, the authorized officer may proceed to impound the livestock under § 4150.4.

(d) The authorized officer may temporarily close areas to grazing by specified kinds or class of livestock for a period not to exceed 12 months when necessary to abate unauthorized grazing use. Such notices of closure may be issued as final decisions effective upon issuance or on the date specified in the decision and shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals in accordance with 43 CFR 4.21.

[43 FR 29067, July 5, 1978, as amended at 47 FR 41712, Sept. 21, 1982; 49 FR 6454, Feb. 21, 1984; 60 FR 9968, Feb. 22, 1995]

§ 4150.3 Settlement.

Where violations are repeated willful, the authorized officer shall take action under § 4170.1–1(b) of this title. The amount due for settlement shall include the value of forage consumed as determined in accordance with paragraph (a), (b), or (c) of this section. Settlement for willful and repeated willful violations shall also include the full value for all damages to the public lands and other property of the United States; and all reasonable expenses incurred by the United States in detecting, investigating, resolving violations, and livestock impoundment costs.

(a) For nonwillful violations: The value of forage consumed as determined by the average monthly rate per AUM for pasturing livestock on privately owned land (excluding irrigated land) in each State as published annually by the Department of Agriculture. The authorized officer may approve nonmonetary settlement of unauthorized use only when the authorized officer determines that each of the following conditions is satisfied:

(1) Evidence shows that the unauthorized use occurred through no fault of the livestock operator;

(2) The forage use is insignificant;

(3) The public lands have not been damaged; and

(4) Nonmonetary settlement is in the best interest of the United States.

(b) For willful violations: Twice the value of forage consumed as determined in paragraph (a) of this section.

(c) For repeated willful violations: Three times the value of the forage consumed as determined in paragraph (a) of this section.

(d) Payment made under this section does not relieve the alleged violator of any criminal liability under Federal or State law.

(e) Violators shall not be authorized to make grazing use on the public lands administered by the Bureau of Land Management until any amount found to be due the United States under this section has been paid. The authorized officer may take action under § 4160–1 of this title to cancel or suspend grazing authorizations or to deny approval of applications for grazing use until such amounts have been paid. The proposed decision shall include a demand for payment.

[49 FR 6454, Feb. 21, 1984, as amended at 53 FR 10235, Mar. 29, 1988; 60 FR 9968, Feb. 22, 1995; 61 FR 4227, Feb. 5, 1996]

§ 4150.4 Impoundment and disposal.

Unauthorized livestock remaining on the public lands or other lands under Bureau of Land Management control, or both, after the date set forth in the

notice and order to remove sent under § 4150.2 may be impounded and disposed of by the authorized officer as provided herein.

[43 FR 29067, July 5, 1978. Redesignated at 47 FR 41712, Sept. 21, 1982]

§ 4150.4–1 Notice of intent to impound.

(a) A written notice of intent to impound shall be sent by certified mail or personally delivered to the owner or his agent, or both. The written notice shall indicate that unauthorized livestock on the specified public lands or other lands under Bureau of Land Management control, or both, may be impounded any time after 5 days from delivery of the notice.

(b) Where the owner and his agent are unknown, or where both a known owner and his agent refuses to accept delivery, a notice of intent to impound shall be published in a local newspaper and posted at the county courthouse and a post office near the public land involved. The notice shall indicate that unauthorized livestock on the specified public lands or other lands under Bureau of Land Management control, or both, may be impounded any time after 5 days from publishing and posting the notice.

[43 FR 29067, July 5, 1978. Redesignated and amended at 47 FR 41712, Sept. 21, 1982; 49 FR 6454, Feb. 21, 1984]

§ 4150.4–2 Impoundment.

After 5 days from delivery of the notice under § 4150.4–1(a) of this title or any time after 5 days from publishing and posting the notice under § 4150.4–1(b) of this title, unauthorized livestock may be impounded without further notice any time within the 12-month period following the effective date of the notice.

[47 FR 41712, Sept. 21, 1982, as amended at 49 FR 6454, Feb. 21, 1984; 49 FR 12705, Mar. 30, 1984]

§ 4150.4–3 Notice of public sale.

