

## **Livestock Grazing**

### **Introduction:**

Approximately 154 cattle and sheep ranches are located within Humboldt County, and federal grazing permits and leases constitute an indispensable, integral component of these operations. Further, public lands-dependent ranches are vital to the economic livelihood of the County (totaling \$32.8 million annual sales in recent years) and constitute a cornerstone of the County's historic cultural identity. Significant decreases to cattle production within the County over time have negatively impacted Humboldt County's economic base. Administrative actions by federal land management agencies have been a primary factor in cattle production decreases, as evidenced by the progressive reduction of authorized grazing by both the BLM and the Forest Service:

Reductions in authorized grazing—and the subsequent loss of income—causes substantial harm to the County's economic prosperity and frustrates the use of grazing as a tool to manage fuel loads and invasive species. Annual data reported by the Nevada Agricultural Statistics Service indicate that cattle production in Humboldt County has decreased by a third over 45 years—from 92,700 head in 1971 to 61,000 head in 2016.<sup>i</sup> Using University of Nevada Cooperative Extension Cow-Calf budget for 2004<sup>ii</sup> and inflating costs to 2016 prices, the total expenditures per head are estimated to be \$505.16. When modified to estimate expenditures made only in Humboldt County<sup>iii</sup> by inflating, margining and import purging the Humboldt County Cow-Calf budget data, per head expenditures in Humboldt County for 2016 were estimated to be \$362.64 per head. Using the IMPLAN Input-output model<sup>iv</sup> for Humboldt County, the total economic impacts from losses due to decreased cattle production are estimated as direct, indirect, and induced.<sup>v</sup> With a loss of 31,700 head since 1971 and expenditures per head in Humboldt County of \$362.64, there has been a direct economic activity loss of \$11.5 million to Humboldt County's economy. Using the Range Cattle Sector multiplier of 1.513715, the total loss in economic activity [combined direct, indirect, and induced] from the reduction in cattle numbers in Humboldt County since 1971 is estimated to be \$17.4 million.

These losses constitute an unacceptable, and unsustainable trend. In order to protect the local economy, local cultural identity, and maximize fire and invasive species control, Humboldt County has developed the following positions and policies to protect public lands and livestock grazing within the County.

### **Goal:**

To ensure that public lands grazing in Humboldt County is a permanent, primary economic driver, an effective range management tool, and a thriving element of County culture through: 1) ensuring active livestock AUMs are maintained, at a minimum, at current levels; 2) ensuring all currently designated grazing allotments continue to be available for grazing; 3) ensuring that forage production is maximized by maintaining or (where appropriate) improving rangeland health trends; 4) ensuring all management decisions are based on current, scientifically sound, site-specific findings; 5) developing and implementing ongoing cooperative permittee rangeland monitoring regimes and 6) achieving a high level of permittee / agency collaboration and trust by ensuring: joint development of allotment management plans; annual permittee/agency operating plans; cooperative adaptive management; transparency in management; ongoing communication; and common goal setting.

### **Objectives:**

- 1) Monthly County / agency meetings will review in coordination all upcoming agency planning and / or significant livestock grazing decisions, and as necessary develop collaborative solutions to individual permittee / agency conflicts.
- 2) Annual operating plan meetings between agency personnel and every permittee 30-60 days prior to turn out.
- 3) By 2029, all grazing allotments within the County will have allotment management plans, developed in “considered consultation, cooperation and coordination with the lessees, permittees, and landowners involved.”<sup>vi</sup>
- 4) Outcome based grazing (OBG) (see BLM IM 2018-109) and cooperative adaptive management will become standard agency management procedures, and will be used to address range issues wherever allowable under federal law. Administrative actions will be used only in emergency situations or as solutions of last resort.
- 5) Permittee and County involvement in all NEPA processes for grazing permit and lease renewals, including permittee-developed alternatives where EAs or EISs are necessary. Incorporation of flexibility / OBG concepts in all grazing permits and allotment management plans.
- 6) Federal land management agencies and permittees will collaborate to provide current, site-specific monitoring data on all grazing allotments (consistent with BLM IM 2018-109, BLM-MOU-NV910-9264-2018-001, and MOUs between the Public Lands Council and the Forest Service and BLM, respectively—see *Nevada Rangeland Monitoring Handbook*, pp. 57-72).

### **Positions and Policies:**

### **Maintaining Grazing Levels:**

Humboldt County recognizes that federal land management agencies make yearly adjustments to stocking rates and schedules on grazing permits and leases to accommodate annual range conditions (see BLM IM 2018-109). Taking this into consideration, it is the position of Humboldt County that, to the extent allowable under federal law, the number of active livestock AUMs on federal grazing allotments should be maintained, at a minimum, at current levels; suspension of AUMs (either temporary or indefinite) should only occur where no other feasible management option exists. AUMs available for livestock grazing should be increased—temporarily or indefinitely—if and when monitoring indicates that additional grazing is feasible and / or grazing is useful for fuel or invasive weed management (see BLM IM 2018-109 and E.O. 13855).

In the event that rangeland health criteria on an allotment are not being met or sufficient progress is not being made toward meeting such criteria, grazing levels (whether measured as stocking rates, duration of use, or utilization levels) should be reduced only in the event that:

- ❖ failure to meet or make progress toward meeting rangeland health criteria is established on the basis of current, on-the-ground site-specific monitoring data (See Rangeland Management);
- ❖ failure to meet range health criteria is clearly demonstrated to be caused by current livestock management practices, not other potential impacts such as wildlife or wild horses; and
- ❖ all reasonable adaptive management approaches have been exhausted with no significant improvement to rangeland health. (See Adaptive Management).

Administrative actions to reduce or suspend grazing should only be used as solutions of last resort or in emergency situations, and then only in close coordination, consultation, and collaboration with the County Board of Commissioners (Board) and the permittee involved.

Any determination that a grazing allotment is failing to meet or make sufficient progress toward meeting range land health criteria—for any reason—should be addressed at the earliest opportunity in coordination, consultation, and collaboration with the Board and the effected permittee.

