

D. Special Status Species

Land Use Plan Decisions. Identify desired outcomes, strategies, restoration opportunities, use restrictions, and management actions to conserve and recover special status species. Desired outcomes may incorporate goals and objectives from recovery plans and conservation strategies or identify ecologically important areas or scarce, limited habitats. Goals and objectives may be species or habitat specific and can be established at multiple scales (i.e., fine, mid, and broad) to fully understand the context of the larger landscape.

Given the legal mandate to conserve threatened or endangered species and BLM's policy to conserve all special status species, land use planning strategies, desired outcomes, and decisions should result in a reasonable conservation strategy for these species. Land use plan decisions should be clear and sufficiently detailed to enhance habitat or prevent avoidable loss of habitat pending the development and implementation of implementation-level plans. This may include identifying stipulations or criteria that would be applied to implementation actions. Land use plan decisions should be consistent with BLM's mandate to recover listed species and should be consistent with objectives and recommended actions in approved recovery plans, conservation agreements and strategies, MOUs, and applicable biological opinions for threatened and endangered species.

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3. *Formal Consultation.* Formal consultation is required when proposed management direction and resource allocations in the preferred alternative are determined to be "likely to adversely affect" to listed species or designated critical habitat. The Endangered Species Act and 50 CFR 402.16 outline criteria for re-initiating consultation when there has been significant change since the original consultation was completed. Based on these criteria, consultation on land use plan and implementation decisions must be reinitiated for any of the following reasons:

a) New information shows that the plan decisions may affect listed or proposed species or critical habitat in a way or to an extent not previously considered;

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E. Fish and Wildlife

Land Use Plan Decisions. Designate priority species and habitats, in addition to special status species, for fish or wildlife species recognized as significant for at least one factor such as density, diversity, size, public interest, remnant character, or age. Identify desired outcomes using BLM strategic plans, state agency strategic plans, and other similar sources.

Describe desired habitat conditions and/or population for major habitat types that support a wide variety of game, non-game, and migratory bird species; acknowledging the states' roles in managing fish and wildlife, working in close coordination with state wildlife agencies, and drawing on state comprehensive wildlife conservation strategies. Identify actions and areawide use restrictions needed to achieve desired population and habitat conditions while maintaining a

thriving natural ecological balance and multiple-use relationships. (Also see previous Section D, Special Status Species.) Identify essential fish habitat (EFH) for federally managed fish species (Oregon, Washington, California and Idaho only).

Implementation Decisions. In coordination with state wildlife agencies, identify site-specific actions, such as riparian fencing, guzzler placement, fuels management, etc., needed to manage ecosystems for all species and habitat for special status species. Identify specific measures to conserve and enhance EFH.

Notices, Consultations, and Hearings. Consult under Section 7 of the Endangered Species Act with the USFWS and/or NOAA-Fisheries, for all actions that may affect listed species or designated critical habitat or confer if actions are likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat (see 50 CFR 402.14 and 402.10; and BLM Handbook H-6840). Depending on state-specific laws, agreements, or policies, there may be additional requirements to confer with state wildlife agencies if Federal actions may affect state-listed species or their habitats. Consult with the NOAA-Fisheries on any action authorized, funded, or undertaken that may impact EFH (through existing environmental review processes in accordance with NEPA). Comply with Executive Order 13186 for the conservation of migratory birds.

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4. *Wild Horse and Burro Ranges.* An HMA may be considered for designation as a wild horse or burro range when there is a significant public value present, such as unique characteristics in a herd or an outstanding opportunity for public viewing.

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Cultural Resource

RMPs will include at least the following two goals:

1. Identify, preserve, and protect significant cultural resources and ensure that they are available for appropriate uses by present and future generations (FLPMA, Section 103 (c), 201(a) and (c); National Historic Preservation Act, Section 110(a); Archaeological Resources Protection Act, Section 14(a)).
2. Seek to reduce imminent threats and resolve potential conflicts from natural or human-caused deterioration, or potential conflict with other resource uses (FLPMA Sec. 103(c), NHPA 106, 110 (a) (2)) by ensuring that all authorizations for land use and resource use will comply with the NHPA Section 106.

All cultural properties in the RMP area, whether already recorded or projected to occur on the basis of existing-data synthesis, including cultural landscapes, will be allocated to the uses listed in Table C-1 according to their nature and relative preservation value. These use allocations pertain to cultural resources, not to areas of land.

