



United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Land Appeals
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06 LIVESTOCK COMPANY, *ET AL.*

IBLA 2014-287 & 2014-288

Decided April 18, 2018

Appeals from orders of Administrative Law Judge Robert G. Holt granting the Bureau of Land Management summary judgment in consolidated appeals from final grazing decisions of the Field Manager, Owyhee Field Office, BLM, renewing 10-year grazing permits with revised terms and conditions. ID-BD-3000-2013-006, *et al.*

Affirmed.

1. Administrative Procedure: Administrative Law Judges;
Administrative Procedure: Burden of Proof

In determining whether to grant or deny a motion for summary judgment, an administrative law judge must decide whether there are any issues of material fact in dispute and if the party moving for summary judgment is entitled to judgment as a matter of law. When a party appeals an ALJ's order on summary judgment to the Board, the party's burden is to show a disputed issue of material fact or an error of law in the ALJ's order.

2. National Environmental Policy Act of 1969

When BLM conducts an environmental assessment, it must include a brief discussion of appropriate alternatives to its proposed action. The identification of appropriate alternatives is informed by BLM's stated purpose and need for its proposed action. We review both BLM's definition of the purpose of the project and its identification of alternatives under a "rule of reason": if BLM's purpose is reasonable, we will uphold an

INDEX CODE:

40 C.F.R. § 1501.2

40 C.F.R. §§ 1502.4, .9, .14

40 C.F.R. §§ 1508.7, .9, .14, .25

43 C.F.R. §§ 4.474, .480

43 C.F.R. §§ 46.305, .310

43 C.F.R. § 1601.0-5 (2005)

43 C.F.R. § 4100.0-5 (2005)

43 C.F.R. § 4100.0-8

43 C.F.R. §§ 4110.1, .3, .3-2, .3-3 43 C.F.R. § 4130.3-1

43 C.F.R. §§ 4120.3-1, .3-2 43 C.F.R. §§ 4180.1, .2

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identification of alternatives that is reasonable in light of that purpose.

3. National Environmental Policy Act of 1969

When BLM decides to proceed with a proposed action after completion of an EA and a finding of no significant impact, its record must demonstrate that it considered all relevant matters of environmental concern, took a “hard look” at potential environmental impacts, and made a convincing case that no significant impact will result or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. We will find that BLM took a “hard look” when it conducted a thorough environmental analysis before concluding that no significant environmental impact exists, and its documentation of that analysis shows the bureau’s thoughtful and probing reflection of the possible impacts of its proposed action.

4. Grazing Permits and Licenses: Adjudication;
Grazing Permits and Licenses: Appeals;
Taylor Grazing Act

Under the Department of the Interior’s regulations, an ALJ and this Board may not set aside a BLM grazing decision if it is reasonable and represents substantial compliance with BLM’s regulations. The Board may reverse a BLM grazing decision only if it is not supportable on any rational basis. The burden is on the appellant to show that BLM’s decision is not reasonable or that it violates BLM’s regulations.

5. Federal Land Policy and Management Act of 1976:
Grazing Leases and Permits

BLM’s grazing regulations mandate that livestock grazing management actions must be in conformance with the governing land use plan. A management action is in conformance with a land use plan if it is specifically provided for in the plan, or if not specifically mentioned, is clearly consistent with the terms, conditions, and decisions of the approved plan. An appellant contending that a management action is inconsistent with a governing land use plan must show error in BLM’s determination that its action complies with the terms of the land use plan.

APPEARANCES: W. Alan Schroeder, Esq., and Brian D. Sheldon, Esq., Boise, Idaho, for 06 Livestock Company, *et al.*; Albert P. Barker, Esq., and Paul L. Arrington, Esq., Boise, Idaho, for Idaho Cattle Association, *et al.*; Robert B. Firpo, Esq., Anne Corcoran Briggs, Esq., and Scott W. Hulbert, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Boise, Idaho, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IDZIOREK

Grazing permittees 06 Livestock Company, Dennis Stanford, and Teo and Sarah Maestrejuan (Permittees), and the Idaho Cattle Association, Public Lands Council, Owyhee Cattlemen's Association, and National Cattlemen's Beef Association (Associations) appeal two orders issued by Administrative Law Judge (ALJ) Robert G. Holt. ALJ Holt reviewed three decisions issued by BLM's Owyhee Field Office in Idaho, which renewed the Permittees' grazing permits for 10 years with modified terms and conditions. In the orders on appeal, ALJ Holt granted BLM's motions for summary judgment, denied the Permittees' and Associations' motions for summary judgment, and dismissed the appeals.

SUMMARY

When a party appeals an ALJ's order on summary judgment to the Board, the party's burden is to identify a disputed issue of material fact or show an error of law in the ALJ's order. In this case, the appellants allege the existence of disputed issues of material fact making summary judgment inappropriate and requiring a hearing. The appellants also allege errors of fact and errors of law under the National Environmental Policy Act of 1969 (NEPA),¹ the Taylor Grazing Act (TGA),² and the Federal Land Policy and Management Act of 1976 (FLPMA).³

The appellants argue errors of material fact with respect to BLM's determination that the Castlehead-Lambert and the Swisher Springs Allotments do not meet several of the Idaho Standards for Rangeland Health and Guidelines for Livestock Grazing Management (Idaho S&Gs). Specifically, the appellants allege that there are disputed issues of material fact with respect to whether grazing is a significant factor in failing to meet one of the standards, whether the Allotments are meeting, or making significant progress in meeting, several other standards, and whether BLM's analysis of one of the standards is a permissible application of Idaho's water quality standards. But in each instance, the appellants have not

¹ 42 U.S.C. §§ 4321-4370m-12 (2012).

² 43 U.S.C. §§ 315-315r (2012).

³ 43 U.S.C. §§ 1701-1787 (2012).

shown either the existence of a dispute that was not adequately explained by BLM and the ALJ or that any disputed fact might alter the outcome of the proceedings. Because we find no disputed issue of material fact, we conclude that the ALJ properly adjudicated the case on the basis of the parties' motions for summary judgment.

The appellants assert that BLM violated NEPA by not analyzing a reasonable range of alternatives and not taking a hard look at the impacts of its decision on socioeconomics and wildfire management. In an environmental assessment (EA), BLM must include a brief discussion of appropriate alternatives that is reasonable in light of the purpose of the proposed action. The purpose of BLM's action in this case is to provide for livestock grazing opportunities on public lands where consistent with meeting management objectives, including the Idaho S&Gs. The appellants did not show that implementation of range improvements or targeted grazing will accomplish the intended purpose of the action, and they did not show error in the ALJ's decision that BLM considered a reasonable range of alternatives under NEPA.

When BLM decides to proceed with a proposed action after completion of an EA, its record must demonstrate that it considered all relevant matters of environmental concern, took a "hard look" at potential environmental impacts, and made a convincing case that no significant impact will result. BLM examined the social and economic effects of each alternative on each allotment and not only acknowledged, but attempted to quantify, possible detrimental effects. Also, BLM examined the connection between grazing and wildfires in several parts of its EA and explained the limitations on its analysis due to the variables involved in wildfire management and the purpose of the proposed action to renew grazing permits. Based on BLM's reasoned analysis, we find that the appellants have not shown error in the ALJ's conclusion that BLM took a hard look at the effects of reduced grazing on socioeconomics and wildfire management. The appellants' argument that BLM's analysis is insufficient amounts only to a difference of opinion, which does not show error by BLM or the ALJ.

The appellants argue that BLM violated the TGA and implementing regulations by failing to consider range improvements as "appropriate action" under the regulations, by failing to take action only on the pastures within the Allotments where Idaho S&Gs were not met, and by failing to transfer the decrease in active-use Animal Unit Months (AUMs) to suspended AUMs. First, because neither BLM's regulations nor the Idaho S&Gs direct BLM to consider implementing range improvements in every case, BLM was not required to consider range improvements as appropriate action on the Allotments. Second, although BLM assessed the public lands on the Allotments on a pasture-specific level, the regulations do not require pasture-specific management; instead, BLM may manage on an allotment level. Third, the appellants have not shown that BLM's decision not to transfer the

decrease in AUMs to suspended AUMs violates BLM's regulations, and they have not shown that BLM's refusal to suspend the AUMs fails to safeguard their grazing privileges under the TGA. The appellants have not shown that BLM's decision is not reasonable or that it violates the TGA or BLM's grazing regulations.

The appellants argue that BLM's decision to reduce grazing violates FLPMA because it is inconsistent with the governing land use plan—the Owyhee Resource Management Plan (RMP)—which the appellants contend requires BLM to implement range improvements, which could eliminate the need to reduce grazing. But the RMP does not require BLM to implement range improvements on every allotment, and BLM has broad discretion to manage grazing, including discretion to determine when it is appropriate to consider implementing range improvements. The appellants also argue that the RMP requires BLM to choose management actions specific to individual pastures within an allotment, but we find that allotment-level management is consistent with the direction given in the Owyhee RMP. We conclude that the appellants have not shown that BLM's decisions or the ALJ's Orders are inconsistent with the governing RMP.

Because the appellants have not identified a disputed issue of material fact or shown that the ALJ made an error of fact or law, we affirm the ALJ's Orders granting summary judgment to BLM and dismissing the appeals.

BACKGROUND

The Allotments and the Existing Grazing Permits

This appeal concerns applications for renewal of three grazing permits: Teo and Sarah Maestrejuan's permit for the Castlehead-Lambert Allotment, 06 Livestock Company's permit for the Castlehead-Lambert Allotment, and 06 Livestock Company's permit for the Swisher Springs and Swisher Fenced Federal Range (FFR) Allotments.

The Castlehead-Lambert Allotment is located approximately 60 miles southwest of Murphy, Idaho, and contains 45,826 acres of public land, 217 acres of state land, and 3 acres of private land.⁴ The Allotment is divided into 6 pastures for livestock management purposes.⁵ The Maestrejuans and 06 Livestock Company are

⁴ Owyhee River Group 1 Allotments Livestock Grazing Permit Renewal Environmental Assessment No. DOI-BLM-ID-B030-2012-0012-EA at 6 (January 2013) (BLM Exhibits (Ex.) Tab 1) (EA).

⁵ *Id.*

the only permittees allowed to graze livestock on public land in the Allotment.⁶ The terms and conditions of the existing permits for the Castlehead-Lambert Allotment authorized the Maestreuans to graze 238 cattle with a total of 1,323 active-use AUMs,⁷ and 06 Livestock Company to graze 334 cattle with a total of active-use 1,856 AUMs and 10 horses with a total of 58 active-use AUMs.⁸ The permits authorized the Permittees to graze their cattle from April 15 to September 30 and their horses from April 8 to September 30.⁹ BLM determined that the permits authorized a total of 3,244 active-use AUMs for the Castlehead-Lambert Allotment, but that in most years, the Permittees used fewer AUMs than authorized.¹⁰

The Swisher Springs Allotment is located adjacent to the Castlehead-Lambert Allotment and contains approximately 3,800 acres of public land.¹¹ The Swisher FFR Allotment is adjacent to the Swisher Springs Allotment and contains 153 acres of public land and 628 acres of private land.¹² The 06 Livestock Company is the only permittee authorized to graze the public lands in either of the Swisher Allotments.¹³ The terms and conditions of the existing permit for the Swisher Springs Allotment authorized 06 Livestock Company to graze 53 cattle from

⁶ BLM's Separate Statement of Facts, Castlehead-Lambert Allotment (BLM Castlehead-Lambert Statement of Facts) at 3.

⁷ Maestreuans's Grazing Permit (July 19, 2012) (BLM Ex. Tab 76); Collins Family LLC (from whom Maestreuans received grazing preference) Grazing Permit (July 29, 2010) (BLM Ex. Tab 108); 43 C.F.R. § 4100.0-5 (2005) (defining "Animal unit month (AUM)" as the amount of forage necessary to sustain one cow or its equivalent for one month). BLM amended its grazing regulations in 2006, but the United States District Court for the District of Idaho enjoined the regulations from taking effect. *Western Watersheds Project v. Kraayenbrink*, 538 F. Supp. 2d 1302 (D. Idaho 2008), *aff'd in relevant part, vacated in part and remanded*, 632 F.3d 472 (9th Cir. 2011). All citations to the grazing regulations, unless otherwise noted, are to the 2005 regulations in effect before the 2006 amendments.

⁸ 06 Livestock Co. Grazing Permit (printed Feb. 13, 1997) (BLM Ex. Tab 109).

⁹ Maestreuans's Grazing Permit; 06 Livestock Co. Grazing Permit.

¹⁰ Notice of Field Manager's Final Decision to Maestreuans, Castlehead-Lambert Allotment at 7 (Apr. 5, 2013) (BLM Ex. Tab 8); Notice of Field Manager's Final Decision to 06 Livestock Company, Castlehead-Lambert Allotment at 7 (Apr. 5, 2013) (BLM Ex. Tab 8) (together, C-L Final Decisions); *see, e.g.*, Castlehead-Lambert Allotment Update, Actual Use (BLM Ex. Tab 119) (2011 actual use was 3,020 AUMs).

¹¹ EA at 7.

¹² *Id.*

¹³ BLM's Separate Statement of Facts, Swisher Springs & Swisher FFR Allotments (BLM Swisher Statement of Facts) at 2, 3.

April 15 to October 31.¹⁴ The permit authorized 348 active-use AUMs,¹⁵ but BLM determined that actual use was around 300 AUMs.¹⁶ The terms and conditions of the existing permit for the Swisher FFR Allotment authorized 06 Livestock Company to graze 15 cattle during the month of December, with 15 active-use AUMs.¹⁷

*BLM Idaho's Efforts to Renew Grazing Permits
Administered by the Owyhee Field Office*

In 2011, BLM began an effort to renew and analyze grazing permits on more than 80 grazing allotments managed by the Owyhee Field Office.¹⁸ To streamline the process, BLM divided the 80 allotments into smaller groups.¹⁹ The Castlehead-Lambert, Swisher Springs, Swisher FFR, and Garat Allotments formed Group 1.²⁰

To begin the permit renewal process, BLM asked those permittees who were interested in continued grazing to submit applications for grazing use.²¹ The Permittees submitted their applications for renewal, proposing to increase active-use AUMs on the Castlehead-Lambert Allotment from 3,244 to a total of 4,278, up to 760 cattle and 10 horses, and maintain the existing level of grazing at the Swisher Allotments.²²

¹⁴ Grazing Permit (printed Oct. 19, 2006) (BLM Ex. Tab 73).

¹⁵ *Id.*

¹⁶ Notice of Field Manager's Final Decision to 06 Livestock Company, Swisher Allotments at 6 (Apr. 5, 2013) (BLM Ex. Tab 7) (Swisher Final Decision); *see, e.g.*, Actual Grazing Use Report, 06 Livestock, Swisher Springs (Feb. 8, 2011) (BLM Ex. Tab 99) (329 AUMs used in 2011).

¹⁷ *Id.*

¹⁸ BLM Castlehead-Lambert Statement of Facts at 3; BLM Swisher Statement of Facts at 3; Letter to Interested Publics, Initiation of External Scoping for Grazing Permit Renewals (Oct. 17, 2011) (BLM Ex. Tab 74).