### **Preference:**

To maximize management flexibility and provide ongoing options for fuel management, it is Humboldt County's position that the total amount of forage (AUMs) associated with a grazing permittee's base property (referred to in the Federal Grazing Regulations as "preference" prior to 1995) not be reduced regardless of whether some AUMs have been "suspended" for an extended period of time. In other words, long suspended AUMs

should not be eliminated from the total number of adjudicated AUMs attached to a grazing permit. This position is consistent with the '94 Rangeland Reform FEIS:

“Suspended use provides an important accounting of past grazing use for the ranching community and is an insignificant administrative workload to the agency; therefore, continuing its use is more beneficial than eliminating its use.”

Bureau of Land Management, Rangeland Reform '94: Final Environmental Impact Statement 144 (1994).<sup>vii</sup>

**Current (2019) active and suspended AUMs associated with BLM grazing permits within Humboldt County are as follows:**

| ALLOTMENT         | ACTIVE<br>AUMs | SUSPENDED<br>AUMs | TOTAL<br>AUMs |
|-------------------|----------------|-------------------|---------------|
| CORDERO           | 197            | 0                 | 197           |
| FT MCDERMITT      | 2085           | 266               | 2351          |
| JORDAN MEADOWS    | 11720          | 8939              | 20659         |
| UC                | 12902          | 0                 | 12902         |
| CROWLEY CREEK     | 3303           | 2102              | 5405          |
| FLAT CREEK        | 3168           | 1377              | 4545          |
| POLE CREEK        | 2988           | 105               | 3093          |
| WILLOW CREEK      | 1536           | 0                 | 1536          |
| DOUBLE H          | 1687           | 0                 | 1687          |
| LOWER QUINN       | 227            | 0                 | 227           |
|                   | 237            | 0                 | 237           |
| REBEL CREEK       | 1000           | 0                 | 1000          |
| SOD HOUSE         | 384            | 240               | 624           |
| GALLAGHER FLAT    | 520            | 0                 | 520           |
|                   | 1067           | 0                 | 1067          |
| UPPER QUINN RIVER | 61             | 248               | 309           |
|                   | 375            | 1172              | 1547          |
| ANTELOPE          | 563            | 0                 | 563           |
| BUFFALO           | 338            | 0                 | 338           |
| ANDORNO           | 873            | 0                 | 873           |
| DAVEYTOWN         | 16             | 0                 | 16            |
|                   | 5149           | 0                 | 5149          |
| LONG CANYON       | 1697           | 0                 | 1697          |
| CHIMNEY CREEK     | 460            | 18                | 478           |
| PARADISE HILL     | 2191           | 720               | 2911          |
| ABEL CREEK        | 1370           | 0                 | 1370          |
|                   | 586            | 0                 | 586           |
| SINGUS            | 350            | 394               | 744           |

|                    |       |       |       |
|--------------------|-------|-------|-------|
| HANSON CREEK       | 151   | 147   | 298   |
| FORT SCOTT         | 361   | 401   | 762   |
| GRANITE            | 108   | 145   | 253   |
|                    | 108   | 145   | 253   |
| SOLID SILVER       | 246   | 500   | 746   |
| INDIAN CREEK       | 250   | 119   | 369   |
| MULLINIX           | 133   | 295   | 428   |
| BUTTERMILK         | 741   | 331   | 1072  |
|                    | 1784  | 796   | 2580  |
| HOT SPRINGS PEAK   | 2536  | 0     | 2536  |
| BULLHEAD           | 12050 | 7233  | 19283 |
| SPRING CREEK       | 2488  | 0     | 2488  |
| WILLIAM STOCK      | 3937  | 1142  | 5079  |
|                    | 1968  | 571   | 2539  |
| LITTLE OWYHEE      | 4100  | 0     | 4100  |
|                    | 23700 | 19663 | 43363 |
| EDEN VALLEY        | 2629  | 786   | 3415  |
| OSGOOD             | 1782  | 289   | 2071  |
|                    | 1605  | 261   | 1866  |
| IRON POINT         | 653   | 0     | 653   |
|                    | 587   | 0     | 587   |
| SCOTT SPRINGS      | 419   | 125   | 544   |
| GOLCONDA BUTTE     | 1003  | 320   | 1323  |
| SAND PASS          | 887   | 232   | 1119  |
| BLOODY RUN         | 1213  | 0     | 1213  |
|                    | 980   | 257   | 1237  |
| ASA MOORE          | 685   | 225   | 910   |
| SUGAR LOAF         | 602   | 126   | 728   |
| PUEBLO MOUNTAIN    | 2137  | 0     | 2137  |
| KINGS RIVER        | 12192 | 0     | 12192 |
| HORSE CREEK        | 3521  | 0     | 3521  |
| LITTLE HORSE CREEK | 262   | 0     | 262   |
|                    | 262   | 0     | 262   |
| ALDER CREEK        | 5913  | 6532  | 12445 |
| DYKE HOT           | 1636  | 84    | 1720  |
| COYOTE HILLS       | 2633  | 0     | 2633  |
| DESERT VALLEY      | 201   | 25    | 226   |
|                    | 1395  | 519   | 1914  |
| SAND DUNES         | 368   | 0     | 368   |
|                    | 3314  | 0     | 3314  |
|                    | 183   | 0     | 183   |
| BLUE MOUNTAIN      | 2315  | 0     | 2315  |
| KNOTT CREEK        | 5936  | 996   | 6932  |

