



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

Boise District Office  
3948 Development Avenue  
Boise, Idaho 83705  
<http://www.id.blm.gov/offices/lsrcd>



In Reply Refer To:  
4160 ID111  
1101654

September 28, 2007

CERTIFIED - RETURN RECEIPT REQUESTED

### **Notice of Field Manager's Proposed Decision**

Verlin Gingerich

Dear Mr. Gingerich:

#### **Introduction**

The purpose of this proposed decision is to implement actions presented in Environmental Assessment ID-111-2006-EA-1772 for the Rattlesnake Creek Allotment (834). Renewal of the grazing permit for the Rattlesnake Creek Allotment to Verlin Gingerich is in conformance with:

- The Taylor Grazing Act of 1934,
- The Federal Land Policy and Management Act, 1976 (FLPMA), Title IV, Section 402,
- Title 43 of the Code of Federal Regulations (CFR) Part 4100, Grazing Administration – Exclusive of Alaska,
- Idaho Standards for Rangeland Health and Guidelines for Livestock Grazing Management,
- the 1983 Kuna Management Framework Plan (MFP),
- Instruction Memorandum ID-090-2004-086 (IM), and

The actions are also compatible with the Snake River Birds of Prey National Conservation Area (NCA) enabling Act (Public Law 103-64), and are consistent with management direction contained in the soon-to-be-released Final NCA Resource Management Plan (RMP).

#### **Background**

The 483,700 acre Snake River Birds of Prey National Conservation Area (NCA) was established on August 4, 1993, to provide for the conservation, protection, and enhancement of raptor populations and habitats, and the natural and environmental resources and values associated therewith. Section 4(f)(1) of the Act provides that Bureau of Land Management (BLM) may

authorize livestock grazing that is compatible with the purposes for which the NCA was established.

Except for a part of the Sunnyside Spring/Fall Allotment, the 14 grazing allotments in the Sunnyside Watershed are located within the NCA in Ada, Canyon, and Elmore County. The allotments are located between the Snake River and Highway I-84, and extend southeast from Melba to about Hammett, Idaho.

Idaho Standards for Rangeland Health and Guidelines for Livestock Grazing Management were approved by the Secretary of the Interior August 12, 1997. In May 1998, the BLM Idaho State Office issued instructions for implementing the requirements of 43 CFR 4100. A standard and guidelines assessment includes a written Rangeland Health Assessment (health assessment), Evaluation and Determination, appropriate analysis as directed by the National Environmental Policy Act (NEPA), and issuance of new 10-year grazing permits.

Following a public review period, determinations were prepared to reflect whether allotments were achieving standards for rangeland health and conforming with guidelines for livestock grazing management.

The Sunnyside Watershed Standards and Guides assessment acknowledged that the NCA has been significantly impacted by wildfire, failed emergency rehabilitation projects, and drought. It also determined that, in some instances, timing and intensity of livestock grazing has contributed to either not meeting a standard or placing the area at risk of not meeting a standard. The rangeland health determinations for the Rattlesnake Creek Allotment are described below and in Table 1.

**Table 1. Rangeland health determinations for the Rattlesnake Creek Allotment**

Allotment Name	Rangeland Health Standards							
	1	2	3	4	5	6	7	8
Rattlesnake Creek #834	M	M	M	*	*	M	M	NMC

M = Meeting the Standard.

NMC = Not meeting, and livestock grazing is considered a significant factor.

\* Standard does not apply to this allotment.

For the Rattlesnake Creek Allotment, it was determined that Standards 1 (watersheds), 2 (riparian areas and wetlands), 3 (stream channel/floodplains), 6 (exotic plant communities, other than seedings), and 7 (water quality) were being met, and Standards 4 (native plant communities) and 5 (seedings) did not apply to this allotment.

Standard 8 (T&E and sensitive species) was not being met in the allotment's West Pasture, and livestock grazing was determined to be a significant factor. The special status plant, Davis peppergrass, is known from one location in the West Pasture. The playa in which it occurs has been invaded by Russian thistle and halogeton, and a barbed wire pasture boundary fence traverses the playa and the Davis peppergrass population and contributes to the collection of Russian thistle. Smothering by Russian thistle has been shown to cause mortality of Davis peppergrass in other playas. To mitigate this situation, the fence may need to be relocated.