¹⁹ BLM Castlehead-Lambert Statement of Facts at 3; BLM Swisher Statement of Facts at 3.

²⁰ BLM Castlehead-Lambert Statement of Facts at 4; BLM Swisher Statement of Facts at 3.

²¹ Letter to Permittee (May 25, 2011) (BLM Ex. Tab 14).

²² Castlehead-Lambert Grazing Allotment, Permittee Proposed Adaptive Management Concept (Dec. 12, 2011) (BLM Ex. Tab 58) (proposing 4,223 cattle and 56 horse active-use AUMs from April 15-September 30); 06 Livestock Co. Application for Grazing Permit Renewal for Swisher Allotments (June 27, 2011) (BLM Ex. Tab 85) (proposing to continue existing grazing levels); *see* Final EA Appendices E and G (identifying the terms of these applications as Alternative 2).

After receiving the renewal applications, BLM began the scoping process for an EA and completed a rangeland health assessment (RHA) process for each Allotment.²³ To conduct the RHAs, BLM reviewed monitoring data and other information, visited the Allotments, analyzed resource issues, solicited information from the permittees and public, and convened an interdisciplinary team to determine whether the Allotments were meeting the standards set forth in the Idaho S&Gs, which serve as BLM Idaho's management goals "for the betterment of the environment, protection of cultural resources, and sustained productivity of the range."²⁴

Based on its analysis, BLM determined that the Castlehead-Lambert Allotment was meeting Idaho S&G 1 (Watersheds), but was not meeting Idaho S&Gs 2 (Riparian & Wetlands), 3 (Stream Channel/Floodplain), 4 (Native Plant Communities), 7 (Water Quality), and 8 (Special Status Species – Animals).²⁵ Idaho S&Gs 5 (Seedings) and 6 (Exotic Plant Communities) do not apply to the Castlehead-Lambert Allotment.²⁶ BLM determined that the Swisher Springs Allotment met Idaho S&Gs 1 and 4, but did not meet 2, 3, 7, and 8.²⁷ Again, Idaho S&Gs 5 and 6 did not apply.²⁸ BLM determined that only Idaho S&Gs 1, 4, and 8 applied to the Swisher FFR Allotment, and the Allotment met each of those standards.²⁹

BLM issued its scoping package to all Permittees and the interested public in January 2012³⁰ and issued its draft EA for public comment in September 2012.³¹

²³ BLM Castlehead-Lambert Statement of Facts at 4-5; BLM Swisher Statement of Facts at 4-5.

²⁴ BLM Castlehead-Lambert Statement of Facts at 5 (quoting Idaho S&Gs at 3 (BLM Ex. Tab 100)); BLM Swisher Statement of Facts at 5 (quoting Idaho S&Gs at 3).

²⁵ Rangeland Health Assessment and Evaluation Report (RHA), Castlehead-Lambert Allotment 13, 28, 34, 52, 57, 79 (January 2012) (BLM Ex. Tab 105).

²⁶ *Id.* at 53-55.

²⁷ RHA, Swisher Allotments 11, 15, 17, 29, 35, 43 (January 2012) (BLM Ex. Tab 13).

²⁸ *Id.* at 32, 33.

²⁹ *Id.* at 12, 15, 17, 31, 32, 33, 36, 44.

³⁰ Notice of Availability of Scoping Package (Jan. 27, 2012) (BLM Ex. Tab 21); Scoping Package (BLM Ex. Tab 22).

³¹ BLM Castlehead-Lambert Statement of Facts at 16, 18; BLM Swisher Statement of Facts at 8, 11; Owyhee Field Office Priority Owyhee River Allotments Grazing Permit Renewal, EA No. DOI-BLM-ID-B030-2012-0012-EA (BLM Ex. Tab 104) (Draft EA).

BLM analyzed five alternatives in the draft EA: (1) no action, which would maintain the current grazing levels; (2) the Permittees' proposed grazing levels; (3) a performance-based alternative, which would add performance-based terms and conditions (for example, vegetation heights to be maintained in sage-grouse habitat) to the existing authorizations; (4) a season-based alternative, which would identify seasons of use for each pasture and eliminate 1,143 active-use AUMs in the Castlehead-Lambert Allotment and 122 active-use AUMs in the Swisher Springs Allotment; and (5) a no-grazing alternative.³² After reviewing public comments, BLM issued the final EA in January 2013. In the final EA, BLM analyzed the same five alternatives in detail for each Allotment and considered additional alternatives that it did not analyze in detail.³³ BLM issued proposed decisions to each Permittee on January 28, 2013, in which it explained its proposed selection of Alternative 4, the season-based alternative.³⁴

BLM received several protests of the proposed decisions, including protests from the Permittees, who argued against reducing grazing on the Castlehead-Lambert and Swisher Springs Allotments.³⁵ The Permittees specifically protested BLM's selection of Alternative 4 and the associated terms and conditions.³⁶ The Permittees also protested BLM's decision not to consider range improvement projects and BLM's failure to disclose significant economic impacts to the Permittees from implementation of Alternative 4.³⁷ 06 Livestock Company did not protest any aspect of BLM's decision with respect to the Swisher FFR Allotment.³⁸

³² Draft EA at 11-18, 23-37, 48-58.

³³ EA at 12-25.

³⁴ Notice of Field Manager's Proposed Decision (Jan. 28, 2013) (BLM Ex. Tabs 5 and 6).

³⁵ See 06 Livestock Co. Protest for Swisher Allotments (Feb. 21, 2013) (BLM Ex. Tab 45); 06 Livestock Co. Protest for Castlehead-Lambert Allotment (Feb. 21, 2013) (BLM Ex. Tab 63); Maestreuans Protest for Castlehead-Lambert Allotment (Feb. 21, 2013) (BLM Ex. Tab 80).

³⁶ 06 Livestock Co. Protest for Swisher Allotments at 2; 06 Livestock Co. Protest for Castlehead-Lambert Allotment at 2; Maestreuans Protest for Castlehead-Lambert Allotment at 2.

³⁷ 06 Livestock Co. Protest for Swisher Allotments at 2, 3; 06 Livestock Co. Protest for Castlehead-Lambert Allotment at 3, 4; Maestreuans Protest for Castlehead-Lambert Allotment at 3, 4.

³⁸ 06 Livestock Co. Protest for Swisher Allotments at 1.

*BLM's Decisions to Renew the Permits under the Terms of the
Season-Based Alternative*

On April 5, 2013, BLM issued the final decisions for the Castlehead-Lambert and Swisher Allotments.³⁹ In the final decisions, BLM selected Alternative 4, the season-based alternative, for implementation.⁴⁰ The final decisions for the Castlehead-Lambert Allotment (one final decision for each permittee) reduced the number of cattle that could be grazed from 572 to 368, reduced AUMs from 3,244 active-use AUMs to 2,101 active-use AUMs, and made seasonal adjustments to the grazing schedule to rotate use among the six pastures.⁴¹ The final decision for the Swisher Allotments reduced the number of cattle that could be grazed on the Swisher Springs Allotment from 53 to 32, reduced the active-use AUMs from 348 to 210, and made seasonal adjustments to the grazing schedule to rotate use among the three pastures.⁴² The authorization for the Swisher FFR Allotment remained the same.⁴³

BLM attached two documents to its decisions. One attachment was a new Appendix O to the EA in which BLM “extended [its] socioeconomic analysis to the ranch level, conducting a partial-budgeting analysis of the impact of this decision on that part of [the permittees’] operation affected by this decision.”⁴⁴ BLM explained that it developed this analysis in response to information provided in the protests.⁴⁵ The second attachment was BLM’s summary of the protests to its proposed decisions and BLM’s responses to those protests.

Appeals to the ALJ and the ALJ's Orders Granting BLM Summary Judgment

The Permittees and the Associations appealed BLM’s decisions to the Departmental Cases Hearings Division. The Hearings Division granted BLM’s motion to consolidate the appeals of the Castlehead-Lambert Allotment decisions and the appeals of the Swisher Allotments decision, resulting in a consolidated case for each Allotment. In both consolidated cases, BLM filed motions for summary judgment against the Permittees and the Associations, and the Permittees and the Associations opposed BLM’s motions. In the consolidated Castlehead-Lambert Allotment case, the Permittees and the Associations each filed a motion for partial

³⁹ C-L Final Decisions; Swisher Final Decision.

⁴⁰ C-L Final Decisions at 13; Swisher Final Decision at 11.

⁴¹ C-L Final Decisions at 13-15.

⁴² Swisher Final Decision at 11-12.

⁴³ *Id.* at 11.

⁴⁴ C-L Final Decisions at 23; Swisher Final Decision at 20.

⁴⁵ C-L Final Decisions at 2, 23; Swisher Final Decision at 1-2, 20.

summary judgment, and BLM opposed those motions. In the consolidated Swisher Allotments case, the Associations filed a motion for partial summary judgment.

After reviewing the record and the pleadings of the parties, ALJ Holt granted BLM's motions for summary judgment against all appellants.⁴⁶ ALJ Holt reviewed the Permittees' assertions of disputed factual issues,⁴⁷ arguments that BLM violated the regulations implementing the TGA,⁴⁸ arguments that BLM violated NEPA and FLPMA,⁴⁹ and the Associations' claims that BLM's decisions amount to an unconstitutional taking.⁵⁰ ALJ Holt concluded that, for the Castlehead-Lambert Allotments, BLM complied with all of the requirements of the TGA, NEPA, and FLPMA, and for the Swisher Allotments, "either that BLM has complied" with those requirements "or the adverse parties have not proven their claims with objective evidence."⁵¹ Finding no genuine issue of material fact and that, as a matter of law, judgment for BLM is appropriate, ALJ Holt granted summary judgment for BLM and denied the Permittees' and the Associations' motions for summary judgment.

*The Permittees and Grazing Associations Appealed
the ALJ's Orders to the Board*

The Permittees and the Associations appealed ALJ Holt's Orders from the Hearings Division to the Board. We consolidated the appeals and granted the Permittees' petition for a stay of the effect of the Orders.⁵²

On appeal, the Permittees and the Associations again argue that genuine issues of material fact exist that should have prevented the ALJ from granting BLM summary judgment and that BLM violated the TGA, NEPA, and FLPMA. Specifically, the appellants argue that the ALJ erred in granting BLM summary judgment when there are genuine issues of material fact about whether failure to transfer active-use AUMs to suspended AUMs impaired the permittees' grazing preferences and whether BLM appropriately assessed whether the Allotments are

⁴⁶ ALJ's Order, Castlehead-Lambert Allotments, ID-BD-3000-2013-004, -005, -007, -008, -010, -011 (C-L Order) at 1; ALJ's Order, Swisher Allotments, ID-BD-3000-2013-006, -009, -012 (Swisher Order) at 1.

⁴⁷ C-L Order at 9-12; Swisher Order at 9-11.

⁴⁸ C-L Order at 12-18; Swisher Order at 11-18.

⁴⁹ C-L Order at 19-29, 29-33; Swisher Order at 18-26, 26-30.

⁵⁰ C-L Order at 33-34; Swisher Order at 30-31.

⁵¹ C-L Order at 34; Swisher Order at 31.

⁵² Order, Motion to Consolidate Granted; Extension of Time Granted (Oct. 16, 2014); Order, Petition for Stay Granted (Mar. 3, 2015).

meeting certain standards.⁵³ Under NEPA, the appellants argue that BLM did not consider a reasonable range of alternatives, including an alternative involving range improvement projects and an alternative that uses grazing for wildfire management, and failed to take a hard look at the impacts of reduced grazing on socioeconomics and wildfire management.⁵⁴ Under the TGA, the appellants argue that BLM violated its grazing regulations when it failed to consider range improvements as “appropriate action,” failed to use a pasture-specific management system, and failed to transfer the decrease in active-use AUMs to suspended AUMs.⁵⁵ Finally, under FLPMA, the appellants argue that BLM violated the governing land use plan when it failed to consider, even at a “minimal level,” range improvement projects.⁵⁶

PENDING MOTIONS

The parties filed motions to enlarge the number of pages they were permitted to submit in the statement of reasons, answer, and reply.⁵⁷ The Board grants those motions.⁵⁸

DISCUSSION

Burden of Proof on Appeal of a Summary Judgment Decision

[1] In determining whether to grant or deny a motion for summary judgment, an ALJ must decide whether there are any issues of material fact in dispute and if the party moving for summary judgment is entitled to judgment as a matter of law.⁵⁹ When a party appeals an ALJ’s order on

⁵³ Statement of Reasons by the Permittees and by the Associations (SOR) at 68-73.

⁵⁴ *Id.* at 30-54.

⁵⁵ *Id.* at 54-57, 60-68.

⁵⁶ *Id.* at 57-60.

⁵⁷ Motion to Enlarge the Number of Pages for Statement of Reasons by the Permittees and by the Associations (Nov. 17, 2014); BLM’s Motion to Exceed Page Limitations Regarding its Answer to Appellants’ Statement of Reasons (Jan. 20, 2015); Unopposed Motion to Enlarge the Number of Pages for Reply by the Permittees and by the Associations (Feb. 9, 2015).

⁵⁸ See 43 C.F.R. § 4.407 (Motions).

⁵⁹ *Quinex Energy Corp.*, 192 IBLA 88, 94 (2017)^a; see *Hanley Ranch Partnership*, 183 IBLA 184, 196 (2013)^b (“The [ALJ’s] task in considering the respective [motions for summary judgment] was to review the evidence in the administrative record and the submissions of each party, giving each the benefit of any reasonable inferences

a) GFS(O&G) 20(2017)

b) GFS(MISC) 2(2013)

summary judgment to the Board, the party's burden is to show a disputed issue of material fact or an error of law in the ALJ's order.⁶⁰ So in this case, the Board must determine whether the appellants have shown the existence of a disputed issue of fact that might alter the outcome of the proceedings or an error of law in the ALJ's decision.⁶¹

In a grazing appeal, if the ALJ determines that the permittees have identified a disputed issue of material fact, then the permittees would be entitled to a hearing before the ALJ under the TGA.⁶² We first examine whether the appellants have demonstrated the existence of a disputed issue of material fact.

The Appellants Have Not Identified a Disputed Issue of Material Fact Warranting a Hearing

The appellants argue that ALJ Holt erred in granting BLM summary judgment because there are genuine issues of material fact about the validity of BLM's RHAs and determinations.⁶³ The appellants assert issues of material fact with respect to BLM's determination that the Allotments do not meet Idaho S&Gs 2 (Riparian Areas and Wetlands), 3 (Stream Channel/Floodplain), 4 (Native Plant Communities), 7 (Water Quality), and 8 (Threatened and Endangered Plants and Animals).⁶⁴

1. There Is No Issue of Material Fact Regarding Whether Grazing Is a Significant Factor in Failing to Meet Idaho S&G 4

The appellants assert that the ALJ erred by upholding BLM's decision to reduce grazing when BLM admitted that current livestock levels and management practices were not a significant factor in the Castlehead-Lambert Allotment's failure to meet Idaho S&G 4 (Native Plant Communities).⁶⁵ The appellants argue that, "[i]f BLM concludes that current grazing levels are not the cause of failing to

to be drawn from such evidence, to reach conclusions about whether the specific facts enumerated by each were genuine, material, and undisputed.").