|                   |      |      |      |
|-------------------|------|------|------|
| BOTTLE CREEK      | 227  | 92   | 319  |
|                   | 300  | 103  | 403  |
|                   | 1136 | 25   | 1161 |
|                   | 1771 | 945  | 2716 |
| MORMAN DAN        | 1998 | 0    | 1998 |
| MARTIN CREEK      | 300  | 0    | 300  |
| ROCK CREEK        | 2392 | 0    | 2392 |
| MELODY            | 1020 | 220  | 1240 |
| COAL CANYON-POKER | 64   | 0    | 64   |
|                   | 2588 | 0    | 2588 |
|                   | 492  | 0    | 492  |
| GOLDBANKS         | 2136 | 129  | 2265 |
|                   | 221  | 0    | 221  |
| RYEPATCH          | 901  | 414  | 1315 |
|                   | 165  | 0    | 165  |
|                   | 915  | 416  | 1331 |
| CLEAR CREEK       | 2931 | 78   | 3009 |
| HUMBOLDT HOUSE    | 107  | 0    | 107  |
|                   | 403  | 0    | 403  |
|                   | 218  | 0    | 218  |
| HUMBOLDT SINK     | 62   | 0    | 62   |
|                   | 1520 | 0    | 1520 |
| PLEASANT VALLEY   | 2682 | 850  | 3532 |
|                   | 2844 | 495  | 3339 |
|                   | 5027 | 1352 | 6379 |
| PRNCE ROYAL       | 97   | 0    | 97   |
|                   | 56   | 0    | 56   |
| PUMPERNICKEL      | 582  | 90   | 672  |
|                   | 1209 | 113  | 1322 |
|                   | 825  | 125  | 950  |
|                   | 6801 | 1017 | 7818 |
|                   | 152  | 0    | 152  |
| ROCHESTER         | 1386 | 0    | 1386 |
|                   | 1400 | 0    | 1400 |
|                   | 400  | 0    | 400  |
| STAR PEAK         | 1453 | 0    | 1453 |
|                   | 259  | 186  | 445  |
|                   | 973  | 1814 | 2787 |
|                   | 390  | 3    | 393  |
| RAWHIDE           | 2139 | 1163 | 3302 |
|                   | 239  | 125  | 364  |
|                   | 362  | 191  | 553  |
| DOLLY HAYDEN      | 1067 | 0    | 1067 |

|                     |               |                  |               |                                          |
|---------------------|---------------|------------------|---------------|------------------------------------------|
| KLONDIKE            | 4610          | 0                | 4610          |                                          |
| RAGGED TOP          | 0             | 0                | 0             | 10,101 AUMs but no active/permitted AUMs |
| BLUE WIND/7 TROUGHS | 2869          | 106              | 2975          |                                          |
|                     | 14058         | 11806            | 25864         |                                          |
|                     | 2643          | 0                | 2643          |                                          |
|                     | 746           | 0                | 746           |                                          |
| DESERT QUEEN        | 3277          | 946              | 4223          |                                          |
|                     | 78            | 22               | 100           |                                          |
| HUMBOLDT VALLEY     | 60            | 5                | 65            |                                          |
|                     | 238           | 0                | 238           |                                          |
|                     | 1763          | 0                | 1763          |                                          |
|                     | 839           | 0                | 839           |                                          |
| ROSE CREEK          |               |                  |               | 159 AUMs but no permit holder            |
| WHITE HORSE         | 1970          | 1083             | 3053          |                                          |
| DIAMOND S           | 1158          | 987              | 2145          |                                          |
| BILK CREEK          | 3030          | 56               | 3086          |                                          |
| JERSEY VALLEY       | 1173          | 1083             | 2256          |                                          |
| PROVO               | 1120          | 0                | 1120          |                                          |
| HOLE IN THE WALL    | 1488          | 0                | 1488          |                                          |
| WASHBURN            | 1465          | 461              | 1926          |                                          |
| HOME STATION GAP    | 602           | 0                | 602           |                                          |
| SONOMA              | 1485          | 485              | 1970          |                                          |
| THOMAS CREEK        | 264           | 0                | 264           |                                          |
|                     | 269           | 58               | 327           |                                          |
| HARMONY             | 189           | 41               | 230           |                                          |
|                     | 159           | 34               | 193           |                                          |
|                     | <b>ACTIVE</b> | <b>SUSPENDED</b> | <b>TOTAL</b>  |                                          |
|                     | <b>AUMs</b>   | <b>AUMs</b>      | <b>AUMs</b>   |                                          |
| <b>TOTALS</b>       | <b>264787</b> | <b>84965</b>     | <b>349752</b> |                                          |

**Grazing Increase—  
Increasing Permitted Use and Issuance of Temporary Permits:**

Humboldt County understands that in the land use planning process, forage available for livestock grazing will depend upon range conditions, wildlife consumption, and (if applicable) consumption by appropriate numbers of wild horses and burros managed within AML.<sup>viii</sup> With this in view, in the interest of maintaining an economically sustainable livestock industry within the County and ensuring stability within the industry, it is the position of Humboldt County that on Taylor Grazing Act grazing districts, livestock grazing AUMs in “suspended use” have priority for use of additional forage, and should become “active” if and when additional forage becomes available. This position is consistent with the ’94 Rangeland Reform FEIS:

“The present suspended use would continue to be recognized and have a priority for additional grazing use within the allotment.”<sup>ix</sup>

*Id.*

More generally, on any BLM or Forest Service grazing allotment where monitoring history, actual use, or authorization of temporary non-renewable grazing demonstrates that supplemental forage is continuously available or should be utilized to improve or protect rangelands (e.g. as a strategy to reduce fuel loads or control invasive species) such supplemental forage should be allocated to existing permits<sup>x</sup> or, at a minimum, be temporarily grazed as a vegetative management tool [36 CFR § 222.3(c)(2); Forest Service Handbook 2200 – Rangeland Management: § 2233 Temporary Grazing Permits; § 2234.18 Vegetation Management Livestock Use Permits; E.O. 13855].

### **Grazing Reductions— Temporary Non-Use, Suspended AUMs, and Restoration of Grazing:**

Humboldt County recognizes that from time to time due to fire, drought, or other natural eventualities, federal agencies may be required to temporarily reduce grazing or even temporarily pause grazing on public lands grazing allotments to restore range conditions. The federal agency should provide current, site-specific range monitoring data (See Rangeland Management Section) to justify the need for reduction of grazing or allotment closures, and specify the conditions necessary to restore prior grazing levels and/or reopen the allotment. If a temporary reduction or pause in grazing is shown to be necessary on an allotment, federal agencies should first coordinate with the permittee to recommend temporary non-use (annual C&P non-use).<sup>xi</sup> Federal agencies should temporarily suspend AUMs (accompanied by clear objectives for restoring AUMs to active use) only if temporary non-use cannot be voluntarily obtained. Agency decisions to suspend AUMs [temporarily or indefinitely] or temporarily close an allotment should be made in coordination with the County and in consultation with the permittee effected. Temporarily or indefinitely suspended AUMs should be returned to active grazing use, and /or allotments reopened as soon as stated objectives are met.

