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GRAZING MANAGEMENT

HEARING

BEFORE THE

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

ON THE

ADMINISTRATION'S GRAZING PROGRAMS

JUNE 25, 2003



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GRAZING MANAGEMENT

WEDNESDAY, JUNE 25, 2003

U.S. SENATE,
SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:30 p.m. in room SD–366, Dirksen Senate Office Building, Hon. Larry E. Craig presiding.

OPENING STATEMENT OF HON. LARRY E. CRAIG, U.S. SENATOR FROM IDAHO

Senator CRAIG. Good afternoon, everyone. The Subcommitte on Public Lands and Forests will be in order.

Today's oversight hearing on Federal land grazing programs is the first since this administration has come to office, and I am very pleased that I am joined by the chairman of the full committee, Senator Domenici. I will turn to him for a moment for his opening statement; and Senator Conrad Burns, on the panel.

I also want to recognize and welcome Rebecca Watson, Assistant Secretary for Land and Minerals Management of the Department of the Interior; and Mark Rey, Under Secretary for Natural Resources and Environment at the Department of Agriculture—for those who are new to the committee—the U.S. Forest Service. That brings it into context, I think. Last month during Memorial Day recess, Senator Mike Crapo, my colleague in Idaho, and I hosted four grazing workshops in various communities across Idaho concerning livestock grazing on Forest Service and BLM-administered public lands. It was no great surprise how little we heard about grazing at these workshops. Instead, we heard about lawsuits; environmental impact statements; Endangered Species Act; bull trout; wolves; invasive weeds; crickets; and water, or lack thereof.

Certainly ranching, in the 21st century, means far more than livestock grazing. Generations of families have made their homes and lived off the land since the mid-19th century. They depended on the land and the knowledge they had gained from the land to survive, a knowledge that only comes from living and working this resource for a lifetime, unlike the inside-the-beltway environmentalism that, in spite of what may be good intentions, has led to a "leave it alone" philosophy that, when imposed, actually, in my opinion, does more harm and wreaks more havoc on our public lands than well-managed lands, where grazing can and should be allowed.

The modern ranchers have learned to understand the science behind what their own common sense has taught them about making the right decisions about rangeland health. They face new challenges and have learned to adapt to the changing demands that come from using public resources. Grazing has proven to be a valuable conservation and management tool in a number of ways.

The first issue is the use of livestock grazing to reduce the risk of fire potential by reducing the fuel load on the land. Rangelands that are grazed are less likely to burn as frequently or with catastrophic intensity. Next, livestock grazing is an important tool for fighting the spread of invasive non-native weeds. Addressing this weed problem requires we work together at all levels of government through public and private partnerships to protect our land, our livelihood, and our environment.

Ranchers are also making significant investments on Federal lands to sustain livestock that also provide improved wildlife habitat. The actual number of wildlife or game animals in my State has increased dramatically over the last 40 years, in large part because of water and water developments in a variety of areas produced by farmers and ranchers. Last, having a viable ranching industry has helped to prevent land fragmentation and development. In the West, developed lands rose from almost 20 million acres in 1970 to 42 million in 2000. The protection of sustainable working ranches and a rural landscape has prevented a growing urbanization of important outdoor areas. Modern rangeland management has become a government-rancher partnership that has facilitated the maintenance and health of the land. Without the rancher's participation, the cost of Federal land management would increase dramatically. We need to continue to use this partnership to ensure the wise use and health of our public lands.

Today, we will hear from the administration about the current status of their grazing programs and their progress on rangeland management. We are eager to hear about their plans, and to assist them where possible.

Before I turn to our panelists today, let me first turn to the chairman of the full Committee on Energy and Natural Resources, Senator Pete Domenici of New Mexico.

STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

The CHAIRMAN. Thank you very much, Senator Craig. I want to compliment you on holding this subcommittee hearing. As many of you know, I have been very frustrated by the way the previous administration treated the farmers and ranchers who depended on public lands for grazing. Unfortunately, I am not completely happy with how this administration is fulfilling its responsibilities in this regard, either. I do understand that the Bureau is making notable progress in working through their backlog of permits and applications. That is a very sorry state of affairs; and while it is not all the responsibility of the Bureau of Land Management or Forest Service, clearly it is something that deserves attention, consistent with the dimension of the problem. It is a big problem. However, I remain concerned about the level of commitment within the Forest Service to solving the grazing issue.

There seems to be some ambivalence within the Forest Service toward grazing that undermines the longstanding use of public range for livestock grazing. We continue to be in a situation in which Senator Craig and I have worked every year to address this situation in the Interior appropriations bill. I want to know, just how long are we going to have to continue doing that because the agencies have to get their act together? If there is something we must do to expedite that final date when we will be current with grazing applications, then we ought to know. I look forward to, if not being present for the hearings, to finding out the results in due course.

Thank you, Mr. Chairman. It is good to be here with you and with the witnesses. Thanks to both of you for all you do on behalf of the Forest Service and our public domain.

Senator CRAIG. Mr. Chairman, thank you. Thank you for your statement and for being here today, and for your leadership in this area. Now let me turn to Senator Conrad Burns.

Senator BURNS. Mr. Chairman, thank you for this hearing. I have no formal statement. I think we should hear from the witnesses and get an exchange going, because it is 2:30 in the afternoon. We want to cover some ground here today that I think is very important, so thank you very much for the opportunity.

Senator CRAIG. Thank you. We have been joined by Senator Craig Thomas of Wyoming. Senator?

Senator THOMAS. Despite Senator Burns' comments, I'm going to make a short statement.

Senator BURNS. Really.

Senator CRAIG. Please proceed.

STATEMENT OF HON. CRAIG THOMAS, U.S. SENATOR FROM WYOMING

Senator THOMAS. Welcome to both of you. I know you work very hard at causing our land management to be done as well as possible. Of course, grazing is always a great concern. We look to long-range problems and so on. I am particularly interested in hearing from you about the conservation partnerships we talked about. These are BLM, I believe, reserve common allotments which seem to be somewhat of a controversy, voluntary allotment restructuring, and the conservation easements and the Endangered Species Act mitigation.

I think these are all things we need to talk about. We have heard a little from our folks there that these ideas were thrown out, but there was not much interchange and discussion. We hear a lot and certainly favor the notion that there should be more local input into these things, so we want to seek to try and do that. I will stop, also, so we can get something going. Thank you for being here. I look forward to working with you.

Senator CRAIG. Thank you very much. Before I turn to our witnesses, just a couple of figures that I asked staff to find. We have been able to produce some. I say that because of what always, to me, appears to be a solution to solving the grazing problem in the West, or on public lands. That is, you just reduce the numbers of livestock grazing. From 1953 to 2003—and this is a figure from the Bureau of Land Management—we have reduced the number of ani-

mal unit months, AUMs, in that 50-year period 110 percent on BLM lands.

Now, we only have a figure from the Forest Service from 1983 to 2003. That is only 20 years. But during that time, the number of AUMs reduced is 27 percent, and the number of allotments is 10 percent, so probably similar reductions spread across a similar time frame are also true of the U.S. Forest Service. A benchmark, a value? Yes, it is, in my opinion. The frequency of fire today, the phenomenal wildfire of weeds on our public lands today, it is in part the product of this example With that, let me stop there and first and foremost return to Rebecca Watson to make her opening statement.

Thank you for joining us today, Madam Secretary.

STATEMENT OF REBECCA W. WATSON, ASSISTANT SECRETARY FOR LAND AND MINERALS MANAGEMENT, DEPARTMENT OF THE INTERIOR

Ms. WATSON. Thank you. Good afternoon, Chairman Craig and Chairman Domenici, and members of the committee. I want to begin by stating that the Department of the Interior and the Bureau of Land Management believe that public-land grazing and the ranching community it helps to support is a keystone Western industry. We are committed to working with ranchers and the public to sustain public-land grazing in the 21st century. This reflects our common-sense recognition that healthy lands, strong communities, and thriving economies go hand-in-hand with working landscapes. My written testimony details the status of BLM grazing permit renewals, our sustaining working landscape initiative, monitoring and land health efforts.

Today, I want to focus quickly on the sustaining working landscapes initiative. This initiative is in two parts. The first is a consideration of grazing rule changes. The second looks at policy changes that we believe we can make without rulemaking that will improve our ability to work cooperatively and voluntarily with the ranching community and other partners. I will talk first about the rule.

On March 31, 2003, the BLM published a notice of proposed rulemaking and a notice of intent to prepare an environmental impact statement. The rulemaking and EIS sought comments and ideas from the public. We had some categories we wanted to address, but we sought more input from the public. We received substantial input. Questions we discussed in our rulemaking are extending voluntary, temporary nonuse of a permit from 3 to 5 years; authorizing a new type of grazing unit, reserve common allotment; reinstituting an earlier provision that allowed the BLM and the permittees to share range improvements; and finally, improving the administrative appeals process for grazing.

Once we prepare a proposed rule, we will once again go out for public comment on the proposed rule and on the draft of EIS. The BLM is also considering policy changes to complete and enhance these potential regulatory changes. As Senator Thomas brought out, there has been some concern in the grazing community about some of these proposals, but what we try to do here is think out

of the box of past practices and look at where we are in the 21st century. The world in the West has changed dramatically.

The population growth, the global economy, all those have put new stresses and strains on an already hard-pressed industry, so we tried to come up with tools that we could use to keep ranchers on the lands but address the stewardship concerns and wildlife and recreation concerns that the now-large Western population holds. So the idea behind them is the same goal that we all share: How do we keep ranching on the land in the 21st century? So we came up with several tools—conservation partnerships, reserve common allotments, and voluntary allotment restructuring—to allow the land to rest, but also with the view that the grazing could come back on again.

That is the focus of the Taylor Grazing Act, and that is our guiding principle of working landscapes. We will have preliminary draft policy proposals shortly. Again, we will seek public comment. I agree that our public comment process was not as good as it could have been, but we wanted to come up with some proposals and then get the comments.

Again, they were proposals and not any final policy. We are now going to work through our Resource Advisory Councils, put it out once again to public comment, and put it on our website to solicit reaction. As to both of these proposals, we have heard the public, and the proposed rule and any policy proposals will reflect comments that we have received from the public.

I will just conclude again by reiterating that we are committed to the goal of sustaining working landscapes in our efforts, and permit renewals, monitoring, and regulatory and policy developments are all focused on that goal of working landscapes. Thank you. I look forward to your questions.

[The prepared statement of Ms. Watson follows:]

PREPARED STATEMENT OF REBECCA W. WATSON, ASSISTANT SECRETARY FOR LANDS AND MINERALS MANAGEMENT, DEPARTMENT OF THE INTERIOR

Thank you for the opportunity to present testimony describing the grazing program of the Bureau of Land Management—where we are now and where we are headed. The BLM is committed to working with those who work on the public land as we strive for economically productive and environmentally healthy rangelands.

Today, the BLM manages grazing on more than 160 million acres of public land in the West. We administer over 18,000 grazing permits and leases and in 2002, eight million AUMs (animal unit months) were used.

I would like to begin by describing the status of grazing permit renewals at the BLM, and our plan to stabilize the renewal process and make it more useful and timely. In addition, I want to share with you the progress we are making on our Sustaining Working Landscapes initiative that considers both grazing regulatory and policy changes. Finally, I will discuss the monitoring and land health efforts we are undertaking without which our initiatives cannot succeed As we improve the health of the land and promote the economic well-being of communities throughout the West, our aim throughout is to achieve the Secretary's goals of consultation, cooperation and communication all in the service of conservation.

GRAZING PERMIT RENEWALS

By regulation, grazing leases and permits are typically issued for 10-year periods. In most years, the BLM has 1,500 permits up for renewal. In 1999, the BLM experienced a spike in grazing permit renewals. Over 5,000 permits were due for renewal with an additional 2,200 due in 2000. Additionally, the BLM was required to improve environmental documentation for processing grazing permit and lease renewals. The increased workload made it clear that the BLM would not meet the required deadlines for permit renewals.

Congress took action to ensure that grazing permittees and lessees could continue to graze if the BLM was unable to complete the environmental analysis mandated by the National Environmental Policy Act (NEPA). Since 1999, a provision has been included each year in the Interior Appropriations bill that gives the BLM the authority to extend grazing permits and leases under their same terms and conditions until completion of NEPA compliance, Endangered Species Act (ESA), consultation and other legal requirements. We recognize that this is not the optimum situation. I would like to share with you what BLM is doing not only to address the permit renewal workload, but also to avoid recurrence of this problem.

