

July 12, 2026

Steve Pearce, BLM Director
Bureau of Land Management
1849 C St. NW, Room 5686
Washington, DC 20240

Submitted via <https://www.regulations.gov/document/BLM-2026-0001-0001>

Re: Revision of Regulations for Grazing Administration, Exclusive of Alaska, BLM-2026-0001

Dear Director Pearce,

Defenders of Wildlife submits the following comments in response to the May 12, 2026, Federal Register Notice soliciting public comments on the Bureau of Land Management's proposed revisions to the regulations for grazing administration (43 CFR § 4100 et seq.) (hereinafter "2026 Proposed Rule").¹

Defenders of Wildlife ("Defenders") is a nonpartisan, nonprofit organization dedicated to protecting and restoring America's wildlife and the habitats upon which they depend. Defenders and our members are deeply invested in the sound stewardship of public lands and in ensuring that management of the National System of Public Lands prioritizes ecosystem health and resilience, biodiversity conservation, benefits to the public and local communities, and the mitigation of climate-related impacts. We submit these comments on behalf of our more than two million members and supporters nationwide, including thousands across the West. The 2026 Proposed Rule and changes to information collection requirements governing domestic livestock grazing on the National System of Public Lands have significant implications for the long-term health and resilience of public lands, the conservation of wildlife and biodiversity, and the public's use and enjoyment of these shared resources.

I. Introduction and Overview

The National System of Public Lands ("NSPL") across the western United States are wildlife and biodiversity strongholds, providing important habitat for hundreds of sensitive, threatened, and endangered species. Sage grouse and native trout depend on these landscapes, as do desert tortoises, pygmy rabbits, pronghorn, and countless migratory birds that pass through or call these lands home.

¹ Revision of Regulations for Grazing Administration, Exclusive of Alaska, 91 Fed. Reg. 26852 (May 12, 2026).

The Bureau of Land Management (“BLM”) currently manages about 18,000 permits on 21,000 grazing allotments on 155 million acres, which is 62% of all the surface acres under BLM’s administration. Poorly managed livestock grazing can have profound effects on important resources like water quality and riparian health, soil integrity, fish and wildlife and rare plants, and vegetation communities. Thus, BLM regulations should ensure that livestock grazing occurs within the land’s capacity, is balanced with other important land and wildlife values, is administered transparently, and incorporates robust public participation requirements. Unfortunately, rather than strengthening this balance, BLM’s 2026 Proposed Rule promotes livestock grazing by weakening current safeguards for conserving wildlife habitat and the broader health of public lands.

Of particular concern to Defenders is the intersection of imperiled species, their habitats, and livestock grazing. BLM manages habitat for over 300 threatened or endangered species that are battling against extinction and deserve the highest levels of protection from activities that individually or cumulatively impact their viability. BLM lands are home to an additional roughly 2,600 sensitive and rare species that merit enhanced attention to prevent them from declining to the point where they also require protection under the Endangered Species Act (“ESA”).² Under the ESA, BLM has a statutory mandate not to likely jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat. BLM also has affirmative responsibilities to implement programs for the conservation of threatened and endangered species and the ecosystems upon which they depend.

Defenders strongly opposes many of the proposed changes in the 2026 Proposed Rule for the following reasons, explained more fully below:

- The 2026 Proposed Rule weakens the Land Health Standards Framework and undermines effective monitoring and adaptive management. This framework was designed to allow land managers to identify problems and adjust course before the damage becomes too severe. Without an effective framework, problems may go undetected and become much more difficult and expensive to fix.
- The 2026 Proposed Rule would restrict the public’s ability to know about or participate in key decisions affecting land and resource health and other uses. It weakens the transparency and public participation requirements that currently

² See Bureau of Land Management, BLM Manual 6840-*Special Status Species Management*, at 3 (2024, now reverted to the 2008 Manual) 8) (providing that BLM shall “implement measures to conserve these [special status] species and their habitats . . . to promote their conservation and reduce the likelihood and need for such species to be listed pursuant to the Endangered Species Act.”

give scientists, conservation groups, Tribes, and everyday citizens a voice in how these lands are managed. Given how vast and ecologically significant these lands are, BLM needs more outside expertise and public input, not less of it.

- The 2026 Proposed Rule inappropriately narrows who can hold a grazing permit to only "production-oriented" livestock operations, potentially sidelining ranchers and land stewards who incorporate conservation-oriented practices into their operations. It also removes incentives for voluntary conservation.
- The 2026 Proposed Rule has procedural deficiencies because BLM failed to conduct an Environmental Impact Statement pursuant to the National Environmental Policy Act ("NEPA"), engage in ESA Section 7 consultation, engage in informed decision-making by developing the technical and scientific understanding of the full regulatory impact of the 2026 Proposed Rule, or adequately explain changes in agency position.
- The 2026 Proposed Rule eliminates the water quality land health fundamental and weakens the standards for at-risk native wildlife and plants.

Taken together, these changes move BLM's grazing program in the wrong direction. BLM should instead be strengthening the land health framework and standards, following through on its NEPA and ESA obligations, preserving public participation, and actively encouraging the kind of conservation-oriented stewardship that keeps both wildlife and rangelands healthy for the long term.

II. Legal and Policy Background of Grazing Statutes and Regulations

The Department of the Interior, through the BLM, manages grazing on public lands under its array of authorities including the Taylor Grazing Act ("TGA"), the Federal Lands Policy Management Act ("FLPMA"), the Public Rangelands Improvement Act ("PRIA"), the Clean Water Act ("CWA") and the ESA. BLM must also comply with the procedural requirements of the NEPA and the Administrative Procedure Act ("APA"). For that reason, we describe several key statutes below to provide context for our comments. BLM must ensure that the proposed regulatory changes comply with its statutory mandates.

A. Taylor Grazing Act

Prior to 1934, livestock grazing on federal land was generally unregulated. "Lack of oversight, '[p]opulation growth, forage competition, and inadequate range control all began to have consequences both serious and apparent.'"³ The Taylor Grazing Act was

³ *Western Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 477 (9th Cir. 2011).

enacted in 1934 to address the severe damage to the public lands caused by overgrazing. Congress articulated three goals for the TGA: “to regulate the occupancy and use of the federal lands, to preserve the land and its resources from injury due to overgrazing, and to provide for the orderly use, improvement, and development of the range.”⁴

Under the TGA, the Secretary of the Interior (“Secretary”) is authorized to establish grazing districts on certain public lands.⁵ The Secretary is required to provide for the regulation of these grazing districts to, among other things, “regulate their occupancy and use, to preserve the land and its resources from destruction and unnecessary injury, [and] to provide for the orderly use, improvement, and development of the range.”⁶ The TGA states a preference for issuance of grazing permits for landowners within or near the grazing district and those with water rights.⁷ Thus, the TGA created a statutory means for continuing to allow grazing by private ranchers on the public range while empowering the Secretary to regulate that use to preserve the land.

B. Federal Land Policy and Management Act

FLPMA was enacted in 1976 and “represents Congress’ express recognition that in over forty years of land management under the TGA, the BLM had failed adequately to protect and enhance the federal lands.”⁸ FLPMA creates a framework governing the BLM’s management of public lands.⁹ In enacting FLPMA, Congress recognized that our public lands must be managed in a way that balances economic uses with other uses, reflects many different needs, and sustains public lands for future generations.

1. Multiple Use and Sustained Yield

Congress explicitly mandated that:

the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, *will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and*

⁴ *Public Lands Council v. Babbitt*, 167 F.3d 1287, 1290 (10th Cir. 1999) (internal emphasis omitted) (citing 43 U.S.C. § 315a).

⁵ Taylor Grazing Act, 43 U.S.C. §§ 315-316(o), § 315.

⁶ *Id.* § 315a.

⁷ *Id.* § 315b.

⁸ *Public Lands Council*, 167 F.3d at 1290, 1290 (citing H.R. Rep. No. 94-1163 at 1 (1976)) (*also citing* 43 U.S.C. § 1751(b)(1) (“Congress finds that a substantial amount of the Federal range lands is deteriorating in quality”).

⁹ See Federal Land and Policy Management Act, 43 U.S.C. §§ 1701–1787 (1976).

wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use[.]¹⁰

Congress also reiterated this mandate of “multiple use” as the means for the management of the public lands and their resources in its definitions of the term.¹¹

Multiple use means 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. . .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 unit output.¹²

Managing for multiple use and sustained yield inherently requires balancing potentially degrading uses with protection of environmental values.

Multiple use planning mandates that the agency must make the “most judicious use” of public lands and their resources to “best meet the present and future needs of the American people.”¹³ Hence, economic productivity is not the only consideration in land management but must be balanced with other values and priorities. FLPMA also requires management for “sustained yield,” defined as the achievement and maintenance “in perpetuity” of renewable resource outputs consistent with multiple use.¹⁴ Therefore, land management agencies have a mandate to include protection of soil, water, and habitat in deciding which uses will be permitted and to what extent on public lands.

As a part of rangeland management for grazing, all permits may incorporate an allotment management plan developed by the Secretary.¹⁵ These plans are required to be tailored to the specific conditions of the area and be reviewed periodically to evaluate the effectiveness of improving the range conditions of the lands.¹⁶ There is no requirement for BLM to evaluate whether the permittee is using the allotment productively, but instead, the focus is on the condition of the land.

¹⁰ *Id.* §1701(a)(8) (emphasis added).

¹¹ *Id.* § 1702(c).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* § 1702(h).

¹⁵ *Id.* § 1752(d).

¹⁶ *Id.*

2. Prevent Unnecessary or Undue Degradation

BLM's obligation to manage in accordance with multiple use, sustained yield principles is also expressed in its ongoing duty to "prevent unnecessary or undue degradation" to the public lands.¹⁷ FLPMA's "unnecessary or undue degradation" standard employs "principles of multiple use and sustained yield."¹⁸ BLM is further required to "balance multiple uses in its management of the public lands, including 'recreation, range, timber, minerals, watershed, wildlife and fish, and [uses serving] natural scenic, scientific, and historical values.'"¹⁹ Finally, BLM "must plan for sustained yield" and not deplete resources over time "so as to ensure a high level of valuable uses in the future."²⁰

3. Public Participation Requirements

FLPMA requires that BLM develop, maintain and revise land use plans (known as Resource Management Plans ("RMPs")) with "public involvement."²¹ FLPMA Section 309(e) further directs that "[i]n exercising his authorities under this Act, the Secretary, by regulation, shall establish procedures, including public hearings where appropriate, to give . . . the public adequate notice and an opportunity to comment upon the formulation of standards and criteria for, and to participate in, the preparation and execution of plans and programs for, and the management of, public lands."²² The grazing program is a program for management of public lands requiring notice and comment under FLPMA.

C. Public Rangelands Improvement Act

In enacting PRIA in 1978, Congress found that "vast segments of the public rangelands are producing less than their potential for livestock, wildlife habitat, recreation, forage, and water and soil conservation benefits, and for that reason are in an unsatisfactory condition[.]"²³ It recognized that the degraded condition of the public range lands presented a high risk for soil loss, desertification, and underproductivity for large swaths of

¹⁷ *Id.* § 1732(b).

¹⁸ *Theodore Roosevelt Conservation Partnership v. Salazar*, 661 F.3d 66, 76 (D.C. Cir. 2011) (citing 42 § 1732(a)).

¹⁹ *Id.* (citing 43 U.S.C. § 1702(c)).

²⁰ *Id.* (citing *Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 58 (2004); see also *Center for Biological Diversity v. U.S. Dep't. of Interior*, 623 F.3d 633, 645 (9th Cir. 2010) (unnecessary or undue degradation requirement "is distinct from requirements under NEPA" and a finding that there will not be a significant impact "does not mean either that the project has been reviewed for unnecessary and undue degradation or that unnecessary or undue degradation will not occur") (quoting *Kendall's Concerned Area Residents*, 129 I.B.L.A. 130, 140 (1994)).

²¹ See 43 U.S.C. § 1712(a).

²² *Id.* § 1739(e); see also *id.* § 1701(a)(5).

²³ Public Rangelands Improvement Act, 43 U.S.C. §§1901-1908, §1901 (a)(1).

public land.²⁴ To address this, Congress established and reaffirmed the national policy that the public rangelands be managed, maintained and improved to “become as productive as feasible for *all* rangeland values”²⁵ Like the TGA and FLPMA, PRIA reflects Congressional intent for the public lands to be managed for the continued health of rangelands—not simply maximum production at a given time by an individual permittee.

D. 1995 and 2006 Grazing Regulations

In 1995, the Department of the Interior finalized comprehensive federal grazing regulations.²⁶ These regulations apply to all public land, excluding Alaska, available for livestock grazing. With the 1995 Grazing Regulations, BLM moved to more explicitly manage grazing lands to “‘accelerate restoration’ of the rangeland, make the rangeland management program ‘more compatible with ecosystem management,’ ‘streamline certain administrative functions,’ and ‘obtain for the public fair and reasonable compensation for the grazing of livestock on public lands.’”²⁷ The 1995 Grazing Regulations utilized Resource Advisory Councils (“RACs”) to provide broad-based stakeholder input on public land management, including grazing decisions.²⁸ The 1995 Grazing Regulations also, and importantly, established the Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration.²⁹ The 1995 Grazing Regulations require BLM to establish land health standards and guidelines and, if lands are found to be in substandard health, take corrective action.

In 2006, BLM attempted to amend the 1995 Grazing Regulations but they were invalidated by a federal court for noncompliance with NEPA, FLPMA, and the ESA.³⁰ The court found, among other things, that BLM failed to take the required “hard look” at the environmental effects of the 2006 Grazing Regulations under NEPA; failed to consult with the United States Fish & Wildlife Service (“FWS”) as required by the ESA; and violated FLPMA’s public participation requirements.³¹ The decision overturning the 2006 Grazing Regulations was affirmed by the Ninth Circuit and the regulations were permanently enjoined, maintaining

²⁴ *Id.* §1901(a)(3).

²⁵ *Id.* §1901(b)(2) (*emphasis added*).

²⁶ Grazing Administration—Exclusive of Alaska, 43 CFR §§ 4100-4190.1 (1995).

²⁷ *Public Lands Council v. Babbitt*, 529 U.S. 728, 739 (2000) (citing 58 Fed. Reg. 43208 (1993)).

²⁸ 43 CFR § 4120.2(e).

²⁹ *Id.* § 4180.

³⁰ *W. Watersheds Project v. Kraayenbrink*, 538 F.Supp.2d 1302, 1324 (D. Idaho 2008); affirmed in part by *W. Watersheds Project*, 632 F.3d 472, 500 (9th Cir. 2011) (upholding the court’s NEPA and ESA findings and remanding for further analysis of its FLPMA claim).

³¹ *W. Watersheds*, 538 F. Supp. at 1314-16, 1319-20.

the primacy of the 1995 Grazing Regulations (60 CFR 9894) in administering BLM's livestock grazing programs.³²

The issues presented during the 2006 regulation revision are still relevant today as it appears BLM's 2026 Proposed Rule includes many similar provisions³³ to the overturned 2006 Grazing Regulations and has provided minimal environmental analysis.

III. The 2026 Proposed Rule Circumvents BLM's Obligations Under the ESA

A. BLM Must Engage in ESA Section 7 Consultation Concerning the 2026 Proposed Rule

BLM must comply with its obligations under Section 7 of the ESA, including consultation with the FWS to ensure that its 2026 Proposed Rule is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat. BLM must ensure that its 2026 Proposed Rule is consistent with the ESA and engage in required consultation to protect listed species.

Congress enacted the ESA to establish a “program” and a “means” of conserving endangered and threatened species and the ecosystems on which they depend.³⁴ The statute, which recognizes the “incalculable” value of these species, “represent[s] the most comprehensive legislation for the preservation of endangered species ever enacted by any nation.”³⁵ The ESA has a proven track record of bringing imperiled species back from the brink. Some 95-99% of the species ever protected under the Act still exist today.³⁶ This includes successfully recovered species, like our national symbol, the bald eagle.

Section 7 consultation has been described as the “heart of the ESA.”³⁷ Section 7 reflects Congress' intent to require federal agencies to “afford first priority to the declared national policy of saving endangered species,” even above their primary missions.³⁸ It imposes both

³² *W. Watersheds*, 632 F.3d at 500.

³³ *Id.* at 480-81 (“In summary, the [2006 Grazing Regulations] reduce public oversight of federal grazing management, eliminate the Fundamentals of Rangeland Health as enforceable standards, allow the BLM additional time to respond to failing allotments, increase monitoring requirements, and cede ownership rights to permanent rangeland structures and water from the United States to private ranchers.”).

³⁴ Endangered Species Act, 16 U.S.C. § 1531(b).

³⁵ *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 180, 187–88 (1978).

³⁶ See Greenwald et al., *Extinction and the U.S. Endangered Species Act*, PEER 1, 3 (2019), doi.org/10.7717/peerj.6803; see also Andrew Carter & Lindsay Rosa, *The Endangered Species Act: The Next 50 Years and Beyond*, DEFS. OF WILDLIFE 1, 2 (2020), defenders.org/sites/default/files/2024-01/ESA%20Beyond%2050%20-%20online.pdf.

³⁷ *Karuk Tribe of Cal. v. U.S. Forest Serv.*, 681 F.3d 1006, 1019 (9th Cir. 2012) (quoting *W. Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 495 (9th Cir. 2011)).

