

4100 (ORB060)

CERTIFIED MAIL – 7010 1870 0002 7993 4062
RETURN RECEIPT REQUESTED

Rob Sanders
Roaring Springs Ranch, Inc.
985 NW 2nd Street
Kalama, Washington 98625

NOTICE OF PROPOSED DECISION

Denying Grazing Use within Tombstone Pasture of South Steens Allotment (#06002) for the 2012 grazing season.

Dear Mr. Sanders:

You are receiving this Proposed Decision because you are the permit holder of record.

A. BACKGROUND

On December 30, 2011, the Bureau of Land Management (BLM) received an application/request for use in South Steens Allotment (#06002) for the 2012 grazing season, from Stacy Davies, manager of Roaring Springs Ranch, Inc. (Authorization #3602570). The request is outlined in Table 1 below.

Table 1: Roaring Springs Ranch Requested Use for Grazing South Steens Allotment during the 2012 Grazing Season

Allotment No.	Allotment Name	Pasture(s)	No. of Head	Season of Use	AUMs
6002	South Steens	Hollywood/Tombstone	2700	04/01/2012 – 05/15/2012	3,755
6002	South Steens	Steens	2700	05/16/2012 – 07/01/2012	3,922
6002	South Steens	Home Creek	1000	04/01/2012 – 06/15/2012	2,349

Roaring Springs Ranch has requested a total use of 10,026 Animal Unit Months (AUMs) within the four pastures of the allotment, which is 449 AUMs over the active permitted use of 9,577 AUMs. The BLM will authorize use in the Hollywood, Steens, and Home Creek pastures, not to exceed the active permitted use of 9,577 AUMs for South Steens Allotment, in a Letter of Authorization as allowed under 43 CFR 4130.4, and use within those pastures is not part of this Proposed Decision.

The grazing permit for the South Steens Allotment includes the 1995 South Steens Allotment Management Plan (AMP) as a term and condition of the permit. The AMP provides that the “annual prescription for grazing will be determined during the annual coordination meeting, between BLM and the permittee, held before grazing begins each spring. This may result in stocking level changes, pasture rotation changes, timing of grazing changes or other modifications of the general schedule to attain utilization target levels and to achieve management objectives,” AMP pg. 28.

Prior to receiving the written request for use of this allotment, on December 27, 2011, Stacy Davies and Autumn Toelle, Rangeland Management Specialist for this allotment, discussed the 2012 grazing use of South Steens Allotment. Stacy indicated his desire to utilize Tombstone Pasture for grazing. Autumn informed him any request for use in Tombstone Pasture prior to the fall of 2013 would likely be denied, as the previous request was. However, Roaring Springs Ranch, Inc. was within their rights to request that use, and suggested he submit his request in writing.

On January 11, 2012 Stacy and Autumn spoke again to discuss the grazing that could currently be authorized within South Steens Allotment, and developed a grazing rotation for Hollywood, Steens, and Home Creek pastures, that fit within the Terms and Conditions of the Grazing Permit.

B. PROPOSED DECISION

It is my proposed decision to deny Roaring Springs Ranch, Inc., their application to graze the Tombstone Pasture during the 2012 grazing season.

C. RATIONALE

Burnt Car Road Rehabilitation Environmental Assessment

On July 14, 2010, the Burnt Car Road Rehabilitation Environmental Assessment (EA), DOI-BLM-OR-B060-2010-0006-EA and associated Finding Of No Significant Impact (FONSI) and Decision Record were signed by the BLM. The purpose of that decision was to rehabilitate disturbance resulting from road maintenance activities. The Decision Record, under the section *Design Features of the Proposed Action* beginning on page 5, states:

As part of the North Steens Ecosystem Restoration Project EIS, the Tombstone Pasture will be closed to grazing use from the end of the 2010 grazing season (reseeding will occur after the end of the 2010 grazing season) until at least the end of the 2013 growing season. Weather conditions may prevent completion of the rehabilitation work in 2010; if

the rehabilitation work is not completed until 2011, the grazing closure will last until at least the end of the 2014 growing season. Under the effectiveness monitoring under Section 3.K. above, if after three growing seasons revegetation does not meet the perennial grasses and forbs criteria, BLM will take additional measures, following appropriate National Environmental Policy Act (NEPA) analysis, to ensure that reseeding meets these criteria. Such measures may include, but are not limited to, extending the closure period, herding, temporary fencing, and salt location. As called for in the North Steens Ecosystem Restoration Project EIS a pasture scheduled for prescribed burning will be closed to grazing for one growing season prior to and two growing seasons after, respectively.

Roaring Springs Ranch, Inc. submitted comments on the Burnt Car Road Rehabilitation EA during the public comment period. Roaring Springs Ranch was provided a copy of the final decision, along with notice of the opportunity to appeal. No appeal was filed by Roaring Springs Ranch or others.