As the BLM began working its way through the permit spike workload, it became increasingly clear that simply doing "business as usual" was not going to provide a long-term solution to the problem. Therefore, the Bureau has placed an emphasis on renewing expiring grazing permits within priority watersheds with significant resource-use conflicts or issues. Rather than rigidly adhering to a predetermined schedule of renewals, we want to group permits with common impacts, watersheds and land health standards. Not only does this provide a more even redistribution of future permit renewals over a full 10-year cycle, but it also affords more timely consultation completion with the Fish & Wildlife Service and/or the NOAA Fisheries. In addition, these measures will facilitate an effective review of land health standards on a watershed basis, allow for cumulative impact analysis, and focus restoration resources. In the long term, this will improve and streamline our processing of permit renewals.

Of the 10,541 grazing permits that expired between fiscal year 1999 and fiscal year 2002, 8,888 have been fully processed. The remaining 1,653 are planned for completion by the close of 2005. By the end of 2009, the BLM plans to have all permits fully processed in the year they expire.

Our experience has shown that most NEPA documents needed for grazing permit renewals have been at the Environmental Assessment (EA) level, with very few requiring full Environmental Impact Statements (EISs). The overwhelming majority of fully processed permits have been issued with terms and conditions that are substantially unchanged from past practices.

The BLM is strongly committed to meeting the goals I have outlined. Each BLM State Office has made very specific commitments for how it will comply. The BLM will continue to closely monitor the status of grazing permit and lease renewals and, as appropriate, will make adjustments to meet our goals. However, in any given year, a particularly difficult fire season (which may involve temporarily diverting some BLM personnel), and other factors, such as challenges to decisions through appeals and litigation, may test our ability to meet our planned timeframes. Nevertheless, we do not believe this will impede our ability to complete this process and we remain committed to meeting our goals.

SUSTAINING WORKING LANDSCAPES REGULATORY AND POLICY MODIFICATIONS

Our challenge is to work cooperatively with our grazing permittees and the public toward a new conservation strategy premised on the Federal obligation to manage the lands for multiple uses. The assistance and support of those closest to the land, the permittees themselves, are vital to our success. Our goal is to create sustainable working landscapes that are economically sound and ecologically healthy.

The rancher and the ranching family have played a key role in the history and development of the American West. Both are important to the economic vitality and quality of life of many communities throughout the West. The rancher increasingly plays an important role in protecting open space in areas of burgeoning population growth. Preserving the ranching lifestyle, not only for its own merits, but for the benefits that accrue to the land and nearby communities, is a goal of our Sustaining Working Landscapes initiative.

The BLM is proceeding with a two-pronged approach: (1) consideration of regulatory modifications and, (2) policy changes that will improve our ability to work cooperatively and voluntarily with the ranching community and other partners. On March 3, 2003, the BLM published an Advance Notice of Proposed Rulemaking (ANPR) and a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) in the Federal Register regarding the BLM's grazing regulatory concepts. A 60-day public comment period followed which included three public scoping meetings in the West and one in Washington, D.C. Over 7,500 comments were received.

The BLM is currently analyzing the comments we received. We expect that modifications, additions and deletions will be made to the proposals. We will again seek public comment on the proposed rule and draft EIS that are targeted for publication later this year.

Among the concepts being considered as part of the rulemaking process are:

- extending voluntary temporary non-use of a permit from the current three-year limit to five years;
- authorizing a new type of grazing unit called a "Reserve Common Allotment;"
- reinstating an earlier provision to allow the BLM and permittee to share title to range improvements such as fences, wells and pipelines; and
- modifying the administrative appeals process.

The BLM is also considering policy changes to complement and enhance these potential regulatory changes. In order to seek public input on these policy ideas, on March 25, 2003, the BLM announced a series of grazing policy development workshops across the West and in Washington, D.C. In total, 24 workshops were held. Comments were received which are currently being reviewed as draft policy is being developed.

Among the tools being considered to enhance citizen stewardship of the lands are:

Conservation Partnerships—voluntary, performance-based agreements to provide environmental services (e.g., riparian restoration, improved wildlife/fisheries habitat, listed species recovery) in exchange for possible incentives such as stewardship grants, management flexibility, forage enhancement and permit flexibility.

Reserve Common Allotments (RCAs)—forage reserve areas that allow permittees to engage in rangeland restoration by temporarily shifting their livestock to forage reserve areas. This rotation would promote range recovery through rest from grazing without jeopardizing personal economic needs. Limited RCAs could be established under existing regulations. However, full implementation requires regulatory modifications.

Voluntary Allotment Restructuring—voluntary mergers of two or more allotments to increase management flexibility and opportunities for conservation purposes. This gives non-grazing organizations the opportunity to work cooperatively with ranchers to develop partnerships to meet economic and conservation goals.

In the near future, the BLM plans to present preliminary draft policy proposals for public review. We will seek public input through our Resource Advisory Councils (RACs), general mailings and our Website. We want to ensure sufficient time and opportunity for meaningful public input and dialogue, and hope to complete this public process by the end of September. Following evaluation and modifications, our goal is to finalize the non-regulatory policy decisions by the end of November of this year. Throughout the process we will keep the Congress informed of our progress.

LAND HEALTH ASSESSMENTS AND MONITORING

An understanding of what is going on out on the land is crucial to appropriate management of our public lands. Sustaining working landscapes, grazing permit renewals and an effective grazing program all rely heavily on good monitoring data. Without that basic information, our ability to make appropriate decisions, improve the health of the land, and meet our obligations to the multiple users of the public land is severely handicapped.

Over the past 25 years, our whole understanding of how monitoring should be conducted, where it should be focused, and what it means has evolved. Science has changed the models for explaining and predicting changes in rangeland vegetation to a "state and transition" model. State and transition models define thresholds of change in vegetation and soils that, when crossed, become barriers to achieving healthy landscapes. For example, when a wildfire burns a sagebrush and perennial grass plant community that may then convert to cheatgrass, a threshold is crossed. Moving back across these thresholds can require expensive restoration efforts. Monitoring change in plant communities tells us when we are approaching one of these thresholds and allows us to make changes in management to avoid costly restoration efforts in the future. The "State and Transition Model" is more accurate than previous models and takes advantage of the most recent advances in our scientific understanding of soils, watersheds and vegetation.

The focus of our monitoring has also changed. We have moved from monitoring individual allotments and individual programs to a coordinated, interdisciplinary look at resource conditions and changes on a watershed basis. Field offices can better analyze the cumulative and combined effects of various management activities. Our data collection efforts are concentrated on issues and resources directly linked to land health.

Our efforts to improve monitoring have support from a wide range of users of the public lands. The ranching community, conservation groups and the academic com-

munity have joined with Federal agencies to form the Sustainable Rangelands Roundtable (SRR). This partnership will help us to promote consistency in monitoring and development of accurate indicators.

The Departments of the Interior and Agriculture are chartering a joint interagency group to address assessment and monitoring issues at the local and national levels.

We are currently working on a report, mandated by the FY 2002 Interior Appropriations bill, Pub. Law 107-63, together with the Natural Resources Conservation Service, the Forest Service, and four other Department of the Interior agencies, to address the needs for completing soil surveys and ecological classification on rangelands within 10 years. In addition, the report will outline a plan for developing and implementing a national rangeland assessment tool.

DROUGHT

Continued drought throughout much of the West is a variable that is threatening the livelihood of many ranchers. While we can, and do, seek to avoid surprises by working in advance with our permittees, short of divine intervention, there are no easy answers. Many of our regulatory and policy initiatives may help ameliorate the effects of the normal drought cycle, but severe, longer-term droughts (of the kind seen throughout much of the West in the last few years) are much harder to address.

We are committed to working in advance with our permittees and other drought-affected partners, alerting them to potential permit modifications as we respond to inadequate forage and/or water. In all of these cases we work on a permit-by-permit basis at the local level with the ranchers. We do not seek to impose a one-size-fits-all solution, but rather seek an answer that is both right for the land and minimizes hardship to the public land users. Solutions include voluntarily reduced stocking levels, water hauling, new water developments and in some cases, temporary suspension of some or all livestock use.

We continue to try to provide as much flexibility as possible in responding to drought conditions, but in many cases that flexibility no longer exists. Recovery can be a slow process and adequate moisture alone is not a cure. In some cases "resting" the land is the only answer.

CONCLUSION

The BLM is committed to the goal of sustaining working landscapes that are economically productive and environmentally healthy. Our efforts and changes for proposed permit renewal, monitoring, and regulations and policy are all developed with an eye toward that goal. Thank you for the opportunity to testify and I'll be happy to answer any questions you may have.

Senator CRAIG. Rebecca, thank you very much. Now let me turn to Mark Rey, Secretary, Natural Resources and Environment, Department of Agriculture.

STATEMENT OF MARK REY, UNDER SECRETARY, NATURAL RESOURCES AND ENVIRONMENT, DEPARTMENT OF AGRICULTURE

Mr. REY. Mr. Chairman, members of the subcommittee, thank you for the opportunity to present the subcommittee with an overview of the Forest Service grazing program. I have brought with me today Janette Kaiser, the Forest Service's Director of Forest Vegetation Management, and Dean Thompson, the natural range conservationist for the Natural Resources Conservation Service. I may call them up to the table to assist in answering your questions.

The Forest Service has been managing rangelands for nearly 10 years, and has a long history of partnerships with livestock producers who rely on National Forest System lands. In fact, grazing on Federal lands was one of the earliest resource debates at the turn of the last century. When the debate raged over whether livestock grazing would be banned from the then newly created forest re-

serves, Gifford Pinchot, the first chief of the Forest Service, argued that grazing should be allowed, rather than prohibited.

Then, as now, that view was based on scientific range research first begun as early as 1897 by the Department of Agriculture in the Cascade Mountains of Oregon, in one of our first range laboratories. Today there are grazing allotments on nearly half of all National Forest System lands, approximately 90 million acres of land in 33 States.

The Forest Service administers approximately 8,800 allotments which have over 9,500 livestock permits and about 9.9 million animal unit months of grazing by cattle, horses, sheep, and goats. Nearly all of this permitted grazing is located in the Western States, with only about 1 percent occurring in our two eastern Forest Service regions.

The CHAIRMAN. Mr. Chairman, may I stop the witness for just a moment?

Senator CRAIG. Sure.

The CHAIRMAN. I cannot stay but about 5 minutes. I wonder if I might interrupt the witness and inquire.

Senator CRAIG. Please proceed.

The CHAIRMAN. Mark, one of the problems that I raised in my very brief remarks is the issue of ranchers who cannot get their permits issued on time because of the long delays that—and I understand, I am not saying the long delays that you impose, but rather, the long delays that are occurring because of the impact of environmental impact assessments which some of us have, within 2 years prior to carving these out, advised that the Bureau would never get caught up if they did this. It started in the Forest Service. They were doing it first. It is now prevalent. Before the regime got out, they got it in both departments.

What is the real situation? I hear we are not making very much headway in terms of catching up. Does that mean that large numbers of ranchers are going to be using outdated permits that have an indication on them that they are temporary because of the situation, as we have mandated that you all do, or what is going on?

Mr. REY. What is going on is an attempt to address a problem that started in the mid-1990's that has expanded in scope and intensity faster than our efforts to address it. In the mid-1990's, as a result of court action, we were required to do new NEPA analyses under the National Environmental Policy Act at the time of the permit renewals.

In 1995, Congress passed legislation as part of the fiscal year 1996 Interior appropriations bill to set up a schedule for staggering that compliance with the National Environmental Policy Act, with the idea that we would get it all completed by 2010. There have been intervening lawsuits since that time that throw into question both the intent of the 1995 legislation congressional language as well as our basic capability of meeting that 2010 deadline.

At present, we have probably about 1,500 to 1,600 permits that are at some risk because we are behind with regard to NEPA compliance. We can still meet the 2010 deadline as originally indicated if we either increase the amount of resources we devote to that, or we look for ways to streamline the procedures that we use to comply with NEPA.

We would be happy to talk to the committee about either of those options. My preference would be to do some of both, because I think we are expending resources on relatively straightforward permit renewals where nothing is changing, where the money isn't buying us any on-the-ground investments.

Back when Congress passed that legislation in 1995, you may recall I was on your side of the dais, and I can remember that we asked then Forest Service chief Jack Ward Thomas where we would be getting a good investment in on the ground by forcing that rapid level of NEPA analysis instead of doing other things in terms of range improvement or better monitoring programs.

He was fairly forthright, and said that he thought on the ground results would be better if we did the latter rather than generating NEPA documents. That is something we would like to work on with you.

The CHAIRMAN. What I would like to say—and I hope you will all agree—I think we have to do what makes common sense for the rancher. If, as a matter of fact, it is useless for us to put in extra money so we can catch up, we ought not to do it.

But if catch-up is necessary for the average rancher to be left in a position where his assets are intact and he is not constantly questioned because of the nebulous nature of the permit, it would seem to me we must go to the administration and say to them, don't send us budgets that do not have enough money for us to get the work done.

