

United States
Department of the Interior

DIGEST OF GRAZING DECISIONS

Issued During the period
July 1, 1993 -October 10, 2001
(IBLA Volumes 127 - 155)

May, 2002

**Interior Board of Land Appeals
Office of Hearings and Appeals
Arlington, Virginia 22203**

**Bureau of Land Management
Rangeland, Soils, Water and Air Group
Washington, D.C. 20240**

FORWARD

This digest of grazing decisions of the Interior Board of Land Appeals supplements three previous grazing decision digests:

- *Digest of Grazing Decisions Under Federal Land Policy & Management Act, 1979-Present.* (1993);
- *Department of the Interior Digest of Grazing Decisions: 1959-1978.* (1983); and,
- *U.S. Department of the Interior Grazing Decisions: 1936-1958.* (1959).

Headings remain the same or similar to those found in previous digests for purposes of consistency with topical categories used by IBLA decision headnotes and with previous digests. There are, however, some new sub-headings introduced in this digest. Topics not represented in this edition are shown as “reserved.”

Acknowledgment: Creation of this updated edition of the digest of grazing decisions was a joint effort of staff of the IBLA in Arlington, Virginia and of BLM in Washington D.C.. Special thanks to Wyoming BLM Employee Arlan Hiner for his work in compiling and creating this digest while on detailed assignment in Washington. Edited by Kenneth M. Visser, BLM, and Margaret Walsh, IBLA.

TABLE OF CONTENTS

| | | | |
|----|--|----------|----|
| 1. | General | | 1 |
| | 1.1 Authority of the Department | | 1 |
| | 1.2 Authority of Subordinate Officials | | 2 |
| | 1.3 Advisory Boards | Reserved | |
| | 1.4 Validity of Regulations | Reserved | |
| | 1.5 Qualifications of Applicants | Reserved | |
| | 1.6 National Environmental Policy Act of 1969 | | 2 |
| | 1.7 Public Participation / Affected Interest / Interested Public | | 6 |
| 2. | Adjudication | | 8 |
| 3. | Appeal Procedures | | 12 |
| | 3.1 Right of Appeal | | 12 |
| | 3.2 Service of Process | | 15 |
| | 3.3 Expiration of License Agreement | Reserved | |
| | 3.4 Scope of Proceedings | | 17 |
| | 3.5 Hearings and Hearing Examiners | | 24 |
| | 3.6 Burden of Proof | | 26 |
| | 3.7 Sufficiency and Weight of Evidence | | 33 |
| 4. | Apportionment of the Federal Range | | 39 |
| | 4.1 Area of Use | | 39 |
| | 4.2 Use and Boundary Agreements | Reserved | |
| | 4.3 Individual Allotments | Reserved | |
| | 4.4 Lands Additionally Available | Reserved | |
| | 4.5 Designation for Classes of Livestock | Reserved | |
| | 4.6 Season of Use | Reserved | |
| | 4.7 Among Different Uses | | 40 |
| 5. | Base Property | | 41 |
| | 5.1 Ownership or Control | | 41 |
| | 5.2 Failure to Offer | Reserved | |
| | 5.3 Intentionally Left Blank | Reserved | |
| | 5.4 Dependency by Use | Reserved | |
| | 5.5 Land Commensureability | Reserved | |
| | 5.6 Base Property - Water | | 43 |
| 6. | Cancellation and Reduction | Reserved | |
| | 6.1 Reduction as Penalty | | 44 |
| | 6.2 To conform with Base Property Qualifications | | 44 |

| | | |
|------|---|----------|
| 6.3 | To Conform with Grazing Capacity of Federal Range | 44 |
| 6.4 | Reduced Area of Use | 44 |
| 7. | Construction and Improvement Permits | 44 |
| 8. | Exchange of Use | 45 |
| 9. | Free Use | Reserved |
| 10. | Licenses and Permits | 46 |
| 10.1 | General | 46 |
| 10.2 | Actual Use | 51 |
| 10.3 | Grazing Fee Billings | 52 |
| 10.4 | Related to State Law | 52 |
| 11. | Range Surveys, Monitoring and Evaluation | 53 |
| 12. | Special Rules | Reserved |
| 13. | Transfers | Reserved |
| 13.1 | Base Property | 61 |
| 13.2 | Base Property Qualifications | 61 |
| 14. | Trespass | 61 |
| 14.1 | General | 61 |
| 14.2 | Measure of Damage | 64 |
| 15. | Wild and Free-Roaming Horses and Burros Act of 1971 | 66 |
| 15.1 | Herd Management | 66 |
| 15.2 | Animal Care and Placement | 71 |
| 16. | Grazing Leases (Section 15) | 76 |
| 16.1 | General | 76 |
| 16.2 | Applications | 76 |
| 16.3 | Apportionment of Land | Reserved |
| 16.4 | Assignment | Reserved |
| 16.5 | Cancellation or Reduction | Reserved |
| 16.6 | Preference Right Applications | Reserved |
| 16.7 | Renewal | 76 |

1. General

1.1 Authority of the Department

The authority of the Office of Hearings and Appeals is delegated to it from the Secretary of the Interior under 43 C.F.R. § 4.1, which provides that the office is an authorized representative of the Secretary for the purpose of hearing, considering, and determining, as fully and finally as might the Secretary, matters within the jurisdiction of the Department. Thus, an Administrative Law Judge's authority in fashioning relief following a hearing on the merits is not limited by jurisprudential constraints underlying injunctive relief analysis.

NATIONAL WILDLIFE FEDERATION ET AL. v. BUREAU OF LAND MANAGEMENT, UTAH FARM BUREAU FEDERATION, and UTE MOUNTAIN UTE INDIAN TRIBE, Intervenors-Appellants, AMERICAN FARM BUREAU FEDERATION, Amicus-Curiae, IBLA 94-264 140 IBLA 85 (Decided August 21, 1997)

The Office of Hearings and Appeals does not have the authority to review a biological opinion issued by the Fish and Wildlife Service under section 7 of the Endangered Species Act, 16 U.S.C. § 1536 (1994), or BLM's implementation of the mandatory terms and conditions of an incidental take statement attached to that opinion.

F. DUANE BLAKE ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 96-155, 145 IBLA 154 (Decided August 6, 1998)

The issuance of a biological opinion does not deprive an Administrative Law Judge or this Board of jurisdiction over a grazing appeal under 43 U.S.C. § 315h (1994) with respect to issues not within the scope of the biological opinion. Therefore, this Board has the jurisdiction to determine whether dismissal of the appeal for lack of jurisdiction was correct, because whether OHA has jurisdiction under the Taylor Grazing Act is not within the scope of a biological opinion.

F. DUANE BLAKE ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 96-155, 145 IBLA 154 (Decided August 6, 1998)

On appeal from a decision of an Administrative Law Judge, the Board of Land Appeals possesses all of the powers which the Judge had in making his initial decision. Accordingly, where the record establishes that an Administrative Law Judge applied the wrong standard of proof to the detriment of an appellant, it is within the authority of the Board to review the record de novo and apply the correct legal standard without remanding the matter to the Hearings Division.

RIDDLE RANCHES, INC. v. BUREAU OF LAND MANAGEMENT (ON JUDICIAL REMAND), IBLA 98-477, 152 IBLA 119 (Decided April 3, 2000)

1.2 Authority of Subordinate Officials

If the Secretary (or his designate) determines, on the basis of information available, that an overpopulation of wild horses or burros exists on a given area of the public lands and that action is necessary to remove excess animals, the Secretary has authority to immediately remove excess animals from the range so as to achieve appropriate management levels, restore a thriving natural ecological balance to the range, and protect the range from the deterioration associated with overpopulation.

REDWINGS HORSE SANCTUARY and ANIMAL PROTECTION INSTITUTE OF AMERICA v. BUREAU OF LAND MANAGEMENT, IBLA 97-199 and 97-200, 148 IBLA 61 (Decided March 18, 1999)

Reliance upon the oral information, advice or opinion of any Federal officer or employee will not bind the United States to vary the terms of a written grazing permit to conform to the representations allegedly made by such officer or employee, absent proof of extreme circumstances which would vitiate the permit.

BERTRAND PARIS & SONS v. BUREAU OF LAND MANAGEMENT, IBLA 96-246 150 IBLA 146, (Decided August 27, 1999)

1.3 Advisory Boards **Reserved**

1.4 Validity of Regulations **Reserved**

1.5 Qualifications of Applicants **Reserved**

1.6 National Environmental Policy Act of 1969

A decision adjusting user boundaries within a Federal grazing allotment was properly affirmed upon a showing that BLM had consulted, cooperated, and coordinated the determination concerning areas of allotted use by the grazers concerned in conformity to Departmental regulation 43 CFR 4110.2-4.

M. L. INVESTMENT CO. v. BUREAU OF LAND MANAGEMENT, IBLA 92-102, 130 IBLA 376 (Decided September 15, 1994)

Editor's note: appeal filed, Civ. No. 90-0187-S-HLR (D. Idaho), motion to reopen case filed Oct. 25, 1994; case had been remanded to agency for further proceedings on April 13, 1990; aff'd, (sum. judg. Sept. 30, 1996)

A finding by BLM that an 80-acre prairie dog study estimated to consume 1 AUM of forage would have an insignificant impact on a 23,000-acre grazing allotment containing about 1,980

AUM's of forage is affirmed; the record on appeal supports BLM's decision to proceed with the study project based upon a hard look at the study taken during preparation of planning documents including two EA's, a staff evaluation of the project, and a recovery plan developed jointly by the State of Utah Division of Wildlife Resources and the U.S. Fish and Wildlife Service.

DAVID M. BURTON ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 95-256, and 95-257, 135 IBLA 18 (Decided February 23, 1996)

The BLM violated section 102(2)(C) of NEPA, as amended, 42 U.S.C. § 4332(2)(C) (1994), by relying on the environmental impact statement prepared for its resource management plan for the San Juan Resource Area as its environmental documentation supporting its authorization for grazing on the Comb Wash Allotment within the resource area. Examination of the environmental impact statement revealed that it did not provide any site-specific environmental analysis of the impact of grazing on the resource values in five canyons on the allotment.

NATIONAL WILDLIFE FEDERATION ET AL. v. BUREAU OF LAND MANAGEMENT, UTAH FARM BUREAU FEDERATION, and UTE MOUNTAIN UTE INDIAN TRIBE, Intervenors-Appellants AMERICAN FARM BUREAU FEDERATION, Amicus-Curiae, IBLA 94-264, 140 IBLA 85 (Decided August 21, 1997)

Tiering is an appropriate method of NEPA compliance. Tiering requires a minimum of two NEPA documents. A general environmental document and a later-developed site-specific environmental document which is tiered back to the earlier general document. In the absence of a site-specific environmental document, tiering is impossible. When the record shows the lack of a site-specific document, BLM may not justify site-specific actions by reliance on the general environmental document.

NATIONAL WILDLIFE FEDERATION ET AL. v. BUREAU OF LAND MANAGEMENT, UTAH FARM BUREAU FEDERATION, and UTE MOUNTAIN UTE INDIAN TRIBE, Intervenors-Appellants, AMERICAN FARM BUREAU FEDERATION, Amicus-Curiae, IBLA 94-264, 140 IBLA 85 (Decided August 21, 1997)

An administrative law judge's dismissal of a grazing appeal on the grounds that the decision appealed was not subject to appeal will be reversed, and the case remanded for hearing where the action appealed was a final decision that may have modified the terms and conditions of the grazing lease or created a grazing system outside the scope of that authorized by an Environmental Assessment.

NATIONAL WILDLIFE FEDERATION ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 95-475, 145 IBLA 379 (Decided September 24, 1998)

A party challenging a decision record and finding of no significant impact, based on an underlying environmental assessment, must show that the determination was premised on a clear error of law, a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared. Mere differences of opinion provide no basis for reversal of BLM's action if it is reasonable and supported by the record on appeal.

COMMITTEE FOR IDAHO'S HIGH DESERT, ET AL. v. Bureau of Land Management, IBLA 96-519, 149 IBLA 1 (Decided May 20, 1999)

Compliance with the National Environmental Policy Act of 1969 requires BLM to take a hard look at the issues, identify relevant areas of environmental concern, and, where no EIS is prepared, make a convincing case that the potential environmental impacts are insignificant.

COMMITTEE FOR IDAHO'S HIGH DESERT, ET AL. v. Bureau of Land Management, IBLA 96-519, 149 IBLA 1 (Decided May 20, 1999)

The decision to authorize temporary nonrenewable livestock grazing within the Jarbidge Resource Area will be affirmed where the record establishes that the authorization is consistent with grazing regulations at 43 C.F.R. § 4130.6-2 and the applicable land use plan, and where certain lands are excepted or excluded from the EA/ROD. These include all Wilderness Study Areas, Areas of Critical Environmental Concern and other lands under special designations; scheduled rest pastures in intensely managed allotments; lands managed under current fire rehabilitation plans; and riparian areas subject to specific management.

COMMITTEE FOR IDAHO'S HIGH DESERT, ET AL. v. Bureau of Land Management, IBLA 96-519, 149 IBLA 1 (Decided May 20, 1999)

A BLM decision to allow cattle grazing at a spring based on a finding of no significant impact is properly set aside and remanded when it appears from the record that a "unique water" designated under state law in which existing water quality is required to be maintained and protected includes the entire length of the stream for which the spring is the headwater and that BLM failed to consider that fact in making its finding.

NATIONAL WILDLIFE FEDERATION, ET AL. v. Bureau of Land Management, IBLA 96-535, 151 IBLA 66 (Decided October 28, 1999)

A party challenging a decision record and finding of no significant impact, based on an underlying environmental assessment, must show that the determination was premised on a clear error of law, a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared. Mere differences of opinion provide no basis for reversal of BLM's action if it is reasonable and supported by the record on appeal.

THOMAS E. SMIGEL and BARBARA W. SMIGEL v. BUREAU OF LAND MANAGEMENT, IBLA 99-85, 155 IBLA 158 (Decided July 17, 2001)

Compliance with the National Environmental Policy Act of 1969 requires BLM to take a hard look at the issues, identify relevant areas of environmental concern, and, where no EIS is prepared, make a convincing case that the potential environmental impacts are insignificant.

THOMAS E. SMIGEL and BARBARA W. SMIGEL v. BUREAU OF LAND MANAGEMENT, IBLA 99-85, 155 IBLA 158 (Decided July 17, 2001)

Where an appellant opposes BLM's choice among alternatives in a record of decision on the basis of an environmental assessment and asks that the Board implement the appellant's choice of alternatives, the Board will not entertain the appeal when: (1) reversal would require a new NEPA process rather than implementation of appellant's choice and (2) a subsequent BLM decision has already supplanted the record of decision in question.

VON L. AND MARIAN SORENSEN v. BUREAU OF LAND MANAGEMENT, IBLA 98-365, 155 IBLA 207 (Decided July 18, 2001)

NEPA is primarily a procedural statute designed to ensure a fully informed and well-considered decision after taking a "hard look" at the environmental effects of any major Federal action. The Board, reviewing a BLM record of decision on the basis of an environmental assessment, will ensure that the agency undertook full and adequate review but will not substitute its judgment for that of BLM.

VON L. AND MARIAN SORENSEN v. BUREAU OF LAND MANAGEMENT, IBLA 98-365, 155 IBLA 207 (Decided July 18, 2001)

1.7 Public Participation / Affected Interest / Interested Public

Where an entity was not named as an "affected interest" under 43 CFR 4100.0-5 concerning a BLM decision to grant a grazing permit and where there is no indication that the entity participated in any other way in any of BLM's dealings with the granting of the permit, it lacks standing to appeal the decision to the Board of Land Appeals, as it was not a "party to the case" under 43 CFR 4.410(a).

OREGON NATURAL RESOURCES COUNCIL, OREGON NATURAL DESERT ASSOCIATION v. BUREAU OF LAND MANAGEMENT, MC BEATY BUTTE GRAZING ASSOCIATION, IBLA 93-672, 129 IBLA 259 (Decided May 17, 1994)

Attachment 1-9

An entity that applies for and receives status as an "affected interest" under 43 CFR 4100.0-5 prior to BLM's granting of an application for a grazing permit was a "party to the case" under 43 CFR 4.410(a). Where that entity has alleged and filed supporting evidence showing that its members frequently use and enjoy areas of the grazing allotment affected by the permit for diverse recreational, educational, scientific, and aesthetic pursuits, it has made an adequately specific, colorable allegation that it is "adversely affected" by the appealed decision, completing the showing required for standing under 43 CFR 4.410(a), so that a motion to dismiss for lack of standing is properly denied.

OREGON NATURAL RESOURCES COUNCIL, OREGON NATURAL DESERT ASSOCIATION v. BUREAU OF LAND MANAGEMENT, MC BEATY BUTTE GRAZING ASSOCIATION, IBLA 93-672, 129 IBLA 259 (Decided May 17, 1994)

Under 43 CFR 4160.1-1, BLM must do two discrete things: (1) it must serve a copy of a proposed decision concerning an application for permit on any applicant unless BLM and the permittee have reached a "documented agreement"; and (2) it must also send a copy of such proposed decision to any entity named as an "affected interest" pursuant to 43 CFR 4100.0-5. The regulation is mandatory, and where BLM fails to comply, its decision approving the permit application is properly set aside and remanded with instructions to re-adjudicate the application in light of the objections of the "affected interest."

OREGON NATURAL RESOURCES COUNCIL, OREGON NATURAL DESERT ASSOCIATION v. BUREAU OF LAND MANAGEMENT, MC BEATY BUTTE GRAZING ASSOCIATION, IBLA 93-672, 129 IBLA 259 (Decided May 17, 1994)

A decision by BLM denying an organization "affected interest status" in grazing matters is properly set aside where BLM did not state therein why it felt the organization did not meet relevant criteria. That failure violated not only the terms of a governing BLM State Office Instruction Memorandum, but also the more general requirement, imposed by well-established precedent, that its decision must contain a reasoned and factual explanation providing a basis for understanding and accepting the decision, or alternatively, for appealing and disputing it before this Board.

SOUTHERN UTAH WILDERNESS ALLIANCE v. BUREAU OF LAND MANAGEMENT, IBLA 93-21, 131 IBLA 293 (Decided November 30, 1994)

The definition of "affected interest" at 43 CFR 4100.0-5 has two parts. The first is the requirement that an individual express concern for management of a particular allotment in writing. The second is the provision for discretionary determination by the authorized officer that the individual should be granted affected interest status. To the extent a party's use of land

within an allotment has been and will be affected by BLM's management of grazing, there is a factual basis for designating the party an affected interest. A written request for designation as an affected interest which states that the party uses an allotment and expresses concern about the management of livestock grazing provides a factual basis supporting a decision granting the designation and precludes it from being arbitrary and capricious.

BEAR RIVER LAND & GRAZING, ET AL. v. THE BUREAU OF LAND MANAGEMENT, IBLA 94-214, 132 IBLA 110 (Decided February 28, 1995)

Under 43 CFR 4160.3 and 4160.4 (1994), after a proposed multiple use decision was protested by several members of a group of persons who were directly affected thereby, the proposed decision did not become a final decision subject to appeal; an attempt to appeal the proposed decision by a member of the affected group who did not protest was therefore properly dismissed as premature.

SILVER CREEK RANCH, INC. v. BUREAU OF LAND MANAGEMENT, IBLA 95-405, 135 IBLA 257 (Decided May 2, 1996)

Absent emergency conditions or an agreement between BLM and parties holding grazing privileges in an allotment, 43 C.F.R. § 4160.1-1 (1991) required notification of those permittees and provision of a period of time to protest prior to authorizing trailing through the allotment.

BUREAU OF LAND MANAGEMENT v. WILLIAM J. THOMAN, IBLA 92-346, 139 IBLA 48 (Decided April 3, 1997)

When BLM is formulating the Federal action it contemplates taking in accordance with the Taylor Grazing Act, and the Federal action requires a biological evaluation pursuant to the ESA, BLM must seek input from affected permittees and lessees and the interested public. Following receipt of this input, a proposed decision setting out Federal action which would necessitate a change in the terms and conditions of a Taylor Grazing Act permit or lease must be served on the affected permittees and lessees, who should be given an opportunity to protest. If a protest is filed, the authorized officer must reconsider the proposed decision in light of the protestant's statement of reasons for protest and other information pertinent to the case. At the conclusion of the review of the protest, the authorized officer must serve the final decision on the protestant and the interested public, and BLM must afford an opportunity for an appeal, as provided in 43 C.F.R. § 4160.3(c).

F. DUANE BLAKE ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 96-155, 145 IBLA 154 (Decided August 6, 1998)

A decision of an Area Manager to assign fence maintenance responsibilities to a grazing permittee will be set aside and remanded on appeal where the permittee establishes that the assignment was arbitrary and capricious because no coordination or consultation was effected

with the permittee concerning the fence location or maintenance costs and the location selected by BLM will be inordinately difficult and expensive to maintain.