Following the impoundment of livestock under this subpart the livestock may be disposed of by the authorized officer under these regulations or, if a suitable agreement is in effect, they may be turned over to the State for disposal. Any known owners or agents, or both, shall be notified in writing by certified mail or by personal delivery of the sale and the procedure by which the impounded livestock may be redeemed prior to the sale.

[43 FR 29067, July 5, 1982. Redesignated and amended at 47 FR 41712, Sept. 21, 1982; 49 FR 6454, Feb. 21, 1984]

§ 4150.4–4 Redemption.

Any owner or his agent, or both, or lien-holder of record of the impounded livestock may redeem them under these regulations or, if a suitable agreement is in effect, in accordance with State law, prior to the time

of sale upon settlement with the United States under § 4150.3 or adequate showing that there has been no violation.

[43 FR 29067, July 5, 1978. Redesignated at 47 FR 41712, Sept. 21, 1982]

§ 4150.4–5 Sale.

If the livestock are not redeemed on or before the date and time fixed for their sale, they shall be offered at public sale to the highest bidder by the authorized officer under these regulations or, if a suitable agreement is in effect, by the State. If a satisfactory bid is not received, the livestock may be reoffered for sale, condemned and destroyed or otherwise disposed of under these regulations, or if a suitable agreement is in effect, in accordance with State Law.

[43 FR 29067, July 5, 1978. Redesignated and amended at 47 FR 41712, Sept. 21, 1982]

Subpart 4160—Administrative Remedies

§ 4160.1 Proposed decisions.

(a) Proposed decisions shall be served on any affected applicant, permittee or lessee, and any agent and lien holder of record, who is affected by the proposed actions, terms or conditions, or modifications relating to applications, permits and agreements (including range improvement permits) or leases, by certified mail or personal delivery. Copies of proposed decisions shall also be sent to the interested public.

(b) Proposed decisions shall state the reasons for the action and shall reference the pertinent terms, conditions and the provisions of applicable regulations. As appropriate, decisions shall state the alleged violations of specific terms and conditions and provisions of these regulations alleged to have been violated, and shall state the amount due under §§ 4130.8 and 4150.3 and the action to be taken under § 4170.1.

(c) The authorized officer may elect not to issue a proposed decision prior to a final decision where the authorized officer has made a determination in accordance with § 4110.3–3(b) or § 4150.2(d).

[60 FR 9968, Feb. 22, 1995]

§ 4160.2 Protests.

Any applicant, permittee, lessee or other interested public may protest the proposed decision under § 4160.1 of this title in person or in writing to the authorized officer within 15 days after receipt of such decision.

[47 FR 41713, Sept. 21, 1982, as amended at 49 FR 6455, Feb. 21, 1984; 61 FR 4227, Feb. 5, 1996]

§ 4160.3 Final decisions.

(a) In the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice unless otherwise provided in the proposed decision.

(b) Upon the timely filing of a protest, the authorized officer shall reconsider her/his proposed decision in light of the protestant's statement of reasons for protest and in light of other information pertinent to the case. At the conclusion to her/his review of the protest, the authorized officer shall serve her/his final decision on the protestant or her/his agent, or both, and the interested public.

(c) A period of 30 days following receipt of the final decision, or 30 days after the date the proposed decision becomes final as provided in paragraph (a) of this section, is provided for filing an appeal and petition for stay of the decision pending final determination on appeal. A decision will not be effective during the 30-day appeal period, except as provided in paragraph (f) of this section. See §§ 4.21 and 4.470 of this title for general provisions of the appeal and stay processes.

(d) When the Office of Hearings and Appeals stays a final decision of the authorized officer regarding an application for grazing authorization, an applicant who was granted grazing use in the preceding year may continue at that level of authorized grazing use during the time the decision is stayed, except where grazing use in the preceding year was authorized on a temporary basis under § 4110.3–1(a). Where an applicant had no authorized grazing use during the previous year, or the application is for designated ephemeral or annual rangeland grazing use, the authorized grazing use shall be consistent with the final

decision pending the Office of Hearings and Appeals final determination on the appeal.

(e) When the Office of Hearings and Appeals stays a final decision of the authorized officer 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.