In the event that grazing is temporarily reduced or paused due to fire or drought, grazing should recommence on the basis of case-by-case monitoring and site-specific range land health evaluations and objectives, as opposed to fixed and/or predetermined time lines. In determining post-fire grazing schedules, federal agencies should consider the benefits of grazing as an invasive species control tool. Research has shown that, in the absence of grazing, cheatgrass increases dramatically on both burned and unburned sites (Robertson 1971, West et al. 1984; Schmelzer et al. 2014; Evans and Young 1970).

### **Allotment Closures:**

In general, it is the position of Humboldt County that grazing allotments should remain open and available to grazing on an ongoing basis. Ongoing grazing stabilizes the County livestock industry and provides a critical means of protecting public safety, the local economy, and wildlife habitat through reducing risk of wildfire. While temporary closure of grazing allotments is occasionally appropriate in cases of fire or other natural eventualities to restore range conditions prior to restocking (See Grazing Reductions: Temporary Non-use, Suspended Use, and Restoration of Grazing) the closure of an allotment for any other reason should only occur in coordination with the County and the effected permittee, and consistent with applicable statute and regulations (see Taylor Grazing Act Grazing Districts).

This position is consistent with Forest Service regulations, which state:

“Forage producing National Forest System lands will be managed for livestock grazing and the allotment management plans will be prepared consistent with land management plans.”

36 CFR § 222.2(c)

#### **Taylor Grazing Act Grazing Districts:**

In accord with recent case law and legal findings of the Department of Interior, Humboldt County agrees that grazing districts created pursuant to the Taylor Grazing Act were intended by Congress to have grazing as their primary, presumed use. It is therefore the policy of Humboldt County to ensure that lands interior to the boundaries of grazing districts be recognized in BLM land use plans as being—by definition, and in accord with Congressional intent—“available” for grazing. Closure of allotments or parts of allotments within grazing districts should be temporary, and should only occur consistent with the Allotment Closures policy above, unless a subsequent federal designation supersedes the primary use established under the Taylor Grazing Act.

It is the policy of Humboldt County to ensure that grazing districts created pursuant to the Taylor Grazing Act and classified by the Secretary of Interior as “chiefly valuable for grazing” be maintained with their current boundaries unaltered and under their present classification. Humboldt County also understands that any classifications or reclassifications of land under the BLM’s management is required to comply with federal regulations which state, in pertinent part:

“All land classifications must be consistent with State and local government programs, plans, zoning, and regulations applicable to the area in which the lands to be classified are located, to the extent such State and local programs, plans, zoning, and regulations are not inconsistent with Federal programs, policies, and uses, and will not lead to inequities among private individuals.”

43 CFR § 2410.1(c)

Background:

Recent case law has clarified that grazing is the primary, presumed use on grazing districts. Excluding grazing on lands interior to TGA grazing district boundaries to prioritize non-grazing uses (e.g. conservation, recreation, etc.) either for fixed or indefinite periods is not appropriate.

In *Public Lands Council v. Babbitt*, 167 F.3d 1287 (10<sup>th</sup> Cir. 1999), for example, the Tenth Circuit reviewed whether the revised grazing regulations (1995) could exclude grazing on grazing district allotments for ten-year periods by authorizing permits for “conservation use” that excluded grazing. The Tenth Circuit upheld the Wyoming Federal District Court’s decision that these regulations were invalid on their face:

“The TGA authorizes the Secretary to establish grazing districts comprised of public lands “which in his opinion are chiefly valuable for grazing and raising forage crops.” 43 U.S.C. § 315. When range conditions are such that reductions in grazing are necessary, temporary non-use is appropriate and furthers the preservation goals of the TGA, FLPMA, and PRIA, even when that temporary non-use happens to last the entire duration of the permit. BLM may impose temporary reductions, see 43 C.F.R. § 4110.3-2 (1994), or permittees may voluntarily reduce their grazing levels. The presumption is, however, that if and when range conditions improve and more forage becomes available, permissible grazing levels will rise.

*Id.* at 1308.

The Court went on to note that a “conservation use” permit is an

“impermissible exercise of the Secretary’s authority under section three of the TGA because land that he has designated as ‘chiefly valuable for grazing livestock’ will be completely excluded from grazing use even though range conditions could be good enough to support grazing. *Congress intended that once the Secretary established a grazing district under the TGA, the primary use of that land should be grazing.*”

*Id.* (Emphasis added.)

The Tenth Circuit’s decision was corroborated and applied to a broader context by William G. Myers III, the then Solicitor of the United States Department of Interior in Memorandum M-37008. Here, the Solicitor examined whether the BLM could retire a relinquished permit from grazing. His conclusion applied the Tenth Circuit’s decision that lands interior to the boundaries of grazing districts are intended for grazing use. Retiring such grazing allotments from grazing is not a possible action so long as an allotment remains within a grazing district:

“[L]ands within grazing districts have been found to be ‘chiefly valuable for grazing and the raising of forage crops.’ *There must be a proper finding that lands are no longer chiefly valuable for grazing in order to cease livestock grazing within grazing districts.*”

*Id.* at 2 (emphasis added).

Further, the Secretary clarified that there is no pretext for reclassifying land within a grazing district from chiefly valuable for grazing to a different classification unless the intent is to remove it from the grazing district entirely:

“The Secretary need only make a chiefly-valuable-for-grazing determination when the Secretary is creating a district, adding to a district, or modifying a district’s boundaries.”

Clarification of M-37008 at 7.

The Solicitor concluded, in agreement with the Tenth Circuit, that grazing is the primary, presumed use on TGA grazing districts.

