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Ms. Christy Goldfuss
Managing Director
White House Council on Environmental Quality
722 Jackson Place, NW
Washington, DC 20503

April 11, 2016

RE: U.S. Bureau of Land Management NEPA Noncompliance

Dear Ms. Goldfuss:

The National Environmental Policy Act (NEPA) established the White House Council on Environmental Quality (CEQ) and charged it with the duty of overseeing the implementation of NEPA and the promulgation of regulations for the implementation of NEPA.[1] NEPA assigns CEQ the task of ensuring that Federal agencies meet their obligations under the Act.

Regulations subsequently promulgated by CEQ, 40 C.F.R. pts 1500-08, implement the directives and purpose of NEPA, and "[t]he provisions of [NEPA] and [CEQ] regulations must be read together as a whole in order to comply with the spirit and letter of the law."[2] CEQ's regulations are applicable to and binding on all federal agencies.[3] The regulations also provide formal guidance to the courts on the requirements of NEPA and are entitled to substantial deference.[4] Among other requirements, CEQ's regulations mandate that federal agencies address all "reasonably foreseeable" environmental impacts of their proposed programs, projects, and regulations.[5]

In this regard, Public Employees for Environmental Responsibility (PEER) hereby requests an immediate review by the CEQ into what appears to be a serious and systemic violation of NEPA by the Bureau of Land Management (BLM). As detailed below, the BLM consistently violates

[1] Exec. Order No. 11991, 42 Fed. Reg. 26967 (May 24, 1977).
[2] 40 C.F.R. 1500.1(a); 40 C.F.R. 1500.3.
[3] 40 C.F.R. §§ 1500.3, 1507.1; *see, e.g.*, Hodges v. Abraham, 300 F.3d 432, 438 (4th Cir. 2002).
[4] Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 372 (1989); Andrus v. Sierra Club, 442 U.S. 347, 358 (1979).
[5] *See* 40 C.F.R. §§ 1502.4, 1508.8, 1508.18, 1508.25.

NEPA by failing to consider significant adverse environmental effects of its major actions through its consistent dismissal of climate change impacts in the environmental review process with respect to its management of livestock grazing on the vast public range lands within its jurisdiction.

I. COMPLAINANT

Public Employees for Environmental Responsibility (PEER) is a national non-profit alliance of local, state, and federal scientists, law enforcement officers, land managers, and other professionals dedicated to upholding environmental laws and values.

II. COMPLAINT SUMMARY

This action concerns the Bureau of Land Management's failure to address climate change causes and effects in NEPA documents relating to its planning, permit issuance and other actions pertaining to public lands grazing.

Recent federal orders, policies, and guidance direct federal agencies to respond to climate change in their official planning. These directives, along with case law and CEQ's own guidance, provide the basis for the assertion that consideration of climate change is required in an agency's environmental review process.

Livestock grazing is ubiquitous on federal lands and is one of the most significant causes of degraded rangeland conditions across the American West. The consequences of public lands grazing is three-fold: the IPCC identified domestic cattle as a significant source of methane, one of the most potent greenhouse gases; see below at section B(1)(a). Secondly, overgrazing has reduced the ability of public lands to offset greenhouse gas emissions by sequestering carbon. Thirdly, degraded rangelands have reduced resiliency to changing climate, thus exacerbating the impacts of changing climate--including lowered water quality, increased desertification and reduced wildlife habitat.

Yet, the BLM steadfastly refuses to assess the full range of environmental impacts of grazing in its environmental reviews, most notably in the NEPA documents associated with the issuance and renewal of grazing permits but also by failing to consider livestock grazing as a cumulative impact to all BLM-authorized activities.[6] BLM has consistently shirked its duty to address climate change in its environmental review process, and continues to do so despite increased federal guidance directing otherwise.

III. STATUTORY AND REGULATORY FRAMEWORK

A. National Environmental Policy Act

The National Environmental Policy Act is the "basic national charter for protection of the environment."[7] Section 101 of NEPA contains Congress' express recognition of "the profound impact of man's activity on the interrelations of all components of the natural environment," and declaration that the federal government must "use all practicable means and measures . . . to

[6] 40 C.F.R. 1508.7
[7] 40 C.F.R. 1500.1 (2005).

create and maintain conditions under which man and nature can exist in productive harmony."[8] NEPA is intended to "promote efforts which will prevent or eliminate damage to the environment and biosphere."[9] Moreover, NEPA "insures that environmental information is available to public officials and citizens before decisions are made and before action is taken."[10]

In order to carry out this mandate, Congress required all federal agencies to act to preserve, protect, and enhance the environment.[11] Section 102(2)(C) of NEPA provides the basic framework by which agencies consider the environmental effects in their decision-making processes and inform the public of those effects.[12] Generally, NEPA requires all federal agencies to identify and consider environmental impacts, alternatives, and mitigating measures prior to approving a project.

