



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

California State Office
2800 Cottage Way, Room W1834
Sacramento, CA 95825-1886

www.ca.blm.gov

March 30, 2001



EMS TRANSMISSION: 04/02/01

In Reply Refer To:

1790, 4160(P)

CA-930

Instruction Memorandum No. **CA-2001-032**

Expires 09/30/02

To: DM, CDD, and CDD FMs

From: State Director

Subject: Center for Biological Diversity (CBD) Grazing Stipulation Implementation: NEPA Compliance, Public Review and Grazing Decisions

The purpose of this memorandum is to clarify and provide guidance for implementation of the CBD grazing stipulation to insure that implementation processes are consistent with all applicable federal statutes and regulations, as well as BLM California NEPA compliance guidance which includes appropriate public notification procedures.

A) We have structured the process to allow public participation prior to making the final grazing decision. The EA and the proposed grazing decision will be mailed (certified mail) at the same time for a 15-day public review and protest period.

B) The Bureau will address and incorporate into the final decision any protests and public comments on the EA which are pertinent to the grazing decision.

C) We have provided for a 30-day appeal period for the combined decision record/FONSI and grazing decision. Follow proposed and final grazing decision template as provided on page 41 of CA IM-2001-028, Transmittal of Environmental Assessment Template/Livestock Grazing (attached below).

For more information contact Dianna Brink at (916) 978-4645 or Jack Mills at (916) 978-4636.

Attachment

Notice of Proposed Decision

Signed by:
James Abbott
Associate State Director

Authenticated by:
Alex Lopez
Records Management

States Department of the Interior
Bureau of Land Management
_____ Field Office
Address
(Phone number)

Certified Mail No. _____
Return Receipt Requested

4160
(OFFICE CODE)

DATE

XYZ Ranch, PERMITTEE OR LESSEE
c/o AUTHORIZED REPRESENTATIVE
P.O. Box xxxx
Rough and Ready, CA xxxxx

NOTICE OF PROPOSED DECISION

Dear (Name of Permittee or Lessee or Authorized Representative):

INTRODUCTION

At a minimum this section includes: a factual chronology of the situation providing sufficient information to lead the reader (permittee, interested publics, appeals judges) to the intended action(s).

BACKGROUND

At a minimum this section includes: What events/actions led to the need for a decision and why is a decision needed now - e.g. implementation of a land use plan or activity plan, modifying a permit or lease as a result of a standards attainment determination, unresolved regulatory violation and so forth. In this section, if an EA had been completed that analyzed various alternatives. The EA number should be addressed in this section. Are desired resource objectives not being met? What are they? As noted in the handbook, there is no restriction on the use of a proposed decision so listing all possible examples here is not practical.

FINDING OF NO SIGNIFICANT IMPACT (FONSI)

If an EA was completed in support of this decision, the Fonsi determination statement needs to be placed in this part of the decision.

PROPOSED DECISION

This section should begin with: **“Therefore, it is my proposed decision that”**, or similar language that clearly identifies to the reader that the actions about to be described comprises the intended decision .

At a minimum, this section includes: What BLM intends to authorize, implement or enforce, under what time frames, and the proposed effective date of the decision; schedule(s) if the implementation is to occur in phases and/or intended terms and conditions of use to be authorized, as appropriate;

payment due date(s) if the decision is demanding payment; a duplication of the preferred alternative of the NEPA document that spells out the specific mandatory terms and conditions, other special T&Cs and potential BLM actions if there is lack of compliance. Include also, as appropriate, an explanation or comparison of how what BLM intends is different from what BLM is currently authorizing, implementing or

enforcing. This can be woven into this section in a “From: To:” format, if appropriate.

There is no “cookbook” of what all could possibly go in this section. Basically the reader will be looking to find: What BLM intends to do, when do they intend to do it and how and when will this be affecting me?

RATIONALE

Be specific as to the reasons and the rationale for the proposed decision. Why is taking the action stated in the decision needed and how is it expected to address the issues brought forward in the background section? If this decision is part of an EA, the purpose and need of the EA can be used in this section.

AUTHORITY

Cite all relevant sections of 43 CFR that provides the authority and/or direction for both issuing a proposed decision (essentially, 43 CFR § 4160) and for the actions described in the decision (various - both in subpart 4100 and elsewhere, depending on the decision).

RIGHT OF PROTEST AND/OR APPEAL

The following example is provided as suggested language for communicating to the recipient their right of protest and/or appeal:

Any applicant, permittee, lessee or other affected interest may protest a proposed decision under Sec. 43 CFR 4160.1, in person or in writing to [Name, title and office address of authorized officer] within 15 days after receipt of such decision. The protest, if filed, should clearly and concisely state the reason(s) as to why the proposed decision is in error.

