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Darwin B. Nielsen
Utah State University

E. Bruce Godfrey
Utah State University

Donald L. Snyder
Utah State University

Roger Banner
Utah State University

Allen Rosmussen
Utah State University

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**COMMENTS AND ISSUES RELATED TO BUREAU OF LAND
MANAGEMENT RANGELAND REFORM 94 PROPOSALS**

By

**Darwin B. Nielsen
E. Bruce Godfrey
Donald L. Snyder
Roger Banner
Allen Rosmussen**

The following outlines the major provisions of the Department of Interior proposed rules (Range reform). Boldface sections are referenced for the readers convenience in commenting on the the proposals as contained in Federal Register Volume 59, no 58 dated 25 March 1994. The proposals concern the five general areas noted below.

I. Grazing fees and incentives (**Section 4130.6-3**)

1. Grazing fees

a. Current situation

$$\begin{aligned} \text{Fee} &= \$1.23 \frac{\text{FVI} + (\text{BCPI} - \text{PPI})}{100} \\ &= \$1.23 \frac{265 + (327 - 436)}{100} = \$1.92/\text{AUM} \end{aligned}$$

b. Change:

New Base Value:

1. WLGS base

$$\$1.23 \times 2.64 \text{ (1991 FVI)} = \$3.25/\text{AUM}$$

2. Appraisal value = \$4.68/AUM

3. Base value

$$(\$3.25 + \$4.68) / 2 = \$3.96$$

Fees by year

1. 1994 = \$1.96/AUM

2. 1995 = \$2.75/AUM

3. 1996 = \$3.50/AUM

4. 1997 and thereafter

$$(\text{new base} \times \text{FVI}) = \$3.96 \times \text{FVI}$$

3. Issues:

1. What is the justification for the new base? What adjustments in the base, if any, will be made over time?
2. Use of the appraisal study base is fraught with problems because the appraisal study has conceptual, statistical and analytical problems.
3. Use of the FVI to update federal fees may cause a circular problem (demand for federal and private forage not independent??)
4. How are the non fee costs of grazing federal lands accounted for in the proposed fees? What adjustments, if any, will be made for changes in non fee costs over time?
5. What fees are to be charged other users? Are fees for other users: 1) approximately equal to market values?, 2) account for impacts on communities, 3) recover a reasonable amount of government costs and 4) easy to administer as proposed for grazing fees? If not, why are fees to be unequally administered by user group?

2. Incentive based fees (**Sections 4130.6-3 and 7-2**)

a. Current situation

not used at present time

b. Proposed

A 30 percent reduction in fees for "...those permittees and lessees who meet applicable eligibility criteria..." and if implementation criteria are not issued prior to 1997, implementation of the \$3.96 base value would be delayed.

c. Issues

1. What criteria will be used to determine if incentives will be given (a separate rule making is suggested)?
2. What is the justification for the 30% reduction? Will more or less than 30 % be allowed? If so, when and why?
3. If the \$3.96 base is delayed, what is the basis for the use of the \$3.50 base suggested?

3. Subleasing (see also administration section III.12 below)

a. Current situation

not allowed (dejure)

b. Proposed

authorized subleases allowed under specified conditions but, a 20, 50 or 70 percent surcharge is to be imposed depending on the arrangements involved.

c. Issues

1. What is the basis for the 20, 50 or 70 percent surcharge? Will this rate be altered over time?
2. What criteria are to be used in applying when 50 versus 70 percent surcharge?
3. Are differences in the non fee costs of grazing different areas to be considered in determining the surcharges to be paid to the federal? government?

II. Public participation

1. Advisory committees (Section 1784.6-1)

a. Current Situation

Public lands advisory councils, district advisory councils and grazing advisory boards.

b. Proposed

Multiple Resource Advisory Councils [MUAC] for most districts of up to 15 members.