⁶⁰ *Quinex Energy Corp.*, 192 IBLA at 93; *K. John and M. Martha Corrigan v. BLM*, 190 IBLA 371, 380 (2017)^c; *Pete Stamatakis v. BLM*, 115 IBLA 69, 74 (1990)^d.

⁶¹ *Pete Stamatakis*, 115 IBLA at 74.

⁶² 43 U.S.C. § 315h (2012).

⁶³ SOR at 68.

⁶⁴ *Id.* at 69-73.

⁶⁵ *Id.* at 69-70.

c) GFS(MISC) 19(2017)
d) GFS(MISC) 47(1990)

meet a particular Standard, then BLM cannot conclude that reducing grazing levels is the appropriate 'effect' to ensure that Standards and Guidelines are met."⁶⁶

The appellants do not identify a disputed issue of fact; instead, they argue in effect that, based on an undisputed fact, BLM was not legally permitted to reduce grazing on the Allotment based on this standard. The appellants are correct that in its RHA determination for the Castlehead-Lambert Allotment, BLM concludes that the Allotment is not meeting Standard 4 and "[l]ivestock grazing management practices are not significant factors."⁶⁷ But the finding that grazing is not a significant factor in failing to meet the standard does not prevent BLM from reducing permitted grazing. BLM identified grazing as a significant factor in the Allotment's failure to meet four other standards and guidelines, so under BLM's grazing regulations, BLM was required to adjust grazing levels.⁶⁸ Consequently, not only have the appellants not identified a disputed issue of material fact, they have also not identified a legal error in the ALJ's finding with respect to Idaho S&G 4.

2. There Is No Issue of Material Fact Regarding Whether the Allotments are Meeting or Making Significant Progress in Meeting Idaho S&Gs 2, 3, 7, and 8

The appellants argue that they have raised a disputed issue of material fact about the validity of the data BLM used to support its finding that the Allotments are not meeting, or making significant progress in meeting, Idaho S&Gs 2 (Riparian Areas and Wetlands); 3 (Stream Channel/Floodplain); 7 (Water Quality); and 8 (Threatened and Endangered Plants and Animals).⁶⁹

The appellants first contend that ALJ Holt erred by not "not[ing] that the Appellants described how BLM's own [proper functioning condition (PFC)] data contradicts its rangeland health determination" with respect to Standards 2 and 3.⁷⁰

⁶⁶ *Id.* at 70.

⁶⁷ EA App. I at 9.

⁶⁸ *Id.* at 19 (determining that grazing management practices are significant factors in not meeting Idaho S&Gs 2, 3, 7, and 8); 43 C.F.R. §§ 4110.3-2(b) (BLM "shall reduce permitted grazing use" when it is not consistent with rangeland health standards), 4180.2(c) (BLM "shall take appropriate action" when grazing is a significant factor in failing to achieve rangeland health standards); Answer to Appellants' Statement of Reasons (Answer) at 57 (because grazing was a significant factor in not meeting four other standards, "BLM's selection of Alternative 4 and its corresponding reduction in grazing levels is still well supported").

⁶⁹ SOR at 70-71.

⁷⁰ *Id.*

In the rangeland health determinations, BLM concluded that neither the Castlehead-Lambert nor the Swisher Springs Allotment was meeting Standards 2 and 3 and that grazing livestock management practices are significant factors contributing to that failure.⁷¹ But according to the appellants, the RHA for the Castlehead-Lambert Allotment shows that, from 2002 to 2009, the springs BLM evaluated for PFC showed improvement, “indicat[ing] that significant progress is being made under current livestock management.”⁷²

Indeed, in the Castlehead-Lambert RHA, BLM stated that of the more than 30 springs on the Allotment, BLM visited 5 of them in both 2003 and 2009, and short-term indicators like stubble height and bank alteration showed an improvement.⁷³ While the data may indicate a positive trend, the appellants do not demonstrate that the trend constitutes “significant progress” toward achievement of the applicable standards or show that the standards were being met. Citing 2003 and 2009 data and other monitoring data, BLM concluded that, “[i]n general, the springs that are not fenced to exclude livestock are not meeting the standard, due to a high percentage of bare soil, heavy utilization of riparian-wetland vegetation, and shearing of wetland soils.”⁷⁴ Based on all available information, BLM concluded that the Castlehead-Lambert Allotment was not meeting the standard for riparian areas and wetlands.⁷⁵

While ALJ Holt did not expressly acknowledge the Permittees’ argument about the discrepancy they identified, there is no indication that he failed to consider it in determining that the Permittees had not shown error in BLM’s conclusion that the Allotments were not making significant progress toward meeting the standards. ALJ Holt described the Permittees’ argument about the “trend data,” particularly for Idaho S&G 2; he stated that BLM acknowledged that it would prefer to have had more trend data; and he recounted some of the data and expert opinions BLM cited for its conclusion that the Allotment did not meet the standards.⁷⁶ ALJ Holt concluded that, viewing the uncontroverted facts in the

⁷¹ EA App. I – RHA Determination for Castlehead Lambert Allotment at 3-8; EA App. K – RHA Determination for Swisher Allotments at 3-6.

⁷² SOR at 70-71 (quoting 06 Livestock Company’s Appeal and Petition for Stay in the Hearings Division at 17 (May 16, 2013) (citing EA App. I – RHA Determination for Castlehead Lambert Allotment at 21)).

⁷³ EA App. I – RHA Determination for Castlehead Lambert Allotment at 28 (Standard 2, Rationale for Evaluation Finding).

⁷⁴ *Id.* at 28-29.

⁷⁵ *Id.* at 29.

⁷⁶ C-L Order at 10.

record as a whole, there is a reasonable basis for BLM's conclusion.⁷⁷ The appellants have not shown error in the ALJ's analysis or conclusion, and particularly in light of BLM's acknowledgement of the data the appellants cite, we see no disputed issue of material fact warranting a hearing.

The appellants also assert that the ALJ erred by finding that the appellants did not support their argument "with admissible evidence, relying instead upon the arguments in its legal memoranda."⁷⁸ The appellants explain that their "Notices of Appeal and related documents" incorporated the professional findings of their range consultant, Dr. Chad Gibson, and rebut the opinion of BLM Fisheries and Riparian Specialist Bonnie C. Claridge.⁷⁹ The appellants specifically refer to a paragraph in the "Declarations and Conclusion" section of the Permittees' Statement of Reasons for Appeal in the Hearings Division, in which Mr. Gibson declared "that the opinions stated within the foregoing Statement of Reasons . . . are my opinions predicated upon my reliance upon the facts stated therein and my examination of . . . the Allotments over a period of years and are products of my experience and education"⁸⁰ Because their pleadings in the Hearings Division were based on expert opinion, the appellants argue that they did in fact present admissible evidence, not just legal arguments.

But even assuming, as the appellants argue, that "[f]or summary judgment purposes, the Permittees' Notice of Appeal is the equivalent of a separate declaration from the Permittees' range consultant,"⁸¹ there was nothing in their pleading with respect to the data underlying BLM's RHA determination that shows a disputed issue of material fact. The appellants' argument is that BLM needed trend data, and to the extent it had any, its data showed a trend toward improvement, indicating that the Allotments were making significant progress toward meeting the standards.⁸² But the appellants have not identified a requirement for BLM to have trend data. And while ALJ Holt acknowledged BLM's preference for more trend data, he found that the information BLM had available provided a reasonable basis for its conclusion that the Allotments were not making

⁷⁷ *Id.* at 11.

⁷⁸ SOR at 71 (quoting Swisher Order at 10); *see* C-L Order at 11 (finding that the Permittees had not "supported their claims with evidence sufficient to show error by BLM").

⁷⁹ *Id.*

⁸⁰ 06 Livestock Company's Appeal and Petition for Stay in the Hearings Division at 40.

⁸¹ Reply to BLM's Answer by the Permittees and by the Associations (Reply) at 24.

⁸² SOR 70-71; 06 Livestock Company's Appeal and Petition for Stay in the Hearings Division at 17.

significant progress towards meeting the standards. So BLM expressly acknowledged the data the appellants rely on, and the appellants have not otherwise presented facts undermining the basis for BLM's conclusions with respect to Idaho S&Gs 2, 3, 7, and 8. We conclude that the appellants have not shown the existence of a disputed issue of material fact warranting a hearing.

3. There Is No Issue of Material Fact Regarding Whether BLM's Analysis of Idaho S&G 7 is a Valid Application of Idaho's Water Quality Standards

Under Idaho S&G 7 (Water Quality), BLM must determine if surface and ground water on public lands comply with the State of Idaho's water quality standards.⁸³ Based on findings by the Idaho Department of Environmental Quality (IDEQ) and BLM monitoring, BLM concluded that the Castlehead-Lambert Allotment does not meet the standards, and livestock grazing management practices are a significant factor.⁸⁴ The appellants argue that BLM did not apply the correct water quality standards and ignored new data from IDEQ showing that the "vast majority" of stream segments in the Allotment were in compliance with the Idaho water quality temperature standard, presenting a disputed issue of material fact.⁸⁵

In his Castlehead-Lambert Order, ALJ Holt explained that, before June 2012, the IDEQ water quality standards for temperature were based on specific temperature criteria.⁸⁶ But between the time when BLM completed the RHA and issued its final grazing decisions to the Permittees on April 5, 2013, IDEQ published revised water quality standards for temperature.⁸⁷ The new standards were based on shade targets instead of temperature criteria.⁸⁸ The IDEQ explained on its website that the 2012 standards would not be effective until the Environmental Protection Agency (EPA) approves them, and it submitted the 2012 report to EPA in January 2014, after BLM's decisions.⁸⁹

While acknowledging BLM's concession that "it would have been better to update the RHA to analyze IDEQ's new standards," ALJ Holt concluded that the

⁸³ Idaho S&G at 7.

⁸⁴ EA App. I at 14-15.

⁸⁵ SOR at 73.

⁸⁶ C-L Order at 11.

⁸⁷ Owyhee River Watershed, Total Maximum Daily Load Temperature Addendum (June 2012) (BLM Ex. Tab 101) (TMDL Addendum).

⁸⁸ *Id.* at xiii; *see also* C-L Order at 11.

⁸⁹ Screen shot of IDEQ Water Quality website dated Feb. 4, 2014, at 1 (BLM Ex. Tab 101) (IDEQ Water Quality website).

use of the old standards is not material because IDEQ still considers the streams and rivers in the Allotment impaired.⁹⁰ Indeed, while IDEQ changed the rating of Beaver Creek and other headwater streams of the Owyhee River from “category 5” streams to “category 4a” streams, both categories indicate that the water quality is impaired and the streams do not meet one or more beneficial uses defined for the area.⁹¹ So the ALJ concluded that the Permittees may have identified a technical error in the RHA, but they did not show that the conclusions are incorrect or that any error compromises the integrity of BLM’s decisions.⁹²

The appellants argue that they “did in fact demonstrate that BLM’s failure to incorporate the most recent IDEQ water quality standards into its RHA[] produced an erroneous result,” quoting statements they made in their notice of appeal about IDEQ’s published 5-year review in 2009, in which it reported temperature improvement for Deep Creek, Red Canyon Creek, and their tributaries.⁹³ Also, the appellants state that current IDEQ data shows that only a handful of small sub-areas within those streams that are designated as “temperature impaired streams” are “areas of concern.”⁹⁴ But the appellants do not dispute that IDEQ still considers the streams impaired, and therefore they have not identified a disputed issue of material fact.

The appellants also argue that BLM’s determination for Idaho S&G 7 cannot be valid absent a determination by IDEQ that the standards are not met because BLM has no authority to regulate water quality in Idaho or to “enforce” state water quality standards; only IDEQ has that authority.⁹⁵ BLM agrees that it cannot enforce Idaho water quality standards and explains that its finding does not

⁹⁰ C-L Order at 11; *see* BLM C-L Motion for Summary Judgment at 19 (“BLM concedes that it should have updated the final EA to reflect the new category for Beaver Creek and other Owyhee River headwater streams. However, BLM did not become aware of this update until too late, and in any case, it does not change the fact that Beaver Creek is still a Category 4a impaired stream and that livestock grazing has the potential to impair it.”); BLM Swisher Motion for Summary Judgment at 19 (similar statement).

⁹¹ IDEQ Water Quality website at 2; TMDL Addendum at xiv (summary of assessment outcomes).

⁹² C-L Order at 11.

⁹³ SOR at 73 (quoting 06 Livestock Company’s Appeal and Petition for Stay in the Hearings Division at 18); Reply at 25.

⁹⁴ SOR at 73 (citing TMDL Addendum at 65); Reply at 25.

⁹⁵ SOR at 72 (citing I.C. §§ 39-3611 (development and implementation of TMDL process), 39-3622 (enforcement provisions); IDAPA 58.01.02.000 (IDEQ’s legal authority)).

constitute “enforcement.”⁹⁶ Rather, BLM uses the Idaho water quality standards as a measure of conditions requiring “appropriate action” under its grazing regulations.⁹⁷ The appellants have not shown that BLM exceeded its authority or otherwise made an error of law in this regard.

We find that the appellants have not shown the existence of a disputed issue of fact that might alter the outcome of the proceedings. We therefore conclude that the ALJ properly adjudicated this case on the basis of the parties’ summary judgment motions and briefs in opposition to summary judgment. Finding no disputed issue of material fact, the ALJ was not required to conduct an evidentiary hearing.⁹⁸ We now examine the appellants’ arguments that the ALJ committed errors of law in his Orders.

The Appellants Have Not Shown that the ALJ Erred as a Matter of Law

NEPA Arguments

The appellants argue that BLM did not consider a reasonable range of alternatives, as required by NEPA, because it did not consider range improvement projects or the use of grazing for wildfire management. The appellants also argue that BLM did not take a hard look at the impacts of its decisions on socioeconomics or wildfires.

1. BLM Considered a Reasonable Range of Alternatives

[2] When BLM conducts an EA, it must include a brief discussion of appropriate alternatives to its proposed action.⁹⁹ The identification of appropriate alternatives is informed by BLM’s stated purpose and need for its proposed

⁹⁶ Answer at 59.

⁹⁷ *Id.*; see 43 C.F.R. § 4180.1(c) (requiring BLM to take appropriate action when water quality does not comply with state water quality standards).

⁹⁸ See, e.g., *Dorothy Smith*, 44 IBLA 25, 29 (1979)^e (“It is well established that where there are no disputed questions of fact and the validity of a claim turns on the legal effect to be given facts of record . . . , no hearing before an Administrative Law Judge is required.”); *Independent Bankers Association of Georgia v. Board of Governors of Federal Reserve System*, 516 F.2d 1206, 1220 (D.C. Cir. 1975) (“[A]n agency is not required to conduct an evidentiary hearing when it can serve absolutely no purpose”); see also 43 C.F.R. § 4.474(c) (“The [ALJ] may consider and rule on all motions . . .”).