JOHN L. FALEN v. BUREAU OF LAND MANAGEMENT, IBLA 98-11R, 149 IBLA 347 (Decided July 21, 1999)

The relevant regulations governing grazing administration at 43 C.F.R. Subpart 4160 provide that proposed decisions shall be served on any permittee who is "affected" by the proposed actions, terms or conditions, or modifications relating to the permit. Any person whose interest is adversely affected by a final BLM decision under this part may appeal the decision for the purpose of a hearing before an administrative law judge. A decision denying a grazing permittee the right, pursuant to 43 C.F.R. Subpart 4160, to protest and appeal a BLM decision to construct fencing on a riparian pasture in an allotment to exclude livestock from a critical source of water on the ground the permittee was not affected by the decision is properly reversed and the case will be referred for a hearing.

ESPERANZA GRAZING ASSOCIATION v. BUREAU OF LAND MANAGEMENT, IBLA 99-259, 154 IBLA 47 (Decided November 9, 2000)

2. Adjudication

In determining the extent to which a grazing permittee's contributions and efforts have contributed to an increase in available forage within an allotment, all expenditures which have benefitted forage production, including those made by BLM, are properly considered. A permittee has no right to receive more than a proportionate share of the forage increase as determined by comparing the permittee's contributions to the total contributions made.

DELMER AND JO MCLEAN v. BUREAU OF LAND MANAGEMENT, IBLA 90-332, 133 IBLA 225 (Decided August 3, 1995)

With respect to the allocation in an allotment of additional forage available on a sustained yield basis, the applicable regulation, 43 CFR 4110.3-1, first requires that the additional forage be used to satisfy existing grazing preferences of those authorized to graze within the allotment and then authorizes the allocation of the remaining forage either in recognition of the contribution and efforts of individual permittees in increasing forage production or to permittees in the proportion of their authorized use within the allotment or to other qualified applicants.

DELMER AND JO MCLEAN v. BUREAU OF LAND MANAGEMENT, IBLA 90-332, 133 IBLA 225 (Decided August 3, 1995)

A grazing decision establishing initial use levels by livestock for a grazing allotment based upon actual prior use of the allotment (rather than on permitted use) is affirmed on appeal because it conforms to a BLM management framework plan. A finding that the season of use for the allotment must be modified to promote management objectives established by the same plan is

also affirmed upon a showing that the change is reasonable, based upon expert analysis of observed vegetation, soil, and climatic conditions on the allotment.

RIDDLE RANCHES, INC. v. BUREAU OF LAND MANAGEMENT, IBLA 94-17, 138 IBLA 82 (Decided February 3, 1997)

Editor's Note: appeal filed, Civ. No. 97-0265-S-LMB (D. Id. June 13, 1997), reversed and set aside (to the extent affirms deferment of commencement of grazing use), by stipulation (April 7, 1998); vacated by Riddle Ranches, Inc. v. BLM (On Judicial Remand), 152 IBLA 119 (2000)

The BLM enjoys broad discretion in determining how to adjudicate and manage grazing preference. Under 43 C.F.R. § 4.478(b), a BLM decision concerning grazing privileges will not be set aside if it is reasonable and substantially complies with the provisions of the Federal grazing regulations found at 43 C.F.R. Part 4100. The burden is on the objecting party to show by a preponderance of the evidence that the decision is unreasonable or improper.

WEST COW CREEK PERMITTEES v. BUREAU OF LAND MANAGEMENT, IBLA 95-206, 142 IBLA 224 (Decided January 22, 1998)

An appellant challenging the accuracy of a range study must show not just that the results of the study could be in error, but that they are in fact erroneous. No error is established absent a showing that BLM's range survey methods are incapable of yielding accurate information, that there was a material departure from prescribed procedures, or that a demonstrably more accurate survey has disclosed a contrary result. A party challenging a decision based on a BLM expert's reasoned analysis must demonstrate by a preponderance of the evidence that the BLM expert erred when collecting the underlying data, when interpreting that data, or when reaching the conclusion. It is not enough to show that its expert disagrees or believes that a different course of action or interpretation is available and supported by the evidence. A BLM denial of applications to increase active grazing preference will be affirmed when monitoring studies indicate that multiple-use management objectives for the grazing allotment are not being met and that additional forage is not available on a sustained yield basis within the allotment.

WEST COW CREEK PERMITTEES v. BUREAU OF LAND MANAGEMENT, IBLA 95-206 142 IBLA 224 (Decided January 22, 1998)

The Department has historically declined to adjudicate private disputes involving grazing leases and has maintained the status quo until the parties have had an opportunity to settle their dispute privately or in a court of competent jurisdiction. When a private party seeks to have a grazing lease cancelled because the lessee has deeded the property to the party seeking to have the grazing lease cancelled, and there is an ongoing dispute regarding the ownership of base property, the proper course of action on the part of BLM is to decline to disturb the existing conditions until resolution of the private dispute.

H. ARVENE COOPER AND BRENT DAVID COOPER (Appellants) v. BUREAU OF LAND MANAGEMENT (Respondent) LYNN A. JENKINS, I. (Intervenor), IBLA 95-489, 144 IBLA 235 (Decided May 6, 1998)

Editor's note: Reconsideration denied by Order dated Nov. 25, 1998

The Bureau enjoys broad discretion in determining how to adjudicate and manage grazing preferences, and, under 43 C.F.R. § 4.478(b), a BLM decision concerning grazing privileges will not be set aside if it is reasonable and substantially complies with the provisions of the Federal grazing regulations found at 43 C.F.R. Part 4100. A BLM decision may be regarded as arbitrary, capricious, or inequitable only when it is not supported by any rational basis, and the burden is on the objecting party to show by a preponderance of the evidence that the decision is unreasonable or improper. Therefore, a BLM determination of the carrying capacity of an allotment will not be disturbed absent positive evidence of error.

NEVADA DIVISION OF WILDLIFE, ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 96-164, 145 IBLA 237 (Decided August 25, 1998)

BLM enjoys broad discretion in determining how to adjudicate and manage grazing privileges, and a BLM decision concerning grazing privileges will not be set aside if it is reasonable and substantially complies with the provisions of the Federal grazing regulations found at 43 C.F.R. Part 4100. BLM's decision may be regarded as arbitrary, capricious, or inequitable only where it is not supported by any rational basis, and the burden is on the objecting party to show that a decision is improper.

KENNETH YOUNG v. BUREAU OF LAND MANAGEMENT, IBLA 95-221, 148 IBLA 221 (Decided April 20, 1999)

BLM enjoys broad discretion in determining how to adjudicate and manage grazing privileges. When it issues a decision taking actions affecting the grazing privileges of a livestock permittee, those actions may be regarded as arbitrary, capricious, or inequitable only if they are not supportable on any rational basis, and an appellant seeking relief from such a decision has the burden to establish by a preponderance of the evidence that the decision is unreasonable or improper.

FILIPPINI RANCHING CO. AND PARIS RANCH v. BUREAU OF LAND MANAGEMENT, IBLA 96-150, 149 IBLA 54 (Decided May 26, 1999)

The Department has provided that an adjudication of grazing privileges will not be set aside on appeal if it is reasonable and substantially complies with Departmental grazing regulations found at 43 C.F.R. Part 4100. 43 C.F.R. § 4.478(b). In this manner, the Department has considerably narrowed the scope of review of BLM grazing decisions by an Administrative Law Judge and by this Board.

KAY KAYSER-MEYRING, Appellee v. BUREAU OF LAND MANAGEMENT, Respondent, KIRK SHINER Intervenor/Appellant, IBLA 97-431, 152 IBLA 39 (Decided March 1, 2000)

BLM enjoys broad discretion to determine how to adjudicate and manage grazing privileges, and a BLM decision concerning grazing privileges will not be set aside if it is reasonable and substantially complies with the provisions of the Federal grazing regulations. A BLM decision may be regarded as arbitrary, capricious, or inequitable only where it is not supported by any rational basis, and the burden is on the objecting party to show that a decision is improper. The determination establishing a grazing allotment's carrying capacity will not be disturbed in the absence of positive evidence of error. Where a party offers no contrary analysis of the carrying capacity of the public lands to demonstrate that BLM's method of determining the carrying capacity is in error, BLM's determination is properly adopted. The determination to issue a 100-percent public land use permit rather than a percentage public land use permit will be affirmed where the record supports BLM's determination and no rebuttal is presented.

JAMES ROSS v. BUREAU OF LAND MANAGEMENT; BERT JENKS, INTERVENOR, IBLA 96-405 and 96-406, 152 IBLA 273 (Decided May 26, 2000)

BLM enjoys broad discretion in determining how to adjudicate and manage grazing privileges, and a BLM decision concerning grazing privileges will not be set aside if it is reasonable and substantially complies with the provisions of the Federal grazing regulations found at 43 CFR Part 4100. BLM's decision may be regarded as arbitrary, capricious, or inequitable only where it is not supported by any rational basis, and the burden is on the objecting party to show that a decision is improper.

THOMAS E. SMIGEL and BARBARA W. SMIGEL v. BUREAU OF LAND MANAGEMENT, IBLA 99-85, 155 IBLA 158 (Decided July 17, 2001)

3. Appeal Procedures

3.1 Right of Appeal

In order to establish standing to appeal under 43 CFR 4.410, an organization must show that it is a party to a case and that it has been adversely affected by the appealed decision. Where an appellant has participated before BLM during its consideration of the decision under appeal, it is a party to the case. Where appellant makes a specific, colorable allegation that its members use an area affected by a BLM decision, it is "adversely affected" within the meaning of 43 CFR 4.410(a).

AUDUBON SOCIETY OF PORTLAND, ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 93-540, 128 IBLA 370 (Decided March 11, 1994)

Under 43 CFR 4160.3 and 4160.4 (1994), after a proposed multiple use decision was protested by several members of a group of persons who were directly affected thereby, the proposed decision did not become a final decision subject to appeal; an attempt to appeal the proposed decision by a member of the affected group who did not protest was therefore properly dismissed as premature.

SILVER CREEK RANCH, INC. v. BUREAU OF LAND MANAGEMENT, IBLA 95-405, 135 IBLA 257 (Decided May 2, 1996)

Timely filing a notice of appeal in the office of an Administrative Law Judge within the 30 days allowed by 43 CFR 4.411(a) is necessary to give the Board jurisdiction over a decision by the judge. Delivery of a notice of appeal to a secretary with instructions that it be sent does not constitute transmittal of the notice of appeal under 43 CFR 4.411(a).

BUREAU OF LAND MANAGEMENT v. JOE B. FALLINI, JR., IBLA 96-420, 136 IBLA 345 (Decided October 23, 1996)

Editor's Note: Reconsideration denied by Order dated February 24, 1997.

Under 43 C.F.R. § 4.472(a) an Administrative Law Judge should grant a motion of an association of grazing permittees to intervene in appeals from a BLM decision that amends the grazing system and monitoring sections of an allotment management plan.

NEVADA DIVISION OF WILDLIFE ET AL. v. BUREAU OF LAND MANAGEMENT, TULEDAD GRAZING ASSOCIATION (Proposed Intervenor), IBLA 94-316, et al., 138 IBLA 382 (Decided March 26, 1997)

When BLM is formulating the Federal action it contemplates taking in accordance with the Taylor Grazing Act, and the Federal action requires a biological evaluation pursuant to the ESA, BLM must seek input from affected permittees and lessees and the interested public. Following receipt of this input, a proposed decision setting out Federal action which would necessitate a change in the terms and conditions of a Taylor Grazing Act permit or lease must be served on the affected permittees and lessees, who should be given an opportunity to protest. If a protest is filed, the authorized officer must reconsider the proposed decision in light of the protestant's statement of reasons for protest and other information pertinent to the case. At the conclusion of the review of the protest, the authorized officer must serve the final decision on the protestant and the interested public, and BLM must afford an opportunity for an appeal, as provided in 43 C.F.R. § 4160.3(c).

F. DUANE BLAKE ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 96-155, 145 IBLA 154 (Decided August 6, 1998)

An administrative law judge's dismissal of a grazing appeal on the grounds that the decision appealed was not subject to appeal will be reversed, and the case remanded for hearing where the

action appealed was a final decision that may have modified the terms and conditions of the grazing lease or created a grazing system outside the scope of that authorized by an Environmental Assessment.

NATIONAL WILDLIFE FEDERATION ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 95-475, 145 IBLA 379 (Decided September 24, 1998)

Where an appellant is a successor-in-interest by assignment to a predecessor who has been both adversely affected and who is a party to a case, standing has been satisfied.

JOHN L. FALEN v. BUREAU OF LAND MANAGEMENT, IBLA 98-11R, 149 IBLA 347 (Decided July 21, 1999)

Where holders of grazing permits failed to timely appeal 1992 Final Multiple Use Decision, they were barred from challenging the validity of the adjustment prescribed therein to the extent that the adjustments were based on studies and monitoring data in existence at the time the 1992 Decision was issued.

BERTRAND PARIS & SONS v. BUREAU OF LAND MANAGEMENT, IBLA 96-246, 150 IBLA 146, (Decided August 27, 1999)

A party who has availed himself of the opportunity to obtain administrative review of a decision within the Department is precluded from relitigating the matter in subsequent administrative proceedings and the Board will not revisit matters previously adjudicated without a showing of compelling legal or equitable reasons.

RALPH AND BEVERLY EASON v. BUREAU OF LAND MANAGEMENT, IBLA 99-278, 150 IBLA 294 (Decided September 27, 1999)

The Department has provided that an adjudication of grazing privileges will not be set aside on appeal if it is reasonable and substantially complies with Departmental grazing regulations found at 43 C.F.R. Part 4100. 43 C.F.R. § 4.478(b). In this manner, the Department has considerably narrowed the scope of review of BLM grazing decisions by an Administrative Law Judge and by this Board.

KAY KAYSER-MEYRING, Appellee v. BUREAU OF LAND MANAGEMENT, Respondent, KIRK SHINER Intervenor/Appellant, IBLA 97-431, 152 IBLA 39 (Decided March 1, 2000)

The relevant regulations governing grazing administration at 43 C.F.R. Subpart 4160 provide that proposed decisions shall be served on any permittee who is "affected" by the proposed actions, terms or conditions, or modifications relating to the permit. Any person whose interest is adversely affected by a final BLM decision under this part may appeal the decision for the

purpose of a hearing before an administrative law judge. A decision denying a grazing permittee the right, pursuant to 43 C.F.R. Subpart 4160, to protest and appeal a BLM decision to construct fencing on a riparian pasture in an allotment to exclude livestock from a critical source of water on the ground the permittee was not affected by the decision is properly reversed and the case will be referred for a hearing.

ESPERANZA GRAZING ASSOCIATION v. BUREAU OF LAND MANAGEMENT, IBLA 99-259, 154 IBLA 47 (Decided November 9, 2000)

3.2 Service of Process

The timely filing of a notice of appeal is jurisdictional and an appeal filed more than 30 days after receipt of the decision under appeal is properly dismissed. When the 30th day falls on a day when the office is closed, the appeal period is extended to the close of the next day on which the office is open.

COMMISSION FOR THE PRESERVATION OF WILD HORSES, ET AL v, BUREAU OF LAND MANAGEMENT, IBLA 94-163, et al., , 133 IBLA 97 (Decided July 18, 1995)

Timely filing a notice of appeal in the office of an Administrative Law Judge within the 30 days allowed by 43 CFR 4.411(a) is necessary to give the Board jurisdiction over a decision by the judge. Delivery of a notice of appeal to a secretary with instructions that it be sent does not constitute transmittal of the notice of appeal under 43 CFR 4.411(a).

BUREAU OF LAND MANAGEMENT v. JOE B. FALLINI, JR., IBLA 96-420, 136 IBLA 345 (Decided October 23, 1996)

Editor's Note: Reconsideration denied by Order dated February 24, 1997.

Where appellants timely file a notice of appeal under 43 C.F.R. § 4.470 along with a request for additional time to file a statement of reasons in support of their appeal, a decision dismissing the appeal as untimely filed because no statement of reasons was filed within the 30-day appeal period is properly reversed.

ROBERT AND VIVIAN LEWIS v. BUREAU OF LAND MANAGEMENT, IBLA 98-237 144 IBLA 235 (Decided June 4, 1998)

Editor's Note: Reconsideration granted, decision reaffirmed by Order dated Oct. 14, 1998.

When BLM is formulating the Federal action it contemplates taking in accordance with the Taylor Grazing Act, and the Federal action requires a biological evaluation pursuant to the ESA,

BLM must seek input from affected permittees and lessees and the interested public. Following receipt of this input, a proposed decision setting out Federal action which would necessitate a change in the terms and conditions of a Taylor Grazing Act permit or lease must be served on the affected permittees and lessees, who should be given an opportunity to protest. If a protest is filed, the authorized officer must reconsider the proposed decision in light of the protestant's statement of reasons for protest and other information pertinent to the case. At the conclusion of the review of the protest, the authorized officer must serve the final decision on the protestant and the interested public, and BLM must afford an opportunity for an appeal, as provided in 43 C.F.R. § 4160.3(c).

F. DUANE BLAKE ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 96-155, 145 IBLA 154 (Decided August 6, 1998)

It is incumbent upon BLM to ensure that its decision is supported by a rational basis which is set out in the written decision and demonstrated in the administrative record accompanying the decision. Parties affected by a BLM decision deserve a reasoned and factual explanation of the rationale for the decision and must be given a basis for understanding it and accepting it or, alternatively, appealing and disputing it. However, when the record demonstrates that the appellant was able to overcome any difficulty it may have initially encountered when BLM failed to present an adequate explanation of the basis for its decision and presented an informed and organized appeal, the Board will not find that the appellant has been unduly prejudiced by BLM's initial omission.

NEVADA DIVISION OF WILDLIFE, ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 96-164, 145 IBLA 237 (Decided August 25, 1998)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed, and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was delivered to show that it was, in fact, timely received by BLM.

PAUL C. LEWIS ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 96-178, 150 IBLA 76 (Decided August 16, 1999)

Any document required or permitted to be filed, which was received in the proper BLM office, either in the mail or by personal delivery when the office is not open to the public, will be deemed to have been filed as of the day and hour the office next opens to the public under regulations in effect on August 21, 1995. 43 CFR 1821.2-2(d) (1995).

THOMAS E. SMIGEL and BARBARA W. SMIGEL v. BUREAU OF LAND MANAGEMENT, IBLA 99-85, 155 IBLA 158 (Decided July 17, 2001)

3.3 Expiration of License Agreement

Reserved

3.4 Scope of Proceedings

A notice of appeal signed by an individual on behalf of other parties (two associations and two individuals) is not a valid notice of appeal as to those other parties unless the signer is authorized to represent them. Where the signer is neither an attorney, an officer in the associations, nor a family member of the individuals, the signer does not meet the criteria allowing her to practice before the Department on their behalf, and the notice of appeal is properly dismissed as to the parties that she is not authorized to represent.

AUDUBON SOCIETY OF PORTLAND, ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 93-540, 128 IBLA 370 (Decided March 11, 1994)

In order to establish standing to appeal under 43 CFR 4.410, an organization must show that it is a party to a case and that it has been adversely affected by the appealed decision. Where an appellant has participated before BLM during its consideration of the decision under appeal, it is a party to the case. Where appellant makes a specific, colorable allegation that its members use an area affected by a BLM decision, it is "adversely affected" within the meaning of 43 CFR 4.410(a).

AUDUBON SOCIETY OF PORTLAND, ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 93-540, 128 IBLA 370 (Decided March 11, 1994)

Hearsay evidence is admissible in a grazing trespass hearing if it is relevant and material.

WAYNE D. KLUMP v. BUREAU OF LAND MANAGEMENT, IBLA 93-559, 130 IBLA 119 (Decided August 4, 1994)

Editor's note: Appeal filed Civ.No. 94-578 TUC RMB (D.Ariz. Aug. 23, 1994), dismissed, (May 19, 1995), appeal filed, No. 95-16109 (9th Cir. May 30, 1995), aff'd, (March 17, 1997). See also: Klump v. U.S., No. 94-309C (Fed.Cl.); 38 Fed.Cl. 243 (June 23, 1997).

In an appeal of a BLM decision adjudicating grazing privileges, neither an Administrative Law Judge nor the Board of Land Appeals has authority to entertain a claim by one grazing applicant of breach of the terms of a contract between the United States, acting through the Department of the Navy, and one of the other applicants.

Smith v. BLM, 129 IBLA 304 (1994), modified, JERRY KELLY, Appellee v. BUREAU OF LAND MANAGEMENT, Appellant, SHELDON W. LAMB, Intervenor-Appellant, IBLA 91-451, 131 IBLA 146 (Decided October 31, 1994)

By regulation, 43 CFR 4.478(b), the Department has provided that an adjudication of grazing privileges will not be set aside on appeal if it is reasonable and substantially complies with Departmental grazing regulations found at 43 CFR Part 4100. 43 CFR 4.478(b). In this manner,

the Department has considerably narrowed the scope of review of BLM grazing decisions by an Administrative Law Judge and by this Board.