1. Five from commodity industries, developed recreation, and ORV.
2. Five representatives from "nationally or regionally recognized environmental or resource conservation groups and other specified groups (horse/burro, dispersed recreation, and archeological and historical interests.
3. Five persons who would represent elective offices, Indian tribes, public-at-large, state lands, fish and game managers, and

others

c. Issues

1. What criteria will be used to determine when a MUAC is to be appointed for areas that are not consistent with district boundaries (e.g., ecosystems)?
2. Will these councils also provide input for other uses? If not, why?
3. Is it possible to have a council made up of members who have no interest in or knowledge of grazing? If so, why?
4. What is the content of the course of instruction to be received by council members? Who is to provide the instruction for MUAC members (e.g., consultants, extension, environmental organization)? Will the content be uniform and consistent?
5. The provision that 3 members of each group must be in attendance allows veto of an action or proposal by abstention of a few (e.g., development of local standards).
6. What provision is to be made if "important groups" choose not to participate as a member of the MUAC?
7. Will people who are not nominated by a Governor be appointed? When? Why?
8. What is the relationship between MUAC and land administrators? What power do these councils possess to affect decisions?
9. What is the cost (private and administrative) of complying with this provision?
10. How is it determined that a possible member has "direct interest"? Is local knowledge to be a deciding factor in choosing members?
11. Are members of MUAC to be individuals who have knowledge of the area? Why is non residency of members allowed for some groups to be represented and not for all groups?
12. At what level(s) [allotment, area, district, state, national] will decisions be made concerning the existence of grazing in a particular area? Is this decision to be evaluated by MUAC's?
13. Why is participation by "academicians" limited to those who are "in natural resource management or the natural sciences"?

2. Rangeland resource teams (Section 1784.6-2)

a. Current situation

none provided for or used

b. Proposed

Teams may be formed by a MUAC or by citizen petition to provide input to MUAC. (two who hold grazing permits, one from the public-at-large, one

from an environmental organization and one representing local wildlife/recreation interests). One member must be from the MUAC.

c. Issues

1. What is the content of the course members are to attend? Who is to provide the instruction received?

3. Technical Review teams (**Section 1784.6-3**)

a. Current situation

none provided for or used

b. Proposed

Teams formed to provide technical input to either of the groups outlined above.

c. Issues

1. How and where are members of technical review teams to be recruited if there is no financial incentive for participation?

III. Administrative Procedures

1. Full force and effect (**Section 4.477**)

a. Current: Decisions that are appealed will not be implemented (are suspended) until appeals have been decided.

b. Proposed: Decisions will be implemented until or if appeals result in a different decision.

c. Issues

1. Guilty unless shown innocent versus innocent unless shown to be guilty.
2. Action on decisions occur faster.
3. No provision for stay pending an appeal.

2. Prohibited Acts (**Section 4140**)

a. Current: Permittees subject to national laws (NEPA, Horse and Burro, Endangered species, etc.)

b. Proposed: Permittees subject to national as well as state and local laws.

c. Issues

1. Number of actions that may be prohibited expanded.
2. What legal authority allows federal employees to enforce state and local laws?
3. Are permittees and affiliates subject to compliance?
4. What specific actions are prohibited from the acts outlined in proposal?

3. Conservation Use (**Sections 4100.0-5, 4100.1, 4130.2**)

a. Current: Conservation use not defined or included

b. Proposed: Conservation use is defined to be "...an activity for the purpose of protecting the land and its resources from destruction and unnecessary injury." This is a new type of active use.