“As long as the boundary of the grazing district remains in place and the classification and withdrawals remain in effect, there is a presumption that grazing within a grazing district should continue. This was the holding in *PLC v. Babbitt*, 167 F.3d 1287, 1308 (10<sup>th</sup> Cir. 1999), *aff’d on other grounds*, 529 U.S. 728 (2000) (“Congress intended that once the Secretary established a grazing district under the Taylor Grazing Act (TGA), the primary use of that land should be grazing.”).

*Id.*

The Ninth Circuit Court has ruled similarly on the purpose of the Taylor Grazing Act. In *Kidd v. United States Department of the Interior, Bureau of Land Management*, 756 F. 2d 1410, 1411 (9<sup>th</sup> Cir. 1985), quoting itself from *Faulkner v. Watt*, 661 F. 2d 809, 812 (9<sup>th</sup> Cir. 1981) the Court found that:

“ ‘the purpose of the Taylor Grazing Act is to stabilize the livestock industry and protect the rights of sheep and cattle growers from interference.’ ”<sup>xiii</sup>

*Id.*

This ruling was further quoted in *Fallini v. Hodel*, 725 F. Supp. 1113 (D. Nev. 1989). In view of determining whether the primary purpose of lands managed pursuant to the Taylor Grazing Act may have been revised or repealed by the passage of subsequent

statutes, the Federal District Court of Nevada ruled that:

“While defendants are correct in pointing out that Congress by various enactments has declared additional purposes for which Taylor Grazing Act lands will be managed by the BLM, there is no indication that Congress has repealed the Act's primary purpose to manage grazing lands so as to stabilize and preserve the livestock industry.”

*Id.*

**Permit relinquishment:**

It is the policy of Humboldt County that currently designated grazing allotments on public lands should remain available for substantive livestock grazing. Ongoing grazing gives economic stability to the County's livestock industry, and provides a critical means of managing fuels. Therefore, the County expects that federal agencies neither encourage nor facilitate the “relinquishment” or “buy out” of grazing permits for non-grazing purposes. Further, allotments on TGA grazing districts are classified for grazing use; “As long as the boundary of the grazing district remains in place and the classification and withdrawals remain in effect, there is a presumption that grazing within a grazing district should continue.”<sup>xiii</sup> Therefore, it is the County's policy to ensure that permits voluntarily relinquished by permittees should be immediately made available to other livestock operators, unless 1) an agency determination to the contrary is consistent with County land use plans and agreed upon in coordination with the County and 2) any necessary reclassifications and subsequent requirements are executed according to applicable statute and regulations. (See Section XX Special Designations.)

**Allocation of Vacated Allotments:**

Due to permit relinquishment, permit cancelation, or other reasons, from time to time grazing allotments become vacated. In order to sustain the livestock industry, and to minimize risk of wildfire or invasive weed infestation, it is the policy of Humboldt County to ensure that allotments vacated for any reason should be immediately made available to other livestock operators, unless 1) an agency determination to the contrary is consistent with County land use plans and agreed upon in coordination with the County and 2) any necessary reclassifications and subsequent requirements are executed according to applicable statute and regulations.

Livestock operators with base property in the immediate vicinity of vacated allotments should be given priority in the reallocation of allotments.

Due to difficulties in maintaining infrastructure, efficient management, and potential fire risk, vacated allotments should not be allocated as grass banks.

### **NEPA for Grazing Permit Renewals and Trailing:**

The FY 2015 National Defense Authorization Act amended FLPMA to streamline the NEPA process for certain grazing permit renewals and livestock trailing and crossing, as well as ensuring that administrative NEPA backlogs did not interfere with continued grazing on public lands grazing allotments. Consistent with Section 402(h)(1) & (2) of FLPMA, as amended by Public Law No. 113-291,<sup>xiv</sup> Humboldt County expects that, in general:

- ❖ Categorical exclusions be issued in the renewal of BLM and U.S. Forest Service grazing permits and leases where current management practices are continuing, and either; 1) range land health standards are being met, or 2) a failure to meet range land health standards is not due to existing livestock grazing.
- ❖ Livestock trailing and crossing on public lands and National Forest Lands be categorically excluded from environmental assessments and environmental impact statements under NEPA.
- ❖ The terms and conditions of expiring or transferred grazing permits or leases shall continue pending the completion of any necessary review under NEPA.

Where development of an EA or EIS under NEPA for a grazing permit or lease renewal is deemed necessary, Humboldt County expects the lead agency to work in cooperation, coordination, and consultation with the effected permittee and the County to develop flexible, workable alternatives consistent with multiple use sustained yield management and including at least one OBG alternative (see BLM IM 2018-109). NEPA EAs and EISs should include at least one alternative that implements adaptive management. Permittees should be allowed to develop an alternative if they choose to. When assessing the effect of grazing on resource values, NEPA alternatives should consider the positive impacts of grazing for fire and weed management, and to wildlife habitat (Klebenow 1985; Evans 1986; Vavra 2005; Schmelzer et al. 2014; Davies et al. 2016, 2017; Diamond et al. 2009, 2012; Strand et al. 2014).

Humboldt County is an “interested party” in all permit renewals and permit modifications. Where an EA or and EIS is necessary for permit renewal, Humboldt County’s policy is to be a co-operating agency, consistent with 40 CFR § 1508.5, 43 CFR §1610.3-1.<sup>xv</sup> [See Sec. XX Principles]

### **Allotment Management Plans:**

FLPMA states that:

“All permits and leases for domestic livestock grazing issued pursuant to this section may incorporate an allotment management plan developed by the Secretary concerned [...] If the Secretary concerned elects to develop an allotment management plan for a given area, he shall do so in careful and considered consultation, cooperation and coordination with the lessees, permittees, and landowners involved, the district grazing advisory boards established pursuant to section 403 of the Federal Land Policy and Management Act (43 U.S.C. 1753), and any State or States having lands within the area to be covered by such allotment management plan.”

43 U.S.C. §1752(d)

Federal regulations state that:

“Each allotment will be analyzed and with careful and considered consultation and cooperation with the affected permittees, landowners, and grazing advisory boards involved, as well as the State having land within the area covered, and an allotment management plan developed. The plan will then be approved and implemented. The analysis and plan will be updated as needed.”

