

**Eastern Washington Resource Advisory Council Meeting
Spokane BLM District, Spokane, WA
Spokane District Office – February 25, 2004**

<p>Members Present (interest/term expiration): <u>Designated Federal Official (DFO):</u> Joseph K. Buesing, Spokane District Manager, BLM</p> <p><u>Sub-Group 1</u> Dave Billingsley (Grazing/2004) Andrew Berg (Energy & Minerals/2005) Steven Tveit (Timber/2004)</p> <p><u>Sub-Group 2</u> Charles Warner (Environmental/2005) Steven McKinney (Conservation/2004) Sharon Vore (Dispersed Recreation/2006)</p> <p><u>Sub-Group 3</u> B. J. Kieffer (Indian Tribe/2006) Mary Hunt (Elected Official/2006) James Dobrowolski (Academician/2004) Julie Dagnon (Public at Large/2006)</p>	<p>Members Not In Attendance: <u>Sub-Group 1:</u> Lori Jordan (Rights-of-Way/2005) Maurice Williamson (Commercial Recreation/2005)</p> <p><u>Sub-Group 2:</u> Mark Amara (Archaeological/Historical/2005) Al Cunningham (Environmental/2004)</p> <p><u>Sub-Group 3:</u> Doug Pineo (State Government/2006)</p> <p><u>Others in Attendance</u></p> <ul style="list-style-type: none">• Kevin Devitt, Field Manager, Border Resource Area, BLM• Jim Fisher, Field Manager, Wenatchee Resource Area, BLM• Kathy Helm, Planner & Environmental Coordinator, Spokane District, BLM• Rich Hubbard, Range Specialist, Spokane District, BLM• Shelly Short (District Coordinator to Congressman Nethercutt) <p><u>Meeting Recorder:</u> Kathy Helm</p>
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RAC Information Packets: Federal Register Notice of December 8, 2003; list of Questions and Answers on the Proposed Grazing Rule; and two letters (one from Mark Amara and another from Bob & Hazel Dezelle), both submitting comments on the Proposed Grazing Rule

The meeting was called to order at 9:15. a.m. by Chair Dave Billingsley, and a quorum was established at 10:00. Joe Buesing, Spokane BLM District Manager and Designated Federal Official, welcomed the RAC members and made general comments. One topic was a meeting room conflict for the March meeting. Sharon Vore offered Avista as an alternate meeting location since they have meeting rooms available.

The process of approving meeting notes was also discussed. Since policy calls for meeting notes to be approved within 90 days after the meeting, and the Eastern WA RAC charter states that the RAC chair approves the notes, it was decided that the BLM forward draft meeting notes to the RAC members for review. Any corrections to the meeting notes should be forwarded to the RAC Chair to facilitate correcting the meeting notes and having them distributed, including posting on the Internet.

The meeting agenda and notes of the January 24, 2004 RAC meeting were approved.

Proposed Grazing Rule Changes

Joe Buesing introduced Todd Thompson, Spokane District BLM Wildlife Biologist. Todd was available, at the request of the RAC, to answer questions about the impact of grazing on sage grouse. Todd gave a brief overview of the situation with sage grouse and BLM management direction, explaining the problems with managing for the species in Washington state where the land ownerships are intermingled. Todd also gave RAC members a handout, published by the Washington Department of Fish & Wildlife, entitled “Priority Habitat and Species Management Recommendations” (Volume IV: Birds).

Rich Hubbard, rangeland specialist with the Spokane BLM District, gave a Powerpoint presentation highlighting the main points of the proposed changes. This was the same Powerpoint given at the January meeting, but presented again as a foundation for the day’s discussion addressing the proposed grazing rule changes. Mr. Hubbard fielded questions from the RAC members to provide additional detail. The RAC members were reminded that the due date for commenting on both the grazing rule changes and the Draft Environmental Impact Statement is March 2, 2004, and that anyone could individually provide comments directly to the BLM, as stated in both documents.

The purpose of this RAC meeting was for RAC members to address the proposed grazing rule changes and to decide which alternative, if any, they supported and/or to give additional input to the BLM. The RAC’s comments would then be forwarded to BLM.

During a general discussion, one RAC member expressed concern that requiring monitoring data (for example over a 24-month period) might result in a particular problem being tracked over time before the problem is resolved.