(f) Notwithstanding the provisions of § 4.21(a) of this title pertaining to the period during which a final decision will not be in effect, the authorized officer may provide that the final decision shall be effective upon issuance or on a date established in the decision and shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals when the authorized officer has made a determination in accordance with § 4110.3–3(b) or § 4150.2(d). Nothing in this section shall affect the authority of the Director of the Office of Hearings and Appeals or the Interior Board of Land Appeals to place decisions in full force and effect as provided in § 4.21(a)(1) of this title.

[43 FR 29067, July 5, 1978, as amended at 46 FR 5791, Jan. 19, 1981; 47 FR 41713, Sept. 21, 1982; 47 FR 46702, Oct. 20, 1982; 49 FR 6455, Feb. 21, 1984; 49 FR 12705, Mar. 30, 1984; 60 FR 9969, Feb. 22, 1995; 61 FR 4227, Feb. 5, 1996]

§ 4160.4 Appeals.

Any person whose interest is adversely affected by a final decision of the authorized officer may appeal the decision for the purpose of a hearing before an administrative law judge by following the requirements set out in § 4.470 of this title. As stated in that part, the appeal must be filed within 30 days after receipt of the final decision or within 30 days after the date the proposed decision becomes final as provided in § 4160.3(a). Appeals and petitions for a stay of the decision shall be filed at the office of the authorized officer. The authorized officer shall promptly transmit the appeal and petition for stay and the accompanying administrative record to ensure their timely arrival at the Office of Hearings and Appeals.

[60 FR 9969, Feb. 22, 1995, as amended at 61 FR 4227, Feb. 5, 1996]

Subpart 4170—Penalties

§ 4170.1 Civil penalties.

§ 4170.1–1 Penalty for violations.

(a) The authorized officer may withhold issuance of a grazing permit or lease, or suspend the grazing use authorized under a grazing permit or lease, in whole or in part, or cancel a grazing permit or lease and grazing preference, or a free use grazing permit or other grazing authorization, in whole or in part, under subpart 4160 of this title, for violation by a permittee or lessee of any of the provisions of this part.

(b) The authorized officer shall suspend the grazing use authorized under a grazing permit, in whole or in part, or shall cancel a grazing permit or lease and grazing preference, in whole or in part, under subpart 4160 of this title for repeated willful violation by a permittee or lessee of § 4140.1(b)(1) of this title.

(c) Whenever a nonpermittee or nonlessee violates § 4140.1(b) of this title and has not made satisfactory settlement under § 4150.3 of this title the authorized officer shall refer the matter to proper authorities for appropriate legal action by the United States against the violator.

(d) Any person found to have violated the provisions of § 4140.1(a)(6) after August 21, 1995, shall be required to pay twice the value of forage consumed as determined by the average monthly rate per AUM for pasturing livestock on privately owned land (excluding irrigated land) in each State as supplied annually by the National Agricultural Statistics Service, and all reasonable expenses incurred by the United States in detecting, investigating, and resolving violations. If the dollar equivalent value is not received by the authorized officer within 30 days of receipt of the final decision, the grazing permit or lease shall be cancelled. Such payment shall be in addition to any other penalties the authorized officer may impose under paragraph (a) of this section.

[46 FR 5792, Jan. 19, 1981, as amended at 50 FR 45827, Nov. 4, 1985; 60 FR 9969, Feb. 22, 1995]

§ 4170.1–2 Failure to use.

If a permittee or lessee has, for 2 consecutive grazing fee years, failed to make substantial use as authorized in the lease or permit, or has failed to maintain or use water base property in the grazing operation, the authorized officer, after consultation, coordination, and cooperation with the permittee or lessee and any lienholder of record, may cancel whatever amount of permitted use the permittee or lessee has failed to use.

[60 FR 9969, Feb. 22, 1995]

§ 4170.2 Penal provisions.

§ 4170.2–1 Penal provisions under the Taylor Grazing Act.

Under section 2 of the Act any person who willfully commits an act prohibited under § 4140.1(b), or who willfully violates approved special rules and regulations is punishable by a fine of not more than $500.

[60 FR 9969, Feb. 22, 1995]

§ 4170.2–2 Penal provisions under the Federal Land Policy and Management Act.