⁹⁹ See 40 C.F.R. § 1508.9(b); 43 C.F.R. § 46.310(a).

e) GFS(MIN) 106(1979) & GFS(O&G) 163(1979)

action.¹⁰⁰ We review both BLM's definition of the purpose of the project and its identification of alternatives under a "rule of reason": if BLM's purpose is reasonable, we will uphold an identification of alternatives that is reasonable in light of that purpose.¹⁰¹

BLM identified the purpose of its action as follows: "to provide for livestock grazing opportunities on public lands where consistent with meeting management objectives, including the Idaho [S&Gs]."¹⁰² The alternatives BLM analyzed in detail encompass its authorization of no grazing at all, a reduction of grazing in accordance with the season-based alternative (Alternative 4), the continuation of the current level of grazing, and an increase of grazing under the Permittees' proposals. BLM also considered alternatives that it did not analyze in detail, including the designation of areas of critical environmental concern, use of passive restoration, use of active restoration, and use of targeted grazing to manage wildfire fuels.¹⁰³

a. BLM Adequately Considered Range Improvement Projects

The appellants argue that BLM's selection of alternatives "intentionally avoids any alternative to remove/modify/construct (or a combination thereof) range improvements so as to fulfill both the 'Purpose' and the 'Need'."¹⁰⁴ The appellants contend that BLM is obligated to consider "all reasonable alternatives" and cannot ignore "obvious" alternatives.¹⁰⁵ If BLM chose not to consider range improvement projects, the appellants assert that BLM was required to explain why it did not consider them and to specifically state whether range improvements meet the

¹⁰⁰ *Western Watersheds Project (WWP)*, 191 IBLA 351, 357 (2017)^f ("The purpose and need of a proposal controls the selection of alternatives that BLM should analyze in the EA, because each alternative must meet the purpose and need for the proposal."); *Roseburg Resource Co.*, 186 IBLA 325, 336 (2015)^g ("[T]he purpose and need of a project drives the identification and choice of alternatives.").

¹⁰¹ *Roseburg Resource Co.*, 186 IBLA at 334; *Southern Utah Wilderness Alliance*, 182 IBLA 377, 390-91 (2012)^h; see *Grunewald v. Jarvis*, 776 F.3d 898, 904 (D.C. Cir. 2015) (explaining that the D.C. Circuit Court defers to the agency's reasonable definitions of objectives, and if the objectives are reasonable, the Court will uphold the selection of reasonable alternatives in light of the objectives).

¹⁰² EA at 8.

¹⁰³ *Id.* at 19-25.

¹⁰⁴ SOR at 38.

¹⁰⁵ *Id.* at 36 (citing *North Slope Borough v. Andrus*, 486 F. Supp. 326, 330 (D.D.C. 1979); *California v. Bergland*, 483 F. Supp. 465, 488 (E.D. Cal. 1980), *aff'd in part, rev'd in part*, *California v. Block*, 690 F.2d 753 (9th Cir. 1982)).

f) GFS(MISC) 28(2017)

g) GFS(MISC) 17(2015)

h) GFS(MISC) 15(2012)

purpose and need of the project, are feasible, and would have a lesser impact on the environment than the proposed action.¹⁰⁶ The appellants argue that BLM did not conform to this standard and therefore violated NEPA.¹⁰⁷

We analyze appellants' argument by breaking it down into three topics: whether BLM met its obligation to consider appropriate alternatives in its EA; the burden of proof on appeal; and whether appellants met the burden of proof.

- (i) NEPA regulations require BLM to include a brief discussion of appropriate alternatives in an EA.

As we stated above, under regulations implementing NEPA, agencies are required to include a brief discussion of appropriate alternatives in an EA.¹⁰⁸ EAs are intended to be "concise public documents" in which an agency briefly discusses the alternatives it considered, with "[t]he level of detail and depth of impact analysis . . . normally . . . limited to the minimum needed to determine whether there would be significant environmental effects."¹⁰⁹ Contrary to the appellants' assertion, BLM is only required to consider "an appropriate range of alternatives" in an EA.¹¹⁰ Appellant's asserted requirement to consider "all reasonable alternatives" does not appear in the regulations or in the court case the appellants cite.¹¹¹ In fact, both the IBLA and the Ninth Circuit Court of Appeals have found that it generally suffices for an agency to consider a no action alternative and a proposed action alternative in an EA, particularly if the proposed action will achieve

¹⁰⁶ *Id.* at 39.

¹⁰⁷ *Id.* at 42.

¹⁰⁸ 40 C.F.R. § 1508.9(b); 43 C.F.R. § 46.310(a).

¹⁰⁹ 40 C.F.R. 1508.9; 43 C.F.R. § 46.310(a), (e); *Confederated Tribes of the Goshute Reservation*, 190 IBLA 396, 404 (2017)ⁱ (explaining that the requirement at 40 C.F.R. § 1502.14(a), that agencies must "[r]igorously explore and objectively evaluate all reasonable alternatives," applies to an environmental impact statement (EIS), not an EA); *Southern Utah Wilderness Alliance*, 185 IBLA 150, 165 n.12 (2014)^j (stating that 40 C.F.R. § 1502.14 applies to an EIS, not an EA).

¹¹⁰ *See, e.g., Coalition for Responsible Mammoth Development*, 187 IBLA 141, 223-24 (2016)^k ("[A]n agency's consideration of alternatives is sufficient if it considers an appropriate range of alternatives, even if it does not consider every available alternative.") (quoting *Headwaters, Inc. v. BLM*, 914 F.2d 1174, 1181 (9th Cir. 1990)) (reviewing a BLM decision supported by an EIS).

¹¹¹ *See* SOR at 36 (citing *North Slope Borough*, 486 F. Supp. at 330 (stating that an agency "must evaluate significant reasonable alternative courses of action" in an EIS)).

i) GFS(MIN) 22(2017)

j) GFS(MISC) 6(2014)

k) GFS(O&G) 4(2016)

environmental benefits.¹¹² “[T]he fact that a party may favor an alternative other than that adopted by BLM does not render the action taken by BLM erroneous.”¹¹³

Here, BLM considered five alternatives that it analyzed in detail and several additional alternatives that it did not analyze in detail. The alternatives encompassed not only a continuation of the existing grazing permits, but also authorizations that would prohibit grazing, reduce grazing, and increase grazing. In light of BLM’s purpose to provide grazing opportunities consistent with management objectives, ALJ Holt concluded that BLM considered a reasonable range of alternatives.¹¹⁴ Because BLM considered alternatives sufficient to inform the decisionmaker of the options available, ranging from no grazing to an increase in grazing, we find that ALJ Holt’s conclusion is consistent with law and find no error.

- (ii) Appellants have the burden to show that BLM did not consider a reasonable range of alternatives.

The appellants contend that, when they challenged whether BLM had considered a reasonable range of alternatives, the ALJ erred by placing the burden on them to present an alternative to BLM for consideration instead of holding BLM to its obligation to “[s]tudy, develop, and describe appropriate alternatives.”¹¹⁵ The appellants fault the ALJ for concluding that, in their words,

BLM had no obligation to assess/consider range improvements in fulfilling the “Purpose and Need” of the EA merely because the Permittees did not either apply for any range improvements, as was the case in the Swisher Springs Allotment, or the Permittees did not sufficiently apply for any range improvements, as was the case in the Castlehead-Lambert Allotment.¹¹⁶

Appellants argue that the ALJ’s approach was wrong because it shifts BLM’s burden to perform an adequate NEPA analysis onto the appellants.

¹¹² *Klamath-Siskiyou Wildlands Center*, 190 IBLA 295, 306 (2017),^l *petition for review filed*, No. 1:17-cv-997 (D. Or. June 27, 2017); *Randy L. Witham*, 187 IBLA 298, 303 (2016)^m; *Earth Island Institute v. U.S. Forest Service*, 697 F.3d 1010, 1021-22 (9th Cir. 2012).

¹¹³ *Southern Utah Wilderness Alliance*, 152 IBLA 216, 224 (2000)ⁿ.

¹¹⁴ C-L Order at 24; Swisher Order at 23.

¹¹⁵ Reply at 7 (quoting 40 C.F.R. § 1501.2(c)); SOR at 30-31.

¹¹⁶ SOR at 31; C-L Order at 25-27; Swisher Order at 24.

l) GFS(MISC) 17(2017)
m) GFS(MISC) 10(2016)
n) GFS(MISC) 20(2000)

When a party challenges a bureau's range of alternatives in an EA, the burden is on that party to demonstrate error by showing that BLM's alternatives are not reasonable in light of its stated purpose.¹¹⁷ Accordingly, the ALJ properly imposed a burden on the appellants to show error in BLM's identification of alternatives.¹¹⁸

- (iii) The appellants did not show that BLM failed to consider a reasonable range of alternatives.

While range improvements, like fences, corrals, pipelines, and troughs, “facilitate the application of grazing management practices,”¹¹⁹ the appellants have not shown how they would provide for livestock grazing opportunities in the Castlehead-Lambert and Swisher Allotments, consistent with meeting management objectives, to achieve the purpose of the project. The appellants assert, in a conclusory manner, only that range improvement projects—as a general category of actions—will accomplish the intended purpose of the action, be technically and economically feasible, and have a lesser or no impact.¹²⁰

Although, as the appellants state, range improvements “serve to achieve proper application of the timing, intensity and duration of grazing use and its occurrence over time,”¹²¹ they do not effect a change in the level of grazing authorized. While range improvements facilitate grazing use, they do not authorize grazing use, consistent with meeting management objectives, which is the purpose of the proposed action considered in the EA.¹²²

¹¹⁷ See *Klamath-Siskiyou Wildlands Center*, 190 IBLA at 306 (upholding BLM's analysis of alternatives in an EA where the appellant had not “demonstrate[d] the existence of a technically and economically feasible alternative that will meet the project's intended purpose and which BLM did not consider”).

¹¹⁸ Swisher Order at 24 (BLM did not err by not considering range improvement projects for the Swisher Allotment because the Permittee did not propose any); C-L Order at 27 (BLM did not err by not considering any range improvement projects that the Permittees had not proposed).

¹¹⁹ Reply at 6 (quoting Idaho S&Gs at 8).

¹²⁰ Reply at 7, 8-9 (citing *Larry Thompson*, 151 IBLA 208, 219-20 (1999)).^o

¹²¹ SOR at 12 (quoting Declaration (Decl.) of Dr. Chad C. Gibson attached to Permittees' Motion for Partial Summary Judgment at 8 (Feb. 28, 2014)).

¹²² See Answer at 21 (arguing that, because the Permittees denied that there were any resource concerns on the Castlehead-Lambert Allotment, “it is clear that the proposed new fence—and for that matter, Appellants' apparent need for any additional range improvements—had nothing to do with improving rangeland health on the Allotments”).

^o GFS(MIN) 5(2000)

In support of their contention that reasonable alternatives include range improvements, the appellants cite a 2000 BLM Instruction Memorandum (IM) that stated that “reasonable alternatives might include management facilities, changes in season of use, or reductions in numbers.”¹²³ But we do not find that BLM’s omission of a range improvement alternative violates any policy set forth in the 2000 IM. To the extent the IM is still in effect,¹²⁴ it states only that “management facilities” “might” be a reasonable alternative, not that they always will be.¹²⁵

With respect to the three range improvement projects the Permittees identified for the Castlehead-Lambert Allotment, ALJ Holt determined that BLM appropriately explained why it did not analyze these projects in detail. Specifically, ALJ Holt found that (1) the Permittees’ general reference to reservoir maintenance, improvement, and construction was too vague to warrant further analysis;¹²⁶ (2) reconstruction of a section of boundary fence has either already been approved as part of a separate NEPA process or is part of ongoing range improvement maintenance that is addressed in the EA;¹²⁷ and (3) construction of 0.72 miles of fence to define the boundary between the Castlehead-Lambert Allotment and a neighboring allotment is immaterial to the proposed action because the fence would have only “limited ability to meet the Allotment’s overall resource goals,” and such “limited benefits do not rise to a level of materiality.”¹²⁸

The appellants argue that ALJ Holt’s finding that BLM was not required to consider range improvements for the Castlehead-Lambert and Swisher Allotments is inconsistent with his finding in a separate appeal, in which he reviewed the same EA for the Garat Allotment, another Group 1 allotment.¹²⁹ In that order, ALJ Holt stated that proposed range improvement projects “appear to satisfy” the purpose of the project and concluded that BLM’s failure to consider range improvements as a reasonable alternative to the proposed action violated NEPA.¹³⁰ But in the

¹²³ SOR at 39; IM 2000-022 at unpaginated (unp.) 2 (July 21, 2000) (SOR Ex. A-21).

¹²⁴ See <https://www.blm.gov/policy/instruction-memorandum> (last visited Feb. 8, 2018) (no IM numbered 2000-022 listed).

¹²⁵ IM 2000-022 at unp. 2.

¹²⁶ C-L Order at 25.

¹²⁷ *Id.*

¹²⁸ *Id.* at 27.

¹²⁹ Reply at 7 (quoting Order, *WWP v. BLM*, ID-BD-3000-2013-001 at 8 (Feb. 13, 2014) (SOR Ex. C) (Garat Order)).

¹³⁰ Garat Order at 2 (“BLM violated NEPA because its EA did not consider [proposed] range improvement projects and did not provide a legitimate reason for not doing so”).

Castlehead-Lambert Allotment Order, ALJ Holt distinguished the alternatives he reviewed in the Garat Order.¹³¹ ALJ Holt explained:

Most importantly, in *Garat*, the permittees proposed, with some detail, projects that could conceivably influence livestock grazing impacts across the entire Garat Allotment. Conversely, here, the Permittees have proposed, in vague terms, construction of a fence that will, by the Permittees' own account, have a limited ability to address resource issues on the Allotment.^{132]}

The ALJ concluded that BLM's decision to decline further consideration of a range improvement project "with such limited ability to meet the Allotment's overall resource goals does not constitute a NEPA violation where, as here, BLM accurately explains that it rejected the project from further analysis because it was not material to the Permittees' overall proposed alternative."¹³³ We find ALJ Holt's distinction between the two cases persuasive and find that the holding in *Garat* does not demonstrate error in ALJ Holt's analysis of BLM's range of alternatives in the Castlehead-Lambert or Swisher Allotment cases.

Finally, the appellants assert that, to the extent they did not propose range improvements for BLM's consideration, it was because BLM had indicated that it would not consider range improvements.¹³⁴ But ALJ Holt rejected this contention as unpersuasive because the Permittees did, in fact, propose range improvement projects for the Castlehead-Lambert Allotment and had opportunities to present them for the Swisher Allotments.¹³⁵ We agree that the Permittees' proposal of range improvement projects for the Castlehead-Lambert Allotment, and BLM's consideration of those projects, demonstrates that the Permittees were not foreclosed from presenting alternatives that included range improvement projects for BLM's consideration.