The RAC addressed the proposed grazing rule changes by reviewing Table ES-1 of the Executive Summary and recording their positions on each element. The comments and/or recommendations of the Eastern Washington RAC are provided on a table, appended to these meeting notes. The RAC voted on the elements, using a consensus method of voting, which means that when all members agreed on a particular comment/recommendation, then that is the comment/recommendation that reflects the EWRAC as a whole. Where one or more members did not agree with the other members on a particular element (where they had differing views), then there was said to be “no consensus reached.”

Steve McKinney read the letter from the Dezellems to give their input on the proposed grazing rules. Regarding the two letters received as input for the Proposed Grazing Rule Changes, the RAC members determined that the letter received from the Dezellems was outside the purview of the advisory council. It was recommended that Mark Amara, an EWRAC member who was absent at today’s meeting but who had submitted a comment letter to be considered at today’s meeting, be advised to submit his comment letter directly to the BLM.

Public Comment: None.

Other Business

A meeting of RAC Chairpersons with BLM Director Kathleen Clarke is scheduled for May in Phoenix. EWRAAC Chair Dave Billingsley requested that James Dobrowolski be approved to attend that meeting in his place if he was unable to attend. The RAC members concurred.

Next Meeting

The March 26 meeting was cancelled, and in its place a meeting was tentatively scheduled for Thursday, April 29, at the Spokane BLM District Office. RAC members should forward any agenda items for that meeting to Kathy Helm at the Spokane BLM office. RAC members would like to have meeting confirmation notices.

With this change, future meetings that are tentatively scheduled are as follows:

- Thursday, April 29, 2004
- Thursday, May 27, 2004 (possibly a field trip)
- Thursday, July 22, 2004 (possibly a mining field trip)
- Thursday, October 7, 2004

The meeting adjourned at 3:15 p.m.



Officially Approved: May 27, 2004

Comments or Recommendations of the Eastern Washington Resource Advisory Council, Specific to “Table ES-1. Proposed Revisions to Grazing Regulations for the Public Lands Comparison of Alternatives” in the Executive Summary of the Proposed Grazing Rule Changes DEIS				
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3	Eastern WA RAC Position
<i>Improving Working Relationships With Permittees and Lessees</i>				
Social, Economic and Cultural Considerations in the Decision-Making Process	*No provisions specifically address NEPA documentation of social, economic and cultural considerations in the regulations regarding changes in permitted use.	*A new provision would be added stating that before changing grazing preference, BLM would undertake appropriate analysis as required by NEPA. The BLM would analyze and document, if appropriate, the relevant social, economic and cultural effects of the proposed action.	*Same as Proposed Action.	Alternative 2, but include that “BLM work closely with local Planning departments.”
Implementation of Changes in Grazing Use	*The current regulations do not address the timing of implementation of decisions to change grazing use.	* Changes in active use in excess of 10% would be implemented over a 5-year period unless: an agreement is reached with the permittee or lessee to implement the increase or decrease in less than 5 years; or the changes must be made before 5 years to comply with applicable law (e.g., Endangered Species Act).	*Same as proposed action, except that the 5-year phase in of changes in use would be discretionary , i.e., change in active use in excess of 10% may be implemented over a 5-year period.	Support Alternative 3
Range Improvement Ownership	*Under the current regulations, the United States holds title to permanent range improvements such as fences, wells, and pipelines authorized after August 21, 1995.	* Title to permanent range improvements such as fences, wells, and pipelines authorized under a cooperative range improvement agreement would be shared among cooperators in proportion to their initial contribution to on-the-ground project development and construction costs.	*Same as Proposed Action.	No consensus
Cooperation with State, Local, And County Established Grazing Boards	*Under current regulations, BLM is required to cooperate with State, county, and Federal agencies in the administration of laws and regulations relating to livestock diseases, sanitation, and noxious weeds, including State cattle and sheep sanitary or brand boards and County or other weed control districts.	*Under the proposed regulations, a requirement is added for the BLM to cooperate with State, local, or county established grazing boards in reviewing range improvements and allotment management plans on public lands.	*Same as Proposed Action.	Support Alternative 2

Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3	Eastern WA RAC Position
Review of Biological Assessments And Evaluations	*Current rules do not specifically mention biological assessments or evaluations, however the current regulations require that BLM, to the extent practicable, provide affected permittees or lessees, the state having lands or responsible for managing resources within the area, and the interested public an opportunity to review, comment and give input during the preparation of reports that evaluate monitoring and other data that are used as a basis for making decisions to increase or decrease grazing use, or to change the terms and conditions of a permit or lease. This provision has been interpreted to include biological assessments.	*Biological assessments and biological evaluations prepared under the Endangered Species Act are specifically identified as reports that BLM would, to the extent practical, provide affected permittees or lessees, the state having lands or responsibility for managing resources within the area, and the interested public an opportunity to review and provide input during their preparation.	*Same as Proposed Action	Support Alternative 2
Protecting the Health of the Rangelands				
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3	Eastern WA RAC Position
Temporary Nonuse	*Grazing permittees or lessees may submit and BLM may approve an annual application for temporary nonuse for no more than three (3) consecutive years. Reasons for temporary non-use include financial conditions or annual fluctuations of livestock.	*Grazing permittees or lessees could submit and BLM could approve non-use for no longer than one year at a time for resource reasons as well as for business/personal needs of the permittee or lessee (i.e., there would be no limit on consecutive years of non-use allowed.)	*Same as Proposed Action except that permittees or lessees could submit and BLM could annually approve an application for nonuse for no more than five consecutive years.	Support Alternative 2, but provide for a more extensive review after 5 years of non-use.
Basis for Rangeland Health Determinations	*The current regulations do not prescribe how the BLM determines that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the rangeland health standards and conform with the guidelines.	*Determinations that existing grazing management practices or levels of grazing use are significant factors in failing to achieve standards and conform with guidelines would be based on standards assessments and monitoring.	*Same as proposed action except that BLM would not be required to use both assessments and monitoring as basis for determinations, i.e., may be based on assessment and/or monitoring.	Support Alternative 3

Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3	Eastern WA RAC Position
Timeframe for Taking Action to Meet Rangeland Health Standards	*Under current regulations, the BLM is required to take appropriate action as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management needs to be modified to ensure that the fundamentals of rangeland health conditions exist or progress is being made toward achieving rangeland health.	*Under the proposed regulations, where standards and guidelines have not been established , BLM would take appropriate action as soon as practicable but not later than the start of the next grazing year following completion of relevant and applicable requirements of law, regulations and consultation requirements to ensure fundamentals of rangeland health conditions exist or progress is being made toward achieving rangeland health.	*Same as Proposed Action.	Support Alternative 2
	*Current regulations state that upon determining that existing grazing practices, or levels of use are significant factors in failing to achieve standards and guidelines for grazing administration, the authorized officer shall take appropriate action as soon as practicable but not later than the start of the next grazing year.	*Upon determining the existing grazing practices or levels of use are significant factors in failing to achieve standards and guidelines, the BLM would, in compliance with applicable laws and with the consultation requirements, formulate, propose, and analyze appropriate action to address failure to meet standards or conform to guidelines no later than 24 months after determination is made. Upon execution of agreement, the BLM would implement appropriate action (s) as soon as practicable but not later than start of next grazing year.	*Same as Proposed Action.	Support Alternative 2

Increasing Administrative Efficiency and Effectiveness				
Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3	Eastern WA RAC Position
Conservation Use	*Under the current regulations, conservation use is defined, is identified as a component of permitted use, may be authorized for up to 10 years, and is addressed in other provisions. However, no conservation use permits can or have been issued due to the 10 th Circuit Court decision in 1999 that issuance of conservation use permits exceeds the Secretary’s authority under the Taylor Grazing Act.	*All references to and provisions on conservation use would be deleted.	*Sane as Proposed Action.	Support Alternative 2, but suggest including an explanation of what the “other regulatory policies” are that are purported to sufficiently address issues.
Definition of Grazing Preference, Permitted Use, And Active Use	*In the current regulations, <u>grazing preference or preference</u> is defined as a superior or priority position against others for the purpose of receiving a grazing permit or lease. This priority is attached to base property owned or controlled by the permittee or lessee.	* <u>Grazing preference or preference</u> would mean the total number of animal unit months on public lands apportioned and attached to base property owned or controlled by a permittee, lessee or an applicant for a permit or lease. Grazing preference would include active use and use held in suspension. Grazing preference holders would have a superior or priority position against others for the purpose of receiving a grazing permit or lease.	*Same as Proposed Action.	Support Alternative 2
	*In the current regulations, permitted use is defined as the forage allocated by, or under the guidance of, an applicable land use plan for livestock grazing in an allotment under a permit or lease and is expressed in AUMS. The term permitted use encompasses authorized use including livestock use, suspended use and conservation use.	*The term <u>permitted use</u> would be dropped from the regulations and replaced with the term grazing preference, preference or active use, depending upon the context, throughout the regulations.	* Same as Proposed Action.	Support Alternative 2
	*In the current regulations, active use means current authorized use, including livestock grazing and conservation use. Active use may constitute a portion, or all, of permitted use. Active use doesn’t include temporary nonuse or suspended use within all or a portion of an allotment.	* <u>Active use</u> would be redefined to mean that portion of the current authorized use which is available for livestock grazing based on rangeland carrying capacity and resource conditions in an allotment under a permit or lease and which is not in suspension.	*Same as Proposed Action.	Support Alternative 2

Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3	Eastern WA RAC Position
Definition and Role of Interested Public	*Under the current regulations, interested public is defined as an individual, groups or organizations that has submitted a written request to the authorized officer to be provided an opportunity to be involved in the decision-making process for the management of livestock grazing on specific allotments or has submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment.	*Interested public would be defined as an individual, group or organization that has: (1) Submitted a written request to BLM to be provided an opportunity to be involved in the process leading to a decision for management of livestock grazing and followed up on that request by commenting on or otherwise participating in the decision-making process on management of a specific allotment; or (2) Submitted written comments to the BLM regarding management of livestock grazing on a specific allotment , as part of the process leading to a BLM decision on the management of livestock grazing on the allotment.	*Same as Proposed Action.	Support Alternative 2
	*The BLM is required to consult, cooperate and coordinate with interested public on the following: <ul style="list-style-type: none"> • Designating/adjusting allotment boundaries. • Apportioning additional forage. • Reducing permitted use • Emergency closures or modifications. • Development or modification of grazing activity plan. • Planning of the range development or improvement program. • Renewing/issuing grazing permit/lease. • Modifying a permit/lease. • Reviewing/commenting on grazing evaluation reports. • Issuing temporary non-renewable grazing permits. 	*Requirements to consult, cooperate and coordinate with the interested public would be modified as follows: <ul style="list-style-type: none"> • Removed • Retained. • Removed • Removed • Retained • Retained • Removed • Removed • Retained/Modified (added review on biological assessments/evaluations; removed specific reference to comment opportunity). • Removed 	*Same as Proposed Action.	Support Alternative 1 – Other alternatives do not provide explanation or justification for suggested changes to remove or modify portions of the requirements.
	*Under the current regulations, BLM is required to send copies of proposed and final decisions to the interested public.	*Same as existing regulations.	*Same as existing regulations.	Support Alternative 1

Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3	Eastern WA RAC Position
Water Rights	*Current regulations state that any right acquired on or after 8/21/95 to use water on public land for the purpose of livestock watering shall be acquired, perfected, maintained and administered under the substantive and procedural laws of the State within which land is located. To the extent allowed by State law, any such water right shall be acquired, perfected, maintained, and administered in the name of the United States.	*The phrase – “on or after 8/21/95” – would be dropped from the first sentence. The second sentence of this provision –stating that, to the extent allowed by State law, any water right would be acquired, perfected, maintained, and administered in the name of the United States – would be removed.	* Same as Proposed Action.	Support Alternative 1
Satisfactory Performance Of Permittee Or Lessee	*Current regulations identify requirements for satisfactory performance for renewal of permits and leases and for new permits or leases.	*The provisions on satisfactory performance would be moved from the section on “mandatory qualifications” to the section on “filing applications”. Minor editorial changes would be made in the definition of “satisfactory performance” for new applicants—basically changing the definition from a negative (what “is not” satisfactory performance) to a positive (what “is” satisfactory performance).	*Same as Proposed Action	Support Alternative 2

Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3	Eastern WA RAC Position
Changes in Grazing use Within Terms And Conditions Of Permit or Lease	*The current regulations state that changes within the terms and conditions of the permit or lease may be granted by the authorized officer.	*The proposed regulations would provide that BLM may authorize temporary changes in grazing within the terms and conditions of a permit or lease to respond to annual fluctuations in timing and amount of forage production; or to meet locally established range readiness criteria.	*Same as Proposed Action.	Support Alternative 2
	*The current regulations do not include consultation requirements for such changes.	*The BLM would consult with the permittee or lessee on such changes.	*Same as Proposed Action	Support Alternative 2
	*The current regulations do not define what is meant by “within terms and conditions of the permit or lease”.	*“ Within terms & conditions ” would be defined to mean temporary changes to livestock number, period of use, or both that would result in grazing use that results in forage removal that does not exceed the amount of active use specified in the permit or lease; and occurs either no earlier than 14 days before the begin date specified on the permit or lease, and no later than 14 days after the end date specified on the permit or lease.	*Same as Proposed Action	Support Alternative 2
Service Charges	*A service charge may be assessed for each crossing permit, transfer of grazing preference, application solely for nonuse and each replacement/supplemental billing notice except for actions initiated by the authorized officer. A specific fee is not identified in the current regulations, however the current fee for these actions is \$10.	*Service charges would be specified as follows: Except where BLM initiates the action, BLM would assess a service charge as shown below: (1) Issuance of crossing permit: \$75; (2) Transfer of grazing preference: \$145; (3) Cancellation and replacement of grazing fee billing: \$50.	*Same as Proposed Action.	Support Alternative 2

Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3	Eastern WA RAC Position
Prohibited Acts	*There are 3 categories of acts which are prohibited on public lands.	*Same as existing regulations.	*Same as existing regulations.	Support Alternative 2
	*The first category provides that permittees or lessees may be subject to civil penalties if they perform any of the 6 prohibited acts listed in this section.	*Same as existing regulations with several minor editorial changes and clarifications.	*Same as Proposed Action.	Support Alternative 2
	*The second category provides that anyone, not just permittees or lessees, shall be subject to civil or criminal penalties if they perform any of the 11 prohibited acts listed in this section. Prohibited acts in this category include actions such as littering, damaging or removing U.S. property without authorization, and failing to reclose any gate or other entry during periods of livestock use.	*Same as existing regulations with some minor editorial changes.	*Same as the Proposed Action plus the following prohibited act would be added to this section: “Failing to comply with the use of certified weed seed free forage, grain, straw or mulch when required by the authorized officer.”	Support Alternative 2
	*The third category provides that permittees or lessees could be subject to civil penalties for performance of acts listed in this section where: public lands are involved or affected; the violation is related to grazing use authorized by BLM; the permittee has been convicted or otherwise found to be in violation of any of these laws or regulations; and no further appeals are outstanding.	*Under the proposed regulation, the performance of prohibited acts in this third category would be further limited to the performance of such acts on an allotment where the permittee or lessee is authorized to graze under a BLM permit or lease. In addition, there would be some minor editorial changes.	*Same as Proposed Action.	Support Alternative 2
	*The third category consists of 3 sets of prohibited acts including: <ul style="list-style-type: none"> • specific laws or regulations (e.g., Endangered Species Act) • Federal or State laws pertaining to natural/environmental/cultural resources • State laws related to livestock operations. 	*Same as existing regulations.	The third category would consist of only 2 sets of prohibited acts including: <ul style="list-style-type: none"> • Specific laws or regulations (e.g., End. Species Act) • Federal or State laws pertaining to natural/ Environmental/cultural resources – deleted • State laws related to livestock operations. 	No consensus. (Second group to be deleted is not sufficiently identified.)

Elements	No Action/No Change Alternative 1	Proposed Action Alternative 2	Modified Alternative 3	Eastern WA RAC Position
Grazing Use Pending Resolution Of Appeals When Decision Has Been Stayed	Under the current regulations, if a decision is stayed, the Permittee or lessee will graze in accordance with the authorization issued the previous year. If the applicant had no authorized grazing use the previous year or the application is for ephemeral or annual grazing use, then grazing use will be consistent with the final decision pending resolution of the appeal.	The provisions would be moved and editorial changes would be made to clarify these requirements. In addition, a provision would be added addressing the stay of a decision on a permit or lease offered to a preference transferee . If a stay is granted on a decision to modify or renew a permit or lease or to offer a permit or lease to a preference transferee, then the immediately preceding authorization would continue under the immediately preceding authorization with the same terms and conditions therein.	*Same as Proposed Action.	Support Alternative 2
Treatment of Biological Assessments & Evaluations in the Grazing Decision-Making Process	*Current regulations do not specifically address biological assessments or biological evaluations prepared in compliance with the Endangered Species Act. However, in accordance with the IBLA Blake decision, biological assessments are to be treated as decisions subject to protest and appeal.	*In the proposed regulations, it would be stated that a biological assessment or biological evaluation prepared for Endangered Species Act consultation or conference would not be a decision for purposes of protest or appeal .	*Same as Proposed Action.	No consensus reached.
General Comments of the RAC				
<ul style="list-style-type: none"> • The Proposed Rule and EIS is complicated, and needs to be streamlined. Cross referencing would help to explain things better. • Need explanation for “Non-regulatory policy making.” • Needs summaries of citations, or maybe electronic links to cited reference. • Interested party consultation (Definition and process) • Rangeland health determination (clarify), re: link to T&E, what data is used. • Non use (duration?). How long can lease be held in non-use? • BLM asked to do more work with less money. • Capital value of BLM lease is not recognized. • Biological assessments and Biological evaluations – need explanation. 				