The Burnt Car Road Rehabilitation EA states, “[r]emoval of livestock from the reseeded road areas to allow for recovery” is the reason for considering closure of the Tombstone Pasture, EA pg. 5. As evidenced by the provisions in the Road Rehabilitation Decision to extend the closure until 2014 if reseeding did not happen in 2010¹ or to consider extension if reseeding goals are not met after three growing seasons, the grazing closure was an integral part of the Burnt Car Road Rehabilitation Decision. However, the Road Rehabilitation Decision was not issued as a grazing decision because the decision had already been made—as part of the North Steens Ecosystem Restoration Project—to close the Tombstone Pasture to grazing through the 2013 growing season.

Oregon Natural Desert Association (ONDA) v. Suther 09-CV-892-PK

Following road maintenance work conducted jointly by BLM and Roaring Springs Ranch in the summer of 2009, an environmental group sued the BLM, *ONDA v. Suther*, 09-CV-862-PK (D.Oregon). After the lawsuit was filed, the BLM assembled a Review Team to review the facts underlying the road maintenance. The Review Team concluded that the “project appears to be in conformance with some existing laws, regulations, policies, and planning decisions, but not with others.” *Report of Fact-Finding* (August 28, 2009), page 5. During the period the Burnt Car Road Rehabilitation EA and Decision were being completed by the BLM, the BLM was negotiating a settlement of litigation regarding road maintenance. The BLM and the plaintiffs in that lawsuit entered into settlement negotiations and reached an unofficial settlement agreement in early 2010. On

¹ Road rehabilitation and reseeding did take place in 2010, so the extension provision will not apply.

August 27, 2010, a Settlement Agreement in 09-CV-862-PK (Burnt Car) between ONDA, the Great Old Broads for Wilderness ("Broads"), and the BLM was accepted by Judge Papak.

The Settlement Agreement provided that the BLM would consider road rehabilitation through a NEPA process and if the BLM's decision was in line with the settlement agreement, the lawsuit would be withdrawn. Following issuance of the Decision Record for the Road Rehabilitation EA, the parties agreed that the Decision was in accordance with the EA and jointly moved the court to dismiss the lawsuit. The Settlement Agreement, as approved by the court, provides that:

Route rehabilitation will take place in 2010 with reseeding to occur in the fall of 2010. As part of the North Steens juniper treatment, the Tombstone Pasture will be closed to grazing use from the end of the 2010 grazing season (reseeding will occur after the end of the 2010 grazing season) until at least the end of the 2013 growing season. The parties understand that weather conditions may prevent completion of the rehabilitation work in 2010; if the rehabilitation work is not completed until 2011, the grazing closure will be extended an additional growing season.

Roaring Springs Ranch moved to intervene in *ONDA v. Suther*, and while intervention was denied for the merits portion of the litigation, the court indicated that it would be appropriate for Roaring Springs Ranch to seek to intervene at the remedy phase. The attorney for Roaring Springs Ranch remained on the service list and was thus provided with notice that the parties were contemplating settlement discussions, that the court had appointed a settlement judge, and that a settlement conference had been scheduled before the settlement judge. Roaring Springs Ranch made no request to participate in the settlement discussions and only sought to intervene with regard to remedy after the parties had moved to dismiss the lawsuit based on the settlement agreement.

North Steens Ecosystem Restoration Project Environmental Impact Statement

In July 2007, the Burns District completed the North Steens Ecosystem Restoration Project Final Environmental Impact Statement (EIS) (North Steens Project). The Record of Decision (ROD) for the North Steens Project was signed in September 2007. The North Steens Project is a landscape-level project, with a goal of reducing hazardous fuels created by an increase in western juniper and to restore appropriate natural fire regimes, natural levels of western juniper trees, and appropriate land uses. Treatment techniques include a combination of prescribed fire, juniper cutting, fencing, seeding, and planting to reduce fuel loads, restore vegetative communities, improve habitat, and increase forage. The project area is approximately 336,000 acres (both private and public land administered by the BLM), and includes the entire South Steens Allotment. Within the

North Steens ROD, the project area was divided into numerous potential project units (ROD Map 2). Between the release of the ROD and 2009, specific treatment units were created within the Tombstone Pasture of the South Steens Allotment. Priority was given to Tombstone Units #1, 2, and 5, all of which are located outside of Wilderness Study Areas. In November 2009 the Tombstone Unit #2 cut was completed, followed by the completion of Tombstone Unit #1 cut in December 2009. In February 2011 Tombstone Unit #5 cut was completed. A prescribed broadcast burn treatment for these three Tombstone Units was planned for fall 2011. As analyzed in the North Steens EIS, when a prescribed fire is planned, the affected pasture is to be rested for two growing seasons following the prescribed burn (ROD Page 24). A growing season of rest prior to the burn may also occur in order to ensure that fine fuels are sufficient to carry the prescribed fire (ROD Page 24). While Roaring Springs Ranch, Inc., had not signed an official Cooperative Agreement with the BLM agreeing to rest Tombstone Pasture for one growing season prior to the prescribed burn and two growing seasons following the prescribed burn, a verbal agreement was made, and the pasture was rested during the 2011 grazing season.