Smith v. BLM, 129 IBLA 304 (1994), modified, JERRY KELLY, Appellee v. BUREAU OF LAND MANAGEMENT, Appellant, SHELDON W. LAMB, Intervenor-Appellant, IBLA 91-451, 131 IBLA 146 (Decided October 31, 1994)

An appeal of an action is not moot if the action appealed is capable of repetition.

MICHAEL BLAKE ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 93-677, 135 IBLA 9 (Decided February 23, 1996)

Under 43 CFR 4160.3 and 4160.4 (1994), after a proposed multiple use decision was protested by several members of a group of persons who were directly affected thereby, the proposed decision did not become a final decision subject to appeal; an attempt to appeal the proposed decision by a member of the affected group who did not protest was therefore properly dismissed as premature.

SILVER CREEK RANCH, INC. v. BUREAU OF LAND MANAGEMENT, IBLA 95-405, 135 IBLA 257 (Decided May 2, 1996)

In keeping with the principle that the filing of a notice of appeal vests exclusive authority over the matter under appeal with the Board of Land Appeals, BLM must forward the case (as represented by BLM's case file) to the Board within no more than 10 working days so that it may exercise its authority to resolve the dispute.

MICHAEL E. BURNS v. BUREAU OF LAND MANAGEMENT, IBLA 97-201, 139 IBLA 7 (Decided March 28, 1997)

An appeal will normally be dismissed as moot where, prior to the filing of a notice of appeal, the action being challenged has already occurred and there is no effective relief which can be afforded the appellant. Where, however, because of the limited duration of the challenged action and the reasonable expectation that the action will recur, there exists a substantial likelihood that a recurrence may evade review, dismissal of an appeal is not appropriate.

BUREAU OF LAND MANAGEMENT v. WILLIAM J. THOMAN, IBLA 92-346, 139 IBLA 48 (Decided April 3, 1997)

The authority of the Office of Hearings and Appeals is delegated to it from the Secretary of the Interior under 43 C.F.R. § 4.1, which provides that the office is an authorized representative of the Secretary for the purpose of hearing, considering, and determining, as fully and finally as might the Secretary, matters within the jurisdiction of the Department. Thus, an Administrative Law Judge's authority in fashioning relief following a hearing on the merits is not limited by jurisprudential constraints underlying injunctive relief analysis.

NATIONAL WILDLIFE FEDERATION ET AL. v. BUREAU OF LAND MANAGEMENT, UTAH FARM BUREAU FEDERATION, and UTE MOUNTAIN UTE INDIAN TRIBE, Intervenors-Appellants AMERICAN FARM BUREAU FEDERATION, Amicus-Curiae, IBLA 94-264, 140 IBLA 85 (Decided August 21, 1997)

The effectiveness of a BLM decision to round up and remove wild horses during the pendency of an appeal to the Board of Land Appeals is controlled by 43 C.F.R. § 4770.-3(c), not by 43 C.F.R. § 4.21-(a). Under 43 C.F.R. § 4770.3(c), the authorized officer may opt to place a wild horse removal decision into full force and effect, and it "take[s] effect on the date specified, regardless of an appeal."

WILD HORSE ORGANIZED ASSISTANCE and COMMISSION FOR THE PRESERVATION OF WILD HORSES v. BUREAU OF LAND MANAGEMENT, IBLA 95-312, 95-313, 141 IBLA 202 (Decided November 13, 1997)

The Department has historically declined to adjudicate private disputes involving grazing leases and has maintained the status quo until the parties have had an opportunity to settle their dispute privately or in a court of competent jurisdiction. When a private party seeks to have a grazing lease cancelled because the lessee has deeded the property to the party seeking to have the grazing lease cancelled, and there is an ongoing dispute regarding the ownership of base property, the proper course of action on the part of BLM is to decline to disturb the existing conditions until resolution of the private dispute.

H. ARVENE COOPER AND BRENT DAVID COOPER (Appellants) v. BUREAU OF LAND MANAGEMENT (Respondent) LYNN A. JENKINS, I. (Intervenor), IBLA 95-489, 144 IBLA 235 (Decided May 6, 1998)

Editor's note: Reconsideration denied by Order dated Nov. 25, 1998.

The existence of a BLM decision, adverse to a party to a case, is necessary to provide jurisdiction for an appeal to the Board of Land Appeals. An appealable decision takes or prohibits some action. A billing notice for grazing privileges established by prior planning documents is not a final, appealable decision under 43 C.F.R. § 4160.3 or 43 C.F.R. § 4.470. An appeal of such a billing notice is properly dismissed.

DEFENDERS OF WILDLIFE ET AL. V. Bureau of Land Management, IBLA 97-479, 144 IBLA 250 (Decided June 5, 1998)

Except for a few specific circumstances, the Board of Land Appeals will not entertain an appeal when no effective relief can be afforded an appellant. A well-recognized exception to this rule is that the Board will not dismiss an appeal when an issue raised by the appeal is capable of repetition, yet evading review.

F. DUANE BLAKE ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 96-155, 145 IBLA 154 (Decided August 6, 1998)

The issuance of a biological opinion does not deprive an Administrative Law Judge or this Board of jurisdiction over a grazing appeal under 43 U.S.C. § 315h (1994) with respect to issues not within the scope of the biological opinion. Therefore, this Board has the jurisdiction to determine whether dismissal of the appeal for lack of jurisdiction was correct, because whether OHA has jurisdiction under the Taylor Grazing Act is not within the scope of a biological opinion.

F. DUANE BLAKE ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 96-155, 145 IBLA 154 (Decided August 6, 1998)

The Office of Hearings and Appeals does not have the authority to review a biological opinion issued by the Fish and Wildlife Service under section 7 of the Endangered Species Act, 16 U.S.C. § 1536 (1994), or BLM's implementation of the mandatory terms and conditions of an incidental take statement attached to that opinion.

F. DUANE BLAKE ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 96-155, 145 IBLA 154 (Decided August 6, 1998)

When BLM cancels a Private Maintenance and Care Agreement, the adopter has the burden of establishing that BLM's action was improper. The adopter's assertions that the horses were well maintained, together with statements of third parties attesting to the good physical appearance of the horses, are insufficient to overcome physical evidence of substandard care and health problems.

LARRY VANDEN HEUVEL v. BUREAU OF LAND MANAGEMENT, IBLA 95-78, 145 IBLA 309 (Decided September 17, 1998)

An administrative law judge's dismissal of a grazing appeal on the grounds that the decision appealed was not subject to appeal will be reversed, and the case remanded for hearing where the action appealed was a final decision that may have modified the terms and conditions of the grazing lease or created a grazing system outside the scope of that authorized by an Environmental Assessment.

NATIONAL WILDLIFE FEDERATION ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 95-475, 145 IBLA 379 (Decided September 24, 1998)

A BLM plan for removing wild horses from a herd management area will be affirmed where BLM has concluded that removal is necessary to restore the range to a thriving ecological balance, and the appellants have failed to demonstrate that BLM committed any error in reaching such conclusion.

TONI HUTCHESON MOORE ET AL., and AMERICAN MUSTANG & BURRO ASSN., INC. v. BUREAU OF LAND MANAGEMENT, IBLA 97-541 and 97-547, 146 IBLA 168 (Decided October 29, 1998)

Under the doctrine of administrative finality — the administrative counterpart of the doctrine of res judicata — when a party has had an opportunity to obtain review within the Department and no appeal was taken, or an appeal was taken and the decision was affirmed, the decision may not be reconsidered in later proceedings except upon a showing of compelling legal or equitable reasons, such as violations of basic rights of the parties or the need to prevent an injustice.

TONI HUTCHESON MOORE ET AL., and AMERICAN MUSTANG & BURRO ASSN., INC. v. BUREAU OF LAND MANAGEMENT, IBLA 97-541 and 97-547, 146 IBLA 168 (Decided October 29, 1998)

An Allotment Management Plan is an activity level document that implements land-use decisions made in a Resource Management Plan or Management Framework Plan. An appeal of an Allotment Management Plan which challenges a land-use decision to allow grazing and to what extent is not likely to succeed on the merits and will not support a stay.

OREGON NATURAL RESOURCES COUNCIL ACTION, OREGON NATURAL DESERT ASSOCIATION v. Bureau of Land Management, IBLA 98-464, 148 IBLA 186 (Decided April 12, 1999)

The Department's rules of practice require that a statement of reasons for appeal must affirmatively point out error in the appealed decision. Where a statement of reasons enumerates only arguments that pertain to an appeal of a grazing management decision that is pending before an Administrative Law Judge, and where the statement of reasons does not allege or identify specific error in the general land management decision pertaining to the grazing allotment, it is appropriate to dismiss the appeal.

OREGON NATURAL RESOURCES COUNCIL ACTION, OREGON NATURAL DESERT ASSOCIATION v. Bureau of Land Management, IBLA 98-464, 148 IBLA 186 (Decided April 12, 1999)

While it is true that on numerous occasions the Board has dismissed an appellant's argument as a mere difference of opinion with BLM's experts, it has never been the practice of this Board to accept the conclusory opinions of BLM's experts as a proper basis for a decision in the face of conflicting testimony.

FILIPPINI RANCHING CO. AND PARIS RANCH v. BUREAU OF LAND MANAGEMENT, IBLA 96-150, 149 IBLA 54 (Decided May 26, 1999)

Where holders of grazing permits failed to timely appeal 1992 Final Multiple Use Decision, they were barred from challenging the validity of the adjustment prescribed therein to the extent that the adjustments were based on studies and monitoring data in existence at the time the 1992 Decision was issued.

BERTRAND PARIS & SONS v. BUREAU OF LAND MANAGEMENT, IBLA 96-246, 150 IBLA 146, (Decided August 27, 1999)

A party who has availed himself of the opportunity to obtain administrative review of a decision within the Department is precluded from relitigating the matter in subsequent administrative proceedings and the Board will not revisit matters previously adjudicated without a showing of compelling legal or equitable reasons.

RALPH AND BEVERLY EASON v. BUREAU OF LAND MANAGEMENT, IBLA 99-278, 150 IBLA 294 (Decided September 27, 1999)

The Department has provided that an adjudication of grazing privileges will not be set aside on appeal if it is reasonable and substantially complies with Departmental grazing regulations found at 43 C.F.R. Part 4100. 43 C.F.R. § 4.478(b). In this manner, the Department has considerably narrowed the scope of review of BLM grazing decisions by an Administrative Law Judge and by this Board.

KAY KAYSER-MEYRING, Appellee v. BUREAU OF LAND MANAGEMENT, Respondent, KIRK SHINER Intervenor/Appellant, IBLA 97-431, 152 IBLA 39 (Decided March 1, 2000)

When the terms and conditions of a settlement agreement do not support an interpretation of one of the parties to the agreement we will not read language into the agreement or interpret the agreement in a manner that an administrative law judge has found does not conform to the intent of the parties.

WILLIAM J. THOMAN v. BUREAU OF LAND MANAGEMENT, GZ LIVESTOCK, ET AL. (Intervenors), IBLA 90-411, 152 IBLA 97 (Decided March 30, 2000)

Whether the Board will, in any given appeal, exercise its full de novo review authority is a matter committed to its discretion. Where the parties allege and make a preliminary showing that, subsequent to a hearing, new information has come to light which directly bears on the matter at issue, the Board will normally decline to exercise its de novo review authority and will, instead, remand the matter to the Hearings Division for a new fact-finding hearing.

Riddle Ranches, Inc. v. Bureau of Land Management, 138 IBLA 82 (1997), vacated.
RIDDLE RANCHES, INC. v. BUREAU OF LAND MANAGEMENT (ON JUDICIAL REMAND), IBLA 98-477, 152 IBLA 119 (Decided April 3, 2000)

On appeal from a decision of an Administrative Law Judge, the Board of Land Appeals possesses all of the powers which the Judge had in making his initial decision. Accordingly, where the record establishes that an Administrative Law Judge applied the wrong standard of proof to the detriment of an appellant, it is within the authority of the Board to review the record de novo and apply the correct legal standard without remanding the matter to the Hearings Division.

RIDDLE RANCHES, INC. v. BUREAU OF LAND MANAGEMENT (ON JUDICIAL REMAND), IBLA 98-477, 152 IBLA 119 (Decided April 3, 2000)

The Board of Land Appeals will not entertain an appeal when no effective relief can be afforded an appellant. Where a challenged interim decision has been superseded by a final multiple use decision, this Board will decline to entertain the appeal with respect to the interim decision because no effective relief is available.

VON L. AND MARIAN SORENSEN v. BUREAU OF LAND MANAGEMENT, IBLA 98-365, 155 IBLA 207 (Decided July 18, 2001)

A well-recognized exception to the rule of mootness is that the Board will not dismiss an appeal when an issue raised by the appeal is capable of repetition, yet evading review. A decision on appeal does not fall into this exception where the appellant did not appeal a subsequent BLM decision supplanting the decision at issue.

VON L. AND MARIAN SORENSEN v. BUREAU OF LAND MANAGEMENT, IBLA 98-365, 155 IBLA 207 (Decided July 18, 2001)

Where an appellant opposes BLM's choice among alternatives in a record of decision on the basis of an environmental assessment and asks that the Board implement the appellant's choice of alternatives, the Board will not entertain the appeal when: (1) reversal would require a new NEPA process rather than implementation of appellant's choice and (2) a subsequent BLM decision has already supplanted the record of decision in question.

VON L. AND MARIAN SORENSEN v. BUREAU OF LAND MANAGEMENT, IBLA 98-365, 155 IBLA 207 (Decided July 18, 2001)

3.5 Hearings and Hearing Examiners

The hearing before an ALJ provided by 43 CFR 4.470 for grazing appeals is authorized by sec. 9 of the Taylor Grazing Act, 43 U.S.C. § 315h (1988). This hearing is deemed to be a hearing "on the record" as provided by 5 U.S.C. § 554(a) (1988). The standard of proof at such a hearing is a preponderance of the evidence.

RALPH AND BEVERLY EASON v. BUREAU OF LAND MANAGEMENT, IBLA 89-216, 127 IBLA 259 (Decided September 28, 1993)

The procedures at 43 CFR Subpart 4150 for giving notice to the owner of livestock grazing without authorization in violation of 43 CFR 4140.1(b)(1); ordering removal; and for impounding unauthorized livestock are properly distinguished from the procedures for adjudicating an alleged trespass and the amount of damages under 43 CFR Subpart 4160 and for assessing penalties under 43 CFR Subpart 4170. Although proposed and final decisions subject to appeal for a hearing before an Administrative Law Judge are required to adjudicate an alleged trespass and assess damages or penalties, these are not a prerequisite to notice and impoundment of livestock grazing without authorization.

WAYNE D. KLUMP v. BUREAU OF LAND MANAGEMENT, IBLA 93-559, 130 IBLA 119 (Decided August 4, 1994)

Editor's note: Appeal filed Civ.No. 94-578 TUC RMB (D.Ariz. Aug. 23, 1994), dismissed (May 19, 1995), appeal filed, No. 95-16109 (9th Cir. May 30, 1995), aff'd, (March 17, 1997). See also: Klump v. U.S., No. 94-309C (Fed.Cl.); 38 Fed.Cl. 243 (June 23, 1997).

Under 43 CFR 4.477, the administrative law judge may either place his or her decision into full force and effect or revoke the full force and effect of a BLM decision only in the context of issuing a final decision on the merits of the pending appeal.

FILIPPINI RANCHING CO. AND PARIS RANCH v. BUREAU OF LAND MANAGEMENT, IBLA 95-481, 132 IBLA 19 (Decided June 30, 1995)

Editor's note: Reconsideration denied by order issued May 23, 1996.

The authority of the Office of Hearings and Appeals is delegated to it from the Secretary of the Interior under 43 C.F.R. § 4.1, which provides that the office is an authorized representative of the Secretary for the purpose of hearing, considering, and determining, as fully and finally as might the Secretary, matters within the jurisdiction of the Department. Thus, an Administrative Law Judge's authority in fashioning relief following a hearing on the merits is not limited by jurisprudential constraints underlying injunctive relief analysis.

NATIONAL WILDLIFE FEDERATION ET AL. v. BUREAU OF LAND MANAGEMENT, UTAH FARM BUREAU FEDERATION, and UTE MOUNTAIN UTE INDIAN TRIBE, Intervenors-Appellants AMERICAN FARM BUREAU FEDERATION, Amicus-Curiae. IBLA 94-264, 140 IBLA 85 (Decided August 21, 1997)

On appeal from a decision of an Administrative Law Judge, the Board of Land Appeals possesses all of the powers which the Judge had in making his initial decision. Accordingly, where the record establishes that an Administrative Law Judge applied the wrong standard of proof to the detriment of an appellant, it is within the authority of the Board to review the record de novo and apply the correct legal standard without remanding the matter to the Hearings Division.

RIDDLE RANCHES, INC. v. BUREAU OF LAND MANAGEMENT (ON JUDICIAL REMAND), IBLA 98-477, 152 IBLA 119 (Decided April 3, 2000)

3.6 Burden of Proof

A person who has expressed an intent to commercially exploit an animal after receiving title is not a qualified applicant. When determining whether an applicant is qualified it is proper for BLM to ascertain an applicant's long-term intent in order to assure that the horse's humane treatment and care will continue after title transfers.

MARVIN COOK v. BUREAU OF LAND MANAGEMENT, IBLA 91-299, 126 IBLA 158 (Decided May 10, 1993)

BLM properly cancelled a private maintenance and care agreement for a wild or free-roaming burro upon receiving proof that the animal subject to the agreement was in a deteriorated condition. Evidence offered by the burro's custodian to establish that a genetic defect was the cause of the burro's observed hoof condition was not adequate to overcome contrary medical evidence based on an actual examination of the adopted burro where the evidence of genetic defect offered by the adopter related to other animals not covered by the maintenance agreement.

JOHN P. WILEY v. BUREAU OF LAND MANAGEMENT, IBLA 90-238, 126 IBLA 261 (Decided June 2, 1993)

BLM may properly cancel private maintenance and care agreements for wild horses and repossess the horses when there is sufficient evidence of improper care of the adopted animals to establish that the adopter violated the terms of the agreement.

FREDDIE R. MASON v. BUREAU OF LAND MANAGEMENT, IBLA 92-259, 126 IBLA 28 (Decided April 13, 1993)

A BLM decision rejecting an application to adopt a wild horse on the ground that an applicant has violated a regulation implementing the Wild Free-Roaming Horses and Burros Act will be set aside if the applicant has not been convicted of the violation as provided in 43 CFR 4750.3-2(a)(2), and a substantial issue exist as to an applicant's responsibility for the violation. The regulation contemplates that issues of culpability will be resolved in a proceeding that would lead to a conviction rather than an appeal to this Board.

MARVIN COOK v. BUREAU OF LAND MANAGEMENT, IBLA 91-299, 126 IBLA 158 (Decided May 10, 1993)

BLM properly cancelled a private maintenance and care agreement for a wild or free-roaming burro upon receiving proof that the animal subject to the agreement was in a deteriorated condition. Evidence offered by the burro's custodian to establish that a genetic defect was the

cause of the burro's observed hoof condition was not adequate to overcome contrary medical evidence based on an actual examination of the adopted burro where the evidence of genetic defect offered by the adopter related to other animals not covered by the maintenance agreement.

JOHN P. WILEY v. BUREAU OF LAND MANAGEMENT, IBLA 90-238, 126 IBLA 261 (Decided June 2, 1993)

The standard of proof to be applied in weighing the evidence presented at a hearing held pursuant to an appeal of a grazing decision issued by BLM is the preponderance of evidence test. Where a decision determining grazing privileges has been reached in the exercise of administrative discretion, the appellant seeking relief therefrom bears the burden of showing by a preponderance of the evidence that the decision is unreasonable or improper.

Smith v. BLM, 129 IBLA 304 (1994), modified, JERRY KELLY, Appellee v. BUREAU OF LAND MANAGEMENT, Appellant, SHELDON W. LAMB, Intervenor-Appellant, IBLA 91-451, 131 IBLA 146 (Decided October 31, 1994)

By regulation, 43 CFR 4.478(b), the Department has provided that an adjudication of grazing privileges will not be set aside on appeal if it is reasonable and substantially complies with Departmental grazing regulations found at 43 CFR Part 4100. 43 CFR 4.478(b). In this manner, the Department has considerably narrowed the scope of review of BLM grazing decisions by an Administrative Law Judge and by this Board.

Smith v. BLM, 129 IBLA 304 (1994), modified, JERRY KELLY, Appellee v. BUREAU OF LAND MANAGEMENT, Appellant, SHELDON W. LAMB, Intervenor-Appellant, IBLA 91-451, 131 IBLA 146 (Decided October 31, 1994)

The burden is on a right-of-way applicant, who challenges a BLM decision denying its application, to demonstrate by a preponderance of the evidence that BLM erred in the collection or evaluation of data supporting rejection and in its conclusions. The applicant's reliance on a BLM engineering report, which concluded that a water-gathering and pipeline project was marginally feasible, does not establish error in the denial, when the denial decision was based not only on the engineering report, but on an environmental analysis prepared by BLM experts, showing that granting the application would adversely affect public land values, including grazing activities, wetlands, and wildlife and its habitat.