We conclude that the ALJ's analysis of the range of alternatives BLM considered in its EA conforms to the requirements of NEPA, the implementing regulations, and our case law. The appellants did not meet their burden to show that BLM did not consider appropriate alternatives, and they have not shown error in the ALJ's Orders.

¹³¹ C-L Order at 26-27.

¹³² *Id.* at 26.

¹³³ *Id.*

¹³⁴ SOR at 34-35; Reply at 8.

¹³⁵ C-L Order at 27; Swisher Order at 24.

b. BLM Adequately Considered Using Grazing for Wildfire Management

The appellants argue that BLM violated NEPA by failing to consider “a grazing scheme that would reduce the risk of wildfires and limit the intensity of those wildfires.”¹³⁶ The appellants assert that such an alternative would satisfy the purpose of the proposed action—to provide livestock grazing opportunities on public lands—because “[w]ildfire can lead to significant grazing restrictions.”¹³⁷ The appellants also contend that wildfire management through grazing will avoid or minimize adverse effects of wildfires, and grazing as a tool to manage wildfire is neither remote nor speculative.¹³⁸ Therefore, the appellants reason, grazing as a wildfire management tool meets the Board’s test to determine whether an alternative must be considered: it will accomplish the intended purpose, it is technically and economically feasible, and it will have a lesser impact than BLM’s proposed action.¹³⁹

ALJ Holt did not specifically analyze whether grazing for the purpose of wildfire management was a reasonable alternative that BLM should have considered. Instead, he reviewed whether BLM adequately analyzed the impacts of reduced grazing on the potential for wildfires, which we will discuss in more detail below. For the purposes of this discussion, we note that the ALJ’s Orders reflect his approval of BLM’s discussion of targeted grazing as an alternative BLM considered but did not analyze in detail.¹⁴⁰

In the EA, BLM explained that “[t]argeted grazing is the application of a specific kind of livestock at a determined season, duration, and intensity to accomplish defined vegetation or landscape goals.”¹⁴¹ BLM acknowledged several reports and studies examining the utility of grazing for wildfire management and explained that “grazing as a fuels management tool is primarily limited to grassland dominated vegetation types.”¹⁴² The Castlehead-Lambert and Swisher Allotments, however, have sagebrush and bunchgrass vegetation, where landscape-scale fuels treatment by livestock grazing has “limited application.”¹⁴³

¹³⁶ SOR at 52.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.* at 51-52 (citing *Larry Thompson*, 151 IBLA at 219-20).

¹⁴⁰ *See* C-L Order at 20 and Swisher Order at 19-20 (reviewing BLM’s “thorough discussion of wildfire as an ‘alternative considered but not analyzed in detail,’” and citing EA at 22-24).

¹⁴¹ EA at 22.

¹⁴² *Id.* at 23.

¹⁴³ *Id.* at 24.

Furthermore, BLM determined that “targeted grazing for fuels reduction to establish fuel breaks is outside the purpose and need of this NEPA document which responds to applications for grazing permit renewal authorizing cattle and horse grazing to meet rangeland health standards and resource management objectives.”¹⁴⁴

The appellants argue that ALJ Holt erred by accepting BLM’s conclusion that grazing has limited application as a fire management tool in the Allotments and that there would be no cumulative effect on the spread of wildfire from grazing reductions.¹⁴⁵ The appellants contend that BLM failed to consider how the history of wildfires in the region has changed the landscape by destroying sagebrush habitat, which has been replaced by perennial grasslands that are susceptible to management by targeted grazing.¹⁴⁶ The appellants assert that the record contains evidence of this change; for example, in the EA, BLM said that, in the Castlehead-Lambert Allotment, “big sagebrush habitat is mostly absent in pasture 3 due to conversion to perennial grasslands resulting from the 2007 Crutcher fire and juniper woodlands. Similarly, in pastures 5 and 6, areas that would support suitable big sagebrush habitat do not support this habitat due to the 2007 Crutcher fire.”¹⁴⁷ The appellants appear to reason that if BLM better acknowledged the existence of perennial grasses in the pastures, it would have recognized the utility of grazing to reduce wildfire risk on the Allotments and the cumulative effect on the spread of wildfires from reduced grazing.

While the quotes the appellants selected from the EA state that the 2007 Crutcher fire has changed the landscape in some of the pastures in the Allotments, they do not undermine other statements in the EA supporting BLM’s and the ALJ’s conclusion that the vegetation in the Allotments is not suitable for grazing as a fuels management tool, so grazing would not appreciably impact the risk of wildfire in the Allotments. For example, BLM reported the following:

Although recent fire has reduced sagebrush and juniper dominance on large portions of the [Castlehead-Lambert A]llotment, deep-rooted bunchgrasses have not recovered to site potential. . . . As a result, the

¹⁴⁴ *Id.*; *see also id.* at 23 (“Livestock grazing actions for fuels management involves a shift in purpose from providing for a use of public lands to a purpose to meet vegetation or fuels objectives.”); Answer at 37 (explaining that using grazing for wildfire management would be inconsistent with the purpose of the action to provide grazing opportunities consistent with management objectives).

¹⁴⁵ SOR at 48.

¹⁴⁶ *Id.* at 48-49.

¹⁴⁷ *Id.* at 49 (quoting EA at 164).

lack of the potential co-dominance by native bunchgrass species greatly reduces the production of forage from the allotment as compared to the reference site in ecological site descriptions.¹⁴⁸

We find support in the record for BLM's and the ALJ's conclusion that grazing reductions would have minimal or no cumulative effect on the spread of wildfire in the Allotments. As the ALJ noted, the EA shows BLM's consideration of a grazing-for-wildfire-management alternative, and BLM explained its reasons for not analyzing this alternative in detail.¹⁴⁹ The appellants have not offered evidence contradicting BLM's explanation, and we find that BLM's explanation satisfies its obligations under NEPA.¹⁵⁰

The appellants further contend that a decision to authorize grazing and a decision to manage wildfires are connected actions, "related to each other closely enough to be, in effect, a single course of action," and therefore should have been evaluated in a single NEPA document.¹⁵¹ The appellants argue that BLM acknowledges that grazing and wildfire management actions are connected because it pledged to address livestock grazing as a tool for managing fuel loads in the Idaho/Southwest Montana environmental impact statement (EIS) for sage grouse.¹⁵² The appellants claim that deferring this analysis to the EIS for sage grouse is improper segmentation of environmental analysis, which violates NEPA.¹⁵³

Connected actions are actions that "are closely related and therefore should be discussed in the same impact statement."¹⁵⁴ Actions are connected if they (1) automatically trigger other actions, (2) cannot or will not proceed unless other actions are taken previously or simultaneously, or (3) are interdependent parts of a larger action and depend on the larger action for their justification.¹⁵⁵ In determining whether two actions are connected, the key question is whether the

¹⁴⁸ EA at 96 (references omitted); *id.* at 307 (same conclusion for Swisher Allotments).

¹⁴⁹ C-L Order at 20; Swisher Order at 19-20.

¹⁵⁰ *See Randy L. Witham*, 187 IBLA at 304 (finding no error in BLM's NEPA compliance where BLM provided reasoned explanation for rejecting a proposed alternative).

¹⁵¹ SOR at 53 (quoting 40 C.F.R. § 1502.4(a)).

¹⁵² *Id.* at 52 (quoting EA at 24).

¹⁵³ *Id.* at 54.

¹⁵⁴ 40 C.F.R. § 1508.25(a)(1).

¹⁵⁵ *Id.* § 1508.25(a)(1)(i)-(iii).

actions have “independent utility”; if so, they are not connected actions.¹⁵⁶ Two actions have independent utility “if sufficient justification exists for each of the two actions, such that each may proceed without the other.”¹⁵⁷

We find that authorizing the Permittees’ grazing and authorizing actions to manage wildfires are not connected actions such that they must be considered in the same environmental analysis under NEPA. Rather, in this case, the management of grazing and the management of wildfires have “independent utility” as management efforts on the public lands, such that each may proceed without the other. Moreover, BLM did not “defer” analysis of grazing to manage wildfires, as the appellants contend,¹⁵⁸ because—as explained above—BLM discussed it as an alternative it considered but did not analyze in detail.

We conclude that the ALJ’s analysis of the range of alternatives BLM considered in its EA conforms to the requirements of NEPA, the implementing regulations, and our case law. The appellants did not meet their burden to show the existence of an appropriate alternative that will accomplish the intended purpose of the action, and they have not shown error in the ALJ’s Order.

2. BLM Took a Hard Look at the Impacts of Its Decision

[3] In addition to arguing that BLM did not consider a reasonable range of alternatives, the appellants argue that BLM did not take a hard look at the impacts of its decisions on socioeconomics and wildfires. When BLM decides to proceed with a proposed action after completion of an EA and finding of no significant impact, its record must demonstrate that it considered all relevant matters of environmental concern, took a “hard look” at potential environmental impacts, and made a convincing case that no significant impact will result or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures.¹⁵⁹ The Board will find that BLM took a “hard look” when it conducted a thorough environmental analysis before concluding that no significant environmental impact

¹⁵⁶ *Center for Biological Diversity*, 189 IBLA 117, 120 (2016)^p

¹⁵⁷ *Id.* (quoting *Oregon Natural Desert Association (On Judicial Remand)*, 185 IBLA 59, 122 (2014))^q

¹⁵⁸ SOR at 52-54.

¹⁵⁹ *Wallace Forest Conservation Area Advisory Committee*, 192 IBLA 108, 116-17 (2017)^r; *Klamath-Siskiyou Wildlands Center*, 190 IBLA at 310; *Center for Native Ecosystems*, 182 IBLA 37, 50 (2012).^s

p) GFS(O&G) 15(2016)

q) GFS(MISC) 5(2014)

r) GFS(MISC) 33(2017)

s) GFS(MIN) 3(2012)

exists, and its documentation of that analysis shows the bureau's thoughtful and probing reflection of the possible impacts of its proposed action.¹⁶⁰

a. BLM Took a Hard Look at Socioeconomic Impacts

The appellants argue that BLM failed to take a hard look at the socioeconomic impacts of its proposed decision “by simply offering fleeting references and post-hoc rationalizations of socio-economic impacts in the EA and its Appendix O without actually addressing these impacts in any meaningful way.”¹⁶¹ The appellants claim that, by stating that “it is unfortunate” that “certain alternatives considered in the EA could impact regional socioeconomic activity,” BLM merely “paid lip service to the serious socio-economic impacts that its severe grazing reductions will have” and failed to “do something about them.”¹⁶² Citing one of Congress's declared policies in NEPA—“to use all practicable means and measures, . . . to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations”—the appellants assert that NEPA requires BLM to “balance environmental and socio-economic impacts.”¹⁶³

But NEPA does not compel an agency to implement any particular action. As the appellants acknowledge, the purpose of NEPA is to ensure that “decisionmakers and the public [have] an accurate assessment of the information relevant to evaluate the agency's proposed action.”¹⁶⁴ The Board has explained that “NEPA is a procedural statute that is designed to provide decision makers with adequate information to make a decision; but NEPA does not require that the decision made is the one ‘that is most solicitous of environmental conservation.’”¹⁶⁵ So the question under NEPA is

¹⁶⁰ *Klamath-Siskiyou Wildlands Center*, 190 IBLA at 310 (citing *Native Ecosystems Council v. U.S. Forest Service*, 428 F.3d 1233, 1239 (9th Cir. 2005); *Silverton Snowmobile Club v. U.S. Forest Service*, 433 F.3d 772, 781 (10th Cir. 2006)).

¹⁶¹ SOR at 43 (citing 40 C.F.R. § 1508.14, which instructs agencies to discuss interrelated economic or social and natural or physical environmental effects in an EIS).

¹⁶² *Id.* at 44-45 (quoting Notice of Field Manager's Final Decision to Maestrejuans, Castlehead-Lambert Allotment at 22-23; Notice of Field Manager's Final Decision to 06 Livestock Company, Castlehead-Lambert Allotment at 23).

¹⁶³ *Id.* at 45 (citing 42 U.S.C. § 4331(a) (2012)).

¹⁶⁴ *Id.* at 44 (quoting *Natural Resources Defense Council v. U.S. Forest Service*, 421 F.3d 797, 812 (9th Cir. 2005)).

¹⁶⁵ *Southern Nevada Water Authority*, 191 IBLA 382, 410-11 (2017)^t (quoting *Friends of the Nestucca Coast Range Association*, 144 IBLA 341, 356 (1998));^u see

t) GFS(MISC) 29(2017)

u) GFS(MISC) 67(1998)

not whether a project is “advisable but whether the decisionmaker was sufficiently advised to make a reasoned decision.”¹⁶⁶ Here, if BLM took a hard look at the effects of its decisions, sufficient to inform the decisionmaker and enable a reasoned decision, BLM complied with NEPA.

In the EA, BLM examined social and economic data for Owyhee County, where the allotments are located, and for two additional counties, Malheur and Elko, because some of the livestock operators who graze cattle in the allotments maintain base ranches there.¹⁶⁷ BLM explained that livestock ranching is among the primary employment sectors in the three counties, and most ranches are family-owned.¹⁶⁸ BLM determined that the total active-use AUMs in the three counties contribute more than \$56.7 million to the local economy.¹⁶⁹ Citing a 2002 study, BLM discussed the reduction in net annual returns to ranches that corresponds to a reduction in BLM-authorized AUMs and explained the following:

Any cuts in AUMs would lead to increased expenses for grazing and/or feed that could be detrimental to the viability of the ranch. This would lead to losses in jobs, income to the community, and tax revenue for the county and state. Additionally, ranching is so intimately connected to the overall culture in the areas in and around Owyhee County that the closing of a ranch would lead to a substantial loss of community cohesion. The closing of a ranch in Jordan Valley or Marsing could be viewed by community members as an adverse effect on the social conditions of the local community.^[170]

Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 350 (1989) (“NEPA itself does not mandate particular results, but simply prescribes the necessary process. If the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs.” (citations omitted)); *Biodiversity Conservation Alliance*, 174 IBLA 1, 14 (2008)^v (“When BLM has satisfied the procedural requirements of section 102(2)(C) of NEPA, it will be deemed to have complied with NEPA, regardless of whether a different substantive outcome would be reached by appellants, this Board, or a reviewing court.”).

¹⁶⁶ *Friends of the Nestucca Coast Range Association*, 144 IBLA at 356.

¹⁶⁷ EA at 78.

¹⁶⁸ *Id.* at 79, 83.

¹⁶⁹ *Id.* at 204, 363; *see id.* at 83 (livestock grazing contributes \$46.85/AUM to ranches and \$16.22/AUM to other sectors in the local economy, like supply purchases).