³⁸ *Tenn. Valley Auth.*, 437 U.S. at 184–85; see also *id.* at 173–74.

substantive and procedural obligations on federal actors. Courts require stringent procedural compliance to ensure substantive compliance with Section 7(a)(2).³⁹

Substantively, Section 7(a)(2) mandates that a federal agency (the “action agency”) “insure that any action authorized, funded, or carried out by [the agency] . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat of such species[.]”⁴⁰ The procedural mechanism for ensuring this substantive duty is fulfilled is a Section 7(a)(2) consultation with the appropriate wildlife agency on any agency “action” that “may affect” listed species or designated critical habitat.⁴¹

To begin the consultation process, the action agency must contact the appropriate wildlife agency (FWS and/or the National Marine Fisheries Service (“NMFS”), (collectively the “Services”)) to determine if listed species or critical habitat “may be present” in the area affected by the proposed action.⁴² “Action area” is defined by regulation to include “all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.”⁴³

Further, once consultation has been initiated, Section 7(d) of the ESA prohibits the action agency from making any “irreversible or irretrievable commitment of resources” that would foreclose modifying the action to avoid jeopardy or adverse modification.⁴⁴ This provision “clarifies the requirements of section 7(a), ensuring that the status quo will be maintained during the consultation process.”⁴⁵

BLM has previously recognized that Section 7 consultation is appropriate when developing and implementing grazing regulations. In 1995, when BLM last successfully revised its grazing regulations, it formally consulted with FWS. However, in 2006, BLM attempted to implement some, though not all, of the changes it now proposes, such as changing the definition of interested parties, sharing title on rangeland improvements, and increasing the time before BLM must address rangeland health, without consultation with FWS.⁴⁶FWS

³⁹ See *Thomas v. Peterson*, 753 F.2d 754, 764 (9th Cir. 1985) (abrogated on other grounds by *Cottonwood Environmental Law Ctr. v. U.S. Forest Service*, 789 F.3d 1075 (2015)); see also *Conner v. Burford*, 848 F.2d 1441, 1457, n. 8 (9th Cir. 1988).

⁴⁰ 16 U.S.C. § 1536(a)(2).

⁴¹ *Id.* § 1536(a)(2); 50 C.F.R. § 402.14(a).

⁴² 16 U.S.C. § 1536(c)(1); see also, e.g., *Forest Guardians v. Johanns*, 450 F.3d 455, 457 (9th Cir. 2006).

⁴³ 50 C.F.R. § 402.02.

⁴⁴ 16 U.S.C. § 1536(d).

⁴⁵ *Conner*, 848 F.2d at 1445 n.34.

⁴⁶ See *W. Watersheds Project*, 632 F. 3d at 479-81 (listing similar proposed changes such as sharing title on rangeland improvements; removing interested parties, extending time before addressing changes to habitat).

and even internal BLM scientists noted that EPA consultation was necessary.⁴⁷ In expressing its concern that consultation did not occur, FWS noted multiple potential impacts on endangered species, as “wild ungulates, sage-grouse, neotropical migrant birds, pygmy rabbits, and various raptors are all influenced by the presence and distribution of livestock in the western sagebrush steppe ecosystem.”⁴⁸ The Ninth Circuit agreed that consultation was necessary, noting that “[t]he minimum threshold for an agency action to trigger consultation with FWS is low, and we conclude that the regulatory amendments here—which affect 160 million acres of public land, home to hundreds of special status species—handily meet that threshold.”⁴⁹

Grazing allotments make up 60% of BLM land, including portions that overlap with critical habitat for endangered and threatened species. The impact on threatened and endangered species therefore triggers BLM’s Section 7 consultation requirements, and BLM must initiate Section 7 consultation before moving forward with the 2026 Proposed Rule. Yet, the 2026 Proposed Rule does not indicate that BLM has initiated consultations with FWS, nor does it explain why it does not believe such consultation is necessary.

Here, the changes contemplated in the 2026 Proposed Rule have a profound possibility of affecting endangered and threatened species both directly and indirectly. The 2026 Proposed Rule has the potential to affect numerous endangered species across BLM lands including, but certainly not limited to, the Gunnison sage grouse, the black-footed ferret, the southwestern willow flycatcher, the yellow-billed cuckoo, and even the bull trout. The 2026 Proposed Rule will directly affect these species. *See infra* Section V(C). Accordingly, as noted by the Ninth Circuit, when changing its grazing regulations, BLM must initiate a Section 7 consultation because of the profound potential for impact on listed species.

IV. BLM’s 2026 Proposed Rule Fails to Protect Water Quality

A. BLM Must Comply with the Clean Water Act’s Requirements to Protect Water Quality

Livestock grazing operations on public lands include impacts to watershed health, water quality, and water quantity. In 1995, BLM promulgated the Fundamentals of Rangeland Health, which included a fundamental regarding functional watershed condition.⁵⁰ In addition, the 1995 Grazing Regulations included an additional fundamental that: “Water quality complies with State water quality standards and achieves, or is making significant

⁴⁷ *Id.* at 497.

⁴⁸ *Id.* at 497.

⁴⁹ *Id.* at 496.

⁵⁰ 43 C.F.R. § 4180.1 (1995).

progress toward achieving, established BLM management objectives such as meeting wildlife needs.”⁵¹ The 2026 Proposed Rule eliminates this provision, weakening an important regulatory tool for addressing grazing-related stream degradation.⁵²

The 2026 Proposed Rule would modify the Fundamentals of Land Health and Standards for Program Administration by eliminating the fundamental related to water quality (“water quality fundamental”). See more discussion about the Fundamentals of Land Health and Standards for Administration *infra* Section VI. Currently, the fundamentals include the requirement that standards and guidelines developed by BLM must ensure that water quality complies with “State water quality standards and achieves or is making progress toward achieving, established BLM management objectives such as meeting wildlife needs.”⁵³

While BLM acknowledges in the 2026 Proposed Rule that it must manage “in accordance with those standards under the Clean Water Act,” it does not explain how it will do so if it removes the water quality land health fundamental.⁵⁴ Instead, the 2026 Proposed Rule merely states that “BLM has determined that enforcement of those state standards by those state agencies responsible for such is the appropriate means for ensuring water quality.”⁵⁵ This statement does not seem to recognize BLM’s affirmative obligation to meet water quality standards under the Clean Water Act in its permitting⁵⁶ and it shifts the burden of enforcing state water quality standards to state agencies or the Environmental Protection Agency (“EPA”). BLM’s reliance on the EPA also ignores the practical realities of investigating exceedances of state water quality standards on remote public lands. As of July 2025, EPA’s workforce has been reduced by approximately 23%.⁵⁷ EPA has further requested a 52% decrease in funding for FY 2027.⁵⁸ It seems highly unlikely that with this reduced capacity and budget EPA would be able to effectively investigate and take

⁵¹ *Id.*

⁵² The proposed rule states that the changes would “call for the orderly rescission of existing standards that address water or air quality.” 91 Fed. Reg. at 26854. It is unclear to us precisely what BLM is referring to regarding air quality, but in addition to our concerns regarding the water quality fundamental, we note that BLM should examine and disclose any changes regarding air quality.

⁵³ 43 C.F.R. § 4180.1(c)

⁵⁴ 91 Fed. Reg. at 26854.

⁵⁵ *Id.*

⁵⁶ 33 U.S.C. § 1323(a).

⁵⁷ EPA Announces Reduction in Force, Reorganization Efforts to Save Taxpayers Nearly Three-Quarters of a Billion Dollars, ENVIRONMENTAL PROTECTION AGENCY. (July 18, 2025) (available at <https://www.epa.gov/newsreleases/epa-announces-reduction-force-reorganization-efforts-save-taxpayers-nearly-three>).

⁵⁸ FY 2027 EPA Budget in Brief, EPA-190-R-26-001, ENVIRONMENTAL PROTECTION AGENCY. (April 2026) (available at https://www.epa.gov/system/files/documents/2026-04/00_fy-2027-bib_combined_final.pdf).

enforcement action for degradation of water on BLM lands resulting from BLM permitted grazing activities. Further, BLM’s economic analysis of the 2026 Proposed Rule does not include an analysis of additional costs to state environmental enforcement programs or whether disparities exist between state enforcement capacity which may result in a patchwork of water quality on grazing lands.

The rationale for the deletion of the water quality fundamental also ignores a key purpose of the requirement in the current regulation. The water quality fundamental requires that water quality is meeting “[s]tate water quality standards *and* achieves, or is making significant progress toward achieving, established BLM management objectives such as meeting wildlife needs.”⁵⁹ There are more than 20,000 acres of wetlands and more than 250,000 miles of perennial and intermittent streams in the NSPL.⁶⁰ A 2016 assessment of stream and river conditions on BLM lands found that at least 70% of streams showed moderate to significant departure from biological reference conditions, with nearly half (47%) classified as significantly departed.⁶¹ The explanation for the change in the 2026 Proposed Rule only addresses the first part of the water quality fundamental (compliance with state water quality standards) but does not offer any reason for abandoning the second part of the standard—achieving water quality for BLM objectives, specifically wildlife needs. BLM simply concludes that it “is unlikely that removing water and air quality from LHS [will] lead to significant changes in these attributes on BLM managed lands.”⁶² BLM does not cite any scientific evidence or analysis for this broad conclusion where hundreds of thousands of miles of streams and tens of thousands of acres of wetlands are potentially affected. Nor does BLM offer any explanation of how it will ensure water quality in meeting its management objectives after it removes the water quality fundamental.

BLM should retain a distinct water quality fundamental to ensure compliance with FLPMA and the Clean Water Act and to recognize the significant effects livestock grazing can have on watershed conditions and water quality in streams and wetlands.

⁵⁹ 43 C.F.R. §. 4180.1(c) (emphasis added).

⁶⁰ *A Critical Call to Restore Our Public Lands*, Bureau of Land Management (Nov. 2024), at 8, https://www.blm.gov/sites/default/files/docs/2024-11/Restoration%20Blueprint%20508_0.pdf, *infra* note 181.

⁶¹ J. Courtwright et al., *Stream and River Condition Across the BLM's National System of Public Lands*, Soc’y for Freshwater Sci. (May 21—26, 2016).

⁶² *Economic Analysis for Proposed Rule: Revision of Regulations for Grazing Administration, Exclusive of Alaska*, Bureau of Land Management, p. 16 (May 12, 2026).

V. BLM Must Comply with the National Environmental Policy Act

A. NEPA Background

BLM must evaluate the environmental impacts of the 2026 Proposed Rule pursuant to NEPA by conducting a full Environmental Impact Statement (“EIS”) as it has done in previous rulemaking.⁶³ NEPA fosters informed decision making by federal agencies and promotes informed public participation in government decisions.⁶⁴ To meet those goals, NEPA requires that the BLM “consider every significant aspect of the environmental impact of a proposed action” and inform the public of those impacts.⁶⁵ BLM must take a “hard look” at the environmental effects of the 2026 Proposed Rule before finalizing any rule to ensure “that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts.”⁶⁶ Use of a Categorical Exclusion Is Inappropriate and BLM Must Prepare an EIS

The 2026 Proposed Rule invokes a categorical exclusion to avoid preparation of an EIS. The 2026 Proposed Rule’s revisions to the livestock grazing regulations and land health standard framework necessitate the preparation of an EIS and the use of a categorical exclusion is wholly inappropriate.

BLM intends to rely on the Departmental Categorical Exclusion (“CE”) at 43 C.F.R. § 46.210(i) to categorically exclude the 2026 Proposed Rule from the requirement to prepare an environmental assessment or environmental impact statement under NEPA.⁶⁷ The CE allows BLM to take actions without preparing an environmental assessment or environmental impact statement for “[p]olicies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.”⁶⁸

⁶³ See 42 U.S.C. §§ 4331-4370. See also *W. Watersheds Project*, 632 F.3d at 479. BLM convened three interdisciplinary teams of experts to review BLM’s proposed changes to its grazing regulations. *W. Watersheds Project*, 632 F. 3d at 479. The second interdisciplinary team drafted a report titled “Administrative Review Copy Draft EIS (ARC-DEIS)” which criticized BLM’s proposed regulations. *Id.* The ARC-DEIS expressed concerns about the long-range effects of the proposed regulatory changes on wildlife and biodiversity. *Id.* The third interdisciplinary team wrote a Final EIS which deleted without comment the ARC-DEIS’ concerns about wildlife, biodiversity, and riparian habitats. *Id.* BLM issued the Final EIS in March 2006 and issued its Final Rule and Record of Decision adopting the proposed changes in July 2006. *Id.*

⁶⁴ See *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 97-98 (1983).

⁶⁵ *Id.* at 97 (internal citation omitted).

⁶⁶ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).

⁶⁷ 91 Fed. Reg. at 26867.

⁶⁸ 43 C.F.R. §§ 46.205(b), 46.210(1).

BLM's rationale for this limited analysis is that:

[t]he proposed rule is administrative and procedural in nature . . . and will later be subject to the NEPA process either collectively or case-by-case. . . . Similarly, the [2026 Proposed Rule] obliges the BLM in some circumstances to take 'appropriate action' to address concerns associated with land health. What constitutes appropriate action, its timing, and its environmental effects will all turn on the particular facts and circumstances present when and where that obligation is triggered. Before taking 'appropriate action,' the BLM would analyze the environmental effects of doing so under NEPA.⁶⁹

The 2026 Proposed Rule changes major aspects of BLM's management of its grazing lands and will likely have profound effects across much of the public lands. It is not simply administrative and procedural in nature and will have significant environmental implications as discussed below.

BLM and the courts historically have concurred that regulation of this scale will require an EIS. To be specific, the promulgation of the original 1995 Grazing Regulations as well as the proposed revision processes in 2006 and 2020 were accompanied by (or committed to being accompanied by) an EIS. Indeed, when BLM initially launched this same revision process in January 2020, it explicitly stated that the revision would be accompanied by an EIS.⁷⁰ Furthermore, when BLM proposed revisions to the 1995 Grazing Regulations in 2006, it did not adequately address concerns raised by its own experts, FWS, the EPA, and state agencies that the changes would not have significant environmental effects and the Ninth Circuit concluded that BLM violated NEPA because it failed to take a "hard look" at the environmental consequences of its 2006 Proposed Rule.⁷¹

BLM now appears to propose many similar provisions as it did in 2006, but without the benefit of a NEPA analysis or the opportunity for one. The Ninth Circuit explicitly found that the changes proposed to BLM's grazing regulations in 2006 were "not purely administrative" because they "increase[ed] barriers to public involvement in grazing management and substantially delay[ed] enforcement on failing allotments, in ways that [would] have a substantial effect on special status species." BLM offers no explanation for

⁶⁹ 91 Fed. Reg. at 26867.

⁷⁰ 85 Fed. Reg. 3410 (Jan. 21, 2020) (available at <https://www.federalregister.gov/documents/2020/01/21/2020-00849/notice-of-intent-to-prepare-an-environmental-impact-statement-for-the-proposed-revision-of-grazing>).

⁷¹ *W. Watersheds Project*, 632 F.3d at 493, 500.

why a NEPA analysis is not required here, even though the Ninth Circuit found that similar provisions were not administrative.

B. BLM Must Take a Hard Look at the Direct, Indirect, and Cumulative Impacts of the 2026 Proposed Rule in an EIS

Livestock grazing across the NSPL has far-reaching consequences for ecosystem function, biodiversity, and individual species. Given the scale of grazing on BLM-managed lands and the diversity of habitats affected, it is inappropriate to characterize this significant change as solely “administrative and procedural in nature.” BLM must prepare an EIS and take a hard look at the direct, indirect, and cumulative effects that livestock grazing can have on ecological resources and wildlife.

1. Ecological Impacts

The weight of scientific literature demonstrates that grazing can affect ecosystems through numerous pathways. These impacts include, but are not limited to, deteriorated water quality,⁷² degraded biocrusts,⁷³ altered plant composition,⁷⁴ increased desertification,⁷⁵ woody encroachment,⁷⁶ increased bare ground,⁷⁷ and other ecosystem changes such as erosion or fire regime shifts.⁷⁸ Arid ecosystems and aquatic habitats are particularly vulnerable to these changes. And riparian systems are among the most biologically important and sensitive habitats on public lands, and studies consistently show that livestock exclusion is often necessary to maintain stream function and aquatic biodiversity.⁷⁹

⁷² See e.g., Stephani L. Clark Barkalow & Scott A. Bonar, *Effects of Suspended Sediment on Early-Life Stage Survival of Yaqui Chub, an Endangered USA–Mexico Borderlands Cyprinid*, 144 Transactions Am. Fisheries Soc’y 345 (2015).

⁷³ See e.g., Heather T. Root, Jesse E. D. Miller & Roger Rosentreter, *Grazing Disturbance Promotes Exotic Annual Grasses by Degrading Soil Biocrust Communities*, 30 Ecological Applications e02016 (2020).

⁷⁴ See e.g., Jeanne C. Chambers, David I. Board, Bruce A. Roundy & Peter J. Weisberg, *Removal of Perennial Herbaceous Species Affects Response of Cold Desert Shrublands to Fire*, 28 J. Vegetation Sci. 975 (2017).

⁷⁵ See e.g., A. Clements, *An Ecosystem Approach to Combat Desertification on the Colorado Plateau*, 99 Env’t Monitoring & Assessment 233 (2004).

⁷⁶ See e.g., Gottfried et al., *Private–Public Collaboration to Reintroduce Fire into the Changing Ecosystems of the Southwestern Borderlands Region*, 5 Fire Ecology 85 (2009).

⁷⁷ See e.g., Souther, S., Loeser, M. R., Crews, T. E., & Sisk, T. D., *Complex Response of Vegetation to Grazing Suggests Need for Coordinated, Landscape-Level Approaches to Grazing Management*, 20 Glob. Ecol. Conserv. e00770 (2019).

⁷⁸ See e.g., C. Centeri, *Effects of Grazing on Water Erosion, Compaction and Infiltration on Grasslands*, 9 Hydrology 34 (2022).

⁷⁹ See e.g., Michelle Krall & Philip Roni, *Effects of Livestock Exclusion on Stream Habitat and Aquatic Biota: A Review and Recommendations for Implementation and Monitoring*, 43 N. Am. J. Fisheries Mgmt. 476 (2023).

Grazing may threaten individual species through habitat degradation⁸⁰ or in more targeted ways. Some of the more specific pathways include increased predation or parasitism,⁸¹ disease transmission,⁸² increased risk of human-wildlife conflict,⁸³ trampling,⁸⁴ and obstruction of movement from fencing.⁸⁵ Grazing pressure can also compound other threats faced by species.⁸⁶ Broad-scale analyses indicate that these impacts are widespread. A global meta-analysis of the effects of livestock grazing on biodiversity showed that grazing decreased wildlife abundance and diversity across most taxa, but most notably for herbivores and pollinators; detritivores were the one group that increased with the addition of livestock.⁸⁷ Some well-managed grazing can benefit wildlife habitat, while poorly managed grazing can harm it. Grazing can have wide-ranging effects on ecosystems, as discussed below, so choosing appropriate grazing areas and employing suitable management sideboard methods can significantly influence the effects of this land use. For example, bison may have fewer negative effects than cattle (e.g., less riparian degradation) so managing land with bison could produce better environmental outcomes in some situations.⁸⁸ However, no single grazing strategy is universally appropriate, and management decisions must be based on site-specific ecological conditions and recurring monitoring.