I myself would like this record to reflect what it would cost for a multi-year program that would catch us up, because I don't think I have seen it. I am not sure the chairman of the subcommittee has ever seen such a number. I am not sure the OMB has. They never do provide it, obviously. Whether they have been provided with it and then turn it down and give us less money than we need, I don't know the answer to that, either. But I think it would be good for us to know that. We could pass that along and know where we are.

Mr. REY. I think the unfortunate irony we find ourselves in today is that the result of what we are achieving is neither beneficial to the rancher nor beneficial to the rangeland ecosystems.

We are spending too much money processing papers that aren't producing any different or better on-the-ground results, and that money could be better spent making range improvements, making habitat improvements, and doing on-the-ground work.

It is not just a question of money, it is a question—as is the case in many instances—of how wisely we spend the money based upon procedural requirements we are bound to meet.

The CHAIRMAN. I want to remind everyone here—all of you help me—my amendment was twice or three times on the floor, but it is such a simple process that hurts nobody to do the extension, and make sure that the extension does not jeopardize the nature of it, which is what we had to write into the law.

That was such a big issue with the environmentalists that it was number two on their national issue for at least 2 years as something that we were using to destroy the public domain. Obviously, it is less than that now because it is nothing in terms of the impact on the public domain.

It is just a matter of having to do something, call it an assessment or impact statement, that people are questioning all the time as to validity of it when it comes to the grazing leases. I wish you would recommend a fix with your good head. Maybe this is what we could do, is find a way to fix the whole problem.

Maybe we could say we don't have to continue to do them on every lease, but rather on selective ones, one out of ten or something, and try that on and see if we could get something like that passed.

Mr. REY. Or, more simply, on lease renewals where something different is occurring, as opposed to lease renewals that are being renewed without change.

The CHAIRMAN. Yes; or what are we going through it for? Thank you.

Senator CRAIG. Mr. Chairman, thank you.

Senator BURNS. Do you want to complete your statement?

Mr. REY. I was just about done.

Senator CRAIG. Complete your statement, and then we will go into additional questions.

Mr. REY. One of the things Senator Bennett from Utah has observed in the past is that we deal with great issues as well as great diversions. The great issue with regard to the use of our rangelands is fragmentation through conversion to other uses through development.

Years ago, the national forests and grazing lands were buffeted by miles of rural landscapes, and that is not the case today. They are increasingly part of what we now call in the West "wildland-urban interface." In the 2000 census, the five fastest-growing States were Idaho, Arizona, Colorado, Nevada, and Utah. Virtually all of that growth was occurring in the wildland/urban interface. Virtually all of that growth was occurring as a result of the conversion of privately-owned rangelands to subdivisions or to trophy homes.

The real challenge before us today, it seems to me, is to embrace the remaining ranch lands as partners in slowing the rate of development of wildland/urban interface. Within the last 10 years, in the time period between the 1990 and the 2000 censuses, 3.5 million acres of privately-owned ranch lands were subdivided. That in my view is the single most significant environmental concern that we face in large parts of the West. It is a concern that goes to water quality and water quantity debates, fire fighting costs, and a whole variety of land use decisions.

Rather than there being ambivalence about what we must do with regard to the grazing issue, there is, I think, a sense of urgency, both in the Department of Agriculture and the Department of the Interior, that we must do what we can to retain privately owned ranches in ranch family hands. That is what we are focused on, both with the Forest Service and with the Natural Resources Conservation Service, through the prosecution of the grassland reserve and farmland protection programs in the 2002 farm bill.

With that, the balance of my statement speaks to challenges in other areas of the grazing program. We can talk about those in response to your questions. I am finished.

[The prepared statement of Mr. Rey follows:]

PREPARED STATEMENT OF MARK REY, UNDER SECRETARY, NATURAL RESOURCES AND ENVIRONMENT, DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the subcommittee:

Thank you for the opportunity to present the subcommittee with an overview of the Forest Service grazing management program.

The Forest Service has been managing rangelands for nearly 100 years, and has a long history of partnerships with livestock producers who rely upon National Forest System (NFS) lands. In fact, grazing on federal lands was one of the earliest resource debates in America. When the debate raged over whether livestock grazing would be banned from the Forest Reserves, Gifford Pinchot, the first Chief of the Forest Service, argued that grazing be controlled rather than prohibited.

Then, as now, that view was based on scientific range research, first begun in 1897 by the Department of Agriculture in the Cascade Mountains of Oregon. The Forest Service began to implement the concept of a "special tract permit system" and began to collect fees in 1906 that were intended to pay for administration of the permit system. By developing concepts such as carrying capacity and grazing systems involving deferral and rotation, these early range scientists and managers laid the foundation for sustainable resource use.

Livestock grazing on National Forests reserved from the public domain is administered under a number of statutes, including the Granger-Thye Act of 1950, the Multiple-Use Sustained-Yield Act of 1960 (MUSYA), the Forest and Rangeland Renewable Resources Planning Act of 1974, and the Federal Land Policy and Management Act of 1976, among others. The MUSYA specifically provides, "It is the policy of the Congress that the National Forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes." These laws augment the authority in the Organic Act of 1897, which established the Forest Service and directed the agency to regulate the use and occupancy of the forests to preserve them from destruction.

Today, there are grazing allotments on nearly half of all National Forest System lands, approximately 90 million acres of land in 33 states. The Forest Service administers approximately 8800 allotments, which have over 9500 livestock permits, about 9.9 million animal unit months of grazing by cattle, horses, sheep, and goats. Nearly all this permitted grazing is located in the Western states (99%), with only about one percent occurring in the Eastern forests.

TRENDS IN RANGELAND MANAGEMENT

Rangeland is an important component of ecosystem diversity at a national scale. Rangeland health is dependent on sustainable management. The Forest Service works with other land managers to ensure the rangeland is productive for current and future use. Invasions of exotic species, fire, drought, and overgrazing are examples of agents and processes that have occurred beyond their range of historic variation on U.S. rangelands during the past 150 years, and have helped to reduce the productivity of rangelands over time.

One of the biggest threats to rangeland is fragmentation through land conversion. Years ago, the national forests and grasslands were buffered by miles of rural landscape and rangeland. Now they are increasingly part of the wildland/urban interface and development. The Forest Service believes this change has relevance for public lands policy in the future. We want to ensure our policies keep ranches and working forests in operation, to keep the land whole, in the best tradition of conservation.

When properly managed, grasslands and shrublands can contribute to cleaner water supplies, healthy riparian areas and reduced sediment loadings in streams and other water bodies. These lands are vital for the production of forage for domestic livestock and provide forage and habitat for maintaining healthy wildlife populations. These lands also improve the aesthetic character of the landscape, provide scenic vistas and open spaces, provide for recreational activities, and protect the soil from water and wind erosion.

To restore and protect rangeland and grasslands the Forest Service and the Natural Resources Conservation Service (NRCS) are working cooperatively to provide both financial and technical assistance to farmers and ranchers. Through the NRCS Grazing Lands Conservation Initiative (GLCI), owners of ranchland and pasture have developed grazing management plans for more than 80 million acres of grazing land since 1999.

In addition to GLCI, the Department of Agriculture recently announced deployment of a new Grassland Reserve Program (GRP), authorized in the 2002 Farm Bill. Beginning June 30, the GRP will provide cost share and financial incentives to help landowners restore and protect grassland, rangeland, pastureland, shrubland and certain other lands. The program will conserve valuable grasslands by helping main-

tain viable ranching operations. GRP offers producers several enrollment options, including permanent easements, 30-year easements, rental agreements and restoration agreements. The Forest Service will have the ability to hold the conservation easement under this program.

GRAZING PERMIT ADMINISTRATION

The National Environmental Policy Act (NEPA) and other environmental laws require the Forest Service to evaluate the environmental effects of livestock grazing on NFS land before authorizing this activity. Forest Service decisions in this area are subject to administrative appeals and judicial review.

In 1995, approximately 1/2 of all Forest Service grazing permits were due to expire. The Forest Service faced a daunting challenge to complete the NEPA process on these grazing allotments before they expired. In order to prevent a major disruption to livestock grazing on National Forest System lands associated with the expiration of approximately 4,500 Forest Service grazing permits, Congress enacted Section 504 of Public Law 104-19 (the "Rescissions Act").

Section 504 directed the Chief to identify grazing allotments that "needed" NEPA analysis and to "establish and adhere to" a schedule for the completion of that analysis. In early 1996, the Forest Service identified 6,886 grazing allotments on National Forest System lands that needed NEPA analysis at that time and established a schedule to complete these analyses by 2010.

By the end of 2002, the Forest Service has completed NEPA analyses on more than 2,300 of the 6,886 grazing allotments listed on the schedule, or just over one-third of the total required. Unfortunately, it is only about half of the 4,527 allotments that had been scheduled for completion during this time.

In the 2003 Consolidated Appropriations Resolution, Public Law 108-7 (as amended by the 2003 Emergency Wartime Supplemental Appropriations Act) Congress enacted Section 328, which directed the Secretary of Agriculture to renew grazing permits for those permittees whose permit expired prior to or during fiscal year 2003. NEPA analyses would still have to be completed on these allotments and the terms and conditions of the renewed grazing permit will remain in effect until such time as the analysis was completed.

The Forest Service is continuing to complete NEPA analyses at the rate of 150 to 200 allotments per year for those grazing allotments on the 1996 schedule. We remain committed to completing this task without disrupting permitted livestock grazing activities, which consist of family-run operations, seventy-percent dependent on the use of NFS land for their livelihood.

STREAMLINED PERMIT PROCESS

The current decision-making procedure to authorize livestock grazing or other activities on rangelands administered by the Forest Service is inflexible, unwieldy, time-consuming, and expensive. For several years, the Forest Service has evaluated alternative procedures that would satisfy our legal obligations, provide the agency with management flexibility, shorten the decision-making time, and reduce the cost to the taxpayer associated with rangeland management decisions. We believe that this can be accomplished without compromising the integrity of the decision-making process or the condition of the land. The objective of these new procedures will be to protect the public's natural resources and financial interests, while providing equitable treatment for permittees through adaptive management.

Recently, we have begun discussions with our colleagues at BLM and the Council on Environmental Quality (CEQ) to discuss the challenges of complying with NEPA in a timely and effective manner. It has not been unusual for the Forest Service to take two or more years to complete the NEPA process for a single grazing allotment. This is unacceptable. We are considering a number of ideas and plan to develop recommendations for improvement by the end of the year. In this regard, we appreciate the April 7, 2003, letter from seven Senators, including Members of this distinguished Subcommittee, to CEQ regarding the issue of NEPA compliance for grazing permit renewals."

Additionally, the Forest Service is preparing a new chapter in the Forest Service Handbook on rangeland management decision-making.

DROUGHT—FORAGE AND WATER

For the past 5 to 7 years, drought has persisted over much of the Western United States. At present, "exceptional" drought (the highest level) is centered on the panhandle of Utah, Southeast Idaho and Southwestern Wyoming. Radiating from this center, extreme to abnormally dry conditions exist within the Intermountain area,

Southeast Oregon, the Southwest, the Rockies, and large portions of the Great Plains continuing down to the Gulf Coast.

Predictions for this year call for more dry weather throughout most of the West. Although there has been some spring precipitation over wide areas, most of the West continues to have a significant water deficit. It will take a number of years of higher than average rainfall to recover from the drought. In 2002, significant reductions in grazing use on National Forest System lands occurred throughout the Interior West and the Western Great Plains. Although it is still too early to know the full effects of the drought, reductions in grazing use for 2003 could equal those of last year.

The Forest Service has actively coordinated drought management with Federal, State, and local government agencies and officials. The agency is actively participating on national, State, and local drought task forces coordinating drought relief to our permittees. We are working closely with industry representatives to provide upfront information about what we are doing and seeking input from them as to their needs.

Locally, the Forest Service is managing drought impacts on a case-by-case basis. District Rangers and Forest Supervisors are working hard to provide the greatest amount of flexibility to permittees when it comes to changes in their use or impacts to their operations. Local officials are communicating early in the process to ensure the permittee is informed and has enough time to implement temporary changes or a long-term strategy. The Agency is coordinating with universities and user groups to best address the concerns at the local level. The Forest Service will continue to do so until we return to more normal conditions.

In this time of critical forage and feed shortage, the Department is sensitive to the livestock producers' needs while we work to ensure our actions are consistent with the purpose of good land stewardship. The Forest Service will continue to work with permittees, local groups and the State to develop drought management plans and identify restocking criteria where needed.