In addition to the above, repeated wildfires have removed most shrubs on the allotment, and have converted the majority of the Rattlesnake Seeding Allotment to invasive plants. The lack of shrubs results in a lack of vegetative structure, which does not meet Standard 8 for most native upland special status animals. However, livestock grazing management practices are not significant factors.

The Sunnyside Watershed assessments were originally completed without evaluating the effects of livestock grazing on species listed under the Endangered Species Act, including bald eagles and Idaho springsnails. Therefore, in 2005, BLM prepared a district-wide Biological Assessment (BA) to determine the effects of livestock grazing on these two species, both of which have since been de-listed. In addition, the Idaho springsnail was reclassified as the Jackson Lake springsnail. The two species, however, will continue to be managed as BLM sensitive species. Cattle were found to access the Snake River along only about 300 feet of the approximate five miles of streambank in the West Pasture. Cattle did not access the Snake River at all due to steepness of slope along the 0.8 miles of streambank in the East Pasture. As such, no specific conservation measures were developed for either bald eagles or Jackson Lake springsnail in the Rattlesnake Creek Allotment.

Alternative strategies for modifying grazing use to make significant progress toward the Idaho Standards for Rangeland Health were analyzed in environmental assessment (EA) No. ID-111-2006-EA-1772. A pre-decisional EA was mailed to grazing permittees and interested publics in July 2006. Table 2.1 in EA ID-111-2006-EA-1772 shows that both the East and West pastures in the Rattlesnake Creek Allotment are annual pastures that have crossed the threshold from native to annual exotic rangeland.

No significant changes in livestock grazing management are proposed for the two annual pastures in the Rattlesnake Creek Allotment due to the inability of annual pastures to significantly respond ecologically to grazing management. The current seasons of use (4/1 to 6/15 and 10/1 to 11/16) will continue; however, a deferred rotation grazing system will be incorporated, and conservation measures will be imposed to protect habitat for slickspot peppergrass and Davis peppergrass. Also, an existing fence may be relocated to mitigate ongoing impacts to a Davis peppergrass playa. This proposed decision will also incorporate Management Requirements to ensure that minimum amounts of residual vegetation remain in all pastures following livestock removal.

Pursuant to direction in the soon-to-be-released Final NCA RMP, if the Rattlesnake Creek Allotment is treated in the future for habitat restoration and/or fuels management, a number of strategies could be employed to improve livestock grazing to facilitate management of the resulting perennial plant community. Future grazing systems will incorporate modifications in livestock numbers, use dates, and utilization levels. Management objectives would address livestock movement, distribution, and turn-out dates. Range improvements could be proposed that improve livestock distribution, accommodate and support rangeland restoration efforts, protect sensitive plant species, and facilitate implementation of grazing systems. Cultural, wildlife, and botanical surveys would be conducted prior to authorizing any new surface disturbing activities. Additional NEPA would be completed prior to implementing a grazing system different than what is currently being authorized.

The grazing alternatives are in conformance with the Kuna MFP, as required by 43 CFR 1610.5-3(a). Also, the alternatives are in conformance with the enabling legislation for the Snake River Birds of Prey NCA, and the 1996 NCA Management Plan, and are consistent with management direction included in the soon to be released Final NCA RMP.

**Proposed Decision**

After carefully considering the analysis of EA ID-111-2006-EA-1772, input from the permittees, state agencies, other federal agencies, interested public and my staff, I have decided that Alternative A of EA ID-111-2006-EA-1772 (with modifications) is my proposed decision. Management Guidelines will be imposed as part of this proposed decision.

Through this decision:

1. Livestock kind and number, period of use, amount of use, and associated terms and conditions will be identified (*points 1 and 2, below*);
2. Management Guidelines will be used to set parameters in development of the annual grazing system (*point 3, below*).
3. Rangeland management projects (*Point 4*) will be identified to improve livestock management in the allotment.