BLM must analyze all the potential impacts grazing and the changes proposed in the 2026 Proposed Rule may have on the environment. Some species and ecosystems are

⁸⁰ See e.g., J.K. Frey, *Landscape Scale and Microhabitat of the Endangered New Mexico Meadow Jumping Mouse in the White Mountains, Arizona*, 8 J. Fish & Wildlife Mgmt. 39 (2017); Krall, *supra* note 80.

⁸¹ See e.g., C.B. Goguen & N.E. Mathews, *Brown-Headed Cowbird Behavior and Movements in Relation to Livestock Grazing*, 11 Ecological Applications 1533 (2001).

⁸² See e.g., T.E. Besser et al., *Exposure of Bighorn Sheep to Domestic Goats Colonized with Mycoplasma ovipneumoniae Induces Sub-Lethal Pneumonia*, 12 PLOS ONE e0178707 (2017); E.F. Cassirer et al., *Pneumonia in Bighorn Sheep: Risk and Resilience*, 82 J. Wildlife Mgmt. 32 (2018).

⁸³ See e.g., S.M. Wilson et al., *Landscape Conditions Predisposing Grizzly Bears to Conflicts on Private Agricultural Lands in the Western USA*, 130 Biological Conservation 47 (2006).

⁸⁴ See e.g., N.G. Perlut & A.M. Strong, *Grassland Birds and Rotational-Grazing in the Northeast: Breeding Ecology, Survival and Management Opportunities*, 75 J. Wildlife Mgmt. 715 (2011); D.P. Peterson et al., *Modeling Predicts That Redd Trampling by Cattle May Contribute to Population Declines of Native Trout*, 20 Ecological Applications 954 (2010).

⁸⁵ See e.g., R.B. Boone & N.T. Hobbs, *Lines Around Fragments: Effects of Fencing on Large Herbivores*, 21 Afr. J. Range & Forage Sci. 147 (2004); A.F. Jakes et al., *A Fence Runs Through It: A Call for Greater Attention to the Influence of Fences on Wildlife and Ecosystems*, 227 Biological Conservation 310 (2018).

⁸⁶ See e.g., A. Cisneros-Pineda, *Impacts of Cattle, Hunting, and Natural Gas Development in a Rangeland Ecosystem*, 431 Ecological Modelling 109174 (2020).

⁸⁷ A. Filazzola et al., *The Effects of Livestock Grazing on Biodiversity Are Multi-Trophic: A Meta-Analysis*, 23 Ecology Letters 1298 (2020).

⁸⁸ See e.g., B.P. Grudzinski et al., *Bison and Cattle Grazing Management, Bare Ground Coverage, and Links to Suspended Sediment Concentrations in Grassland Streams*, 52 JAWRA J. Am. Water Resources Ass'n. 16 (2016).

especially vulnerable to grazing-related impacts. Below we describe grazing effects on a short (and not exhaustive) list of vulnerable species and habitats to demonstrate the far-reaching impacts of grazing. BLM must analyze the effects to these and other species in an EIS because the proposed regulatory changes in the 2026 Proposed Rule go well beyond mere administrative or procedural changes.

a) Sage-Grouse

Greater sage-grouse require a network of healthy sagebrush habitats across multiple seasons, including nesting habitat, mesic brood-rearing areas, and winter habitat. The species exhibits strong fidelity to breeding areas and is particularly sensitive to disturbances within and around lek complexes.⁸⁹ Similar concerns exist for the threatened Gunnison sage-grouse, which occupies a much smaller range and faces many of the same threats associated with habitat degradation.

The Greater sage-grouse requires specific habitat conditions that can be affected by livestock grazing. In its 2010 finding that listing the Greater sage-grouse under the ESA was warranted, FWS concluded:

Livestock management and domestic grazing can seriously degrade sage-grouse habitat. Grazing can adversely impact nesting and brood-rearing habitat by decreasing vegetation concealment from predators. Grazing also has been shown to compact soils, decrease herbaceous abundance, increase erosion, and increase the probability of invasion of exotic plant species. Once plant communities have an invasive annual grass understory dominance, successful restoration or rehabilitation techniques are largely unproven and experimental (Pyke, in press, p. 25). Massive systems of fencing constructed to manage domestic livestock cause direct mortality to sage-grouse in addition to degrading and fragmenting habitats. Livestock management also can involve water developments that can degrade important brood-rearing habitat and or facilitate the spread of [West Nile virus].⁹⁰

The scientific evidence that supported these conclusions remains valid today and is reinforced by more than a decade of additional research documenting continued population declines and habitat loss. Greater sage-grouse populations have declined significantly over the last six decades, with an 80% range-wide decline since 1965 and

⁸⁹ D.J. Manier et al., U.S. Geological Survey, *Conservation Buffer Distance Estimates for Greater Sage-Grouse—A Review*, Open-File Report 2014-1239 (2014), <https://dx.doi.org/10.3133/ofr20141239>.

⁹⁰ *Endangered and Threatened Wildlife and Plants; 12-Month Findings for Petitions to List the Greater Sage Grouse (Centrocercus urophasianus) as Threatened or Endangered*, 75 Fed. Reg. 13910, 13942 (Mar. 23, 2010), <https://www.govinfo.gov/content/pkg/FR-2010-03-23/pdf/2010-5132.pdf>.

nearly a 40% decline since 2002.⁹¹ In 2022, the United States Geological Survey (“USGS”) concluded that if current conditions persist, there is only a 50% change that most leks will remain productive within the next sixty years.⁹² In its most recent range-wide trend analysis, USGS found that between 1990 and 2024, 72.5% of monitored leks experienced at least one population “watch” status and 57.8% experienced at least one “warning” status, indicating widespread and persistent population stress across the species’ range.⁹³ These declines have been driven primarily by the loss, degradation, and fragmentation of sagebrush ecosystems.

The condition of sage-grouse habitat on BLM-managed lands demonstrates why grazing management remains a critical issue. Within the approximately 139 million acres of Greater sage-grouse habitat spanning eight western states, BLM manages more than 10,000 grazing allotments. Analysis of BLM data reveals that approximately one-quarter of all Greater sage-grouse habitat—more than 36 million acres—is located within allotments that fail to meet BLM’s land health standards.⁹⁴ Of those acres, approximately 23 million acres fail land health standards due to livestock grazing, while nearly 17 million acres within sage-grouse habitat have never been evaluated through BLM’s land health assessment process despite more than twenty-five years having passed since the agency began conducting such evaluations.⁹⁵

The situation is particularly concerning in Wyoming, which contains roughly one-third of the remaining Greater sage-grouse habitat. Of the more than 17 million acres managed by BLM in Wyoming, the agency has determined that over 8 million acres are failing to meet land health standards. Among allotments that have been assessed, livestock grazing has been identified as a causal factor in approximately 44 percent of those failures.⁹⁶

⁹¹ P.S. Coates et al., U.S. Geological Survey, *Range-wide Greater Sage-Grouse Hierarchical Monitoring Framework—Implications for Defining Population Boundaries, Trend Estimation, and a Targeted Annual Warning System*, *Open-File Report 2020-1154* at 3 (2021).; *National News Release: Greater Sage-Grouse Monitoring*, U.S. Geological Survey, Mar. 30, 2021, <https://www.usgs.gov/news/national-news-release/new-research-highlights-decline-greater-sage-grouse-american-west>.

⁹² *Id.*

⁹³ B.G. Prochazka et al., U.S. Geological Survey, *Range-wide Population Trend Analysis for Greater Sage-Grouse (Centrocercus urophasianus)—Updated 1960–2024*, *Data Report 1217*, at 14 (2025) (the Targeted Annual Warning System (“TAWS”) identifies where and when sage-grouse populations may benefit from targeted management interventions where a “watch” indicates the early stages of declines in a specific neighborhood cluster and a “warning” signals a more severe, aberrant decline.

⁹⁴ *Sage-grouse Recovery Imperiled by Overgrazing*, Public Employees for Environmental Responsibility, July 25 2024, <https://peer.org/sage-grouse-recovery-imperiled-by-overgrazing/>.

⁹⁵ *Id.*

⁹⁶ *Greater Sage-Grouse in Decline Factsheet*, Public Employees for Environmental Responsibility, May 2022, <https://peer.org/wp-content/uploads/2022/06/Sage-Grouse-Fact-Sheet-June-2022.pdf>.

Because livestock grazing occurs across much of the remaining sagebrush ecosystem, grazing management decisions can have significant implications for habitat quality and species recovery. Decisions regarding forage allocation, utilization levels, season of use, stocking rates, livestock distribution, and the availability of additional AUMs can directly influence the condition of sagebrush habitats and the ecological processes upon which sage-grouse depend. Numerous studies have found that lower utilization levels,⁹⁷ conservative forage allocations,⁹⁸ and setting grass height minimums⁹⁹ are more likely to support habitat objectives while maintaining ecosystem resilience, particularly in drought-prone landscapes.

Although the 2026 Proposed Rule does not directly modify sage-grouse habitat standards, it would alter multiple aspects of grazing administration—including the frameworks for forage allocation, active use, suspended use, permit flexibility, and other management provisions—that would affect habitat conditions across millions of acres of sage-grouse range. Given the species' continued decline, the extensive overlap between grazing allotments and sage-grouse habitat, and the documented relationship between grazing management and habitat condition, BLM must fully analyze the impacts of the proposed regulatory changes on Greater sage-grouse, Gunnison sage-grouse, and the sagebrush ecosystems upon which they depend, in an EIS.

b) Pygmy Rabbit

Pygmy rabbits provide another example of a sagebrush-obligate species whose conservation is closely tied to grazing management decisions on BLM lands. Pygmy rabbits are highly dependent on intact sagebrush ecosystems, requiring dense sagebrush cover for forage and protection from predators, healthy understories of native grasses and forbs, and deep, friable soils suitable for burrow construction. Because pygmy rabbits rely on these habitat features throughout their life cycle, changes to vegetation structure, soil

⁹⁷ D. Galt et al., *Grazing Capacity and Stocking Rate*, 22 *Rangelands* 7 (2000); C.E. Braun, *A Blueprint for Sage-Grouse Conservation and Recovery* (Grouse, Inc., unpublished report, 2006); Jerry L. Holechek, Rex D. Pieper & Carlton H. Herbel, *Range Management: Principles and Practices* (6th ed. 2010).

⁹⁸ See e.g., Galt, *supra* note 98; Braun, *supra* note 98; Holechek, *supra* note 98; T.R. Troxel & L.D. White, *Balancing Forage Demand with Forage Supply*, Tex. A&M Univ. Res. & Ext. Serv. Publ. No. B-1606 (1989); H.W. Van Poolen & J.R. Lacey, *Herbage Response to Grazing Systems and Stocking Intensities*, 32 *J. Range Mgmt.* 250 (1979); U.S. Dep't. of Agric., Nat. Res. Conservation Serv., *National Range and Pasture Handbook* (1997); L.D. White & A. McGinty, *Stocking Rate Decisions: Key to Successful Ranching*, Tex. A&M Univ. Res. & Ext. Serv. Publ. No. B-5036 (1997).

⁹⁹ M.A. Gregg, J.A. Crawford, M.S. Drut & A.K. DeLong, *Vegetational Cover and Predation of Sage Grouse Nests in Oregon*, 58 *J. Wildlife Mgmt.* 162 (1994); R.L. Taylor, D.E. Naugle & L.S. Mills, *Viability Analysis for Conservation of Sage-Grouse Populations: Miles City Field Office, Montana, Final Report*, BLM Contract No. 09-3225-0012, Agreement No. G09AC00013 (2010) (prepared for the Bureau of Land Management, Miles City Field Office).

condition, and habitat connectivity can have significant consequences for population persistence.

The species has experienced substantial range-wide declines and is currently under review for protection under the Endangered Species Act.¹⁰⁰ An earlier (2003) listing petition estimated that pygmy rabbits occupied only approximately ten percent of their historic range, which once encompassed more than 100 million acres across the American West. More than two decades later, the species continues to face significant threats and remains at risk of becoming threatened or endangered throughout all or a significant portion of its range.¹⁰¹

Livestock grazing was identified as a significant threat in the original listing petition, and subsequent research has continued to demonstrate the ways grazing can degrade pygmy rabbit habitat.¹⁰² Because livestock grazing occurs throughout much of the species' remaining range, grazing management decisions can substantially influence habitat quality and population viability. Grazing can reduce the abundance and nutritional quality of native grasses and forbs used by pygmy rabbits for forage, diminish the structural diversity of sagebrush communities, increase the spread of invasive species, and damage the friable soils necessary for burrowing. Livestock movement can also collapse burrows and reduce habitat connectivity by degrading areas used for dispersal between populations.¹⁰³

Various scientific studies have documented these impacts in greater detail. One study found that cattle grazing during spring and summer reduced the biomass of perennial grasses available to pygmy rabbits, while spring grazing also reduced the availability of important forb species.¹⁰⁴ Similarly, a Washington study found that ungrazed areas in

¹⁰⁰ See Western Watersheds Project et al., *Rulemaking Petition to List the Pygmy Rabbit (Brachylagus idahoensis) under the Endangered Species Act as an Endangered or Threatened Species and to Concurrently Designate Critical Habitat* (Mar. 2023), <https://westernwatersheds.org/wp-content/uploads/2023/03/FINAL-030623-Pygmy-Rabbit-ESA-listing-petition-WWP-v2.pdf>; *12-Month Finding on a Petition to List the Pygmy Rabbit as Endangered or Threatened*, 75 Fed. Reg. 60516, 60519 (Sep. 30, 2010); *Conservation Groups Sue Trump Administration to Protect World's Smallest Bunnies*, Earthjustice, May 13, 2026, <https://earthjustice.org/press/2026/conservation-groups-sue-trump-administration-to-protect-worlds-smallest-bunnies>.

¹⁰¹ 75 Fed. Reg. at 60519; Wendy A. Estes-Zumpf et al., *Dispersal, gene flow, and population genetic structure in the pygmy rabbit (Brachylagus idahoensis)*, 91 J. of Mammology 208, 209 (2018), doi.org/10.1644/09-MAMM-A-032R.1.

¹⁰² See generally, 75 Fed. Reg. 60516.

¹⁰³ See *id.*

¹⁰⁴ M.J. Camp, J.L. Rachlow, L.A. Shipley, T.R. Johnson & K.D. Bockting, *Grazing in Sagebrush Rangelands in Western North America: Implications for Habitat Quality for a Sagebrush Specialist, the Pygmy Rabbit*, 36 Rangeland J. 151 (2014), <https://doi.org/10.1071/RJ13065>.

Washington's Columbia Basin supported higher densities of pygmy rabbit burrows than grazed areas and that livestock grazing reduced herbaceous cover by approximately fifty percent while decreasing the nutritional quality of forage available to pygmy rabbits.¹⁰⁵ The authors concluded that the reduction of grasses and forbs may adversely affect pygmy rabbit diets and that removing cattle from areas important to pygmy rabbit conservation could provide ecological benefits.¹⁰⁶

State wildlife agencies have reached similar conclusions. In a 2021 survey of pygmy rabbit populations in Oregon, the Oregon Department of Fish and Wildlife observed that cattle grazing appeared to contribute to the destruction of mature sagebrush plants and degradation of friable soil mounds that may provide suitable pygmy rabbit habitat.¹⁰⁷ The agency concluded that reducing grazing pressure in areas supporting pygmy rabbit populations could improve the species' long-term persistence and facilitate movement among populations.¹⁰⁸

These findings are particularly important because pygmy rabbits already occupy a fraction of their historic range and depend on increasingly fragmented sagebrush ecosystems. Because livestock grazing is a recognized threat to pygmy rabbits and because the species remains under active consideration for ESA protection, BLM must fully evaluate how these proposed changes could affect pygmy rabbit habitat, population connectivity, and recovery potential. Given the species' continued decline and dependence on healthy sagebrush ecosystems, a thorough analysis in an EIS is necessary to assess the direct, indirect, and cumulative effects of the 2026 Proposed Rule on pygmy rabbits and their habitats.

c) Black Footed Ferret and Prairie Dogs

The black-footed ferret is the only native species of ferret in North America and is one of the most endangered species in the U.S.¹⁰⁹ Black-footed ferrets once numbered as many as a million individuals across 12 western states, but the species was thought to be extinct by the late 1970s due to the loss of both the ferrets' habitat and their prairie dog prey, as well as the spread of non-native disease. One of the best indicators of a fully functioning

¹⁰⁵ N.J.S. Thines, L.A. Shipley & R.D. Saylor, *Effects of Cattle Grazing on Ecology and Habitat of Columbia Basin Pygmy Rabbits (Brachylagus idahoensis)*, 119 Biological Conservation 525 (2004).

¹⁰⁶ See e.g., *id.*

¹⁰⁷ Ross McLean & Kalysta Adkins, *Pygmy Rabbit Monitoring in Eastern Oregon 2021*, Or. Dep't. of Fish & Wildlife (2021).

¹⁰⁸ *Id.* at 6-7.