Among other delineated duties, NEPA requires federal agencies: to "[i]nclude in every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment, a detailed statement" which addresses, inter alia, the environmental impact of the proposed action;[13] to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;"[14] and to "recognize the worldwide and long-range character of environmental problems.[15]

NEPA requires that federal agencies consider any adverse environmental effects of their major actions. 42 U.S.C.S. § 4332(C). CEQ regulations explain that "effects" include both direct and indirect effects. 40 C.F.R. 1508.8. Indirect effects are those that are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. 40 C.F.R. § 1508.8. Indirect effects may include effects on air and water and other natural systems, including ecosystems. 40 C.F.R. § 1508.8. As in other legal contexts, an environmental effect is "reasonably foreseeable" if it is sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision.

NEPA also requires that federal agencies consider the incremental effect of past, present, and future actions which, when added to the effect of the proposed action, result in significant impacts. Unlike other types of activities which may not be "reasonably foreseeable," public-land livestock grazing is entirely foreseeable, occurring, in many cases, over more than ninety percent of BLM-managed land. Thus, the effects of livestock grazing and the degraded condition of federal lands should be fully analyzed in all NEPA documents.

B. Public Lands Grazing

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[8] The National Environmental Policy Act of 1969 § 101, 42 U.S.C. § 4331(a) (2005).
[9] 42 U.S.C. §4321.
[10] 40 C.F.R. § 1500.1(b), (c).
[11] *See* 42 U.S.C. § 4331(b).
[12] Robertons v. Methow Valley Citizens Council, 490 U.S. 332, 350 (1989) (noting that "the sweeping policy goals announced in §101 of NEPA are thus realized through a set of 'action-forcing' procedures that require that agencies take a 'hard look' at the environmental consequences").
[13] *See* 42 U.S.C. §4332(C).
[14] *See id.* §4332(E).
[15] *See id.* § 4332(F).

Pursuant to the Taylor Grazing Act of 1934, the public lands managed by the BLM are divided into grazing allotments.[16] BLM grazing allotments vary in size from less than one hundred acres to hundreds of thousands of acres. Livestock grazing on each allotment is authorized by a permit issued by the BLM.[17] The Taylor Grazing Act of 1934 authorizes the Secretary of the Interior to establish grazing districts of vacant, unappropriated, and unreserved lands from any part of the public domain of the United States.[18] Within these grazing districts, the Secretary is authorized to issue grazing permits upon the payment annually of reasonable fees.[19]

The Bureau of Land Management (BLM) is charged with managing and protecting some 250 million acres of public or national resource lands located in 11 Western states, of which livestock grazing covers 155 million acres. The BLM administers nearly 18,000 permits and leases held by ranchers who graze their livestock, at least part of the year, on more than 21,000 allotments under BLM management. Permits and leases generally cover a 10-year period and are renewable if the BLM determines that the terms and conditions of the expiring permit are met. The issuance of grazing permits by the BLM constitutes "major federal actions significantly affecting the human environment," and, therefore, requires NEPA compliance.[20]

IV. COMPLAINT: BLM IMPROPERLY EXCLUDES GRAZING CLIMATE IMPACTS FROM NEPA DOCUMENTS

A. Legal Basis

1. *CEQ's interpretation of its own regulations supports the position that NEPA requires consideration of climate change impacts.*

Since climate change has emerged as a critical environmental issue, several federal agencies have evaluated and disclosed the projected greenhouse gas emissions attributable to government actions.[21] However, many, if not most, government agencies have failed to meaningfully consider the effects of climate change on proposed projects in connection with the environmental review process.[22]

In December 2014, CEQ issued revised draft guidance on consideration of greenhouse gas emissions and the effects of climate change in NEPA reviews.[23] Notably, the Draft NEPA Guidance clarifies that climate change adaptation and resilience are important considerations for agencies planning actions. According to the Guidance:

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[16] 43 U.S.C. §§ 315-315r (1988).
[17] 43 U.S.C. § 315b (1988).
[18] *Id.*
[19] *Id.*
[20] *See* Natural Resources Defense Council, Inc. v. Morton, 388 F. Supp. 829 (D.D.C. 1974).
[21] Amy L. Stein, *Climate Change under NEPA: Avoiding Cursory Consideration of Greenhouse Gases*, 81 U. Colo. L. Rev. 473, 476-77, 505-17 (2010).
[22] Michael B. Gerrard, *Reverse Environmental Impact Analysis: Effect of Climate Change on Projects*, 247(45) N.Y.L.J. 1 (Mar. 8, 2012).
[23] Revised Draft Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in NEPA Reviews [hereinafter "2014 Draft Guidance"], 79 Fed. Reg. 77801 (Dec. 24, 2014), *available at* https://www.whitehouse.gov/sites/default/files/docs/nepa_revised_draft_ghg_guidance_searchable.pdf.