Table C-1.—Cultural use allocations and desired outcomes

Use allocation ¹	Desired outcomes
a. Scientific use	Preserved until research potential is realized
b. Conservation for future use	Preserved until conditions for use are met
c. Traditional use	Long-term preservation
d. Public use	Long-term preservation, on-site interpretation
e. Experimental use	Protected until used
f. Discharged from management	No use after recordation; not preserved

¹ The majority of the cultural properties in a given geographic area will fall into categories (a) and (f). The less-common properties in categories (b)–(e) are likely to be associated with particular settings that can be delineated geographically in the planning process. As the plan is developed, properties in categories b–d will require the most attention to balance their proactive uses with other land and resource uses.

Implementation Decisions. Identify site-specific information needs, impacted resources, protection measures and opportunities to use cultural properties for scientific, educational, recreational, and traditional purposes. Evaluate whether intended uses would result in changes to cultural properties’ significance or preservation value, and if so, how resource condition should be monitored, measured, and maintained at an acceptable level.

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B. Livestock Grazing

Land Use Plan Decisions. Identify lands available or not available for livestock grazing (see 43 CFR 4130.2(a)), considering the following factors:

1. Other uses for the land;
2. terrain characteristics;
3. soil, vegetation, and watershed characteristics;
4. the presence of undesirable vegetation, including significant invasive weed infestations; and

5. the presence of other resources that may require special management or protection, such as special status species, special recreation management areas (SRMAs), or ACECs. Decisions identifying lands available, or not available, for livestock grazing may be revisited through the amendment or revision process if the grazing preference or permit on those lands has been voluntarily relinquished, or if there are outstanding requests to voluntarily relinquish the grazing preference or permit. If an evaluation of Land Health Standards identifies an allotment or group of allotments where Land Health Standards cannot be achieved under any level or management of livestock use, then decisions identifying those areas as available for livestock grazing need to be revisited.

For lands available for livestock grazing, identify on an areawide basis both the amount of existing forage available for livestock (expressed in animal unit months) and the future anticipated amount of forage available for livestock with full implementation of the land use plan while maintaining a thriving natural ecological balance and multiple-use relationships. The land use plan needs to describe how these public lands will be managed to become as productive as feasible for livestock grazing, including a description of possible grazing management practices such as grazing systems, range improvements (including land treatments), changes in seasons of use and/or stocking rates. In addition, identify guidelines and criteria for future allotment-specific adjustments in the amount of forage available for livestock, season of use, or other grazing management practices (*Joel Stamatakis, Steve Stamatakis; 98 IBLA 4 (1987)*).

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III. Special Designations

A. Congressional Designations

Land Use Plan Decisions. Develop stand-alone RMP/EIS-level plans for all national monuments and congressionally designated national conservation areas, national recreation areas, cooperative management and protection areas, outstanding natural areas, and forest reserves (in accordance with the establishing statute or Presidential proclamation).

Implementation Decisions. Develop site-specific implementation actions and plans for congressionally designated areas.

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Subject to valid existing rights, avoid approval of proposed actions that could degrade the values of potential special designations. Proposed actions will be reviewed on a case-by-case basis and impacts to an area's values will be assessed. The standard for this review is the protection of the area's resources and values so that the area will not be disqualified from designation. Subject to valid existing rights, proposed actions that can not meet this standard should be postponed, relocated, mitigated, or denied until the planning for the area is completed.

Implementation Decisions. Develop site-specific management actions and constraints. Evaluate and issue permits for scientific, educational, or recreational activities, and develop project plans for trails, interpretive exhibits, resource rehabilitation, and other site-specific activities.

Protective management provisions must be followed to enhance or protect identified resource values and/or characteristics.

Notices, Consultations, and Hearings. Publish a *Federal Register* notice providing a 60-day comment period on proposed ACEC recommendations and resource use limitations (see 43 CFR 1610.7-2(b)).

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Appendix D: Social Science Considerations in Land Use Planning Decisions

I. Using Social Science in Land Use Planning

Appendix D provides guidance on integrating social science information into the planning process. Any information gathered in support of a planning effort must be considered in the context of BLM's legal mandates.

The BLM is required to manage the public lands on the basis of multiple use and sustained yield and to meet the needs of present and future generations. As the human population continues to increase and social values evolve, resource conflicts are likely to increase. More importantly, the American public is increasingly aware of the importance of the public lands to its well-being and is demanding a larger voice in resource management decisions. Given these realities, the planning process can represent a constant balancing of competing needs, interests, and values. The effective use of social science can be critical to understanding and reconciling these differing perspectives.