STEWART HAYDUK v. BUREAU OF LAND MANAGEMENT, IBLA 93-154, 133 IBLA 346 (Decided September 13, 1995)

A BLM decision concerning grazing privileges will not be set aside if it is reasonable and substantially complies with the provisions of the Federal grazing regulations found at 43 C.F.R. Part 4100 (1992). The burden is on the objecting party to show by a preponderance of the evidence of record that a decision is in error.

DUNCAN MACKENZIE v. BUREAU OF LAND MANAGEMENT, IBLA 94-871, 140 IBLA 192 (Decided September 8, 1997)

Editor's Note: This decision refers to leases but the issue appears to be issuance of a grazing permit not a grazing lease.

The BLM enjoys broad discretion in determining how to adjudicate and manage grazing preference. Under 43 C.F.R. § 4.478(b), a BLM decision concerning grazing privileges will not be set aside if it is reasonable and substantially complies with the provisions of the Federal grazing regulations found at 43 C.F.R. Part 4100. The burden is on the objecting party to show by a preponderance of the evidence that the decision is unreasonable or improper.

WEST COW CREEK PERMITTEES v. BUREAU OF LAND MANAGEMENT, IBLA 95-206 142 IBLA 224 (Decided January 22, 1998)

An appellant challenging the accuracy of a range study must show not just that the results of the study could be in error, but that they are in fact erroneous. No error is established absent a showing that BLM's range survey methods are incapable of yielding accurate information, that there was a material departure from prescribed procedures, or that a demonstrably more accurate survey has disclosed a contrary result. A party challenging a decision based on a BLM expert's reasoned analysis must demonstrate by a preponderance of the evidence that the BLM expert erred when collecting the underlying data, when interpreting that data, or when reaching the conclusion. It is not enough to show that its expert disagrees or believes that a different course of action or interpretation is available and supported by the evidence. A BLM denial of applications to increase active grazing preference will be affirmed when monitoring studies indicate that multiple-use management objectives for the grazing allotment are not being met and that additional forage is not available on a sustained yield basis within the allotment.

WEST COW CREEK PERMITTEES v. BUREAU OF LAND MANAGEMENT, IBLA 95-206, 142 IBLA 224 (Decided January 22, 1998)

A BLM plan for removing wild horses from a herd management area will be affirmed where BLM has concluded that removal is necessary to restore the range to a thriving ecological balance, and the appellants have failed to demonstrate that BLM committed any error in reaching such conclusion.

AMERICAN MUSTANG & BURRO ASSOCIATION, INC. and DAVE HILLBERRY v. BUREAU OF LAND MANAGEMENT, IBLA 96-8, 144 IBLA 148 (Decided May 28, 1998)

The Bureau enjoys broad discretion in determining how to adjudicate and manage grazing preferences, and, under 43 C.F.R. § 4.478(b), a BLM decision concerning grazing privileges will not be set aside if it is reasonable and substantially complies with the provisions of the Federal grazing regulations found at 43 C.F.R. Part 4100. A BLM decision may be regarded as arbitrary,

capricious, or inequitable only when it is not supported by any rational basis, and the burden is on the objecting party to show by a preponderance of the evidence that the decision is unreasonable or improper. Therefore, a BLM determination of the carrying capacity of an allotment will not be disturbed absent positive evidence of error.

NEVADA DIVISION OF WILDLIFE, ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 96-164, 145 IBLA 237 (Decided August 25. 1998)

A BLM decision apportioning the carrying capacity of an allotment between livestock and wild horses will be affirmed when an appellant urges another course of action but does not demonstrate that BLM's allocation is unreasonable.

NEVADA DIVISION OF WILDLIFE, ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 96-164, 145 IBLA 237 (Decided August 25. 1998)

The Department's rules of practice require that a statement of reasons for appeal must affirmatively point out error in the appealed decision. Where a statement of reasons enumerates only arguments that pertain to an appeal of a grazing management decision that is pending before an Administrative Law Judge, and where the statement of reasons does not allege or identify specific error in the general land management decision pertaining to the grazing allotment, it is appropriate to dismiss the appeal.

OREGON NATURAL RESOURCES COUNCIL ACTION, OREGON NATURAL DESERT ASSOCIATION v. BUREAU OF LAND MANAGEMENT, IBLA 98-464, 148 IBLA 186 (Decided April 12, 1999)

An Allotment Management Plan is an activity level document that implements land-use decisions made in a Resource Management Plan or Management Framework Plan. An appeal of an Allotment Management Plan which challenges a land-use decision to allow grazing and to what extent is not likely to succeed on the merits and will not support a stay.

OREGON NATURAL RESOURCES COUNCIL ACTION, OREGON NATURAL DESERT ASSOCIATION v. Bureau of Land Management, IBLA 98-464, 148 IBLA 186 (Decided April 12, 1999)

BLM enjoys broad discretion in determining how to adjudicate and manage grazing privileges, and a BLM decision concerning grazing privileges will not be set aside if it is reasonable and substantially complies with the provisions of the Federal grazing regulations found at 43 C.F.R. Part 4100. BLM's decision may be regarded as arbitrary, capricious, or inequitable only where it is not supported by any rational basis, and the burden is on the objecting party to show that a decision is improper.

KENNETH YOUNG v. BUREAU OF LAND MANAGEMENT, IBLA 95-221, 148 IBLA 221 (Decided April 20, 1999)

A party challenging a decision record and finding of no significant impact, based on an underlying environmental assessment, must show that the determination was premised on a clear error of law, a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared. Mere differences of opinion provide no basis for reversal of BLM's action if it is reasonable and supported by the record on appeal.

COMMITTEE FOR IDAHO'S HIGH DESERT, ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 96-519, 149 IBLA 1 (Decided May 20, 1999)

A BLM determination that a land use planning objective to stop downward trend on 10,603 acres, and manage for upward trend on 10,762 acres, in the long term, on a grazing allotment had not been met, based on limited monitoring trend data, will be set aside when the record fails to show a rational basis for failing to apply statistical analysis to that data, as recommended by the Nevada Rangeland Monitoring Handbook, the handbook utilized by BLM in its monitoring program.

FILIPPINI RANCHING CO. AND PARIS RANCH v. BUREAU OF LAND MANAGEMENT, IBLA 96-150, 149 IBLA 54 (Decided May 26, 1999)

A BLM determination that a land use planning objective to improve 7,952 acres to good condition, and 2,014 acres to excellent condition, in the long term, on a grazing allotment had not been met will be set aside when the case record fails to show any baseline data on ecological condition for any particular acreage in the grazing allotment. .

FILIPPINI RANCHING CO. AND PARIS RANCH v. BUREAU OF LAND MANAGEMENT, IBLA 96-150, 149 IBLA 54 (Decided May 26, 1999)

While it is true that on numerous occasions the Board has dismissed an appellant's argument as a mere difference of opinion with BLM's experts, it has never been the practice of this Board to accept the conclusory opinions of BLM's experts as a proper basis for a decision in the face of conflicting testimony.

FILIPPINI RANCHING CO. AND PARIS RANCH v. BUREAU OF LAND MANAGEMENT, IBLA 96-150, 149 IBLA 54 (Decided May 26, 1999)

BLM may properly measure utilization in a grazing allotment using the key forage plant method. However, when the case record fails to establish a rational basis for selecting the highest utilized key forage species from each transect in the allotment in developing use pattern maps for the allotment and calculating average weighted utilization, BLM's conclusion that land use planning objectives for utilization were not being met, which was based on those results, must be set aside.

FILIPPINI RANCHING CO. AND PARIS RANCH v. BUREAU OF LAND MANAGEMENT, IBLA 96-150, 149 IBLA 54 (Decided May 26, 1999)

BLM enjoys broad discretion in determining how to adjudicate and manage grazing privileges. When it issues a decision taking actions affecting the grazing privileges of a livestock permittee, those actions may be regarded as arbitrary, capricious, or inequitable only if they are not supportable on any rational basis, and an appellant seeking relief from such a decision has the burden to establish by a preponderance of the evidence that the decision is unreasonable or improper.

FILIPPINI RANCHING CO. AND PARIS RANCH v. BUREAU OF LAND MANAGEMENT, IBLA 96-150, 149 IBLA 54 (Decided May 26, 1999)

There is a legal presumption, which is rebuttable, that official acts of public officers are regular. On the other hand, there is a presumption that mail properly addressed and with adequate postage affixed, and deposited in an appropriate receptacle, is duly delivered. When these two presumptions come into conflict and BLM states that it did not receive the instrument, the burden is on the one asserting that it was delivered to show that it was, in fact, timely received by BLM.

PAUL C. LEWIS ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 96-178 , 150 IBLA 78 [or 76?] (Decided August 16, 1999)

When BLM cancels a Private Maintenance and Care Agreement, the adopter has the burden of establishing that BLM's action was improper.

STEFANIE LEE v. BUREAU OF LAND MANAGEMENT, IBLA 97-502, 151 IBLA 1 (Decided October 14, 1999)

An Administrative Law Judge's decision reversing and remanding a BLM decision to the extent BLM found that the former grazing preference holder had been compensated for range improvements placed on the allotment after 1986 will be affirmed where the record establishes that BLM issued permits for the range improvements after 1986 and the current grazing preference holder has not shown error in the Administrative Law Judge's decision to remand the matter to BLM for determinations of use, ownership, and valuation or removal of those improvements.

JERRY KELLY, Appellant v. BUREAU OF LAND MANAGEMENT, Respondent; SHELDON W. LAMB, Intervenor, IBLA 99-332, 155 IBLA 58 (Decided May 9, 2001)

BLM enjoys broad discretion to determine how to adjudicate and manage grazing privileges, and a BLM decision concerning grazing privileges will not be set aside if it is reasonable and substantially complies with the provisions of the Federal grazing regulations. A BLM decision may be regarded as arbitrary, capricious, or inequitable only where it is not supported by any rational basis, and the burden is on the objecting party to show that a decision is improper. The

determination establishing a grazing allotment's carrying capacity will not be disturbed in the absence of positive evidence of error. Where a party offers no contrary analysis of the carrying capacity of the public lands to demonstrate that BLM's method of determining the carrying capacity is in error, BLM's determination is properly adopted. The determination to issue a 100-percent public land use permit rather than a percentage public land use permit will be affirmed where the record supports BLM's determination and no rebuttal is presented.

JAMES ROSS v. BUREAU OF LAND MANAGEMENT; BERT JENKS,
INTERVENOR, IBLA 96-405 and 96-406, 152 IBLA 273 (Decided May 26, 2000)

BLM enjoys broad discretion in determining how to adjudicate and manage grazing privileges, and a BLM decision concerning grazing privileges will not be set aside if it is reasonable and substantially complies with the provisions of the Federal grazing regulations found at 43 CFR Part 4100. BLM's decision may be regarded as arbitrary, capricious, or inequitable only where it is not supported by any rational basis, and the burden is on the objecting party to show that a decision is improper.

THOMAS E. SMIGEL and BARBARA W. SMIGEL v. BUREAU OF LAND
MANAGEMENT, IBLA 99-85, 155 IBLA 158 (Decided July 17, 2001)

A party challenging a decision record and finding of no significant impact, based on an underlying environmental assessment, must show that the determination was premised on a clear error of law, a demonstrable error of fact, or that the analysis failed to consider a substantial environmental question of material significance to the action for which the analysis was prepared. Mere differences of opinion provide no basis for reversal of BLM's action if it is reasonable and supported by the record on appeal.

THOMAS E. SMIGEL and BARBARA W. SMIGEL v. BUREAU OF LAND
MANAGEMENT, IBLA 99-85, 155 IBLA 158 (Decided July 17, 2001)

Where an adopter, over a 8-month period following the implementation of a private maintenance and care agreement, failed to provide shelter for adopted horses as required by that agreement, the return of the horses to the adopter is properly conditioned upon a showing that she has, in fact, provided shelter as required.

JULIE R. HAYSLIP v. BUREAU OF LAND MANAGEMENT, IBLA 2000-242, 155
IBLA 315 (Decided September 5, 2001)

3.7 Sufficiency and Weight of Evidence

A BLM decision rejecting an application to adopt a wild horse on the ground that an applicant has violated a regulation implementing the Wild Free-Roaming Horses and Burros Act will be

set aside if the applicant has not been convicted of the violation as provided in 43 CFR 4750.3-2(a)(2), and a substantial issue exist as to an applicant's responsibility for the violation. The regulation contemplates that issues of culpability will be resolved in a proceeding that would lead to a conviction rather than an appeal to this Board.

MARVIN COOK v. BUREAU OF LAND MANAGEMENT, IBLA 91-299, 126 IBLA 158 (Decided May 10, 1993)

The BLM properly cancelled a private maintenance and care agreement for a wild or free-roaming burro upon receiving proof that the animal subject to the agreement was in a deteriorated condition. Evidence offered by the burro's custodian to establish that a genetic defect was the cause of the burro's observed hoof condition was not adequate to overcome contrary medical evidence based on an actual examination of the adopted burro where the evidence of genetic defect offered by the adopter related to other animals not covered by the maintenance agreement.

JOHN P. WILEY v. BUREAU OF LAND MANAGEMENT, IBLA 90-238 , 126 IBLA 261 (Decided June 2, 1993)

BLM properly canceled a private maintenance and care agreement for three wild horses and took possession of a remaining wild free-roaming horse where the record established that the adopter violated the terms of his agreement by selling the other two horses before title to them was issued by BLM.

DARBY L. RYLAND v. BUREAU OF LAND MANAGEMENT, IBLA 90-164, 126 IBLA 371 (Decided June 30, 1993)

A decision to gather wild horses from a herd management area in order to avert deterioration of the range and to pursue a thriving natural ecological balance in accordance with sec. 3(b) of the Wild Free-Roaming Horses and Burros Act, as amended, 16 U.S.C. § 1333(b) (1988), is properly affirmed where the record demonstrates that the decision is based upon a reasonable analysis of data collected on an ongoing basis.

AUDUBON SOCIETY OF PORTLAND, ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 93-540, 128 IBLA 370 (Decided March 11, 1994)

An order by Administrative Law Judge denying an appeal as frivolous will be vacated where appellants' statement of reasons set out numerous specific objections to the propriety of BLM's decision granting a grazing permit, along with citations to Departmental regulations and the BLM Manual, presenting legitimate issues of fact and law requiring resolution.

OREGON NATURAL RESOURCES COUNCIL, OREGON NATURAL DESERT ASSOCIATION v. BUREAU OF LAND MANAGEMENT, MC BEATY BUTTE GRAZING ASSOCIATION, IBLA 93-672, 129 IBLA 259 (Decided May 17, 1994)

The Private Maintenance and Care Agreement and 43 CFR 4750.4-1(e) require financially responsible adopters to assure the proper care and treatment of horses covered by the Private Maintenance and Care Agreement. When the person providing care for an animal being adopted for the adopting party informs BLM that the person adopting the animal has not paid care and maintenance bills, and that the person providing care will no longer care for the animal, BLM is justified in cancelling the Agreement and repossessing the animal.

MARK L. WILLIAMS v. BUREAU OF LAND MANAGEMENT, IBLA 93-72 , 130 IBLA 45 (Decided July 12, 1994)

A finding of a grazing trespass will be affirmed where it is supported by a preponderance of the evidence introduced at a hearing.

WAYNE D. KLUMP v. BUREAU OF LAND MANAGEMENT, IBLA 93-559, 130 IBLA 119 (Decided August 4, 1994)

Editor's note: Appeal filed Civ.No. 94-578 TUC RMB (D.Ariz. Aug. 23, 1994), dismissed, (May 19, 1995), appeal filed, No. 95-16109 (9th Cir. May 30, 1995), aff'd, (March 17, 1997). See also: Klump v. U.S., No. 94-309C (Fed.Cl.); 38 Fed.Cl. 243 (June 23, 1997).

A BLM decision cancelling private maintenance and care agreements and repossessing a wild burro and a wild horse is properly affirmed where the evidence establishes that the adopter violated the adoption agreement and the applicable regulation requiring adopter to notify BLM within 7 days of discovery of an animal's escape; that a subsequent adoption was obtained without notice to BLM of the impoundment by animal control authorities of the escaped animal; and the record indicates that the animals were maintained under conditions which threatened their welfare.

LARRY PULLEY v. BUREAU OF LAND MANAGEMENT, IBLA 91-357 , 131 IBLA 7 (Decided September 22, 1994)

A trespass will be considered willful where the evidence objectively shows that the circumstances did not comport with a finding that the trespasser acted in good faith or innocent mistake.

WAYNE D. KLUMP v. BUREAU OF LAND MANAGEMENT, IBLA 93-559, 130 IBLA 119 (Decided August 4, 1994)

Editor's note: Appeal filed Civ.No. 94-578 TUC RMB (D.Ariz. Aug. 23, 1994), dismissed, (May 19, 1995), appeal filed, No. 95-16109 (9th Cir. May 30, 1995), aff'd, (March 17, 1997). See also: Klump v. U.S., No. 94-309C (Fed.Cl.); 38 Fed.Cl. 243 (June 23, 1997).

A BLM decision notifying the adopter that his wild horses had been repossessed and cancelling his private maintenance and care agreement will be reversed where the record on appeal contains insufficient evidence of improper care or abandonment of the adopted animals or any other failure to comply with the terms of the agreement sufficient to justify such action.

NOEL BENOIST v. BUREAU OF LAND MANAGEMENT, IBLA 92-588, 131 IBLA 138 (Decided October 31, 1994)

The standard of proof to be applied in weighing the evidence presented at a hearing held pursuant to an appeal of a grazing decision issued by BLM is the preponderance of evidence test. Where a decision determining grazing privileges has been reached in the exercise of administrative discretion, the appellant seeking relief therefrom bears the burden of showing by a preponderance of the evidence that the decision is unreasonable or improper.

_____Smith v. BLM, 129 IBLA 304 (1994), modified, JERRY KELLY, Appellee v. BUREAU OF LAND MANAGEMENT, Appellant, SHELDON W. LAMB, Intervenor-Appellant, IBLA 91-451, 131 IBLA 146 (Decided October 31, 1994)

Under 43 CFR 4770.3(b), stays of decisions taking possession of wild horses and canceling private maintenance and care agreements could not be granted and the decisions were properly affirmed when there was admitted failure to comply with animal care instructions issued by the authorized officer pursuant to 43 CFR 4760.1(d) after the horses were found in a deteriorated condition by a BLM inspection.

WILLIAM J. AHRNDT ET AL. V. BUREAU OF LAND MANAGEMENT , IBLA 95-209, and 95-210, 132 IBLA 126 Decided March 6, 1995

BLM properly canceled a private maintenance and care agreement and took possession of wild horses when the adopter failed to produce the horses for inspection within 7 days of receipt of a written request as required by his agreement and 43 CFR 4750.4-(c) and 4770.1(g).

JOE PEEPERS v. BUREAU OF LAND MANAGEMENT, IBLA 94-339 , 137 IBLA 324 (Decided 1996)

An application to adopt wild and free-roaming horses under 43 CFR Subpart 4750 is properly rejected where the decision is supported by the regulations and observations of qualified BLM personnel, and the party challenging the determination has not shown it to be unreasonable or improper.

JOHN LINJATIE v. BUREAU OF LAND MANAGEMENT, IBLA 93-299 , 15 IBLA 390 (Decided January 22, 1997)

A Private Maintenance and Care Agreement for wild horses is properly cancelled and the horses are properly repossessed by the Federal Government when there is sufficient evidence of improper care of the adopted horses to establish that the adopter violated the terms of the Agreement by "inhumanely treating" the horses, by allowing them to suffer stress and injury owing to action or failure to act that was not compatible with animal husbandry practices accepted in the veterinary community.

LARRY VANDEN HEUVEL v. BUREAU OF LAND MANAGEMENT, IBLA 95-78, 145 IBLA 309 (Decided September 17, 1998)

BLM properly cancelled a Private Maintenance and Care Agreement for wild free-roaming horses and repossessed the horses when the adopter violated the terms of 43 C.F.R. § 4770.1(d) by placing an advertisement in a newspaper for the sale of the horses before title was issued by BLM, notwithstanding the fact that the adopter advised a potential buyer that the horses could not be sold until title issued.

LARRY VANDEN HEUVEL v. BUREAU OF LAND MANAGEMENT, IBLA 95-78, 145 IBLA 309 (Decided September 17, 1998)

When BLM cancels a Private Maintenance and Care Agreement, the adopter has the burden of establishing that BLM's action was improper. The adopter's assertions that the horses were well maintained, together with statements of third parties attesting to the good physical appearance of the horses, are insufficient to overcome physical evidence of substandard care and health problems.