> "it is now well established that rising global atmospheric GHG emission concentrations are significantly affecting the Earth's climate. These conclusions are built upon a scientific record that has been created with substantial contributions from the United States Global Change Research Program (USGCRP)."[24]

The Guidance recognizes that government action occurs incrementally, program-by-program and step-by-step, and climate impacts are not attributable to any single action, but are exacerbated by a series of smaller decisions:

> "Therefore, the statement that emissions from a government action or approval represent only a small fraction of global emissions is more a statement about the nature of the climate change challenge, and is not an appropriate basis for deciding whether to consider climate impacts under NEPA."[25]

Addressing cumulative impacts, the Guidance states that agencies "need to consider whether the reasonably foreseeable incremental addition of emissions from the proposed action, when added to the emissions of other relevant actions, is significant when determining whether GHG emissions are a basis for requiring preparation of an EIS."

Although the Draft NEPA Guidance does not purport to create new obligations under NEPA, it is significant because, upon adoption, it will represent CEQ's interpretation of its own regulations. A non-binding interpretation of this type is "entitled to respect" by courts to the extent that it has the "power to persuade."[26] Thus, this document, when final, will provide support for the position that NEPA requires consideration of climate change impacts on agency actions where relevant.

In addition to CEQ guidance, federal courts have held that environmental review requires consideration of climate change impacts. The complaint in *City of Los Angeles v. National Highway Traffic Safety Administration* alleged that a lower Corporate Average Fuel Economy (CAFE) standard would worsen global warming.[27] Although the court found that plaintiffs had standing to bring the suit, the one-mile per gallon change in the CAFE standard at issue was not deemed to be so significant as to require an Environmental Impact Statement. The court did not doubt that global warming was a proper subject for analysis under NEPA; it simply found a particular action's impacts below the threshold of significance.

In a similar challenge to CAFE standards, the court in *Center for Biological Diversity v. Nat'l Hwy Traffic Safety Administration* found that an Environmental Assessment was inadequate because the impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impact analysis that NEPA requires agencies to conduct.[28]

In *Border Power Plant Working Group v. Department of Energy*, the court found that carbon dioxide emissions associated with the construction of transmission lines to carry electricity from

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[24] *Id.* at 6.
[25] *Id.* at 9.
[26] See Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944); United States v. Mead Corp., 533 U.S. 218, 235 (2001).
[27] 912 F.2d 478 (D.C. Cir. 1990).
[28] 538 F.3d 1172 (9th Cir. 2008).

new power plants in Mexico to users in southern California should be analyzed under NEPA.[29] Later the same year, in *Mid States Coalition or Progress v. Surface Transportation Board*, the court decided that the EIS for the construction of a rail line to bring coal from Wyoming to plants in Minnesota and South Dakota should have considered air emissions (including carbon dioxide) from the power plants.

In short, it is clearly the case that NEPA requires federal agencies to consider the climate change impacts – no matter how incremental or cumulative – of their official actions.

The BLM recognized the need to include analysis of climate change in NEPA documents as early as 2008, and issued Washington Office Instruction Memorandum 2008-171. Rather than meaningfully address climate change, this IM provides elegantly worded language to excuse a failure to analyze either the contribution of BLM-authorized projects to climate change or the impacts of climate change on BLM-managed resources.

2. Federal orders direct agencies to reduce the carbon footprint of their operations and integrate climate change causes and effects into their official planning.

President Obama has consistently prioritized climate preparedness, issuing an executive order in 2009 establishing a task force to create an initial adaptation strategy and directing all federal agencies to develop vulnerability assessments and adaptation plans.[30] Subsequently, the President directed agencies to protect biodiversity and conserve natural resources in the face of climate change.[31] In 2013, the task force created in the previous executive order was replaced with a multi-agency Council on Climate Preparedness and Resilience tasked with recommending actions to encourage climate preparedness and resilience.[32]

That Council issued a report in 2014 identifying priority strategies to make the nation's natural resources more resilient to climate change, including fostering climate-resilient lands and waters and modernizing federal plans to build resilience.[33] The report directed agencies to develop tools to improve their capacity to manage for resilience and to select priority areas for conservation, restoration, or other investments to build resilience, and, specifically, directed the U.S. Department of Interior (DOI) to develop "resilience metrics.[34] The Council has directed agencies with natural resources responsibilities to identify best practices for applying resilience criteria to program management.[35]

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[29] 260 F. Supp. 2d 997 (S.D. Cal. 2003).