MONITORING

The ecological conditions of rangelands affect the social and economic stability of many rural communities. To assure these lands are capable of providing sustainable products for future generations the ecological condition of these lands are monitored to specific standards. Implementation and effectiveness monitoring are the two types of monitoring which the Agency uses. Implementation monitoring is an annual measurement of vegetation to assure permit compliance with written instructions for either the permittee, or the Forest Service, or both. Effectiveness monitoring is long-term (every 5-6 years) where vegetation is monitored to assess prescriptions and objectives set forth in Forest Plans, allotment management plans or other relevant documents. Effectiveness monitoring is the basis for determining what if any modifications to the grazing strategy are needed to provide ecosystem sustainability.

On some National Forests there is an established program which encourages the grazing permittee to conduct much of the implementation monitoring. In some instances the permittee, working in conjunction with other Federal agencies, universities and rangeland consultants, have developed a successful, collaborative monitoring program.

The Forest Service is currently working with industry representatives to develop a national Memorandum of Understanding that will improve our cooperative implementation and effectiveness monitoring. This is a great opportunity for both entities to collaborate on long-term goals and objectives for rangeland resources.

Congress, in its FY 2003 House Interior Appropriations Report, asked the Secretary of the Interior and the Secretary of Agriculture to prepare a report on how they would address the long-term monitoring, ecological classification of vegetation and soil survey work which is needed to efficiently address rangeland conditions. The report should be available later this year.

While there have been improvements in rangeland conditions on National Forest System lands since the Forest Service started regulating livestock grazing over 100 years ago we must continue to work collaboratively with our partners to restore and rehabilitate rangeland areas so they may be productive for current and future generations. Managing rangeland resources is an important task for the Forest Service, and we appreciate the Subcommittee's interest in this subject.

COORDINATION BETWEEN THE FOREST SERVICE AND THE BUREAU OF LAND MANAGEMENT AND LOCAL COMMUNITIES

Some National Forest System lands are intermingled with or adjacent to lands administered by the Bureau of Land Management (BLM). The Forest Service is

working with the BLM on common resource issues including grazing use, to improve consistency and resource management across agency boundaries. We have long standing agreements that provide for interagency management and cooperation.

The Forest Service and BLM also have a number of co-located offices operating under the banner of Service First. In these situations, the management official in charge manages both National Forest System lands, as well as BLM lands. In some cases the two agencies entered into an agreement that provides for one Federal agency to manage another's grazing program under their respective authorities.

In addition, there are numerous planning groups helping to manage lands of mixed ownership. These groups include coordinated resource management (CRM) groups, watershed management groups and others. The underlying goal is to manage an area as a landscape.

At the national level, the Forest Service and BLM have been coordinating revisions of our respective manuals and handbooks, with the goal of achieving greater consistency in our grazing programs while being mindful of the different enabling legislation governing our respective agencies. We have been cooperating in the development of standard monitoring techniques, as well as protocols for inventorying rangeland resources. We are working to coordinate the use of data for managing adjacent lands at the local level.

The Forest Service will continue to work closely with the BLM and local communities to manage our Federals lands in a cooperative fashion to ensure the rangeland is healthy, sustainable, and productive.

This concludes my statement. I would be pleased to answer any questions that you may have.

Senator CRAIG. Thank you very much. Mark and Ms. Watson, thank you again. Let me start with some questions. While both of you have struggled with the issue of permit renewal—I guess my first question goes to you, Rebecca. I know this goes back before your time, certainly. How did the BLM get in the situation where it, in 1999, found a spike of 5,000 permits due for renewal?

Ms. WATSON. I think it goes, as you said, back before my time, but it is a combination of completing certain use plans between 1977 and 1983. There was a decision to issue 10-year grazing permits. That was combined with a decision by the Interior Board of Land Appeals on the NEPA issue.

Those things came together and created a high backlog. In 1999 and 2000 alone, some 7,200 of BLM's total 18,000 permits expired. I think that the BLM initially took a random approach, taking care of these grazing permits kind of as they came up. That wasn't efficient, and in fiscal year 2001 BLM took a watershed-based assessment strategy and focused on high-priority areas and areas where there are good skills to get those permits processed in a more timely manner.

We think we are making a lot more progress. As to Senator Domenici's question as to when we might be done with this process, we look to 2008, fiscal year 2008. We believe all the permits will be completed by then and that we will then be in a place with this strategy to address the permits coming up in 2009, and not get in the same situation because we have done the NEPA, and we will be able to move forward better.

Senator CRAIG. What you are telling us, in essence, is you have a plan. It is my understanding the Forest Service doesn't.

Mr. REY. No, we have a plan. The question is what path we take. When we try to—

Senator CRAIG. You are not yet executing a plan, then?

Mr. REY. No. We are catching up, but we are not catching up fast enough to meet—

Senator CRAIG. To be done by 2008?

Mr. REY. To be done by 2010, without two things occurring. One is a devotion of significant additional resources to do that task, and only that task; and/or, two, ameliorating some of that by expediting some of the procedures we are operating under now.

I suspect it will end up being a combination of the two. I think that it is incumbent upon us to see if we can result in some improvements in these procedures so the money that we do add to this effort is spent more wisely than would otherwise be the case today.

Senator CRAIG. My time has just run out, or nearly. I want to turn to my colleagues here. I ask this question of you, Rebecca. You have a plan in place and you are executing it. You think you will be complete by 2008. Has this backlog, and your effort to push it out of the way by doing the things you are now doing, damaged the agency's ability to conduct other aspects of rangeland management in the program?

Ms. WATSON. Yes. I think there is no question that it has, similar to Mark's answer to Senator Domenici's question. This paperwork requirement takes resources away from on-the-ground improvements for the monitoring and some things that really make a difference, both to the public that is interested in public-land grazing, and to the ranchers themselves. It has impacted our ability to do something that I think really makes a difference to the landscape we manage.

Senator CRAIG. If there was one consistent theme we were hearing throughout our hearings in Idaho last month, it was that all of the Forest Service and BLM folks in the most part are in the city, are in the office doing paperwork, not out on the ground working with the permittees, monitoring and managing. I think that speaks to the problem that we have at hand here. I will turn to my colleague from Montana, Mr. Burns.

Senator BURNS. Thank you, Mr. Chairman. Mark, you have been down there at the Department of Agriculture now, and you can tell me if I am all wet or not. But I will tell you, every time I had a little meeting or we have a little situation and we call agencies out, we take a look at a river or something, they all have new pickups. Everybody shows up and everybody has a pickup. I have never seen two of them in one pickup yet.

Then they say they are not getting their work done. You always come up here and ask for more resources or more money to complete what we should be working on, and it still doesn't happen, because somebody gets a better idea: maybe we had better be working over here. I never see any—their shirttails are pretty close to the backside. That is what kind of worries me a little bit, because I don't see these people working. I just don't.

I think if you could give me some people—of course, they go to work at 8:30, and I will tell you a story about that—and they go home at 4:30 or 5 o'clock. I don't understand that, when we are paying them by the month. I would work them a little longer, I think. Let me talk about this.

The Horse Butte allotment up in Yellowstone Park, you are pretty familiar with it, and of course we are to in Montana. Give me your educated guess on that. Would it be beneficial to implement a categorical solution on permit transfers and renewals?

Mr. REY. I think that where nothing else is changing except where we are renewing a permit or transferring it to a different owner who is going to manage it in the same way, that that is the kind of government action that NEPA contemplates could be covered by a categorical solution.

So yes, I think that is one of the things we are looking at. The important caveat there is that nothing else is changing on the ground; it is simply a ministerial action to renew a permit or to transfer the ownership, the title of the permit, from one owner to another.

Senator BURNS. When we are going to use it for the same use under the same conditions and we have monitoring plans in place, there has been no abuse on the range, I don't know why we have to jump through all these hoops. I don't understand that at all. Rebecca, we worked out in—Julie, when did we do the search—

Ms. LAPEYRE. 1996.

Mr. REY. 1996.

Senator BURNS. It was before then, wasn't it? It doesn't make any difference. We worked out a cooperative plan between the grazing, BLM, and the Forest Service on your plan like you've got here on the conservation partnerships, sustaining working landscapes, and this type of thing.

I would hope that you would familiarize yourself with that agreement up there, because basically I think that has been a working kind of a model that we can use for the grazing industry. Part of that was in Silver Bow County, part was in Beaverhead County. It worked pretty well. It is still working today.

In fact, they worked all that out up there with the Smiths. I would familiarize yourself with that allotment. Maybe we can sort of make it work. I am aware that the BLM has been restructuring certain parts of their grazing policy and want an update of how the process is moving along. Can we expect—what can we expect at the end of the day?

Ms. WATSON. As I said, we did an announcement of proposed rulemaking. We threw out some questions. We had more from the public. I would say that the ranching industry and community supported that type of a proposal being addressed in our rulemaking.

I believe our proposed rule, which will go out again for comment, will come out by the end of this year, so we would put that out for comment along with our draft environmental impact statement. So I think that our schedule, November—by the end of September.

Senator BURNS. Do you think there will be any loss of AUMs at the end of this, if the rules that you are proposing go in? Do you think there is a chance for a loss of an AUMS?

Ms. WATSON. That is a hard question to answer, I guess.

Senator BURNS. It sure is. Just take an educated guess.

Ms. WATSON. These rules and proposals are designed to keep people on the land and to manage the land in a better way so we can keep these ranching families on the lands. There has been no analysis of whether AUMs would be lost or gained, but the idea is that we support the ranching industry. That is the focus, as I said, is how do we keep them on the land and fulfill their responsibilities on range health.

Senator BURNS. We talked a little, but I want the record to note I had a good friend who was in the sheep industry in Big Timber, Montana. What it is about is controlling the fuel load on our forest floors for fire prevention. We can't prevent all the fires.

Tommy Thompson—he ran the thing up there for a long, long time. He will tell you, and I think a lot of other people will tell you, if there is a very active grazing program on our forest lands, there are less fires. It is one way to control the fuel load on the forest floor, and especially in the meadows and this type of thing.

I would suggest that be put somewhere as a working tool to control fuel load and this type of thing. I want to work with you on these renewals, but I am always a little skeptical about the loss of AUMs. I think we ought to work a little more on what we did up there with those joint agreements. In other words, are there some areas where maybe some years the entire pasture will be rested, won't be grazed at all?

If grazers know and there is a rule and a guideline to follow, they can work within those guidelines; but they have to be consistent in the long term because they can't change their plans in a year's time. I just look forward to working with you on those rules and on the categorical exclusions. We ought to take a look at that.

Senator CRAIG. Conrad, thank you. Let me turn to Senator Craig Thomas.

Senator THOMAS. Thank you, Mr. Chairman. We had a meeting this morning with the conserve ecosystems operation. That is the private universities and so on working with the agencies. Has BLM or the Forest Service worked with them in terms of helping get scientific information and private sector input?

Ms. WATSON. I don't recognize that name, but I recognize the description. The answer would be yes.

Senator THOMAS. I would hope so, because it seems like that is always what we hear: well, we don't have the manpower to do this. They aren't able to do the NEPA, EISs, and all those things. This is an opportunity, I think, to be able to get some other kinds of assistance. The administration is committed, aren't they, to having more local input into decisions that are made in the country?

Ms. WATSON. Yes.

Senator THOMAS. Do you think that is happening?

Ms. WATSON. I believe so. I think we are making an effort. Like any effort, people might find it falls short in one instance or another. But I think when I learn of that, I try to address it with clear communication.

For our Secretary, that is the theme of her tenure: communication and consultation. We are making a strong effort. We are working with our publics to improve that communication. We have come up with a nationwide response towards addressing invasive weeds, and trying to work with them and get that local input. That is one tool we use.

Mr. REY. What we have tried to do, particularly in States where we have drought problems, is to utilize the expertise of universities, State agriculture agencies, the Natural Resources Conservation Service, the Agriculture Resources Conservation Service, and local soil and water conservation districts to work with us and our permittees to do a better job of evaluating what the implications

of drought are going to be and where we will have to make some shifts. We have committees of that nature operating now in North Dakota, in Idaho, in Arizona, and in New Mexico.

That is proving very helpful. They are all public employees, so in a strict sense it is not an advisory committee, but they come from different perspectives with a lot of State and local on-the-ground experience.

Senator THOMAS. That is good. But I do hear fairly consistently from people on the ground that what we talk about here in terms of policy doesn't always show up on the ground.

For instance, I am told that this last group of hearings—they were not hearings, but meetings, on the working landscapes—there was no input asked from the grazers; that all they did was listen to what the BLM was going to do. The reserve common allotment would allow grazing lands to be improved. Where would they find the reserve allotments?

Ms. WATSON. First, I would like to respond to your question about whether or not we were reaching out to other folks. Jim Hughes, who is with me here today, the Deputy Director of the Bureau of Land Management, personally attended most, if not all, the sessions reaching out to the public. The intent of the multiple sessions we had on the policy proposals we made was to solicit input from people around the West on this issue, so we intended to get comments. We received comments on those proposals.