Social science information in land use planning can include the economic, political, cultural, and social structure of communities, regions, and the Nation as a whole; social values, beliefs, and attitudes; how people interact with the landscape; and sense-of-place issues. The social sciences

integrate a wide variety of disciplines, generally including economics, sociology, demography, anthropology, archaeology, political science, geography, history, and landscape architecture. Though the information appropriate to a given analysis depends upon the specific issues being assessed, the social science information usually important for resource planning decisions can be grouped in the following categories:

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IV. Environmental Justice Requirements

Environmental Justice involves the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people, including racial, ethnic, or socio-economic group should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of Federal, state, local, and Tribal programs and policies.

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B. Data Quality and Analytic Soundness

Social and economic analyses should be performed in a manner consistent with professionally recognized approaches, methods, and techniques. In addition, the Information Quality Act (Public Law 106-554, §515) requires Federal agencies to ensure that influential information, such as that used in the preparation of resource management plans, be characterized by reproducibility and transparency.

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I. Land Use Plan Protests

The protest procedures in 43 CFR 1610.5-2 provide the public an administrative review of the State Director's proposed land use plan decisions. The BLM Director determines through this process whether the State Director followed established procedure, considered relevant information in reaching proposed decisions, and whether the proposed decisions are consistent with BLM policy, regulation, and statute.

1. WO-210 state liaisons, in coordination with the respective state/field office, will evaluate each protest for content. 43 CFR 1610.5-2(a)(2)(v) requires that protests include a "concise statement explaining why the State Director's decision is believed to be wrong." Statements that merely reflect disagreement, express opinions, or make demands or allegations without the support of this concise statement will be addressed as comments and will not cause a change in the plan being protested.

The bases for upholding protests include:

- a) Approval of the proposed plan or amendment would be contrary to the Director's policy guidance;
- b) significant aspects of the proposed plan or amendment are based upon invalid or incomplete information; or

c) the proposed plan or amendment does not comply with applicable laws, regulations, policies, and planning procedures.

3. As the protest responses are drafted, WO-210 will coordinate with other Washington Office program staffs. Program offices are consulted when a protest involves one or more of the following:

- a) Precedent-setting departures from the existing resource management practices;
- b) failure to comply with national policy guidance and legal requirements;
- c) a major change in the use of resources in the area covered by the plan; and/or
- d) subject areas or matters where special expertise is required.

1601.0-5 Definitions

(i) *Multiple use* means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the lands for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some lands for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long term needs of future generations for renewable and non-renewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the lands and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.

(1) Land areas for limited, restricted or exclusive use; designation, including ACEC designation; and transfer from Bureau of Land Management Administration;

§ 1610.2 Public participation.

(a) The public shall be provided opportunities to meaningfully participate in and comment on the preparation of plans, amendments and related guidance and be given early notice of planning activities. Public involvement in the resource management planning process shall conform to the requirements of the National Environmental Policy Act and associated implementing regulations.

(b) The Director shall, early in each fiscal year, publish a planning schedule advising the public of the status of each plan in process of preparation or to be started during that fiscal year, the major action on each plan during that fiscal year and projected new planning starts for the 3 succeeding fiscal years. The notice shall call for public comments on projected new planning starts so that such comments can be considered in refining priorities for those years.

(c) When BLM starts to prepare, amend, or revise resource management plans we will begin the process by publishing a notice in the Federal Register and appropriate local media, including newspapers of general circulation in the state and field office area. The Field Manager may also decide if it is appropriate to publish a notice in media in adjoining States. This notice may also constitute the scoping notice required by regulation for the National Environmental Policy Act (40 CFR 1501.7). This notice shall include the following:

(1) Description of the proposed planning action;

(7) The name, title, address and telephone number of the Bureau of Land Management official who may be contacted for further information; and

(g) BLM will make copies of an approved resource management plan and amendments reasonably available for public review. Upon request, we will make single copies available to the public during the public participation process. After BLM approves a plan, amendment, or revision we may charge a fee for additional copies. We will also have copies available for public review at the:

§ 1610.3-2 Consistency requirements.

(a) Guidance and resource management plans and amendments to management framework plans shall be consistent with officially approved or adopted resource related plans, and the policies and programs contained therein, of other Federal agencies, State and local governments and Indian tribes, so long as the guidance and resource management plans are also consistent with the purposes, policies and programs of Federal laws and regulations applicable to public lands, including Federal and State pollution control laws as implemented by applicable Federal and State air, water, noise, and other pollution standards or implementation plans.

§ 1610.4-3 Inventory data and information collection.

