



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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In Reply Refer To:
4130/4160 (330)

September 8, 2008

Dear Permittee:

NOTICE OF FIELD MANAGER'S FINAL DECISION

On September 22, 2004, Judge Lynn B. Winmill, United States District Court for the District of Idaho, issued a Memorandum Decision and Order that granted a partial summary judgment and reversed the Full Force and Effect Decision of the Bureau of Land Management (BLM). The BLM, at that point, decided to complete a new Rangeland Health Assessment (RHA) and Determination and write a new Environmental Assessment (EA) for renewing the grazing permit on the Burnt Creek Allotment. The allotment has been in non-use during the 2004-2006 grazing seasons in order to complete the RHA and new EA.

In 2005-2007, the Challis Field Office (CFO) conducted an RHA, and determined that six of the eight standards for rangeland health (i.e., watersheds, riparian areas and wetlands, stream channels and floodplains, native plant communities, water quality, and threatened and endangered plants and animals) are applicable to the allotment, and are being met or are making significant progress toward being met. Two of the standards for rangeland health (i.e., seedings and exotic plant communities) are not applicable to this allotment.

BLM solicited comments for this process in letters dated January 28, 2005; March 8, 2006; and April 21, 2006. Comments were received from Western Watersheds Project and Idaho Conservation League and were considered. The CFO prepared an EA (ID-330-2006-EA-1504, dated April 21, 2006) to analyze the impacts of authorizing a term grazing permit for the Burnt Creek Allotment. An Interdisciplinary (ID) Team considered the comments received and incorporated the relevant comments into the EA. The proposed decision and EA (ID-330-2006-EA-1504, dated May 24, 2007) were issued on June 8, 2007.

Western Watersheds Project submitted three timely protest letters. I have carefully considered each protest statement of reasons, why the proposed decision was thought to be in error, and have responded to these reasons. The response to the protest points is attached to this decision.

FINDING OF NO SIGNIFICANT IMPACT (FONSI)

I have reviewed the direct, indirect and cumulative effects of the alternatives documented in the EA (ID-330-2006-EA-1504, dated October 22, 2007) for the Burnt Creek Allotment Grazing Authorization Renewal. I have also reviewed the project record for this analysis and the effects of the proposed action and alternatives, as disclosed in the Alternatives and Environmental Impacts sections of the EA. I have determined that authorizing grazing use in accordance with the permit terms and conditions established in the selected alternative is in conformance with the following Sections in the Challis Resource Management Plan (RMP, 1999) relating to: Biological Diversity, Cultural Resources, Livestock Grazing, Noxious Weed Infestations, Recreation Opportunities and Visitor Use, Riparian Areas, Special Status Species, Upland Watershed, Visual Resources, and Wildlife Habitat, Areas of Critical Environmental Concern (ACEC), and Wild and Scenic Rivers.

Implementing regulations for NEPA (40 CFR 1508.27) provide criteria for determining the significance of effects. Significant, as used in NEPA, requires consideration of both context and intensity.

(a) Context. This requirement means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant (40 CFR 1508.27):

The disclosure of effects in the EA found the actions limited in context. The planning area is limited in size and the activities limited in potential. Effects are local in nature and are not likely to significantly affect regional or national resources.

(b) Intensity. This requirement refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following are considered in evaluating intensity (40 CFR 1508.27).

(1) Impacts that may be both beneficial and adverse.

- The analysis documented in EA #ID-330-2006-EA-1504 dated October 22, 2007, did not identify any individually significant short- or long-term impacts.

(2) The degree to which the proposed action affects public health or safety.

- No major effects on public health and safety were identified in the EA.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

- No major effects on unique geographic characteristics of the area, cultural or historical resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas were identified in the EA. Cultural resources will not be adversely impacted (EA; Section I Relationship to Statutes, Regulations or Other Plans). No prime farmlands or park lands are found in the project area.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

- The analysis did not identify any controversy or disagreement concerning effects on the quality of the human environment. The public comments received were on the general effects of grazing management actions on various resource values. No significant individual or cumulative impacts are anticipated as a result of this action.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

- The analysis did not identify any effects on the human environment which are highly uncertain or involve unique or unknown risks. Grazing has been a primary use in this area for at least 73 years (Taylor Grazing Act, 1934).

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

- The analysis showed how the alternatives would implement direction in the Challis RMP (EA; Section I Conformance with Applicable Land Use Plan) and will not establish precedent for any future actions. The activities are not connected to any other future actions. Implementation of this decision will not trigger other actions, nor is it a part of a larger action in the project area encompassed by this decision.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.