Reserve common allotments are commonly known as grazing banks. In fact, I saw one working up in Cody, Wyoming. That is where some of these have come from, from on the ground, where people are finding solutions to problems. Here they worked with a partner, in this case I believe it was the Nature Conservancy, who worked with the Hart Mountain Ranch to purchase some land. They had some goals they wanted to do.

The ranch was having trouble with grazing. They were able to rest the land, move the cattle over to the property owned by the Nature Conservancy, and they all received a benefit. So the idea, again, is as we get lands—and there could be grazing groups, associations that have some lands—it is a safety valve.

Again, perhaps a piece of public land, ground, is in need of some rest. We want to be able to find a safety valve so we can move the cattle somewhere else, so we don't have to take nonuse and the rancher doesn't have to take the impact of the loss of income.

Senator THOMAS. That is great if you have an alternative; but in most cases there are no alternatives, there are no allotments. That seems to be the problem.

Ms. WATSON. I think we feel there are alternatives out there. There is a lot of movement and change in the ranching communities now. For good or ill, there are a lot of sales, people getting out of the ranching business. There are opportunities to find partnerships there where we can work together.

We think it is a useful tool. Again, it is a voluntary tool. If it is not workable in a certain situation, then it is not workable. But where it is, it can provide relief and make a difference to a rancher who is trying to continue in the business.

Senator THOMAS. Conceptually, it is a good idea, if there are resources available to do that. Let me say, the person who was there

did a good job with very limited information available to him, because—apparently during the meetings he had been provided with much information but was not able, then, to "exchange it." These were the hearings that took place there.

Ms. WATSON. I'm sorry for that.

Senator CRAIG. Thank you very much. Rebecca, you mentioned in your testimony that—it goes back to what Senator Thomas was just talking about—the public comment period was not as good as it could have been. I think those were your words. I happened to write them down as you said them. What would you have done differently, if they were not as good as they could have been?

Ms. WATSON. I think we could have done a better job of reaching out to folks simultaneously as we put these proposals out. The way I have described it, it is sort of the chicken and the egg. We could have gone out and said that we were looking at a plan to make policy changes to improve your ability to stay on the land, and, "Give us your ideas." Or we could have done what we did here, that "These are some proposals.

What do you think of them? What other ideas do you have," to kind of get the ball rolling. That is what we chose to do, but that seemed to get us started off on the wrong foot, so we are trying to now reach out. I personally am sending Mr. J.O. Ratliff, who is my special assistant, to many grazing meetings around the Western States to explain these proposals better, solicit input, hear the concerns, and try to improve the understanding of what we are trying to do.

Again, we are not trying to take people off the land. We are opposed to that. We want to keep ranching on the land for the reasons that Mark described. These are our open space stewards. They take care of our wildlife. They provide water for the wildlife. We think they have a valuable role in public land management. We are trying to think of ways to keep them there. You know better than anyone the opposition that is out there, and how do we give our ranching community the tools to stay on the land?

Senator CRAIG. I would agree, there is opposition. There is outright radical opposition that believes there ought not be any livestock grazing on any public lands. I understand their position, but I very much disagree with them. There is also a growing belief out there that the fragmentation that is going on, the urban-wildland interface that is occurring, in part is a product of such dramatic reductions in AUMs that you have destroyed the economic viability of the ranching unit.

There is a margin of operational viability. Once that is destroyed, the ranch goes, and the private land goes into some other use, or it is broken up. So when you talk to us about a new plan, a reach-out, an effort to devise a variety of things, and yet you cannot make the statement, when asked the question by Senator Burns, that you don't know if this will result in the reduction of AUMs—the reduction of AUMs destroys the economic viability of the operating unit that results in the fragmentation of the very land we are concerned about.

I would have hoped that a stated goal, while it would have been risky and bold and criticized, would be no reduction in AUM. We have gone from 18 million AUMs for BLM in the 1953 to 8 million

in 2003; from 9.5 million in 1993 to 8 million in 2003. The name of the game in range management for all these years has been get rid of the numbers, get rid of the livestock.

Now, a variety of other things have been applied underneath, some of them productive, such as rest and rotation. Those are all combinations of the way we utilize the resource itself. But the end product of those efforts has been the very frustration we have today. What did I do a couple years ago?

I hustled around here and got some money to go out and acquire a chunk of private land of a ranch to turn it into public land, so that I wouldn't destroy or we wouldn't destroy the winter migrating pattern of mule deer down in Caribou County, Idaho. Why was that pattern being destructive? Because the ranch that sustained that pattern by openness and connectivity of the State, Federal, and private land was being subdivided because the ranching unit was no longer viable, because its AUMs had been cut 75 percent in 20 years, the Forest Service and the BLM. As a result, the mule deer were stacking up on fences in the winter migration.

The Nature Conservancy and Safari Club, International, were frustrated and concerned. In an address—in an effort to sustain that wildlife pattern, we had to go out and acquire the private land in a State that is 63 percent public land to do that. That is my great frustration. My question of you, then, Rebecca, would be this.

I know the BLM has annual reports on its performance and accomplishments on rangeland management work. Could you please provide for the committee a comparative analysis in a table format of the BLM's accomplishments in range programs for each year of the past 20 years? And here we go, me criticizing you people for being in the office instead of being out on the range. But I am quite concerned that those in these offices here don't get to a range, except during August recess and other times. Their job here isn't range monitoring.

Could you give us some kind of comparative analysis of the annualized work that goes on or has gone on in relation to the program? I think that would be extremely valuable.

Ms. WATSON. Yes. I would be happy to do that.

Senator CRAIG. Mark.

Mr. REY. I think we can do the same thing.

Senator CRAIG. We would like the same thing from you. But more importantly, do you have in place, or are you working on to put in place now the same kind of program that BLM has in the context of time lines and certainty, or relative certainty, as to when we get these permits restructured and issued?

Mr. REY. We have the same time line. My problem with the time lines is that it is predicated on an increase in resources that I am not convinced is the best way to proceed. What I am interested in doing is exploring with the committee and others ways that we can accelerate the rate of achievement of that time line at lower cost. I would like to be able to reprogram that cost back into the actual on the ground work.

Senator CRAIG. We would like to accomplish that, too. But in the meantime, and during the time of the process—

Mr. REY. We will send you that, along with a comparative analysis.

Senator CRAIG. I have other questions, but Senator.

Senator THOMAS. Just a couple. Mark, this permitting process seems to have been—continues to be one of the problems, the time it takes. I think you indicated 68,000 or something to do it? Is that something that ought to be changed in the regulations or in the law that could be—where you could continue to do what we should be doing to conserve the resources, but do it more efficiently?

Mr. REY. The principal things we need to look at are the amount of time and effort we are putting into environmental analysis on renewals where nothing is changing. I question whether that is the wisest expenditure of the time and money that we have available.

What I want to look at is ways to accelerate that part of the work so I can devote the money we do have to portions of the work where the analysis is actually going to achieve a tangible, desirable result.

Senator THOMAS. It looks like the allotments could fall into different categories, and those categories receive different kinds of——

Mr. REY. Yes.

Senator THOMAS. Is it the NEPA requirement that is so burdensome?

Mr. REY. That is probably the largest burden of the time and resources. It is not the only one, but it is one of the ones that is most amenable to the development of different procedures than the ones we are using now.

Senator THOMAS. Do you have any thoughts, Rebecca—are there things that ought to be changed, either by the Congress or by the regulatory agencies, that would speed up the work and still allow it to accomplish the tasks?

Ms. WATSON. I think that is something that we are looking at in the Department of the Interior, and together with the U.S. Forest Service, taking a look at how we can work more efficiently with NEPA. We are examining that issue right now. I think there are always ways to improve NEPA implementation.

We have demonstrated some of those in the healthy forest initiative. I think there might be similar efficiencies here. I would get back to the point that Mark made earlier, that we are doing a lot of paperwork here. Meanwhile, there are concerns about the landscape. Couldn't we put our efforts better into monitoring and doing things on the ground that matter, rather than going through paperwork?

We are in the situation that we are in. It is not really helping what everyone on both sides says they are concerned about, which is the health of the range. I guess—do we really want to make a process that doesn't result in a good end product more efficient? Maybe that is where we are, but it would be nice if we could put our money on the ground.

Senator THOMAS. It would be nice if we were not driven so much by lawsuits, too.

Ms. WATSON. That would be a happy world.

Senator THOMAS. Indeed. Mr. Chairman?

Senator CRAIG. Thank you very much, Craig. To paraphrase one of the ranchers in Challis, Idaho, last month, put a BLM person in the pickup beside me, or on a horse beside me, as often as you

can, and we will work out a way to improve this range and still raise cattle on the range. I thought that was a phenomenally common-sense statement.

He said, we want to do it right, and we want to make sure that when we do it, they see that we are doing it right, instead of to come out here with a yardstick and return and say, whoops, the grass stubble is just a certain height, and it is in violation thereof.

Get the cattle off. It is not day-to-day management as much as it is long-term goals and some practices that combine to produce quality range. We have got to get more people on the land working with these ranchers and a consistency of policy. That was heard throughout, that concern, throughout these hearings.

I think that was most valuable. Both of you have stated that your folks are in the office shuffling papers at a very high cost to the environment, interestingly enough, and the rangeland, or the resource itself, in many instances.

That shouldn't be the case. A question probably of both of you: Some environmental groups have suggested establishing a process that would allow them to purchase a grazing permit from a rancher with the grand design to then permanently rest that allotment. How would you respond to this kind of a proposal? I ask that of you, in the first part, Mark, and then Rebecca. If you would respond, please.

Mr. REY. There are instances in specific areas where we may be trying to achieve an individual land management function that justifies retiring a lease. I think in the case of BLM and Grand Staircase Escalante there was some justification.

The proposal that you are referencing, however, is a broad and generic proposal that asserts as its basic premise that our wildlands will be better off if we can successfully and perhaps more humanely reduce the number of ranchers that we have out there. As a general proposition, it is one of the stupidest ideas that I have ever heard.

I have heard a lot of stupid ideas, including a few that I have advanced. Because once we have accomplished that objective, we will have the rancher, who we have bought out, with little or no choice but to sell his base property to the first subdivider or trophy home developer who comes down the road. And I have to ask myself, what have we gained in those transactions?

Senator CRAIG. Rebecca.

Ms. WATSON. I would echo what Mark said. I think it is a stupid idea and a nonproductive idea, simply from a fiscal sense. It is some $2.2 billion to accomplish their goal, and in the end it is a result that they should not want.

Again, removing ranchers—public land grazers from the land results in negative impacts. It results in a subdivision that is there forever. Mines, timber, grazing, those are temporary uses. A subdivision lasts forever. A Wal-Mart is there for a long time. That is habitat that is lost. That is recreational land that is lost. That is land—empty space that we from the West love just seeing empty.

So that is not a result that anybody should want. It is not a result that we want at all. We believe the Taylor Grazing Act—if your land is in a Taylor grazing district it is designed to be grazed. Certainly, you can relinquish your permit; but as for permanent re-

tirement, that is something that cannot be done by the BLM. We believe it can only be done by Congress.

We believe you can retire land for a period of time through a land use plan amendment, but again, the ultimate goal is bringing the land back to grazing health. I would take the opportunity to clarify my answer to Senator Burns. Even though I am from Montana, I had a hard time following his question.

The premise of my statement was that we want public land grazing to last. We understand the connection between AUMs and financial viability. What we have found when you do some rest/rotation—and all of those tools that I mention in my policy are basically various forms of rest/rotation. It is designed to bring the land back to health so it can take more AUMs. This is the example I cited to him in Wyoming.

That is what happened there, that more AUMs were put back into that ranch property. That is our goal, to have sustainable ranching. I just wanted to clarify that.

Senator CRAIG. Thank you, Rebecca, for doing so. I know one of the great concerns among the livestock and public land grazing industry is that once off the land, never again to come back. While many allotments have gone into rest or AUMs have been turned back—and there is phenomenal flexibility out there on most rangelands today to rest and move livestock elsewhere, assuring them the same AUMs within a reasonable distance of the operating base property.

But I think that is the greater concern, that once off the land, never to return. There is about 30 years of history to cause that feeling to exist against public land—with public land grazers. I think that is the concern that you will find, in the pushback, if you will, unless there is flexibility in the program to move that livestock elsewhere and sustain the AUM while you are offering the rest, the flexibility, and maybe the rehabilitation in the given property.

Mr. REY. I think we will have the opportunity to prove our intentions if, Lord willing, this drought does start to reverse itself, because many of our permittees have taken voluntary reductions in the face of the extreme drought conditions based on the promise that when those conditions turn around, that those AUMs would be restored.

We intend to restore them when the range and drought conditions improve.

