

By Electronic and U.S. Mail

May 2, 2003

Ms. Kathleen Clarke, Director (630)
Bureau of Land Management
c/o Eastern States Office
7450 Boston Boulevard
Springfield, VA 22153

Attention: RIN 1004-AD42

Re: Advance Notice of Proposed Rulemaking for Proposed Amendments to the BLM's Grazing Administration Regulations and Notice of Intent to Prepare an Environmental Impact Statement

Dear Director Clarke:

Please accept the following comments on behalf of the 200,000 members and supporters of The Fund for Animals (The Fund) on the Advance Notice of Proposed Rulemaking (ANPR) for Proposed Amendments to the Bureau of Land Management's (BLM) Grazing Administration Regulations and Notice of Intent (NOI) to Prepare an Environmental Impact Statement (EIS). These comments are submitted in addition to those you will receive from AGRO, a National Coalition to End the Aerial Gunning of Wildlife, of which The Fund is a member.

Given that much of the focus in the ANPR and NOI is on the need to clarify existing definitions, regulations and policies, The Fund is perplexed by BLM's failure to clarify what the agency is proposing in the way of changes to grazing-related regulations and policies. According to BLM news releases, you are quoted as saying: "The changes under consideration would enhance community-based conservation and promote cooperative stewardship of the public rangelands." Unfortunately, the ANPR and NOI did not include a description of the nature of the changes under consideration, thereby making it challenging to offer informed, pointed comments. The public cannot be expected to be a mind reader.

We trust that as the process continues, the BLM will better articulate its proposal and will hold additional EIS scoping meetings throughout the country. Considering that the proposed changes will affect grazing management throughout the West on lands regularly visited by the national public, it stands to reason that scoping should be conducted in considerably more locations to allow for greater public participation.

According to the ANPR, the goals of the proposed changes are to (1) enhance community-based conservation and citizen-centered stewardship; (2) improve BLM business practices; and (3) provide greater flexibility for the manager and the permittee. While such innocuous-sounding goals may indeed be meritorious, we question whether the BLM has adequately implemented the current regulations issued in 1995, which were designed to accomplish many of these same goals.

In the past and today, “citizen-centered” stewardship has translated into grazing advisory boards, advisory groups, resource advisory councils, multiple use councils, etc., -- the composition of which was, and is, routinely monopolized by livestock ranchers or people with direct or indirect ties to the livestock industry. While this may technically classify as citizen-centered stewardship, it compromises decision-making by essentially excluding or diminishing the interests and input of the non-ranching and/or non-local public. It is easy for local citizenry to forget that there is a national public with a vested interest in how its public lands are managed.

For these reasons, the EIS must disclose names, addresses, biographical information, areas of expertise, affiliation and term limits of all individuals who are currently serving on any advisory group related to grazing management, whether or not it is chartered under the Federal Advisory Committee Act (FACA), as well as the criteria used to select these individuals. The EIS must analyze alternatives to address the problems associated with the current composition of many of these groups and to ensure that the national public’s interests are sufficiently represented in “citizen-centered” stewardship. Likewise, the interests of other types of multiple users must be adequately and proportionately represented on such advisory groups – e.g., environmentalists, animal rights activists, wildlife enthusiasts, recreationalists, educators, students, photographers, filmmakers, researchers, etc.

It is unclear what the BLM means by “community-based conservation.” On the one hand, The Fund would support voluntary partnerships whose purpose is to improve environmental health and functioning, particularly in livestock grazing allotments, many of which are severely degraded due to years of unregulated grazing. However, on the other hand, if by “community-based conservation,” the BLM is considering allowing the livestock industry to engage in self-regulation, we vehemently oppose any such proposal. Such license is an invitation for the creation of complications. In fact, monitoring and accountability within the BLM’s current grazing program is entirely inadequate. “Streamlining” the permit process will only exacerbate the problem. Even though countless Environmental Assessments indicate that livestock use is responsible for habitat degradation, the BLM rarely takes action to reduce/remove livestock during either the short or long term until the problems reach crisis proportions as is now occurring due to the ongoing drought. Instead, the agency often allows current grazing

use and merely adjusts the grazing seasons or chooses to expend thousands or hundreds of thousands of dollars in so-called range “improvements” to maintain a few hundred cows.

