

the transfer of grazing preference to ensure that all interests in range improvements have been assigned to the transferee.

The amendment does not change agreements currently in effect. The amendment also clarifies that permanent water improvement projects will be authorized through cooperative range improvement agreements.

Section 4120.3-3, Range improvement permits, is amended to make it clear that a permittee or lessee may hold title to removable livestock handling facilities and to temporary improvements such as troughs for hauled water or loading chutes. The amendment will not affect ownership or rights currently held in a range improvement.

The final rule provides that BLM may mediate disputes when necessary about reasonable compensation for the operation and maintenance of facilities when another operator is authorized temporary use of forage that the preference permit holder cannot use. Finally, the rule removes as unnecessary the provision that permittees or lessees can control their livestock's use of ponds or wells.

A new section § 4120.3-8, Range improvement fund, is added to address the distribution and use of the "range betterment" funds appropriated by Congress through section 401(b) of FLPMA for range improvement expenditures by the Secretary. The range betterment fund has been called the range improvement appropriation by Congress, and is known by that title in BLM. The final rule provides for distribution of the funds by the Secretary, with one-half of the range improvement fund to be made available to the State and District from which the funds were derived. The remaining one-half is to be allocated by the Secretary on a priority basis. All range improvement funds will be used for on-the-ground rehabilitation, protection and improvements of public rangelands.

The final rule further clarifies that range improvement includes activities such as planning, design, layout, modification, as well as maintaining, monitoring and evaluating the effectiveness of specific on-the-ground range improvements in achieving resource condition and management objectives.

The final rule also requires consultation with affected permittees, lessees, and the interested public during the planning of range development and improvement programs. RACs will also be consulted during the planning of range development and improvement programs, including the development of

budgets for range improvement and the establishment of range improvement priorities.

Section 4120.3-9, Water rights for the purpose of livestock grazing on public lands, is added to provide consistent direction for BLM regarding water rights on public lands for livestock watering purposes. This section provides that the United States will acquire, perfect, maintain, and administer any rights to water obtained on public land for livestock watering on public land in the name of the United States to the extent allowed by State law.

The rule adopted today will be prospective. The final rule does not create any new Federal reserved water rights, nor will it affect valid existing water rights. The provisions of this final rule are not intended to apply to the perfection of water rights on non-Federal lands. Any right or claim to water on public land for livestock watering on public land by or on behalf of the United States will remain subject to the provisions of 43 U.S.C. 666 (the McCarran Amendment) and section 701 of FLPMA (43 U.S.C. 1701 note; disclaimer on water rights). Finally, the final rule does not change existing BLM policy on water rights for uses other than public land grazing, such as irrigation, municipal, or industrial uses.

Section 4120.5 is added to recognize and encourage cooperation with, among others, State, county, Indian tribal, and local government entities and Federal agencies.

Section 4120.5-1, Cooperation with State, county, and Federal agencies, is amended to recognize existing cooperation with State cattle and sheep boards, county and local noxious weed control districts, and State agencies involved in environmental, conservation, and enforcement roles related to these cooperative relationships.

#### Subpart 4130—Authorizing Grazing Use

This section is reordered to follow a more logical sequence. This discussion will use the new numbers and cross reference the old numbers. A table showing old and new numbers is included in the section-by-section discussion of this subpart.

Section 4130.1, Applications, is added. This action merely adds a title for purposes of the reorganization of the subpart.

Section 4130.1-1, Filing applications, is renamed from the proposed "Applications" and amended slightly to accommodate the new category of use, conservation use, which is adopted in this final rule.

Section 4130.1-2, Conflicting applications, is amended to add criteria to be considered in granting a use authorization or permit or lease. The rule incorporates the history of applicants' and affiliates' compliance with the terms and conditions of Federal and State grazing permits and leases and demonstrated stewardship of the public lands as criteria for granting permits or leases where there is more than one qualified applicant.

Section 4130.2, Grazing permits or leases, is amended so that permits and leases will continue to be offered for 10-year terms except in specified circumstances. The final rule also clarifies that all grazing permits and leases issued, including the transfer or renewal of permits and leases, will include terms and conditions addressing the fundamentals of rangeland health and standards and guidelines proposed under subpart 4180, as well as terms and conditions establishing allowable levels, seasons and duration of use, and other factors that will assist in achieving management objectives, provide for proper range management, or assist in the orderly administration of the public rangelands. The final rule also provides that the authorized officer must consult with interested parties prior to the issuance or renewal of grazing permits and leases and prohibits the offering or granting of permits and leases to applicants who refuse to accept the terms and conditions of the offered permit or lease.

The final rule clarifies the process of application for and granting of conservation use and temporary nonuse. Conservation use is established as one of the allowable uses for which a permit or lease may be granted when it is in conformance with the applicable land use and activity plans and the appropriate standards and guidelines.

Forage made available as a result of temporary nonuse may be authorized for temporary use by another operator. Forage used for conservation purposes would not be available to other livestock operators. The procedures guiding approval of nonuse have been developed in response to a recommendation from the March 19, 1986, OIG's review of the grazing management program.

Section 4130.3, Terms and conditions, is amended through a minor addition to reflect the requirement to conform with the fundamentals of rangeland health and standards and guidelines of subpart 4180.

Section 4130.3-1, Mandatory terms and conditions, is amended through minor additions and deletions which