LARRY VANDEN HEUVEL v. BUREAU OF LAND MANAGEMENT, IBLA 95-78, 145 IBLA 309 (Decided September 17, 1998)

Under 43 C.F.R. § 4760.1(d), BLM has the discretionary authority to give an adopter of wild horses reasonable time to complete required corrective actions in lieu of immediate repossession of the horses and cancellation of the Private Maintenance and Care Agreement, or repossess the horses immediately. If the record establishes that some of the horses were suffering from severe hoof problems and all of the horses were kept in substandard facilities, BLM may properly repossess and cancel the Agreement without allowing for corrective action.

LARRY VANDEN HEUVEL v. BUREAU OF LAND MANAGEMENT, IBLA 95-78 , 145 IBLA 309 (Decided September 17, 1998)

When, in evaluating a grazing allotment, BLM applies an incorrect riparian objective and uses the failure to meet that objective as a basis for closing part of the allotment to livestock grazing,

and the case record shows that the proper objective had been met, the closure action will be set aside.

FILIPPINI RANCHING CO. AND PARIS RANCH v. BUREAU OF LAND MANAGEMENT, IBLA 96-150, 149 IBLA 54 (Decided May 26, 1999)

A decision of an Area Manager to assign fence maintenance responsibilities to a grazing permittee will be set aside and remanded on appeal where the permittee establishes that the assignment was arbitrary and capricious because no coordination or consultation was effected

with the permittee concerning the fence location or maintenance costs and the location selected by BLM will be inordinately difficult and expensive to maintain.

JOHN L. FALEN v. BUREAU OF LAND MANAGEMENT, IBLA 98-11R, 149 IBLA 347 (Decided July 21, 1999)

A BLM decision cancelling a private maintenance and care agreement will be reversed where the record on appeal contains insufficient evidence of improper care or abandonment of the horse covered by the agreement or the existence of any other failure to comply with the terms of the agreement sufficient to justify such action.

JOHN SAMPSON v. BUREAU OF LAND MANAGEMENT, IBLA 96-530, 150 IBLA 92 (Decided August 17, 1999)

A BLM decision canceling a private maintenance and care agreement and repossessing a wild horse is properly affirmed where the evidence establishes that the adopter violated the adoption agreement by transferring the horse to another party for more than 30 days without notifying the authorized officer.

STEFANIE LEE v. BUREAU OF LAND MANAGEMENT, IBLA 97-502, 151 IBLA 1 (Decided October 14, 1999)

The Department has provided that an adjudication of grazing privileges will not be set aside on appeal if it is reasonable and substantially complies with Departmental grazing regulations found at 43 C.F.R. Part 4100. 43 C.F.R. § 4.478(b). In this manner, the Department has considerably narrowed the scope of review of BLM grazing decisions by an Administrative Law Judge and by this Board.

KAY KAYSER-MEYRING, Appellee v. BUREAU OF LAND MANAGEMENT, Respondent, KIRK SHINER Intervenor/Appellant, IBLA 97-431, 152 IBLA 39 (Decided March 1, 2000)

When the provisions of an agreement are unambiguous, parol evidence that an obligation is a condition precedent to the other party's obligations is inadmissible.

WILLIAM J. THOMAN v. BUREAU OF LAND MANAGEMENT, GZ LIVESTOCK, ET AL. (Intervenors)(ON RECONSIDERATION), IBLA 90-411R, 155 IBLA 266 (Decided July 27, 2001)

BLM improperly cancelled a private maintenance and care agreement for wild horses and took immediate possession of the horses on the basis that the adopter had failed to provide adequate shelter and feed for her adopted horses, where BLM did so (1) during the period of an indefinite extension of time granted to the adopter to provide shelter without providing notice that the period for compliance had ended and that the horses were about to be seized; and (2) on the strength of an unconfirmed report by a third party that the horses were about to be denied feed.

JULIE R. HAYSLIP v. BUREAU OF LAND MANAGEMENT, IBLA 2000-242, 155 IBLA 315 (Decided September 5, 2001)

4. Apportionment of the Federal Range

4.1 Area of Use

A decision adjusting user boundaries within a Federal grazing allotment was properly affirmed upon a showing that BLM had consulted, cooperated, and coordinated the determination concerning areas of allotted use by the grazers concerned in conformity to Departmental regulation 43 CFR 4110.2-4.

M. L. INVESTMENT CO. v. BUREAU OF LAND MANAGEMENT, IBLA 92-102, 130 IBLA 376 (Decided September 15, 1994)

Editor's note: appeal filed, Civ. No. 90-0187-S-HLR (D. Idaho), motion to reopen case filed Oct. 25, 1994; case had been remanded to agency for further proceedings on April 13, 1990; aff'd, (sum. judg. Sept. 30, 1996)

While the Department will normally respect and give effect to range-line and allotment agreements, the Department always retains the authority to override such agreements where they are found to be incompatible with the proper administration of the Federal range.

DELMER AND JO MCLEAN v. BUREAU OF LAND MANAGEMENT, IBLA 90-332, 133 IBLA 225 (Decided August 3, 1995)

A grazing decision establishing initial use levels by livestock for a grazing allotment based upon actual prior use of the allotment (rather than on permitted use) is affirmed on appeal because it conforms to a BLM management framework plan. A finding that the season of use for the allotment must be modified to promote management objectives established by the same plan is also affirmed upon a showing that the change is reasonable, based upon expert analysis of observed vegetation, soil, and climatic conditions on the allotment.

RIDDLE RANCHES, INC. v. BUREAU OF LAND MANAGEMENT, IBLA 94-17, 138 IBLA 82 (Decided February 3, 1997)

Editor's Note: appeal filed, Civ. No. 97-0265-S-LMB (D. Id. June 13, 1997), reversed and set aside (to the extent affirms deferment of commencement of grazing use), by stipulation (April 7, 1998); vacated by Riddle Ranches, Inc. v. BLM (On Judicial Remand), 152 IBLA 119 (2000)

| | | |
|------------|---|-----------------|
| 4.2 | Use and Boundary Agreements | Reserved |
| 4.3 | Individual Allotments | Reserved |
| 4.4 | Lands Additionally Available | Reserved |
| 4.5 | Designation for Classes of Livestock | Reserved |
| 4.6 | Season of Use | Reserved |
| 4.7 | Among Different Uses | |

A decision to make proportionate reductions in livestock and wild horse use that was based on monitoring, research, and analysis of usage of the public lands and was shown to have been made in consideration of the condition of the affected range in terms of available forage was properly affirmed.

ANIMAL PROTECTION INSTITUTE OF AMERICA v. BUREAU OF LAND MANAGEMENT, IBLA 94-56, 128 IBLA 150 (Decided January 13, 1994)

A BLM decision apportioning the carrying capacity of an allotment between livestock and wild horses will be affirmed when an appellant urges another course of action but does not demonstrate that BLM's allocation is unreasonable.

NEVADA DIVISION OF WILDLIFE, ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 96-164, 145 IBLA 237 (Decided August 25, 1998)

BLM enjoys broad discretion to determine how to adjudicate and manage grazing privileges, and a BLM decision concerning grazing privileges will not be set aside if it is reasonable and substantially complies with the provisions of the Federal grazing regulations. A BLM decision may be regarded as arbitrary, capricious, or inequitable only where it is not supported by any rational basis, and the burden is on the objecting party to show that a decision is improper. The determination establishing a grazing allotment's carrying capacity will not be disturbed in the absence of positive evidence of error. Where a party offers no contrary analysis of the carrying capacity of the public lands to demonstrate that BLM's method of determining the carrying

capacity is in error, BLM's determination is properly adopted. The determination to issue a 100-percent public land use permit rather than a percentage public land use permit will be affirmed where the record supports BLM's determination and no rebuttal is presented.

JAMES ROSS v. BUREAU OF LAND MANAGEMENT; BERT JENKS,
INTERVENOR, IBLA 96-405 and 96-406, 152 IBLA 273 (Decided May 26, 2000)

5. Base Property

5.1 Ownership or Control

The Bureau of Land Management may properly cancel a grazing permit and preference where the record shows that the operator transferred deeded land and the base property water rights for an allotment; that the deeded land and water rights were pledged as security for a loan issued by the Farmers Home Administration; and that upon foreclosure of that loan, ownership of the base property was transferred to the Farmers Home Administration.

DALE D. SMITH v. BUREAU OF LAND MANAGEMENT, IBLA 91-467, 129 IBLA 304
(Decided May 25, 1994)

Editor's note: modified in Jerry Kelly v. BLM, 131 IBLA 146 (Oct. 31, 1994)

When the record supports a finding that the grazing lessee did not lose control of the base property to which his grazing preference was attached, an Administrative Law Judge's decision setting aside a Bureau of Land Management decision denying an application for a grazing lease in part and reducing grazing preference and AUM's will be affirmed on appeal.

D. RAY GORDON v. BUREAU OF LAND MANAGEMENT, IBLA 94-194, 140 IBLA 112
(Decided August 26, 1997)

Editor's Note: This decision refers to leases but the issue appears to be issuance of a grazing permit not a grazing lease.

The Department has historically declined to adjudicate private disputes involving grazing leases and has maintained the status quo until the parties have had an opportunity to settle their dispute privately or in a court of competent jurisdiction. When a private party seeks to have a grazing lease cancelled because the lessee has deeded the property to the party seeking to have the grazing lease cancelled, and there is an ongoing dispute regarding the ownership of base property, the proper course of action on the part of BLM is to decline to disturb the existing conditions until resolution of the private dispute.

H. ARVENE COOPER AND BRENT DAVID COOPER (Appellants) v. BUREAU OF
LAND MANAGEMENT (Respondent) LYNN A. JENKINS, I. (Intervenor), IBLA 95-489,
144 IBLA 235 (Decided May 6, 1998)

Editor's note: Reconsideration denied by Order dated Nov. 25, 1998

Documents sent between parties subsequent to signing an agreement are not conclusive as to the nature of the rights acquired under the agreement but are evidence of the parties' understanding of the agreement.

BEVERLY EASON v. BUREAU OF LAND MANAGEMENT, IBLA 94-526 145 IBLA 78 (Decided July 16, 1998)

Editor's note: Reconsideration denied by Order dated Nov. 9, 1998.

When a party applies to remove range improvements or be compensated because his interests in grazing permits were terminated by a state court's foreclosure proceedings, BLM may properly deny the application because documents establish that when the transfer of the permittee's interests had occurred the permittee had been compensated for the value of the improvements, as required under 43 C.F.R. § 4120.3-5.

THELBERT WATTS v. UNITED STATES, IBLA 97-64, 148 IBLA 213 (Decided April 14, 1999)

Where BLM notifies prospective applicants for grazing use and preference that, if leased property is offered as base property to qualify for grazing use, the term of the lease must be for 3 years, as set forth in a BLM state Range Administration Policy, and an applicant offers base property land leased for less than 3 years, the Administrative Law Judge's decision finding that the applicant failed to qualify for grazing use and that BLM improperly awarded grazing use to the applicant will be affirmed.

KAY KAYSER-MEYRING, Appellee v. BUREAU OF LAND MANAGEMENT, Respondent, KIRK SHINER Intervenor/Appellant, IBLA 97-431, 152 IBLA 39 (Decided March 1, 2000)

- | | | |
|------------|---------------------------------|-----------------|
| 5.2 | Failure to Offer | Reserved |
| 5.3 | Intentionally Left Blank | Reserved |
| 5.4 | Dependency by Use | Reserved |
| 5.5 | Land Commensureability | Reserved |
| 5.6 | Base Property - Water | |

The Bureau of Land Management may properly cancel a grazing permit and preference where the record shows that the operator transferred deeded land and the base property water rights for an allotment; that the deeded land and water rights were pledged as security for a loan issued by the Farmers Home Administration; and that upon foreclosure of that loan, ownership of the base property was transferred to the Farmers Home Administration.

DALE D. SMITH v. BUREAU OF LAND MANAGEMENT, IBLA 91-467, 129 IBLA 304 (Decided May 25, 1994)

Editor's note: modified in Jerry Kelly v. BLM, 131 IBLA 146 (Oct. 31, 1994)

Under Departmental regulations, grazing preference was awarded an applicant commensurate with the carrying capacity of base property during the qualifying priority period. The Federal range was not classified but only the base property. Only base property may be properly described as "Class 1," while preference is stated in terms of AUM's, which are colloquially described as "Class 1" in reference to the base property for which the preference was granted.

RALPH AND BEVERLY EASON v. BUREAU OF LAND MANAGEMENT, IBLA 94-526, 145 IBLA 78 (Decided July 16, 1998)

Editor's note: Reconsideration denied by Order dated Nov. 9, 1998.

If AUM's do not fall within the definition of a Class 1 AUM, they are not Class 1 AUM's, regardless of what the parties may have called them. The AUM's of grazing allowance which do not appear on dependent property survey records as part of Class 1 base property qualifications are not Class 1 AUM's.

RALPH AND BEVERLY EASON v. BUREAU OF LAND MANAGEMENT, IBLA 94-526, 145 IBLA 78 (Decided July 16, 1998)

Editor's note: Reconsideration denied by Order dated Nov. 9, 1998.

6. Cancellation and Reduction Reserved

6.1 Reduction as Penalty

6.2 To conform with Base Property Qualifications

6.3 To Conform with Grazing Capacity of Federal Range

6.4 Reduced Area of Use

7. Construction and Improvement Permits

A BLM decision rejecting a right-of-way application for a water-gathering and pipeline project, filed pursuant to sec. 501 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1761 (1988), will be affirmed where the record shows the decision to be a reasoned analysis of the facts involved, made with due regard for the public interest.

STEWART HAYDUK v. BUREAU OF LAND MANAGEMENT, IBLA 93-154, 133 IBLA 346 (Decided September 13, 1995)

When a party applies to remove range improvements or be compensated because his interests in grazing permits were terminated by a state court's foreclosure proceedings, BLM may properly deny the application because documents establish that when the transfer of the permittee's interests had occurred the permittee had been compensated for the value of the improvements, as required under 43 C.F.R. § 4120.3-5.

THELBERT WATTS v. UNITED STATES, IBLA 97-64, 148 IBLA 213 (Decided April 14, 1999)

A decision of an Area Manager to assign fence maintenance responsibilities to a grazing permittee will be set aside and remanded on appeal where the permittee establishes that the assignment was arbitrary and capricious because no coordination or consultation was effected with the permittee concerning the fence location or maintenance costs and the location selected by BLM will be inordinately difficult and expensive to maintain.

JOHN L. FALEN v. BUREAU OF LAND MANAGEMENT, IBLA 98-11R, 149 IBLA 347 (Decided July 21, 1999)

The relevant regulations governing grazing administration at 43 C.F.R. Subpart 4160 provide that proposed decisions shall be served on any permittee who is "affected" by the proposed actions, terms or conditions, or modifications relating to the permit. Any person whose interest is adversely affected by a final BLM decision under this part may appeal the decision for the purpose of a hearing before an administrative law judge. A decision denying a grazing permittee the right, pursuant to 43 C.F.R. Subpart 4160, to protest and appeal a BLM decision to construct fencing on a riparian pasture in an allotment to exclude livestock from a critical source of water on the ground the permittee was not affected by the decision is properly reversed and the case will be referred for a hearing.

ESPERANZA GRAZING ASSOCIATION v. BUREAU OF LAND MANAGEMENT, IBLA 99-259, 154 IBLA 47 (Decided November 9, 2000)

An Administrative Law Judge's decision reversing and remanding a BLM decision to the extent BLM found that the former grazing preference holder had been compensated for range improvements placed on the allotment after 1986 will be affirmed where the record establishes that BLM issued permits for the range improvements after 1986 and the current grazing preference holder has not shown error in the Administrative Law Judge's decision to remand the matter to BLM for determinations of use, ownership, and valuation or removal of those improvements.

JERRY KELLY, Appellant v. BUREAU OF LAND MANAGEMENT, Respondent; SHELDON W. LAMB, Intervenor, IBLA 99-332, 155 IBLA 58 (Decided May 9, 2001)

8. Exchange of Use

The existence of a longstanding regulation allowing exchange-of-use agreements implies that it is within the Department's authority under the Taylor Grazing Act to exempt grazing, in the proper circumstances, from the payment of annual fees.

RALPH AND BEVERLY EASON v. BUREAU OF LAND MANAGEMENT, IBLA 94-526,145 IBLA 78 (Decided July 16, 1998)

Editor's note: Reconsideration denied by Order dated Nov. 9, 1998.

9. Free Use

Reserved

10. Licenses and Permits

10.1 General

An application for a grazing permit following transfer of ownership of base lands is an "application for permit" within the meaning of 43 CFR 4160.1-1, governing proposed decisions on permits or leases. Further, a BLM decision effectively extending the term of a grazing permit and recognizing a new entity as permittee is a "proposed action relating to terms and conditions of permits" under that provision.

OREGON NATURAL RESOURCES COUNCIL, OREGON NATURAL DESERT ASSOCIATION v. BUREAU OF LAND MANAGEMENT, MC BEATY BUTTE GRAZING ASSOCIATION, IBLA 93-672, 129 IBLA 259 (Decided May 17, 1994)

Under 43 CFR 4160.1-1, BLM must do two discrete things: (1) it must serve a copy of a proposed decision concerning an application for permit on any applicant unless BLM and the permittee have reached a "documented agreement"; and (2) it must also send a copy of such proposed decision to any entity named as an "affected interest" pursuant to 43 CFR 4100.0-5. The regulation is mandatory, and where BLM fails to comply, its decision approving the permit application is properly set aside and remanded with instructions to re-adjudicate the application in light of the objections of the "affected interest."

OREGON NATURAL RESOURCES COUNCIL, OREGON NATURAL DESERT ASSOCIATION v. BUREAU OF LAND MANAGEMENT, MC BEATY BUTTE GRAZING ASSOCIATION, IBLA 93-672, 129 IBLA 259 (Decided May 17, 1994)

Prohibited acts of unauthorized grazing in violation of 43 CFR 4140.1(b) are subject to civil penalties. The regulation at 43 CFR 4170.1-1(b) requires BLM to suspend or cancel, in whole or in part, grazing use authorized under a grazing permit and grazing preference for repeated willful violations of 43 CFR 4140.1(b)(1) including grazing without a permit or in violation of the terms of a permit.

WAYNE D. KLUMP v. BUREAU OF LAND MANAGEMENT, IBLA 93-559, 130 IBLA 119 (Decided August 4, 1994)

Editor's note: Appeal filed Civ.No. 94-578 TUC RMB (D.Ariz. Aug. 23, 1994), dismissed, (May 19, 1995), appeal filed, No. 95-16109 (9th Cir. May 30, 1995), aff'd, (March 17, 1997). See also: Klump v. U.S., No. 94-309C (Fed.Cl.); 38 Fed.Cl. 243 (June 23, 1997).

The 1978 amendments to the grazing regulations effected such substantial changes in what was formerly known as the Federal Range Code that the precedential value of Departmental adjudications rendered prior to these amendments has been significantly reduced, particularly with respect to the issuance and administration of grazing permits under sec. 3 of the Taylor Grazing Act, 43 U.S.C. § 315b (1988).

DELMER AND JO MCLEAN v. BUREAU OF LAND MANAGEMENT, IBLA 90-332, 133 IBLA 225 (Decided August 3, 1995)

An Administrative Law Judge's determination that a BLM ear-tagging decision was arbitrary and capricious will be affirmed where the record does not demonstrate that, under the extant circumstances, ear-tagging would promote proper management of the public range.

JAMES D. WILCOX v. BUREAU OF LAND MANAGEMENT, IBLA 91-354,134 IBLA 57 (Decided October 5, 1995)

Absent emergency conditions or an agreement between BLM and parties holding grazing privileges in an allotment, 43 C.F.R. § 4160.1-1 (1991) required notification of those permittees and provision of a period of time to protest prior to authorizing trailing through the allotment.

BUREAU OF LAND MANAGEMENT v. WILLIAM J. THOMAN, IBLA 92-346, 139 IBLA 48 (Decided April 3, 1997)

An appeal will normally be dismissed as moot where, prior to the filing of a notice of appeal, the action being challenged has already occurred and there is no effective relief which can be afforded the appellant. Where, however, because of the limited duration of the challenged action and the reasonable expectation that the action will recur, there exists a substantial likelihood that a recurrence may evade review, dismissal of an appeal is not appropriate.

BUREAU OF LAND MANAGEMENT v. WILLIAM J. THOMAN, IBLA 92-346,139 IBLA 48, (Decided April 3, 1997)

The BLM violated the multiple-use mandate of section 302(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1732(a) (1994), when it authorized livestock grazing in five canyons in the Comb Wash Allotment without engaging in a reasoned and informed decisionmaking process showing that it had balanced competing resource values in order to best meet the present and future needs of the American people.