36 C.F.R. § 222.2(b)

The Forest Service Handbook states that:

“Basic policies for range management on National Forests and National Grasslands are to [...] Coordinate, cooperate and consult with grazing permittees and grazing associations, and other interested parties in the development of allotment management plans.”

FSM 2200 – Range Management § 2203.1

In order to promote the highest degree of scientifically informed, well-planned, and cooperative management of grazing allotments, Humboldt County expects the BLM and Forest Service, at the earliest practicable opportunity, to develop individualized allotment management plans (AMPs) “in consultation with the permittee or lessee involved”<sup>xvi</sup> on all allotments currently lacking AMPs. AMPs should be developed and implemented as follows: Within five (5) years on all “I” category, high priority allotments; within eight (8) years on all “P” category medium priority allotments; within ten (10) years on all other allotments.

In the interest of maximizing multiple use goals, rangeland health, and opportunities for advancing scientific learning and management techniques, Humboldt County expects the BLM and Forest Service, in collaboration and consultation with permittees and lessees, to incorporate adaptive management practices into allotment management plans wherever practicable. [See Adaptive Management, below; Section XX Rangeland Management].

The BLM has recognized the utility of incorporating flexibility in AMPs, and has issued guidance stating that managers:

“may authorize grazing permits and leaseholders (permittees) to exercise flexibility by making adjustments in their livestock grazing use to accommodate changes in weather, forage production, effects of fire or drought, or other temporary conditions when flexibility is included in an allotment management plan (AMP) or its functional equivalent. *Allowing permittees flexibility to adjust their grazing use will provide more timely and responsive adjustments to changing conditions in order to achieve identified resource and operational objectives.*”

BLM IM 2018-109 (emphasis added).

### **Adaptive Management:**

In the interest of optimizing healthy, productive rangelands within the context of a multiple use sustained yield management approach, and with a view to facilitating collaborative management with the highest opportunities for joint learning and enhancement of management methods, Humboldt County expects federal land management agencies to apply adaptive management wherever applicable.

Adaptive rangeland management includes: identifying clear, achievable objectives; consistent monitoring; identifying and executing best management alternatives; and permittee participation.<sup>xvii</sup> The Department of Interior Departmental Manual states that: “The Department’s policy is to encourage the use of adaptive management as appropriate as a tool in managing lands and resources. ...Bureau and offices are required to [i]ncorporate adaptive management principles, as appropriate, into policies, plans, guidance, agreements, and other instruments for the management of resources under the Department’s jurisdiction.”<sup>xviii</sup>

The Forest Service Handbook 1909.12 Land Management Planning Handbook, § 41 Adaptive Management Framework states that “The three phases of planning (assessment, planning, and monitoring) in Title 36, Code of Federal Regulations, part 219 (36 CFR part 219) are designed to support a framework for adaptive management that will facilitate learning and continuous improvement in plans and Agency decision making. Adaptive management is a structured, iterative process for decision making to reduce uncertainty through structured hypothesis testing and monitoring of outcomes. This approach supports decision making that meets resource management objectives while simultaneously accruing information to improve future management.”

Adaptive management should be incorporated into all allotment management plans, in collaboration, consultation, and coordination with permittees or lessees. Adaptive management strategies may include: physical installations such as cross fencing, pipelines, water tanks and troughs, and salt distribution; vegetative treatments; deferred

or rest rotation systems; herding strategies; fire restoration treatments and other restoration projects, and grazing flexibility (see BLM IM 2018-109). If grazing is determined, by appropriate methods [See Rangeland Health Section], to be a significant causal factor in failing to meet or make adequate progress toward meeting rangeland health criteria, Humboldt County expects, wherever allowable under federal law, that federal land management agencies use adaptive management approaches to reestablish rangeland health goals before resorting to administrative remedies.

### **Range Improvements:**

The Public Rangelands Improvement Act (“PRIA”) defines “range improvement” as “Any activity or program on or relating to rangelands which is designed to improve production of forage; change vegetable composition; control patterns of use; provide water; stabilize soil and water conditions; and provide habitat to livestock and wildlife. The term includes, but is not limited to, structures, treatment projects, and use of mechanical means to accomplish desired results.” [43 U.S.C. § 1902(f)].

Consistent with PRIA and FLPMA<sup>xix</sup> Humboldt County views the installation of range improvements such as fencing, pipelines, stock water tanks and holes, off-stream water catchments, reseeding, invasive weed treatments, fire breaks, and other projects as essential to ensuring public safety, healthy, productive rangelands, wildlife habitat, and sustainable livestock grazing. It is therefore the policy of Humboldt County that range improvements thus defined be utilized as a primary, first-line approach to addressing rangeland management issues and enhancing rangeland health in all federal land use planning, grazing permit terms and conditions, allotment management plans, and federal land management decisions generally. Wherever allowable by law, range improvements, applied within an adaptive management framework, should be employed early and often: to enhance rangeland health; to reduce risk of fire; and to address any failure to meet or make significant progress toward meeting rangeland health criteria. Federal agencies should work in coordination with the County and the permittee to resolve any rangeland health deficiency caused by insufficient grazing management by employing range improvements in an adaptive management framework before reducing grazing as an administrative remedy.

### **Rangeland Monitoring:**

Humboldt County recognizes that monitoring is critical to effective range management, and for meeting rangeland health goals and objectives within a multiple use management framework. Monitoring is also a key component of OBG and grazing flexibility (consistent with BLM IM 2018-109) and of adaptive management. Federal agencies are responsible for developing monitoring programs. Humboldt County expects that federal agencies will actively involve grazing permittees as cooperative partners in rangeland monitoring activities within the County. Monitoring efforts within the County should be guided by the framework provided by the *Nevada Rangeland Monitoring Handbook* and

its companion, the *Rancher's Monitoring Guide*, which were collaboratively co-authored and approved by the BLM and the Forest Service, among other federal and state agencies.