- The analysis did not identify any known significant cumulative or secondary effects (EA; Section III Affected Environment and Environmental Consequences). Outside this project area, additional Standards and Guidelines Assessments, determinations and subsequent decisions will be made, potentially resulting in changes in livestock management actions, stocking levels and seasons of use. However, those actions in combination with this decision are not anticipated to result in cumulatively significant impacts.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

- The analysis showed that the alternatives will not result in adverse effects to cultural or historical resources. Terms and conditions, allowable use indicator/criteria, and the grazing system designed to address wildlife and vegetation issues will continue to offer

an important level of protection to cultural resources. Mitigation of potential effects to sites in the vicinity of natural or constructed water sources includes monitoring. Appropriate management actions will be taken if increased impacts from livestock are documented. In summary, the grazing permit terms and conditions, allowable use indicator/criteria, and grazing system provide a reasonable level of general protection for cultural resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

- The CFO requested concurrence on a Supplement to the Pahsimeroi River Section 7 Watershed Biological Assessment (BA) for the Burnt Creek Allotment Grazing Permit modification on December 18, 2006. The concurrence memo dated January 16, 2006 [sic 2007] (USFWS # 14420-2007-I-0188) states, “With this memorandum, the Fish and Wildlife Service (Service) provides concurrence with your determination that the proposed grazing on the Burnt Creek Grazing Allotment (Project), located in Custer County, Idaho, May Affect, but is Not Likely to Adversely Affect species listed under the Endangered Species Act of 1973, as amended, (Act).” Based on protest points received on the Field Manager’s Proposed Decision, changes in livestock grazing management have been modified in Alternative 3. A letter dated January 28, 2008, was sent to the USFWS from the CFO requesting concurrence on modified livestock grazing management for the Burnt Creek Allotment. The concurrence memo received by the CFO on February 21, 2008, states, “Therefore, the Service concurs with the BLM’s determination that the changes are consistent with the effects analysis of 2006 and are not likely to adversely affect bull trout.” This memo supersedes previous consultation.
- Anadromous salmonids, such as Snake River spring/summer Chinook salmon, Snake River steelhead trout, and Snake River sockeye salmon are not present within the Burnt Creek Allotment. Excluding livestock grazing within the Burnt Creek Enclosure will ensure that designated critical and essential fish habitat for Chinook salmon and potential steelhead trout habitat are not affected by livestock grazing. A separate BA has been prepared for anadromous salmonids and a “No Effect” determination was made for these species and their habitats pertaining to livestock grazing on the allotment.

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

- The analysis in the EA shows that the alternatives are consistent with Federal, State, and local laws or requirements imposed for protection of the environment (EA Section I).

I have reviewed the Council on Environmental Quality (CEQ) Regulations for significance (40 CFR 1508.27) and have determined the actions analyzed in the EA will not constitute a major Federal action that will significantly affect the quality of the human environment; therefore an Environmental Impact Statement is not required.

FINAL DECISION

My Final Decision is to implement the following provisions as described in EA, # ID-330-2006-EA-1504 (dated October 22, 2007), for authorization of livestock grazing use on the Burnt Creek

Allotment, #04519 in the grazing permit for Scott L. Whitworth with a term of 10 years (March 1, 2008 to February 28, 2018):

- Terms and Conditions; Grazing System; Allowable Use Indicator/Criteria; and Range Improvements (c), (e), (f) and (g) listed in Alternative 3;
- the removal of Range Improvements listed in Alternative 4;
- the Range Improvements (a) listed in Alternative 2; and
- the “Resource Objectives and Associated Monitoring Common to All Alternatives.”
- Season of Use is shortened by 47 days (From 109 days between 6/16 – 9/30 to 62 days between 6/16 – 8/31).
- Horse AUMs are reduced from 18 to zero.
- Cattle AUMs are reduced from 840AUMs to 670 AUMs.

These provisions are explained in more detail below:

1. MANDATORY TERMS AND CONDITIONS

Table 1. Permitted Number, kind and season of livestock use for the Burnt Creek Allotment.

Number	Kind	Season of Use		% Public Land	Permitted Use (AUMs)	Suspended AUMs
		Begin	End			
342	Cattle	6/16*	8/31*	96	670	188

* The begin and end dates listed above indicate the outside parameters in which grazing can occur. Grazing use will be limited to a maximum of 62 days within these dates.

2. OTHER TERMS AND CONDITIONS

- All trailing to and from the Burnt Creek Allotment will be done within the dates of the authorized use. Trailing to and from the allotment will take 3 days to complete each direction. Trailing will be done along the Upper Pahsimeroi and Burnt Creek roads.
- Crossing areas will be approved by a BLM fisheries biologist to prevent impacts to spawning bull trout. The three crossing locations are located in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 20, NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 29, and the SW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 33, Township 10 North, Range 24 East, BM (Map B). The primary crossing will be the one in Section 29.
- The Burnt Creek Enclosure is closed to livestock grazing with the exception of the above-mentioned crossing until an interdisciplinary team determines that the stream is in proper functioning condition and resource objectives are being met.
- Six enclosure gates will be locked during the grazing season to maintain the integrity of the livestock enclosure. They are located at 1) SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 20; 2) NW $\frac{1}{4}$ SE $\frac{1}{4}$, Section 29; 3) SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 29; 4-5) SW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 33; and 6) SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 32; all in Township 10 North, Range 24 East, BM.
- Salt and/or mineral blocks shall not be placed within $\frac{1}{4}$ mile of springs, streams, meadow riparian habitats, or aspen stands unless prior approval is given by the authorized officer.

- f) Seasonal temporary electric fence may be used as a tool to protect sensitive areas along the East and West tributaries of Burnt Creek and upland spring areas, improve livestock distribution, and enhance wilderness values by improving riparian/wetland habitat conditions. The temporary electric fence will consist of one or two strands and will be removed once the livestock leave the allotment.