¹⁰⁹ U.S. Fish & Wildlife Serv., *Species Status Assessment Report for the Black-Footed Ferret (Mustela nigripes)*, at i (2019), iris.fws.gov/APPS/ServCat/DownloadFile/169265 [hereinafter *2019 Black-Footed Ferret Special Status Assessment Report*].

prairie dog ecosystem is its ability to support viable populations of obligate and other strongly associated species.¹¹⁰ Kotliar et al. (1999) identified the black-footed ferret as a prairie dog obligate species that is “almost totally dependent on prairie dogs for survival” and would go extinct if prairie dogs went extinct.¹¹¹

Ferrets den and shelter in prairie dog burrows; an adult black-footed ferret eats about one prairie dog every three days, and a female with kits must eat every day or at least every other day.¹¹² Ferrets require large prairie dog complexes, which consist of multiple, proximal large colonies interspersed with small colonies.¹¹³ Prior to mass prairie dog poisoning that began in the early 1900s, black-tailed and white tailed prairie dogs were distributed across their range in complexes. Historical records indicate that colonies could span 20-30 miles and complexes of over 49,000 acres were common.¹¹⁴ Scientists believe black-footed ferrets were once common and widely distributed across the black-tailed, Gunnison’s, and white-tailed prairie dog ranges, with about 85 percent occurring in black-tailed prairie dog habitat and seven percent occurring within the white-tailed prairie dog range.¹¹⁵ Anderson et al. (1986) determined 500,000 to 1,000,000 ferrets could have existed at the beginning of the 1900s.¹¹⁶

¹¹⁰ C.J. Knowles et al., *Black-Tailed Prairie Dog Abundance and Distribution in the Great Plains Based on Historic and Contemporary Information*, 12 Great Plains Res. 219, 219–254 (2002), <https://www.jstor.org/stable/23779568>.

¹¹¹ N.B. Kotliar et al., *A Critical Review of Assumptions About the Prairie Dog as a Keystone Species*, 24 Envtl. Mgmt. 177, 180 (1999), <https://link.springer.com/article/10.1007/s002679900225>.

¹¹² B. Miller et al., *Prairie Night: Black-Footed Ferrets and the Recovery of Endangered Species* (1996), Smithsonian Institution Press.

¹¹³ S.C. Forrest, *Black-Footed Ferret Habitat: Some Management and Reintroduction Considerations*, Wyo. Bureau of Land Mgmt. Wildlife Tech. Bull. No. 2 (1985); Knowles, *supra* note 111.

¹¹⁴ C.H. Merriam, *The Prairie Dog of the Great Plains*, in Yearbook of the U.S. Department of Agriculture, 1901, at 257, 257–270 (1902); V. Bailey, *Biological Survey of Texas*, N. Am. Fauna No. 25 (U.S. Gov’t Printing Office 1905); Knowles, *supra* note 111.

¹¹⁵ T.W. Clark, *The Black-Footed Ferret*, 13 Oryx 275, 275–80 (1976), <https://www.cambridge.org/core/journals/oryx/article/blackfooted-ferret/E4D86E2612BE84A4C920451865167154>; E. Anderson et al., *Paleobiology, Biogeography, and Systematics of the Black-Footed Ferret, Mustela nigripes (Audubon and Bachman), 1851*, 8 Great Basin Naturalist Memoirs 11, 11–62 (1986), <https://scholarsarchive.byu.edu/cgi/viewcontent.cgi?article=1025&context=gbnm>; D.E. Biggins & M.H. Schroeder, *Historical and Present Status of the Black-Footed Ferret*, in Eighth Great Plains Wildlife Damage Control Workshop Proceedings 93 (Gen. Tech. Rep. No. RM-154, U.S. Dep’t. of Agric., Forest Serv., Rocky Mountain Forest & Range Experiment Station 1988), https://www.fs.usda.gov/rm/pubs_series/rm/gtr/rm_gtr154.pdf#page=102; U.S. Fish & Wildlife Serv., *Black-Footed Ferret Recovery Plan*, 2nd Revision (2013).

¹¹⁶ E. Anderson et al., *supra* note 116 (citing S.C. Forrest et al., *supra* note 114).

FWS published the first recovery plan for the ferret in 1978 and the most recent in 2013.¹¹⁷ FWS' revised 2013 Black-footed Ferret Recovery Plan reflects the shift in program priorities from rearing ferrets in captivity to broadly managing ferrets on private and public land designated recovery sites. The Ferret Recovery Plan includes supplementing wild populations with captive-bred ferrets, but the goal of the recovery plan is for self-sustaining wild populations. The current ferret population estimate is about 300 in the wild,¹¹⁸ and the entire wild breeding adult population has never surpassed 800 animals since reintroductions began in 1991.¹¹⁹ There have been no recovery sites that have consistently maintained a population of 100 or more breeding adults, required for delisting.¹²⁰ Though the species went extinct in the wild and dwindled to just 18 animals in captivity,¹²¹ the persistent failure to get close to the 3,000 breeding adult black-footed ferret recovery criterion helps demonstrate the prairie dog crisis. The black-footed ferret relies on prairie dogs as its primary food source and lives in prairie dog burrows.¹²² Because of this dependence, black-footed ferret recovery must be integrated with prairie dog conservation.

Prairie dogs are also a keystone species, influencing the landscape through their burrowing activities and providing habitat for other species.¹²³ Over 200 vertebrate species have been observed on prairie dog colonies; of these, at least nine species depend heavily on prairie dogs for their survival and many others benefit from their existence.¹²⁴ Both black-tailed prairie dog and white-tailed prairie dog are listed as BLM Special Status Species. Because prairie dogs are often found on or adjacent to BLM grazing allotments, the BLM must analyze potential impacts from the 2026 Proposed Rule to prairie dogs and the black footed ferret in an EIS.

¹¹⁷ See U.S. Fish & Wildlife Serv., *Recovery Plan for the Black-footed Ferret (Mustela nigripes)* 13 (2d. rev. 2013), https://ecos.fws.gov/docs/recovery_plan/20131108%20BFF%202nd%20Rev.%20Final%20Recovery%20Plan.pdf [hereinafter *2013 Recovery Plan for the Black-footed Ferret*].

¹¹⁸ Personal communication with T. Jackson, Black-Footed Ferret Recovery Coordinator, U.S. Fish & Wildlife Serv. (Jan. 21, 2026).

¹¹⁹ *2013 Recovery Plan for the Black-footed Ferret*, *supra* note 118; *2019 Black-Footed Ferret Special Status Assessment Report*, *supra* note 151.

¹²⁰ *2013 Recovery Plan for the Black-footed Ferret*, *supra* note 118; *2019 Black-Footed Ferret Special Status Assessment Report*, *supra* note 151.

¹²¹ *2013 Recovery Plan for the Black-footed Ferret*, *supra* note 118.

¹²² *Id.*

¹²³ See Kotliar, N. B. et al., *A critical review of assumptions about the prairie dog as a keystone species*, 24 *Envtl. Mgmt.* 177, <https://doi.org/10.1007/s002679900225>.

¹²⁴ *Id.*

d) Grassland Birds

Grassland birds, including but not limited to the lesser prairie chicken and mountain plover, often require a mosaic of different grassland habitats both to benefit different species and even the same species at different phases of their lifecycle; it is therefore important to have grazing that promotes heterogeneity when managing for this group.¹²⁵ While managing for this patchwork landscape is widely discussed, a study of five breeding bird species in northeastern Colorado found that fine-scale vegetation characteristics and precipitation explained species abundances better than broad grazing management treatments alone (demonstrating that species may have habitat preferences more nuanced than just vegetation height or structure).¹²⁶ The findings suggest that adaptive grazing strategies targeting specific vegetation conditions such as allowing moderate grass growth during wet years to benefit species like Grasshopper Sparrows could simultaneously improve habitat for birds while maintaining forage value for livestock. Grazing strategies should be tailored based on which grassland birds are present and therefore the 2026 Proposed Rule must review how different grazing practices impact grassland birds and their habitat in an EIS.

e) Riparian Systems and Aquatics

Aquatic and riparian systems are particularly susceptible to livestock impacts. Grazing can increase stream temperatures, sedimentation, turbidity, nutrient loading, pathogen contamination, and eutrophication.¹²⁷ The severity of impact depends on numerous factors including climate, stream size, livestock access, grazing intensity and location, soil drainage, and ambient water quality.¹²⁸ Aquatic ecosystems adjacent to or downstream of grazing may see declines in biodiversity as species experience the negative effects of poor water quality. Fish,¹²⁹ amphibians,¹³⁰ and benthic invertebrates¹³¹ are some groups that

¹²⁵ S. Gennet et al., *Livestock Grazing Supports Native Plants and Songbirds in a California Annual Grassland*, 12 PLOS ONE e0176367 (2017).

¹²⁶ K.P. Davis et al., *Vegetation Characteristics and Precipitation Jointly Influence Grassland Bird Abundance Beyond the Effects of Grazing Management*, 123 Ornithological Applications 1 (2021).

¹²⁷ See e.g., R.P. Kovach et al., *Effects of Land Use on Summer Thermal Regimes in Critical Salmonid Habitats of the Pacific Northwest*, 76 Canadian J. Fisheries & Aquatic Sci. 753 (2019); P. O'Callaghan et al., *The Environmental Impact of Cattle Access to Watercourses: A Review*, 48 J. Env'tl. Quality 340 (2019).

¹²⁸ See e.g., O'Callaghan et al., *supra* note 128.

¹²⁹ See e.g., Clark Barkalow & Bonar, *supra* note 73.

¹³⁰ See e.g., K.L. Smalling et al., *Monitoring Wetland Water Quality Related to Livestock Grazing in Amphibian Habitats*, 193 Env'tl. Monitoring & Assessment 58 (2021); T.M. Swartz & J.R. Miller, *Managing Farm Ponds as Breeding Sites for Amphibians: Key Trade-Offs in Agricultural Function and Habitat Conservation*, 29 Ecological Applications (2019), <https://doi.org/10.1002/eap.1964>.

¹³¹ See e.g., A. Braccia & J.R. Voshell, *Environmental Factors Accounting for Benthic Macroinvertebrate Assemblage Structure at the Sample Scale in Streams Subjected to a Gradient of Cattle Grazing*, 573

may be particularly threatened due to impaired water quality. A review of 95 North American studies found that reducing or excluding livestock from riparian areas consistently improved streambank stability, water quality, vegetation, and increased biodiversity.¹³² Most physical and biological improvements required over a decade to materialize. Complete exclusion produced better results than rotational grazing strategies.¹³³ Recovery was faster when exclusion was paired with active restoration like replanting, and outcomes varied considerably based on local climate, geology, and soils.

In hot weather, cattle spend more time drinking and wallowing in water, which makes water quality problems worse. Cattle also tend to defecate directly in water bodies, adding fecal contamination.¹³⁴ Bison, by contrast, tolerate heat better and spend less time in water, so they likely have a smaller impact on water quality.¹³⁵

Careful water quality management is especially important in areas with imperiled aquatic species.¹³⁶ Keeping livestock out of riparian areas and providing off-stream water troughs in well-chosen locations can help improve water quality in some cases.¹³⁷ The 2026 Proposed Rule must analyze how changes to grazing management may impact riparian and aquatic systems in an EIS.

(1) Amphibians

Grazing may pose a risk to amphibians, including the endangered Wyoming toad and declining northern leopard frog, by degrading water quality in wetland habitats through increased *E. coli*, total coliforms, turbidity, and estrogenicity. Careful water monitoring in grazed areas can help determine whether a specific site is experiencing these effects.¹³⁸ A global review of livestock's effects on amphibians found variable responses across studies.¹³⁹ Amphibians native to forested, closed-canopy environments experienced a higher degree of negative effects from grazing and impacts from proposed changes to

Hydrobiologia 55 (2006); K.L. Deroose et al., *Microbial Water Quality Conditions Associated with Livestock Grazing, Recreation, and Rural Residences in Mixed-Use Landscapes*, 12 Sustainability 5207 (2020).

¹³² Krall & Roni, *supra* note 80.

¹³³ *See id.*

¹³⁴ *See e.g.*, O'Callaghan et al., *supra* note 28; V. Pandey et al., *GPS Monitoring of Cattle Location Near Water Features in South Florida*, 25 Applied Engineering Agric. 551 (2009).

¹³⁵ Grudzinski et al., *supra* note 89.

¹³⁶ *See e.g.*, Clark Barkalow & Bonar, *supra* note 73.

¹³⁷ D.E. Johnson et al., *Cattle Use of Off-Stream Water Developments Across a Northeastern Oregon Landscape*, 71 J. Soil & Water Conservation 494 (2016); Krall, *supra* note 81.

¹³⁸ *See e.g.*, K.L. Smalling et al., *Monitoring Wetland Water Quality Related to Livestock Grazing in Amphibian Habitats*, 193 *Envtl. Monitoring & Assessment* 58 (2021).

¹³⁹ H.J. Howell et al., *Amphibian Responses to Livestock Use of Wetlands: New Empirical Data and a Global Review*, 29 *Ecological Applications* e01976 (2019).

grazing management must be analyzed in terms of potential impacts to amphibians.¹⁴⁰ BLM should analyze such changes in an EIS.

(2) Native Cold-Water Fish

Grazing also poses a threat to fish species, including bull trout, greenback cutthroat trout, and native salmon and steelhead, due to decreased water quality. For example, a study of California golden trout habitat found that even after 25 years of livestock exclusion, riparian vegetation is still recovering in some areas.¹⁴¹ Aside from impaired vegetation and water quality, livestock trampling may pose a risk to fish eggs as well.¹⁴²

BLM must take a hard look at all the impacts the 2026 Proposed Rule and changes to livestock grazing management may have on riparian and aquatic ecosystems and their associated wildlife in an EIS.

f) Pollinators

A global meta-analysis of 109 studies found that excluding livestock generally increased animal abundance and diversity, with some of the strongest benefits seen for pollinators.¹⁴³ Another review examining 63 studies on public lands management found that while grazing did not meaningfully affect pollinators within the Great Plains, it tended to have negative effects on pollinators in other regions.¹⁴⁴ As one specific example, the Suckley's cuckoo bumble bee, which is currently proposed for listing as endangered due to drastic declines throughout its range, was impacted by grazing activities.¹⁴⁵ FWS found that grazed sites generally have lower floral resources and lower bumblebee diversity and abundance.¹⁴⁶ BLM must analyze impacts from changing grazing administration on pollinators, including the Suckley's cuckoo bumble bee, in an EIS.

g) Invasive Annual Plants

The spread of invasive plants such as cheatgrass provides another example of how grazing management decisions can have significant, landscape-scale ecological consequences.

¹⁴⁰ *Id.*

¹⁴¹ Johnson et al., *supra* note 138.

¹⁴² D.P. Peterson et al., *Modeling Predicts That Redd Trampling by Cattle May Contribute to Population Declines of Native Trout*, 20 *Ecological Applications* 954 (2010).

¹⁴³ A. Filazzola et al., *The Effects of Livestock Grazing on Biodiversity Are Multi-Trophic: A Meta-Analysis*, 23 *Ecology Letters* 1298 (2020).

¹⁴⁴ W. Glenney, J.B. Runyon & L.A. Burkle, *A Review of Management Actions on Insect Pollinators on Public Lands in the United States*, 31 *Biodiversity & Conservation* 1995 (2022).

¹⁴⁵ *Endangered and Threatened Wildlife and Plants; Endangered Species Status for Suckley's Cuckoo Bumble Bee*, 89 Fed. Reg. 102074, 102083 (Dec. 17, 2024).

¹⁴⁶ *Id.*

Cheatgrass is one of the most destructive invasive species affecting western rangelands, fundamentally altering sagebrush ecosystems, reducing native biodiversity, and increasing the frequency and severity of wildfire.¹⁴⁷ Because livestock grazing is so prevalent, changes to grazing management has the potential to influence both the spread of cheatgrass and the resilience and resistance of native ecosystems. The scientific literature consistently identifies livestock grazing as an important factor contributing to cheatgrass invasion.¹⁴⁸ Numerous studies have found that grazing facilitates the establishment and expansion of cheatgrass by reducing the abundance and diversity of native perennial grasses, increasing bare ground and gaps between perennial plants, and damaging biological soil crusts that help resist invasion.¹⁴⁹ Even after accounting for other variables such as climate, topography, and plant community composition, researchers have found a strong relationship between grazing pressure and cheatgrass occurrence.¹⁵⁰

For example, a long-term study across the central Great Basin found that both fire and livestock grazing were strong positive predictors of cheatgrass occurrence and prevalence, independent of variation in climate, topography, or plant community composition.¹⁵¹ The results also show that higher perennial grass cover is associated with reduced cheatgrass prevalence. Similarly, studies of Great Basin sagebrush habitat found that cattle grazing reduces the ecosystem's ability to resist invasion by reducing native bunchgrass cover, lowering diversity among the composition of grass species, and destroying biological soil crusts through trampling (all of which increase the open gaps that cheatgrass exploits).¹⁵² The authors conclude that reducing grazing can help in restoring ecosystem resistance to cheatgrass invasion.

The ecological consequences of cheatgrass invasion extend beyond changes in plant composition. Once established, cheatgrass increases fine fuel continuity, elevates fire frequency, and suppresses recovery of native vegetation, creating a self-reinforcing cycle

¹⁴⁷ See e.g., Erik M. Molvar et al., *Cheatgrass Invasions: History, Causes, Consequences, and Solutions*, W. Watersheds Project (Jan. 2024).

¹⁴⁸ See generally *id.*

¹⁴⁹ M.D. Reisner, J.B. Grace, D.A. Pyke & P.S. Doescher, *Conditions Favouring Bromus tectorum Dominance of Endangered Sagebrush Steppe Ecosystems*, 50 *J. Applied Ecology* 1039 (2013); D.A. Pyke et al., U.S. Geological Survey, *Restoration Handbook for Sagebrush Steppe Ecosystems with Emphasis on Greater Sage-Grouse Habitat—Part 3: Site Level Restoration Decisions*, Circular 1426 (ver. 1.1, 2018), <https://doi.org/10.3133/cir1426>; J.C. Chambers, D.I. Board, B.A. Roundy & P.J. Weisberg, *Removal of Perennial Herbaceous Species Affects Response of Cold Desert Shrublands to Fire*, 28 *J. Veg. Sci.* 975 (2017).

¹⁵⁰ *Id.*

¹⁵¹ M.A. Williamson et al., *Fire, Livestock Grazing, Topography, and Precipitation Affect Occurrence and Prevalence of Cheatgrass (Bromus tectorum) in the Central Great Basin, USA*, 22 *Biological Invasions* 663 (2020).