*The Nevada Rangeland Monitoring Handbook and its companion, the Ranchers Monitoring Guide, describe the inventory, assessment, and long- and short-term monitoring processes and techniques in detail. As these manuals make clear, inventory, assessment, and long- and short-term monitoring are distinct processes, and are not interchangeable.*

Humboldt County strongly endorses cooperative permittee monitoring. Both the BLM and the Forest Service have signed MOUs with the Public Lands Council stating their commitment to working cooperatively with grazing permittees as monitoring partners (see *Nevada Rangeland Monitoring Handbook*, pp. 57-72). Further, the Nevada State Office of the BLM and the U.S. Forest Service (Humboldt-Toiyabe National Forest) have signed MOUs (BLM-MOU-NV910-9264-2018-001; 18-MU-11041730-003, respectively) with the Nevada Cattlemen's Association endorsing permittee/agency cooperative monitoring within an adaptive management framework. Humboldt County expects all provisions of these MOUs to be honored, and strongly encourages federal agency personnel to work with grazing permittees to fill out the Cooperative Monitoring Agreement Template in the *Handbook* (pp. 55-6) to initiate individual cooperative agency/permittee monitoring plans.

### **Annual Grazing Authorizations / Annual Operating Plans and Instructions:**

In the interest of maximizing transparent, collaborative, and effective grazing management on federal allotments, Humboldt County expects federal land management agency range consultants to meet annually, in person, with all grazing permittees and lessees 30-60 days prior to turn out to develop annual operating plans and/or instructions for the upcoming season. Consistent with BLM IM 2018-109, annual authorizations should maximize flexible grazing management. Federal agencies are expected to maintain ongoing documentation of all allotment management plans, annual instructions, adjustments and authorizations, rangeland health issues, monitoring data, and adaptive management strategies for all allotments on file.

### **Grazing in Wilderness Areas:**

Humboldt County expects federal agencies to manage all grazing on congressionally designated wilderness areas consistent with the Wilderness Act 16 U.S.C. § 1131(d)(4)<sup>xx</sup> and subsequent congressional guidance. Specifically, federal agencies shall not make livestock grazing on wilderness areas that predates the Act impracticable by foreclosing on the necessary maintenance of facilities, or the occasional and necessary use of motorized vehicles for livestock or facility management where practical alternatives do not exist. [With respect to wilderness areas administered by the Secretary of Agriculture, see guidelines described in House Report 96-617 of the 96th Congress; with respect to wilderness areas administered by the Secretary of the Interior, see guidelines described in

appendix A of House Report 101–405 of the 101st Congress. Appendix X.]

### **Access:**

Roads historically used for livestock trailing, facility maintenance, allotment access, or vehicle transport of livestock across public lands should remain open and be maintained as necessary. Agencies should maintain a log of roads currently in need of maintenance. (For access on wilderness areas, see *Grazing in Wilderness Areas*.) (For more general discussion of County road accessibility and maintenance policy, see Section XX Travel Management.)

### **Water Rights:**

Humboldt County recognizes that water rights (both vested and subsisting) located on public lands or on intermingled private lands are private property.<sup>xxi</sup> Water rights are integral to the greater property value, productivity, and subsistence of ranches and other entities within the County, and are legally recognized and protected by Nevada law. (NRS 533 *et seq.*). It is therefore the policy of Humboldt County that:

- ❖ Grazing permit renewals or authorization of federal permits for the development or improvement of water facilities on federal lands should not be contingent upon: 1) the transfer of privately held water rights, in whole or in part, to the US Government;<sup>xxii</sup> 2) the public or federal use of a permittee’s stockwater or water installations for non-livestock watering purposes including in-stream bypass,<sup>xxiii</sup> noting that Nevada Law (NRS 533.367) provides for wildlife access to surface water. Humboldt County further recognizes that Nevada law restricts possession of stock watering rights to owners or interest holders in livestock.<sup>xxiv</sup>
- ❖ Federal agencies should not obstruct or impede use of a lawfully held water right by denying reasonable access to, maintenance of, or beneficial use of water or rights-of-way (easements) for water conveyance on or crossing public lands. Any taking of a privately held water right by a federal agency should be immediately and justly compensated according to federal law.<sup>xxv</sup>

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<sup>i</sup> Nevada Crops and Livestock Reporting Service. 1972. [Agricultural Statistics, 1971](#). University of Nevada, Reno, Reno, Nevada; Rumburg, S. 2017. [Nevada Agricultural Statistics: Annual](#)

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<sup>ii</sup> Curtis, K., W. Riggs, and B. Shultz, 2005. Humboldt County Calf-Cow Production Costs and Returns, 2004. University of Nevada Cooperative Extension, Reno, Nevada, Fact Sheet Number 05-41.

<sup>iii</sup> In order to derive expenditures per head made in Humboldt County, selected budget categories must be margined and the total cost per head must be import purged. Following procedures by Willis and Holland (1997), those budget expenditures made in Humboldt County from retail trade must be margined. For retail purchases, only expenditures above cost of goods sold are expended in Humboldt County. Using the IMPLAN input-output model data, it was found that approximately 25.32% of total Range Livestock Sector purchases were imported. See Willis, D. and D. Holland. 1997. Translating Farm Enterprise Budgets Into Input-output Accounts: Another Example from Washington State. Washington State University, School of Economics, Pullman, Washington.

<sup>iv</sup> IMPLAN Group, LLC. 2017. "IMPLAN System: Data and Software, Huntsville, North Carolina.

<sup>v</sup> *Direct* impacts are the initial changes in economic activity in Humboldt County by the impacted sector. For this paper, the impacted sector is the Range Livestock Sector in Humboldt County. *Indirect* impacts are changes in economic activity in Humboldt County of economic sectors that supply goods and services to the Range Livestock sector. *Induced* impacts are the changes in activity within Humboldt County household spending of income earned by the Range Livestock Sector and supporting sectors.

<sup>vi</sup> 43 U.S.C. §1752(d). See also: 36 CFR § 222.2(b).

<sup>vii</sup> As quoted in *Public Lands Council v. Babbitt*, 529 U.S. 728 (2000) at 744.

<sup>viii</sup> See *Fallini v. Hodel*, 725 F. Supp. 133 (D.Nev. 1989); *Fallini v. Hodel*, 963 F. 2d 275 (9<sup>th</sup> Cir. 1992).