3. GRAZING SYSTEM

The Burnt Creek Allotment will be grazed in a two-pasture deferred grazing rotation. The East Pasture will be grazed for approximately 26 days and the West Pasture will be grazed for approximately 36 days. The East Pasture will be grazed first on odd-numbered years and second on even-numbered years. The West Pasture will be grazed first on even-numbered years and second on odd-numbered years. The allotment will be grazed by up to 342 cattle with a total of 670 AUMs. The maximum days on the allotment will be 62 days. Table 2 illustrates a multi-year grazing sequence, with the late and early turn-out dates.

Table 2. Potential grazing rotation.

Year	<u>Grazing Sequence</u>	
	First	Second
Odd (2009)	East Pasture (6/16 to 7/11) or (7/1 to 7/26)	West Pasture (7/12 to 8/16) or (7/27 to 8/31)
Even (2010)	West Pasture (6/16 to 7/21) or (7/1 to 8/4)	East Pasture(7/22 to 8/16) or (8/5 to 8/31)

This grazing strategy will require crossing (or fording) of Burnt Creek twice during the grazing season. Each crossing area is limited in extent along Burnt Creek to less than 50 feet of stream. Three crossing areas have been identified. They are located at points A, B, & C on Map B. Location B is the primary crossing area. When cattle are in the East Pasture the latter half of the season, gathering will require crossing Burnt Creek during late August. This could potentially overlap with the spawning period in years if spawning is initiated early (spawning normally occurs in September). Redd monitoring will be used to determine if spawning has been initiated early and if any redds are located within, or immediately downstream of the crossing to minimize the potential for take. If redds are found in or within 100 meters downstream of the crossing, an alternative strategy will be used to gather livestock from the East Pasture in order to avoid exposing redds to potential trampling. The alternative strategies will be to utilize one of the other two identified crossing areas or to trail livestock on the east side of the enclosure through the Upper Pahsimeroi Allotment and cross Burnt Creek at the Upper Pahsimeroi Road crossing.

The permittee will ride or will provide a rider to move livestock away from the tributaries to minimize use in those areas during their grazing period.

4. ALLOWABLE USE INDICATOR/CRITERIA

Upland Areas:

- a) Utilization of upland key species including bluebunch wheatgrass, Idaho fescue, Indian ricegrass, and upland bluegrass species will be limited to 40 percent of the current year's growth.

Riparian Areas:

- a) Browse utilization (percent frequency of nipping of current year leaders for woody species) at the East (BCET-KA2) and West (BCWT-KA1) Tributaries riparian key areas will be 50 percent or less on willow or aspen in order to maintain or expand existing woody riparian plant communities and protect stream banks.
- b) The median end of growing season stubble height for herbaceous hydric plant species in riparian key areas will be 6 inches or greater at the West Tributary riparian key area until a good ecological status is reached. Once the ecological status is rated at or above 61, the median end of growing season stubble height for herbaceous hydric plant species will be 4 inches or greater. Key species include deep-rooted sedges, deep-rooted rushes, and American mannagrass.
- c) Total bank alteration by livestock at the East (BCET-KA2) and West (BCWT-KA1) Tributaries riparian key areas will be 20 percent or less of the total bank in order to limit mechanical damage of stream banks by livestock.

5. RANGE IMPROVEMENTS

The permittee will have maintenance responsibility for all range improvements within the Burnt Creek Allotment, including maintaining the Burnt Creek Exclosure and installing seasonal temporary electric fence prior to turnout.

- a) Relocate approximately one mile the Burnt Creek Exclosure fence onto the bench above the creek to include Burnt Creek Spring #1. See Map F3
- b) The Cook Allotment Fence, #364006 (Map F4) and the corrals located on the West Tributary, will be removed by BLM personnel.
- c) An additional 0.2 miles of temporary electric fence will be used to exclude livestock use along the West Tributary below the road to the existing exclosure fence and fence modifications will occur along the east side of the Burnt Creek Exclosure fence to reduce the likelihood of livestock entering the exclosure. The temporary electric fence constructed around the lower portion of the West Tributary will be removed once the livestock leave the allotment.
- d) Install annually .27 miles (600' x 100') of electric fence at T. 10 N., R. 24 E., Sec. 29, NE1/4, which will be in place for approximately 45 days per year to protect a spring/meadow complex; and install one trough outside of the electric fence to provide alternative water to Burnt Creek Spring #1. The pipe will be on the surface of the ground. All troughs on BLM will have an escape ramp. All materials will be

- hauled onto site on existing ways and through non-motorized means where there is no existing ways (See Map F3).
- e) Fence construction, and subsequent removal if necessary, will be completed using the least ground disturbing tools possible. Motorized vehicle use off of existing roads and vehicle ways will not be permitted. Any clearing of vegetation will be kept to the minimum necessary to align the fence and will be accomplished without use of motorized vehicles.
 - f) Maintenance of proposed projects consists of timely repair of an improvement to keep it in usable condition for the purpose intended over its normal expected life span. Specifically for fences maintenance includes: periodic inspection, keeping the wire attached to the posts with proper tension, maintaining a specified number of wires, replacing bent or broken posts and stays, repairing gates, repairing drainage crossings, and other minor work needed to keep the fence usable. Specifically, for springs, pipelines, and troughs, maintenance includes: periodic inspection, repair or replacement of worn or damaged parts, repair of leaks, removing trash or silt, winterizing the facility, maintaining water flows during agreed upon times, and maintaining wildlife escape ramps. In addition, the BLM will monitor the trough locations for noxious or invasive weed species and treat appropriately if found.