**(Point 1)** A grazing permit will be issued to Verlin Gingerich, Operator Number 1101654, for the term of March 1, 2008 to February 28, 2018. Management flexibility, based on seasonal circumstances, may be made with approval from the Authorizing Officer, provided livestock use is within the sideboards of the mandatory terms and conditions. The grazing permit will be issued as follows:

Allotment		Livestock		Grazing Period		%	AUMs	
Name	No.	No.	Kind	Begin	End	PL	Active	Suspended
Rattlesnake Creek	00834	55	Cattle	04/01	06/15	100	137	0
		55	Cattle	10/01	11/16	100	83	0

Livestock grazing in the Rattlesnake Creek Allotment will be defined as a two pasture deferred rotation grazing system. Spring and dormant season grazing will alternate yearly between the East and West pastures. Water may need to be hauled to distribute livestock and mitigate any restrictions along the Snake River. Table 1 shows the proposed grazing rotation for the Rattlesnake Creek Allotment.

**Table 1 – Grazing Rotation in Rattlesnake Creek Allotment**

Rattlesnake Creek Pastures	Even Years	Odd Years
West	4/1 to 6/15	10/1 to 11/16
East	10/1 to 11/16	4/1 to 6/15

No major changes in livestock management will be imposed on the Rattlesnake Creek Allotment, other than to incorporate a deferred rotation grazing system and conservation measures for the Jackson Lake springsnail and slickspot and Davis peppergrass. An existing fence may need to be relocated to mitigate impacts to a Davis peppergrass playa.

Maintaining the current grazing seasons will provide the permittee with sufficient management flexibility within the constraints of his allocated AUMs, given his agreement to limit the length of time that livestock are in the allotment to reduce potential impacts to Jackson Lake springsnails. Implementing a two pasture deferred rotation grazing system will benefit riparian and wildlife values, and will be compatible with Jackson Lake springsnail management. The permittee has agreed, if needed, to construct short segments of fence to restrict livestock access to the Snake River. In addition the permittee has agreed to limit the period that cattle are allowed to graze within the riverfront portion of the allotment to 30 days or less.

Exchange of Use is a separate application request and is not included in this grazing permit for the Rattlesnake Creek Allotment #834.

***(Point 2) Allotment Terms and Conditions***

The following terms and conditions would be included in the grazing permit to provide for proper range management and assist in the orderly administration of the public rangelands:

1. Livestock grazing in Rattlesnake Creek Allotment will be in accordance with the Four Rivers Field Manager's Final Grazing Decision.
2. Livestock numbers may vary annually, providing the period of use, AUMs and livestock numbers are not exceeded, except as otherwise provided by this permit.
3. Turn-out is subject to Boise District range readiness criteria.
4. Your certified actual use report is due within 15 days of completing your authorized annual grazing use. An annual grazing license will not be issued unless an actual use report for the previous grazing season has been filed with BLM.
5. Salt and/or supplement shall not be placed within one quarter (1/4) mile of springs, streams, meadows, aspen stands, playas or water developments.
6. Trailing activities must be coordinated with the BLM prior to initiation. A trailing permit, crossing permit or similar authorization may be required prior to crossing public lands.
7. Livestock enclosures located within your grazing allotments are closed to all domestic grazing use.
8. All appropriate documentation regarding base property leases, lands offered for exchange-of-use, and livestock control agreements must be approved prior to turn-out.
9. Pursuant to 43 CFR 10.4(b), you must notify the BLM Field Manager, by telephone with written confirmation, immediately upon the discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony on federal lands. Pursuant to 43 CFR 10.4(c), you must immediately stop any ongoing activities connected with such discovery and make a reasonable effort to protect the discovered remains or objects.

10. Changes to the scheduled use require prior approval.
11. Range improvements must be maintained in accordance with the cooperative agreements and range improvement permits in which you are a signatory or assignee.
12. Failure to pay grazing bills within 15 days of the due date specified shall result in a late fee assessment of \$25.00 or 10 percent of the grazing bill, whichever is greater, not to exceed \$250.00. Payment made later than 15 days after the due date shall include the appropriate late fee assessment. Failure to make payment within 30 days may be a violation of 43 CFR 4140.1(b(1) and shall result in action by the authorized officer under 43 CFR 4150.1 and 4160.
13. Livestock grazing will be in accordance with your allotment grazing schematic(s). Changes in scheduled pasture use dates will require prior authorization.