<sup>ix</sup> As quoted in *Public Lands Council v. Babbitt*, 529 U.S. 728 (2000) at 744.

<sup>x</sup> 43 CFR § 4110.3-1(a)-(c) for BLM grazing allotments.

<sup>xi</sup> Bureau of Land Management IM 2009-057: *Nonuse of Grazing Permits or Leases*. "Approval of C&P nonuse should not be used as a surrogate method to implement a long term grazing reduction or rest on allotments that the governing land use plan has determined are available for grazing use." *Id*.

<sup>xii</sup> In *Fallini v. Hodel*, 963 F. 2d 275 (9<sup>th</sup> Cir. 1992), the 9<sup>th</sup> Circuit reaffirms this position, quoting *Kidd*.

<sup>xiii</sup> The Solicitor General of the Department of the Interior has addressed the question of whether the BLM has the authority to consider requests for retiring grazing permits relinquished by permittees, and what statutory process is required to do so. See M-37008, October 4, 2002.

<sup>xiv</sup> See also: BLM IM 2015-120, BLM IM 121.

<sup>xv</sup> *A Desk Guide to Cooperating Agency Relationships and Coordination with Intergovernmental Partners* (BLM, 2012) p. 9.

<sup>xvi</sup> "An "allotment management plan" means a document prepared in consultation with the lessees or permittees involved, which applies to livestock operations on the public lands or on lands within National Forests in the eleven contiguous Western States and which: (1) prescribes the manner in, and extent to, which livestock operations will be conducted in order to meet the multiple-use, sustained-yield, economic and other needs and objectives as determined for the lands by the Secretary concerned; and (2) describes the type, location, ownership, and general specifications for the range improvements to be installed and maintained on the lands to meet the livestock grazing and other objectives of land management; and (3) contains such other

provisions relating to livestock grazing and other objectives found by the Secretary concerned to be consistent with the provisions of this Act and other applicable law.’ 43 U.S.C. §1702(k).

<sup>xvii</sup> *Adaptive Management: The U.S. Department of Interior Technical Guide*, 2009.

<sup>xviii</sup> *Department of the Interior: Departmental Manual*. 522 DM 1, Feb. 1, 2008.

<sup>xix</sup> “Congress finds that a substantial amount of the Federal range lands is deteriorating in quality, and that installation of additional range improvements could arrest much of the continuing deterioration and could lead to substantial betterment of forage conditions with resulting benefits to wildlife, watershed protection, and livestock production [...] [R]ehabilitation, protection, and improvements shall include all forms of range land betterment including, but not limited to, seeding and reseeding, fence construction, weed control, water development, and fish and wildlife habitat enhancement as the respective Secretary may direct after consultation with user representatives.” 43 U.S.C. § 1751(b)(1).

<sup>xx</sup> [T]he grazing of livestock, where established [prior to the effective date of this Act, shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture.”

<sup>xxi</sup> In *Fallini v. Hodel*, 725 F. Supp. 1113 (D. Nev.) the Federal District Court of Nevada ruled that “[a] water right is real property. *Carson City v. Estate of Lompa*, 88 Nev. 541, 501 P.2d 662 (1972). Owners of water rights possess vested property rights protected from unconstitutional takings...”

<sup>xxii</sup> Report Of The Federal Water Rights Task Force Created Pursuant To Section 389(D)(3) Of P.L. 104-127. August 25, 1997. See also: Taylor Grazing Act at 43 U.S.C. § 315(b). “[N]othing in this subchapter shall be construed or administered in any way to diminish or impair any right to the possession and use of water for mining, agriculture, manufacture, or other purposes which has heretofore vested or accrued under existing law validly affecting the public lands or which may be hereafter initiated or acquired and maintained in accordance with such law.” See also 43 U.S.C. 661. “Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed...”

<sup>xxiii</sup> *United States v. New Mexico* 438 U.S. 696 (1978). *Fallini v. Hodel*, 725 F. Supp. 1113 (D. Nev.).

<sup>xxiv</sup> NRS 533.503 Restrictions on issuance of permit or certificate regarding appropriation to water livestock.

<sup>xxv</sup> Recent case law has clarified that federal agency actions that interfere with private water rights recognized under state law may constitute a takings under the Fifth Amendment. See *Sacramento Grazing Ass’n Inc. et al. v. The United States* No. 04-786 L November 3, 2017. See also *Estate of Hage v. U.S.* 687 F.3d (2012). See also *Fallini v. Hodel*, 725 F. Supp. 1113 (D. Nev.). In *Estate of Hage*, in pertinent part, the United States Court of Appeals for the Federal Circuit ruled:

‘As an initial matter, we agree with the government that any claim based on the fences erected in 1981-1982 is barred by the six-year statute of limitations period, 28 U.S.C. § 2501, because this suit was filed in 1991. We disagree, however, that *Colvin Cattle* means that there is no "access" component to the Hages' water rights. In *Colvin Cattle*, we held that the cancellation of grazing permits on federal land did not amount to a taking of the plaintiffs stockwater rights, because its

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Nevada "water rights do not have an attendant right to graze." 468 F.3d at 808. We expressly noted, however, that "the

[687 F.3d 1290]

government has not impeded its access to water." *Id.* at 806. *Colvin Cattle* thus stands for the proposition that water rights do not include an attendant right to graze, *id.* at 808, but it does not follow that the government may prevent all access to such water rights."

We agree with the Hages that the government could not prevent them from accessing water to which they owned rights without just compensation. The government, for example, could not entirely fence off a water source, such as a lake, and prevent a water rights holder from accessing such water. Assuming the other criteria for a Fifth Amendment taking were met, such fencing could be a taking. The Hages' claim, however, is flawed because there is no evidence that the government actually took water that they could have put to beneficial use. For example, the Hages do not allege or point to evidence that the fences prevented the water from reaching their land. Likewise, the Hages do not allege that there was insufficient water for their cattle on the allotments or that they could have put more water to use. Because there is no evidence that the government's actions resulted in taking the Hages' water rights, the Claims Court erred in holding that the construction of fences amounted to a physical taking.'

*Id.* at 687 F.3d 1290