6. RESOURCE OBJECTIVES and ASSOCIATED MONITORING

The following paragraphs list resource objectives for the Burnt Creek Allotment and associated implementation and effectiveness monitoring for each objective.

The monitoring objectives were developed based on the following criteria:

Uplands: 1) current resource conditions being in late to potential natural community; 2) the allotment meeting Standard 1 (watersheds), Standard 4 (native plant communities), and Standard 8 (threatened and endangered plants and animals); and 3) meeting the expected cover values from the Natural Resource Conservation Service (NRCS) ecological site guides.

Riparian/Wetlands: 1) current resource conditions – making significant progress toward Standard 2, 3, 7 & 8; 2) Attachment 15: Riparian Habitat Objectives, 3) RMP to have vegetative communities in late to potential natural community.

Implementation Monitoring will be used to help refine livestock grazing management from year to year during the term of the permit. This monitoring will be used to trigger livestock movement through use areas, timing of grazing by use area, and to select locations for the temporary electric fencing and/or salting.

Effectiveness monitoring provides the status of the indicator(s) used to determine the current condition and trend. This monitoring answers the question whether the current livestock grazing management is resulting in the expected resource conditions for the Burnt Creek Allotment. Based on these monitoring data, the implementation monitoring data and other information/data acceptable to the authorized officer changes in permitted use may occur.

The monitoring is the minimum to occur on the Burnt Creek Allotment. Based on funding and staffing levels more monitoring may be conducted. The implementation monitoring should occur on an annual basis. The effectiveness monitoring should occur every five years at a minimum.

Objective 1: Soil Condition.

Ground cover at Burnt Creek Allotment nested frequency plots will be maintained within the 80% confidence interval (Challis Resource Area Monitoring Procedures, April 1996 and Minimum Monitoring Standards for BLM-Administered Rangelands in Idaho, 1984) or greater than the amount measured during the 2005 readings for each nested frequency plot in order to protect upland soils from above-natural erosion.

BRNT-1 is located west of the confluence of the East and West Forks of Burnt Creek in the SE of Section 32, Township 10 North, Range 24 East, BM. BRNT-2 is located in the NESW of Section 29, Township 10 North, Range 24 East, BM. BRNT-3 is located in the NENW of Section 29, Township 10 North, Range 24 East, BM.

Table 1. Ground cover percentages for nested frequency sites on the Burnt Creek Allotment in 2005.

Nested Frequency Plot #	BRNT-1	BRNT-2	BRNT-3
2005 Percent Ground Cover (%)*	75	83	57

* Ground Cover for BRNT-1 and BRNT-2 includes vegetation, litter, gravel, and rock based on the ecological site guide. Ground Cover for BRNT-3 includes vegetative canopy cover only based on the ecological site guide.

Implementation Monitoring. Upland utilization will be measured at the three key areas following the key species method as described in the 1996 Interagency Technical Reference *Utilization Studies and Residual Measurements* (TR 1734-3) or with other BLM approved methodologies that measure the same parameters.

Effectiveness Monitoring. Nested frequency plots BRNT-1, BRNT-2 and BRNT-3 will be read at each site on a 10-year cycle.

Objective 2: Upland vegetation.

Frequencies of key species will be maintained within the 80% confidence interval (Challis Resource Area Monitoring Procedures, April 1996 and Minimum Monitoring Standards for BLM-Administered Rangelands in Idaho, 1984) from the 2005 readings at BRNT-1 and BRNT-2 and the 1991 reading at BRNT-3.

Table 2. 1991 and 2005 Plant species frequency (%) at nested frequency plots on the Burnt Creek Allotment and plot size for each measurement.

Plant Species	Nested Frequency Plot # (Plot Size)		
	BRNT-1(2005)	BRNT-2(2005)	BRNT-3(1991)
Bluebunch wheatgrass (<i>Pseudoroegneria spicata</i>)	59(4)	69(2)	79(2)
Idaho fescue (<i>Festuca idahoensis</i>)	15(1)	-	-
Mountain big sagebrush (<i>Artemisia tridentata vaseyana</i>)	11(3)	-	40(2)
Three-tip sagebrush (<i>Artemisia tripartita</i>)	38(4)	44(4)	-
Wyoming big sagebrush (<i>Artemisia tridentata wyomingensis</i>)	-	41(4)	-

Implementation Monitoring. Upland utilization will be measured at the three key areas following the key species method as described in *Utilization Studies and Residual Measurements* (TR 1734-3) or with other BLM approved methodologies that measure the same parameters.

Effectiveness Monitoring. The nested frequency plots will be read at each site and photos will be taken at each 3x3 photo plot approximately every 10 years at the three key areas.

Objective 3: Bank Stability. The objective from the Challis RMP *Attachment 15: Minimum Riparian and Aquatic Habitat Conditions* is to have greater than 90% streambank stability on all fish-bearing streams. Burnt Creek DMA 4 currently has 90% streambank stability after being excluded from livestock use for 6 years. Therefore, the bank stability objectives for the perennial streams within the Burnt Creek Allotment are: Increase bank stability on East Tributary Designated Monitoring Area (DMA) 2 (BCET-KA2) from 75% to at least 90%, increase bank stability on West Tributary of Burnt Creek Key Area 1 (BCWT-KA1) from 85% to 90%, on Burnt Creek DMA 3 (BCKA3) from 54% to 90%, and maintain bank stability on Burnt Creek DMA 4 (BCKA4) at least 90% by 2020.

