

land use plans, activity plans and standards and guidelines. Finally, the proposed rule would have provided that forage made available as a result of temporary nonuse may be authorized for temporary use by another operator, although forage used for conservation purposes would not be available to other livestock operators.

The Department received numerous comments on this section. Major themes expressed in the comments were objections to conservation use, concern that expanded public involvement would negatively affect applicants for permits and leases, and opposition to what was perceived as provisions to limit permit and lease tenure.

Many commenters expressed objections to the proposal for conservation use, asserting that conservation use would hurt rangelands and should only be allowed where scientific data demonstrates that rest from grazing will benefit the land. Many held the perception that conservation use would be required by the authorized officer. Others thought the proposal would remove the requirement for base property, would jeopardize water rights, would result in inadequate maintenance of range improvements, would reduce tax revenues, should require payment of grazing fees for conservation use, would lead to reduced fees available for rangeland improvements, would adversely affect operators on isolated or scattered public lands, and would result in purchase of permits for conservation purposes. Others asserted that conservation use was a closing of the range that would require following certain notice and comment requirements of FLPMA, while still others thought conservation use should be offered for a term of greater than 10 years. Some commenters thought that allotments that are not being grazed should be retired or reallocated rather than placed in conservation use. Finally, some comments were concerned that conservation use would be severely limited by existing land use plans because the concept is new and has not been considered in past planning efforts.

Considerable concern was expressed about the addition of public involvement prior to the issuance or renewal of grazing permits and leases. Some commenters opposed the expansion of public input opportunities on the grounds that such opportunities are not part of making decisions in other resource programs and that grazing decisions would be unduly delayed to the detriment of the permittee and lessee. Others suggested that the requirement to consult should be

changed to "consultation, coordination, and cooperation." Some commenters believed that public input should only be made part of NEPA analysis and planning efforts affecting grazing. Others stated that authorized officers should be able to issue or renew permits to permittees who demonstrate good stewardship without input from the public.

Some commenters held the perception that the proposed rule would significantly affect the term of permits and were concerned that decisions to issue permits and leases for terms of less than 10 years could be subjective and unfair. Others asserted that terms of less than 10 years would be contrary to FLPMA while still others suggested that only five-year permits and leases should be offered to poor stewards. Still others suggested that permits should be made available for competitive bid at the end of the 10-year term.

A number of respondents suggested provisions pertaining to temporary nonuse should be more flexible, that decisions to not make livestock use should be left to the ranchers, and that leaving forage placed in nonuse available to other applicants would discourage good stewards from resting areas (i.e., others would reap the benefits of the range the permittee protected).

Some concern was expressed about the provisions allowing the authorized officer to deny permits and leases to applicants who refuse to accept terms and conditions. Some commenters believed this provision would result in "arbitrary" terms and conditions. Some commenters suggested a one year continuance of a permit where a permittee or lessee seeking renewal refuses to accept proposed terms and conditions in order to provide time to reach agreement.

Some reviewers suggested a review to determine "suitability" of the range to support livestock grazing should be required prior to permit or lease issuance and offered criteria to be followed. Some commenters asserted that issuance of 10-year permits requires NEPA compliance and should be subject to administrative appeal, and that annual authorizations to be made in the absence of approved activity plans should be subject to administrative appeal.

Many comments received in this section that pertained to the definition of "temporary nonuse" are addressed at § 4100.0-5.

The Department disagrees with assertions that conservation use will be detrimental to the health of the land. Existing data should generally be

adequate to make conservation use decisions. Conservation use will only be approved when it is found to be in conformance with land use plans and when it is determined it will promote resource protection or enhancement. This determination may require additional data in a few cases but the Department anticipates that available data and input from the permittee or lessee and others will usually prove sufficient. In addition, allotments placed in conservation use will be monitored in a fashion similar to other allotments to determine whether such use is consistent with standards and guidelines, and established resource management objectives. These requirements, as well as the 10-year limit on permits specifying conservation use, will discourage persons from obtaining permits for the sole purpose of placing them in conservation use.

Conservation use is requested by the permittee and approved by the authorized officer based on the provisions in the applicable land use plan. The BLM will not impose conservation use on an unwilling permittee. Conservation use must be included as part of an application by a permittee or lessee and must be found to be consistent with the land use plan. Appropriate terms and conditions will be attached to permits that specify conservation use, and permittees will be subject to all applicable requirements under the grazing program rules. This includes the requirement for base property. See discussion of § 4110.2-1.

Whether placing all or portions of allotments in conservation use will affect water rights will depend on the applicable State laws. However, resting grazing land is a commonly accepted grazing practice. Permit and lease holders possessing rights to water, as well as BLM, will need to consider potential effects on water rights in deciding to apply for or approve conservation use.

With regard to maintenance and operation of range improvements where the forage has been devoted to conservation use, the Department intends that in most, if not all, cases, permittees will be required to maintain improvements during the term of the conservation use. Requirements for maintaining range improvements will be made a condition of any permit specifying conservation use. Occasionally, where an existing improvement enhances neither the goals of conservation use nor the goals of grazing use or any other multiple use, maintenance may not be required. Depending upon the circumstances, specific activities to improve range