In the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice unless otherwise provided in the proposed decision.

Any applicant, permittee, lessee or other person whose interest is adversely affected by the final decision may file an appeal in accordance with 43 CFR 4.470 and 43 CFR 4160.1-4. The appeal may be accompanied by a petition for stay of the decision in accordance with 43 CFR 4.21, pending final determination on appeal. The appeal and petition for stay must be filed in the office of the authorized officer, as noted above, within 30 days following receipt of the final decision, or within 30 days after the date the proposed decision becomes final.

The appeal shall state the reasons, clearly and concisely, why the appellant thinks the final decision is in error and otherwise comply with the provisions of 43 CFR 4.470 which is available from the BLM office for your use in a BLM office.

In accordance with 43 CFR 4.21(b) (1), a petition for stay, if filed, must show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied.*
- (2) The likelihood of the appellant's success on the merits.*
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and*
- (4) Whether the public interest favors granting the stay.*

_____Name

Signature

Title of the Authorized Officer

cc (by certified mail):

(As applicable)

Agent(s) of record

Lienholder(s) of record

Tribes

Interested public (specific to allotments for which they have been granted interested public status)

States having affected lands or management responsibilities

United States Department of the Interior
Bureau of Land Management
_____ Field Office
Address
(Phone number)

Certified Mail No. _____
Return Receipt Requested

4160
(OFFICE CODE)

DATE

XYZ Ranch, PERMITTEE OR LESSEE
c/o AUTHORIZED REPRESENTATIVE
P.O. Box xxxx
Outback, NV xxxxx

NOTICE OF FINAL DECISION

Dear (Name of Permittee or Lessee or Authorized Representative):

This suggested format essentially follows the same format suggested for a proposed decision and that the final decision needs to be a stand alone document that does not refer to other documents or the proposed decision.

Suggestions below that refer to a proposed decision would not be used in the event that the authorized officer elected to issued a final decision with out first issuing a proposed decision.

INTRODUCTION

At a minimum this section includes: What this document is, as compared with routine correspondence, and why it is important to the permittee or lessee, and how it is the “next step” following the proposed decision.

BACKGROUND

Background information included in a proposed decision need not be repeated if it clearly referenced. In some circumstances, however, the AO may wish to repeat it. or when this decision also addresses an alternative in a NEPA document.

In the “Background” section, include:

On ___(date)___, you received my Notice of Proposed Decision regarding ... (briefly describe the purpose and content of the proposed decision).

Timely protest(s) to the Proposed Decision were received from [Name(s)]. I have carefully considered each protest’s statement of reasons as to why the proposed decision was in error and [optional, but preferred] have responded to these reasons, below.

Reason (or, Protest Point)

Response

Etc., until all reasons have been addressed.

FINDING OF NO SIGNIFICANT IMPACT(FONSI)

If an EA was completed in support of this decision, the Fonsi determination statement needs to be placed in this part of the decision.

FINAL DECISION

Suggested introductory text:

*After careful consideration of the statement of reasons included in the protests, information received through consultation, communication and coordination with [names of individuals or entities], and other information pertinent to the matters addressed in this decision, **My Final Decision is***

It may occur that the final decision is issued unchanged or that the final decision is a modification of what was stated in the proposed decision based on information received through protest and/or further consultation, or it may be that the final decision vacates the intentions of the proposed decision. In any event, the decision must be explained in the rationale.

Be cautious to ensure that the final decision does not introduce new material issues that were not addressed by the proposed decision. “Changing horses in mid-stream” is not allowed. New material issues or circumstances that merit a decision should be addressed by another proposed decision.

RATIONALE

Be specific as to the reasons and the rationale for the decision. Is it different from the proposed decision? Why or why not? If it is issued effective upon issuance or a date specified, why is it necessary to implement the decision immediately? If this decision is part of an EA, the purpose and need of the EA can be used in this section.

AUTHORITY

Cite all relevant sections of 43 CFR that provides the authority and/or direction for both issuing a final decision (essentially, 43 CFR § 4160) and for the actions described in the decision (various - both in subpart 4100 and elsewhere, depending on the decision).

NORMAL LANGUAGE ON FINAL GRAZING DECISIONS

Suggested text:

Any applicant, permittee, lessee or other person whose interest is adversely affected by the final decision may file an appeal in accordance with 43 CFR 4.470 and 43 CFR 4160.1-4. The appeal may be accompanied by a petition for stay of the decision in accordance with 43 CFR 4.21, pending final determination on appeal.