### ***(Point 3) Management Guidelines***

Management Guidelines are actions to be followed in order to bring livestock management, or activities associated with livestock management, into conformance with the allotment or specific areas within the allotment that require special attention and management.

Adherence to these guidelines and the prescribed grazing management plan would likely maintain or make progress toward meeting rangeland health standards and land use plan objectives. Periodic collection, evaluation and interpretation of monitoring data could provide an indication of the potential success of the grazing management plan.

1. To protect the watershed and maintain sufficient available forage for Piute ground squirrel populations, the minimum amount of residual or ungrazed forage is recommended to be 250 lb/ac. Livestock will be removed from the allotment before grazing exceeds this use level.
2. Permittee shall place salt/supplement at least ½ mile from slickspots and playas identified to support or have supported slickspot and Davis peppergrass, respectively, to minimize trampling. Supplements that are attractants should be placed so that cattle will not trail through an element of occurrence to the supplement or water source. Attractants should be placed so that cattle are drawn away from the area of the element occurrence.

### ***(Point 4) Rangeland Management Projects***

The following projects would be authorized following completion of site suitability determinations and requisite environmental analysis:

1. A spring is proposed in the West Pasture, in the SW¼NE¼ of Section 19, T 5S, R 6E, to improve livestock distribution and make water available in the uplands to mitigate restrictions on grazing along the Snake River.

2. A boundary fence would be realigned in the West Pasture to mitigate impacts to playas and slickspots located in the NW¼SE¼ of Section 17, T 5S, R 6E. The proposed fence modification would exclude about one acre of slickspot and Davis peppergrass habitat from the allotment, which will reduce impacts to the sensitive species' habitat and aid in meeting Standard 8.
3. If required, the permittee will construct short segments of fence at appropriate locations to restrict livestock from accessing the Snake River.

### **Rationale**

Renewal of the grazing permit is in conformance with the Kuna MFP Record of Decision. In addition, Section 3 of the Taylor Grazing Act states in part, "The Secretary of the Interior is authorized to issue or cause to be issued permits to graze livestock on grazing districts . . . Such permits shall be for a period of not more than ten years....to renewal in the discretion of the Secretary of the Interior, who shall specify from time to time numbers of stock and season of use."

All qualifications of 43 CFR 4110.1, 4110.2-1, and 4110.2-2 have been met. The authorization of the grazing permit is consistent with 43 CFR 4100.0-8, 4110.3, 4130.2, 4130.3, 4130.3-1, 4130.3-2, 4130.3-3, 4130.6-1, 4160 and all of subpart 4180.

Additional rationale follows:

1. Standard 8 was not being met in the Rattlesnake Creek Allotment for slickspot and Davis peppergrass. Implementation of the management requirements for slickspot and Davis peppergrass and relocation of an existing fence will improve upland resources and mitigate the accumulation of invasive weeds in slickspots and playas, and reduce trampling of rare plants and their habitat. Specifically, these measures will minimize the impact of ground disturbance caused by livestock penetrating trampling of slickspots during periods when soils are saturated. These changes will help to improve sensitive plant populations and habitats, which will help to make significant progress towards meeting Standard 8.
2. Proper management of annual exotic range requires more flexibility than perennial range. Low elevation ranges on which cheatgrass has excluded almost all desirable perennial species should be managed as annual range with the primary goal of reducing fuel loads, and providing grazing consistent with long-term watershed protection.
3. The primary consideration for protecting annual rangeland is the maintenance of enough litter to protect the soil, and adequate seed production for stand maintenance. Establishing management guidelines and monitoring will provide data and a means to manage these highly variable rangelands for watershed health.
4. Native rangelands once converted to an annual type will normally remain an annual community unless massive expenditures of resources are applied.

