



Spirit of the Ancients

June 13, 2023

US Department of the Interior
Director (630) Bureau of Land Management
1849 C St. NW Room 5646
Washington D.C. 20240
Attention: 1004-AE-92

RE: Proposed rule adding “conservation” to Multiple Use

To Whom It May Concern:

ISPMB appreciates this opportunity to respond to the newly proposed regulations affecting public lands. We commend the Bureau of Land Management (BLM) for its current attempt in this proposed rule to prioritize the health and resilience of ecosystems across the entirety of our public lands by protecting intact landscapes, restoring degraded habitat, and making wise management decisions based on science and data.

ISPMB has long been an advocate of creating healthy ecosystems on public lands. In fact, it was our organization with Velma Johnston (affectionately known as Wild Horse Annie) at our helm that was the driving force behind the enactment of one of the most environmentally protective laws in 1971, the Wild Free-Roaming Horses and Burros Act known as PL 92-195.

The above law on its own strength requires the BLM and Forest Service (FS) “*shall manage wild free-roaming horses and burros in a manner that is designed to achieve and maintain a thriving natural ecological balance on public lands.*” Further the law states “*All management activities shall be at the minimal feasible level.*”

The real testing of this law came in 1984 in the Interior Board of Land Appeals (IBLA) in the case of *Dahl v Clark*, 1984 with the further defining of “excess” pertaining to wild horses and burros.

Quoting the IBLA Appeals 16 U.S.C. 1333(b)(2) (1982)

In examining this statute, we also concluded that the statutory term ‘appropriate management level’ (AML) has a very specific meaning in regard to removing wild horses or burros from public range. It is synonymous with restoring the range to a thriving natural ecological balance and protecting the range from deterioration. Thus, the number of “excess” animals the Secretary is authorized to remove is that which exceeds the AML, which is the optimum number of wild

horses and burros that results in a thriving natural ecological balance and avoid deterioration of the ranges.”

IBLA further concludes, “An AML established purely for administrative reasons because it was the level of wild horse use at a particular point in time cannot be justified under the statute. Accordingly, we also held that ‘the Act’ does not authorize the removal of wild horses in order to achieve AML which has been established for administrative reasons, rather than in terms of the optimum number which results in a thriving ecological balance and avoids deterioration of the range.”

ISPMB brings the above to the attention of this rule-making committee to emphasize the abrogation of the BLM’s duties to adhere to the law, PL 92-195. Very simply put, the BLM is required to monitor the habitat and determine which animals are causing damage to the habitat and only those animals shall be removed whether it be cattle or wild horses or burros.

Because of this ruling, wild horse and burro removals were stopped for three consecutive years in the IBLA through a lawsuit brought by Animal Protection Institute in 1989. The BLM defied the IBLA ruling in the Wyoming case in 1992 and Animal Protection Institute could not file an appeal in federal court due to the cost involved.

AML is the **outcome of monitoring**, not a set range of numbers carved in stone

Since 1992, the BLM has reverted back to its old way of setting arbitrary and capricious AML numbers for wild horses and burros.

Visually monitoring the habitat and determining the health of that habitat should be one of the most important aspects in the conservation use and we question if it should be delegated to entities holding conservation leases. ISPMB believes this is the responsibility of the BLM as noted in its name, Bureau of *Land Management*. Yet, previous history shows that the agency does not have the staff, the finances or the will to monitor habitat and determine who is actually causing damage.

We note that the BLM has recently moved toward the application of remote sensing data for rangeland health analysis of the habitat. While this application may be a way of the future, for now the final rule should specify that this should not replace on-the-ground assessments and determinations by qualified staff but it may be used in conjunction with the visual on-the-ground assessments.

To further our concern, BLM states in its Frequently Asked Questions regarding grazing leases the following: *If the BLM receives an application for a conservation lease that conflicts with an existing grazing permit or lease, that conservation lease would not be approved.*

In other words, only livestock permittees can decide if they want to participate in Conservation leases on their permitted public lands. ISPMB believes this gives too much power to permittees to control *our* public lands. The rule should either include all permitted lands for Conservation leases or none. BLM is required to look at these permits every ten years or even sooner in five years, if there is damage to the lands and make adjustments. Sadly, we don't see that happening enough.

