



# 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  
1101618

September 28, 2007

CERTIFIED - RETURN RECEIPT REQUESTED

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

Margarette DeMeyer Estate  
c/o Arlen A. DeMeyer Jr.

Dear Mr. DeMeyer:

#### **Introduction**

The purpose of this proposed decision is to implement actions presented in Environmental Assessment ID-111-2006-EA-1772 for the Sunnyside Winter Allotment. Renewal of the grazing permit for the Sunnyside Winter Allotment to the Margarette DeMeyer Estate 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 Sunnyside Winter Allotment are described below and in Table 1.

**Table 1. Rangeland health determinations for the Sunnyside Winter Allotment**

Allotment Name	Rangeland Health Standards							
	1	2	3	4	5	6	7	8
Sunnyside Winter #00826	M	M	M	NMC	NM	NM	*	NMC

M = Meeting the Standard.

NM = Not meeting, but livestock grazing is not a significant factor.

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

\* Standard does not apply to this allotment.

Standards 1 (watersheds), 2 (riparian areas and wetlands), and 3 (stream channel/floodplains) were being met, and Standard 7 (water quality) did not apply to this allotment.

Standard 4 (native plant communities) was not being met, and livestock grazing management was determined to be a significant factor. Military and recreational vehicle activity, and frequent wildfires, also play a role. While moderate shrub canopy cover was observed, it supported a depleted understory of cheatgrass and/or exotic annual forbs. The structure and function of the sites is changed because the species diversity is reduced (native perennial forbs and larger bunchgrasses are absent), and the middle and/or upper canopy layer is absent. Herbaceous production was much below potential. Concentrated winter grazing in some areas resulted in overuse of palatable shrub species, including winterfat. Invasive species were increasing throughout all of the native plant communities. The amount and type of litter was not conducive

to nutrient cycling. Reduced amounts of organic material affect the nutrient cycle, and the resistance of the soil to erosion. The hydrologic cycle has been affected because invasive species are shallow-rooted compared to the deep-rooted native species. Also, livestock grazing during the green-up of early season native species, like Sandberg bluegrass, impacts their general vigor.

Standard 5 (seedings) was not being met, but livestock grazing management was not a significant factor. Evaluated seedings all appeared to be devoid of shrubs, or shrubs were sparsely scattered through the site. Structural and species diversity displayed moderate and moderate to extreme departure from the reference site. Functionally, plant communities were found to be moderately dissimilar to reference sites because microbiotic crusts were absent, and forbs and shrubs were absent or sparse. The seeded species, generally crested wheatgrass and Russian wildrye, were faring well in patches; however, cheatgrass and bur buttercup were dense in the interspaces, and dominant in larger patches. Litter amounts and annual vegetative production displayed moderate dissimilarity to the reference site. This, in turn, negatively affects the soil's nutrient cycling, soil surface resistance to erosion, and energy flow. Low precipitation, improper seeding techniques, and insufficient rest from livestock grazing following seeding probably also contributed to the problem.

Standard 6 (exotic plant communities, other than seedings) was not being met, but livestock grazing management was not a significant factor. Cheatgrass-dominated plant communities, which make up 43% of the non-native community types and occur on 16% of the allotment, are meeting the standard. These sites maintained sufficient plant litter at the end of the grazing period to provide some soil stability. Exotic annual forb communities, which represent 57% of the non-native community types, and occupy 21% of the allotment, do not meet the standard. The limited growth that characterizes this plant community easily blows away after maturity and leaves the soil surface unprotected from wind and water erosion. These sites are generally so degraded that nothing, short of reseeding, will restore vegetative cover. Livestock may have contributed to the problem historically, but fire frequency, military activities, and OHV use are the significant factors that are maintaining these conditions. Noxious weeds were scattered in patches, and probably pose a threat of expansion.