Implementation Monitoring: Bank shearing/alteration monitoring will be conducted at BCWT-KA1 and BCET-KA2. Monitoring procedures will follow protocols from *Monitoring Stream Channels and Riparian Vegetation – Multiple Indicators* (Burton et al. 2007) or other BLM approved methodologies that measure the same parameters. Photos will be taken at BCKA3 and BCKA4 annually.

Effectiveness Monitoring: Monitoring procedures will follow protocols from *Monitoring Stream Channels and Riparian Vegetation – Multiple Indicators* (Burton et al. 2007) or other BLM approved methodologies that measure the same parameters. Objectives are based on listed protocol. The measurements will occur along the greenline transects. The bank to be monitored is from scour line to the first terrace that portion of the channel must be affected by livestock use. Six stability classes are used: covered and stable, covered and unstable (vulnerable), uncovered and unstable, uncovered and unstable, false bank (vulnerable), and unclassified.

Objective 4: Riparian vegetation

The Ecological Status at BCWT-KA1 by 2020 will be increased from 46% to 61% (61% is the lower end of the “late” range) with a range of precision of 5% within a 95% confidence interval with an upward trend by 2015. The Wetland Indicator Rating at BCWT-KA1 will be maintained at 81% within the 95% confidence interval. The 2005 values and the objectives for these parameters are shown below:

Table 3. 2005 results of multiple indicator riparian monitoring at the BCWT-KA1 riparian key area and future objectives.

Parameter	2005 Value	Objective
Ecological Status	46% (mid)	61% (late)
Site Wetland Rating	81% (good)	81% (good)

The Ecological Status at BCET-KA2 by 2020 will be increased from 46% to 61% (61% is the lower end of the “good” range) with a range of precision of 5% within a 95% confidence interval with an upward trend by 2015. The Wetland Indicator Rating at BCET-KA2 will be increased from 63% to 70% with a range of precision of 5% within a 95% confidence interval in the (2020) with an upward trend by 2015. The 2006 values and the objectives for these parameters are shown below:

Table 3a. 2006 results of multiple indicator riparian monitoring at the BCET-KA2 riparian key area and future objectives.

Parameter	2006 Value	Objective
Ecological Status	46% (mid)	61% (late)
Site Wetland Rating	63% (good)	70% (good)

Implementation Monitoring. Woody browse utilization will be measured at the BCET-KA2 and BCWT-KA1. Frequency of nipping of current year’s leaders for browse species will be measured. Stubble height measurements will be taken at the BCWT-KA1.

Effectiveness Monitoring. Riparian vegetation community data, including but not limited to Ecological Status, Site Wetland Rating, and Woody Regeneration, will be collected at the BCWT-KA1, BCET-KA2, BCKA3, BCKA4 riparian key area every 5 to 10 years. Monitoring protocols will follow the protocols outlined in *Monitoring Stream Channels and Riparian Vegetation – Multiple Indicators* (Burton et al. 2007).

RATIONALE

This decision addresses the following resource issues: bull trout and bull trout habitat conservation, riparian conditions, wilderness values and compliance with the Wilderness Interim Management Policy, grazing prescription that will ensure significant progress toward meeting *Idaho Standards for Rangeland Health and Guidelines for Livestock Management* dated August 12, 1997, and resource objectives, inclusion of allowable use indicator/criteria, and unauthorized use. Alternative 3 was selected for the Burnt Creek Allotment, except for the following: the two proposed new water developments associated with the East and West Tributaries, conversion of the high tensile electric fence portions of the Burnt Creek Enclosure to a barbed wire fence, and the drift fences between the Dry Creek and Burnt Creek Allotments proposed in Alternative 3 are not implemented in this decision. The temporary electric fence around the West Tributary below the Burnt Creek Road will be constructed annually as described in Alternative 2 and the Cook Fence and West Tributary Corrals will be removed as described under Alternative 4. Hereafter, this will be called the selected alternative. The rationale for the selected alternative is outlined below.

- This action will ensure maintenance of and/or significant progress toward achievement of Standards for Rangeland Health and is in compliance with the Guidelines for Grazing Management.
- The implementation of a deferred grazing system coupled with upland allowable use indicator/criteria should hasten or maintain natural re-vegetation by improving plant vigor and permitting desirable species to produce seed, improving plant and hydrologic cover conditions, and reduce soil loss. This will in turn improve watershed protection and enhance wildlife habitat.
- The season of use will allow for a portion of the allotment to be grazed after the critical growing period each year.
- The duration of use, West Pasture - 36 days and East Pasture - 26 days in conjunction with allowable use indicator/criteria triggering movement sooner if necessary will allow for the allowable use indicator/criteria to be met. Meeting the allowable use indicator/criteria will leave sufficient residual vegetation to serve as a natural trap to retain sediments during high flows, increase the vegetative vigor, change the composition to meet the resource objectives, and increase bank stability. Grazing systems with duration less than 30 to 45 days have been found to be successful with a release of riparian vegetation occurring within 5 to 15 years, which meets the timeframes in the resource objectives.
- Montana BLM Technical Bulletin No. 4, *Successful Strategies for Grazing Cattle in Riparian Zones* (1998), found that operations having healthy riparian zones did not exceed 45 days unless grazing occurred during the winter.
- The selected alternative will apply allowable use indicator/criteria that will maintain or improve current upland and riparian plant community conditions. Maximum utilization levels will maintain adequate plant vigor for seed production, seed dispersal, and seedling survival of desired species. The selected alternative will maintain natural ecological cycles (nutrient, hydrological and energy) on the allotment and comply with Idaho Water Quality Standards.