Nothing could be a better example of the ecological destruction caused by livestock grazing than what has occurred and continues to occur in the Great Basin area and the arid Southwest and the enormously expensive attempt to reverse the spiraling downward ecological trends. BLM’s continuing failure to take swift and sweeping actions to correct problems is largely due to the agency’s inexcusable efforts to pacify the interests of the livestock ranchers and their political allies. An objective analysis may well determine that ranching is an unsuitable use in many fragile areas of our public lands and its continuation violates both the intent and language of the Federal Land Policy and Management Act (FLPMA) despite the agency’s machinations to persuade the public otherwise.

The time is long overdue for the BLM to stop trying to dupe the public into believing that its “**multiple use**” mandate prevents it from terminating or dramatically modifying grazing leases. The BLM has routinely appealed to its “multiple use” mandate as an excuse to maintain certain historical practices such as ranching, despite serious, deleterious impacts on the environment. “**Multiple use**” is defined in FLPMA as follows: “The management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for **some** or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform with changing needs and conditions; the use of some land for **less** than all of the resources; a combination of **balanced** and diverse resource uses that take into account the **long-term** needs of future generations for renewable and non-renewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural, scenic, scientific and historic values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources **and not necessarily to the combination of uses that will give the greatest economic return or the greatest output.**” (Emphases added) It is clear from this definition that while multiple use must be considered, it is not necessary to have all uses on all lands, nor is it necessary to preserve the existing use or the existing levels of use based upon economic considerations. Hence, current or historical uses need not continue.

It is for this reason that we question the purpose for the BLM’s proposal to re-emphasize that National Environmental Policy Act (NEPA) reviews will consider the economic, social and cultural impacts of the agency’s decisions. While The Fund does not object to an analysis of such impacts, NEPA is designed specifically to highlight environmental impacts; it is essentially an environmental protection statute. We have reviewed too many BLM NEPA documents that have provided skewed cost/benefit analyses as a means to support the status quo despite serious, adverse environmental impacts caused by livestock grazing. Invariably, such analyses are deficient, flawed and short-sighted because they examine only short-term economic impacts of

modification or termination of livestock grazing use to permittees and/or to the immediate local community.

The EIS must explore ways to conduct fair, accurate and inclusive cost/ benefit analyses that look at both short and long-term impacts of livestock grazing. Doing so will go a long way in helping to improve BLM business practices. The BLM must provide a comprehensive cost-benefit analysis of livestock grazing, not merely an economic analysis of how livestock grazing contributes to the economic welfare of individuals and to the economies of local communities. Such a cost-benefit analysis must examine both the economic and non-economic costs and benefits to the general taxpaying public by itemizing revenue generated by the grazing program as well as costs of fence construction and maintenance, water diversion and development (construction of reservoirs, water catchments, pipelines, guzzlers or the placement of troughs or storage tanks), predator and “nuisance” animal control, fire management, drought relief assistance, vegetative conversion projects to correct livestock grazing-induced problems, including prescribed burns, plantings and treatments such as noxious weed control, market price supports, and any and all other assistance to ranchers underwritten by tax dollars.

Any cost-benefit analysis must also examine indirect costs of grazing such as how the aforementioned subsidies impact healthy ecosystem functioning, recreational opportunities, etc. For example, how does livestock grazing impact threatened, endangered and sensitive species? What costs associated with recovery programs for these species are ultimately attributable to livestock grazing practices? How much food and fiber are actually produced on the leased lands in question? Would the nation suffer as a result of losing this production? All cost/benefit analyses must examine thoroughly the extent of our nation’s need for food and fiber, how it is currently being met, the degree to which livestock ranching on BLM lands in general and on specific parcels of lands contributes to the supply and at what environmental and fiscal cost over the short and long terms, as well as existing and alternative sources for meeting this need. Do the lands in question have different values (both economic and non-economic) that are not being realized because of livestock grazing use?

Cost-benefit analyses must also indicate whether livestock permittees are personally profiting by subleasing their grazing permits to third parties. The public is entitled to know which grazing permittees are paying \$1.35 per Animal Unit Month (AUM), only to turn around and sublease the same for considerably more. Analyses must also disclose what the current comparable leasing fees are for state or privately owned land. Likewise, the public is entitled to know whether grazing permittees are using public land grazing leases as collateral for obtaining bank loans or other forms of financial credit, a practice that should be strictly prohibited by the BLM because it tends to perpetuate the myth that livestock ranchers possess some property right to the public land, which is clearly not the case. These are just some of the issues that must be comprehensively analyzed in any cost/benefit analysis, and yet few of the issues are ever calculated in analyses prepared heretofore. .