¹⁷⁰ *Id.* at 88 (identifying effects of AUM reductions that would be common to all allotments).

v) GFS(O&G) 6(2008)

For each allotment, BLM calculated the value to a livestock operation of the change in AUMs under each alternative, cautioning that, in actuality, it is unknown how each ranch would respond to changes in the permitted number of AUMs on its allotment.¹⁷¹ If a ranch chose to reduce herd numbers and, in turn, reduce its spending within the regional economy, then the reduction in AUMs would correspond to a reduction in regional economic activity.¹⁷² BLM's calculations showed that, for example, implementation of the Permittees' proposed alternative would result in an estimated \$286,000 added to the Owyhee County economy from the Castlehead-Lambert Allotment and \$23,000 from the Swisher Springs Allotment,¹⁷³ and the selected season-based alternative would translate to an estimated \$141,000 added from Castlehead-Lambert and \$14,000 from Swisher Springs added to the Owyhee County economy.¹⁷⁴ For both Allotments, under the season-based alternative, BLM stated that ranchers might decide that it is not economically viable to continue their operations.¹⁷⁵

In Appendix O to the EA, BLM explained that, during the protest period, it received information from a local ranch operator that allowed BLM to construct "a sample partial enterprise budget showing the potential impact of each alternative on that part of the enterprise affected."¹⁷⁶ For example, for a medium ranch with 100 to 500 cattle and 10 horses, the annual change in net revenue for the Permittees' proposed alternative would be an increase of \$43,000, and for the selected season-based alternative, it would be a decrease of \$31,000.¹⁷⁷

Based on BLM's analysis in the EA and Appendix O to the EA, we agree with ALJ Holt that BLM took a hard look at the socioeconomic impacts of its decisions.¹⁷⁸ BLM examined the social and economic effects of each alternative on each allotment and not only acknowledged, but attempted to quantify, possible detrimental effects. The appellants' argument that BLM's analysis is insufficient amounts only to a difference of opinion, which does not show error by BLM or the ALJ.¹⁷⁹

¹⁷¹ *Id.* at 200, 359.

¹⁷² *Id.* at 201, 359.

¹⁷³ *Id.* at 202, 361.

¹⁷⁴ *Id.* at 203, 362.

¹⁷⁵ *Id.* at 203, 362.

¹⁷⁶ EA App. O at 31.

¹⁷⁷ *Id.* at 31, 32.

¹⁷⁸ C-L Order at 19; Swisher Order at 19.

¹⁷⁹ *WWP*, 184 IBLA 106, 121 (2013)^w ("At most, [the appellant] has shown that it profoundly disagrees with BLM's conclusions and management decisions, but a mere difference of opinion, even expert opinion, will not suffice to show that BLM

The appellants also argue that, instead of adding Appendix O to the EA, BLM was required to supplement the EA or prepare a new EA.¹⁸⁰ By regulation, BLM must supplement an EIS when it makes substantial changes in the proposed action that are relevant to environmental concerns or when there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.¹⁸¹ This regulation does not apply to EAs; however, according to BLM guidance, BLM will prepare a new EA when it makes changes to the proposed action or adds an alternative outside the spectrum of those already analyzed, or new circumstances or information arises that alters the validity of the analysis in an EA analysis before BLM implements the action.¹⁸² None of these circumstances were present in this case. In response to one of the protests BLM received, it appended additional analysis to the EA in its final decisions, and BLM was not required to notify the public or solicit comments before it did so.¹⁸³

Finally, the appellants argue that Appendix O amounts to “post-hoc rationalization” of BLM’s choice not to perform an analysis of cumulative socioeconomic impacts from the Castlehead-Lambert and Swisher Allotment decisions in conjunction with anticipated future reductions in grazing in the Owyhee planning area.¹⁸⁴ Cumulative impacts are those that result from the incremental impact of the proposed action “when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.”¹⁸⁵ They include impacts that “result from individually minor but collectively significant actions taking place over a period of time.”¹⁸⁶ In considering the adequacy of cumulative effects analyses in EAs, BLM is not required to consider the impacts of future actions that are speculative, and therefore not reasonably foreseeable.¹⁸⁷

failed to fully comprehend the true nature, magnitude, or scope of the likely impacts.”).

¹⁸⁰ SOR at 45 (citing *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55, 72-73 (2004)).

¹⁸¹ 40 C.F.R. § 1502.9(c)(1).

¹⁸² BLM’s NEPA Handbook H-1790-1 at 29, available at https://www.blm.gov/sites/blm.gov/files/uploads/Media_Library_BLM_Policy_Handbook_h1790-1.pdf (last visited Feb. 8, 2018).

¹⁸³ See 43 C.F.R. § 46.305(b) (“Bureaus . . . may revise environmental assessments based on comments received without need of initiating another comment period.”).

¹⁸⁴ SOR at 45-47; Reply at 10-12.

¹⁸⁵ 40 C.F.R. § 1508.7.

¹⁸⁶ *Id.*

¹⁸⁷ *WWP*, 191 IBLA 351, 366 (2017)^x (citing *Center for Biological Diversity*,

x) GFS(MISC) 28(2017)

The appellants point to BLM's admissions in Appendix O that "future reductions may occur" in the other allotment groups and that recently-issued decisions, when implemented, will contribute to cumulative effects on the social and economic environment in the region.¹⁸⁸ These admissions, the appellants claim, show that additional grazing reductions were reasonably foreseeable and therefore should have been analyzed as contributing to the cumulative effects of BLM's proposed action.¹⁸⁹

But the EA reflects BLM's consideration of the grazing reductions the appellants reference. In Appendix O, BLM explained that, while it is actively conducting environmental analyses and preparing final decisions for grazing permits in other allotments managed by the Owyhee Field Office, those analyses and decisions are not yet complete. Nevertheless, "because reductions in AUMs have been proposed on allotments in the Owyhee River Group that have not met Standards or Guidelines, it is reasonable to assume that future reductions may occur on any allotments in Groups 2 through 5 that are not meeting Standards or Guidelines as well."¹⁹⁰ BLM stated that any reductions added to those in the Castlehead-Lambert and Swisher Allotments "could have substantial impacts on local economic activity," which "would be compounded on a county-wide or regional basis."¹⁹¹

BLM further explained that, for those future grazing decisions that have not yet issued, it would be speculative to include them in the cumulative impacts analysis; instead, the environmental analyses for those actions will include the cumulative effects of past, present, and reasonably foreseeable future actions, including the decisions for the Castlehead-Lambert and Swisher Allotments, at that time.¹⁹² But BLM deemed decisions it had recently issued, and those that have been issued and implemented, as actions that it would include in its cumulative effects analysis.¹⁹³ BLM then concluded that "[t]he level of AUM reductions analyzed in the grazing alternatives in this EA, added to all AUM reductions implemented or proposed in other permit renewal actions within the planning area, would result in 115,320 active use AUMs permitted."¹⁹⁴ BLM explained that this

189 IBLA at 126; *Powder River Basin Resource Council*, 180 IBLA 119, 132-33 (2010)).^y

¹⁸⁸ Reply at 11, 12; EA App. O at 32, 33.

¹⁸⁹ Reply at 11.

¹⁹⁰ EA App. O at 32.

¹⁹¹ *Id.*

¹⁹² *Id.* at 33.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

y) GFS(MIN) 20(2010)

reduction in AUMs from the number that was authorized at the time of the 1999 Owyhee RMP (134,116 active-use AUMs), was within AUM-reduction levels analyzed in the EIS that accompanied the RMP. BLM stated that its EA tiers to the RMP EIS and incorporates it by reference.¹⁹⁵

Upon review of the EA and Appendix O, ALJ Holt concluded that Appendix O “provides the required cumulative impact analysis that the [appellants] claim is deficient.”¹⁹⁶ ALJ Holt specifically referenced BLM’s explanation that the AUM reductions analyzed in the EA, in addition to those implemented or proposed in other grazing permit renewal actions, would be within the AUM reductions BLM analyzed in the final EIS for the RMP.¹⁹⁷ The appellants do not allege error in the ALJ’s conclusion that the reductions directed in BLM’s decisions were contemplated and analyzed in the RMP EIS, nor do they show error in any part of BLM’s analysis in Appendix O. They also have not shown that BLM ignored reasonably foreseeable actions that it should have addressed in its cumulative effects analysis. We therefore find no basis to reverse ALJ Holt’s finding that BLM took a hard look at the socioeconomic effects of BLM’s decisions.

b. BLM Took a Hard Look at the Impacts on Wildfire Management

The appellants allege that BLM violated NEPA by failing to consider “the potentially devastating *fire-related* impacts associated with reduced grazing on the Allotments.”¹⁹⁸ The appellants explain that grazing benefits wildfire management by removing fuels that help wildfires spread.¹⁹⁹ According to the appellants, by reducing grazing, BLM is increasing the risk of impacts from wildfires.²⁰⁰

As ALJ Holt observed, BLM considered the relationship between grazing and wildfires when it considered whether to analyze an alternative action that uses grazing for wildfire management.²⁰¹ BLM acknowledged that livestock grazing can reduce fine fuels and therefore reduce wildfire impacts.²⁰² But BLM also recognized that certain variables—including climate, biology, and livestock management—affect the success of using grazing to decrease wildfire impacts, and studies suggest that grazing may play a lesser role than other variables do in affecting wildfire

¹⁹⁵ *Id.* at 33 n.2.

¹⁹⁶ C-L Order at 19; *see* Swisher Order at 19 (same).

¹⁹⁷ C-L Order at 19; Swisher Order at 19.

¹⁹⁸ SOR at 47.

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ C-L Order at 20; Swisher Order at 19-20.

²⁰² EA at 22, 23.

behavior.²⁰³ As we already found, the appellants have not shown error in the ALJ's and BLM's factual conclusions with respect to the relationship between grazing and wildfire management on the Castlehead-Lambert and Swisher Allotments.

In a few places in the EA, BLM further considered the effect of grazing on wildfires and the consequent indirect effect on certain resources. For example, BLM explained that livestock grazing can lead to decreased biodiversity, which may lead to the proliferation of fine fuels, which may increase the frequency of wildfire.²⁰⁴ Also, BLM found that grazing has little influence on juniper encroachment other than the indirect effect of removing fine fuels that support the spread of wildfire, which may eliminate certain juniper.²⁰⁵ And BLM considered wildfires in its analysis of the cumulative impacts of the alternatives, listing specific wildfires as past "actions" with an incremental cumulative impact on the resources it analyzed, including vegetation, soils, and wildlife.²⁰⁶

Considering BLM's reasoned analysis, we find that the appellants have not shown error in the ALJ's conclusion that BLM took a hard look at the effects of reduced grazing on wildfire management. BLM examined the connection between grazing and wildfires in several parts of its EA and explained the limitations on its analysis due to the variables involved in wildfire management and the purpose of the proposed action to renew grazing permits. Furthermore, the appellants have not shown that BLM failed to consider reasonably foreseeable actions—including future reductions in grazing in the area—in the cumulative effects analysis. We therefore affirm the ALJ's finding that BLM took a hard look at the effects of grazing on wildfire management.

²⁰³ See *id.* at 22 ("The [study] team concluded that much of the area involved in these fires burned under extreme fuel and weather conditions that likely overshadow livestock grazing as a factor influencing fine fuels and thus fire behavior"), 24 ("[L]andscape-scale fuels treatment through livestock grazing has limited application within the sagebrush/bunchgrass vegetation types in the Owyhee River Group allotments, a landscape with few large or connected areas dominated by annual species or grazing[-]tolerant introduced perennial grasses").

²⁰⁴ *Id.* at 66.

²⁰⁵ *Id.* at 99, 108, 309, 315, 321.

²⁰⁶ See, e.g., *id.* at 109-11, 316-17 (identifying specific wildfires as past and present actions in the analysis of cumulative effects on vegetation resources); *id.* at 122-23, 329, 342-43 (cumulative effects on soils considering the impacts of wildfires and fire suppression); *id.* at 183, 350 (cumulative effects on wildlife habitat considering impacts of wildfires).

Taylor Grazing Act Arguments

The appellants argue that BLM violated the TGA and implementing regulations by failing to consider range improvements as “appropriate action” under the regulations, by failing to take action only on the pastures within the Allotments where Idaho S&Gs were not met, and by failing to transfer the decrease in active-use AUMs to suspended AUMs.²⁰⁷

[4] In the TGA, Congress granted BLM, as the delegate of the Secretary of the Interior, discretion “to regulate the[] occupancy and use” of public lands in grazing districts, which “are chiefly valuable for grazing and raising forage crops”; “to preserve the land and its resources from destruction or unnecessary injury”; and “to provide for the orderly use, improvement, and development of the range[.]”²⁰⁸ Under the Department of the Interior’s regulations, an ALJ and this Board may not set aside a BLM grazing decision if it is “reasonable” and “represents a substantial compliance” with BLM’s regulations.²⁰⁹ Through this regulation, “the Department has considerably narrowed the scope of review of BLM grazing decisions by an [ALJ] and by this Board, authorizing reversal of such a decision . . . only if it is not supportable on any rational basis.”²¹⁰ The burden is on the appellant to show that BLM’s decision is not reasonable or that it violates BLM’s regulations.²¹¹

1. BLM Did Not Violate BLM’s Grazing Regulations By Not Considering Range Improvements as “Appropriate Action”

BLM’s regulations provide that when BLM determines that “existing grazing management practices or levels of grazing use on public lands are significant factors

²⁰⁷ SOR at 54-57, 60-68.

²⁰⁸ 43 U.S.C. §§ 315, 315a (2012); see *BLM v. WWP*, 191 IBLA 144, 179 (2017)^z (“The management of public lands pursuant to the TGA is committed to BLM’s broad discretion.”); *Calvin Yardley v. BLM*, 123 IBLA 80, 89 (1992)^{aa} (implementation of the TGA “is committed to the discretion of the Secretary of the Interior, through his duly authorized representatives in BLM”).

²⁰⁹ 43 C.F.R. § 4.480(b).

²¹⁰ *Thomas E. Smigel v. BLM*, 155 IBLA 158, 164 (2001)^{bb}; see *BLM v. WWP*, 191 IBLA at 179-80; *Calvin Yardley*, 123 IBLA at 90.

²¹¹ See *Thomas E. Smigel v. BLM*, 155 IBLA at 164 (“If 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.’”) (quoting *Jerry Kelly v. BLM*, 131 IBLA 146, 151 (1994)^{cc}); *Calvin Yardley*, 123 IBLA at 90 (“The burden is on the objecting party to show that a decision is improper.”).

z) GFS(MISC) 23(2017)

aa) GFS(MISC) 28(1992)

bb) GFS(MISC) 21(2001)

cc) GFS(MISC) 61(1994)

in failing to achieve the standards and conform with the guidelines” BLM develops for grazing administration—here, the Idaho S&Gs—BLM must “take appropriate action as soon as practicable but not later than the start of the next grazing year.”²¹² The regulations define “appropriate action” as “implementing actions” pursuant to several subparts of the BLM grazing regulations, including a subpart that governs range improvements, “that will result in significant progress toward fulfillment of the standards and significant progress toward conformance with the guidelines.”²¹³ Appropriate actions include, among other activities, “range improvement activities such as vegetation manipulation, fence construction and development of water.”²¹⁴ One of BLM’s grazing regulations states that range improvements “shall be installed, used, maintained, and/or modified on the public lands, or removed from these lands, in a manner consistent with multiple-use management.”²¹⁵

The appellants assert that, having determined that grazing is a significant factor in the Allotments’ failing to achieve standards and conform to guidelines, BLM was required to consider implementing range improvement projects as an “appropriate action.”²¹⁶ The appellants argue that by failing to consider range improvements as an appropriate action and failing to provide a rational basis for finding that range improvements would not achieve standards or conform to guidelines, BLM violated its regulations.²¹⁷

ALJ Holt disagreed with the appellants’ interpretation of the grazing regulations. First, ALJ Holt found that the rangeland health regulations do not require BLM to use range improvements in every instance.²¹⁸ Reviewing the plain language of the regulations, ALJ Holt observed that the only prescriptive language is the direction to take appropriate action.²¹⁹ Otherwise, the regulations allow BLM discretion to decide what action to take and, in particular, whether to use range improvements.²²⁰ ALJ Holt concluded that BLM did not violate its grazing regulations by not including range improvements.²²¹

²¹² 43 C.F.R. § 4180.2(c).