Senator CRAIG. That will be an opportunity. We certainly hope in certain areas of the Southwest, especially now—we got some turnaround on the western side of the Great Plains area, in the State of Idaho. Parts of Montana and Wyoming have improved dramatically, but it is not the case in Arizona and New Mexico.

Let me close by this observation. It occurred to me about 4 or 5 years ago—I happened to be out in south central Idaho in the Shoshone district of the BLM having meetings, doing a town meeting or something, and it was a late August afternoon.

It was hot, and, quite typically, a thunderstorm developed. Lightning struck, and a range fire was started. It started on an allotment, or actually, two allotments where the livestock had been

taken from them 7 or 8 years before, and the allotments had never been touched.

They were wading in grass. They were beautiful, no question about it. The riparian areas, the willows, the water was all there. Five years later and 175,000 acres later, nothing was there. All of the riparian zones, all of the willows were burned to little piles of ashes as that fire roared through there, so hot and so aggressive that Shoshone district would not put firefighters on the ground.

The only thing that stopped the fire as it rushed from west to east that afternoon was the highway that goes from Twin Falls to Sun Valley, and that highway stopped it for just a few moments. It jumped that highway and went on for another 25,000 acres, until it hit nothing but lava rock, and it finally stopped. All of the rest/rotation, all of the effort to rehabilitate that rangeland, disappeared in one firestorm.

While grass can come back, the ability to bring those forests back and to bring the riparian area back took a decade, in a semi-arid high desert environment of that kind. To me, that was the best example of the worst example, or the worst example of the best. While moderate grazing would have not allowed the fuel buildup that occurred, and the total wipeout of the resources—of course, that is now getting played out in another dramatic way in Arizona and New Mexico, as we speak.

As Mark knows, this relates to Forest Service management, and all the fuel-loaded lands of the Forest Service that are timbered. Sometimes the best thought-out ideas, when carried to the extreme, create some of the most difficult, if not impossible and destructive, situations. What was beautiful in the morning of that day was destroyed for decades in the evening of that day. There was no middle ground. Mother Nature at her best did her worst.

Thank you all very much for coming. We will work closely with you on these, certainly both with you, Rebecca and Mark, where we can help adjust, create flexibility, create some exclusions where it fits appropriately, where we can sustain it in rulemaking and sustain it before the courts.

I am quite confident some of these efforts will be challenged. They are not radical, but they are certainly opposed by some. But it is clearly worth trying because failing to do so is, in my opinion, not going to reverse or neutralize the decline in the livestock numbers that I have talked about here that have occurred over the last good number of decades.

We would like to sustain for the West, and especially for the rural West, a livestock grazing industry. We think it is important to our States and to the people involved. We think it is important to the economy of the country to be able to do so.

We also believe it is a very important management tool of the lands in question and the resource we are concerned about. Thank you for coming today. We appreciate your time.

(Whereupon, at 4:05 p.m., the hearing was adjourned.)

APPENDIXES

APPENDIX I

Responses to Additional Questions

[Answers to the following questions were not received at the time this hearing went to press.]

QUESTIONS FROM SENATOR WYDEN

Question. Interior Secretary Norton recently sent a letter to the Grand Canyon Trust stating her support for private interests to "retire" grazing permits for conservation use. A few years ago at the Oregon Cattlemen's Association annual meeting in Hood River, I endorsed an approach where ranchers and conservation groups can collaborate rather than fight in court. What progress are your agencies making to actively support collaborative efforts throughout the West and in Oregon?

Question. Assistant Secretary Watson, in spite of Secretary Norton's letter, I understand these collaborative efforts are being hindered because of Interior's reluctance to recognize these willing-buyer, willing-seller transactions; consequently, potential fenders are unwilling to put up the money for the permits. Can you explain this behavior?

QUESTIONS FROM SENATOR DOMENICI TO MARK REY

Question. Unfortunately, I have heard a lot of frustration from ranchers in New Mexico in their dealings with Forest Service. I am particularly concerned with what is happening on the Gila National Forest. It's my understanding that about 85% of the Forest was grazed at one time. Environmental groups have applied strong pressure to remove grazing in this area. I'm hearing that there has been an 87% reduction in AVM's in areas bordering the wilderness and a 33% reduction in other areas.

1. How does the Forest Service justify an 87% reduction in and around the Wilderness portion of the Forest when the Wilderness Act says that grazing in Forest Service Wilderness "shall be permitted"?
2. Is there a scientific basis for this degree of reductions?
3. If so, can you have your staff provide the Committee a summary of this data and the rationale for these reductions?

QUESTIONS FROM SENATOR CRAIG TO MARK REY

PERMIT RENEWAL

Question. Your testimony would indicate to me that the Forest Service has yet to figure out how to address its backlog on permit renewal. Its now been eight years since the Recision Act passed, and it appears that little progress has been made. Can you get a Forest Service strategy in place within 60 days for completing this backlog?

SAWTOOTH NATIONAL RECREATION AREA

Question. In April, Federal District Court Judge B. Lynn Winmill renewed an injunction protecting wolves on public lands in Idaho's Sawtooth National Recreation Area.

1. Is there flexibility within this court order for the SNRA to work with the grazing community to find acceptable methods for protecting livestock from predation?
2. Do you believe the SNRA will be able to complete NEPA in accordance with the schedule ordered by Judge Winmill?

3. If not, what steps will the Department take in response to the order?

SUPPLEMENTAL QUESTIONS ON THE JUNE 25 GRAZING HEARING

QUESTIONS FROM SENATOR CRAIG TO REBECCA WATSON

MONITORING

Question 1. With your staff committed to addressing the permit backlog and lawsuits. How much effort is actually being directed toward range monitoring?

Question 2. I would be interested in learning about BLMs lawsuit situation the effects grazing. I know much of this information is difficult to track but can you provide me information as to:

—How many lawsuits?

—How much is spent annually responding to this litigation, including additional workload imposed by court orders?

—Identify where the funds come from to address the cost of responding to litigation?

—What impact do these costs have on the BLM's on-the-ground management capability?

APPENDIX II

Additional Material Submitted for the Record

STATEMENT OF AMERICAN FARM BUREAU FEDERATION

The American Farm Bureau Federation (AFBF) is pleased to offer this statement for the hearing record. AFBF's membership includes most of the livestock producers in the United States, including those who graze livestock on federal lands. Our members graze livestock on lands managed by both the Forest Service and the Bureau of Land Management (BLM).

AFBF has been a full participant on behalf of our members in the debates surrounding livestock grazing issues. We were a plaintiff in the landmark litigation, *Public Lands Council, et. al.* v. *Babbitt*, which challenged the controversial "Rangeland Reform" grazing regulations all the way to the U.S. Supreme Court. We have actively sought relief to the dilemma of trying to timely address grazing permit renewals that plague both the Forest Service and the BLM. We have been actively engaged with the Forest Service and the BLM on a number of grazing issues that affect our members.

There have been a number of livestock grazing issues that have arisen over the course of the past few years. We would like to present our views to the committee on some of these issues.

1. Grazing Permit Renewal

In the mid-1990's, both the Chief of the Forest Service and the Director of the BLM directed to their field level staffs that documentation required by the National Environmental Policy Act (NEPA) had to be completed before livestock grazing permits held by area ranchers could be renewed or transferred. At the time, both agencies were facing a significant number of permits expiring during that year.

Both agencies quickly realized that they were not going to be able to complete NEPA documentation for all of the expiring permits, meaning that they could not be renewed. Innocent ranchers who had complied with all the terms and conditions of their permits and who had done nothing wrong, suddenly found themselves facing the loss of permits because the issuing agency could not complete the required paperwork.

Congress came to the relief of the ranchers and the agencies, albeit via different routes. In 1995, Congress required Forest Service units to establish a schedule for completion of NEPA documentation for their permits, and allowed permits expiring before the scheduled NEPA work to be renewed on the same terms and conditions as the expiring permit, pending completion of NEPA work. For the BLM, Congress added a similar provision in the Interior Appropriations bill, which allows for renewal of that provision one year at a time as necessary. The American Farm Bureau Federation strongly supports both of these provisions.

Both agencies found it more and more difficult to meet their NEPA obligations. Budgets for range were slashed. Agency manpower was reduced. Forest Service range personnel were cut by nearly half in the eight years since the Rescissions Act schedule was enacted, and the remaining agency personnel were often pulled away from their range duties for other duties, such as wildfire control.

The result was that the agencies could not meet the obligations imposed during different times. The Forest Service fell behind on its 1995 schedule, and once again innocent ranchers faced the loss of their permits despite having done nothing wrong. Farm Bureau strongly supported the inclusion of a provision in the 2003 Interior Appropriations Act that treats permit repeals for the Forest Service the same as those for the BLM.

Farm Bureau views the 2003 Appropriations Act provision as a temporary fix to resolve a situation that is outside the control of either the BLM or the Forest Service. As scarce resources and manpower shift from one area to another within the agencies, it becomes increasingly difficult for them to maintain NEPA compliance

on expiring or transferring permits. The continuing provisions in the Interior Appropriations bill are necessary to protect permittees until the agencies can catch up with their NEPA work, their NEPA responsibilities under current funding and manpower constraints.

We also advocate streamlining NEPA procedures so that livestock grazing permits can be more expeditiously renewed or transferred. We believe that categorical exclusions from NEPA documentation for certain types of grazing permit renewals or transfers should be explored. We will work with the agencies and/or Congress to accomplish these.

2. Proposed BLM Revisions to Grazing Regulations

In 1994, Secretary Babbitt significantly amended the BLM grazing rules. These amendments, among other things, eliminated the statutory concept of "preference" as an adjudicated right. Another amendment eliminated permittee of range improvements that they had built and paid for. They also would have allowed for entities to purchase and retire grazing permits by allowing "conservation use" of allotments as a permitted use. All of these changes adversely impacted ranchers.

AFBF and livestock organizations challenged these amendments in court. The case was heard and decided by the Supreme Court.

An Advance Notice of Proposed Rulemaking (ANPR) to revise the grazing regulations was published earlier this year. AFBF strongly supports these revisions to eliminate the unworkable and unfair amendments promulgated in 1994. Attached is a copy of the comments we submitted on the ANPR.

Restoring an ownership interest in range improvements will allow ranchers an increased opportunity to obtain operating loans from their banks by allowing such improvements to be listed on their balance sheet. Restoring the full meaning of "preference" will restore the full amount of grazing opportunity as contemplated by the Taylor Grazing Act. Elimination of "conservation use," struck down by the Supreme Court, will retain grazing permits for grazing purposes.

Our positions on other proposals is contained in the attached comments.

3. Reserve Common Allotments

One new idea that would be incorporated into the revised regulations is the concept of a reserve common allotment. A reserve common allotment program would provide for unused allotments in an area to be available for use by permittees whose own allotments have suffered damage from wildfire, disease or pests, or is being restored. It would provide flexibility for both ranchers and the agency by providing alternate forage for ranchers and encouraging the restoration of allotments by the agency.

AFBF generally supports the reserve common allotment concept under appropriate circumstances, which include:

- Reserve common allotments should come from vacant or unused allotments, and not from existing permittees being removed from their allotments.
- Reserve common allotments might be taken from allotments where the permittee elects to take non-use, so long as the consent of the original permittee is obtained and agreement for compensation or maintenance of the allotment is made.
- Permittees who use common allotments, or who allow their allotments to be used as such, should not lose their water rights for lack of beneficial use.
- Reserve common allotments should be available only to qualified BLM permittees whose own allotments have been damaged by drought, fire or pests, or which is undergoing restoration.
- Reserve common allotments should be grazed at current carrying capacity, and not used as a subterfuge to reduce or eliminate grazing in an area.
- Reserve common allotments should not be used as an excuse for entities not engaged in the livestock business to purchase associated base property and turn the permit over for light or no grazing.
- There should be a limit on the amount of reserve common allotments within any given area.
- Reserve common allotments should not be permanent.

4. Working Landscapes Proposal

Together with the ANPR on revisions to the grazing regulations, BLM announced a program it calls "Working Landscapes." BLM sees this program as a voluntary way for ranchers and the BLM to jointly provide increased enhancement for other values, such as wildlife habitat.

The "Working Landscapes" approach currently would provide such incentives through conservation partnerships, conservation easements, mitigation for endan-

gered or threatened species, or voluntary allotment re-structuring to reduce overall grazing pressures.

"Working Landscapes" should provide a number of tools to achieve conservation ends, not be the only way to achieve them. For example, the BLM proposal to obtain conservation easements in exchange for checker-boarded BLM land should also include an option for the rancher to purchase the BLM land as well.

We do not oppose truly voluntary agreements entered into by ranchers with the BLM. Ranchers wishing to engage in conservation measures with the BLM on a voluntary basis should be given the tools to do so.