- The selected alternative will prescribe grazing at levels that will maintain or improve ground cover and soil conditions on the allotment. The selected alternative will promote soil conditions on the allotment that support water infiltration, plant vigor and permeability rates and minimize soil compaction. The selected alternative will allow for more intensive management of the allotment (i.e. deferral of use areas), to further promote good soil conditions and plant community conditions.
- The 20% streambank total alteration will limit mechanical damage of stream banks by livestock to allow the streambanks to be repaired annually and bank stability to be maintained or improved.
- A six inch stubble height is consistent with the Challis RMP Goal 1, Rationale 5(b) that states livestock will be managed to maintain a six inch minimum stubble height on streams that are functioning at risk with a static or downward trend until an upward trend is reached. The proper functioning condition survey did not assess a trend for the West Tributary. The baseline data for long term trend was established in 2005 and trend has not yet been determined from this data. Ocular observations suggest that the tributary is in an upward trend, but as the resource objectives state, a six inch stubble height will be applied until the resource objectives are met. Once resource objectives are met on the West Tributary, the stubble height trigger will be 4 inches. The site conditions will have more channel resistivity and resilience. The vegetation composition will be comprised of predominately of herbaceous vegetation having deep root binding masses and woody species that will reduce the vulnerability of banks for trampling.
- The vegetation along the East Tributary is predominately woodies and herbaceous species not conducive to stubble height measurements, so other use indicators, woody use and bank shearing, will be used. (Clary and Leininger 2000)
- Clary and Leininger (2000) state that, “Best Management Practice Guidelines developed under the Idaho Agricultural Pollution Abatement Plan (IDEQ-ISCC 1993) suggest that stubble height criteria should be used where streambank stability is dependent upon herbaceous plants. Alternatively, woody plant utilization or streambank disturbance should be used as a management guide in situations where streambank stability is controlled by substrate or the stream is deeply incised. This is the rationale used to include stubble height on the West Tributary as one of the allowable use indicator/criterion, but is not included on the East Tributary.
- Movement of livestock based on a four inch stubble height should preclude any substantial use on the woody species. Livestock do not usually switch to woody species until the hydric stubble height is below 3 to 4 inches.
- The 50% nipping of current year’s leaders of woody species equates to approximately 30% utilization. 30% utilization should not affect the normal growth form of the shrub.
- All critical occupied habitat (Burnt Creek) is removed from livestock grazing through the use of exclosures. The remaining streams (East and West Tributaries) have stubble height, bank alteration, and/or woody browse criteria. The use of allowable use indicator/criteria should limit the impacts that are occurring to the resources. Limiting the impacts should help maintain and improve both riparian and upland conditions.
- Burnt Creek and the adjacent riparian area will be excluded from livestock grazing. With this protection, riparian conditions in Burnt Creek are expected to improve at a natural rate as has occurred since the exclosure fence was completed in 2000. The expected riparian improvements include a narrowing of the stream channel, the deposition of fines

sediments on the floodplain, and the stabilization of streambanks from increases in riparian vegetative cover. These same channel recovery characteristics were noted by Burton (2002) and the National Riparian Service Team (2002) during a review of the allotment. Bull trout populations in Burnt Creek are likely to increase as riparian conditions continue to improve over time.

- On occasion, livestock may enter the Burnt Creek Exclosure, either through breaks in the fence or gates that are inadvertently left open. The BLM will lock the six gates in the exclosure to address resource concerns from livestock entering the exclosure through open gates.
- Entry of livestock into the exclosure, with the exception of authorized stream fording, is not authorized, which will protect listed fish species and habitats.
- The drift fences between the Burnt Creek and Dry Creek Allotments will not be constructed at this time. The Dry Creek Allotment season of use has been shortened to reduce the probability of unauthorized use, and the grazing period changed to outside of the spawning period so that any cattle that drift into the Burnt Creek area will not cause potential harm to bull trout.
- The additional water sources away from the East and West Tributaries of Burnt Creek to reduce concentration of use on the two tributaries will not be installed at this time. The Burnt Creek Allotment is entirely contained within the Burnt Creek Wilderness Study Area (WSA). The Interim Management Policy and Guidelines for Lands under Wilderness Review does allow for temporary and even permanent livestock developments if the development truly enhances wilderness values, is substantially unnoticeable, and is maintained without motorized access. At this time the applicant and the BLM will exhaust other “minimum tool” alternatives such as annual allowable use indicator/criteria to trigger livestock movement and the use of temporary electric fencing.
- This grazing strategy will require crossing or fording of Burnt Creek with each animal twice during the grazing season. This could potentially overlap with the spawning period in years when spawning is initiated early (spawning normally occurs in September). Redd monitoring will be used to determine if spawning has been initiated early and if any redds are located within, or immediately downstream of the crossing to minimize the potential for take. If redds are found in or within 100 meters downstream of the crossing, an alternative strategy (i.e. cattle will be trailed through the Squaw Creek Pasture of the Upper Pahsimeroi Allotment or cattle will trail across Burnt Creek in a location that will not impact redds) will be used to gather livestock from the east pasture in order to avoid exposing redds to potential trampling.
- The long-term desired condition of tributaries is to achieve stable channel conditions (NRST 2003). The Challis RMP management objective for bank stability is 90%, and therefore applied to the East and West tributaries. The desired vegetative condition is “good” ecological status (Winward 2000). According to the Riparian Area Management (PFC Technical Bulletin, TR 1737-15), “Most plants that are obligate and facultative wet have root masses capable of withstanding high-flow events.” The Wetland Rating is an index of the relative proportion of these kinds of plants on the greenline. The objective for the Wetland Rating is “Good”, which will indicate about 75% or more OBL and FACW plants.
- The season of use will be from mid-June through the end of August, which means livestock will be off the allotment prior to the onset of bull trout spawning. With this