Standard 8 (T&E and sensitive species) was not being met, and livestock grazing management was determined to be a significant factor. Ten special status plant species are known from several pastures in the Sunnyside Winter Allotment, including slickspot peppergrass, Davis peppergrass, white-margined wax plant, white eatonella, spreading gilia, woven-spore lichen, Snake River milkvetch, Packard's buckwheat, American wood sage, and desert pincushion. The standard is not being met in only the Winter Common Pasture because of livestock-related impacts to Davis peppergrass, which occurs in 19 playas in this pasture, seven of which have been monitored since 1987. Livestock trampling has been documented in several of the playas that show a downward trend in Davis peppergrass population size. Where trampling has occurred, invasion by exotic plants and aggressive seeded species is also occurring. Previous potential livestock-related impacts to slickspot peppergrass in the northwestern portion of the allotment have been mitigated by the imposition of conservation measures for the Kuna slickspot peppergrass Management area.

The Sunnyside Watershed assessments were completed without evaluating the effects of livestock grazing on species listed under the Endangered Species Act. Therefore, in 2005, BLM filed with the U.S. Fish and Wildlife Service (FWS) a Biological Assessment (BA) to determine the effects of livestock grazing on the threatened bald eagle and endangered Idaho springsnail. In August, 2005, the FWS published a Biological Opinion (BO) that included short- and long-term conservation measures to reduce or eliminate potential impacts from livestock grazing to these two listed species. The BO determined that livestock grazing in the Sunnyside Winter Allotment was a May Affect, Likely to Adversely Affect for the endangered Idaho springsnail, and was a May Affect, Not Likely to Adversely Affect for the threatened bald eagle. To address potential impacts to the Idaho springsnail, the BO included short- and long-term conservation measures to reduce grazing below the rim of the Snake River Canyon, and to monitor cattle use along the river to reduce shoreline impacts. These conservation measures are being incorporated in the grazing permit as Management Requirements.

Both the Idaho springsnail and bald eagle have since been de-listed. In addition, the Idaho springsnail has been reclassified as the Jackson Lake springsnail. These species will continue to be managed as BLM sensitive species to ensure that actions authorized by BLM do not contribute to the need for their re-listing.

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 the EA ID-111-2006-EA-1772 shows that the Sunnyside Winter Allotment is composed entirely of pastures that have crossed the threshold from native to annual exotic rangeland. Therefore, no substantial changes in livestock grazing management are proposed for the Sunnyside Winter Allotment due to the inability of annual allotments to significantly respond ecologically to grazing management.

This proposed decision will incorporate permit modifications necessary to insure conformance with rangeland health standards, while providing management flexibility. In addition, the permit will include Management Requirements to protect the Jackson Lake springsnail and to ensure sufficient residual forage for watershed protection.

Pursuant to direction in the soon-to-be-released Final NCA RMP, if the Sunnyside Winter 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 management objectives and modify livestock numbers, use dates, and utilization levels to properly manage the treated areas. 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 analysis would be completed prior to implementing a grazing system different than what is currently being authorized.

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 is my proposed decision. Management Requirements 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. General Management Requirements will be used to set parameters in development of the annual grazing system (*point 3, below*).
3. Slickspot Peppergrass Management Requirements will be imposed to protect the species and its habitat (*point 4, below*);

**(Point 1)** A grazing permit will be issued to the Margarett DeMeyer Estate, Operator Number 1101618, 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
Sunnyside Winter	00826	243	Cattle	12/16	02/28	100	599	0

The permit would authorize an extended dormant season of use for the Sunnyside Winter Allotment. The permit will also include conservation measures to protect slickspot peppergrass and Jackson Lake springsnail populations and habitats.

**(Pont 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 Sunnyside Winter 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 exclosures 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) General Management Requirements***

Management Requirements 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. Key areas and key perennial upland herbaceous forage species would be established with the operators. The maximum allowable use level for key upland vegetation is 50% of the current year's growth as determined by a quantitative method outlined in "*Utilization Studies and Residual Measurements, Interagency Technical Reference 1996*". Livestock should be removed from the affected area when this utilization level has been reached. Additional key areas will be established where needed in cooperation with permittees.
3. **Sunnyside Winter Allotment:** To reduce and/or eliminate potential impacts to streambanks, riparian areas, and Jackson Lake springsnails, permittee will keep livestock on the plateau above the Snake River and away from the rim of the Snake River Canyon. If monitoring shows these measures to be unsuccessful, permittee will be required to repair or replace fences that may be required to keep livestock from drifting to the Snake River.
4. The permittee will monitor the riverfront portions of the Sunnyside Winter Allotment for grazing livestock. Any livestock found along the river will be herded back to the plateau above the river.