5. Livestock Grazing as Part of the Healthy Forest Initiative

We believe that livestock grazing can be an important toll in implementing the administration's Healthy Forest Initiative. The initiative is designed to reduce fuel loads on our nation's forests and rangelands in order to prevent the likelihood of catastrophic wildfires.

Livestock grazing is useful in reducing fuel loads on rangelands, and it also helps to eliminate certain harmful invasive plants. We urge the Committee and the agencies to consider livestock grazing as a tool that might be used in fuel reduction or restoration projects as part of the Healthy Forest Initiative.

These are some of the main livestock grazing issues that affect our members. We appreciate the opportunity to present this statement, and look forward to working with the Committee to resolve these issues.

To Whom It May Concern:

The American Farm Bureau Federation is pleased to offer its comments on the Advance Notice of Proposed Rulemaking and the scoping request for preparation of an Environmental Impact Statement (EIS) on changes to grazing regulations in the lower 48 states.

The Bureau of Land Management (BLM) will develop an Environmental Impact Statement (EIS) in connection with a proposed rulemaking to amend its regulations relating to livestock grazing. The agency has listed a series of subject areas that will be considered for the new rule. Unfortunately, the agency has provided no further explanation of these subjects or any further indication of what changes they would like to make.

Farm Bureau members graze livestock on lands managed by the Bureau of Land Management, predominantly in the Western United States. The passage of the Taylor Grazing Act in 1934 prescribed an orderly method for allocating forage on public lands to be administered by BLM. The purposes of the Taylor Grazing Act were to protect grazing resources, and stabilize the Western livestock industry. Grazing districts were established in many parts of the West. Grazing was determined on the basis of "preference," which gave those who historically used the land and lived and ranched near the federal lands the first right to secure newly-issued grazing permits. Grazing preferences were adjudicated in each grazing district throughout the West. Ranch units in the West are comprised of privately owned lands and also federal grazing permits to graze livestock on federal lands. Ranchers relied on grazing preferences, and also rely on the public lands to make their ranching operations viable.

The system had worked reasonably well for 60 years, when Secretary of the Interior Babbitt drastically changed it. "Preference" was replaced with "permitted use," which stripped permittees of the benefits of their adjudicated forage amounts. Range improvements that permittees funded and built were taken away from them, with title vested in the United States. Grazing permits were given to entities that had no interest in using the lands for livestock grazing, and regulations allowed these entities to put the allotments into a permanent non-use category of "conservation use." Surcharges were levied on permittees who subleased their allotments to their neighbors in need of forage.

The system that had been in place for 60 years was suddenly thrown out of whack. Change is needed to restore the balance and to stabilize a livestock industry that has been devastated by drought and low prices.

We support the efforts of the BLM to amend the grazing regulations. Changes are needed to make the grazing regulations more workable for all concerned parties. We believe, however, that regulatory amendments should go farther than those subject areas set forth in the Advance Notice.

Reserve Common Allotment. This new concept proposed by BLM would develop a system of BLM lands held in reserve, to be allocated for use by livestock permittees whose allotments are unavailable due to restoration projects or natural conditions such as drought or wildfire.

This concept could provide greater flexibility to both the BLM and to livestock permittees. It provides an outlet for producers whose allotments are unusable due to weather, fire, or other reasons beyond their control. This concept could also encourage both producers and BLM to undertake needed restoration projects on federal lands if there is alternative forage available for producers. If that is the intention of BLM, a reserve common allotment program would be beneficial to permittees as well as the grazing resource.

We support the concept of a reserve common allotment program under appropriate circumstances. Some issues that need to be addressed in regulations implementing a reserve common allotment program include:

- Reserve common allotments should be drawn from vacant or unused allotments and not created by removing permittees from existing allotments. This should be spelled out in the description. Reserve allotments might also be drawn from areas that were historically grazed, but which have not been grazed in recent years.
- Reserve allotments might also be drawn from allotments where non-use is taken for reasons other than needed rest. This would require the consent of the permittee who has taken non-use, and would require compensation or agreement for maintenance of fencing and other range improvements contained on the allotment.
- Permittee water rights in most states is predicated on making beneficial use of water for a specified period of time. Permittees who use RCAs, or permittees who allow their allotments to be temporarily used for RCAs may inadvertently find that their water rights under state law have been forfeited due to non-use. Permittees should not lose their water rights either for using a RCA or for allowing an allotment to be used for a RCA. This issue must be clarified and resolved prior to development of any RCA program.
- The agency should also devise a fair and equitable process for allocating forage under the reserve common allotment program.
- Rules should also specify whether more than one permittee would be allowed to use a reserve allotment at a time. If so, rules implementing such a program should specify requirements such as branding and separation requirements to ensure orderly use of the allotment.
- Any placement of allotments into a RCA must be truly "voluntary" on the part of the landowner. There must be no coercion or "friendly persuasion" on the part of any BLM employee to have someone place an allotment into a RCA.
- RCAs must be available to qualified BLM permittees whose own allotments are unusable due to drought, fire, pest infestation or restoration work.
- RCAs shall not be a subterfuge for taking "conservation use." Any RCA must be used for grazing at its carrying capacity, and not be used as an excuse to cut or eliminate livestock grazing.
- RCAs should also not be an excuse to allow entities not truly engaged in the livestock business to purchase private base property and turn any associated permit over for light or no grazing. RCAs should be used, and should be a true safety valve for permittees displaced by circumstances beyond their control. Permittees whose allotments are rendered unusable by bad management practices should not be eligible to participate in the RCA program.
- There should be a limit on the amount of RCAs in a given resource area. Allowing no more than 10 percent of an area to be in RCA for example, might serve as a benchmark.

Ranchers Share Title to Range Improvements. This change would restore a provision that gives permittees some title to the range improvements that they make and pay for. The title might be held jointly with the United States for more permanent improvements. Farm Bureau and other livestock organizations unsuccessfully challenged the provision vesting title to BLM in court.

We support reinstatement of co-ownership of range improvements.

Farmers and ranchers who pay and construct range improvements should have an ownership interest in them. They should be able to list range improvements that they construct as assets on their balance sheets for purposes of determining their eligibility for bank operating loans. Permittees will be in a better position to obtain financing if they are allowed to have an ownership interest in range improvements. Providing co-ownership with permittees will also give permittees an incentive to construct and maintain range improvements on federal lands.

Extending Permitted Non-Use From Three to Five Years. The BLM is proposing to extend the period for which a permittee can take non-use from three to five years. This change would provide greater flexibility to producers and to the forage resource. Ranchers benefit because it provides them greater flexibility to address situ-

ations which caused the non-use in the first place. Grazing forage also benefits if additional time is needed to address situations such as drought that might require non-use.

An extension of the non-use period must be accompanied by other changes in order to be acceptable. There is some concern among our members that extending the period of non-use to five years would allow allotments to be placed in a de facto "conservation use." "Conservation use" was added by Rangeland Reform as a permitted use, to allow non-livestock entities to obtain grazing permits and not use the allotment for grazing for the permit term. A five year non-use should not be a subterfuge to achieve "conservation use," which the courts have said is outside the scope of current BLM authority. Permittee concerns on this issue are heightened by the recent BLM action in the Grand Staircase Escalente National Monument in Utah, where grazing permits were transferred to an affiliate of the Grand Canyon Trust and essentially retired from grazing use.

Another necessary and integral part of any extension of the non-use period to five years is restoration of a provision in the regulations requiring that a person must be "engaged in the livestock business" as required by the Taylor Grazing Act. That will ensure that allotments will actually be used for grazing and not for other uses.

It is also important that the original concept of the grazing "preference" as an adjudicated amount of forage allocated to a permittee be restored through these regulations in order to protect any amount of non-use from being lost in subsequent years. Taking authorized non-use should net result in lost or reduced grazing. Restoration of the grazing preference concept as originally included in the Taylor Grazing Act will help ensure such protection. (Discussed below in greater detail.)

We also believe that allotments for which five year non-use is taken should be part of the Reserve Common Allotment program for at least a few years for which non-use is taken. Such a requirement would allow the management of the allotment during the period of non-use, and keep the allotment grazed during this time. It would also allow the original permittee to return to the allotment at the end of the non-use period.

Clarifying That BLM Will Follow State Law With Respect to Acquisition of Water Rights. There have been efforts by some federal agencies to claim reserved federal water rights or otherwise acquire water rights outside the state water system. Continued drought and increasing water demands make this a critical issue. Any water rights should only be acquired through the process established by state water law.

Rangeland Reform also provided that water rights on federal lands for livestock grazing purposes were to be acquired in the name of the United States to the extent allowed by state law. We would support an amendment that would allow water rights for livestock grazing be acquired in the name of the permittee as was allowed before 1995.

Non-Permit Related Activities as Prohibited Activities. "Rangeland Reform" amendments enacted in 1995 greatly expanded the list of prohibited activities that could result in the suspension or cancellation of a permit. Under Rangeland Reform, a permit could be cancelled for any violation of any state or federal environmental law, without regard to whether it was in the furtherance of livestock grazing under the permit. The current rule only requires that a violation be "related to" grazing use.

BLM managers should not be authorized to take actions against a permittee for actions that do not violate the terms and conditions of the permit itself, and permit terms and conditions should not contain items that are not part of grazing administration. Permittees who abide by the terms and conditions of their permits should not have action taken against their permit for violations of law or regulation outside the permit. Any such violations should be addressed within the confines of the particular law or regulation allegedly violated, and not by the additional action against a grazing permit. These statutes provide ample authority for addressing alleged violations on their own terms. Giving BLM the authority to also address such issues by allowing permit actions provides too much opportunity for abuse.

State law in some cases allows state leases to be cancelled for activities unrelated to livestock grazing. For federal regulations to allow for federal grazing permits to be suspended or cancelled when action is taken against state leases allows permits to be suspended or revoked for reasons unrelated to livestock grazing. We suggest that current language be modified to reflect this issue.

Permit Qualifications. The Taylor Grazing Act requires that landowners "be engaged in the livestock business" in order to acquire a grazing permit or preference. Rangeland Reform removed that requirement, in order to allow for "conservation use" of grazing permits. The Rangeland Reform provision was struck down by the Tenth Circuit Court of Appeals as violative of the Taylor Grazing Act, and that rul-

ing was not overturned by the Supreme Court in its review of Rangeland Reform. However, it was never removed from the BLM regulations.

We support provisions that strike "conservation use" wherever that term is found in the regulations and restore the requirement that permit and preference holders "must be engaged in the livestock business" as required by the Tenth Circuit Court and the U.S. Supreme Court. Because the courts have already ruled that the changes made by Rangeland Reform were illegal, the restoration of the regulations to the pre-1995 language merely represents housekeeping, as opposed to substantive changes in the rules. Both changes must be made in order to comply with the courts decisions.

These changes are also necessary if the BLM intends to enact a Reserve Common Allotment Program that is acceptable to ranchers and permittees.

Re-emphasizing Consideration of Economic, Social and Cultural Impacts for National Environmental Policy Act (NEPA) Purposes. NEPA requires that economic and social impacts be considered in environmental impact statements and environmental analyses. Secretary Babbitt had essentially eliminated consideration of cultural heritage of an area for NEPA purposes. Livestock grazing forms a vital basis for the rich cultural heritage of the West. That heritage needs to be remembered and considered in any NEPA analysis.

Changing the Definition of "Grazing Preference." The term "grazing preference" is defined by the Taylor Grazing Act to mean the amount of forage to which a landowner is entitled. Grazing preferences were adjudicated throughout the West in accordance with the Taylor Grazing Act. "Preference amounts" are forage in either active use or in suspended non-use.

A major component of Rangeland Reform was the removal of the concept of grazing preferences as defined by the Taylor Grazing Act. These rules replaced preferences with "permitted use," which is the amount allowed to be grazed by the BLM. This was the primary challenge that livestock organizations raised to Rangeland Reform in the courts. The Supreme Court upheld the government's concept of "permitted use."It eliminated preference holders' rights to additional forage within their preference amounts should it become available. We support reinstatement of the definition of "grazing—preference" to the way it was defined prior to 1995.

Streamlining the Appeals Process. BLM is also open to suggestions for ways to streamline its appeals process.

BLM is in the process of streamlining the appeals process applicable to wildfire management decisions. One proposal is to clarify who is eligible to appeal a decision. The proposal would require that in order to file an appeal of a wildfire management decision, a person has: (1) have a "legally cognizable interest" that is a particularized interest or injury that is more than a general citizen concern about the issue; (2) have commented either orally or in writing on the decision; and, (3) only raise issues on appeal that were raised in their comments.

We believe that the same criteria proposed for wildfire management issues should also be applicable to livestock grazing issues. We supported the changes to the wildfire management appeal regulations, and would support a similar proposal for livestock grazing appeals. They are fair and reasonable, and conform generally to established "standing" requirements for suing in court.