[30] Exec. Order no. 13514, Federal Leadership in Environmental, Energy, and Economic Performance, 74 Fed. Reg. 52,117 (Oct. 8, 2009); Alejandro E. Camacho & Robert L. Glickman, *Legal Adaptive Capacity: How Program Goals and Processes Shape Federal Land Adaptation to Climate Change*, 87 U. Colo. L. Rev. (forthcoming 2016) at 26.

[31] The President's Climate Action Plan

[32] Exec. Order No. 13653, Preparing the United States for the Impacts of Climate Change, 78 Fed. Reg. 66,819 (Nov. 6, 2013), as amended by Exec. Order No. 13683, 79 Fed. Reg. 75,041 (Dec. 16, 2014); Camacho & Glickman at 26-27.

[33] Council on Climate Preparedness and Resilience, Priority Agenda: Enhancing the Climate Resilience of America's Natural Resources (Oct. 2014) at 5-6, 14.

[34] *Id.* at 19-20.

[35] *Id.* at 51.

Additionally, DOI has incorporated climate-change adaptation strategies into its planning process. Secretarial Order 3289 (replacing a 2001 order directing DOI agencies to consider climate change impacts in planning[36]), in 2009, established a Climate Change Response Council to execute a coordinated Department-wide strategy. The Order announced the creation of two initiatives addressing regional coordination on ecosystem, watershed, and environmental management and a general policy for combatting climate change. Of particular importance to grazing is the final new initiative of the Secretarial Order, the DOI Carbon Footprint Project, aimed at developing a unified greenhouse gas emission reduction program, including setting a baseline and reduction goal for the Department's greenhouse gas emissions and energy use.

In 2012, DOI included in its Departmental Manual new provisions relating to climate change adaptation.[37] The provisions commit DOI to integration of climate change adaptation strategies into its policies, planning, programs, and operations, including park, refuge, and public land management.

In 2013, DOI issued a Climate Change Adaptation Plan that recognized that "vulnerabilities to climate change impacts vary widely across the Department's mission areas. Bureaus' climate change adaptation priorities and needs depend on the particular vulnerabilities of their mission and assets.[38] The plan announced "guiding principles" for all bureaus of offices that included requiring individual agencies to establish adaptation-related planning priorities.

Thus as an agency within DOI, BLM is subject to multiple directives to explicitly consider and plan for the climate change implications of its programs – and public lands grazing is unquestionably a major BLM program.

B. Factual Basis

1. Livestock grazing has measurable impacts on climate change.

There is broad scientific support for the existence of climate change.[39] This complaint focuses on the exacerbating effects of BLM-managed public lands livestock grazing on the well-established causes and impacts of climate change.

a. Livestock grazing contributes significantly to global greenhouse gas emissions.

A significant source of greenhouse gases, including carbon dioxide, methane, nitrous oxide and ammonia, animal agriculture is one of the primary contributors to global climate change. A study by the United Nations Food and Agriculture Organization found that emissions from animal agriculture represent eighteen percent of anthropogenic global greenhouse gases.[40] This

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[36] Secretarial Order 3226 (January 19, 2001)

[37] Climate Change Policy, 523 DM 1 (effective Dec. 20, 2012).

[38] Department of Interior Climate Change Adaptation Plan for FY 2013, at 1.

[39] *See* U.S. Department of State, U.S. Climate Action Report 2002, Third National Communication of the United States of America Under the United Nations Framework Convention on Climate Change (May 2002), *available at* http://unfccc.int/resource/docs/natc/usnc3.pdf.

[40] Debra L. Donahue, *Elephant in the Room: Livestock's Role in Climate and Environmental Change*, 17 Mich. St. J. Int'l L. 95, 98 (2008).

is more than the emissions produced from powering all the world's road vehicles, trains, ships, and airplanes combined.[41]

Other sources allocate to livestock's role in climate change a significantly higher percentage, closer to fifty-one percent of all global greenhouse gases.[42] Whichever the case, animal agriculture stands as a major anthropogenic contributor of greenhouse gas emissions.

Notable among these emissions are methane and nitrous oxide, of which livestock production is the largest global source.[43] The livestock sector generates 65 percent of human-related nitrous oxide and 37 percent of all human-induced methane, whose global warming potential exceeds that of carbon dioxide by 296 and 23 times, respectively.[44] Additionally, livestock grazing represents 64 percent of human-related ammonia, a significant contributor to acid rain. Grazing's potential to affect climate change is greater than that of feedlot cattle. Grass-fed range cows gain weight slower and therefore release methane and nitrous oxide for a longer period of time, resulting in a greater effect on climate change, ultimately releasing twice as much methane as feedlot cows.[45] Moreover, while methane produce by feedlot cows can be captured and productively used, methane produced by range cows is released to the atmosphere.