timing, the potential for adverse affects to spawning bull trout or bull trout eggs will not occur.

- Recent bull trout spawning data collected by the BLM indicates that spawning begins approximately September 13th. To prevent the potential for conflicts between “staging” bull trout (i.e. bull trout that are pairing/preparing to spawn) all livestock will be off the allotment by August 31st. This provides twelve days to protect the staging bull trout.
- Influencing the amount of time livestock spend in the riparian area is an essential component of proper riparian management. Many techniques or strategies exist including but not limited to: off-stream water, salting, fencing, and herding. (MT Riparian Tech. Bulletin No. 4 1998 and TR-1737-20 2006). These techniques are being applied to the Burnt Creek Allotment to enhance riparian management and conditions.
- Installation of the one trough from the Burnt Spring East Spring/Meadow complex will reduce the amount of time cows use the stream. Livestock prefer to drink from a clear source where they have good footing rather than a stream channel. Providing alternative water sources away from the Burnt Spring East Spring/Meadow will change the use patterns occurring within the Burnt Creek Allotment. Less use will occur at the existing water sources (East and West Tributaries and springs) and more use will occur in the surrounding uplands where the alternate water sources occur. This will allow for improved riparian conditions. The riparian conditions will improve by having less bank alteration by livestock as they access the streams for water. This will assist in improving bank stability. Lower utilization levels by livestock will allow for maintenance and recovery of these streams by: 1) developing a diverse age-class distribution of riparian-wetland vegetation for recruitment, 2) obtaining a diverse composition of riparian-wetland vegetation, 3) riparian-wetland vegetation exhibiting high vigor, and 4) obtaining an adequate riparian-wetland vegetative cover present to protect banks and dissipate energy during high flows. (MT Riparian Tech. Bulletin No. 4 1998 and TR 1737-20 2006).
- The use of annual/seasonal temporary electric fences (MT Riparian Tech. Bulletin No. 4 1998). Temporary electric fencing can be an effective tool for improving distribution so that parts of a pasture can be grazed while others are rested. Using annual/seasonal temporary electric fences from year to year to break up grazing patterns and facilitate implementation of rangeland management practices provides flexibility in obtaining long-term objectives (Tech. Reference 1737-20 2006). Therefore, the use of annual/seasonal temporary electric fences should allow for improved riparian conditions by limiting the duration and intensity of use on riparian/wetland areas.
- Seasonal temporary electric fence may be used as a tool to protect sensitive areas while livestock are on the allotment. This will allow the operator to make use of the allotment and protect areas that have historically been heavily used by livestock. The fencing will be removed once the livestock have completed their use, so should not present a visual obstruction.
- An evaluation of the current temporary Burnt Creek Exclosure shows that a more effective location for the lower mile on the East side of the exclosure within the Burnt Creek Allotment will be on the bench above the stream. At the current location cattle are drawn down and trail along the fence and try to access the stream. By re-locating the fence on the bench above, the cattle will be less likely to access the exclosure.
- The change in permitted AUMs is based on the average amount of AUMs used between

1986 and 2001 when a hot season of use was prescribed. It was also done in consideration of protest points.

AUTHORITY

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

- 4110.2-2(a) Specifying permitted use** *“Permitted use is granted to holders of grazing preference and shall be specified in all grazing permits or leases...”*
- 4110.3 Changes in permitted use** *“The authorized officer shall periodically review the permitted use specified in a grazing permit or grazing lease and shall make changes in the permitted use as needed to manage, maintain or improve rangeland productivity, to assist in restoring ecosystems to properly functioning condition, to conform with land use plans or activity plans, or to comply with the provisions of subpart 4180 of this part. These changes must be supported by monitoring, field observations, ecological site inventory or other data acceptable to the authorized officer.”*
- 4110.3-2(b) Decreasing permitted use** *“When monitoring or field observations show grazing use or patterns of use are not consistent with the provisions of subpart 4180, or grazing use is otherwise causing an unacceptable level or pattern of utilization or, when use exceeds the livestock carrying capacity as determined through monitoring, ecological site inventory or other acceptable methods, the authorized officer shall reduce permitted grazing use or otherwise modify management practices.”*
- 4110.3-3(a) Implementing reductions in permitted use** *“After consultation, cooperation, and coordination with the affected permittee or lessee, the State having lands or managing resources within the area, the interested public, reductions of permitted use shall be implemented through a documented agreement or by decision of the authorized officer. Decisions implementing §§4110.3-2 shall be issued as proposed decisions pursuant to 4160.1 of this part, except as provided in paragraph (b) of this section.”*
- 4120.3-1(a) Conditions for range improvements** *“Range improvements shall be installed, used, maintained, and/or modified on the public lands, or removed from these lands, in a manner consistent with multiple-use management.”*
- 4120.3-1(b) Conditions for range improvements** *“Prior to installing, using, maintaining, and/or modifying range improvements on the public lands, permittees or lessees shall have entered into a cooperative range improvement agreement with the Bureau of Land Management or must have an approved range improvement permit.”*

