

BLM Grazing Regulation Scoping Comments  
Seth Flanigan, Project Manager  
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Via email to: BLM\_WO\_grazing\_email@blm.gov

March 6, 2020

Re: Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Revision of Grazing Regulations for Public Lands (Federal Register/Vol. 85, No. 13/Tuesday, January 21, 2020)

Dear Mr. Flanigan:

Please accept on behalf of the undersigned organizations the following comments in response to the January 21, 2020 Federal Register notice (85 FR 3410) soliciting public comments on the Bureau of Land Management's (BLM) proposed revisions to the grazing regulations (43 CFR § 4100 et seq.).

#### **I. Submission of An Alternative**

The undersigned respectfully submit an alternative for revised grazing regulations and request that the alternative be fully analyzed in the environmental impact statement (EIS). The alternative is a set of revisions to the BLM grazing regulations that will address the scope of issues noted in the January 21, 2020 Federal Register *Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Revision of Grazing Regulations on Public Lands*.

In its workshop document regarding desired comments during the scoping period ending March 6, "Commenting on BLM Grazing Regulation Updates," the BLM urges commenters in this scoping period to "Offer an [sic] alternative solutions and ideas." We intend for the BLM to publish our proposed regulations revisions as one among the range of alternatives in the Draft Environmental Impact Statement (DEIS). Because the BLM did not provide in the Notice of Intent a specific format by which the BLM will propose grazing regulations revisions in the DEIS, we request that BLM feature and consider our proposed revisions in a parallel format as other alternatives, without altering any of the proposed revisions we are submitting on March 6, 2020.

The alternative we provide in these scoping comments is within the scope of this revisions process and proposes reasonable, prudent and well-thought-out grazing administration and grazing use provisions. As discussed in further detail below (Section III), the National Environmental Policy Act (NEPA) requires that the agency consider reasonable alternatives in the EIS for BLM grazing regulations revision. This range of alternatives is not limited to only those crafted by the agency, but must also include approaches and alternatives proposed by the public, stakeholders, cooperating agencies,

as well as other interested parties, so long as those alternatives fall within the scope of the analysis, are reasonable, and accomplish the management goals and obligations of the agency.

## **II. The alternative is within the scope of this revisions process**

The Notice of Intent seeks proposals to address the following:

- **Updating and modernizing the regulations**, including revising definitions to provide more accurate and concise descriptions of the terms, and to align with current statutory, and regulatory authorities; rewording certain sections to improve readability and understanding; and considering ways to improve grazing permit administration, such as: transfers of grazing preference; provisions that allow for greater flexibility for using livestock grazing to address fuel loads and protect areas with high quality habitat from wildfire; continued Resource Advisory Committee review of rangeland improvements and allotment management plans; and emergency public consultation.
- **Improving permitting efficiency**. This could include, for example, changing how the BLM issues decisions for crossing permits, temporary nonrenewable permits, and authorizing grazing to reduce wildfire risk, expanded or clarified use of NEPA categorical exclusion authorities, and streamlining protest and appeal processes.
- **Promoting land health**. Considering where and how the BLM will evaluate the Land Health Fundamentals and Standards. Explore ways to use livestock grazing to reduce wildfire risk and improve rangeland conditions.
- **Public participation**. The BLM seeks to ensure adequate participation of all stakeholders without unduly burdening administrative processes. [Bold added for emphasis]

The alternative we are submitting falls within the scope of the proposed revision issues. It is reasonable and feasible for the BLM and permittees/lessees, revises and adds definitions, rewords certain sections in readable language, and suggests ways to improve permit administration to ensure both public participation of all stakeholders and efficient administration. Its emphasis on native species, provisions for annual conservation use authorization, and mandatory evaluations of allotment conditions at least once every ten years promote land health. Permitting efficiencies will be obtained through provisions for increased non-use; permittee responsibilities such as confirming that all range improvements are maintained prior to turnout; a uniform utilization standard of 30%; and more consistency around data management, inventory, and evaluations. While some may argue that enhanced participation of stakeholders (e.g., bird watchers, predator advocates, hunters, independent scientists, campers) encumbers rather than streamlines process, we assert that enhanced stakeholder participation opportunities earlier in the process results in time and cost savings overall; it builds trust, identifies conflicts and problems early, and provides the time to identify resolutions. Stakeholder engagement produces more robust decisions.

The alternative should remain intact for presentation within the Draft EIS. While the BLM proposal(s) are likely internally consistent, we have likewise proposed an internally consistent set of grazing regulation revisions. The alternative deserves agency and public comparison of its social and environmental consequences with the BLM proposal(s). The proposed alternative (**Attachment 1**) is followed by the rationale for its major elements (**Attachment 2**).

### **III. A range of reasonable alternatives is required by CEQ regulation**

The range of alternatives is “the heart of the environmental impact statement.” 40 C.F.R. § 1502.14. NEPA requires BLM to “rigorously explore and objectively evaluate” a range of alternatives to proposed federal actions. See 40 C.F.R. §§ 1502.14(a), 1508.25(c). “An agency must look at every reasonable alternative, with the range dictated by the nature and scope of the proposed action.” *Nw. Env'tl. Defense Center v. Bonneville Power Admin.*, 117 F.3d 1520, 1538 (9th Cir. 1997). An agency violates NEPA by failing to “rigorously explore and objectively evaluate all reasonable alternatives” to the proposed action. *City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1310 (9th Cir. 1990) (quoting 40 C.F.R. § 1502.14). This evaluation extends to considering more environmentally protective alternatives and mitigation measures. See, e.g., *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1122–23 (9th Cir. 2002) (and cases cited therein). The consideration of more environmentally protective alternatives is also consistent with FLPMA’s requirement that BLM “minimize adverse impacts on the natural, environmental, scientific, cultural, and other resources and values (including fish and wildlife habitat) of the public lands involved.” 43 U.S.C. §1732(d)(2)(a).

NEPA requires that an actual “range” of alternatives is considered, such that the Act will “preclude agencies from defining the objectives of their actions in terms so unreasonably narrow that they can be accomplished by only one alternative (i.e., the applicant’s proposed project).” *Col. Env'tl. Coal. v. Dombeck*, 185 F.3d 1162, 1174 (10th Cir. 1999), citing *Simmons v. U.S. Corps of Engineers*, 120 F.3d 664, 669 (7th Cir. 1997). This requirement prevents the EIS from becoming “a foreordained formality.” *City of New York v. Dep’t of Transp.*, 715 F.2d 732, 743 (2nd Cir. 1983). See also *Davis v. Mineta*, 302 F.3d 1104 (10th Cir. 2002).

Further, in defining what is a “reasonable” range of alternatives, NEPA requires consideration of alternatives “that are practical or feasible” and not just “whether the proponent or applicant likes or is itself capable of carrying out a particular alternative”; in fact, “[a]n alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable.” Council on Environmental Quality, *Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations*, Questions 2A and 2B, available at <https://www.energy.gov/sites/prod/files/G-CEQ-40Questions.pdf>; 40 C.F.R. §§ 1502.14, 1506.2(d).

Thank you for the opportunity to submit a comprehensive, reasonable alternative. We look forward to meeting with you to discuss the format of alternatives within the upcoming Draft EIS.

Sincerely,

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Attachment 1: An Alternative Set of Grazing Regulation Revisions

Attachment 2: Rationale for Major Elements in the Alternative