c. Issues

1. Will fees be paid when conservation use is

- approved? Is free use (**Section 4130.7-1,h.1**) to be equally applied for all permittees who apply for conservation use? If not, what criteria is to be applied to determine if conservation use is "free"?
2. May allow entities to obtain a permit and not graze any livestock and maintain the permit.
 3. Forage set aside for "conservation use" not available for other permittees.
 4. Suspended non use no longer available.
 5. Conservation use is to be part of active use and not part of non use of rangelands.
 6. Can permittees change from conservation to active use? Under what circumstances? How?
4. Permit issuance and renewal (**Sections 4100.0-5, 4101.1, 4130, 4130.1**)
- a. Current: must be engaged in livestock business
 - b. Proposed: must have satisfactory performance
 - c. Issues
 1. What constitutes "satisfactory performance" and who must meet these conditions?
 2. Loss of state lease may result in loss of federal permit
 3. Non livestock parties (e.g., conservation organizations, mortgage insurers and private parties whose primary source of income is not the livestock business) could qualify for a grazing permit.
5. Easements (**Sections 420.2-1 and 4130.6-2**)
- a. Current: none specified
 - b. Proposed: Permittees must grant BLM access across permittees or lessee's owned or leased private land to obtain or renew a grazing permit.
 - c. Issues
 1. Any limitations on access?
6. Adjustments in permits (**Sections 4110 and 4130**)
- a. Current: Stocking rates for temporary use given to meet forage availability.
 - b. Proposed: Increases or decreases in use not to exceed 25% of authorized use or 100 AUMs
 - c. Issues
 1. Will limitations be enforced on ephemeral ranges?
 2. How are adjustments for changes to be implemented?
7. Takings
- c. Issues
 1. When/Are some of the actions proposed a "taking" of private property?
8. Affiliate (**Section 4100**)
- a. Current: Term not defined or used in current policy.
 - b. Proposed: Affiliate has power to control a permittee or lessee.
 - c. Issues

1. Must permittees have control of affiliates?
 2. Do agency personnel, committees, etc. have status to determine how the applicant, permittee or lessee conducts the grazing operation? Are these people affiliates?
 3. Must affiliates also have a satisfactory record of performance for an applicant to receive permit or additional forage?
9. Failure to use (**Section 4130.1**)
- a. Current: Failure to graze livestock may result in loss of permit
 - b. Proposed: Application for and approval of temporary nonuse or conservation use could maintain permits.
 - c. Issues
 1. Is this a means whereby permits may be purchased by non livestock interests and not lose permit for non use?
10. Permitted use qualifications (**Sections 4100.0-5, 4100, 4110.2-2**)
- a. Current: AUMS of use permitted
 - b. Proposed: use defined in terms of land use plans and amount of forage allocated for livestock.
 - c. Issues
 1. Impact on permit values
 2. Quantity of forage not specified
11. Interested public (**Section 4110**)
- a. Current: not included
 - b. Proposed: An individual, group or organization who submits written comments concerning the use of a specific allotment are considered to be an "interested public".
 - c. Issues:
 1. Any person can object to use of an area.
 2. Is more involvement needed/warranted given provisions in NEPA?
 3. Must authorizing officer consult with interested public for all grazing decisions (e.g., range improvements, stocking rates, season of use)
 4. Must interested public input be used in making non grazing decisions? If not, why must they be considered only in grazing decisions?
 5. What provisions, if any, are made to prevent an interested public from prolonging a decision(s) concerning the use of an area?
12. Authorized leasing and subleasing
- a. Current: not allowed statutorily
 - b. Proposed: leases can occur which are approved.
 - c. Issues
 1. See section on subleasing outlined under grazing fees above.
 2. What criteria are to be used in approving a sublease?

IV. Range improvements and Water rights

1. Range improvements (Section 4120.3-3)

a. Current

A Permittee can pay for entire cost of range improvements and retain title to the structure.

b. Proposed

Vests title in all permanent structural range improvements with federal government.

c. Issues

1. Will this change bring about an improvement on rangeland resources?
2. What incentives in the form of access will permittees have after improvements are made?
3. How can funds for improvements be obtained by permittees from lenders if title remains with the federal government?
4. What will be the disposition of rangeland resources funds? How are these to be allocated/
5. If the permittee initiates an application , he/she may be required to pay all installation and maintenance costs even though title is not obtained.
6. At what level must permittees maintain improvements?
7. Must a permittee keep improvements functioning (e.g., water in lines/troughs) even if livestock do not use the area?
8. Can other uses be excluded from using an improvement?