²¹³ *Id.*; *id.* § 4120.3 (Range improvements).

²¹⁴ *Id.* § 4180.2(c).

²¹⁵ *Id.* § 4120.3-1(a).

²¹⁶ SOR at 54.

²¹⁷ *Id.*

²¹⁸ C-L Order at 13; Swisher Order at 12.

²¹⁹ C-L Order at 13; Swisher Order at 12.

²²⁰ C-L Order at 13; Swisher Order at 13.

²²¹ C-L Order at 13; Swisher Order at 13.

On appeal, the appellants argue that ALJ Holt erred by finding only that BLM did not need to *implement* range improvements; even if BLM declined to implement range improvements, the appellants assert that BLM still needed to *consider* them and explain why it chose not to implement them.²²²

In the EA and in declarations supporting one of BLM's motions for summary judgment, BLM and its staff affirmatively state that BLM "did not consider range improvements."²²³ BLM also explained why it did not consider range improvements. For example, one of BLM's declarants explained that "BLM would not be able to effectively analyze and consider range improvements as part of the [NEPA Permit Renewal (NPR) Team] effort" for several reasons: BLM had limited time to renew grazing permits on more than 60 allotments—including the Castlehead-Lambert and Swisher Allotments—that are subject to a deadline in a Stipulated Settlement Agreement filed in court; BLM was engaged in a contemporaneous effort to amend the National Sage-grouse RMP, which could result in restrictions on range improvement projects; many range improvements have already been constructed on a majority of the allotments; the renewal of grazing permits does not require consideration or construction of new improvements; many permit renewal applications did not request new improvements; and BLM could consider range improvements in the future.²²⁴

Consistent with ALJ Holt's reading of the grazing regulations, we find that BLM was not required to consider range improvements. Neither BLM's regulations nor the Idaho S&G direct BLM to consider implementing range improvements in every case. In fact, the guidelines in the Idaho S&G specifically limit the use of range improvements to those situations "where appropriate."²²⁵ Given BLM's broad

²²² SOR at 54-55.

²²³ Decl. of Loretta Chandler, Field Manager, Owyhee Field Office at 3, ¶ 10 (Nov. 14, 2013) (Ex. 44 to BLM's Motions for Summary Judgment) ("BLM did not consider range improvements as part of the [NEPA Permit Renewal (NPR)] Group 1 EA"); see Decl. of Jake Vialpando, Project Manager, BLM Idaho's NPR Team, at 2-3, ¶ 6 (Nov. 14, 2013) (Ex. 13 to BLM's Motions for Summary Judgment) (BLM decided that range improvement projects would not be considered during the permit renewal process); EA at 25 ("No new project construction or reconstruction is considered within any alternative of this NEPA document.").

²²⁴ Decl. of Jake Vialpando at 2-3, ¶ 6-7; see Decl. of Loretta Chandler at 3-4, ¶ 10-13 (explaining the same considerations identified in Mr. Vialpando's declaration).

²²⁵ Idaho S&G at 8 ("Guidelines direct the selection of grazing management practices, and where appropriate, livestock management facilities to promote

discretion to manage grazing, BLM may choose when it is appropriate to consider implementing range improvements. As ALJ Holt stated, range improvements “are just one of several tools BLM may use.”²²⁶

We conclude that the appellants have not established that BLM violated its grazing regulations. Accordingly, we find no error in ALJ Holt’s decision on summary judgment with respect to BLM’s consideration of range improvements as appropriate action.

2. BLM Did Not Violate the TGA by Failing to Take Pasture-Specific “Appropriate Action”

In the Hearings Division before the ALJ, the appellants argued that BLM violated its grazing regulations by adjusting the level of grazing use on pastures within the Allotments that were meeting, or making significant progress towards meeting, rangeland health standards.²²⁷ The appellants argued that BLM was required to implement a pasture-specific management system by adjusting grazing use only on the public lands in those pastures that were not meeting standards and maintaining the existing use on the public lands in pastures in which BLM determined that all standards were met or livestock grazing was not a significant factor in not meeting the standards.²²⁸ According to the appellants, a pasture-specific management system would result in no reduction of grazing use in two pastures in the Castlehead-Lambert Allotment and two pastures in the Swisher Springs Allotment.²²⁹ ALJ Holt rejected the appellants’ argument because the appellants identified no legal authority to support their claim, allotment-level changes are consistent with the grazing regulations, and limiting BLM to pasture-specific action “would deny BLM the discretion it needs to manage the public lands.”²³⁰

On appeal to this Board, the appellants argue that ALJ Holt erred by rejecting their argument for a pasture-specific management regime.²³¹ They first contend that ALJ Holt erred by misreading the Board’s decision in *Smigel v. BLM*

significant progress toward, or the attainment and maintenance of, the standards.”).

²²⁶ C-L Order at 13; Swisher Order at 13.

²²⁷ SOR at 60.

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ C-L Order at 15-16 (citing *Thomas E. Smigel v. BLM*, 155 IBLA at 164); Swisher Order at 15 (citing *Thomas E. Smigel v. BLM*, 155 IBLA at 164).

²³¹ SOR at 60.

to grant BLM “absolute discretion” to manage the public lands “at whatever level [of grazing] it considers best.”²³² The appellants contend that although the Board in *Smigel* acknowledged that BLM has broad discretion to manage Federal range lands, that discretion is “bounded by a standard of reasonableness,” and “a BLM decision will be upheld only if it is ‘reasonable and substantially complies with Departmental grazing regulations.’”²³³ But in his conclusion, ALJ Holt described BLM’s discretion consistent with the Board’s case law, including *Smigel*. He concluded that BLM did not violate its regulations by making allotment-level decisions and that requiring pasture-specific management “would deny BLM the discretion it needs to manage the public lands.”²³⁴ We do not read ALJ Holt’s language as finding that BLM has “absolute discretion.”

Second, the appellants argue that the grazing regulations support their interpretation of BLM’s obligation to implement pasture-specific action. Disputing ALJ Holt’s finding that they did not cite any authority for their position, the appellants refer to 43 C.F.R. § 4180.2(c), “Standards and guidelines for grazing administration,” which they say indicates that reducing grazing is not “appropriate action” unless BLM finds that grazing was a factor in failing to meet the grazing standards and guidelines.²³⁵ The appellants assert that this regulation does not refer to allotments but to “public lands,” and in this case, the only “public lands” where grazing was a factor in failing to meet the standards and guidelines are those public lands within certain pastures, not all of the public lands in the allotments.²³⁶ The appellants also cite 43 C.F.R. § 4110.3-2(b), “Decreasing permitted use,” which specifies the situations in which BLM must “reduce permitted grazing use or otherwise modify management practices,” specifically, when grazing use is not consistent with the regulations, is causing an unacceptable level or pattern of utilization, or exceeds the livestock carrying capacity.²³⁷ The appellants contend that BLM’s decision to reduce grazing on public lands where standards and guidelines are met is not supported by the regulations and therefore is unreasonable, arbitrary, and capricious.²³⁸

²³² *Id.* at 61 (quoting C-L Order at 15; Swisher Order at 15).

²³³ *Id.* (quoting *Thomas E. Smigel v. BLM*, 155 IBLA at 164).

²³⁴ C-L Order at 15-16; Swisher Order at 15.

²³⁵ SOR at 61-62 (citing 43 C.F.R. § 4180.2(c) (“The authorized officer shall take appropriate action . . . upon determining that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the standards and conform with the guidelines that are made effective under this section.”)).

²³⁶ *Id.* at 62.

²³⁷ *Id.*

²³⁸ *Id.*

We disagree with the appellants' interpretation of the regulations. While these two regulations specify when BLM must reduce or modify permitted grazing, they do not prohibit reductions and modifications in other circumstances, and they do not identify an exclusive list of situations warranting a modification of grazing. In fact, BLM's regulations identify other situations in which a modification in grazing may be appropriate, including when "needed to manage, maintain or improve rangeland productivity, [or] to assist in restoring ecosystems to properly functioning condition."²³⁹ BLM may also find it appropriate to modify grazing to meet the objectives of the governing land use plan.²⁴⁰ Furthermore, although BLM assessed the public lands on the Allotments on a pasture-specific level,²⁴¹ the regulations do not require pasture-specific management. Indeed, BLM's regulations implementing the TGA contemplate managing grazing at the allotment level.²⁴²

For the Castlehead-Lambert and Swisher Allotments, BLM explained its decision to manage the amount of grazing on an allotment level, while still accounting for the resource conditions on specific pastures. In its grazing decisions, BLM explained that it "initially set seasons of use necessary to protect resources, and then designed a workable grazing scheme around those seasons specific to each pasture."²⁴³ BLM set the stocking rate for "the most limiting pasture" and then "in

²³⁹ 43 C.F.R. § 4110.3.

²⁴⁰ See 43 U.S.C. § 1732(a) (2012) (requiring BLM to manage the public lands "in accordance with the land use plans"); 43 C.F.R. § 4100.0-8 (requiring BLM to manage livestock grazing on public lands "in accordance with applicable land use plans"); see, e.g., EA at 97 ("Passive management through implementing proper grazing management practices that support maintenance and recovery of large deep-rooted perennial bunchgrasses would help achieve [Owyhee RMP] objectives to improve unsatisfactory and maintain satisfactory vegetation condition.").

²⁴¹ See generally RHA, Castlehead-Lambert Allotment and Swisher Allotments (January 2012).

²⁴² See, e.g., 43 C.F.R. §§ 4100.0-5 (defining *Allotment* as "an area of land designated and managed for grazing of livestock," *Allotment management plan* as a documented program for managing livestock grazing on specified public lands, and *Permitted use* as forage allocated for livestock grazing in an allotment), 4110.3-3 (authorizing closure of allotments or portions of allotments in certain situations), 4130.3-1(a) ("The authorized officer shall specify the kind and number of livestock, the period(s) of use, the allotment(s) to be used, and the amount of use . . . for every grazing permit"); see also Idaho S&G at 8 ("Grazing management practices and facilities are implemented locally, usually on an allotment or watershed basis").

²⁴³ C-L Final Decisions at 18; Swisher Final Decision at 15; see EA at 37 (Castlehead-Lambert), 59 (Swisher) (explaining that the season-based alternative would authorize periods of grazing "specific to sage-grouse habitats, upland

its discretion decided to maintain that number of livestock on the other pastures.”²⁴⁴ The BLM Field Manager further explained as follows:

Theoretically, I could have adjusted livestock numbers on each pasture so that, as was suggested in protests, BLM maintained a constant 10 acres per AUM stocking rate. However, such variation of cattle numbers by pasture during the season would have created significant management concerns for . . . the permittee and for BLM, and it would certainly have required BLM to increase monitoring and compliance checks at a time of declining budgets. In addition, the increased intensities of use that would have resulted from the higher stocking rates would have reduced the certainty that this decision would be effective in meeting short and long term objectives. Accordingly, I decided against this approach.^[245]

In this way, BLM managed the Allotments for a discrete number of cattle throughout the seasons. We find that this approach is both a reasonable exercise of BLM’s discretion and consistent with the regulations.

We therefore agree with ALJ Holt that the appellants have not identified any legal authority for their position that BLM was required to manage each pasture of the Allotments individually, and the appellants have not shown error in the ALJ’s decision.

3. BLM Did Not Violate the TGA by Failing to Suspend Excess AUMs

In selecting the season-based alternative, BLM reduced the number of permitted AUMs on the Allotments. The final decisions for the Castlehead-Lambert

perennial vegetation communities, or riparian resources present within each pasture”).

²⁴⁴ C-L Final Decisions at 18; *see also* Swisher Final Decision at 15 (“Once BLM set the livestock numbers on pastures 1 and 3 [(the most limiting pastures in the allotment)] during the more restrictive years, BLM in its discretion decided to maintain that number of livestock throughout the grazing rotation.”); EA at 38 (Castlehead-Lambert), 59 (Swisher) (setting the stocking rate for the pasture most limited by the number of cattle and duration of scheduled use under the season-based alternative).

²⁴⁵ Notice of Field Manager’s Final Decision to 06 Livestock Company, Castlehead-Lambert Allotment at 18-19 n.16; Notice of Field Manager’s Final Decision to Maestrejuans, Castlehead-Lambert Allotment at 18 n.16; *see* Swisher Final Decision at 15-16 n.14.

Allotment reduced the active-use AUMs from 3,244 to 2,101,²⁴⁶ and the final decision for the Swisher Allotments reduced the active-use AUMs from 348 to 210.²⁴⁷ On appeal to the ALJ, the appellants argued that the decrease in active-use AUMs should have been converted to suspended AUMs.²⁴⁸ ALJ Holt rejected this argument. He concluded that the regulations expressly allowed BLM to reduce the permitted use because “existing grazing management practices or levels of grazing use on public lands are significant factors’ in the allotment failing to achieve the Idaho S&Gs.”²⁴⁹ ALJ Holt also concluded that “BLM could not have properly transferred the cancelled use to suspended use because the reduction did not result from the temporary situations described” in 43 C.F.R. § 4110.3-2(a)—specifically, drought, fire, or other natural causes, or to facilitate installation, maintenance, or modification of range improvements.²⁵⁰

In their appeal to the Board, the appellants concede that the ALJ’s conclusion about the application of 43 C.F.R. § 4110.3-2(a) “is correct as a technical matter.”²⁵¹ Nevertheless, the appellants argue that the ALJ’s affirmance of BLM’s decision to cancel the reduced AUMs was incorrect “because BLM’s effective elimination of the very concept of Suspended use contradicts the Taylor Grazing Act, as confirmed by U.S. Supreme Court precedent.”²⁵² The appellants contend that by “permanently reduc[ing] permitted use overall rather than reducing active use and transferring those AUMs to suspended use,” BLM is refusing to recognize a “common sense approach to protecting both the rancher and the range,” in violation of the TGA’s mandate to adequately safeguard grazing privileges.²⁵³

The appellants refer specifically to the 2000 Supreme Court case of *Public Lands Council v. Babbitt*,²⁵⁴ in which the Supreme Court rejected a challenge to three changes BLM made in the grazing regulations in 1995. One of those

²⁴⁶ C-L Final Decisions at 13-15.