NATIONAL WILDLIFE FEDERATION ET AL. v. BUREAU OF LAND MANAGEMENT, UTAH FARM BUREAU FEDERATION, and UTE MOUNTAIN UTE INDIAN TRIBE, Intervenor-Appellants AMERICAN FARM BUREAU FEDERATION, Amicus-Curiae, IBLA 94-264, 140 IBLA 85 (Decided August 21, 1997)

A BLM decision concerning grazing privileges will not be set aside if it is reasonable and substantially complies with the provisions of the Federal grazing regulations found at 43 C.F.R. Part 4100 (1992). The burden is on the objecting party to show by a preponderance of the evidence of record that a decision is in error.

DUNCAN MACKENZIE v. BUREAU OF LAND MANAGEMENT, IBLA 94-871, 140 IBLA 192 (Decided September 8, 1997)

Editor's Note: This decision refers to leases but the issue appears to be issuance of a grazing permit not a grazing lease.

With regard to the information to be reported, the Actual Grazing Use Report requests the permittee's cooperation in providing accurate information. Permittees are also required to certify the completeness and accuracy of their grazing use, as evidenced by signing the report, and further warned of criminal penalties for "any false, fictitious, or fraudulent statements or representations." These instructions or requirements constitute more than adequate notice that a permittee is required to take appropriate steps to ensure that the data reported are accurate and complete, and that BLM deems the information to be important to the conduct of its official duties.

BALTZOR CATTLE CO. v. BUREAU OF LAND MANAGEMENT, IBLA 94-287, 141 IBLA 10 (Decided October 20, 1997)

The Actual Grazing Use Report instructs permittees and lessees to include other information such as death losses, disease, and unauthorized use by strays. This is intended to elicit any information that reasonably bears upon the data and activities elsewhere reported on the form by the permittee.

BALTZOR CATTLE CO. v. BUREAU OF LAND MANAGEMENT, IBLA 94-287 141 IBLA 10 (Decided October 20, 1997)

Until the Actual Grazing Use Report is submitted, its terms require the permittee or lessee to report the cattle taken into, or gathered from, the allotment each day, without regard to whether they previously had been removed.

BALTZOR CATTLE CO. v. BUREAU OF LAND MANAGEMENT, IBLA 94-287, 141 IBLA 10 (Decided October 20, 1997)

When BLM is formulating the Federal action it contemplates taking in accordance with the Taylor Grazing Act, and the Federal action requires a biological evaluation pursuant to the ESA, BLM must seek input from affected permittees and lessees and the interested public. Following receipt of this input, a proposed decision setting out Federal action which would necessitate a change in the terms and conditions of a Taylor Grazing Act permit or lease must be served on the affected permittees and lessees, who should be given an opportunity to protest. If a protest is filed, the authorized officer must reconsider the proposed decision in light of the protestant's statement of reasons for protest and other information pertinent to the case. At the conclusion of the review of the protest, the authorized officer must serve the final decision on the protestant and the interested public, and BLM must afford an opportunity for an appeal, as provided in 43 C.F.R. § 4160.3(c).

F. DUANE BLAKE ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 96-155, 145 IBLA 154 (Decided August 6, 1998)

An administrative law judge's dismissal of a grazing appeal on the grounds that the decision appealed was not subject to appeal will be reversed, and the case remanded for hearing where the action appealed was a final decision that may have modified the terms and conditions of the grazing lease or created a grazing system outside the scope of that authorized by an Environmental Assessment.

NATIONAL WILDLIFE FEDERATION ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 95-475, 145 IBLA 379 (Decided September 24, 1998)

Denial of applications for grazing privileges is authorized by 43 C.F.R. § 4170.1-1(a) when the evidence supports a violation of the grazing regulations by the applicant.

KENNETH YOUNG v. BUREAU OF LAND MANAGEMENT, IBLA 95-221, 148 IBLA 221 (Decided April 20, 1999)

The decision to authorize temporary nonrenewable livestock grazing within the Jarbidge Resource Area will be affirmed where the record establishes that the authorization is consistent with grazing regulations at 43 C.F.R. § 4130.6-2 and the applicable land use plan, and where certain lands are excepted or excluded from the EA/ROD. These include all Wilderness Study Areas, Areas of Critical Environmental Concern and other lands under special designations; scheduled rest pastures in intensely managed allotments; lands managed under current fire rehabilitation plans; and riparian areas subject to specific management.

COMMITTEE FOR IDAHO'S HIGH DESERT, ET AL. v. Bureau of Land Management, IBLA 96-519, 149 IBLA 1 (Decided May 20, 1999)

Reliance upon the oral information, advice or opinion of any Federal officer or employee will not bind the United States to vary the terms of a written grazing permit to conform to the representations

allegedly made by such officer or employee, absent proof of extreme circumstances which would vitiate the permit.

BERTRAND PARIS & SONS v. BUREAU OF LAND MANAGEMENT, IBLA 96-246, 150 IBLA 146, (Decided August 27, 1999)

A BLM decision to allow cattle grazing at a spring based on a finding of no significant impact is properly set aside and remanded when it appears from the record that a "unique water" designated under state law in which existing water quality is required to be maintained and protected includes the entire length of the stream for which the spring is the headwater and that BLM failed to consider that fact in making its finding.

NATIONAL WILDLIFE FEDERATION, ET AL. v. Bureau Of Land Management, IBLA 96-535, 151 IBLA 66 (Decided October 28, 1999)

Where BLM notifies prospective applicants for grazing use and preference that, if leased property is offered as base property to qualify for grazing use, the term of the lease must be for 3 years, as set forth in a BLM state Range Administration Policy, and an applicant offers base property land leased for less than 3 years, the Administrative Law Judge's decision finding that the applicant failed to qualify for grazing use and that BLM improperly awarded grazing use to the applicant will be affirmed.

KAY KAYSER-MEYRING, Appellee v. BUREAU OF LAND MANAGEMENT, Respondent, KIRK SHINER Intervenor/Appellant, IBLA 97-431, 152 IBLA 39 (Decided March 1, 2000)

Allotment management plans are incorporated into grazing permits in accordance with 43 C.F.R. § 4120.2.

WILLIAM J. THOMAN v. BUREAU OF LAND MANAGEMENT, GZ LIVESTOCK, ET AL. (Intervenors), IBLA 90-411, 152 IBLA 97 (Decided March 30, 2000)

When the terms and conditions of a settlement agreement do not support an interpretation of one of the parties to the agreement we will not read language into the agreement or interpret the agreement in a manner that an administrative law judge has found does not conform to the intent of the parties.

WILLIAM J. THOMAN v. BUREAU OF LAND MANAGEMENT, GZ LIVESTOCK, ET AL. (Intervenors), IBLA 90-411, 152 IBLA 97 (Decided March 30, 2000)

BLM enjoys broad discretion to determine how to adjudicate and manage grazing privileges, and a BLM decision concerning grazing privileges will not be set aside if it is reasonable and substantially complies with the provisions of the Federal grazing regulations. A BLM decision may be regarded as arbitrary, capricious, or inequitable only where it is not supported by any rational basis, and the burden is on the objecting party to show that a decision is improper. The determination establishing

a grazing allotment's carrying capacity will not be disturbed in the absence of positive evidence of error. Where a party offers no contrary analysis of the carrying capacity of the public lands to demonstrate that BLM's method of determining the carrying capacity is in error, BLM's determination is properly adopted. The determination to issue a 100-percent public land use permit rather than a percentage public land use permit will be affirmed where the record supports BLM's determination and no rebuttal is presented.

JAMES ROSS v. BUREAU OF LAND MANAGEMENT; BERT JENKS, INTERVENOR,
IBLA 96-405 and 96-406, 152 IBLA 273 (Decided May 26, 2000)

Where a private landowner asserts that he is being damaged by another party's unauthorized grazing on his land, his remedy lies in State court, and the Department is without authority to intervene in the matter. A finding that issuance of a grazing permit by BLM for Federally-owned lands aggravated or exacerbated unauthorized use of neighboring private lands by the permittee will be vacated where unsupported by evidence of record.

JAMES ROSS v. BUREAU OF LAND MANAGEMENT; BERT JENKS, INTERVENOR,
IBLA 96-405 and 96-406, 152 IBLA 273 (Decided May 26, 2000)

10.2 Actual Use

An accurate tally of cattle turned onto, and removed from, an allotment is necessary to assure not only the accuracy of an Actual Grazing Use Report, but to assure that all of the cattle are removed at the end of the grazing season, and in appropriate circumstances, the failure to report accurate information at the close of the season may be sufficient to establish a violation of 43 C.F.R. § 4140.1(b)(8) (1992). Where BLM has not shown that the permittee's behavior demonstrated recklessness, gross negligence, or indifference to the obligation to report accurate information, BLM has not established a knowing or willful violation of the regulation.

BALTZOR CATTLE CO. v. BUREAU OF LAND MANAGEMENT, IBLA 94-287 ,141
IBLA 10 (Decided October 20, 1997)

A finding that a violation of a requirement to report the removal of cattle from an allotment was knowing or willful, may be negated by a good faith belief that the requirement did not apply in the circumstances of a given case. The issue is the reasonableness of the permittee's belief that the cattle had been removed previously and Appellant's understanding of the nature of the reporting obligation imposed by an Actual Grazing Use Report.

BALTZOR CATTLE CO. v. BUREAU OF LAND MANAGEMENT, IBLA 94-287, 141
IBLA 10 (Decided October 20, 1997)

In requiring a grazing permittee to "[u]se a separate line for every day that you either turn livestock in or take livestock out of an allotment or pasture," the Actual Grazing Use Report requires a daily entry for each movement of cattle onto, or off of, the allotment. The Actual Grazing Use Report is

designed to establish the amount of forage actually consumed by all of the permittee's cattle present on the Federal range during the reporting period, and it is immaterial whether the forage was consumed by cattle that returned to the allotment after being removed. Given the stated purpose and objective of the report, it is not correct that a permittee whose cattle have returned to the allotment after the end of the grazing season, but before the Actual Grazing Use Report has been filed, has no obligation to report their removal in the Actual Grazing Use Report.

BALTZOR CATTLE CO. v. BUREAU OF LAND MANAGEMENT, IBLA 94-287, 141 IBLA 10 (Decided October 20, 1997)

10.3 Grazing Fee Billings

The existence of a BLM decision, adverse to a party to a case, is necessary to provide jurisdiction for an appeal to the Board of Land Appeals. An appealable decision takes or prohibits some action. A billing notice for grazing privileges established by prior planning documents is not a final, appealable decision under 43 C.F.R. § 4160.3 or 43 C.F.R. § 4.470. An appeal of such a billing notice is properly dismissed.

DEFENDERS OF WILDLIFE ET AL. V. Bureau of Land Management, IBLA 97-479, 144 IBLA 250 (Decided June 5, 1998)

10.4 Related to State Law

A BLM decision to allow cattle grazing at a spring based on a finding of no significant impact is properly set aside and remanded when it appears from the record that a "unique water" designated under state law in which existing water quality is required to be maintained and protected includes the entire length of the stream for which the spring is the headwater and that BLM failed to consider that fact in making its finding.

NATIONAL WILDLIFE FEDERATION, ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 96-535, 151 IBLA 66 (Decided October 28, 1999)

Under section 313(a) of the Clean Water Act of 1977, as amended, 33 U.S.C. § 1323(a) (1994), BLM is generally required to comply with state water pollution laws when engaged in any activity which may result in the runoff of pollutants. Under Arizona law, existing water quality is required to be protected and maintained in surface water designated as a "unique water."

NATIONAL WILDLIFE FEDERATION, ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 96-535, 151 IBLA 66 (Decided October 28, 1999)

Where a private landowner asserts that he is being damaged by another party's unauthorized grazing on his land, his remedy lies in State court, and the Department is without authority to intervene in the matter. A finding that issuance of a grazing permit by BLM for Federally-owned lands aggravated or exacerbated unauthorized use of neighboring private lands by the permittee will be vacated where unsupported by evidence of record.

JAMES ROSS v. BUREAU OF LAND MANAGEMENT; BERT JENKS, INTERVENOR,
IBLA 96-405 and 96-406, 152 IBLA 273 (Decided May 26, 2000)

11. Range Surveys, Monitoring and Evaluation

When, in evaluating a grazing allotment, BLM applies an incorrect riparian objective and uses the failure to meet that objective as a basis for closing part of the allotment to livestock grazing, and the case record shows that the proper objective had been met, the closure action will be set aside.

FILIPPINI RANCHING CO. AND PARIS RANCH v. BUREAU OF LAND
MANAGEMENT, IBLA 96-150, 149 IBLA 54 (Decided May 26, 1999)

A BLM determination that a land use planning objective to stop downward trend on 10,603 acres, and manage for upward trend on 10,762 acres, in the long term, on a grazing allotment had not been met, based on limited monitoring trend data, will be set aside when the record fails to show a rational basis for failing to apply statistical analysis to that data, as recommended by the Nevada Rangeland Monitoring Handbook, the handbook utilized by BLM in its monitoring program.

FILIPPINI RANCHING CO. AND PARIS RANCH v. BUREAU OF LAND
MANAGEMENT, IBLA 96-150, 149 IBLA 54 (Decided May 26, 1999)

A BLM determination that a land use planning objective to improve 7,952 acres to good condition, and 2,014 acres to excellent condition, in the long term, on a grazing allotment had not been met will be set aside when the case record fails to show any baseline data on ecological condition for any particular acreage in the grazing allotment. .

FILIPPINI RANCHING CO. AND PARIS RANCH v. BUREAU OF LAND
MANAGEMENT, IBLA 96-150, 149 IBLA 54 (Decided May 26, 1999)

A decision to make proportionate reductions in livestock and wild horse use that was based on monitoring, research, and analysis of usage of the public lands and was shown to have been made in consideration of the condition of the affected range in terms of available forage was properly affirmed.

ANIMAL PROTECTION INSTITUTE OF AMERICA v. BUREAU OF LAND
MANAGEMENT, IBLA 94-56, 128 IBLA 150 (Decided January 13, 1994)

A decision to gather wild horses from a herd management area in order to avert deterioration of the range and to pursue a thriving natural ecological balance in accordance with sec. 3(b) of the Wild Free-Roaming Horses and Burros Act, as amended, 16 U.S.C. § 1333(b) (1988), is properly affirmed where the record demonstrates that the decision is based upon a reasonable analysis of data collected on an ongoing basis.

AUDUBON SOCIETY OF PORTLAND, ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 93-540, 128 IBLA 370 (Decided March 11, 1994)

BLM's decision to gather wild horses will be affirmed where it is based upon appropriate management levels for herd management areas based on analysis of grazing utilization, trend in range condition, actual use, and observational data demonstrating that maintenance of the herd at the prescribed levels of horse population will restore and maintain the range in a thriving natural ecological balance and prevent deterioration of the range, in accordance with sec. 3(b) of the Wild Free-Roaming Horses and Burros Act.

ANIMAL PROTECTION INSTITUTE OF AMERICA v. BUREAU OF LAND MANAGEMENT, IBLA 93-308 and 94-14, 131 IBLA 175 (Decided November 2, 1994)

A decision determining the appropriate management level for wild horses based on monitoring of forage condition, range usage, an inventory of wild horse numbers, and application of a desired stocking formula to determine grazing capacity may be affirmed where the record supports a finding that removal of horses in excess of the appropriate management level is necessary to restore the range to a thriving ecological balance.

COMMISSION FOR THE PRESERVATION OF WILD HORSES, ET AL. V. BUREAU OF LAND MANAGEMENT, IBLA 94-163, et al., 133 IBLA 97 (Decided July 18, 1995)

If the Secretary (or his designate) determines, on the basis of information available, that an overpopulation exists on a given area of the public lands and that action is necessary to remove excess animals, the Secretary has authority to immediately remove excess animals from the range so as to achieve appropriate management levels, restore a thriving natural ecological balance to the range, and protect the range from the deterioration associated with overpopulation.

MICHAEL BLAKE ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 93-677, 135 IBLA 9 (Decided February 23, 1996)

BLM may take preventative action, and is not required to wait until the range is damaged before removing wild horses. Proper range management dictates herd reduction before it causes damage to the range land. If the record establishes current resource damage or a significant threat of resource damage, removal is warranted.

MICHAEL BLAKE ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 93-677, 135 IBLA 9 (Decided February 23, 1996)

The goal of wild horse management is to maintain a thriving natural ecological balance among wild horse populations, wildlife, livestock, and vegetation, and to protect the range from the deterioration associated with overpopulation. A determination that removal is warranted must be based on research and analysis, and on monitoring programs which include studies of grazing utilization, trends in range condition, actual use, and climatic factors.

MICHAEL BLAKE ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 93-677, 135 IBLA 9 (Decided February 23, 1996)

A BLM decision implementing a wild horse area management plan and capture plan based on an appropriate management level which will avert deterioration of the range and preserve a thriving natural ecological balance in accordance with sec. 3(b) of the Wild Free-Roaming Horses and Burros Act, as amended, 16 U.S.C. § 1333(b) (1994), will be upheld where the record demonstrates that the decision is based upon a reasonable analysis of data collected on an ongoing basis.

MICHAEL BLAKE ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 93-657, 138 IBLA 170 (Decided February 10, 1997)

A BLM decision implementing a wild horse area management plan is affirmed when it is founded on a reasoned analysis of monitoring data supporting reduction of a horse population to restore a range to a thriving natural ecological balance and prevent its deterioration.

COMMISSION FOR THE PRESERVATION OF WILD HORSES ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 94-126, 94-127 and 94-128, 139 IBLA 327 (Decided July 14, 1997)

The goal of wild horse management is to maintain a thriving natural ecological balance among wild horse populations, wildlife, livestock, and vegetation, and to protect the range from the deterioration associated with overpopulation. Allocation determinations must be based on research and analysis, and on monitoring programs which include studies of grazing utilization, trends in range conditions, actual use, and climactic factors.

DON AND MARTHA P. SIMS v. BUREAU OF LAND MANAGEMENT, IBLA 95-203, 141 IBLA 1 (Decided October 16, 1997)

A decision by BLM allocating livestock and wild horse use that is based on monitoring, research, and analysis of usage of the public lands and is shown to be made in consideration of the condition of the affected range in terms of availability is properly affirmed.

DON AND MARTHA P. SIMS v. BUREAU OF LAND MANAGEMENT, IBLA 95-203, 141 IBLA 1 (Decided October 16, 1997)

A BLM decision implementing a wild horse area management plan and capture plan based on an appropriate management level which will avert deterioration of the range and preserve a thriving natural ecological balance in accordance with section 3(b) of the Wild Free-Roaming Horses and Burros Act, as amended, 16 U.S.C. § 1333(b) (1994), will be upheld where the record demonstrates that the decision is based upon a reasonable analysis of data collected on an ongoing basis.

JOEY R. DEEG v. BUREAU OF LAND MANAGEMENT, IBLA 94-858, 141 IBLA 67 (Decided October 27, 1997)

If the Secretary (or his designate) determines, on the basis of information available, that an overpopulation of wild horses or burros exists on a given area of the public lands and that action is necessary to remove excess animals, the Secretary has authority to immediately remove excess animals from the range so as to achieve appropriate management levels, restore a thriving natural ecological balance to the range, and protect the range from the deterioration associated with overpopulation.

WILD HORSE ORGANIZED ASSISTANCE and COMMISSION FOR THE PRESERVATION OF WILD HORSES v. BUREAU OF LAND MANAGEMENT, IBLA 95-312, 95-313, 141 IBLA 202 (Decided November 13, 1997)

An appellant challenging the accuracy of a range study must show not just that the results of the study could be in error, but that they are in fact erroneous. No error is established absent a showing that BLM's range survey methods are incapable of yielding accurate information, that there was a material departure from prescribed procedures, or that a demonstrably more accurate survey has disclosed a contrary result. A party challenging a decision based on a BLM expert's reasoned analysis must demonstrate by a preponderance of the evidence that the BLM expert erred when collecting the underlying data, when interpreting that data, or when reaching the conclusion. It is not enough to show that its expert disagrees or believes that a different course of action or interpretation is available and supported by the evidence. A BLM denial of applications to increase active grazing preference will be affirmed when monitoring studies indicate that multiple-use management objectives for the grazing allotment are not being met and that additional forage is not available on a sustained yield basis within the allotment.

WEST COW CREEK PERMITTEES v. BUREAU OF LAND MANAGEMENT, IBLA 95-206, 142 IBLA 224 (Decided January 22, 1998)

A BLM plan for removing wild horses from a herd management area will be affirmed where BLM has concluded that removal is necessary to restore the range to a thriving ecological balance, and the appellants have failed to demonstrate that BLM committed any error in reaching such conclusion.

AMERICAN MUSTANG & BURRO ASSOCIATION, INC. and DAVE HILLBERRY v. BUREAU OF LAND MANAGEMENT, IBLA 96-8, 144 IBLA 148 (Decided May 28, 1998)

A decision determining the appropriate management level for wild horses based on monitoring of forage condition, range usage, an inventory of wild horse numbers, and application of a desired stocking formula to determine grazing capacity may be affirmed where the record supports a finding that removal of horses in excess of the appropriate management level is necessary to restore the range to a thriving ecological balance.

