



WESTERN STATES WATER COUNCIL

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July 13, 2026

Mr. Steve Pearce, Director
Bureau of Land Management
U.S. Department of the Interior
1849 C Street NW, Room 5646
Washington, DC 20240

Sent via email: spearce@blm.gov

Re: Revision of Regulations for Grazing Administration, Exclusive of Alaska (Docket Number: BLM-2026-0001)

Dear Mr. Pearce,

The Western States Water Council (WSWC) is a bi-partisan government entity created by Western Governors in 1965. Our members are appointed by and serve at the pleasure of their respective Governors, advising them on water policy issues. Our mission is to ensure that the West has an adequate, secure, and sustainable supply of water of suitable quality to meet its diverse economic and environmental needs now and in the future. We offer the following comments in response to the proposed rule, Revision of Regulations for Grazing Administration, Exclusive of Alaska.

Water Quality

We appreciate the cooperative federalism intention behind the BLM's proposal to remove existing standards addressing water quality from the "fundamentals of land health" (sections 1700.1 and 4180.1). The BLM's acknowledgment that "water and air quality are best regulated by the state agencies responsible for enforcing state standards, alongside the Environmental Protection Agency (EPA), as appropriate" aligns closely with our views. As outlined in WSWC Position No. 531,¹ states are co-regulators under the Clean Water Act, which expressly recognizes, preserves, and protects "the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources" (CWA § 101(b)).

However, the practical implications of this shift warrant careful consideration. Under the current rule, BLM is required to ensure that grazing allotments are in "properly functioning physical condition" and that water quality "complies with state water quality standards." BLM should ensure that this requirement is retained in the final rule. WSWC encourages BLM to develop effective partnerships with western states to ensure that state water quality standards are achieved on BLM lands.

¹ <https://westernstateswater.org/wp-content/uploads/2025/04/531-CWA-Jurisdiction-25April2025.pdf>

Livestock grazing operations can significantly impact water quality, particularly through localized erosion and sedimentation within riparian corridors. While western states possess primary authority to protect waters of the state, their regulatory frameworks, technical capacity, and financial resources to address downstream water quality impacts from activities on federal lands vary. We encourage BLM to engage and coordinate closely with states to ensure that the changes proposed do not create unintentional gaps in monitoring and administration of water quality responsibilities.

Water Rights

As proposed, Section 4120.3-9(a) requires stockwater rights to be “acquired, perfected, maintained, and administered in the name of the United States,” to the extent allowed by state law, including through joint ownership agreements if necessary. Notably, the proposed regulation does not indicate what steps BLM and stockowners will need to take if state law does *not* allow the stockwater rights to be acquired by the United States, either with or without joint ownership agreements.

Under the prior appropriation doctrine, which governs water allocation in the West, water rights with the earliest or most senior dates will be fulfilled first, before later or more junior water rights. This priority system becomes critically important during times of drought, when the most junior water users in the system may not have a right to use any water at all. Additionally, perfecting and maintaining a water right depends on continuous beneficial use. Without this continuous use, a water right may be lost, including the priority date associated with that water right. Any new application for a replacement water right would necessarily have a more junior priority date. This can be a source of uncertainty and concern for federal agencies and stockowners; if the stockowner ceases watering the stock, or if a federal agency ceases using land for grazing, a valuable stockwater right may be lost through non-use.

Consequently, managing stockwater rights on federal lands creates unique legal complexities under state laws, particularly when the landowner (the Bureau of Land Management) and the livestock owner (the permittee grazing stock on federal lands) are distinct entities.² Many states require the holder of the water right to be the party that puts the water to beneficial use. More generally, a landowner will divert the water and put it to beneficial use at some specific location on the land. However, when a stockowner puts the water to beneficial use as drinking water for stock, some state laws view the stockowner as the appropriate holder of the water right.

Other issues arise related to the ownership of stock water rights. In some states, water is appurtenant to the land specified in the water right, which can mean that if grazing occurs on other land, the water right may require a change in the point of diversion or place of use following the procedures contained in state law. Federal agencies sometimes make changes to grazing allotment permits, and this can affect water rights. Changes in ownership of land, stock, grazing permits, and water rights can lead to inaccurate information about water rights that accumulates over time. Western states possess exclusive authority over the allocation and administration of water within their borders. Keeping this information accurate has an impact on the management of water for grazing and many other uses on federal and private lands.

² The WSWC explored the intricate relationship between state water law and federal grazing permits in our March 2021 report, *Stock Water Rights for Grazing Livestock on Federal Lands*. While this report was issued a few years ago and some state laws have subsequently changed, the foundational legal constraints, jurisdictional frictions, and cooperative solutions it highlights remain highly relevant to the BLM's current rulemaking efforts. <https://westernstateswater.org/wp-content/uploads/2021/06/WSWC-Grazing-Report.pdf>

Subsection (b) creates similar concerns with regard to changes to federal reserved water rights under Public Water Reserve 107 claims. To be valid, these claims must first be quantified and recognized through a state court water adjudication. Given the nature of those claims—that specific isolated water sources were being preserved for public watering—it is difficult to see how such a right could be changed at all. If a change is needed, it must follow state procedures to ensure existing water rights are protected from impairment or interference even though the right itself was created as part of a federal reservation.

Some states allow the BLM to be a voluntary co-owner or co-applicant on the water right alongside the permittee. However, in jurisdictions where a federal agency landowner is prohibited from acquiring stockwater rights—either individually or through joint ownership agreements—this regulation establishes a requirement that cannot be fulfilled. The proposed rule is silent on what steps the BLM and permittees must take when state law prevents federal acquisition of the right, such as allowing the permittee to continue to be the stockwater owner and still graze their stock on federal lands. Additionally, the rule is silent on whether a permittee who declines to be a co-owner or co-applicant under a *voluntary* state stockwater alternative will be allowed to continue to graze on federal lands. Essentially, the proposed rulemaking does not clearly answer the question of whether federal ownership of state stockwater rights is a condition of permitting for grazing on federal lands. It also creates additional risk. Inclusion of the phrase “maintained, and administered” in the name of the United States suggests that an existing right solely in the name of a stockowner would require a change in ownership, if allowed by state law, even when nothing in the federal / stockowner relationship has changed. If this result is intended, it is potentially an unconstitutional taking; if the suggestion is not intended, it may imply a threat of a taking.

The BLM should actively engage with state water administrators to understand and comply with the respective states’ stockwater laws, water quality standards, and to develop collaborative solutions. The WSWC urges the BLM to adopt rule language that encourages flexible, state-specific cooperative agreements. The WSWC supports language which encourages the establishment of cooperative mechanisms, such as Memoranda of Understanding (MOUs) and other administrative agreements.

Thank you for the opportunity to comment. The WSWC encourages the BLM to continue to proactively reach out to the states individually as water regulators through every stage of the rulemaking process. States remain uniquely positioned to address questions related to water management in the West.

Sincerely,



J.D. Strong
Executive Director