²⁴⁷ Swisher Final Decision at 11-12.

²⁴⁸ See C-L Order at 16 (describing the appellants’ argument that, “[a]t a minimum . . . BLM should have moved the cancelled AUMs into ‘suspended’ status rather than canceling the AUMs entirely”); Swisher Order at 15 (same).

²⁴⁹ C-L Order at 17 (citing 43 C.F.R. § 4110.3-2(b); source of quote not identified, but possibly referring to EA App. I – RHA Determination for Castlehead Lambert Allotment at 19); Swisher Order at 16 (same, possibly referring to EA App. K – RHA Determination for Swisher Allotments at 15).

²⁵⁰ C-L Order at 17; Swisher Order at 16-17.

²⁵¹ SOR at 63 n.20.

²⁵² *Id.*

²⁵³ Reply at 22 (citing 43 U.S.C. § 315b (2012)).

²⁵⁴ 529 U.S. 728 (2000).

regulatory changes revised the definition of “grazing preference” to eliminate reference to a number of AUMs and added a definition of “permitted use” that refers to the forage allocated in land use plans.²⁵⁵ The Public Lands Council and other petitioners argued that this change in definitions, which defines a grazer’s privileges in relation to land use plans, threatened the stability and economic viability of their ranches and therefore violated the mandate in section 3 of the TGA to “adequately safeguard[]” grazing privileges.²⁵⁶ Section 3 provides in relevant part as follows:

. . . So far as consistent with the purposes and provisions of this subchapter, grazing privileges recognized and acknowledged shall be adequately safeguarded, but the creation of a grazing district or the issuance of a permit pursuant to the provisions of this subchapter shall not create any right, title, interest, or estate in or to the lands.^[257]

The Supreme Court disagreed with the petitioners. The Court observed that section 3 of the TGA “qualifies the duty to ‘safeguard’ by referring directly to the Act’s various goals and the Secretary [of the Interior]’s efforts to implement them.”²⁵⁸ Accordingly, the Court read section 3 as “granting the Secretary at least ordinary administrative leeway to assess ‘safeguard[ing]’ in terms of the Act’s other purposes and provisions,” which include not only “‘stabiliz[ing] the livestock industry,’” but also “‘stop[ping] injury to the public grazing lands by preventing overgrazing and soil deterioration,’” and “‘provid[ing] for th[e] orderly use, improvement, and development’ of the public range.”²⁵⁹

But significant to the appellants, the Supreme Court allowed for the possibility that future application of the new regulations “might arguably lead to a denial of grazing privileges that the pre-1995 regulations would have provided,” and in that event, the affected grazing permittee could challenge the effect of the regulations on the permittee’s grazing privileges.²⁶⁰ In a concurring opinion emphasizing this point, Justice O’Connor observed that if a permit holder finds that a specific application of the 1995 regulations “deprives the permit holder of grazing privileges to such an extent that the Secretary’s conduct can be termed a failure to

²⁵⁵ *Id.* at 740.

²⁵⁶ *Id.* at 741.

²⁵⁷ 43 U.S.C. § 315b (2012).

²⁵⁸ 529 U.S. at 741-42.

²⁵⁹ *Id.* at 742 (quoting 48 Stat. 1269 (June 28, 1934) (purpose of TGA)).

²⁶⁰ *Id.* at 744.

adequately safeguard such privileges, the permit holder may bring an as-applied challenge to the Secretary's action at that time."²⁶¹

Here, the appellants argue that BLM's refusal to convert the reduced AUMs to suspended AUMs "effectively destroy[s] the distinction between Permitted use and Suspended use" and therefore allows the appellants to bring an as-applied challenge to the grazing regulations.²⁶² The appellants contend that BLM's refusal to convert the AUMs "permanently diminishes the value of the privilege to the individual permittee"²⁶³ and "has a devastating impact on the capital value of a ranchers' private land and associated property."²⁶⁴

But as the Supreme Court instructed in *Public Land Council*, "the ranchers' interest in permit stability cannot be absolute" because the TGA grants the Secretary—through BLM—discretion to determine "how, and the extent to which, 'grazing privileges' shall be safeguarded, in light of the Act's basic purposes."²⁶⁵ Indeed, section 2 of the TGA directs the Secretary "to preserve the land and its resources from destruction or unnecessary injury."²⁶⁶ And that is what BLM did here: having found that current levels of grazing use are significant factors in the Allotments failing to achieve rangeland health standards, BLM followed the mandate in 43 C.F.R. § 4110.3-2 to "reduce permitted grazing use."²⁶⁷

²⁶¹ *Id.* at 751.

²⁶² SOR at 66.

²⁶³ *Id.* at 65; *see id.* at 68 ("[T]he ALJ Orders erred in granting the BLM's summary judgment on the point [impairment of grazing preferences under TGA], given the disputed issue of material fact advanced through the *Brandt Declaration* that such failure would impair the Preferences at issue.").

²⁶⁴ *Id.* at 67; *see Answer* at 55 n.38 ("BLM does not dispute the potential economic impacts of reducing AUMs.").

²⁶⁵ 529 U.S. at 741-42.

²⁶⁶ 43 U.S.C. § 315a (2012).

²⁶⁷ 43 C.F.R. § 4110.3-2(b) ("When monitoring or field observations show grazing use or patterns of use are not consistent with the provisions of subpart 4180 [Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration], . . . the authorized officer shall reduce permitted grazing use"); *see, e.g., C-L Final Decisions* at 15 ("[T]he affected . . . active use AUMs will not be transferred to suspension, in conformance with regulatory direction at 43 CFR § 4110.3-2"); *Swisher Final Decision* at 12 (same); *EA* at 26 ("In accordance with [the] regulation pertaining to reducing permitted use (43 CFR 4110.3-2), alternatives that result in a reduction in active use AUMs to meet Rangeland Health Standards or make significant progress . . . would be implemented by

Furthermore, 43 C.F.R. § 4110.3-2, which was among the regulations that BLM amended in the 1995 regulations, was not at issue in *Public Land Council*.²⁶⁸ To the extent that the appellants argue that BLM's application of § 4110.3-2, like the regulations at issue in *Public Lands Council*, affects their grazing preferences, that is not true. In responding to the protests to its proposed grazing decisions, BLM explained that a reduction in AUMs to protect the environment "does not cancel or impact a permittee's right to first priority in the receipt of a grazing permit."²⁶⁹ BLM's decisions do not impact the "superior or priority position" of 06 Livestock Company and the Maestrestuans to "receiv[e] a grazing permit" in the future with respect to either of the Allotments,²⁷⁰ even though BLM did not place the reduced AUMs in suspension.

For all of these reasons, we find that the appellants have not shown error in the ALJ's decision that BLM properly reduced the permitted use and was not required to transfer the reduced AUMs to suspended use.

We conclude that the appellants have not shown that the ALJ's Orders violate the TGA or BLM's grazing regulations.

FLPMA Arguments

The appellants argue that BLM's decisions are inconsistent with the governing land use plan, the Owyhee RMP,²⁷¹ and therefore violate FLPMA, for two reasons. First, the appellants contend that the Owyhee RMP requires BLM to either use range improvement projects "to achieve multiple use resource objectives and meet standards for rangeland health,"²⁷² or to explain why range improvement projects would not achieve objectives and standards, and BLM did neither.²⁷³ Second, the appellants claim that, because BLM's pasture-specific findings are incorporated into the Owyhee RMP, BLM's refusal to implement pasture-specific management is inconsistent with the RMP.²⁷⁴

reducing permitted use. Active use AUMs no longer available would not be converted to suspension.").

²⁶⁸ See 529 U.S. at 731 (identifying the challenged regulations as 43 C.F.R. §§ 4100.0-5, 4110.1(a), and 4120.3-2).

²⁶⁹ Group 1 Protest Responses at 16 (attached to C-L Final Decisions); Swisher Final Decision at 46.

²⁷⁰ 43 C.F.R. § 4100.0-5 (defining "*Grazing preference or preference*").

²⁷¹ Owyhee RMP (Dec. 30, 1999) (BLM Ex. Tab 4).

²⁷² *Id.* at 24.

²⁷³ SOR at 59.

²⁷⁴ *Id.* at 62-63.

1. BLM's Grazing Decisions Must Be Consistent with the Governing Land Use Plan

[5] FLPMA requires BLM to “manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans” BLM develops.²⁷⁵ BLM's grazing regulations echo this mandate, specifying that livestock grazing management actions must “be in conformance with the land use plan.”²⁷⁶ A management action is in conformance with a land use plan if it is “specifically provided for in the plan, or if not specifically mentioned, [is] clearly consistent with the terms, conditions, and decisions of the approved plan or plan amendment.”²⁷⁷ An appellant contending that a management action is inconsistent with a governing land use plan under FLPMA must show error in BLM's determination that its action complies with the terms of the land use plan.²⁷⁸

The governing land use plan in this case is the 1999 Owyhee RMP.

2. BLM Did Not Violate FLPMA by Failing to Authorize Range Improvement Projects

The Owyhee RMP directs BLM to “[p]rovide for a sustained level of livestock use compatible with meeting other resource objectives.”²⁷⁹ The RMP lists 13 “Management Actions and Allocations” to achieve this objective, including one that directs BLM to “[u]se a minimal level of rangeland developments (e.g., fences, water facilities) to adjust livestock grazing practices to achieve multiple use resource objectives and meet standards for rangeland health.”²⁸⁰ The appellants state that the ALJ erred by not finding that BLM must either use rangeland developments “to achieve multiple use resource objectives and meet standards for rangeland health” or expressly find that rangeland developments would not achieve that objective or standard.²⁸¹

ALJ Holt found that the Management Action the appellants cite is not a mandatory requirement on every allotment.²⁸² The ALJ wrote, “Range improvements provide but one of several possible management actions that BLM

²⁷⁵ 43 U.S.C. § 1732(a) (2012).

²⁷⁶ 43 C.F.R. § 4100.0-8.

²⁷⁷ *Id.* § 1601.0-5(b) (2005) (defining “*Conformity or conformance*”).

²⁷⁸ *WWP*, 191 IBLA at 378-79.

²⁷⁹ Owyhee RMP at 23 (Livestock Grazing Management Objective LVST 1).

²⁸⁰ *Id.* at 24.

²⁸¹ SOR at 59 (quoting Owyhee RMP at 24).

²⁸² C-L Order at 29-30; Swisher Order at 27.

may use to meet its multiple use objectives under FLPMA and the standards for rangeland health.”²⁸³

We agree that BLM is not required to implement range improvements on every allotment to conform to the RMP. As we noted earlier in this decision in response to the appellants’ argument that BLM violated its grazing regulations by not considering range improvement projects as “appropriate action,”²⁸⁴ BLM has broad discretion to manage grazing, including discretion to determine when it is appropriate to consider implementing range improvements. The RMP provided multiple ways for BLM to achieve the objective for livestock grazing management and did not mandate any particular action.²⁸⁵ As the Supreme Court has recognized, “a land use plan is generally a statement of priorities; it guides and constrains actions, but does not . . . prescribe them.”²⁸⁶ Furthermore, BLM adequately explained its decision not to consider incorporating range improvements at the present time.²⁸⁷

Finally, BLM properly notes that the specific directive in the RMP to “[u]se a minimal level of rangeland developments” “speaks to the *entire* Owyhee Field Office, and thus when it says use a ‘minimal’ amount of range improvements, it means to use a minimal amount across the entire Owyhee landscape, which totals approximately 150 allotments.”²⁸⁸ Accordingly, adhering to the directive could result in few, if any, improvements on particular allotments like the Castlehead-Lambert and Swisher Allotments, especially where there are already existing improvements that must be maintained under the new 10-year permits.²⁸⁹

²⁸³ C-L Order at 29-30; Swisher Order at 27.

²⁸⁴ *See supra* at 192 IBLA 362.

²⁸⁵ *See* Owyhee RMP at 7 (“This RMP focuses mostly on broad resource objectives and direction. However, it also provides some activity level guidance and includes some site specific decisions.”), 23-25 (Management Actions and Allocations).

²⁸⁶ *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. at 71.

²⁸⁷ *See supra* at 192 IBLA 361.

²⁸⁸ Answer at 44.

²⁸⁹ *See* C-L Final Decisions at 14, 16 and Swisher Final Decision at 12, 13 (requiring maintenance of range improvements as condition of permits); *see also* EA at 122 and 328 (“[In the Castlehead-Lambert and Swisher Allotments,] a variety of range improvement projects, such as spring developments, fences, cattle guards, and troughs have been implemented across the landscape to aid in livestock grazing management”), 124 (Table SOIL-5) (approximately 105 miles of fence and 34 water developments in Castlehead-Lambert Allotment), 330-31 (Table SOIL-14) (approximately 23 miles of fence and 5 water developments in Swisher Allotments).

We therefore conclude that ALJ Holt did not err by not requiring BLM to either use rangeland developments or expressly find that rangeland developments would not achieve multiple use resource objectives and meet standards for rangeland health.

3. BLM Did Not Violate FLPMA by Failing to Implement Pasture-Specific Management

The appellants state that, “to the extent that [BLM’s] refusal to abide by a pasture-specific system contradicts the Owyhee RMP (i.e., by ignoring the pasture-specific system used by FRH Determinations, which are incorporated into the RMP), a permittee could argue that there is a FLPMA violation as well.”²⁹⁰ The appellants do not identify where in the 1999 RMP BLM incorporated the 2012 RHA Determinations, and the appellants do not seem to have argued to the ALJ that BLM violated FLPMA in this manner.²⁹¹ In his Orders, ALJ Holt did not address whether an allotment-level grazing management system violates FLPMA and found only that BLM is not required by its grazing regulations to manage grazing on a pasture-specific level.²⁹²

The appellants’ passing reference to this theoretical argument is not sufficient to show error in the ALJ’s Orders. Furthermore, as BLM states, the Owyhee RMP directs BLM to identify and document all impacts that affect the ability of an allotment to meet the Idaho S&Gs, and if a standard is not being met due to livestock grazing, to adjust “allotment management.”²⁹³ Accordingly, allotment-level management is consistent with the direction given in the Owyhee RMP. We conclude that the appellants have not shown that BLM or the ALJ’s Orders are inconsistent with the governing RMP, and they have not demonstrated a FLPMA violation.

²⁹⁰ SOR at 62.

²⁹¹ See Associations’ Response in Opposition to the BLM’s Motion for Summary Judgment at 21-25.

²⁹² C-L Order at 15-16; Swisher Order at 15.

²⁹³ Answer at 49 (quoting Owyhee RMP App. LVST-1 at 53 (restating the Idaho S&Gs at 9)).

CONCLUSION

The Permittees and the Associations have not shown an error of fact or law in the ALJ's Orders granting summary judgment to BLM and dismissing the appeals. Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior,²⁹⁴ we affirm the ALJ's Orders.

_____/s/_____
Silvia Riechel Idziorek
Administrative Judge

I concur:

_____/s/_____
James F. Roberts
Acting Chief Administrative Judge

²⁹⁴ 43 C.F.R. § 4.1.