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), any person who knowingly and willfully commits an act prohibited under § 4140.1(b) or who knowingly and willfully violates approved special rules and regulations may be brought before a designated U.S.

magistrate and is punishable by a fine in accordance with the applicable provisions of Title 18 of the United States Code, or imprisonment for no more than 12 months, or both.

[60 FR 9969, Feb. 22, 1995]

Subpart 4180—Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration

§ 4180.1 Fundamentals of rangeland health.

The authorized officer shall take appropriate action under subparts 4110, 4120, 4130, and 4160 of this part 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 following conditions exist.

(a) Watersheds are in, or are making significant progress toward, properly functioning physical condition, including their upland, riparian-wetland, and aquatic components; soil and plant conditions support infiltration, soil moisture storage, and the release of water that are in balance with climate and landform and maintain or improve water quality, water quantity, and timing and duration of flow.

(b) Ecological processes, including the hydrologic cycle, nutrient cycle, and energy flow, are maintained, or there is significant progress toward their attainment, in order to support healthy biotic populations and communities.

(c) Water quality complies with State water quality standards and achieves, or is making significant progress toward achieving, established BLM management objectives such as meeting wildlife needs.

(d) Habitats are, or are making significant progress toward being, restored or maintained for Federal threatened and endangered species, Federal Proposed, Category 1 and 2 Federal candidate and other special status species.

[60 FR 9969, Feb. 22, 1995]

§ 4180.2 Standards and guidelines for grazing administration.

(a) The Bureau of Land Management State Director, in consultation with the affected resource advisory councils where they exist, will identify the geographical area for which standards and guidelines are developed. Standards and guidelines will be developed for an entire state, or an area encompassing portions of more than 1 state, unless the Bureau of Land Management State Director, in consultation with the resource advisory councils, determines that the characteristics of an area are unique, and the rangelands within the area could not be adequately protected using standards and guidelines developed on a broader geographical scale.

(b) The Bureau of Land Management State Director, in consultation with affected Bureau of Land Management resource advisory councils, shall develop

and amend State or regional standards and guidelines. The Bureau of Land Management State Director will also coordinate with Indian tribes, other State and Federal land management agencies responsible for the management of lands and resources within the region or area under consideration, and the public in the development of State or regional standards and guidelines. Standards and guidelines developed by the Bureau of Land Management State Director must provide for conformance with the fundamentals of § 4180.1. State or regional standards or guidelines developed by the Bureau of Land Management State Director may not be implemented prior to their approval by the Secretary. Standards and guidelines made effective under paragraph (f) of this section may be modified by the Bureau of Land Management State Director, with approval of the Secretary, to address local ecosystems and management practices.

(c) The authorized officer shall take appropriate action as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the standards and conform with the guidelines that are made effective under this section. Appropriate action means implementing actions pursuant to subparts 4110, 4120, 4130, and 4160 of this part that will result in significant progress toward fulfillment of the standards and significant progress toward conformance with the guidelines. Practices and activities subject to standards and guidelines include

the development of grazing-related portions of activity plans, establishment of terms and conditions of permits, leases and other grazing authorizations, and range improvement activities such as vegetation manipulation, fence construction and development of water.

(d) At a minimum, State or regional standards developed under paragraphs (a) and (b) of this section must address the following:

(1) Watershed function;

(2) Nutrient cycling and energy flow;

(3) Water quality;

(4) Habitat for endangered, threatened, proposed, Candidate 1 or 2, or special status species; and

(5) Habitat quality for native plant and animal populations and communities.

(e) At a minimum, State or regional guidelines developed under paragraphs (a) and (b) of this section must address the following:

(1) Maintaining or promoting adequate amounts of vegetative ground cover, including standing plant material and litter, to support infiltration, maintain soil moisture storage, and stabilize soils;

(2) Maintaining or promoting subsurface soil conditions that support permeability rates appropriate to climate and soils;

(3) Maintaining, improving or restoring riparian-wetland functions including energy dissipation, sediment capture, groundwater recharge, and stream bank stability;

(4) Maintaining or promoting stream channel morphology (e.g., gradient, width/depth ratio, channel roughness and sinuosity) and functions appropriate to climate and landform;

(5) Maintaining or promoting the appropriate kinds and amounts of soil organisms, plants and animals to support the hydrologic cycle, nutrient cycle, and energy flow;