¹⁵² Reisner, *supra* note 150.

of invasion and ecosystem degradation.¹⁵³ Additionally, as native plant communities are dominated by or replaced by cheatgrass, habitat quality declines for numerous species that depend on diverse native plant systems (e.g., Greater sage-grouse, pygmy rabbits, pollinators, and desert tortoises). Changes in the 2026 Proposed Rule regarding grazing intensity and scope may affect the spread of invasive annual grasses like cheatgrass thus impacting wildfire risk, ecosystem resilience, and habitats. These potentially significant impacts must be analyzed by BLM in an EIS.

h) Soils & Hydrologic Function

Soil stability and hydrologic function provide another example of natural resources that may be significantly affected by the 2026 Proposed Rule. Healthy soils are fundamental to functioning ecosystems, supporting vegetation, storing water, resisting erosion, and maintaining water quality. Degradation of soils can have cascading effects on watershed health, native plant communities, wildlife habitat, and ecosystem resilience. While grazing causes erosion across regions, arid regions seem to be some of the most affected.¹⁵⁴ One of the main mechanisms by which livestock promote erosion in these regions is by trampling important soil-stabilizing biological soil crusts.¹⁵⁵ In these regions, the effects of erosion are exacerbated by drought which will become more prevalent with increasing climate change.¹⁵⁶ A global meta-analysis of grazing's effects on hydrological processes found that livestock significantly increase sediment production and reduce infiltration; arid regions experience this most acutely.¹⁵⁷ Aside from climatic regime, the meta-analysis found that herbivore type and grazing intensity influenced overall outcomes of grazing. Erosion can also contribute to water quality issues by increasing sediment in water; in particular, grazing over riparian habitat can cause stream bank degradation and erosion of sediment into streams.¹⁵⁸ These cumulative impacts affect multiple public land resources

¹⁵³ Molvar et al., *supra* note 148.

¹⁵⁴ See e.g., S.E. Fick, J. Belnap & M.C. Duniway, *Grazing-Induced Changes to Biological Soil Crust Cover Mediate Hillslope Erosion in Long-Term Exclosure Experiment*, 73 *Rangeland Ecology & Mgmt.* 61 (2020).

¹⁵⁵ See e.g., M. Coles-Ritchie, L. Gross & M. O'Brien, *Grazing, Rest, and Biological Soil Crust in Canyons of the Ancients National Monument* 39 (2017); E. Dettweiler-Robinson, J.M. Ponzetti & J.D. Bakker, *Long-Term Changes in Biological Soil Crust Cover and Composition*, 2 *Ecological Processes* 5 (2013).

¹⁵⁶ See e.g., T.W. Nauman et al., *Elevated Aeolian Sediment Transport on the Colorado Plateau, USA: The Role of Grazing, Vehicle Disturbance, and Increasing Aridity*, 43 *Earth Surface Processes & Landforms* 2897 (2018); R.A. Washington-Allen et al., *Retrospective Assessment of Dryland Soil Stability in Relation to Grazing and Climate Change*, 160 *Envtl. Monitoring & Assessment* 101 (2010).

¹⁵⁷ D.J. Eldridge, J. Ding & S.K. Travers, *A Global Synthesis of the Effects of Livestock Activity on Hydrological Processes*, 25 *Ecosystems* 1780 (2022).

¹⁵⁸ G.J. Scrimgeour & S. Kendall, *Consequences of Livestock Grazing on Water Quality and Benthic Algal Biomass in a Canadian Natural Grassland Plateau*, 29 *Envtl. Mgmt.* 824 (2002); G.N. Zaines et al., *Understanding Stream Bank Erosion and Deposition in Iowa, USA: A Seven-Year Study Along Streams in Different Regions with Different Riparian Land-Uses*, 287 *J. Env'tl. Mgmt.* 112352 (2021).

and are particularly concerning in landscapes already experiencing drought, wildfire, and other climate-related stressors.

The scientific literature also demonstrates that grazing management can influence these outcomes. Studies have found that practices such as reducing stocking rates, implementing appropriate rotational grazing, resting erosion-prone areas following disturbance, and excluding livestock from sensitive riparian habitats can reduce erosion and improve watershed condition.¹⁵⁹ In riparian ecosystems, excluding grazing or avoiding the main growing season may help improve bank stability as well as practices for improving water quality mentioned above.¹⁶⁰ Highly erodible arid landscapes may be unsuitable for grazing altogether due to their limited capacity to recover from disturbance.

As the best available science demonstrates that grazing management plays a significant role in determining soil stability, erosion, and watershed function, BLM must analyze how the proposed regulatory changes may affect these resources in an EIS. Such analysis is necessary to evaluate the direct, indirect, and cumulative impacts of the 2026 Proposed Rule and to ensure that grazing management maintains healthy, functioning ecosystems in the face of increasing environmental stressors.

i) Disease Transmission to Native Wildlife

Disease transmission from domestic livestock also poses serious risks to native wildlife. Contact between domestic sheep or goats and bighorn sheep can transmit pneumonia-causing pathogens that have caused long-term population declines. Domestic cattle also harbor various diseases that can be transmitted to bison, bighorn sheep, deer, and other native ungulates. BLM must analyze the potential impacts from increasing livestock grazing on disease transmission with native wildlife.

Bighorn sheep that are exposed to domestic goats and sheep can contract pneumonia, which can be lethal.¹⁶¹ Long-term monitoring of 12 bighorn sheep populations found that disease introduction caused a shift from bighorn population growth ($\lambda = 1.11$) to stagnation

¹⁵⁹ See e.g., J. Lyons et al., *Influence of Intensive Rotational Grazing on Bank Erosion, Fish Habitat Quality, and Fish Communities in Southwestern Wisconsin Trout Streams*, 55 J. Soil & Water Conservation 271 (2000); M. Tufekcioglu et al., *Riparian Grazing Impacts on Streambank Erosion and Phosphorus Loss via Surface Runoff*, 49 JAWRA J. Am. Water Resources Ass'n. 103 (2013).

¹⁶⁰ K.N. Dalldorf et al., *Influence of Livestock Grazing Strategies on Riparian Response to Wildfire in Northern Nevada*, 66 Rangeland Ecology & Mgmt. 34 (2013).

¹⁶¹ T.E. Besser et al., *Exposure of Bighorn Sheep to Domestic Goats Colonized with Mycoplasma ovipneumoniae Induces Sub-Lethal Pneumonia*, 12 PLOS ONE e0178707 (2017); E.F. Cassirer et al., *Pneumonia in Bighorn Sheep: Risk and Resilience*, 82 J. Wildlife Mgmt. 32 (2018).

or decline ($\lambda = 0.98$) that persisted for two decades.¹⁶² These declines were driven primarily by chronic disease-induced mortality in lambs. Periodic testing of domestic herds can help prevent transmission of deleterious pneumonia-associated pathogens to bighorn sheep; many private landowners are unaware of disease transmission risk so education on disease transmission is important to lower spread.¹⁶³ Domestic cattle harbor many diseases that can be transmitted to bighorn sheep and other native ungulates including deer and elk.¹⁶⁴ They include, but are not limited to, *Mycoplasma bovis*, *bluetongue*, *epizootic hemorrhagic disease*, bovine respiratory syncytial virus, and bovine viral diarrhea. These diseases may depress native ungulate populations through mortality and reduced recruitment. Management of domestic livestock should consider bighorn movements and alter grazing practices so as not to overlap with the species; using cost-distance models and collaring bighorn to better track their movements can help predict potential overlaps.

Taken together, the scientific literature demonstrates that livestock grazing can produce significant and long-lasting impacts to soils, water resources, vegetation, ecosystem processes, and wildlife. Although carefully managed grazing, like certain bison grazing practices, may provide benefits under specific ecological conditions, those benefits are not universal and depend heavily on site-specific circumstances. Accordingly, BLM must comprehensively analyze these effects through an EIS and ensure that grazing management decisions are tailored to the ecological conditions and conservation needs of the NSPL rather than assuming that increased grazing or generalized management approaches will produce acceptable outcomes.

2. Impacts from Changes to Land Health Standards

The proposed revisions to the land health standards and adaptive management framework are themselves sufficiently significant to warrant preparation of EIS. As discussed at length below, *infra* at Section IV, BLM is proposing changes to the way land health is evaluated and how the agency responds when degradation and poor land health is identified. These

¹⁶² K.R. Manlove, E.F. Cassirer, R.K. Plowright, P.C. Cross & P.J. Hudson, *Contact and Contagion: Probability of Transmission Given Contact Varies with Demographic State in Bighorn Sheep*, 86 J. Animal Ecology 908 (2017).

¹⁶³ K. Paolini, M. Schwartz, M. Friggens, S. Cushman, J. Weckworth & J. Holbrook, *A Review of Population and Landscape Level Dynamics Associated with Pneumonia Outbreaks in Bighorn Sheep with Implications for Land Management*, 5 Conservation Sci. & Prac. 12956 (2023).

¹⁶⁴ Padilla et al., *Serological Assessment of Pathogen Exposure Among Desert Bighorn Sheep in Southwestern Arizona*, Sw. Naturalist (2025); Malmberg et al., *Cross-Species Transmission at the Wildlife-Livestock Interface: A Case Study of Epidemiological Inference From Mule Deer GPS Collar Data*, Ecology & Evolution (2025).

changes include: (1) expanding the framework to encompass all BLM-managed lands and programs; (2) extending the timeline for corrective action; (3) reducing BLM's role in water quality monitoring and response; and, (4) when grazing is identified as a cause for degraded lands, not requiring corrective action through adjustments to grazing permit authorizations. Taken together, these changes have the potential to affect ecological conditions across millions of acres and therefore require a comprehensive analysis of their environmental consequences.

BLM also proposes to expand land health evaluations beyond grazing allotments to encompass all lands and programs under its jurisdiction. While a landscape-scale approach to ecosystem health makes sense if done correctly, extending the framework across the agency's 245 million acres with weakened monitoring and management provisions substantially increases both the scope and significance of the framework. The proposed changes to the framework—e.g., no longer conducting evaluations at the allotment level, decoupling adaptive management actions from permit authorizations, and changes to fundamentals of land health, adaptive management provisions, and standards—also significantly shift its functionality and related outcomes for public land health across time and space. We are concerned that the 2026 Proposed Rule, as currently written, lacks the safeguards necessary to responsibly manage this expanded scope and ensure land health.

These changes are especially consequential in the context of climate change and increasing ecological stressors discussed above. Drought, invasive species, altered fire regimes, and rising temperatures are already placing unprecedented pressures on western ecosystems. In such circumstances, delaying adaptive responses and weakening monitoring requirements could reduce the resilience of public lands precisely when more proactive management is needed. Because the proposed revisions would alter the timing, scope, and responsibility for identifying and responding to land health problems across millions of acres, they raise substantial questions regarding the intensity and significance of environmental impacts. Therefore, based solely on the creation of Section 1700 of the 2026 Proposed Rule, BLM must prepare an EIS that rigorously evaluates the direct, indirect, and cumulative effects of these changes and considers reasonable alternatives that would maintain or strengthen existing safeguards.

3. Impacts from Changing Grazing Allotments to “Production-Oriented” Only

The change across the 2026 Proposed Rule to only allow livestock grazing for production-oriented livestock and businesses is also a significant change requiring additional environmental analysis. While we address the myriad issues with BLM's new production-

oriented standard in more detail below, *infra* at Section VII, the system-wide change that it brings to grazing land management should be fully analyzed through an EIS.

4. Impacts from Limiting Public Participation

The proposed restrictions on public participation are also likely to have significant environmental consequences and therefore warrant a “hard look” analysis in an EIS. Public involvement is a fundamental component of sound land management and serves as an important mechanism for ensuring that BLM has access to local knowledge, scientific information, and diverse perspectives regarding the effects of management decisions. By reducing opportunities for public review and engagement, the 2026 Proposed Rule risks diminishing the quality and breadth of information available to decision-makers and limiting accountability for the management of public resources.¹⁶⁵ We address our concerns regarding transparency with several aspects of the 2026 Proposed Rule more fully below, *infra* at Section IX, but note here that lack of public participation is yet another reason for an EIS to be conducted.

C. The 2026 Proposed Rule’s Reliance on Future NEPA Analysis Is Misplaced

BLM intends to apply the categorical exclusion, at least in part, because the agency claims that there will be various additional NEPA processes where additional analysis and opportunity for public engagement will occur.¹⁶⁶ However, given that the Department of Interior’s NEPA regulations now allows for less analysis and public transparency,¹⁶⁷ this is an insufficient reason for using a categorical exclusion to promulgate the 2026 Proposed Rule.

¹⁶⁵ In *Western Watersheds Project v. Kraayenbrink*, regarding the 2006 regulation revision, the court quoted an interdisciplinary team of experts assembled by BLM cautioning that “[t]he [revised] definitions of interested and interested public appear, by themselves, benign. However, using those definitions . . . appear[s] to allow the exclusion of virtually all other [*i.e.* non-rancher] members of the public who may otherwise want to participate Restricting public participation will ultimately lead to poorer land management decisions . . . [and] to greater environmental harm, without necessarily sustaining or improving economic conditions.” 632 F.3d at 488. The agency experts’ previous recognition of the connection between public involvement and environmental outcomes holds today and highlights the significance of the changes proposed in 2026. The plaintiffs in that case were successful in their claims that the BLM failed to take a hard look. *Id.* at 500.

¹⁶⁶ See *e.g.*, 91 Fed. Reg. at 26859, 67.

¹⁶⁷ See U.S. Department of Interior Handbook of National Environmental Policy Act Implementing Procedures, 516 DM 1, *U.S. Dep’t. of Interior* (Feb. 2026) at 27 (noting that BLM is only required to solicitation of public comment on a notice of intent to prepare an EIS, and it up to the authorized officer’s discretion whether to solicit public comments for environmental assessments).

VI. The 2026 Proposed Rule Weakens Protections for Public Lands and Fails to Meet BLM’s Mandate to Manage for Multiple Use and Sustained Yield

The 2026 Proposed Rule fails to protect rangeland health, narrows public participation and does not adequately balance current and future uses of the public land. Instead, it elevates grazing and economic productivity as the primary type of use to the detriment of others. BLM must ensure public rangeland is managed consistent with FLPMA’s mandate to manage lands “without permanent impairment of the productivity of the land and the quality of the environment”¹⁶⁸ and must take action necessary to prevent unnecessary or undue degradation.¹⁶⁹ The 2026 Proposed Rule ignores land health declines that threaten the functionality of entire ecosystems. As the 2026 Proposed Rule is currently proposed, BLM cannot meet its statutory obligations. As explained more fully below, the 2026 Proposed Rule removes several key protections for public lands and resources and also sharply curtails public participation and transparency in government decision making.

A. Baseline Data Indicate Many BLM-Managed Lands Are Currently in Poor Land Health and Require Better Management

Recent data and BLM’s land health determinations show that much of the NSPL is ecologically degraded and not currently in a sustainable condition in contravention of FLPMA’s legislative mandate. BLM recently concluded that public lands “have become increasingly degraded in recent decades through the appearance of invasive species, extreme wildfire events, prolonged drought, and increased habitat fragmentation.”¹⁷⁰ Degradation of the health of public lands threatens BLM’s ability to manage public lands as directed by FLPMA.”

BLM’s land health data indicates that, of the rangelands that have been assessed, 50% or nearly 57 million acres are failing to meet minimum land health standards.¹⁷¹ Furthermore, no land health assessments have ever been conducted on 24% or 36.5 million acres of existing grazing allotments, despite nearly three decades having passed since the agency adopted the fundamentals of rangeland health and associated standards.¹⁷² This gap is especially pronounced in certain states, with unassessed allotments making up 39% in Nevada, 28% in New Mexico, and 27% in Idaho.¹⁷³ This poor land health has serious implications for at-risk species and other important values. For example, 35% of

¹⁶⁸ 43 U.S.C. § 1702(c).

¹⁶⁹ *Id.*

¹⁷⁰ 89 Fed. Reg. 40308, 40309 (May 9, 2024).

¹⁷¹ PEER, *supra* note 36.

¹⁷² *Id.*

¹⁷³ *Id.*

designated critical habitats on public lands and 46% of Greater sage-grouse habitats are in grazing allotments with failing land health grades.¹⁷⁴ BLM's land health framework is discussed in further detail below.

Much of the west is also becoming warmer and dryer.¹⁷⁵ Climate change is affecting habitat conditions and ecological processes (e.g., fire, flood) impacting resilience.¹⁷⁶ The majority of the NSPL is currently experiencing chronic drought which affects wildlife, the activities that occur on public lands, and the ecosystem benefits public lands provide.¹⁷⁷

Invasive species, such as cheat grass, also contribute to degraded land health by taking over areas previously occupied by native vegetation relied upon by wildlife. In the cold desert ecoregion, which covers much of the Interior West, nearly one-third of public lands are now dominated by invasive plant species, in contrast to approximately 4% in 1992.¹⁷⁸

Additionally, within the NSPL are more than 20,000 acres of wetlands and more than 250,000 miles of perennial and intermittent streams.¹⁷⁹ A 2016 assessment of stream and river conditions on BLM lands found that at least 70% of streams showed moderate to significant departure from biological reference conditions, with nearly half (47%) classified as significantly departed.¹⁸⁰

B. The 2026 Proposed Rule Would Weaken the Land Health Standards and Adaptive Management Framework

To make the management framework effective for long-term land health and to fulfill BLM's statutory obligations, certain components of the current construction must be strengthened, not weakened as proposed here. The 2026 Proposed Rule moves Subpart 4180 in the current grazing (Fundamentals of Land Health and Land Health Standards) to Part 1700—so that it applies to all public lands and not just to grazed lands—and modifies

¹⁷⁴ See *Are Our Public Lands Healthy and Sustainable? A Review of Recent Analyses and Data*, Defenders of Wildlife (Spring 2026), <https://defenders.org/sites/default/files/2026-05/BLM-Science-and-Policy-Brief.pdf>.

¹⁷⁵ See e.g., *Hotter and Drier: The West's Changed Climate*, Natural Res. Def. Council. (2008), <https://www.nrdc.org/sites/default/files/fwest.pdf>.

¹⁷⁶ See e.g., *Effects of Climate Change on Ecology*, Center for Science Education, <https://scied.ucar.edu/learning-zone/climate-change-impacts/ecology>.

¹⁷⁷ See Defenders of Wildlife, *supra* note 178.