Aside from the greenhouse gas released directly form livestock, there are also associated indirect emissions, from sources such as fertilizer and manure decomposition (which releases methane), land degradation, and the use of fossil fuels associated with animal transportation.[46] In addition, public land grazing is part of a cycle that facilitates degradation of private lands and increased use of chemical fertilizers and growth of annual grasses using full-till agriculture. Holders of public land livestock grazing permits "turn-out" their cattle on to public lands and raise winter fodder on their private lands. Typically, the private lands do not use "no-till" techniques, despite incentives from the NRCS, and are heavily dependent upon chemical fertilizers, herbicides, and fossil fuel. Subsidized by a variety of federal programs, not least the BLM's grazing fee that is a small fraction of the costs charged by states and private owners, livestock grazing on public lands seems designed to encourage greenhouse gas production.

b. Land degradation associated with livestock grazing impacts climate change.

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[41] Henning Steinfeld et al., U.N. Food & Agric. Org., *Livestock's Long Shadow: Environmental Issues and Options* (2006) (Livestock contribute about 9 percent of total carbon dioxide emissions, but 37 percent of methane and 65 percent of nitrous oxide); Rob Bailey, et al., *Livestock – Climate Change's Forgotten Sector, Global Public Opinion on Meat and Dairy Consumption*, Energy, Environment and Resources (Chatham House, December 2014) at 3.

[42] Roberd Goodland and Jeff Anhang, *Livestock and Climate Change: What if the Key Actors in Climate Change are . . . Cows, Pigs, and Chickens?*, World Watch Magazine (Nov./Dec. 2009), *available at* http://www.worldwatch.org/files/pdf/Livestock%20and%20Climate%20Change.pdf.

[43] Bailey, *supra* note 39, at 5.

[44] Debra L. Donahue, *Elephant in the Room: Livestock's Role in Climate and Environmental Change*, 17 Mich. St. J. Int'l L. 95, 98-99 (2008).

[45] Doug Gurian-Sherman, *Raising the Steaks: Global Warming and Pastureraised Beef Production in the United States*, Union of Concerned Scientists (2011); *see also* Bailey, *supra* note 39, at 9.

[46] James C. Caitlin, et al., *Range Management in the Face of Climate Change*, 17 Nat. Resources & Envtl. Issues 207 (2011).

Grazing contributes to global warming by changing how lands function physically, chemically, and ecologically.[47] Livestock use commonly causes carbon loss via mechanical disturbance of soils and alteration of vegetative composition and cover, leading to decomposition of soil organic matter and loss of below-ground sinks in roots and soil inorganic carbon.[48] Reducing the carbon-storage capacity of the soil reduces the earth's potential to sequester carbon. Overgrazing, which happens with the "season-long" grazing that is typical on BLM lands, reduces the plant root growth and mass and reduces the ability of the most productive types of native vegetation to compete with invasive noxious weeds and annual grasses such as cheatgrass.

Although the soil carbon storage capacity of native plants and their ability to outcompete invasive weeds is well known, the BLM does not manage rangelands as carbon sinks. Instead, the BLM manages its rangelands to maximize forage for livestock, sometimes secondarily considering residual forage for wildlife. Faced with a listing of greater sage-grouse under the Endangered Species Act, the BLM has been mandated to look at the role of overgrazing on wildfire return intervals and the spread of invasives and non-native grasses[49]. However, although the US Fish and Wildlife Service determined[50] that climate change was a risk factor for sage grouse, the BLM continues to ignore the contribution of public land grazing to climate change and the potential for rangeland management to offset greenhouse gas production or to make public lands more resilient to climate changes. Even the BLM's greater sage grouse national planning efforts failed to evaluate climate change including the loss of soil carbon capacity or the loss of climate resilience caused by BLM livestock grazing. If the "national" planning efforts ignore the role BLM livestock grazing management has on climate change, even when it is a risk factor for ESA listing, it is hardly surprising that the impact of grazing on grasslands' ability to sequester carbon or withstand climate change is not analyzed in BLM NEPA documents authorizing grazing.