The appeal and petition for stay must be filed in the office of [name, address and title of the authorized officer] within 30 days following receipt of the final decision. The appeal shall state the reasons, clearly and concisely, why the appellant thinks the final decision is in error, and comply

with the provisions of 43 CFR 4.470 which is available from the BLM office for your use in a BLM office.

In accordance with 43 CFR 4.21(b) (1), a petition for stay, if filed, must show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied.*
- (2) The likelihood of the appellant's success on the merits.*
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and*
- (4) Whether the public interest favors granting the stay.*

_____ (Signature)

Name
Title of Authorized Officer

cc (by certified mail):

(As applicable)

Agent(s) of record

Lienholder(s) of record

Tribes

Interested public (specific to allotments for which they have been granted interested public status)

States having affected lands or management responsibilities

4160.1 (045)

Date

CERTIFIED MAIL _____

Return Receipt Requested

Permittee/Lessee Name & Address

Dear :

NOTICE OF AREA MANAGER'S PROPOSED GRAZING DECISION

An *Introduction Section* is needed to address the background of the action (i.e. expired permit or lease, Rangeland Health Standard and Guideline assessment and other management action like improvements). This section also needs to identify the land base that was analyzed (i.e. watershed, landscape, allotment or a group of allotments with similarities). The area has undergone review for consistency and conformance with the land use plan, and compliance with NEPA. The review was conducted through the preparation of an environmental assessment document (# of document) prepared by BLM staff and subject to public comment.

I have reviewed this environmental assessment including the explanation and resolution of any potentially significant environmental impacts. I have determined that the proposed action will not have any significant impacts on the human environment and that an EIS is not required. I have determined that the renewal of the grazing permit/lease in accordance with the terms and conditions established in the proposed action is in compliance with the _____ Management Framework Plan/_____RMP of (19XX).

This decision will be the decision for the EA that identifies the selected alternative and state the terms and conditions by specific management unit (generally an allotment) which will be incorporated into a permit or lease.

My proposed decision is to implement the proposed action described in the attached environmental assessment EA# _____ for authorization of livestock grazing use on the _____ Allotment(s), #(s) _____, under your grazing permit/lease for Operator Number _____ with a term of 10-year (note the dates for the term of the permit).

(Note: Preferred option would be to list the proposed action, in its entirety, in this paragraph, example:)

The authorized terms and conditions by allotments under the above proposed action are:

| <u>allotment</u> | <u>number/kind</u> | <u>season</u> | <u>%PL</u> | <u>active AUMs</u> | <u>suspended</u> | <u>total</u> |
|------------------|--------------------|-----------------------|------------|--------------------|------------------|--------------|
| Squal | 500 cattle | May 1 to September 30 | 100 | 2515 | 485 | 3000 |

Other Terms and Conditions

At (insert where measurement will occur, key area #, polygon #, reach beginning and ending points, etc.) in the (insert allotment/pasture name), utilization of (insert species name(s) or grouping) will not exceed (insert specific percentage depending on objectives) of the (seasonal or current year's growth depending on your objective) as determined by the (insert specific method from Technical Reference "Utilization Studies and Residual Measurements").

A minimum of *(insert specific inches required to meet your objectives)* of median stubble height will

remain on (*insert specific key species name(s) or plant type grouping such as obligate species, hydric species, herbaceous vegetation, etc.*) at the end of the (*insert grazing season, grazing period or growing season or other date or time depending on your objective*) in the riparian area along (*insert name of creek and allotment/pasture name*) as measured at (*insert where measurement will occur, key area #, polygon #, reach beginning and ending points, etc.*)

The authority under which this decision is made is found within the following 43 CFR citations:

(Note: Cite the specific portions of the CFR that are applicable.)

| | | |
|-----------------|--|------------------------|
| 4110.2-2 | Specifying permitted use | |
| 4110.2-3 | Transfers of grazing preference | <i>(as applicable)</i> |
| 4110.3 | Changes in permitted use | <i>(as applicable)</i> |
| 4130.2 | Grazing permits or leases | |
| 4130.3 | Terms and conditions | |
| 4130.3-1 | Mandatory terms and conditions | |
| 4130.3-2 | Other terms and conditions | <i>(as applicable)</i> |
| 4130.3-3 | Modification of permits or leases | <i>(as applicable)</i> |
| 4180 | Fundamentals of Rangeland Health & S&G for Grazing Administration | <i>(as applicable)</i> |

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- (2) The likelihood of the appellant's success on the merits.
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

As noted above, the petition for stay must be filed in the office of the authorized officer.

If you have any questions, feel free to contact either (*specify range staff*) at (*phone*), or myself at (*phone*).

Sincerely,

_____ Resource Area Manager

Attachments

cc:

Permittee(s)
Interested Publics
Tribes
Agencies