¹⁷⁸ Andrew R Kleinhesselink et al., *Long-Term Trends in Vegetation on Bureau of Land Management Rangelands in the Western United States*, 87 *Rangeland Ecology & Mgmt.* 1-12. (Mar. 2023), <https://www.sciencedirect.com/science/article/pii/S1550742422001075?via%3Dihub>; Allred, B.W., et. al., *Improving Landsat predictions of rangeland fractional cover with multitask learning and uncertainty*. *Methods in Ecology and Evolution* (2021), <http://dx.doi.org/10.1111/2041-210x.13564>.

¹⁷⁹ *A Critical Call to Restore Our Public Lands*, *supra* note 60; *How the Bureau of Land Management Can Restore Healthy Riverscapes in the West*, Natural Resources Defense Council, June 2024, <https://www.nrdc.org/sites/default/files/2024-06/bureau-land-management-healthy-riverscapes-west-fs.pdf>.

¹⁸⁰ J. Courtwright, *supra* note 61.

its provisions.¹⁸¹ Subpart 4180 was promulgated as part of the 1995 Grazing Regulations. It established the first and only national-level monitoring and adaptive management construct for public rangelands. While this was a laudable and important first step toward achieving rangeland health, much more needs to be done to achieve sustainable, healthy public grazing lands—for example, setting a timeframe for conducting evaluations to avoid inconsistent and incomplete implementation of rangeland health improvement measures throughout the BLM system. Science-based land health standards provide the operational framework BLM needs to assess, maintain, and restore ecological function across the landscapes it administers. The standards translate broad statutory mandates under FLPMA into measurable ecological benchmarks tied to soil stability, hydrologic integrity, water quality, and habitat function.¹⁸² Without clear land health standards, land management lacks consistent performance measures, limiting accountability, and impairing the agency's ability to ensure sustained yield over time.

The proposed land health framework (consisting of standards, landscape-scale assessment, evaluations and adaptive management), found at the newly proposed Section 1700, contain several significant deficiencies that would weaken accountability and impair BLM's ability to maintain and restore healthy public lands.¹⁸³ Most notably, it fails to establish clear schedules for evaluations or corrective actions. It also fails to identify an appropriate and consistent scale for assessing land health conditions and weakens the connection between monitoring, land health determinations, and management responses.

Collectively, these deficiencies would undermine BLM's ability to satisfy its statutory obligations described above. BLM has demonstrated that, absent a consistent and regularly implemented land health monitoring, evaluation, and adaptive management process, it is unable to prevent land degradation as over half of BLM livestock grazing allotments that have been assessed currently fail to meet the minimum rangeland health requirements and another approximately 36 million acres have never been evaluated.¹⁸⁴

1. Existing Regulations Establish a Sound Framework but Have Been Inconsistently and Incompletely Implemented

The existing livestock grazing regulations establish an adaptive management framework that begins with assessments and evaluations of land health conditions and culminates in permit authorization decisions designed to achieve and maintain land health standards. While the existing regulations need improvement to fully achieve healthy rangeland

¹⁸¹ 91 Fed. Reg. at 26868 (proposing a new section of code at Part 1700, *Fundamentals of Land Health and Standards for Program Administration*).

¹⁸² 43 C.F.R. § 4180.1.

¹⁸³ 91 Fed. Reg. at 26868.

¹⁸⁴ PEER, *supra* note 36, at 3.

conditions, the 2026 Proposed Rule takes a significant step away from the sound conceptual framework which could seriously jeopardize current and future success.

Under current guidance, land health assessments should generally be organized at the watershed scale. BLM's *Rangeland Health Standards Handbook*, defines an "assessment" as "[t]he estimation or judgment of the status of ecosystems structures, functions, or processes, within a specified geographic area (*preferably a watershed or a group of contiguous watersheds*) at a specified time" where a watershed is defined using the 5th level of the hydrologic unit delineation system ("HUC").¹⁸⁵ This watershed-scale approach allows BLM to evaluate ecological processes that operate across landscapes while still providing sufficient resolution to identify localized resource concerns. Importantly, watershed-scale assessments are not intended to replace allotment-level land health evaluations. Rather, they serve as an organizational framework for conducting more detailed evaluations of individual grazing allotments and surrounding areas. This framework also promotes coordinated evaluation of all allotments within a watershed, ensuring that adjacent allotments are assessed on a consistent schedule rather than being evaluated sporadically or overlooked altogether.

BLM has demonstrated that this approach can be successful where implemented properly. The Dillon Field Office in Montana implemented a watershed-based management program consistent with the BLM handbook. Due to the structured approach, the office maintained a relatively small permit-renewal backlog and routinely completed multiple permit renewals within approximately two years from initial data collection to final decision. In fact, the Dillon Field Office was so successful in implementing the watershed approach that they were tasked by BLM Headquarters to write about their experience.¹⁸⁶

Importantly, the Dillon Field Office did not abandon allotment-level evaluation while implementing a watershed scale approach. Individual allotments were still evaluated separately, with management prescriptions tailored to specific conditions and permittees. The watershed approach functioned as an organizational framework rather than a substitute for site-specific evaluations. The Dillon Field Office example shows that BLM can properly implement the land health framework when adequately resourced and supported by staff. This approach can be efficient, rigorous, and yield measurable benefits for land health. BLM should be looking for ways to replicate the Dillon Field Office model west-wide rather than weakening aspects of the framework as proposed in the rule.

Once BLM determines that an area is not meeting land health standards, existing regulations require BLM to determine the casual factors responsible for the degradation

¹⁸⁵ *Rangeland Health Standards*, Bureau of Land Management, Manual Transmission Sheet H-4180-1 (Jan. 19, 2001) at I-2, I-9, https://www.blm.gov/sites/blm.gov/files/uploads/Media_Library_BLM_Policy_h4180-1.pdf.

¹⁸⁶ See Ryan Martin, Pat Fosse, & Brian Thrift, *An Interdisciplinary Approach for Watershed-Scale Assessment and Management*, 34 *Rangelands* 25—30, (Aug. 2012), <https://doi.org/10.2111/RANGELANDS-D-12-00015.1>.

and implement corrective measures. In general, BLM must implement the appropriate corrective measures by the following grazing season, and permit terms and conditions are modified as necessary to ensure progress toward meeting land health standards.¹⁸⁷

Despite this framework, implementation has suffered from chronic backlogs. Existing regulations contain no mandatory schedule for conducting land health evaluations, allowing allotments encompassing more than 36 million acres of public land to remain unevaluated even though the framework has been in place for over thirty years.¹⁸⁸

Recognizing this problem, BLM issued a 2025 Instruction Memorandum establishing priorities for land health evaluations and implementation of management actions to promote resilient landscapes and conserve necessary habitat conditions for Greater sage-grouse, bighorn sheep, and threatened and endangered species.¹⁸⁹ The issuance of this guidance demonstrates that BLM itself has acknowledged the need to accelerate evaluations and prioritize ecologically important landscapes.

Furthermore, BLM also faces a substantial backlog of grazing permits requiring NEPA analysis before renewal. Rather than addressing this backlog through timely land health evaluations and environmental review, Congress authorized BLM to renew certain permits without completing NEPA analysis through the FLPMA section 402(c)(2) rider.¹⁹⁰ This became a permanent exemption in 2014 when FLPMA was amended to allow for grazing permits to be renewed without a NEPA assessment as long as grazing remained unchanged from prior years.¹⁹¹ Through this process, BLM has demonstrated a keen willingness to avoid the hard decisions necessary to address land health failures. In 2025, 60% of BLM allotments and 74% of BLM animal unit months (“AUMs”) were authorized without a current NEPA analysis.¹⁹² When BLM renews grazing permits using FLPMA 402(c)(2), data collection does not occur, and the land health determinations and effects of grazing are not analyzed, disclosed, or addressed.

¹⁸⁷ 43 C.F.R. § 4180.2(c)(1-2).

¹⁸⁸ PEER, *supra* note 36, at 3.

¹⁸⁹ Permanent Instruction Memorandum 2025-004, *Setting Priorities for Review and Processing of Grazing Authorizations and Related Livestock Grazing Monitoring, and Incorporating Thresholds and Responses into Grazing Permits/Leases*, Bureau of Land Management, Dec. 19, 2024 (inactive policy), <https://www.blm.gov/policy/pim-2025-004>.

¹⁹⁰ 43 U.S.C. § 1752(c)(2).

¹⁹¹ Melissa Cain, *Renew or Review: How the FLPMA 402(c)(2) Loophole Has Limited Public Engagement and Enabled Environmental Degradation on Western Public Lands*, Western Watersheds Project, <https://storymaps.arcgis.com/stories/45ea3ebe6ef54bd0840bb41e63a79174> (analyzing BLM grazing records from 2013–2021).

¹⁹² *Id.*

2. The 2026 Proposed Rule Weakens Every Stage of the Land Health Evaluation and Adaptive Management Framework

Rather than addressing these longstanding implementation challenges, the 2026 Proposed Rule would fundamentally weaken every stage of the land health framework. The 2026 Proposed Rule creates a new "rapid landscape-scale condition assessment."¹⁹³ These assessments would evaluate soils, water, habitat, and ecological processes across broad landscapes and would be updated at least once every ten years.¹⁹⁴ While landscape-scale assessments may be useful for identifying broad ecological trends, they cannot substitute for site-specific analysis necessary for evaluating whether individual allotments or other areas are meeting land health standards.

For example, proposed § 1700.3 makes multiple references to the use of remote sensing data. During a recent BLM public webinar on the 2026 Proposed Rule, agency staff explained that the rapid landscape-scale condition assessment is intended to function primarily as a broad-scale, remote sensing-based screening tool to identify potential "hot spots" where more detailed land health evaluations may be warranted.¹⁹⁵ We are concerned that the broad-scale remote sensing tools will lack the sensitivity to discern site-level conditions, including in essential habitats for at-risk or listed species where degraded conditions could pose significant threats. Relying entirely or primarily on remote sensing data could result in ecologically important areas being overlooked or deprioritized for land health evaluations. To our knowledge, BLM does not possess remote sensing tools that can assess stream channel integrity or native plant diversity (looking at composition rather than just annual vs perennial). Thus, it seems that BLM would have to rely on a broad scale tool which lacks the ability to find these "hot spots" and necessary site level review will never occur.

The 2026 Proposed Rule states that land health evaluations will "step down" from these landscape assessments to finer scales but provides no criteria describing when, where, or how those finer-scale evaluations will occur. This omission is particularly concerning because the 2026 Proposed Rule defines "landscape scale" broadly as a mosaic of interacting ecosystems and human systems but does not provide sufficient detail for the scale of the subsequent land health evaluations.¹⁹⁶ Without a defined evaluation scale, BLM risks relying on analyses that are too coarse to detect localized ecological problems—as we note in the example above. Another example is that many sensitive species occupy

¹⁹³ 91 Fed. Reg. at 26854.

¹⁹⁴ *Id.* at 26854, 58.

¹⁹⁵ Brenda Younkin, U.S. Dep't. of Interior Deputy Assistant Secretary for Lands and Minerals, addressing a Western Landowners Alliance Webinar on the proposed livestock grazing regulation revision, June 24, 2026.

¹⁹⁶ The proposed regulation simply states that land health evaluations will be conducted on an "appropriate finer scale to determine whether standards are being achieved or significant progress is being made." 91 Fed. Reg. at 26855.

relatively small habitat features, such as individual meadows, springs, or stream reaches. Reliance on coarse landscape-scale assessments to prioritize and inform land health evaluations risks overlooking these types of localized habitats and any potential land health concerns.

The 2026 Proposed Rule also fails to establish any schedule for conducting land health evaluations. One of the principal shortcomings of the existing regulations has been the absence of mandatory evaluation timelines, contributing to over 36 million acres of grazing allotments that have never been assessed. Rather than correcting this problem, the 2026 Proposed Rule relies almost entirely on agency discretion while simultaneously expanding the number of lands subject to land health evaluations. This approach risks perpetuating—and potentially increasing—the existing backlog.

The proposed framework would also substantially delay corrective action. Under the 2026 Proposed Rule, BLM would have six months to complete a causal factor analysis, an additional year if further evaluation is needed, and as much as two years to implement appropriate actions.¹⁹⁷ By comparison, existing regulations generally require corrective measures by the next grazing season.¹⁹⁸

These delays are particularly troubling because nearly identical provisions proposed during the 2006 grazing rulemaking drew strong objections from BLM's own specialists, the Fish and Wildlife Service, and EPA. FWS concluded that extending response times from twelve to twenty-four months could be "extremely detrimental to long-term range health and fish and wildlife resources," particularly because many western ecosystems already exist near ecological thresholds."¹⁹⁹ In the 2026 Proposed Rule, BLM neither addresses the concerns raised during the 2006 rulemaking nor provides a reasoned explanation or analysis of how extending the timeframe for taking appropriate corrective action will not detrimentally impact species and their habitat.

Perhaps most significantly, the 2026 Proposed Rule seeks to "decouple management for land health from actions on BLM permits and other land use authorizations."²⁰⁰ This approach is inconsistent with BLM's statutory obligation to, among other things, improve rangeland conditions and represents a significant departure from the existing adaptive management framework, under which permit terms and conditions are modified as necessary to achieve land health standards.²⁰¹

The 2026 Proposed Rule explicitly states that corrective actions taken in response to failing land health standards "need not include cancellation or modification of a current

¹⁹⁷ *Id.*

¹⁹⁸ 43 Fed. Reg. at 4180.2(c)(2).

¹⁹⁹ *W. Watersheds Project*, 632 F.3d at 490.

²⁰⁰ 91 Fed. Reg. at 26855.

²⁰¹ 43 Fed. Reg. at 4130.2.

authorized use that is determined to be a significant causal factor, provided that the use conforms to the governing land use plan and the permittee is in compliance with the terms, conditions, or stipulations in the land use authorization.”²⁰² As a result, BLM could determine that livestock grazing is causing resource degradation while simultaneously declining to modify the grazing authorization responsible for that degradation. Such an approach undermines adaptive management by disconnecting land health findings from the management actions necessary to remedy them.

3. BLM Must Design and Implement an Effective Land Health Framework

An effective land health monitoring and adaptive management program is essential for maintaining and improving the condition of public lands and resources. Defenders offers the following recommendations for strengthening the 2026 Proposed Rule’s Part 1700.

a) Assessment and Evaluation Scales

Assessments should continue to occur at the watershed scale to identify ecological conditions and trends, consistent with BLM's longstanding guidance, while recognizing that watershed assessments cannot replace allotment-level or other site-specific evaluations.

Land health evaluations should occur at two complementary scales—the watershed-scale and the allotment scale—using repeatable and science-based protocols. Evaluating watersheds at a consistent HUC level across the NSPL is critical for understanding land health conditions broadly and informing BLM program management and priority setting. It also aligns with the approach adopted by the US Forest Service in its Watershed Condition Framework.²⁰³ Allotments should continue to receive separate evaluations because permit terms and conditions should be tailored to allotment-specific conditions. The successful implementation of this approach by the Dillon Field Office demonstrates that watershed organization and allotment-specific management are complementary rather than mutually exclusive.

²⁰² 91 Fed. Reg. at 26870.

²⁰³ 16 U.S.C. § 6543. The Watershed Condition Framework utilized by the Forest Service is a primary framework utilized by the Forest Service to evaluate land health. It uses the HUC 12 watershed as the assessment unit. For priority watersheds, the Framework requires the completion of a Watershed Restoration Action Plan that specifies causes of degradation and a set of essential projects necessary for the restoration of the watershed. See also *Watershed Condition Framework: A Framework for Assessing and Tracking Changes to Watershed Condition*, U.S. Dep’t. of Agric. Forest Serv., FS-977 (May 2011), https://www.fs.usda.gov/biology/resources/pubs/watershed/maps/Watershed_Condition_Framework2011FS977.pdf; *Watershed Restoration Program Reporting, Guidance, and Directives*, U.S. Dep’t. of Agric. Forest Serv., https://www.fs.usda.gov/restoration/Watershed_Restoration/guidance.shtml.

b) Timeline for Evaluations

BLM should require that evaluations be completed at least every ten years and prioritized where resource concerns are known or reasonably likely to exist (e.g., habitat for sensitive species, allotments with documented land health problems, and landscapes vulnerable to invasive species, wildfire, or drought).²⁰⁴ Creating a set schedule for evaluations would ensure that all BLM lands are evaluated every decade followed by adaptive actions to address substandard land health, as well as enabling trend identification and analysis. It would also help address the evaluation backlog that otherwise could continue to worsen given the broader scope of lands contemplated in Section 1700.

c) Land Health Categories

The rule should distinguish between lands that are achieving land health standards and those merely making significant progress toward achieving those standards. Throughout Part 1700 of the 2026 Proposed Rule, BLM contemplates evaluating whether public lands are either 1) achieving or making significant progress toward achieving, or 2) not achieving land health standards.²⁰⁵ If an authorized officer finds that resource conditions are achieving or making significant progress toward achieving land health standards, no additional analysis is needed.²⁰⁶ The categories of “achieving” and “making significant progress toward achieving” are distinct and should not be treated as equivalent. The phrase “making significant progress toward” is subjective and undefined, making it an unreliable measure of land health. Further, lands could be in very poor condition yet not identified as such because they are deemed as making significant progress; because they are not identified as in distress, they are not subject to causal factor analysis and subsequent corrective actions. This conflation of these two categories undermines effective program management, accountability, and informed decision-making by understating the extent to which public lands are not meeting minimum land health standards.

d) Watershed Action Plans

BLM should expand upon the concept of “appropriate action” in Section 1700.4(e) by specifying that, for watersheds found to have compromised land health, BLM should develop a watershed restoration action plan designed to achieve land health within a specified timeframe. Consistent with best available science, the plan should identify the causes of degradation, establish clear objectives tied to land health standards, specify the management actions necessary to address those causes, and include monitoring

²⁰⁴ See, e.g., BLM’s Conservation and Landscape Health Rule, previously found at 43 C.F.R. Parts 1600 and 6100 (contemplating that BLM would complete land health evaluations at least every ten years) 43 C.F.R. § 6103.1.2 (a) (repealed 2026).