COMMISSION FOR THE PRESERVATION OF WILD HORSES v. BUREAU OF LAND MANAGEMENT, IBLA 96-102 and 96-103, 145 IBLA 343 (Decided September 23, 1998)

A BLM plan for removing wild horses from a herd management area will be affirmed where BLM has concluded that removal is necessary to restore the range to a thriving ecological balance, and the appellants have failed to demonstrate that BLM committed any error in reaching such conclusion.

TONI HUTCHESON MOORE ET AL., and AMERICAN MUSTANG & BURRO ASSN., INC. v. BUREAU OF LAND MANAGEMENT, IBLA 97-541 and 97-547, 146 IBLA 168 (Decided October 29, 1998)

If the Secretary (or his designate) determines, on the basis of information available, that an overpopulation of wild horses or burros exists on a given area of the public lands and that action is necessary to remove excess animals, the Secretary has authority to immediately remove excess animals from the range so as to achieve appropriate management levels, restore a thriving natural ecological balance to the range, and protect the range from the deterioration associated with overpopulation.

WILD HORSE SPIRIT LIMITED v. BUREAU OF LAND MANAGEMENT, IBLA 96-39, 147 IBLA 317 (Decided February 18, 1999)

If the Secretary (or his designate) determines, on the basis of information available, that an overpopulation of wild horses or burros exists on a given area of the public lands and that action is necessary to remove excess animals, the Secretary has authority to immediately remove excess animals from the range so as to achieve appropriate management levels, restore a thriving natural ecological balance to the range, and protect the range from the deterioration associated with overpopulation.

REDWINGS HORSE SANCTUARY and ANIMAL PROTECTION INSTITUTE OF AMERICA v. BUREAU OF LAND MANAGEMENT, IBLA 97-199 and 97-200, 148 IBLA 61 (Decided March 18, 1999)

While it is true that on numerous occasions the Board has dismissed an appellant's argument as a mere difference of opinion with BLM's experts, it has never been the practice of this Board to accept the conclusory opinions of BLM's experts as a proper basis for a decision in the face of conflicting testimony.

FILIPPINI RANCHING CO. AND PARIS RANCH v. BUREAU OF LAND MANAGEMENT, IBLA 96-150, 149 IBLA 54 (Decided May 26, 1999)

A BLM determination that a land use planning objective to stop downward trend on 10,603 acres, and manage for upward trend on 10,762 acres, in the long term, on a grazing allotment had not been met, based on limited monitoring trend data, will be set aside when the record fails to show a rational basis for failing to apply statistical analysis to that data, as recommended by the Nevada Rangeland Monitoring Handbook, the handbook utilized by BLM in its monitoring program.

FILIPPINI RANCHING CO. AND PARIS RANCH v. BUREAU OF LAND MANAGEMENT, IBLA 96-150, 149 IBLA 54 (Decided May 26, 1999)

When, in evaluating a grazing allotment, BLM applies an incorrect riparian objective and uses the failure to meet that objective as a basis for closing part of the allotment to livestock grazing, and the case record shows that the proper objective had been met, the closure action will be set aside.

FILIPPINI RANCHING CO. AND PARIS RANCH v. BUREAU OF LAND MANAGEMENT, IBLA 96-150, 149 IBLA 54 (Decided May 26, 1999)

A BLM determination that a land use planning objective to improve 7,952 acres to good condition, and 2,014 acres to excellent condition, in the long term, on a grazing allotment had not been met will be set aside when the case record fails to show any baseline data on ecological condition for any particular acreage in the grazing allotment. .

FILIPPINI RANCHING CO. AND PARIS RANCH v. BUREAU OF LAND MANAGEMENT, IBLA 96-150, 149 IBLA 54 (Decided May 26, 1999)

BLM may properly measure utilization in a grazing allotment using the key forage plant method. However, when the case record fails to establish a rational basis for selecting the highest utilized key forage species from each transect in the allotment in developing use pattern maps for the allotment and calculating average weighted utilization, BLM's conclusion that land use planning objectives for utilization were not being met, which was based on those results, must be set aside.

FILIPPINI RANCHING CO. AND PARIS RANCH v. BUREAU OF LAND MANAGEMENT, IBLA 96-150, 149 IBLA 54 (Decided May 26, 1999)

Where holders of grazing permits failed to timely appeal 1992 Final Multiple Use Decision, they were barred from challenging the validity of the adjustment prescribed therein to the extent that the adjustments were based on studies and monitoring data in existence at the time the 1992 Decision was issued.

BERTRAND PARIS & SONS v. BUREAU OF LAND MANAGEMENT, IBLA 96-246, 150 IBLA 146, (Decided August 27, 1999)

A BLM decision amending a wild horse area management plan will be upheld where the decision is predicated on a reasoned analysis of monitoring data such as grazing utilization, trend in range condition, actual use, and other factors which demonstrate that reduction of the appropriate

management level will restore the range to a thriving natural ecological balance and prevent a deterioration of the range, in accordance with sec. 3(b) of the Wild Free-Roaming Horses and Burros Act, as amended, 16 U.S.C. § 1333(b) (1994).

AMERICAN HORSE PROTECTION, INC. AND JOEY R. DEEG v. BUREAU OF LAND MANAGEMENT, IBLA 93-71 and 94-284, 134 IBLA 24 (Decided October 3, 1999)

A BLM decision authorizing the removal of wild horses determined to be excess from certain areas of public land based on an appropriate management level which will avert deterioration of the range and preserve a thriving natural ecological balance in accordance with section 3(b) of the Wild Free-Roaming Horses and Burros Act, as amended, 16 U.S.C. § 1333(b) (1994), will be upheld where the record demonstrates that the decision is based upon a reasonable analysis of data collected on an ongoing basis.

ANIMAL PROTECTION INSTITUTE OF AMERICA, ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 96-489, 96-490 and 96-492, 151 IBLA 396 (Decided February 15, 2000)

BLM enjoys broad discretion to determine how to adjudicate and manage grazing privileges, and a BLM decision concerning grazing privileges will not be set aside if it is reasonable and substantially complies with the provisions of the Federal grazing regulations. A BLM decision may be regarded as arbitrary, capricious, or inequitable only where it is not supported by any rational basis, and the burden is on the objecting party to show that a decision is improper. The determination establishing a grazing allotment's carrying capacity will not be disturbed in the absence of positive evidence of error. Where a party offers no contrary analysis of the carrying capacity of the public lands to demonstrate that BLM's method of determining the carrying capacity is in error, BLM's determination is properly adopted. The determination to issue a 100-percent public land use permit rather than a percentage public land use permit will be affirmed where the record supports BLM's determination and no rebuttal is presented.

JAMES ROSS v. BUREAU OF LAND MANAGEMENT; BERT JENKS, INTERVENOR, IBLA 96-405 and 96-406, 152 IBLA 273 (Decided May 26, 2000)

The relevant regulations governing grazing administration at 43 C.F.R. Subpart 4160 provide that proposed decisions shall be served on any permittee who is "affected" by the proposed actions, terms or conditions, or modifications relating to the permit. Any person whose interest is adversely affected by a final BLM decision under this part may appeal the decision for the purpose of a hearing before an administrative law judge. A decision denying a grazing permittee the right, pursuant to 43 C.F.R. Subpart 4160, to protest and appeal a BLM decision to construct fencing on a riparian pasture in an allotment to exclude livestock from a critical source of water on the ground the permittee was not affected by the decision is properly reversed and the case will be referred for a hearing.

ESPERANZA GRAZING ASSOCIATION v. BUREAU OF LAND MANAGEMENT, IBLA 99-259, 154 IBLA 47 (Decided November 9, 2000)

12. Special Rules **Reserved**

13. Transfers **Reserved**

13.1 Base Property

13.2 Base Property Qualifications

14. Trespass

14.1 General

A trespass will be considered willful where the evidence objectively shows that the circumstances did not comport with a finding that the trespasser acted in good faith or innocent mistake.

WAYNE D. KLUMP v. BUREAU OF LAND MANAGEMENT, IBLA 93-559, 130 IBLA 119 (Decided August 4, 1994)

Editor's note: Appeal filed Civ.No. 94-578 TUC RMB (D.Ariz. Aug. 23, 1994), dismissed, (May 19, 1995), appeal filed, No. 95-16109 (9th Cir. May 30, 1995), aff'd, (March 17, 1997). See also: Klump v. U.S., No. 94-309C (Fed.Cl.); 38 Fed.Cl. 243 (June 23, 1997).

Hearsay evidence is admissible in a grazing trespass hearing if it is relevant and material.

WAYNE D. KLUMP v. BUREAU OF LAND MANAGEMENT, IBLA 93-559, 130 IBLA 119 (Decided August 4, 1994)

Editor's note: Appeal filed Civ.No. 94-578 TUC RMB (D.Ariz. Aug. 23, 1994), dismissed, (May 19, 1995), appeal filed, No. 95-16109 (9th Cir. May 30, 1995), aff'd, (March 17, 1997). See also: Klump v. U.S., No. 94-309C (Fed.Cl.); 38 Fed.Cl. 243 (June 23, 1997).

The procedures at 43 CFR Subpart 4150 for giving notice to the owner of livestock grazing without authorization in violation of 43 CFR 4140.1(b)(1); ordering removal; and for impounding unauthorized livestock are properly distinguished from the procedures for adjudicating an alleged trespass and the amount of damages under 43 CFR Subpart 4160 and for assessing penalties under 43 CFR Subpart 4170. Although proposed and final decisions subject to appeal for a hearing before an Administrative Law Judge are required to adjudicate an alleged trespass and assess damages or penalties, these are not a prerequisite to notice and impoundment of livestock grazing without authorization.

WAYNE D. KLUMP v. BUREAU OF LAND MANAGEMENT, IBLA 93-559, 130 IBLA 119 (Decided August 4, 1994)

Editor's note: Appeal filed Civ.No. 94-578 TUC RMB (D.Ariz. Aug. 23, 1994), dismissed, (May 19, 1995), appeal filed, No. 95-16109 (9th Cir. May 30, 1995), aff'd, (March 17, 1997). See also: Klump v. U.S., No. 94-309C (Fed.Cl.); 38 Fed.Cl. 243 (June 23, 1997).

A grazing trespass appealed by the livestock owner will be upheld where the livestock were grazed on a permit issued to a third party without filing with BLM a document transferring control of the livestock to the permittee and specifying the brand, numbers of livestock, and anticipated periods of use as required by BLM.

WAYNE D. KLUMP v. BUREAU OF LAND MANAGEMENT, IBLA 93-559, 130 IBLA 119 (Decided August 4, 1994)

Editor's note: Appeal filed Civ.No. 94-578 TUC RMB (D.Ariz. Aug. 23, 1994), dismissed, (May 19, 1995), appeal filed, No. 95-16109 (9th Cir. May 30, 1995), aff'd, (March 17, 1997). See also: Klump v. U.S., No. 94-309C (Fed.Cl.); 38 Fed.Cl. 243 (June 23, 1997).

A finding of a grazing trespass will be affirmed where it is supported by a preponderance of the evidence introduced at a hearing.

WAYNE D. KLUMP v. BUREAU OF LAND MANAGEMENT, IBLA 93-559, 130 IBLA 119 (Decided August 4, 1994)

Editor's note: Appeal filed Civ.No. 94-578 TUC RMB (D.Ariz. Aug. 23, 1994), dismissed, (May 19, 1995), appeal filed, No. 95-16109 (9th Cir. May 30, 1995), aff'd, (March 17, 1997). See also: Klump v. U.S., No. 94-309C (Fed.Cl.); 38 Fed.Cl. 243 (June 23, 1997).

A finding of trespass against a livestock owner grazing his cattle on an allotment permitted to a third party will be upheld where the grazing permit is applied for on an annual basis, the permit for the current season authorizes grazing of cattle bearing the brand of the permittee, and no control document for the current season transferring control from the livestock owner to the permittee specifying the brand, numbers of livestock, and anticipated periods of use has been filed with BLM.

WAYNE D. KLUMP v. BUREAU OF LAND MANAGEMENT, IBLA 93-559, 130 IBLA 119 Decided August 4, 1994

Editor's note: Appeal filed Civ.No. 94-578 TUC RMB (D.Ariz. Aug. 23, 1994), dismissed, (May 19, 1995), appeal filed, No. 95-16109 (9th Cir. May 30, 1995), aff'd, (March 17, 1997). See also: Klump v. U.S., No. 94-309C (Fed.Cl.); 38 Fed.Cl. 243 (June 23, 1997).

An accurate tally of cattle turned onto, and removed from, an allotment is necessary to assure not only the accuracy of an Actual Grazing Use Report, but to assure that all of the cattle are removed at the end of the grazing season, and in appropriate circumstances, the failure to report accurate information at the close of the season may be sufficient to establish a violation of 43 C.F.R. § 4140.1(b)(8) (1992). Where BLM has not shown that the permittee's behavior demonstrated recklessness, gross negligence, or indifference to the obligation to report accurate information, BLM has not established a knowing or willful violation of the regulation.

BALTZOR CATTLE CO. v. BUREAU OF LAND MANAGEMENT, IBLA 94-287, 141 IBLA 10 (Decided October 20, 1997)

In determining whether grazing trespasses are "willful," intent sufficient to establish willfulness may be shown by evidence which objectively shows that the circumstances did not comport with the notion that the trespasser acted in good faith or by innocent mistake, or that his conduct was so lacking in reasonableness or responsibility that it became reckless or negligent.

BALTZOR CATTLE CO. v. BUREAU OF LAND MANAGEMENT, IBLA 94-287, 141 IBLA 10 (Decided October 20, 1997)

Under 43 C.F.R. § 2920.1-2(a), any use, occupancy or development of the public lands, other than casual use, without authorization, shall be considered a trespass. "Casual use" includes only short-term noncommercial activity. 43 C.F.R. § 2920.0-5(k). Where the record shows that unauthorized use included long-term grazing and the erection of buildings, it was not casual use. Even though the parties may have used the land under the belief that this was Western Shoshone land and not public land, their good faith is irrelevant to liability for trespass, but may be considered only as to whether the trespass was intentional.

CARRIE AND MARY DANN, ET AL. v. Bureau of Land Management, IBLA 98-372, 147 IBLA 81 (Decided December 18, 1998)

When the evidence shows (1) unauthorized grazing use; (2) prior trespass; and (3) willfulness as to each, a BLM decision finding repeated, willful trespass will be upheld.

WILLIAM J. THOMAN v. BUREAU OF LAND MANAGEMENT, GZ LIVESTOCK, ET AL. (Intervenors), IBLA 90-411, 152 IBLA 97 (Decided March 30, 2000)

Where a private landowner asserts that he is being damaged by another party's unauthorized grazing on his land, his remedy lies in State court, and the Department is without authority to intervene in the matter. A finding that issuance of a grazing permit by BLM for Federally-owned lands aggravated or exacerbated unauthorized use of neighboring private lands by the permittee will be vacated where unsupported by evidence of record.

JAMES ROSS v. BUREAU OF LAND MANAGEMENT; BERT JENKS, INTERVENOR, IBLA 96-405 and 96-406, 152 IBLA 273 (Decided May 26, 2000)

14.2 Measure of Damage

Prohibited acts of unauthorized grazing in violation of 43 CFR 4140.1(b) are subject to civil penalties. The regulation at 43 CFR 4170.1-1(b) requires BLM to suspend or cancel, in whole or in part, grazing use authorized under a grazing permit and grazing preference for repeated willful violations of 43 CFR 4140.1(b)(1) including grazing without a permit or in violation of the terms of a permit.

WAYNE D. KLUMP v. BUREAU OF LAND MANAGEMENT, IBLA 93-559, 130 IBLA 119 (Decided August 4, 1994)

Editor's note: Appeal filed Civ.No. 94-578 TUC RMB (D.Ariz. Aug. 23, 1994), dismissed, (May 19, 1995), appeal filed, No. 95-16109 (9th Cir. May 30, 1995), aff'd, (March 17, 1997). See also: Klump v. U.S., No. 94-309C (Fed.Cl.); 38 Fed.Cl. 243 (June 23, 1997).

In assessing the propriety of cancelling a grazing permit and preference in whole or in part, a "severe reduction" in grazing privileges (*i.e.*, a permanent loss of privileges or a temporary loss of significant privileges for a period of years) may be imposed where the trespasses were both repeated and willful; involved fairly large numbers of animals; occurred over a fairly long period of time; and often involved a failure to take prompt remedial action upon notification of the trespass. Any mitigating circumstances are also properly considered.

WAYNE D. KLUMP v. BUREAU OF LAND MANAGEMENT, IBLA 93-559, 130 IBLA 119 (Decided August 4, 1994)

Editor's note: Appeal filed Civ.No. 94-578 TUC RMB (D.Ariz. Aug. 23, 1994), dismissed, (May 19, 1995), appeal filed, No. 95-16109 (9th Cir. May 30, 1995), aff'd, (March 17, 1997). See also: Klump v. U.S., No. 94-309C (Fed.Cl.); 38 Fed.Cl. 243 (June 23, 1997).

In determining the severity of a reduction in grazing privileges, the reduction must be gauged in terms of its impact on all of the grazing use authorized under a particular grazing permit. The aim is not to target the offending grazing use, but by curtailing all or part of a permittee's nearby permitted use, to reform the permittee's grazing practices in that area. The BLM may suspend or cancel all or part of a trespasser's grazing privileges under other permits, whether in one or more grazing districts or in one or more states.

BUREAU OF LAND MANAGEMENT v. BURGHARDT CO., IBLA 92-75, 138 IBLA 365 (Decided March 20, 1997)

The BLM properly penalizes a grazing permittee for unauthorized grazing on the public lands. However, a 2-year suspension of all fall/winter grazing privileges in two allotments (*i.e.*, 11 percent of all permitted grazing use) and a permanent cancellation of all grazing privileges in one allotment will each be deemed too severe where, although the current trespass was willful and repeated, the duration of the trespass was fairly short. In such circumstances, the penalty will be modified commensurate with the violation, but designed to reform the trespasser's behavior.

BUREAU OF LAND MANAGEMENT v. BURGHARDT CO., IBLA 92-75, 138 IBLA 365 (Decided March 20, 1997)

A finding that a violation of a requirement to report the removal of cattle from an allotment was knowing or willful, may be negated by a good faith belief that the requirement did not apply in the circumstances of a given case. The issue is the reasonableness of the permittee's belief that the cattle had been removed previously and Appellant's understanding of the nature of the reporting obligation imposed by an Actual Grazing Use Report.

BALTZOR CATTLE CO. v. BUREAU OF LAND MANAGEMENT, IBLA 94-287, 141 IBLA 10 (Decided October 20, 1997)

Reductions of 21 percent for 2 years have been deemed appropriate in other cases involving willful and repeated trespasses, but not for a first-time, nonwillful, 10-AUM trespass.

BALTZOR CATTLE CO. v. BUREAU OF LAND MANAGEMENT, IBLA 94-287, 141 IBLA 10 (Decided October 20, 1997)

Anyone properly determined by BLM to be in trespass shall be liable to the United States for (1) the reimbursement of all costs incurred by the United States in the investigation and termination of a trespass; (2) the rental value of the lands for the time of the trespass; and (3) either rehabilitation of the lands harmed by the trespass or payment of costs incurred by the United States in so doing.

CARRIE AND MARY DANN, ET AL. v. Bureau of Land Management, IBLA 98-372, 147 IBLA 81 (Decided December 18, 1998)

Denial of applications for grazing privileges is authorized by 43 C.F.R. § 4170.1-1(a) when the evidence supports a violation of the grazing regulations by the applicant.

KENNETH YOUNG v. BUREAU OF LAND MANAGEMENT, IBLA 95-221, 148 IBLA 221 (Decided April 20, 1999)

15. Wild and Free-Roaming Horses and Burros Act of 1971

15.1 Herd Management

A decision to make proportionate reductions in livestock and wild horse use that was based on monitoring, research, and analysis of usage of the public lands and was shown to have been made in consideration of the condition of the affected range in terms of available forage was properly affirmed.

ANIMAL PROTECTION INSTITUTE OF AMERICA v. BUREAU OF LAND MANAGEMENT, IBLA 94-56, 128 IBLA 150 (Decided January 13, 1994)

A decision to gather wild horses from a herd management area in order to avert deterioration of the range and to pursue a thriving natural ecological balance in accordance with sec. 3(b) of the Wild Free-Roaming Horses and Burros Act, as amended, 16 U.S.C. § 1333(b) (1988), is properly affirmed where the record demonstrates that the decision is based upon a reasonable analysis of data collected on an ongoing basis.