The Fund opposes any change that would involve sharing or transferring title to range improvements to permittees. Not only could such a move potentially create profound management problems if a disagreement arises between the BLM and the permittee about the need to repair, remove or modify a privately-owned improvement on public lands, but such a proposed regulation violates the Taylor Grazing Act, which specifically states a grazing permit “shall not create any right, title, interest, or estate in or to the lands.” Congress intended and the courts have interpreted this law to mean that grazing permittees possess no property rights in the public lands. The BLM must exercise equal foresight by protecting the general public’s interest by retaining title to all range improvements on public lands.

Similarly, any proposal to deny the public access to its public lands by locking gates on these lands allegedly “to protect private lands and to improve livestock operations” must be rejected on its face. Not only has the BLM failed to provide any crumb of justification for such a proposal, but for the agency to even seriously consider such a proposal reveals that agency officials are shamefully prepared to bend over backwards to pacify livestock interests at the expense of the interests of the public-at-large.

FLPMA requires the BLM to determine whether livestock grazing is an appropriate use of specific public lands. In concert with this determination, FLPMA further requires the agency to consider the present and potential uses of the public lands, the relative scarcity of the values involved, the availability of alternative means and sites for realizing those values and weigh long-term benefits to the public against short-term benefits. Not only has the BLM failed to determine the suitability of livestock grazing, but also it has, for the most part, failed to sufficiently and objectively evaluate livestock grazing operations and take immediate and appropriate action to protect the public’s resources when permittees fail to meet standards and guidelines. Too often, the agency has been paralyzed by the politics of livestock grazing. On those rare occasions when an employee tries to do the right thing in order to protect the environment, his/her efforts are typically thwarted.

One need only examine the BLM’s wild horse and burro program and the agency’s recently adopted strategy to remove one half of all the wild horses and burros throughout the West to detect the agency’s preferential treatment of a single use -- viz., livestock grazing. Over the years, the BLM has repeatedly issued decisions resulting in significant decreases in the amount of public land available to wild horses and burros and subsequent reductions in the numbers of these animals. Despite clear language in the 1971 Wild Free-Roaming Horses and Burros Act (WFHBA) stipulating that wild horses and burros are to be protected in the areas where they were found at the time of the legislation’s enactment, the BLM has routinely removed thousands of these animals from millions of acres of public land, while allowing teeming numbers of private livestock to remain on these same public lands. The BLM apparently fails to grasp the concept that wild horses must be present on the public lands to be **components** of the public lands as mandated by the WFHBA.

In other instances, the BLM has arbitrarily decided that it is unable to manage for wild horses for the long term in certain areas – usually because of conflicts with other land

uses due to jurisdictional issues and/or political pressure by current users to continue certain historic uses -- primarily livestock grazing. Rather than attempting to modify existing uses or consolidating land via acquisition efforts through purchase, swaps, or negotiation of conservation easements to protect wild horses and other wildlife species, the BLM typically elects to “zero out” sections of wild horse Herd Areas (HAs) or entire HAs to accommodate livestock interests. If boundaries are being redrawn to exclude wild horses from private lands, then it becomes necessary to adjust (i.e., reduce) stocking rates for livestock on the public acreage within HAs or Herd Management Areas (HMAs) to provide for the biotic needs of wild horses, who will now be required to survive on less land; yet this never occurs.

It is unclear what criteria the BLM uses in establishing the Appropriate Management Levels (AMLs) for wild horse and burro HMAs. However judging from the huge disparity in forage allocation between livestock and wild horses throughout the West, it is likely that AMLs are based primarily on resource availability ***after*** existing livestock and wildlife use is considered. Not only do fences constructed to accommodate livestock impede wild horse movements within legal HMAs, but it appears that the BLM routinely establishes wild horse AMLs by taking into consideration the carrying capacity of the habitat, the current level of livestock use and state wildlife population objectives. After these have been determined, the wild horse AML is calculated.

The BLM repeatedly ignores its regulatory mandate that wild horses and burros ***shall*** be considered ***comparably*** with other resource values in the formulation of land use plans. CFR 4700.06 (b). Judging from most BLM land use plans, the interests of wild horses are a postscript in the process. Environmental reviews not only fail to disclose the criteria used to establish the AMLs, they seldom seriously examine alternatives that will considerably increase the AML for wild horses such as a reduction in livestock grazing.

Environmental reviews must not simply evaluate the impacts of wild horses and burros on domestic livestock operations, wildlife or range condition without concurrently evaluating the impacts of domestic livestock and wildlife on wild horses and range condition. In particular, environmental reviews must analyze not only forage allocation, but also stocking rates and season of use by livestock. In other words, the public needs to know which animals and how many are grazing where and when.