The vast extent of BLM-managed rangelands means that the cumulative potential for affecting soil carbon loss and storage capacity is significant. According to one estimate, "[i]mproving management on 279 million acres of poorly managed . . . rangelands [in the U.S. alone] would sequester 11 million additional tons of carbon annually."[51]

Healthy grasslands and forests could mitigate much of the impact of climate change by sequestering carbon.[52] However, when lands are overgrazed, "land degradation is a sign of decreasing reabsorption of atmospheric [carbon dioxide] by vegetation re-growth."[53] A disturbingly large portion of grazed lands fails to meet range health standards (adopted by the BLM in the 1990s) principally due to livestock operations. The "Rangeland Inventory, Monitoring and Evaluation Report for Fiscal Year 2011" covers BLM allotments in Arizona,

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[47] Debra L. Donahue, *Elephant in the Room: Livestock's Role in Climate and Environmental Change*, 17 Mich. St. J. Int'l L. 95, 99 (2008).
[48] *Id.*
[49] See, for example, http://www.blm.gov/wo/st/en/prog/more/sagegrouse.html.
[50] https://www.federalregister.gov/articles/2015/10/02/2015-24292/endangered-and-threatened-wildlife-and-plants-12-month-finding-on-a-petition-to-list-greater
[51] Donahue, *supra* note 42, at 100.
[52] *Id.*
[53] Henning Steinfeld et al., U.N. Food & Agric. Org., *Livestock's Long Shadow: Environmental Issues and Options* (2006) at 95.

California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming. [54] The report totals BLM acreage failing to meet rangeland health standards in measures such as water quality, watershed functionality and wildlife habitat and it shows that:

- Almost 40% of acres within BLM allotments surveyed since 1998 have failed to meet the agency's own required land health standards. In allotments totaling more than 33 million acres, an area exceeding the State of Alabama in size, the impairment is attributed to livestock grazing;

- Overall, 30% of allotments by area surveyed to date suffer from significant livestock-induced damage, suggesting that once the remaining allotments have been surveyed, the total impaired area could well be larger than the entire State of Washington; and

- While factors such as drought, fire, invasion by non-native plants, and sprawl are important, livestock grazing is identified by BLM experts as the primary cause (nearly 80%) of BLM lands not meeting health standards.[55]

Nor are the conditions on the ground improving. In the last decade as more land has been assessed, estimates of damaged lands have doubled in the 13-state Western area where BLM conducts major livestock grazing.

Not only do these degraded landscape conditions contribute to a reduced capacity for carbon storage but also to increased desertification, increased fugitive dust and decreased albedo. Further, grazing facilitates the introduction of invasive plants and annual grasses which have less carbon storage capabilities than native plants and result in the increased wildfire return intervals described by the USFWS.

In addition, overgrazing is particularly damaging to riparian health, making these critical biodiversity hotspots less able to withstand the increasing storm events, early spring snow melt-offs and increased shifting of precipitation from the winter (with slow spring melts) to high volume precipitation falling as rain which stays on the land for a far shorter time.

Even BLM concedes that livestock grazing results in a feedback loop that aggravates other climate change impacts:

> "The particular impacts consequent to livestock grazing have ever-growing significance in light of observed and predicted climate change impacts in the Southwest including higher temperatures; reduced snowpack and earlier snowmelt; longer droughts; more erratic, but more intense precipitation events rushing over drought-stressed lands and further incising channels; vegetation die-offs; and the spread of invasive, exotic species. .

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[54] http://www.blm.gov/style/medialib/blm/wo/Planning_and_Renewable_Resources/rangeland.Par.49582.File.dat/Rangeland2011.pdf

[55] See breakdown of RIME figures by PEER in "Livestock's Heavy Hooves Impair One-Third of BLM Rangelands" May 14, 2012 http://www.peer.org/news/news-releases/2012/05/14/livestock's-heavy-hooves-impair-one-third-of-blm-rangelands/

> . . The grazing cannot meet the meaning of a FONSI, i.e., no significant impacts; and it cannot be justified in an [Environmental Impact Statement] vis-à-vis reasonable alternatives of no grazing or greatly reduced grazing. The impacts are too many, serious, irreversible, and unavoidable given the current levels, frequency, and geographic extent of the livestock grazing."[56]

While the science of its contribution to climate change and resulting loss of habitat resilience is well understood[57] the BLM continues to approach livestock grazing as if it were a limited activity instead of a range-wide degrader of resilient public lands and contributor to climate change.

C. BLM Improper Omission of Grazing Climate Assessment

Despite strong evidence of the climate change impacts of grazing, along with federal guidance, numerous federal directives, and case law mandating that climate change be considered in the NEPA process, BLM continues to disregard climate change impacts in its planning decisions.

Particularly, BLM consistently disregards climate change in the environmental review process for the issuance and renewal of grazing permits. As detailed below, BLM historically excludes climate change from NEPA documents – and this exclusion continues in the face of federal directives promoting agency accountability for climate change impacts. Perhaps more insidiously, the BLM fails to consider livestock grazing as a cumulative to *every* authorization on public lands.

BLM maintains a national register for Land Use Planning (LUP) and National Environmental Policy Act (NEPA) documents.[58] While not complete, this register represents a sampling of the NEPA documents on livestock grazing permit issuance that are available for public viewing. Since 2013, of the available records for the issuance or renewal of grazing permits, only thirty-one are accompanied by NEPA documentation explaining the basis of BLM's decision. Of these thirty-one NEPA documents, twenty-one are silent as to the potential impacts of the grazing decision on climate change.