We strongly support the elimination of the concept of "interested public" from the grazing regulations. The current rules allow for anyone to interject themselves into discussions between BLM and permittee with respect to allotment management and grazing management. In no other aspect of business relationships does this occur. We support the right of an aggrieved member of the public to appeal a grazing decision and to be involved in BLM planning activities, but they should not be involved in day-to-day management issues as "interested public" currently are.

We would also support a provision that would eliminate the "full force and effect" provisions of Rangeland Reform.

Examine Whether BLM Should Authorize Temporary Locked Gates on Federal Lands to Protect Livestock Operations. This issue needs more explanation. The description leads one to believe that BLM could limit access to federal lands for livestock permittees. If this is the case, we oppose it.

There is another scenario, however. Barring access to federal lands by a private person is currently a prohibited act. Thus, a livestock permittee cannot currently close gates to federal land entrances, even if a temporary closure would not affect public access. If, however, the regulation were changed to allow BLM to authorize a temporary closure so the permittee could take some action that was beneficial to the ranch operations, it could be something we could support. Comments should describe this scenario and state that it should be enacted.

Requiring a Permittee to Apply for a Renewal. The proposal would establish an application process for renewing grazing permits. This is a two-edged sword. On the

one hand, requiring an application process provides some protection under the Administrative Procedures Act from adverse actions resulting from failure to comply with NEPA. On the other hand, it creates a burden for the producer and provides too much discretion in the hands of the agency. Requiring a permittee to apply for a permit renewal will also increase the importance of the performance review in the renewal process, and could lead to using the performance review as an excuse not to renew a permit.

Categorical Exclusions for Certain Permit Transfers or Renewals. BLM policy requires that they complete analyses under NEPA prior to the renewal of grazing permits and other permit transfers. This has caused a major problem for the BLM because the agency has encountered difficulty in completing the required analyses time. This has caused problems for permittees, who would be denied the privilege to graze through no fault of their own. For the past five years Congress has enacted a specific provision in the Interior Appropriations Bill to alleviate this situation and allow otherwise expiring permits to be renewed, and others to be transferred.

BLM should consider streamlining its regulations to expedite the NEPA process with regard to grazing permits. Grazing permit transfers that do not impact the environment but only involve paper changes should not be subject to NEPA documentation. Minor permit changes might include transfers that do not change the terms and conditions of a permit or transfer title from one permittee to another in the middle of a permit term. Such actions should not have to be subject to the preparation of NEPA documentation. Categorical exclusions were proposed for BLM wildfire management decisions. BLM should consider the same treatment for grazing permit actions in this rulemaking. Also, BLM cannot keep up with the NEPA paperwork that is required to renew or transfer permits, and spends more time and money on paperwork as a result. Categorical exclusions would remove the permit action backlog, and allow BLM to spend more time and money on the ground.

This rulemaking is an appropriate time to consider rules or policy changes that would remove the necessity of requesting Congress every year for a "fix" for the NEPA dilemma regarding permits.

Grazing Surcharge. The surcharge imposed for subleasing permits should be reopened and reexamined. The surcharge, added by Rangeland Reform in 1995, should be eliminated. The surcharge is a burden for BLM to administer, and serves no discernable purpose.

One of the reasons for the imposition of the surcharge was the allegation that permittees were sub-leasing their grazing allotments at a significant profit. As alleged, they would receive upwards of $10 per Animal Unit Month for the same forage that they paid the BLM $1.35. We commented at the time that we do not condone the practice of taking advantage of the federal lands in that manner.

But we also mentioned that there were good reasons for charging more than the federal grazing fee. Sub-lessors provide more services for their sub-lessees than are provided by the BLM in grazing permits. Each of those services costs the sub-lessor money. Studies have shown that when the costs of these additional services are balanced out, the relative costs are comparable.

If this is still a concern, we offer this possible solution instead of the surcharge. A sublease would list all the items and the costs of the services provided in the sublease, including the grazing fee and any additional service provided beyond those provided by the permit.

Make BLM Procedures More Compatible With the Endangered Species Act. The Endangered Species Act (ESA) continues to make it more difficult for permittees to graze livestock in accordance with the terms of their permits. While ESA jurisdiction resides with other federal agencies, there are changes BLM can make to its regulations to ease ESA burdens on permittees.

a. Bring permittees in as part of any section 7 ESA consultation involving their allotments. The Endangered Species Act requires that any time an action is "authorized, funded or carried out" by a federal agency, it must consult with the Fish & Wildlife Service or National Marine Fisheries Service anytime the action "may affect" a listed species. In most cases, the party most affected by the outcome of any consultation is a private entity holding or applying for a federal permit, such as a grazing permit. Yet, current practice does not allow the private party to participate in the consultation to any meaningful extent. Full private participation would assist both the BLM and the Fish & Wildlife Service or National Marine Fisheries Service (the Services) to arrive at a more informed and meaningful decision. The Services rules are silent on third party participation. BLM rules could be amended to include private applicants or permit holders as full parties with BLM in the process.

b. Notify permittees of any "citizen suits" under the ESA, Clean Water Act or other environmental laws. Another problem that we have encountered with the ESA is citizen suits that challenge livestock grazing on BLM lands are most often filed against the BLM and not the private permittees. Although the permittees are the parties that are most adversely impacted by such suits, they are often not aware of such cases, and not made aware of them. Injunctions may be obtained, or cases settled, without any opportunity for the permittees to participate. This issue can be corrected simply by BLM communicating with permittees that a citizen suit has been filed or that a Notice of Intent to Sue has been filed that may affect their allotments or grazing privileges. This will allow the permittees to take whatever action they deem appropriate to protect their interests. Notification to a grazing association (where they exist) could be construed as notice to all of the permittees. A provision added to the BLM regulations requiring such notification would address this problem.

Monitoring

The definition of "monitoring" should read as follows: "The orderly collection, analysis, and interpretation of resource data to evaluate progress toward meeting management objectives. This process must be conducted over time in order to determine whether management objectives are being met."

In addition to establishing monitoring studies, BLM should continue the periodic evaluation of rangeland resources on existing monitoring locations using the same procedures to ensure continuity over time and ensure that all monitoring data collected on BLM lands remains available in allotment files for use in evaluation trends in resource conditions over time.

The Grazing Regulations should also contain a separate section titled "Monitoring". The direction in this section should include the following language:

BLM field office or district managers shall develop, in consultation with allotment owners and local land grant universities, resource management objectives, including but not limited to wildlife, threatened and endangered species, and recreation impacts, at the allotment level. They should develop both short-term and long-term monitoring programs based on current and historical quantitative vegetative data that have the technical ability to determine if allotment resource objectives are being met. At the discretion of the Grazing Board, findings may be subject to peer review. It is the intent of this section that, to the extent feasible, field level data and documented observations collected during this monitoring program be collected at the same time and location with participation by both the BLM and the allotment owner, and that both parties be responsible for the interpretation of this data. The action office will prepare an annual report on the monitoring activities under its jurisdiction and will report the status of progress toward meeting allotment/lease objectives as they are determined by the BLM and permittee/lessee within their respective field offices or districts.

This section should also require periodic reports be developed in consultation with the permittee, showing how the monitoring data and documented field observations are tracking, and whether allotment level resource objectives are being accomplished.

Payment of Fees

Farm Bureau recommends that, for purposes of billing AUM the conversion ration for sheep should be changed from 5:1 to 7:1.

Full Force and Effect Decisions and Petitions for Stay of Decisions

We recommend that Sec. 4160.3, Final Decisions, be revised as follows:

"A BLM decision timely appealed by a grazing permittee or lessee shall not be effective pending a final agency decision following a hearing on the record. During the pendency of the appeal, the terms and conditions of the existing or prior permit shall be in effect.

"When the authorized officer determines that the current authorized grazing use poses an imminent likelihood of irreparable resource damage, after consultation with, or a reasonable attempt to consult with, permittees or lessees, the state with responsibility over lands in the area and other land owners, the authorized officer may declare an emergency and place the decision in effect prior to the hearing or final administrative decision. The decision will be effective for the 30-day period provided for filing an appeal.

A declaration of emergency by the authorized officer must show sufficient justification based on the following standards:

(i) the relative harm to the parties if the decision is effective pending appeal;
(ii) The likelihood of BLM's success on the merits;

(iii) The likelihood of immediate and irreparable harm if the decision is not effective pending appeal; and

(iv) whether the public interest favors placing the decision in effect pending appeal.

A review of BLM grazing decisions over the past ten years shows that very little actual data from state-of-the-art rangeland studies were the basis for grazing decisions. In addition, the Interior Board of Land Appeals has incorrectly applied the burden of proof to the appellant instead of BLM, as is required by the Administrative Procedures Act (APA). If decisions are not suspended, the permittee/lessee could well be placed out of business pending final disposition.

Burden of Proof

Farm Bureau requests that Sec. 4160.4 be amended to include the following language:

"During the process of adjudication of the appeal, the burden of proof shall be on the proponent of the rule or order, the BLM, and the standard of proof shall be a preponderance of evidence showing that BLM's decision is supported by scientifically-based facts."

In 5 U.S.C. 556, of the APA, it states, in part, that the standard of proof is a preponderance of the evidence and the burden is on the proponent of the rule or order. The BLM grazing regulations have an obligation to reflect the letter and intent of U.S. statutes that govern their activities. The BLM is subject to ALL of the direction in the APA, including this subject. This change will result in fewer and higher quality decisions.

The APA provides uniform rules regarding adjudications before administrative agencies and review of final agency actions. Regarding the former, the APA governs all adjudications "required by statute to be determined on the record after opportunity for an agency hearing" 5 U.S.C. § 554(a). Section 9 of the Taylor Grazing Act (TGA) requires that the Secretary of the Interior provide "rules and regulations for local hearings on appeals from the decision of the administrative officer in charge" 43 U.S.C. § 315(h). This provision means that all "matters which arise in the administration of grazing districts" are "required by statute to be determined on the record," triggering all APA requirements for formal adjudications. See *LaRue* v. *Udall*, 324 F.2d 428, 432 (D.C. Cir. 1963); *Ralph and Beverly Eason*, 127 IBLA 259, 261 (1993); *Ericsson*, 98 IBLA 258, 263 (1987).

With respect to formal adjudications, Section 7(c) of the APA provides that "the proponent of a rule or order has the burden of proof. . . . 5 U.S.C. § 556(d) (1988). The U.S. Supreme Court has held that § 7(c) requires the proponent of the rule or order to meet its burden by a preponderance of the evidence. *Steadman* v. *Securities & Exchange Commission*, 101 S.Ct. 999 (1981). In passing the APA, "Congress was primarily concerned with the elimination of agency decision making premised on evidence which was of poor quality-irrelevant, immaterial, unreliable, and nonprobative—and of insufficient quantity—less than a preponderance." Id. at 1008.

It stands to reason, that since all BLM decisions pertaining to "matters which arise in the administration of grazing districts" are subject to the APA, and that the APA requires the "proponent of a rule or order" to have the burden of proof by a preponderance, then any time BLM affirmatively issues a decision impacting established grazing rights, they would have to prove, on appeal, any such decision by a preponderance of the evidence. The IBLA has, in fact, applied this burden of proof to appeals involving grazing trespass alleged by BLM. See *Ericsson* at 255, *Wayne D. Klump*, 130 IBLA 119,130 (1994); *John L. Falen*, 143 IBLA 1 (1998). However, the IBLA has failed to apply the appropriate standard for the remainder of "matters which arise in the administration of grazing districts," requiring instead that an aggrieved rancher bear the burden to prove BLM's fault by a preponderance, even when BLM is clearly the "proponent of the rule or order."

Any doubt regarding the correct standard of proof applicable in an administrative proceeding subject to the APA was settled by the Supreme Court in *Steadman.* The court found that the decision must be in accordance with the weight of the evidence. The court further found that § 7(c) of 5 U.S.C. 556(d) was intended to establish a standard of proof and that the standard adopted is the traditional-preponderance-of-the-evidence standard.

Conflicting Applications

Section 4130.1-2 conveys the criteria an action office shall use to determine who among competing applicants for federal livestock AVM's would receive these AVM's. Farm Bureau requests that item (d) in this section that now reads, "public ingress or egress across privately owned or controlled land to public land," should be re-

moved from these regulations as criteria for consideration by BLM in the allocation of federal AVM's.

The subject of whether a person currently, or in the future, will grant public ingress or egress across his or her private lands is in no way related to whether the applicant would be the best steward of the use of federal forage. It should not be a criterion in determining who might be entitled to a grazing permit.

Farm Bureau greatly appreciates BLM efforts to make its rules relating to livestock grazing more workable. We hope that you will consider these suggestions. We look forward to working with the agency to develop a set of regulations that works better for everyone.

Sincerely,

RICHARD W. NEWPHER,
Executive Director, Public Policy.

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