AUDUBON SOCIETY OF PORTLAND, ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 93-540, 128 IBLA 370 (Decided March 11, 1994)

BLM's decision to gather wild horses will be affirmed where it is based upon appropriate management levels for herd management areas based on analysis of grazing utilization, trend in range condition, actual use, and observational data demonstrating that maintenance of the herd at the

prescribed levels of horse population will restore and maintain the range in a thriving natural ecological balance and prevent deterioration of the range, in accordance with sec. 3(b) of the Wild Free-Roaming Horses and Burros Act.

ANIMAL PROTECTION INSTITUTE OF AMERICA v. BUREAU OF LAND MANAGEMENT, IBLA 93-308 and 94-14, 131 IBLA 175 (Decided November 2, 1994)

A decision determining the appropriate management level for wild horses based on monitoring of forage condition, range usage, an inventory of wild horse numbers, and application of a desired stocking formula to determine grazing capacity may be affirmed where the record supports a finding that removal of horses in excess of the appropriate management level is necessary to restore the range to a thriving ecological balance.

COMMISSION FOR THE PRESERVATION OF WILD HORSES, ET AL. V. BUREAU OF LAND MANAGEMENT, IBLA 94-163, et al., 133 IBLA 97 (Decided July 18, 1995)

If the Secretary (or his designate) determines, on the basis of information available, that an overpopulation exists on a given area of the public lands and that action is necessary to remove excess animals, the Secretary has authority to immediately remove excess animals from the range so as to achieve appropriate management levels, restore a thriving natural ecological balance to the range, and protect the range from the deterioration associated with overpopulation.

MICHAEL BLAKE ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 93-677, 135 IBLA 9 (Decided February 23, 1996)

The goal of wild horse management is to maintain a thriving natural ecological balance among wild horse populations, wildlife, livestock, and vegetation, and to protect the range from the deterioration associated with overpopulation. A determination that removal is warranted must be based on research and analysis, and on monitoring programs which include studies of grazing utilization, trends in range condition, actual use, and climatic factors.

MICHAEL BLAKE ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 93-677, 135 IBLA 9 (Decided February 23, 1996)

BLM may take preventative action, and is not required to wait until the range is damaged before removing wild horses. Proper range management dictates herd reduction before it causes damage to the range land. If the record establishes current resource damage or a significant threat of resource damage, removal is warranted.

MICHAEL BLAKE ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 93-677, 135 IBLA 9 (Decided February 23, 1996)

A BLM decision implementing a wild horse area management plan and capture plan based on an appropriate management level which will avert deterioration of the range and preserve a thriving natural ecological balance in accordance with sec. 3(b) of the Wild Free-Roaming Horses and Burros Act, as amended, 16 U.S.C. § 1333(b) (1994), will be upheld where the record demonstrates that the decision is based upon a reasonable analysis of data collected on an ongoing basis.

MICHAEL BLAKE ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 93-657, 138 IBLA 170 (Decided February 10, 1997)

A BLM decision implementing a wild horse area management plan is affirmed when it is founded on a reasoned analysis of monitoring data supporting reduction of a horse population to restore a range to a thriving natural ecological balance and prevent its deterioration.

COMMISSION FOR THE PRESERVATION OF WILD HORSES ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 94-126, 94-127 and 94-128, 139 IBLA 327, (Decided July 14, 1997)

A decision by BLM allocating livestock and wild horse use that is based on monitoring, research, and analysis of usage of the public lands and is shown to be made in consideration of the condition of the affected range in terms of availability is properly affirmed.

DON AND MARTHA P. SIMS v. BUREAU OF LAND MANAGEMENT, IBLA 95-203, 141 IBLA 1 (Decided October 16, 1997)

The goal of wild horse management is to maintain a thriving natural ecological balance among wild horse populations, wildlife, livestock, and vegetation, and to protect the range from the deterioration associated with overpopulation. Allocation determinations must be based on research and analysis, and on monitoring programs which include studies of grazing utilization, trends in range conditions, actual use, and climactic factors.

DON AND MARTHA P. SIMS v. BUREAU OF LAND MANAGEMENT, IBLA 95-203, 141 IBLA 1 (Decided October 16, 1997)

A BLM decision implementing a wild horse area management plan and capture plan based on an appropriate management level which will avert deterioration of the range and preserve a thriving natural ecological balance in accordance with section 3(b) of the Wild Free-Roaming Horses and Burros Act, as amended, 16 U.S.C. § 1333(b) (1994), will be upheld where the record demonstrates that the decision is based upon a reasonable analysis of data collected on an ongoing basis.

JOEY R. DEEG v. BUREAU OF LAND MANAGEMENT, IBLA 94-858 , 141 IBLA 67 (Decided October 27, 1997)

The effectiveness of a BLM decision to round up and remove wild horses during the pendency of an appeal to the Board of Land Appeals is controlled by 43 C.F.R. § 4770.-3(c), not by 43 C.F.R. § 4.21-(a). Under 43 C.F.R. § 4770.3(c), the authorized officer may opt to place a wild horse removal decision into full force and effect, and it "take[s] effect on the date specified, regardless of an appeal."

WILD HORSE ORGANIZED ASSISTANCE and COMMISSION FOR THE PRESERVATION OF WILD HORSES v. BUREAU OF LAND MANAGEMENT, IBLA 95-312, 95-313, 141 IBLA 202 (Decided November 13, 1997)

If the Secretary (or his designate) determines, on the basis of information available, that an overpopulation of wild horses or burros exists on a given area of the public lands and that action is necessary to remove excess animals, the Secretary has authority to immediately remove excess animals from the range so as to achieve appropriate management levels, restore a thriving natural ecological balance to the range, and protect the range from the deterioration associated with overpopulation.

WILD HORSE ORGANIZED ASSISTANCE and COMMISSION FOR THE PRESERVATION OF WILD HORSES v. BUREAU OF LAND MANAGEMENT, IBLA 95-312, 95-313, 141 IBLA 202 (Decided November 13, 1997)

A BLM plan for removing wild horses from a herd management area will be affirmed where BLM has concluded that removal is necessary to restore the range to a thriving ecological balance, and the appellants have failed to demonstrate that BLM committed any error in reaching such conclusion.

AMERICAN MUSTANG & BURRO ASSOCIATION, INC. and DAVE HILLBERRY v. BUREAU OF LAND MANAGEMENT, IBLA 96-8, 144 IBLA 148 (Decided May 28, 1998)

A BLM decision apportioning the carrying capacity of an allotment between livestock and wild horses will be affirmed when an appellant urges another course of action but does not demonstrate that BLM's allocation is unreasonable.

NEVADA DIVISION OF WILDLIFE, ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 96-164, 145 IBLA 237 (Decided August 25, 1998)

A decision determining the appropriate management level for wild horses based on monitoring of forage condition, range usage, an inventory of wild horse numbers, and application of a desired stocking formula to determine grazing capacity may be affirmed where the record supports a finding that removal of horses in excess of the appropriate management level is necessary to restore the range to a thriving ecological balance.

COMMISSION FOR THE PRESERVATION OF WILD HORSES v. BUREAU OF LAND MANAGEMENT, IBLA 96-102 and 96-103, 145 IBLA 343 (Decided September 23, 1998)

A BLM plan for removing wild horses from a herd management area will be affirmed where BLM has concluded that removal is necessary to restore the range to a thriving ecological balance, and the appellants have failed to demonstrate that BLM committed any error in reaching such conclusion.

TONI HUTCHESON MOORE ET AL., and AMERICAN MUSTANG & BURRO ASSN., INC. v. BUREAU OF LAND MANAGEMENT, IBLA 97-541 and 97-547, 146 IBLA 168 (Decided October 29, 1998)

If the Secretary (or his designate) determines, on the basis of information available, that an overpopulation of wild horses or burros exists on a given area of the public lands and that action is necessary to remove excess animals, the Secretary has authority to immediately remove excess animals from the range so as to achieve appropriate management levels, restore a thriving natural ecological balance to the range, and protect the range from the deterioration associated with overpopulation.

WILD HORSE SPIRIT LIMITED v. BUREAU OF LAND MANAGEMENT, IBLA 96-39, 147 IBLA 317 (Decided February 18, 1999)

If the Secretary (or his designate) determines, on the basis of information available, that an overpopulation of wild horses or burros exists on a given area of the public lands and that action is necessary to remove excess animals, the Secretary has authority to immediately remove excess animals from the range so as to achieve appropriate management levels, restore a thriving natural ecological balance to the range, and protect the range from the deterioration associated with overpopulation.

REDWINGS HORSE SANCTUARY and ANIMAL PROTECTION INSTITUTE OF AMERICA v. BUREAU OF LAND MANAGEMENT, IBLA 97-199 and 97-200, 148 IBLA 61 (Decided March 18, 1999)

A BLM decision amending a wild horse area management plan will be upheld where the decision is predicated on a reasoned analysis of monitoring data such as grazing utilization, trend in range condition, actual use, and other factors which demonstrate that reduction of the appropriate management level will restore the range to a thriving natural ecological balance and prevent a deterioration of the range, in accordance with sec. 3(b) of the Wild Free-Roaming Horses and Burros Act, as amended, 16 U.S.C. § 1333(b) (1994).

AMERICAN HORSE PROTECTION, INC. AND JOEY R. DEEG v. BUREAU OF LAND MANAGEMENT, IBLA 93-71 and 94-284, 134 IBLA 24 (Decided October 3, 1999)

A BLM decision authorizing the removal of wild horses determined to be excess from certain areas of public land based on an appropriate management level which will avert deterioration of the range and preserve a thriving natural ecological balance in accordance with section 3(b) of the Wild Free-Roaming Horses and Burros Act, as amended, 16 U.S.C. § 1333(b) (1994), will be upheld where the record demonstrates that the decision is based upon a reasonable analysis of data collected on an ongoing basis.

ANIMAL PROTECTION INSTITUTE OF AMERICA, ET AL. v. BUREAU OF LAND MANAGEMENT, IBLA 96-489, 96-490 and 96-492, 151 IBLA 396 (Decided February 15, 2000)

15.2 Animal Care and Placement

BLM may properly cancel private maintenance and care agreements for wild horses and repossess the horses when there is sufficient evidence of improper care of the adopted animals to establish that the adopter violated the terms of the agreement.

FREDDIE R. MASON v. BUREAU OF LAND MANAGEMENT, IBLA 92-259, 126 IBLA 28 (Decided April 13, 1993)

The Wild Free-Roaming Horses and Burros Act authorizes the Secretary to make excess wild horses available for private maintenance and care by qualified individuals. An applicant must have no prior conviction for inhumane treatment of animals or for violation of the Act or its implementing regulations.

MARVIN COOK v. BUREAU OF LAND MANAGEMENT, IBLA 91-299, 126 IBLA 158
(Decided May 10, 1993)

A person who has expressed an intent to commercially exploit an animal after receiving title is not a qualified applicant. When determining whether an applicant is qualified it is proper for BLM to ascertain an applicant's long-term intent in order to assure that the horse's humane treatment and care will continue after title transfers.

MARVIN COOK v. BUREAU OF LAND MANAGEMENT, IBLA 91-299, 126 IBLA 158
(Decided May 10, 1993)

A BLM decision rejecting an application to adopt a wild horse on the ground that an applicant has violated a regulation implementing the Wild Free-Roaming Horses and Burros Act will be set aside if the applicant has not been convicted of the violation as provided in 43 CFR 4750.3-2(a)(2), and

a substantial issue exist as to an applicant's responsibility for the violation. The regulation contemplates that issues of culpability will be resolved in a proceeding that would lead to a conviction rather than an appeal to this Board.

MARVIN COOK v. BUREAU OF LAND MANAGEMENT, IBLA 91-299, 126 IBLA 158
(Decided May 10, 1993)

BLM properly cancelled a private maintenance and care agreement for a wild or free-roaming burro upon receiving proof that the animal subject to the agreement was in a deteriorated condition. Evidence offered by the burro's custodian to establish that a genetic defect was the cause of the burro's observed hoof condition was not adequate to overcome contrary medical evidence based on an actual examination of the adopted burro where the evidence of genetic defect offered by the adopter related to other animals not covered by the maintenance agreement.

JOHN P. WILEY v. BUREAU OF LAND MANAGEMENT, IBLA 90-238, 126 IBLA 261
(Decided June 2, 1993)

BLM properly canceled a private maintenance and care agreement for three wild horses and took possession of a remaining wild free-roaming horse where the record established that the adopter violated the terms of his agreement by selling the other two horses before title to them was issued by BLM.

DARBY L. RYLAND v. BUREAU OF LAND MANAGEMENT, IBLA 90-164, 126 IBLA 371
(Decided June 30, 1993)

The Private Maintenance and Care Agreement and 43 CFR 4750.4-1(e) require financially responsible adopters to assure the proper care and treatment of horses covered by the Private Maintenance and Care Agreement. When the person providing care for an animal being adopted for the adopting party informs BLM that the person adopting the animal has not paid care and maintenance bills, and that the person providing care will no longer care for the animal, BLM is justified in cancelling the Agreement and repossessing the animal.

MARK L. WILLIAMS v. BUREAU OF LAND MANAGEMENT, IBLA 93-72, 130 IBLA 45
(Decided July 12, 1994)

A BLM decision cancelling private maintenance and care agreements and repossessing a wild burro and a wild horse is properly affirmed where the evidence establishes that the adopter violated the adoption agreement and the applicable regulation requiring adopter to notify BLM within 7 days of discovery of an animal's escape; that a subsequent adoption was obtained without notice to BLM of the impoundment by animal control authorities of the escaped animal; and the record indicates that the animals were maintained under conditions which threatened their welfare.

LARRY PULLEY v. BUREAU OF LAND MANAGEMENT, IBLA 91-357, 131 IBLA 7
(Decided September 22, 1994)

A BLM decision notifying the adopter that his wild horses had been repossessed and cancelling his private maintenance and care agreement will be reversed where the record on appeal contains

insufficient evidence of improper care or abandonment of the adopted animals or any other failure to comply with the terms of the agreement sufficient to justify such action.

NOEL BENOIST v. BUREAU OF LAND MANAGEMENT, IBLA 92-588, 131 IBLA 138
(Decided October 31, 1994)

It is error for BLM to repossess a wild horse and allow it to be readopted prior to notice to the original adopter of the repossession of the horse and cancellation of the private maintenance and care agreement. Such action by BLM defeats the ability of the adopter to reclaim the repossessed animal through the administrative review process.

NOEL BENOIST v. BUREAU OF LAND MANAGEMENT, IBLA 92-588, 131 IBLA 138
(Decided October 31, 1994)

Under 43 CFR 4770.3(b), stays of decisions taking possession of wild horses and canceling private maintenance and care agreements could not be granted and the decisions were properly affirmed when there was admitted failure to comply with animal care instructions issued by the authorized officer pursuant to 43 CFR 4760.1(d) after the horses were found in a deteriorated condition by a BLM inspection.

WILLIAM J. AHRNDT ET AL. V. BUREAU OF LAND MANAGEMENT, IBLA 95-209
and 95-210, 132 IBLA 126 (Decided March 6, 1995)

BLM properly canceled a private maintenance and care agreement and took possession of wild horses when the adopter failed to produce the horses for inspection within 7 days of receipt of a written request as required by his agreement and 43 CFR 4750.4-(c) and 4770.1(g).

JOE PEEPERS v. BUREAU OF LAND MANAGEMENT, IBLA 94-339, 137 IBLA 324
(Decided 1996)

An application to adopt wild and free-roaming horses under 43 CFR Subpart 4750 is properly rejected where the decision is supported by the regulations and observations of qualified BLM personnel, and the party challenging the determination has not shown it to be unreasonable or improper.

JOHN LINJATIE v. BUREAU OF LAND MANAGEMENT, IBLA 93-299, 15 IBLA 390
(Decided January 22, 1997)

A Private Maintenance and Care Agreement for wild horses is properly cancelled and the horses are properly repossessed by the Federal Government when there is sufficient evidence of improper care of the adopted horses to establish that the adopter violated the terms of the Agreement by "inhumanely treating" the horses, by allowing them to suffer stress and injury owing to action or failure to act that was not compatible with animal husbandry practices accepted in the veterinary community.

LARRY VANDEN HEUVEL v. BUREAU OF LAND MANAGEMENT, IBLA 95-78, 145
IBLA 309 (Decided September 17, 1998)

When BLM cancels a Private Maintenance and Care Agreement, the adopter has the burden of establishing that BLM's action was improper. The adopter's assertions that the horses were well maintained, together with statements of third parties attesting to the good physical appearance of the horses, are insufficient to overcome physical evidence of substandard care and health problems.

LARRY VANDEN HEUVEL v. BUREAU OF LAND MANAGEMENT, IBLA 95-78, 145 IBLA 309 (Decided September 17, 1998)

Under 43 C.F.R. § 4760.1(d), BLM has the discretionary authority to give an adopter of wild horses reasonable time to complete required corrective actions in lieu of immediate repossession of the horses and cancellation of the Private Maintenance and Care Agreement, or repossess the horses immediately. If the record establishes that some of the horses were suffering from severe hoof problems and all of the horses were kept in substandard facilities, BLM may properly repossess and cancel the Agreement without allowing for corrective action.

LARRY VANDEN HEUVEL v. BUREAU OF LAND MANAGEMENT, IBLA 95-78, 145 IBLA 309 (Decided September 17, 1998)

A BLM decision cancelling a private maintenance and care agreement will be reversed where the record on appeal contains insufficient evidence of improper care or abandonment of the horse covered by the agreement or the existence of any other failure to comply with the terms of the agreement sufficient to justify such action.

JOHN SAMPSON v. BUREAU OF LAND MANAGEMENT, IBLA 96-530, 150 IBLA 92 (Decided August 17, 1999)

A BLM decision canceling a private maintenance and care agreement and repossessing a wild horse is properly affirmed where the evidence establishes that the adopter violated the adoption agreement by transferring the horse to another party for more than 30 days without notifying the authorized officer.

STEFANIE LEE v. BUREAU OF LAND MANAGEMENT, IBLA 97-502, 151 IBLA 1 (Decided October 14, 1999)

When BLM cancels a Private Maintenance and Care Agreement, the adopter has the burden of establishing that BLM's action was improper.

STEFANIE LEE v. BUREAU OF LAND MANAGEMENT, IBLA 97-502, 151 IBLA 1 (Decided October 14, 1999)

Where an adopter, over a 8-month period following the implementation of a private maintenance and care agreement, failed to provide shelter for adopted horses as required by that agreement, the return of the horses to the adopter is properly conditioned upon a showing that she has, in fact, provided shelter as required.

JULIE R. HAYSLIP v. BUREAU OF LAND MANAGEMENT, IBLA 2000-242, 155 IBLA 315 (Decided September 5, 2001)

BLM improperly cancelled a private maintenance and care agreement for wild horses and took immediate possession of the horses on the basis that the adopter had failed to provide adequate shelter and feed for her adopted horses, where BLM did so (1) during the period of an indefinite extension of time granted to the adopter to provide shelter without providing notice that the period for compliance had ended and that the horses were about to be seized; and (2) on the strength of an unconfirmed report by a third party that the horses were about to be denied feed.

JULIE R. HAYSLIP v. BUREAU OF LAND MANAGEMENT, IBLA 2000-242, 155 IBLA 315 (Decided September 5, 2001)

16. Grazing Leases (Section 15)

16.1 General

A BLM decision concerning grazing privileges will not be set aside if it is reasonable and substantially complies with the provisions of the Federal grazing regulations found at 43 C.F.R. Part 4100 (1992). The burden is on the objecting party to show by a preponderance of the evidence of record that a decision is in error.

DUNCAN MACKENZIE v. BUREAU OF LAND MANAGEMENT, IBLA 94-871, 140 IBLA 192 (Decided September 8, 1997)

Editor's Note: This decision refers to leases but the issue appears to be issuance of a grazing permit not a grazing lease.

16.2 Applications

When the record supports a finding that the grazing lessee did not lose control of the base property to which his grazing preference was attached, an Administrative Law Judge's decision setting aside a Bureau of Land Management decision denying an application for a grazing lease in part and reducing grazing preference and AUM's will be affirmed on appeal.

D. RAY GORDON v. BUREAU OF LAND MANAGEMENT IBLA 94-194, 140 IBLA 112 (Decided August 26, 1997)

Editor's Note: This decision refers to leases but the issue appears to be issuance of a grazing permit not a grazing lease.

| | | |
|-------------|--------------------------------------|-----------------|
| 16.3 | Apportionment of Land | Reserved |
| 16.4 | Assignment | Reserved |
| 16.5 | Cancellation or Reduction | Reserved |
| 16.6 | Preference Right Applications | Reserved |
| 16.7 | Renewal | |

An administrative law judge's dismissal of a grazing appeal on the grounds that the decision appealed was not subject to appeal will be reversed, and the case remanded for hearing where the action appealed was a final decision that may have modified the terms and conditions of the grazing lease or created a grazing system outside the scope of that authorized by an Environmental Assessment.

NATIONAL WILDLIFE FEDERATION ET AL. v. BUREAU OF LAND MANAGEMENT,
IBLA 95-475, 145 IBLA 379 (Decided September 24, 1998)