Those NEPA documents that *do* mention climate change forgo any meaningful analysis and incorporate, depending on the particular field office, the same boilerplate language dismissive of the action's potential effects on climate change:

> "The Worland Field Office Interdisciplinary Team determined the following resources are not present or affected by the proposed action or alternatives; therefore, they are not analyzed further in this EA: . . . Air Quality/Climate Change."[59]

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[56] Mary O'Brien, *Uneasy Riders: A Citizen, a Cow, and NEPA*, 39 Envtl. L. Rep. 10,632, 10, 634 (2009).
[57] See Cox, et al, http://www.ars.usda.gov/SP2UserFiles/Place/30180500/74.%20Cox%20Booth%20Likins%202016%20Headcut%20.pdf
[58] *Available at* https://eplanning.blm.gov/epl-front-office/eplanning/nepa/nepa_register.do.
[59] Bureau of Land Management Worland Field Office, Livestock Grazing Permit Renewal for the Tatman Mountain Common (00639) and Snyder (00640) Grazing Allotments [Worland, WY, 2014], *available at* http://www.blm.gov/style/medialib/blm/wy/information/NEPA/wfodocs/TatmanMountainSnyder.Par.73200.File.dat/EA.pdf; *see also* Bureau of Land Management Worland Field Office, Livestock Grazing Permit Transfer and

> "It is currently beyond the scope of existing science to identify a specific source of greenhouse gas emissions or sequestration and designate it as the cause of specific climate or resource impacts at a specific location. The proposed action and alternatives, when implemented, would not have a clear, measurable cause-and-effect relationship to climate change because the available science cannot identify a specific source of greenhouse gas emissions such as those from livestock grazing and tie it to a specific amount or type of changes in climate. Therefore, the effects of livestock grazing to the global climate will not be analyzed in detail in this EA."[60]

> "Addressing effects on greenhouse gas levels within the scope of NEPA is difficult due to the lack of explicit regulatory guidance on how to meaningfully apply existing NEPA regulations to this evolving issue, and due to the continuously evolving science available at varying levels. The proposed action and alternatives do not have a clear, measurable cause and effect relationship to climate change because the available science cannot identify a specific source of greenhouse gas emissions or storage and tie it to a specific amount or type of climate change."[61]

> "USGS has reviewed science on GHG emissions and concluded it is beyond scope of existing science to identify a specific source of GHG emissions and designate it as the cause of specific climate impacts at a specific location . . . The effects that infrequent, ephemeral livestock grazing on the Hazen-Shepard Allotment may contribute to climate change are currently unknown, but are expected to be negligible under the proposed action and alternatives."[62]

Rather than analyze the potential climatic effects of issuing a grazing permit, BLM consistently relies on the assertion that such an analysis is beyond the scope of existing science. However, as the federal policy toward increasing accountability for climate change has shown, addressing these impacts should be at the forefront of BLM's analysis when undertaking a major federal

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Renewal for the Blue Creek Allotment (00516) [Worland, WY, 2013], *available at* http://www.blm.gov/style/medialib/blm/wy/information/NEPA/wfodocs/bluecreek.Par.93533.File.dat/EA.pdf.

[60] Bureau of Land Management Upper Snake Field Office, Environmental Assessment, Grazing Permit Renewal for Allotment IV (#06046) and Spring Creek (#05060) Allotments [Idaho Falls, ID, 2014], *available at* https://eplanning.blm.gov/epl-front-office/projects/nepa/39006/51609/56151/Allotment_IV_Spring_Creek_EA_5.30.14_508.pdf; *see also* Bureau of Land Management Upper Snake Field Office, Environmental Assessment, Grazing Permit Renewal for Blizzard Mountan Allotment (#11007) [Idaho Falls, ID, 2014], *available at* https://eplanning.blm.gov/epl-front-office/projects/nepa/38873/51603/56145/Blizzard_EA_508.pdf (using the exact same language); *see also* Bureau of Land Management Upper Snake Field Office, Environmental Assessment, Grazing Permit Renewal for Beck Canyon Allotment (#11017) [Idaho Falls, ID, 2014], *available at* https://eplanning.blm.gov/epl-front-office/projects/nepa/38872/51606/56148/Beck_Canyon_EA_508.pdf (using the exact same language).

[61] Bureau of Land Management, Upper Snake Field Office, Environmental Assessment, Grazing Permit Renewal for Camas Meadow Allotment [Idaho Falls, ID, 2013], 51-52, *available at* https://eplanning.blm.gov/epl-front-office/projects/nepa/36447/45722/49374/camas_meadow_EA__final_508.pdf.