2. Water rights (Section 4120.3-9)

a. Current status

Water rights are retained by permittee or whoever files for and develops water

b. Proposed

Federal government would hold title to all water rights developed on federal lands

c. Issues

1. Federal ownership of water rights and state administration---federal administration???
2. Is the proposal consistent with state water laws?
3. What is the status of water rights developed on federal lands but flow to private lands?
4. What about water rights on private land that flow to federal lands?
5. What is the status of water based permits if federal ownership of waters are allowed?
6. Do improvements to existing water systems affect current water rights currently held by permittees?

V. National Requirements and Standards and Guidelines for
Grazing Administration (4180)

a. Current Situation:

Any standards and guidelines currently identified, are included in AMPs, RFPs and Forest Plans. No current rule establishes standards and guidelines for grazing. Federal agencies are currently required to following policy set by law that covers the expressed intent of this subpart (Taylor Grazing Act, Federal Land Management and Policy Act, Clean Water Act, Endangered Species Act).

b. Proposed: This is a new subpart.

c. Issues:

1. Are national standards being proposed only for livestock grazing? Will national standards for other uses be established? If not, why? 4180.1(a) 4180.2(a) (b) (c) (d) (e) (f) (g) (h) (i) (j)
2. What is the basis for instituting National requirements, standards and guidelines? Are they needed when BLM data indicate that rangelands are improving in ecological condition rather than deteriorating? 4180.1(a) 4180.2(a) (b) (c) (d) (e) (f) (g) (h) (i) (j)
3. What is meant by a "properly functioning ecosystem" or a "properly functioning riparian area"? 4180.1 (a) (1) (2)
4. What mechanism, if any, is to be provided to ensure due consideration (professional, technical, scientific) of local conditions (e.g., local factors affecting water quality, species recovery, ecological processes, and site potential)? If livestock grazing and grazing management practices have nothing to do with water quality or the status (health or welfare) of species covered by the Endangered Species Act can the attainment of conditions set forth in these paragraphs be obtained? 4180.1 (a) (3) (4)
5. What is the basis for establishing one year as the time frame for determining whether or not management practices are meeting the conditions specified for water quality and endangered species habitat? Is not a longer time necessary to establish these trends? 4180.1(a) (3) (4) and 4180.1(b)
6. Is a permit holder to be afforded due process when damaging assertions (frivolous or not) are made? When does a preponderance of evidence exist? 4180.1(b), 4110, 4120, 4130, 4160, 4180.2(f) (g) (j)
7. What is the basis for requiring the approval of all standards and guidelines at the highest level (secretary)? Will this provide a more politicized set of standards than when decisions are made at

the local level. 4180.2 (a) (b) (c) (d) (e) (f) (g) (h) (i) (j)

8. What is the basis for allowing public involvement to set standards and guidelines? Is public involvement not more appropriate in setting broad objectives for land management? 4180.2(b) (c) (d) (e)
9. If MUACs are to develop technical standards and guidelines, does the membership of non residents on MUAC's bias the development of standards that reflect local conditions especially when local users may not be represented? 4180.2(b) (c) (d) (e) Will this result in power based decisions instead of consensus?
8. Will the establishment of minimum or fallback standards ensure due consideration of local conditions? 4180.2(d) (f) (g)
9. What are the definition and standards used to establish required indicators for: (1) soil stability and watershed function, (2) distribution of nutrients and energy, (3) recovery mechanisms, and (4) riparian functioning condition? 4180.2(d) What objective standards, if any, are to be used?
10. Why must grazing management decisions be made that assist in species recovery? What evidence exists that: 1) livestock grazing is detrimental to any or all threatened or endangered species or 2) that changes in livestock grazing will reverse downward trends? 4180.2(e) (g)
11. What is the basis of the standards proposed? What is the role of natural processes in establishing these standards (e.g., some soils may never have had A-horizons)? 4180.2(f)
12. Is it legally possible to enforce state water law by a federal agency? 4180.2(e) (2) (g) (2)