²⁰⁵ See e.g., 91 Fed. Reg. at 26868-70.

²⁰⁶ 91 Fed. Reg. at 26869.

protocols with indicators, thresholds, and adaptive management triggers. Such plans would align with the Forest Service’s approach²⁰⁷ and provide a transparent framework for evaluating whether management actions are effective and making adjustments where needed. Absent requiring management actions to directly address the primary causes of degradation, BLM risks investing substantial resources on restoration projects that do not remedy the underlying issues that prevented the achievement of land health standards in the first place.

e) Timeframes and Sufficiency of Corrective Actions Related to Grazing

The BLM should require that corrective actions (referred to as appropriate actions in the 2026 Proposed Rule) address the significant causes of degradation and not make an exception for grazing. Further, where livestock grazing is identified as a significant causal factor, grazing authorizations should be modified no later than the following grazing season. The 2026 Proposed Rule, which provides for two years between causal factor determination and corrective action related to grazing authorizations, would allow for 3.25 years from the start of the evaluation to modifying grazing authorizations, which seems excessive given that grazing permits are issued every ten years.

C. Several Proposed Fundamentals and Standards Must Be Strengthened

1. Section 1700.1 Fundamentals of Land Health

a) Habitats and Species Populations Fundamental

BLM has a substantive duty under FLPMA and the ESA to manage for at-risk plants and animals.²⁰⁸ The 2026 Proposed Rule language for this fundamental is: “Habitats are, or are making significant progress toward being restored or maintained, for Federal threatened and endangered, Federal candidate, or other special status species.”²⁰⁹

This proposed habitat fundamental focuses solely on maintaining or restoring habitat for listed species. While this is essential, BLM also has obligations to conserve and recover species. Scenarios exist where habitats are suitable but species are declining or absent (e.g., too much disturbance from recreation). Thus, BLM should expand this provision to

²⁰⁷ 16 U.S.C. § 6543. See also *Watershed Condition Framework: A Framework for Assessing and Tracking Changes to Watershed Condition*, U.S. Dep’t. of Agric. Forest Serv., FS-977 (May 2011), https://www.fs.usda.gov/biology/resources/pubs/watershed/maps/Watershed_Condition_Framework2011FS977.pdf; *Watershed Restoration Program Reporting, Guidance, and Directives*, U.S. Dep’t. of Agric. Forest Serv., https://www.fs.usda.gov/restoration/Watershed_Restoration/guidance.shtml.

²⁰⁸ See e.g., 16 U.S.C. § 1536(a); 43 U.S.C. § 1701(a)(7); Bureau of Land Management, BLM Manual 6840-*Special Status Species Management* (2008).

²⁰⁹ 91 Fed. Reg. at 26868 (proposing new Fundamentals of land health for Section 1700.1).

reflect its dual obligations for at-risk species by rewording it to say, “Federal threatened and endangered, Federal candidate, or other special status species and their habitats are making significant progress toward being restored or maintained.” Population monitoring can be the most effective means of determining whether habitats are functioning adequately and supporting species conservation.

2. Section 1700.2 Standards

The proposed Standard 9 narrows protections currently afforded to proposed, candidate, and other special status species. Current regulations require BLM to formulate standards that address habitats for “Federal proposed, Federal candidate, and other special status species.” The 2026 Proposed Rule replaces this language with a more limited standard focused on “restoring, maintaining, or enhancing habitats to assist in the recovery of Federal threatened and endangered species.”

The 2026 Proposed Rule offers no explanation for why BLM chose to remove references to Federal proposed species, Federal candidate species, and other special status species. These categories play an important role in proactive conservation efforts by identifying species that may be at risk *before* they require listing under the Endangered Species Act.²¹⁰ BLM should retain existing references in standards to proposed, candidate, and special status species and explain how their habitat needs will continue to be considered in land health evaluations.

The 2026 Proposed Rule also eliminates an important requirement that standards address habitat quality for native plant and animal populations and communities.²¹¹ Nowhere in the 2026 Proposed Rule does BLM contemplate a standard that explicitly addresses the quality, diversity, and distribution of habitats for native species. BLM should include a standard that says “Restoring, maintaining or enhancing the natural diversity and quality of habitats for native plant and animal populations and communities.”

We are also concerned about revisions to proposed Standard 11 addressing the use of non-native plant species. The proposed standard sanctions the use of non-native and non-invasive plant species only when 1) native species are not available in sufficient quantities or are incapable of maintaining or achieving properly functioning conditions and biological health, or 2) a site has passed an ecological threshold and cannot be returned to a functioning native state. This modifies the existing regulatory language by adding the word “non-invasive” and the second condition. We support the addition of the term “non-

²¹⁰ Bureau of Land Management, BLM Manual 6840-*Special Status Species Management* (2008).

²¹¹ 43 C.F.R. § 4180.2(d)(5).

invasive,” as it appropriately recognizes the risks associated with introducing invasive species into restoration projects.

We have concerns that the ecological threshold language may give BLM latitude to use plant species that are not native to North America or the relevant subregion, which would be inconsistent with best practices.²¹² If areas have shifted across an ecological threshold—for instance, from ponderosa pine to shrub-steppe—BLM should be planting species native to the “new” ecosystem and not species that do not belong in either ecosystem type and BLM should be sourcing seed from nearby relevant locations. Erickson and Halford (2020) describe using seed transfer zones and other practices to utilize native seed with the least chance for maladaptation.²¹³ BLM should clarify that revegetation projects should use species native to the ecosystem and climate regime in which it is occurring and prohibit using species that are not native to the continent and relevant sub-regions.

Further, we question carrying over the language from the 1995 regulation that allows BLM to use non-native plants when native species are not available in sufficient quantities or are incapable of maintaining or achieving properly functioning conditions and biological health. Since the 1995 Grazing Regulations were promulgated, considerable advancement in the native seed arena has occurred. The Department of the Interior created a Native Seed and Restoration Center, BLM established multiple regional native seed hubs, USGS established seed transfer zones, and the scientific community has further developed its understanding of the benefits of using native seed and the pitfalls of using non-native species for revegetation.²¹⁴ Given this tremendous progress, we question the appropriateness of continuing this exception, especially in the context of land health standards, and urge BLM to remove or narrow it.

²¹² See e.g., *National Seed Strategy*, Plant Conservation Alliance Federal Committee (2015), <https://www.blm.gov/programs/natural-resources/native-plant-communities/national-seed-strategy>; G.D. Gann et al., *International principles and standards for the practice of ecological restoration*, 34 Restor. Ecol., 3d. ed. (2026), at app’x 1 & 2, <https://doi.org/10.1111/rec.70441>; National Academies of Sciences, Engineering, & Medicine, *An Assessment of Native Seed Needs and the Capacity for Their Supply: Final Report*, Washington, DC: The National Academies Press (2023), <https://doi.org/10.17226/26618> (“Recommendation 4 calls for agencies to “establish clear agency policies on native seed uses . . . that support the use of locally adapted native plant materials in management activities.”).

²¹³ Erickson & Halford. *Seed planning, sourcing, and procurement*. 28 Restor. Ecol., S219—27 (2020), <https://doi.org/10.1111/rec.13199>.

²¹⁴ See Gann et al. (2026), *supra* note 212.

3. Lack of Timelines and Fall-Back Provisions

The 2026 Proposed Rule contains no fallback provisions or timelines for developing or revising new state or regional land health standards. The 2026 Proposed Rule simply states that BLM will “as appropriate, develop, amend, and maintain state or regional standards to measure and evaluate achievement of the fundamentals.”²¹⁵ In the meantime, the 2026 Proposed Rule provides no fallback provisions or stop gap measures to ensure BLM is evaluating land health properly before the state or regional standards are developed. The current regulations provide fallback land health standards and guidelines for BLM to use until such time that the state or regional standards or guidelines are developed and in effect.²¹⁶ Similar safeguards should be retained.

In addition, the 2026 Proposed Rule would eliminate requirements that BLM coordinate with RACs before creating or revising land-health standards. It would also remove the requirement that the Secretary approve those standards, transferring authority to the BLM Director.²¹⁷ Conservation groups such as Defenders often rely on RACs and formal review processes to provide feedback on management decisions and the existing provisions should be retained.

BLM should also establish a periodic process for reviewing and updating standards with input from states, Tribes, federal agencies, and the public to reflect advancements in scientific understanding.

D. BLM Must Analyze a Range of Alternatives for the 2026 Proposed Rule, Including the Previously Submitted Citizen’s Alternative

In addition to undertaking an EIS to comply with NEPA, BLM’s environmental analysis must “study, develop, and describe technically and economically feasible alternatives.”²¹⁸

On March 6, 2020, a coalition of conservation organizations, including Defenders of Wildlife, submitted a comprehensive regulatory alternative in response to BLM’s January 21, 2020 Federal Register notice initiating revisions to the grazing regulations.²¹⁹ During the associated scoping process, BLM expressly encouraged participants to propose alternative approaches and solutions. The coalition’s proposal was intended to address

²¹⁵ 91 Fed. Reg. at 26868.

²¹⁶ 43 C.F.R. § 4180.2(f).

²¹⁷ 91 Fed. Reg. at 26854.

²¹⁸ 42 U.S.C. § 4332(F).

²¹⁹ 85 Fed. Reg. 3410 (Jan. 21, 2020), <https://www.federalregister.gov/documents/2020/01/21/2020-00849/notice-of-intent-to-prepare-an-environmental-impact-statement-for-the-proposed-revision-of-grazing>; see Defenders of Wildlife 2020 Scoping Comments and Proposed Alternative (attached).

the purposes identified in the Notice of Intent, including modernizing the regulations, improving permitting efficiency, promoting land health, and ensuring meaningful public participation. BLM's 2026 Proposed Rule contains similar stated purposes as in 2020.

Following submission of the alternative, our organizations met with BLM in August 2020 to discuss the alternative and respond to any questions the agency might have. At that time, we were informed that BLM intended to analyze the conservation organizations' proposal as a stand-alone alternative in a forthcoming Draft Environmental Impact Statement, subject to minor revisions.²²⁰ Yet the current rulemaking proceeds without any acknowledgement of the 2020 process, the alternatives developed through that process, or the agency's prior commitment to analyze those alternatives.

For the reasons discussed above, BLM should prepare EIS for this rulemaking and should include and analyze the previously submitted conservation alternative in its range of alternatives. BLM has not explained why it undertook an extensive NEPA process when it amended the grazing regulations in 2006 but now asserts a categorical exclusion is appropriate. Further, BLM has not explained why it solicited proposals for a draft EIS in 2020 but now reverses course and asserts that an EIS is unnecessary for this rulemaking. At a minimum, BLM should explain why it believes a categorical exclusion is appropriate here when it deviates from past agency practice and why it no longer intends to evaluate alternatives it indicated just six years ago would be included in the environmental review process. BLM should conduct a full EIS and include Defenders' alternative proposal in a subsequent EIS.

VII. BLM Cannot Arbitrarily Limit Livestock Grazing Allocation and Management to "Production-Oriented Livestock"

BLM proposes to restrict grazing permits only to operations engaged in "production-oriented livestock" grazing without providing analysis or justification for the change.²²¹

Production-oriented livestock would become a central eligibility test under the 2026 Proposed Rule and would be mandatory to hold a grazing permit. The 2026 Proposed Rule

²²⁰ See Oct. 14, 2020 Letter to BLM re: Conservation Alternative for Proposed Revisions of Grazing Regulations for Public Lands (Federal Register/Vol. 85, No. 13/Tuesday, January 21, 2020) ("March 2020 Defenders' et al. Letter") (attached). Defenders attaches and incorporates its March 2020 Defenders' Letter into this comment letter. Defenders' prior alternative proposal holistically addressed changes to update grazing regulations, including affirmative programs such as encouraging non-lethal coexistence, encouraging the use and consideration of native species like bison, and evaluating land health on a consistent schedule. Defenders also advocated for revisiting the application of "chiefly valuable" in the land use planning context so that it is reflective of multiple use and sustained yield principles and mandates. BLM should review and adopt the proposals discussed therein.

²²¹ 91 Fed. Reg. at 26860, 26873.

would only permit applicants to graze “production-oriented livestock” where the animals “are being used as part of an operation to provide output for various purposes such as meat, milk, fiber, or other products and any animals in connection with such operations (e.g. horses that are used to assist with cattle management).”²²² BLM justifies this limitation because “[i]n the TGA, Congress expressed the preference that grazing permits be issued to ‘landowners engaged in the livestock business.’ 43 U.S.C. 315b. The BLM’s administration of the grazing program has nearly universally reflected that principle from the time of the TGA’s passage through today.”²²³ However, TGA, FLPMA, and PRIA do not support BLM’s “production oriented” standard. Defenders has addressed this new “production-oriented” requirement in its administrative appeal of BLM’s decision to revoke American Prairie’s permits to graze bison. We have attached our appeal and incorporate by reference its arguments and supporting documents here. Defenders also submitted comments to OMB regarding the proposed changes on this issue and the revision of Form 4130—1.²²⁴

First, this “production-oriented” standard is not found in the TGA or any of its implementing regulations. BLM itself acknowledges that that the TGA does not expressly state that grazing authorizations are only to be issued for “production oriented” livestock.²²⁵ Indeed, the term is not even found within the TGA. The 2026 Proposed Rule interprets a provision in the TGA “to support resource consumption” as requiring the change to a “production-oriented” standard, concluding that “[i]t is not appropriate [] for the BLM to entertain applications for grazing permits from individuals or organizations who aim to compete with ranchers for valuable public forage but who have no intention of using that forage to support a commodity-producing operation, as the TGA originally anticipated.”²²⁶

Through this interpretation of its authority under the TGA, BLM also introduces an “intent” element into its decision making which is not articulated in the TGA. This requirement of intent for “production oriented” livestock operations is also not found in FLPMA or PRIA. The idea that intent should be factored into decisions about the issuance of grazing permits through the definition of livestock, or “domestic” livestock has been well-considered and previously rejected by BLM. In 2023, BLM specifically addressed whether intent could be considered in its permitting decisions when reviewing American Prairie’s change-of-use application and found “there is no authority or mechanism for BLM to

²²² *Id.* at 26872.

²²³ *Id.* at 26860.

²²⁴ See Defenders of Wildlife June 10th 2026 comments OMB (attached).

²²⁵ 91 Fed. Reg. at 26857.

²²⁶ *Id.*

evaluate the goals of permittees to determine eligibility to hold a grazing permit. To make such leaps would without question violate the applicable law [].”²²⁷

In BLM’s 2023 approval of American Prairie’s change-of-use application to graze bison on their grazing allotments in Montana, BLM correctly recognized that there is no statutory basis or guidance for basing its permitting decisions on the presence or lack of livestock production or the amount of livestock production.²²⁸ Yet now in the 2026 Proposed Rule, BLM seeks to add a requirement that applicants must demonstrate to the federal government that their livestock operations are productive enough to receive a permit to graze on public lands. BLM does not explain in the 2026 Proposed Rule why its 2023 interpretation of its statutory authority was incorrect and gives only a cursory analysis and explanation of its current interpretation of the TGA to justify its abrupt change in position.

BLM also fails to explain how “intent” and “production oriented” are to be measured and evaluated. Will applicants have to submit an affidavit asserting that they have no interest in conservation of land? What proportion of an organization’s overall operations must be “production oriented”? If a private production-oriented organization also wishes to invest in land health to improve its grazing prospects will its operations no longer be “production oriented”? If applicants wish to engage in “targeted grazing” to manage wildfire risk,²²⁹ will BLM deny that request as being insufficiently “production oriented”? If the goal of a Tribal government or producer is to increase food sovereignty and return to an ancestral practice, will the BLM now parse which practices are sufficiently “production oriented”? The 2026 Proposed Rule does not grapple with the implications of its new “production oriented” standard or offer criteria for determining which applicants meet the production-oriented grazing standard.

The 2026 Proposed Rule also removes the special grazing permit section entirely.²³⁰ Special grazing permits for grazing indigenous animals would be removed, and the relevant language would instead be incorporated into the general grazing permit sections. This creates an arbitrary and unclear distinction for what BLM would consider production versus non-production operations.

²²⁷ Defenders of Wildlife Appeal of Final Decision 2026, Appendix (attached).

²²⁸ *Id.*

²²⁹ The 2026 Proposed Rule states that a grazing permit can be authorized where “[t]he primary objective of authorized grazing use is the management of vegetation to meet resource objectives other than the production of livestock forage, such as prescribed or targeted grazing to manipulate the vegetation composition and structure (e.g., fuel reduction), control undesirable vegetation, or reestablish desired vegetation communities...” 91 Fed Reg at 26872 (2026 Proposed Rule Section 4190.1).

²³⁰ 91 Fed. Reg. at 26862.

BLM fails to recognize its own previous decisions and rationales or provide an explanation for its reversal of course. BLM also fails to explain how its changed interpretation of the TGA reconciles with later statutory goals articulated by Congress in FLPMA and PRIA related to conservation of rangelands. BLM ignores the language in the TGA, FLPMA and PRIA that require consideration of other values beyond mere economic production for rangelands and offers no new facts or changes of circumstances to justify the reversal of who may be qualified to apply for and receive livestock grazing permits or leases.

VIII. BLM Must Maintain Its Commitment to Its Multiple Use and Sustained Yield Requirements

In order to fully meet its multiple use and sustained yield mandates, BLM must ensure that stewardship and conservation-oriented activities can continue in the grazing context. BLM has an obligation to manage for resilience and conservation directly from FLPMA. FLPMA's history, purpose, and plain language demonstrate that protecting public lands from environmental degradation and conserving specific ecological attributes—including watersheds and wildlife habitat—have always been central to the BLM's mission. Section 102(c) of FLPMA defines BLM's "multiple use" mandate to explicitly require "a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources."²³¹ FLPMA's sustained yield mandate requires BLM to avoid permanent impairment of land productivity to ensure a high level of valuable uses "in perpetuity."²³² As the Supreme Court recognized in *Norton v. Southern Utah Wilderness Alliance*, this FLPMA provision obligates the BLM to "control depleting uses over time, so as to ensure a high level of valuable uses in the future."²³³

BLM asserts in the 2026 Proposed Rule that its decision to remove "conservation" is merely consistent with the requirements of *Public Land Council v. Babbitt*, 167 F.3d 1287(10th Cir. 1999).²³⁴ In *Babbitt*, however, the Tenth Circuit enjoined the BLM from granting a grazing permit issued "exclusively for conservation use," but did not argue that the BLM could not balance the needs of conservation with other needs, as required by FLPMA and PRIA.²³⁵ Indeed, the Tenth Circuit specifically noted that conservation was a "[p]ermissible end" even if granting a conservation exclusive grazing permit was an "unauthorized means."²³⁶ It also bears noting that the Tenth Circuit's holding regarding

²³¹ 43 U.S.C. § 1702(c).