- 4120.3-1(c) Conditions for range improvements** *“The authorized officer may require a permittee or lessee to maintain and/or modify range improvements on the public lands under Sec. 4130.3-2 of this title.”*
- 4120.3-1(e) Conditions for range improvements** *“A range improvement permit or cooperative range improvement permit or cooperative range improvement agreement does not convey to the permittee or cooperator any right, title, or interest in any lands or resources held by the United States.”*
- 4120.3-1(f) Conditions for range improvements** *“Proposed range improvement projects shall be reviewed in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4371 *et seq.*). The decision document following the environmental analysis shall be considered the proposed decision under subpart 4160 of this part.”*
- 4120.3-2(a) Cooperative range improvement agreements** *“The Bureau of Land Management may enter into a cooperative range improvement agreement with any person, organization, or other government entity for the installation, use, maintenance, and/or modification of permanent range improvements or rangeland developments to achieve management or resource condition objectives. The cooperative range improvement should specify how the costs or labor, or both, shall be divided between the United States and cooperator(s).”*
- 4130.2(a) Grazing permits or leases** *“Grazing permits or leases shall be issued to qualified applicants to authorize use on the public lands and other lands under the administration of the Bureau of Land Management that are designated as available for livestock grazing through land use plans. Permits or leases shall specify the types and levels of use authorized including livestock grazing, suspended use, and conservation use. These grazing permits or leases shall also specify terms and conditions pursuant to §§ 4130.3, 4130.3-1, and 4130.3-2.*
- 4130.3 Terms and conditions** *“Livestock grazing permits and leases shall contain terms and conditions determined by the authorized officer to be appropriate to achieve the management and resource condition objectives for the public lands and other lands administered by the Bureau of Land Management, and to ensure conformance with the provisions of subpart 4180 of this part.”*
- 4130.3-1(a) Mandatory terms and conditions** *“The authorized officer shall specify the kind and number of livestock, the period(s) of use, the allotment(s) to be used, and the amount of use, in animal unit months, for every grazing permit or lease. The authorized livestock grazing use shall not exceed the livestock carrying capacity of the allotment.”*

4130.3-2 Other terms and conditions *“The authorized officer may specify in grazing permits or leases other terms and conditions which will assist in achieving management objectives, provide for proper range management or assist in the orderly administration of the public rangelands...”*

4130.3-3 Modification of permits or leases *“... the authorized officer may modify terms and conditions of the permit or lease when the active grazing use or related management practices are not meeting the land use plan, allotment management plan or other activity plan, or management objectives, or is not in conformance with the provisions of subpart 4180 of this part...”*

APPEAL AND PETITION FOR STAY PROVISIONS

Any applicant, permittee, lessee or other person whose interest is adversely affected by the final decision may file an appeal (*in writing*) in accordance with 43 CFR 4.470 and 43 CFR 4160.4. The appeal must be filed within 30 days following receipt of the final decision or within 30 days after the date the proposed decision becomes final. The appeal may be accompanied by a petition for a stay of the decision in accordance with 43 CFR 4.471 pending final determination on appeal. The appeal and petition for a stay must be filed in the office of the authorized officer, as noted above. The person/party must also serve a copy of the appeal on the Office of the Solicitor, Boise Field Solicitor's Office, University Plaza, 960 Broadway Avenue, Suite 400 Boise, ID 83706, and person(s) named [43 CFR 4.421(h)] in the Enclosure: Interested Publics Mailing List.

The appeal shall state the reasons, clearly and concisely, why the appellant thinks the final decision is in error and otherwise complies with the provisions of 43 CFR 4.470.

Should you wish to file a petition for a stay, see 43 CFR 4.471 (a) and (b). In accordance with 43 CFR 4.471(c), a petition for a stay 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.

As noted above, the petition for stay must be filed in the office of the authorized officer and served in accordance with 43 CFR 4.471.

Any person named in the decision that receives a copy of a petition for a stay and/or an appeal see 43 CFR 4.472(b) for procedures to follow if you wish to respond.

If you have any question, feel free to contact Peggy Redick at (208) 879-6200.

Sincerely,

A handwritten signature in black ink, appearing to read "David Rosenkrance". The signature is fluid and cursive, with a long horizontal flourish at the end.

David Rosenkrance
Field Manager

Enclosures:

EA#ID-330-2005-EA-1504 (dated October 22, 2007)

Response to Protest Points

Maps (13)

Interested Publics Mailing List