Cropping grasses and other vegetation during the growing season is most harmful, particularly if the plant is regrazed. Wildlife and wild horses seldom tend to regraze the same plant because of their mobile behavior. Cows, being less mobile, often regraze the same plant, causing damage to plants by forcing the plant to replace lost tissue, thereby causing root and seed production to suffer. Additionally, cows tend to be stocked in higher density than you find under natural conditions, further exacerbating the problem. If a drought occurs, such plants are at distinct disadvantage and may die. Most of the concentrated grazing by wild ungulates takes place in the winter when plants are dormant. Environmental reviews must provide a comprehensive analysis of the differences in grazing behavior between livestock and wild horses and burros and other wild ungulates.

Such reviews must also provide information about the season of use by all animals (both wild and domestic), the numbers, distribution and movement patterns of animals, species of vegetation used and a description of all range “improvements” including fences, water developments, cattle guards, etc. and how such “improvements” have beneficially and adversely impacted wild horses and wildlife, including any changes to behavior and movement patterns, as well as ecological functioning in general.

In addition, the BLM must provide information regarding changes in the weaning weight of calves and the frame size of cattle in recent years. Does the current Animal Unit Month (AUM) formula that is used to establish stocking rates take into account changes in cattle weight and frame size? Forage intake for larger-sized cattle will be greater and may not be reflected in the current formula. Environmental reviews must define the existing Animal Unit Equivalents Guide and also analyze how, if at all, the BLM has adjusted stocking rates based upon cattle size. If this has not occurred, the RMP must develop a means whereby the Animal Unit and equivalents allow for change in frame size of today’s cattle.

Unfortunately, livestock ranching interests have been, by and large, overtly anti-wild horse and burro. The BLM has done little to correct misperceptions or to eliminate this bias. The welfare of wild horses and burros depends upon the BLM fully exercising its authority to take action to afford these animals the greatest protection possible as Congress and the public clearly intended. Educational outreach is an essential component of such protective efforts. However, based upon review of internal agency memos, it seems that some BLM employees themselves suffer from the same biases as those outside the program, thereby further complicating the problem.

Wild horses have often been used as the scapegoats for habitat degradation. Ranchers clamor for wild horse and burro removals as a means to divert attention away from the environmental damage caused by livestock. Even though countless environmental reviews and studies indicate that livestock use is primarily responsible for habitat degradation, the BLM turns a blind eye to livestock’s impacts, and at the behest of the livestock industry focuses attention on wild horses and burros. Such diversions do a tremendous disservice to wild horses and burros and to the public.

Interestingly, one of the proposals the BLM is considering deals with clarifying which non-permit violations BLM may take into account in penalizing a permittee. One of the examples described was shooting a wild horse! Any livestock grazing permittee who is convicted of shooting a wild horse, poaching or violating any of the statutes governing resource protection on public lands should be appropriately penalized, including consideration of permit revocation, depending upon the nature and severity of the violation.

The Fund opposes the concept of “Reserve Common Allotments,” which ranchers could use for forage while their normal allotments undergo range improvement treatment. Range recovery is typically necessary because of over-utilization for which livestock grazing itself is primarily responsible. Grazing privileges are contingent upon meeting the standards and guidelines for healthy rangelands. If these standards and guidelines

are not met, the BLM should not reward ranchers with additional benefits for abusing the public's lands. Placing livestock into even more areas means that there will be less habitat available for wildlife and the potential for even more acreage to be degraded by livestock.

Today, with ever-increasing knowledge about ecology including the fragility of certain environments, the loss of floral and faunal diversity and abundance and the irreparable environmental harm caused by certain levels and types of human activities along with dramatic shifts in demographics and rapidly changing attitudes about how we should relate to the natural world, there is a likelihood that traditional uses of our public lands will change.

“Community-based conservation” may well mean that the face of business operations must change within certain areas in order to adapt to changing societal values and to achieve conservation goals. It is incumbent upon the BLM to explore creative ways to embrace this change and to ease the transition. The National Public Lands Grazing Campaign has advanced one alternative that has received much attention and support nationwide. It would allow the voluntary, permanent retirement of grazing permits by offering a one-time permit buy-out. More information on this proposal can be found at <http://www.publiclandsranching.org>. The BLM should consider this and other proposals that can make a meaningful difference in moving us into a new era of public land use that will genuinely reflect the emerging values and interests of the public-at-large.

Thank you for the opportunity to comment on proposed changes to grazing regulations and policies. Please add our organization to your mailing list to receive all notices and NEPA documents pertaining to this matter.

Sincerely,

Andrea Lococo
Rocky Mountain Coordinator