[62] Bureau of Land Management Lower Sonoran Field Office, Hazen-Shepard Allotment Grazing Permit Renewal Environmental Assessment [Phoenix, AZ, 2014], *available at* https://eplanning.blm.gov/epl-front-office/projects/nepa/36909/51633/56224/Hazen_Shepard_EA_FINAL.pdf.

action. Yet climate change continues to be treated either as a non-factor or a factor incapable of, according to BLM, producing a significant impact.

Ironically, the BLM may circumvent its NEPA and CFR obligations entirely by making a determination that degraded rangeland conditions were caused by past livestock grazing and may issue a new 10-year permit under a "categorical exemption" without any NEPA analysis[63] at all, even to determine if current grazing could repair the damage caused by past grazing. Even worse, the BLM fails to complete any analysis of the impacts of current grazing prior to the end of the 10-year permit, and the livestock grazing permittee is entitled to have the BLM grazing permit renewed on identical terms and conditions even if any objective assessment would determine that current livestock grazing caused the rangelands to be in degraded condition[64]. Both the categorical exemption and the automatic renewal of permits allow the BLM to avoid any meaningful NEPA analysis and perpetuate a failure to consider climate change.

As noted in the CEQ Guidance, refraining from analysis because emissions represent only a small fraction of global emissions is not an appropriate basis for deciding whether to consider climate impacts under NEPA. As evidenced, there is an established relationship between grazing and climate change, and BLM's assessment that this connection is too attenuated will no longer suffice.

Moreover, BLM sidesteps the environmental review process altogether in many instances, allowing a Documentation of NEPA Adequacy (DNA) or Categorical Exclusion to suffice.[65] A DNA identifies previously prepared NEPA documents which "adequately describe the environmental consequences" of a newly proposed action and a categorical exclusion is deemed to have no significant environmental effects. Among BLM's categorical exclusions are the issuances of new grazing permits where the new grazing permit is consistent with the use specified on the previous permit. The result is that permitting decisions are being made based on NEPA documents, in some cases adopted decades ago, with no assessment of climate change impacts. In other words, BLM simply "Xeroxes forward" the unsupported premise that its thousands of livestock grazing permits have no climate impact.

A review of existing NEPA documents establishes that ignoring livestock grazing's climate change impacts is not limited to livestock grazing decisions. The BLM systematically ignores the effects of federally permitted livestock grazing in *all* NEPA analysis even though it is clearly

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[63] BLM National Environmental Policy Act Handbook H-1790-1 (2008) available at: http://www.blm.gov/style/medialib/blm/wo/Information_Resources_Management/policy/blm_handbook.Par.24487.File.dat/h1790-1-2008-1.pdf.

[64] Washington Office Instruction Memorandum 2015-122: IM 2015-122, Implementing Amended Section 402(c)(2) of the Federal Land Policy and Management Act, http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2015/IM_2015-122.html

[65] *See* NEPA#'s DOI-BLM-MT-C020-2016-0038-DNA, DOI-BLM-MT-C020-2016-0024-DNA, DOI-BLM-MT-C020-2016-0011-DNA, DOI-BLM-CA-C090-2016-0002-DNA, DOI-BLM-CA-C090-2016-0001-DNA, DOI-BLM-CO-N040-2015-0045-DNA, DOI-BLM-CO-N040-2015-0030-DNA, DOI-BLM-CO-N040-2015-0003-DNA, DOI-BLM-CO-N030-2015-0013-DNA, DOI-BLM-CO-N030-2015-0012-DNA, DOI-BLM-CO-F020-2015-0013-DNA, DOI-BLM-CO-F020-2015-0012-DNA, DOI-BLM-CO-F020-2015-0007-DNA, DOI-BLM-CO-N010-2014-0030-DNA, DOI-BLM-AK-A010-2014-0011-DNA

a cumulative impact. (As an example of the ubiquity of public lands grazing, the BLM's webpage for the Worland Field Office, whose NEPA analyses are discussed above, states that the Worland Field Office manages "in excess of 2,000,000 acres"--but only 1,830 acres, or .0o01 percent, are closed to livestock grazing).

V. CONCLUSION

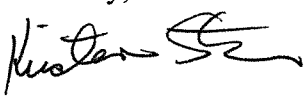
Based on the foregoing information pointing to the fact that BLM consistently refuses to address climate impacts in its planning process, PEER respectfully requests that CEQ direct BLM to –

1. Analyze the climate change impacts of the issuance and renewal of grazing permits in all future NEPA documents; and

2. Review all of its prior grazing-related categorical exclusions to determine whether those exclusions from NEPA review are still appropriate in light of the risks presented by climate change.

If you have questions or would like any additional information in support of this complaint, please do not hesitate to contact me.

Sincerely,



Kirsten Stade
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