The Field Manager, in collaboration with any cooperating agencies, will arrange for resource, environmental, social, economic and institutional data and information to be collected, or assembled if already available. New information and inventory data collection will emphasize significant issues and decisions with the greatest potential impact. Inventory data and information shall be collected in a manner that aids application in the planning process, including subsequent monitoring requirements.

[48 FR 20368, May 5, 1983, as amended at 70 FR 14566, Mar. 23, 2005]

§ 1610.4-4 Analysis of the management situation.

The Field Manager, in collaboration with any cooperating agencies, will analyze the inventory data and other information available to determine the ability of the resource area to respond to identified issues and opportunities. The analysis of the management situation shall provide, consistent with multiple use principles, the basis for formulating reasonable alternatives, including the types of resources for development or protection. Factors to be considered may include, but are not limited to:

(a) The types of resource use and protection authorized by the Federal Land Policy and Management Act and other relevant legislation;

(e) Specific requirements and constraints to achieve consistency with policies, plans and programs of other Federal agencies, State and local government agencies and Indian tribes;

(i) Critical threshold levels which should be considered in the formulation of planned alternatives.

§ 1610.4-9 Monitoring and evaluation.

The proposed plan shall establish intervals and standards, as appropriate, for monitoring and evaluation of the plan. Such intervals and standards shall be based on the sensitivity of the resource to the decisions involved and shall provide for evaluation to determine whether mitigation measures are satisfactory, whether there has been significant change in the related plans of other Federal agencies, State or local governments, or Indian tribes, or whether there is new data of significance to the plan. The Field Manager shall be responsible for monitoring and evaluating the plan in accordance with the established intervals and standards and at other times as appropriate to determine whether there is sufficient cause to warrant amendment or revision of the plan.

[48 FR 20368, May 5, 1983, as amended at 70 FR 14567, Mar. 23, 2005]

§ 1610.5-6 Revision.

A resource management plan shall be revised as necessary, based on monitoring and evaluation findings (§1610.4–9), new data, new or revised policy and changes in circumstances affecting the entire plan or major portions of the plan. Revisions shall comply with all of the requirements of these regulations for preparing and approving an original resource management plan.

§ 1610.6 Management decision review by Congress.

The Federal Land Policy and Management Act requires that any Bureau of Land Management management decision or action pursuant to a management decision which totally eliminates one or more principal or major uses for 2 or more years with respect to a tract of 100,000 acres or more, shall be reported by the Secretary to Congress before it can be implemented. This report shall not be required prior to approval of a resource management plan which, if fully or partially implemented, would result in such an elimination. The required report shall be submitted as the first action step in implementing that portion of a resource management plan which would require elimination of such a use.

Sec. 102 [42 USC § 4332].

The National Environmental Policy Act of 1969, as amended

(Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982)

Sec. 101 [42 USC § 4331].

4. preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice; achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

Sec. 102 [42 USC § 4332].

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Following Dahl, the Board has set aside BLM decisions that proposed removals based on horse population numbers established under planning documents "for administrative convenience, rather than based on a determination of the optimum number of wild horses which would maintain the range in a thriving natural ecological balance and avoid a deterioration of the range."

Taken from:

Case # 06-523-HO

United States District Court for the District of Oregon

Oregon Natural Desert Association, et al.,

Versus

Shirley Gammo

Manager, BLM, et al.,

Lake View District

Pursuant to the APA, the court shall set aside agency action found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A); Marsh v. Ore. Natural Res. Council, 490 U.S. 360, 377 (1989); Blue Mtns. Biodiversity Project v. Blackwood, 161 F.3d 1208, 1211 (9th Cir. 1998). In determining whether an agency decision is arbitrary and capricious, courts consider "whether

the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.” Marsh, 490 U.S. at 378. “A decision is arbitrary and capricious if the agency ‘has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs

counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” O’Keefe’s, Inc. v. U.S. Consumer Prod. Safety Comm’n, 92 F.3d 940, 942 (9th Cir. 1996) (quoting Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983)). Although review under this standard is narrow, the agency must articulate a rational connection between the facts found and the conclusions made. Ore. Natural Res. Council v. Lowe, 109 F.3d 521, 526 (9th Cir. 1997); O’Keefe’s, 92 F.3d at 942; Env’tl. Def. Ctr. v. EPA, 319 F.3d 398, 428 n.46 (9th Cir. 2003). Finally, an agency’s decision can be upheld only on the basis of the reasoning in that decision. Anaheim Mem’l Hosp. v. Shalala, 130 F.3d 845, 849 (9th Cir. 1997).