²³² *Id.* at § 1702(h).

²³³ *Norton*, 542 U.S. at 58.

²³⁴ 91 Fed. Reg. at 26852.

²³⁵ *Babbitt*, 167 F. 3d at 1308.

²³⁶ *Id.*

conservation permits was not appealed to the Supreme Court.²³⁷ There is no case law prohibiting BLM from engaging in its congressional mandates to consider and promote conservation, and its regulations should reflect the multiple use purposes it is required to uphold.

A. BLM Should Encourage Stewardship Activities

The 1995 Grazing Regulations appropriately recognized that successful public lands management depends upon the stewardship efforts of permittees and provided incentives to encourage those efforts. Several provisions of the existing regulations provide benefits for operators who have demonstrated a commitment to maintaining and improving rangeland health. For example, Section 4110.3-1 gives priority for additional forage to permittees and lessees in proportion to their contributions to stewardship efforts that result in increased forage production. Section 4120.2 provides that the amount of operational flexibility granted to a permittee may be based on the operator's demonstrated stewardship, and Section 4130.1-2 directs BLM to consider an applicant's demonstrated stewardship to improve, maintain, and protect the rangeland ecosystem. Together, these provisions establish that permittees who invest time, labor, and resources in improving ecological conditions should receive corresponding consideration in grazing administration.

In the 2026 Proposed Rule, BLM states that it is proposing to eliminate the 4120.2 provision that would prioritize “contributions to stewardship efforts” when apportioning additional forage, explaining that, in its experience, these types of provisions are unclear and difficult to implement consistently.²³⁸ However, the existence of implementation challenges does not justify abandoning the underlying principle that stewardship should be recognized and incentivized. To the contrary, encouraging voluntary conservation and proactive management is a valuable step in achieving healthy rangelands and sustaining multiple uses on public lands. As explained in the agency’s economic analysis, “[i]t is possible that removing stewardship as a criterion when awarding additional forage or grazing permits would disincentivize future permittee-initiated range improvement projects and general good stewardship of allotment resources.”²³⁹

Rather than eliminating these provisions, BLM should clarify and strengthen them. Clear standards for evaluating stewardship contributions would provide permittees with greater

²³⁷ See *Public Land Council v. Babbitt*, 529 U.S. 728 (2000) (reviewing other aspects of the Tenth Circuit’s decision but noting that the parties did not appeal the conservation specific holding).

²³⁸ *Id.*

²³⁹ Economic Analysis for Proposed Rule: Revision of Regulations for Grazing Administration, Exclusive of Alaska at 9.

certainty and create meaningful incentives for actions that improve land health, restore riparian areas, reduce invasive and non-native species, enhance wildlife habitat, or otherwise contribute to ecosystem resilience. BLM also has an affirmative obligation under the ESA to carry out programs for the conservation of listed species²⁴⁰ and should therefore be seeking ways to expand opportunities for voluntary conservation rather than abandoning them.

The 1995 Grazing Regulations recognized that stewardship is a valuable component of sound grazing management, and that principle remains just as important today. Accordingly, at a time when public lands and species face increasing pressures from drought, invasive species, altered fire regimes, and climate change BLM should retain and improve these stewardship-based incentives rather than remove them from the regulatory framework.

B. BLM Should Allow for Non-Use on an Annual Basis

The 2026 Proposed Rule should preserve and affirm the continued availability of nonuse as an important management tool. Although BLM may not authorize the issuance of grazing permits solely for conservation purposes, BLM retains the authority to approve annual nonuse, including for the entirety of a ten-year permit term.²⁴¹ Nonuse has long been recognized as a valuable component of adaptive grazing management, and BLM's regulations should be updated consistent with Instruction Memorandum 2009-057 to clarify that annual nonuse may be approved without limitation on the number of years for which it can be authorized under 43 C.F.R. § 4130.4(b), in addition to the proposed changes allowing for a temporary non-use permit for business or personal needs for up to four consecutive years.²⁴² BLM should also add to the 2026 Proposed Rule additional safeguards for restocking previously vacant grazing allotments, taking into account whether prior resource conflicts occurred and whether the allotments were vacated for specific reasons, such as protecting imperiled wildlife.

C. BLM Should Allow for Permanent Adjustments to Grazing Levels

The 2026 Proposed Rule treats reductions in active use as temporary suspensions rather than permanent adjustments to authorized grazing levels.²⁴³ Under this framework, if BLM determines that grazing pressure must be reduced to address resource concerns, the associated AUMs would not be permanently removed from the permit. Instead, they would

²⁴⁰ 16 U.S.C. § 1536(a)(1).

²⁴¹ See *Pub. Lands Council v. Babbitt*, 167 F.3d 1287, 1307–08 (10th Cir. 1999).

²⁴² *Nonuse of Grazing Permits or Leases*, Bureau of Land Management, IM 2009-057 (Jan. 12, 2009).

²⁴³ 91 Fed. Reg. at 26875.

be classified as suspended use that could readily be restored if additional forage later becomes available. This approach undermines the ability of BLM to secure lasting ecological improvements and risks treating periods of rest merely as pauses before a return to prior grazing levels, rather than as opportunities to adapt management to changing ecological conditions.

D. BLM Should Maintain Active Use and Allocation Limits for Livestock

The 2026 Proposed Rule is setting the stage for a substantial increase in active use and allocation of forage to livestock, raising additional concerns. Section 4110.3-1 would require that "[a]dditional forage available on a sustained yield basis for grazing by production-oriented livestock shall first be apportioned in satisfaction of suspended permitted use to the permittee(s) authorized to graze in the allotment in which forage is available."²⁴⁴ In other words, when BLM determines that additional forage exists, the default assumption is that it should be allocated to livestock. The 2026 Proposed Rule provides little explanation, however, regarding how the forage needs of wildlife are calculated or why additional productivity should automatically be devoted to domestic livestock rather than supporting native species and ecological functions. Further, under the 2026 Proposed Rule, additional forage not first used by permittees could be apportioned to other production-oriented livestock producers on a non-renewable basis.²⁴⁵ It is unclear, however, how this additional or unused forage would be identified and how the additional grazer would be chosen.

This concern is particularly acute because the preamble recognizes that carrying capacity "must include use by all species using the landscape, whether domestic or native."²⁴⁶ Yet the 2026 Proposed Rule offer no meaningful methodology for accounting for wildlife use or habitat requirements when allocating forage. The availability of forage alone does not determine ecosystem health. Sustainable management must also account for habitat quality, species diversity, migration corridors, riparian conditions, and other ecological values. Species ranging from pollinators and grassland birds to sage-grouse, pygmy rabbits, and ungulates depend on vegetation structure and composition that may not be captured by forage calculations designed primarily around livestock production. If livestock allocations can effectively consume 100 percent of the carrying capacity, wildlife needs are dismissed despite the 2026 Proposed Rule's acknowledgment that carrying capacity encompasses all species.

²⁴⁴ *Id.* at 26874.

²⁴⁵ *Id.* at 26873.

²⁴⁶ *Id.* at 26856.

The 2026 Proposed Rule likewise fails to explain how habitat conditions and wildlife requirements will factor into decisions regarding increases in active use or identify the approved methodologies that will be used to evaluate these considerations. Given the extensive scientific evidence discussed above demonstrating the impacts of grazing on soils, water quality, vegetation communities, and habitat, BLM cannot simply assume that all newly available forage should be converted into additional livestock use. Rather, any decision to increase grazing should be preceded by a rigorous analysis of whether the ecosystem is capable of sustaining additional use while maintaining healthy wildlife populations and functioning habitats.

E. BLM Should Maintain Oversight for Changes in Permit Terms and Conditions

The 2026 Proposed Rule also would authorize greater flexibility in permit terms and conditions by allowing permittees to adjust grazing practices within preset limits without seeking additional BLM approval.²⁴⁷ While flexible management, like allowing for greater flexibility in permit terms and conditions, can be beneficial, it risks reducing agency and public engagement in grazing practices, the absence of which could prove consequential to land health conditions and wildlife.

Allowing operational changes without prior agency review or public notice could make it more difficult to ensure that grazing remains consistent with land health standards, ESA-related obligations, and other resource objectives. Flexibility should not come at the expense of accountability, particularly given the 2026 Proposed Rule's simultaneous reduction in public participation and lengthening of timelines for corrective action. We are concerned that increased flexibility intended for ranch operations, if not paired with strong ecological safeguards, could make enforcement more difficult and lead to less predictable protection of sensitive landscapes.

Viewed aggregately, these provisions reflect a broader shift toward maximizing livestock use and preserving authorized grazing levels, while placing insufficient emphasis on ecological recovery, wildlife needs, and long-term land health. This is at odds with BLM's sustained yield mandate under FLPMA.²⁴⁸ BLM should instead ensure that conservation nonuse remains fully available as a management tool, recognize that periods of rest may warrant permanent reductions where ecological conditions require them, and clarify that carrying capacity and forage allocations must meaningfully account for the needs of native species and ecosystem function—not solely the production of livestock forage.

²⁴⁷ See *id.* at 26853, 79.

²⁴⁸ See 43 U.S.C. § 1701.

IX. BLM Must Ensure the 2026 Proposed Rule Provides for Transparent Decision-Making and Robust Public Participation

The 2026 Proposed Rule significantly reduces transparency and public participation in administration of the grazing program as well as the land health assessment, evaluation, and adaptive management process. Public involvement helps ensure that agency decisions are informed by local knowledge, scientific expertise, and the interests of the many stakeholders who rely on and care about public lands. However, the 2026 Proposed Rule would limit opportunities for the public to understand, engage with, or provide input on key components of allotment management and the land health framework.

A. The Land Health Evaluation Framework Should Involve the Public

The 2026 Proposed Rule does not require BLM to publish the results of its rapid landscape health assessments. These assessments are intended to inform about resource conditions and landscape-scale trends, yet the public may have no access to the information generated through this process. Without public disclosure, stakeholders will be unable to evaluate the agency's findings, understand the basis for subsequent management decisions, or identify potential errors or omissions. Transparency regarding assessment methods and results is essential to building public trust and advancing public land health collaboratively.

1. Land Health Evaluations and Adaptive Management

The 2026 Proposed Rule provides no meaningful opportunities for public participation during the land health evaluation and adaptive management process. The 2026 Proposed Rule does not require BLM to provide the public with notice of scheduled evaluations or opportunities to participate or comment. It also does not provide the public opportunities to comment on proposed corrective actions to identify land health concerns. As a result, determinations regarding whether land health standards are being met and the appropriate suite of corrective actions is being employed could occur with no public visibility or engagement.

The proposed lack of transparency is particularly concerning given the important role land health evaluations play in determining management actions across millions of acres of public lands. Evaluations and adaptive management decisions can have significant implications for wildlife habitat, ecological integrity, recreational opportunities, cultural resources, and other public land values. The final rule should therefore require BLM to provide notice and comment on land health evaluations and offer opportunities for public review and comment before adaptive management decisions are finalized. Such measures

would strengthen the credibility of the land health framework and help ensure that management decisions are informed by the best available information and public input.

B. Data Transparency and Accessibility

Federal law requires BLM to ensure data transparency and accessibility. The Data Quality Act (“DQA”) directs the Office of Management and Budget (“OMB”) to issue government-wide guidelines that “provide policy and procedural guidance to federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies.”²⁴⁹ OMB direction implementing the DQA and corresponding direction in the Safe Water Drinking Act Amendments of 1996 require that agencies utilize best available science and data.²⁵⁰ The OPEN Government Data Act complements these obligations by requiring federal agencies to publish their information online as open data, using standardized formats and with access to metadata.²⁵¹

Despite these obligations, data regarding grazing on public lands is especially lacking. Without frequently updated and downloadable spatial data, it is challenging for the public to participate effectively in land health assessments, evaluations, and determinations as well as permit authorizations and related decision-making. BLM must work to ensure that quality information is being collected and used in its decision-making processes and work to ensure this data is readily available to the public, including in GIS and non-GIS form. This includes making land health evaluations, determinations, and adaptive management plans available online in a timely manner.

C. Administration of Grazing Permits & the “Interested Public”

It is critical that BLM provide meaningful opportunities for public participation in grazing-related decisions, both at the planning and implementation levels. When promulgating the 1995 Grazing Regulations, the Department of the Interior stated that it “believes that the public interest will be best served if a wide range of interests are represented when decisions are being made.”²⁵² Thus, increased public participation is essential to achieving

²⁴⁹ Consolidated Appropriations Act for Fiscal Year 2001, Pub. L. No. 106-554, § 515(a).

²⁵⁰ 42 U.S.C. § 330g-1(b)(3); 67 Fed. Reg. 8452, 8458 (February 22, 2008). *See also* Bureau of Land Management, Information Quality Guidelines, available at <https://www.blm.gov/documents/national-office/public-room/guidebook/blm-information-quality-guidelines> (emphasizing importance of using sufficient, high-quality data and analytical methods, and making those available to the public).

²⁵¹ Pub. L. No. 115-435, Title II (Jan. 14, 2019), *codified at* 44 U.S.C. Ch. 35.

²⁵² 60 Fed. Reg. 9894, 9895 (Feb. 22, 1995), <https://www.govinfo.gov/content/pkg/FR-1995-02-22/pdf/95-3866.pdf>.

lasting improvements in the management of our public lands.” Now, the 2026 Proposed Rule would significantly narrow those opportunities. According to the Preamble, “[t]he BLM is proposing to revise the definition of the term *interested public* to make explicit that anyone wishing to participate in the management of livestock grazing on public lands must have a cognizable interest in such management on the allotment or allotments for which they wish to participate as a member of the interested public. **An interest in public lands management or the health of the range or particular resources on it would not alone be sufficient for the BLM to grant interested public status**; rather, an articulable interest in those matters as applied to the allotment at issue would be necessary.”²⁵³

Under the 2026 Proposed Rule, members of the “interested public” would be required to affirmatively request the opportunity to participate in livestock management on an allotment-by-allotment basis. BLM would no longer provide public notice of proposed grazing decisions or permit modification, limiting notice of these management decisions to applicants and grazing permittees or lessees. Members of the public would instead be expected to independently monitor agency websites and individual allotments to remain informed about management actions.

This approach is unreasonable. Conservation organizations, Tribes, local governments, scientists, recreationists, and other stakeholders often follow grazing issues across multiple landscapes and programs. They have expertise to offer and an interest in the outcome of grazing-related decisions. Establishing unjustified tests for engagement or requiring the public to request interested public status separately for individual allotments (of which there are more than 21,000) creates unnecessary and inappropriate barriers to participation and ignores the landscape-scale nature of many grazing-related impacts. The public should be able to request notification and participation broadly, rather than navigating a cumbersome allotment-by-allotment system.

FLPMA section 309(e) further requires the Secretary to establish procedures providing the public with adequate notice and an opportunity to comment upon the formulation of standards and criteria and to participate in the preparation and execution of plans and programs for the management of public lands. The grazing program is unquestionably a program for the management of public lands, and meaningful public participation is therefore required by statute.

However, public participation is not merely procedural; it produces better decisions. Members of the public frequently provide information that would otherwise be unavailable

²⁵³ 91 Fed. Reg. at 26856 (emphasis added).

to the agency, including observations regarding deteriorating riparian conditions, invasive species outbreaks, wildlife use patterns, recreation conflicts, and other site-specific concerns. Tribes, conservation organizations, scientists, local governments, and other members of the public often possess unique knowledge that helps identify ecological problems before they become severe. Restricting these opportunities increases the likelihood that adverse impacts will go undetected and that management decisions will fail to account for important environmental considerations.

BLM justifies these changes to public participation opportunities by asserting that requiring consultation with the interested public “at every step of the process” is inefficient and can delay management actions necessary to facilitate grazing and other resource uses.²⁵⁴ According to the agency, public involvement would remain available through comments on draft NEPA documents and the proposed decision and protest process. However, these limited opportunities are not an adequate substitute for the robust public participation contemplated by FLPMA or opportunities historically provided under BLM's grazing regulations. And, under the existing NEPA implementing procedures, BLM is only required to solicit public comment on a notice of intent to prepare an EIS, and it is up to the authorized officer's discretion whether to offer notice or solicit public comments for environmental assessments or categorical exclusions.²⁵⁵ It is therefore insufficient that the 2026 Proposed Rule purports to rely upon future opportunities afforded by NEPA that may or may not come to fruition.

Reducing transparency in the grazing program will undermine public confidence in BLM's decisions. Limiting notice requirements and shifting much of the burden to the public to discover proposed implementation actions creates the appearance that decisions are being made hidden from public view. Such changes are unlikely to improve public trust and instead risk fostering perceptions that the agency is insulating grazing decisions from meaningful evaluation and public feedback.

In combination with the recent changes to the Department of Interior's implementing NEPA regulations, these revisions represent a significant retreat from the transparency and public involvement that Congress envisioned in FLPMA or that were historically afforded by BLM. BLM should ensure that any member of the public can easily know about and have meaningful opportunities to engage in grazing-related decisions.

²⁵⁴ 91 Fed. Reg. at 26858–59.

²⁵⁵ U.S. Department of Interior Handbook of National Environmental Policy Act Implementing Procedures, 516 DM 1, *U.S. Dep't. of Interior* (Feb. 2026) at 27.

X. Conclusion

Thank you for considering our comments. We look forward to continuing to provide feedback on BLM's grazing program and 2026 Proposed Rule impacting land health across the National System of Public Lands. Please do not hesitate to contact us if you have any questions.

Sincerely,

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