On November 1, 2007, ONDA appealed the North Steens EIS ROD. On June 9, 2008, the Deputy Chief Administrative Judge, Bruce R. Harris, Office of Hearings and Appeals, Interior Board of Land Appeals (IBLA) denied the petition for a stay and the decision was affirmed (IBLA 2008-27). Following the IBLA decision, ONDA filed an appeal in District Court (Case No. 08-1271-KI). On May 23, 2011, ONDA filed a motion for a temporary restraining order and/or preliminary injunction and a request for oral argument and an expedited hearing. The BLM agreed to stop ground-disturbing work pending a ruling on the case. At this time, the District Court judge has ruled on the merits of the case, and the BLM is now able to continue implementation of the North Steens Project. However, the BLM has decided not to complete a prescribed fire (i.e. broadcast burn) in the Tombstone units described above, due to the unit's proximity to sage-grouse leks. Future work in these Tombstone units may include cutting, piling, and pile burning, and possibly jackpot burning, neither of which require grazing rest within the Tombstone Pasture. Therefore, livestock grazing rest, as described in the Burnt Car Road Rehabilitation EA and Decision is no longer necessary.

Conclusion

The BLM had planned to rest the Tombstone Pasture from 2011 through the growing season of 2013 to allow one year for the pasture to prepare for a prescribed broadcast burn and two growing seasons to recover from the prescribed broadcast burn. Rest as part of broadcast burning was analyzed in the North Steens Ecosystem Restoration Project Final EIS, and Roaring Springs Ranch, Inc. verbally agreed to the rest for the purpose of this project. As the BLM is no longer going to perform a prescribed broadcast burn within this pasture, there is no longer a requirement that the pasture be rested in conjunction with the North Steens Project.

However, in the Burnt Car Road Rehabilitation EA, the planned closure was adopted as part of that decision in order to allow reseeded areas along the roads to fully recover. That decision was approved by the District Court as part of the settlement in *ONDA v. Suther*. Since circumstances surrounding the North Steens Project and the Tombstone units have changed; the BLM is now formalizing the grazing portion of the Burnt Car Settlement to close the Tombstone Pasture through the end of the 2013 grazing season to promote recovery of the reseeded roadsides.

Based on the court order approving the settlement in *ONDA v. Suther*, my decision is to close the Tombstone Pasture to grazing through the 2013 growing season. As discussed in the Burnt Car Rehabilitation Decision EA and Decision, “[r]emoval of livestock from the reseeded road areas [will] allow for recovery” of those areas.

Beginning in 2013, the permittee will be able to apply for use within Tombstone Pasture, with use in 2013 being limited to a Defer Grazing Treatment².

D. AUTHORITY

Applications for changes in grazing use within the terms and conditions of a permit may be filed with the authorized officer under 43 CFR 4130.4(a). The authorized officer *may* grant the changes in grazing use in compliance with 43 CFR 4130.4(b).

The Steens Mountain Cooperative Management Protection Area RMP and ROD, dated August 2005, allows for the implementation of administrative solutions to provide proper management for livestock grazing, while meeting resource objectives (RMP Page 53).

E. RIGHT OF PROTEST AND/OR APPEAL

Any applicant, permittee, lessee or other interested public may protest a proposed decision under Section 43 CFR 4160.1 and 4160.2, in person or in writing to the Andrews/Steens Resource Area, Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738, within 15 days after receipt of such decision. The protest, if filed, should clearly and concisely state the reason(s) as to why the proposed decision is in error.

In the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice unless otherwise provided in the proposed decision. Any protest received will be carefully considered and then a final decision will be issued.

² **Defer Grazing Treatment** – (approximately July 1 to October 15) – Grazing during this treatment will not begin until after most plants have reached seed ripe and have stored adequate carbohydrate reserves. This treatment will assist in meeting the objectives by providing all plants an opportunity to complete their life cycles and produce the maximum amount of cover and forage.

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 in writing and filed within 30 days following receipt of the final decision. 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 Joan Suther, Andrews/Steens Resource Area Field Manager, 28910 Hwy 20 West, Hines, Oregon 97738.

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. The appellant must serve a copy of the appeal by certified mail on the Office of the Solicitor, U.S. Department of the Interior, 805 SW Broadway, Suite 600, Portland, Oregon 97205, and person(s) named [43 CFR 4.421(h)] in the Copies sent to (cc): section of this decision.

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.

The appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.

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.

Sincerely,

/signature on file/

Joan M. Suther
Andrews/Steens Resource Area Field Manager

cc: Stacy Davies, Roaring Springs Ranch, Inc.
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Tyler Smith, Attorney Roaring Springs Ranch, Inc.
181 N. Grant Street, Suite 212, Canby, Oregon 97013
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The Honorable Steven E. Grasty, Harney County Courthouse
450 N Buena Vista Avenue # 5, Burns, Oregon 97720

Honorable Greg Walden
843 E Main Street Suite 400, Medford, Oregon 97504

Rod Klus, Oregon Department of Fish and Wildlife
P.O. Box 8, Hines, Oregon 97738

High Desert Committee, Sierra Club – Oregon Chapter
1821 SE Ankeny Street, Portland, Oregon 97214-1521

E-mailed to the Steens Mountain Advisory Council

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