As reported by Public Employees for Environmental Responsibility (PEER) the following:

- BLM has assessed land health standards (LHS) on approximately 108 million acres of grazed public lands. They have yet to assess 41 million acres.
- Of the total acres assessed, 50% fail to meet LHS, totaling 54 million acres
- Of the lands that failed to meet LHS, the agency said that in 72% of the cases a significant cause was livestock grazing - that's approximately 40 million acres, roughly the size of Wisconsin, that are failing due to overgrazing.
- There is a massive allotment in Wyoming, over 950,000 public acres, that is identified as failing LHS and reports livestock grazing as a significant cause.
- The records reveal that many allotments have never been assessed, including 1.4-million-acres allotment in Nevada.
- Wild horses are cited as "a significant disturbance factor" more than 50 times, but most frequently in conjunction with livestock.
- Much of the Greater Sage-grouse Priority and General Habitat Management Area lies within BLM allotments in ecoregions where more than 40% of lands assessed fail to achieve LHS due to livestock grazing.
- Additionally, a significant portion of the assessed lands that are "meeting" standards are actually only "making significant progress" towards meeting the standards, not actually meeting them.

ISPMB notes that "significant progress" has never been defined by the BLM. The final rule should define significant progress with quantitative and temporal objectives and include timeframes to accomplish this progress. It should include penalties for non-compliance.

PEER, which has obtained the BLM's rangeland health data via the Freedom of Information Act, charges BLM's deliberate obfuscation of livestock eco-impacts is a function of political pressure from the ranch industry; and that

- While the Agency scapegoats wild horses for habitat degradation, its data reveal that most of the allotments within the Wild Horse Management Areas (HMAs) that fail its standards for rangeland health - approximately 11.5 million acres of the 21.5 million acres of allotments with the HMAs assessed by the BLM to date - identify livestock as the significant cause of failure; Livestock are by far the most frequently identified cause of allotment failure to meet standard for quality of water, vegetation, and soils, as well as the ability to support wildlife nationwide, including for allotments within HMAs.

ISPMB believes instead of Conservation leases, BLM should fully assess the public lands as required by law and should account for the causes of environmental destruction. BLM should revise existing regulations for the offending activities so that public lands will be protected, restored, and future harm is prevented.

Further, ISPMB requests that the final rule should consider domestic livestock a disturbance agent that diminishes the intactness of landscapes and its impacts. One of those impacts is the unnecessary lethal management of native carnivores, some of which, are listed on the ESA such as the gray wolves.

Another impact from livestock grazing that should be considered in the final rule is infrastructure impacts such as fencing, water developments, roads, and corrals.

The final rule should list the activities that are appropriate for restoration and a list that are inappropriate for restoration. ISPMB advocates that livestock grazing is not an acceptable restoration practice and the altering of grazing management, which should be done in permits, should not be considered as a restoration activity.

Finally, the final rule should clearly indicate that passive restoration, or the removal of the stressors leading to degradation, is the preferred way to achieve recovery. In regard to where Rangeland Health Standards are not met, this should include reducing or eliminating livestock grazing.

The final rule should include meaningful public engagement at all levels of planning, decision making, and throughout project implementation. This is an important and fundamental principal of democracy. Categorical exclusions should be discouraged as it prevents public input at the discretion of the BLM and FS and prevents the use of the National Environmental Policy Act (NEPA). ISPMB encountered this in trying to protect wild horses in the Alpine District of the Apache-Sitgreaves Forest in northern Arizona.

Adding Conservation as a use to Multiple Use can be a powerful tool for the public depending on how the regulations are promulgated. If done appropriately and with the true intent to improve the health of the public lands, it may give hope to future generations that this agency truly has the best interest of the lands at heart and is no longer governed by the powerful lobbies such as livestock and oil and gas. And just maybe, as a nation we may be able to combat climate change, not only to protect the lands and all that is therein, but also to afford our children and grandchildren a future on earth.

Again, thank you for this opportunity to respond.

International Society for the Protection of Mustangs and Burros (ISPMB)