

fully consistent with the requirements of governing statutes. In fact, conservation use includes a variety of activities to improve rangeland conditions. Because the land and the forage involved are actively being devoted to accomplishing specific conservation-oriented objectives, they are deemed actively used. The concept of conservation use, and its application to this program, are discussed more fully at § 4130.2.

In general, commenters expressed some confusion regarding application of the concepts of suspension and temporary non-use under the proposed definitions of these terms. In particular, some commenters were concerned that the definitions might be used by BLM to restrict active use.

*Temporary nonuse* and *suspension* remain options under the rule finalized today. Temporary nonuse is for the convenience of a permittee's or lessee's livestock operation and must be included as a part of his or her application each year. Therefore, BLM does not believe temporary nonuse should be considered active use. The BLM will authorize changes in temporary nonuse from year to year, but temporary nonuse may only be approved by the authorized officer for up to three consecutive years. With regard to changes in use initiated by the permittee or lessee, the concept of temporary nonuse is expected to continue as the common practice used to respond to fluctuations in the weather, the livestock market or other factors beyond the control of the operator.

Suspension of grazing use is initiated by the authorized officer, and may be agreed to by the permittee or be the result of a decision by the authorized officer. It results, for example, from situations requiring a reduction of use of the rangeland to protect the resource or where there has been noncompliance. See also the discussions of subparts 4110 and 4130.

Regarding *active use*, BLM intends to continue allowing changes in active use from year to year, depending on conditions. The authorized officer can adjust active use and other factors under a permit or lease *as long as the changes are within the terms and conditions of the permit or lease*. If the authorized officer determines that changes in use must be made outside the terms and conditions, it will be done in consultation with the permittee or lessee, the State and other interested parties.

Numerous comments were received on proposed changes to the definition of "grazing preference," including the

addition of the term "preference." Many commenters interpreted the proposed changes to mean that preference was being abolished. Others were concerned that unless preference refers to a specified quantity of forage, ranching operations would be negatively impacted. They stated that preference, tied to a specific amount of AUMs, adds value and stability to ranching operations, for example, by enhancing the operator's ability to borrow money. They also maintained that a preference is a property right and that the proposed rule could result in a "taking." And some commenters expressed the view that the proposed definition excluded owners of water or water rights and that such owners deserve priority consideration.

The Department has changed "grazing preference" to *preference or grazing preference* because the terms are used interchangeably and to clarify that the term refers only to a person's priority to receive a permit or lease, and not to a specific number of AUMs. The term "preference" was used during the process of adjudication of available forage following the passage of TGA to establish an applicant's relative standing for the award of a grazing privilege. At one time in the evolution of grazing administration preference was the amount of use expressed in AUMs that any particular permittee may have made during the "priority period"—the four years following passage of TGA. Preference is still defined as the relative standing of an applicant as reflected in historic records. Through time, common usage of the term evolved to mean the number of AUMs attached to particular base properties. But this usage dilutes the original statutory intent of the term as an indication of relative standing. The term "permitted use" captures the concept of total AUMs attached to particular base properties, and use of this term does not cancel preference. The change is merely a clarification of terminology. Issues of valuation of permits are discussed in more detail in the FEIS, and takings are discussed under "Takings" in the General Comments section of this preamble.

With regard to owners of water or water rights, the evolution of the term preference was similar. The status of waters and water rights that have been recognized as base property would not be affected by the rules adopted today. Waters recognized as base property would continue to qualify as such. The preference for receiving a grazing permit or lease that is attached to base property would not be affected. The Department believes that permitted use is the more

appropriate term to describe and quantify the number of AUMs of forage being allocated.

The comments on the proposed definition of *permitted use* were similar to those relating to preference. Some commenters asked what would happen to existing suspended AUMs under the new concept of permitted use. Some suggested that the proposed rule would limit grazing to what is stated in the land use plan, and that this would effectively cancel the grazing preference. These commenters suggested that the result would be significant reductions in grazing, and that the regulation would thus "take" the rights of the permittee.

As they did with respect to preference, some commenters stated that the definition of permitted use would result in reduced economic stability and would eliminate the collateral value of grazing permits. They expressed concern that the new definition would negatively affect property values and would adversely affect the ability of the permittee to obtain financing.

Commenters further opposed the use of the Land Use Plan to determine the permitted grazing use. They argued that these plans are not site specific documents, and that it is arbitrary for the Department to use them to make site specific decisions. They advocated that BLM use actual range condition and trend data on individual allotments to make these decisions. Some commenters took the position that the proposed definition of permitted use was contrary to statute.

*Permitted use* is an end product of the process of renewal or issuance of permits or leases. The land use plan provides guidance for allocation of land or forage to various uses on a regional scale. In the context of grazing, the land use plan sets the basic parameters by which permits and leases are issued or renewed. The objectives set in the plan are refined in the permit or lease, and permitted use is then expressed in AUMs of active use, including both livestock use and conservation use, as well as suspended use and temporary nonuse during a particular time period. This process and terminology are fully consistent with TGA, FLPMA and PRIA. The land use plan allows adjustment of the AUM amounts and seasons based on monitoring, other studies, or where changes in permitted use or terms and conditions are necessary to meet land use plan objectives. Where changes in the situation are major, it may be necessary to amend the land use plan, thus re-initiating the process. In the absence of a major change in the overall