(6) Promoting the opportunity for seedling establishment of appropriate plant species when climatic conditions and space allow;

(7) Maintaining, restoring or enhancing water quality to meet management objectives, such as meeting wildlife needs;

(8) Restoring, maintaining or enhancing habitats to assist in the recovery of Federal threatened and endangered species;

(9) Restoring, maintaining or enhancing habitats of Federal Proposed, Category 1 and 2 Federal candidate, and other special status species to promote their conservation;

(10) Maintaining or promoting the physical and biological conditions to sustain native populations and communities;

(11) Emphasizing native species in the support of ecological function; and

(12) Incorporating the use of non-native plant species only in those situations in which native species are not available in sufficient quantities or are incapable of maintaining or achieving properly functioning conditions and biological health;

(f) In the event that State or regional standards and guidelines are not completed and in effect by February 12, 1997, and until such time as State or regional standards and guidelines are developed and in effect, the following standards provided in paragraph (f)(1) of this section and guidelines provided in (f)(2) of this section shall apply and will be implemented in accordance with paragraph (c) of this section. However, the Secretary may grant, upon referral by the BLM of a formal recommendation by a resource advisory council, a postponement of the February 12, 1997, fallback standards and guidelines implementation date, not to exceed the 6-month period ending August 12, 1997. In determining whether to grant a postponement, the Secretary will consider, among other factors, long-term rangeland health and administrative efficiencies.

(1) *Fallback standards.* (i) Upland soils exhibit infiltration and permeability rates that are appropriate to soil type, climate and landform.

(ii) Riparian-wetland areas are in properly functioning condition.

(iii) Stream channel morphology (including but not limited to gradient, width/depth ratio, channel roughness and sinuosity) and functions are appropriate for the climate and landform.

(iv) Healthy, productive and diverse populations of native species exist and are maintained.

(2) *Fallback guidelines.* (i) Management practices maintain or promote adequate amounts of ground cover to support infiltration, maintain soil moisture storage, and stabilize soils;

(ii) Management practices maintain or promote soil conditions that support permeability rates that are appropriate to climate and soils;

(iii) Management practices maintain or promote sufficient residual vegetation to maintain, improve or restore riparian-wetland functions of energy dissipation, sediment capture, groundwater recharge and stream bank stability;

(iv) Management practices maintain or promote stream channel morphology (e.g., gradient, width/depth ratio, channel roughness and sinuosity) and functions that are appropriate to climate and landform;

(v) Management practices maintain or promote the appropriate kinds and amounts of soil organisms, plants and animals to support the hydrologic cycle, nutrient cycle, and energy flow;

(vi) Management practices maintain or promote the physical and biological conditions necessary to sustain native populations and communities;

(vii) Desired species are being allowed to complete seed dissemination in 1 out of every 3 years (Management actions will promote the opportunity for seedling establishment when climatic conditions and space allow.);

(viii) Conservation of Federal threatened or endangered, Proposed, Category 1 and 2 candidate, and other special status species is promoted by the restoration and maintenance of their habitats;

(ix) Native species are emphasized in the support of ecological function;

(x) Non-native plant species are used only in those situations in which native species are not readily available in sufficient quantities or are incapable of maintaining or achieving properly functioning conditions and biological health;

(xi) Periods of rest from disturbance or livestock use during times of critical plant growth or regrowth are provided when needed to achieve healthy, properly functioning conditions (The timing and duration of use periods shall be determined by the authorized officer.);

(xii) Continuous, season-long livestock use is allowed to occur only when it has been demonstrated to be consistent with achieving healthy, properly functioning ecosystems;

(xiii) Facilities are located away from riparian-wetland areas wherever they conflict with achieving or maintaining riparian-wetland function;

(xiv) The development of springs and seeps or other projects affecting water and associated resources shall be designed to protect the ecological functions and processes of those sites; and

(xv) Grazing on designated ephemeral (annual and perennial) rangeland is allowed to occur only if reliable estimates of production have been made, an identified level of annual growth or residue to remain on site at the end of the grazing season has been established, and adverse effects on perennial species are avoided.

[60 FR 9969, Feb. 22, 1995, as amended at 61 FR 59835, Nov. 25, 1996]