**(Point 4) Slickspot Peppergrass Management Requirements:**

These Management Requirements were developed from specific conservation measures contained in the 2003 slickspot peppergrass Candidate Conservation Agreement, which was refined and updated by the 2006 Conservation Agreement (CA). Management Requirements are actions to be followed in specific slickspot peppergrass management areas (MA) 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.

1. Permittee will supplement federal and state agency surveys and monitoring by surveying their allotments or use areas for slickspots and slickspot peppergrass plants, including existing occurrences, during their normal course of business. Permittees will report survey information to the Conservation Data Center for the purposes of aiding monitoring efforts and contributing to the CA adaptive management strategy.
2. **Kuna MA:** Grazing within the Kuna Management Area will be limited to the period from 10/15 to 02/15. For portions of the Sunnyside Winter Allotment located outside of the Kuna Management Area, the authorized season of use will be from 10/15 to 02/28.
3. **Kuna MA:** Permittees operating within the Kuna MA will use only existing roads and tracks for vehicle travel.

4. **Kuna MA:** Permittee shall place salt/supplement to minimize trampling of slickspot peppergrass and of slickspots, respectively. Supplements will be placed at least ½ mile, preferably ¾ mile if practicable from occurrences. Supplements that are attractants should be placed so that cattle will not trail through an element occurrence to the supplement or a water source. Attractants should be placed so that cattle are drawn away from the area of the element occurrence.
5. **Kuna MA:** Permittee will herd livestock away from priority EOs if the soils become moist or are *likely* to become saturated, and will relocate livestock if soils become saturated and penetrating trampling is likely to occur to one of three alternative sites (two of the alternative sites are fenced) away from existing priority EOs.
6. **Kuna MA:** Permittee will not trail livestock through EOs when soils are saturated. Permittee will herd livestock away from priority EOs if soils become moist, and will relocate livestock if soils become saturated and penetrating trampling is likely to occur.

### **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. Implementation of the proposed grazing management terms and conditions, slickspot peppergrass conservation measures and management guidelines in the Sunnyside Winter allotment will improve upland resources where currently the Standards and Guideline assessment and determinations have identified that current livestock grazing practices are significant factors.
2. Standard 8 was not being met in the Sunnyside Winter Allotment. The implementation of the slickspot peppergrass CA and associated conservation measures will prevent trampling of rare plants and their associated 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 assist in making significant progress towards meeting Standard 8.

3. Sustainable livestock grazing will be authorized that will provide economic stability for permittees. Proper management of annual exotic ranges requires more flexibility than on perennial ranges. These low elevation ranges on which cheatgrass has excluded most desirable perennial species should be managed as annual range with the primary goal of reducing fuel loads, and providing grazing opportunities consistent with long-term watershed protection.
4. The primary consideration for protecting an 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.
5. Native rangelands once converted to an annual type will normally remain an annual community unless massive expenditures of resources are applied.
6. Where current livestock grazing practices are not significant factors or where standards are met, existing grazing management practices will remain the same. 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 public 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 &  
Decisions affected by Sunnyside Winter allotment

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  
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 Commissioners

Western Watersheds Project  
Col Wm Richey, Special Asst, Military Affairs, Office of the Governor  
Curt Meis  
Michael Stanford  
Sierra Club, Middle Snake Group  
Marzinelli, Marty  
Idaho Wildlife Federation, Attn: Kent J. Laverty

Nicholson, Thomas  
TFI, c/o Tom & Scott Nicholson  
Soulen Livestock Co, Phil Soulen