5. Proper grazing management practices and seasons of use will help sustain and improve riparian and wildlife values.
6. Where current livestock grazing practices are not significant factors or where standards are being met, existing grazing management practices will continue. Once an area has been successfully treated for habitat restoration or fuels management, such that the area supports a perennial plant community pursuant to the Final NCA RMP, grazing management practices will be implemented to provide deferment or rest during the critical growing period of perennial plants, maintaining plant vigor and adequate ground cover for watershed protection. Additional NEPA analysis will be completed prior to implementing a grazing system different than what is currently being authorized.

**Authority**

Authority under which this decision is being issued is found in Title 43 of the Code of Federal Regulations (CFR).

43 CFR 4100.0-8	Land Use Plans
43 CFR 4110.1	Mandatory Qualifications
43 CFR 4110.2-2	Specifying Grazing Preference
43 CFR 4110.2-4	Allotments
43 CFR 4110.3	Changing in Grazing Preference
43 CFR 4120.2	Allotment Management Plans and Resource Activity Plans
43 CFR 4120.5	Cooperation
43 CFR 4130.1-1	Filing Applications
43 CFR 4130.2	Grazing Permits or Leases
43 CFR 4130.3	Terms and Conditions
43 CFR 4130.4	Authorization of Temporary Changes in Grazing Use Within the Terms and Conditions of Permits and Leases, Including Temporary Nonuse
43 CFR 4140	Prohibited Acts
43 CFR 4160	Administrative Remedies
43 CFR 4180	Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration

**Right of Protest and/or Appeal**

Any applicant, permittee, lessee or other interested publics may protest a proposed decision under Sec. 43 CFR 4160.1 and 4160.2, in person or in writing to Rosemary Thomas; Field Manager; Four Rivers Field Office; 3948 Development Avenue, Boise, Idaho 83705 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 accordance with 43 CFR 4160.3(a), 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.

In accordance with 43 CFR 4160.3(b) upon a timely filing of a protest, after a review of protests received and other information pertinent to the case, the authorized officer shall issue a final 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 .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 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 by certified mail to Ken Sebby, Office of the Field Solicitor, US Department of the Interior, 960 Broadway Avenue, Suite 400, Boise, Idaho 83706 and to person(s) named [43 CFR 4.421(h)] in the *copies sent to:* section of this decision.

The appeal shall state clearly and concisely the reason 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 of the decision pending resolution of the appeal, 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 serviced in accordance with 43 CFR 4.473. Any person named in the decision that receives a copy of a petition for a stay and/or an appeal will need to refer to 43 CFR 4.472(b) for procedures to follow if you wish to respond.

You may access EA ID-111-2006-EA-1772, which addresses allotments within the Sunnyside Watershed on our website at: <http://www.blm.gov/id/st/en/info/nepa.2.html>

If you have any questions, please contact either Mike Barnum, Rangeland Management Specialist at 384-3218, or myself at 384-3430.

Sincerely,

/s/ Rosemary Thomas

Rosemary Thomas  
Four Rivers Field Manager

Enclosure: CD containing EA ID-111-2006-EA-1772

Copies sent to:

Burns Paiute Tribe, Tribal Chairman  
Shoshone-Paiute Tribe, Kyle Prior Chairman  
Shoshone-Bannock Tribes, Tribal Chairman  
Doug McConnaughey, Resolution Advocates

Boise District Grazing Board, Stan Boyd  
Weldon Branch  
Phil Soulen

Senator Larry Craig  
Senator Mike Crapo  
Congressman Bill Sali

ID Dept of Agriculture  
Committee for Idaho's High Desert, c/o Pam Marcum  
Idaho Bird Hunters Inc c/o Game Bird Conservation Comm

Idaho Dept of Fish & Game, Bob Martin  
Idaho Dept of Lands, SW Idaho Area Office

ID Dept of Lands  
Idaho Farm Bureau Federation, c/o Judy Bartlett  
High Desert Coalition, Inc. Ted Hoffman  
Knight Veterinary Clinic, Lloyd Knight DVM  
Land & Water Fund, Laird Lucas

Elmore County Commissioners  
Ada County Commissioners0

Western Watersheds Project  
Col Wm Richey, Special Asst, Military Affairs, Office of the Governor  
Curt Meis  
Michael Stanford  
Moore, Smith, Buxton & Turcke, Paul Turcke