



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Burns District Office
28910 Hwy 20 West
Hines, Oregon 97738

IN REPLY REFER TO:

4100 (ORB060)

CERTIFIED MAIL – 7010 1870 0002 7993 3690
RETURN RECEIPT REQUESTED

OCT 04 2011

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

NOTICE OF PROPOSED DECISION

To Deny Grazing Use within Tombstone Pasture of the South Steens Allotment (#06002) until after the 2013 Growing Season

Dear Mr. Sanders:

You are receiving this Proposed Decision because you are the permit holder of record, an interested public or lienholder of record.

A. BACKGROUND

On September 12, 2011, Stacy Davies, manager of Roaring Springs Ranch, Inc., (#3602570) phoned in a request to utilize the Tombstone Pasture within the South Steens Allotment #06002 by 1,500 head of cattle from September 20 through November 1. This request was based on the fact that the prescribed fire, which had been planned for the fall of this year (2011), within the Tombstone Pasture, did not occur, and if it occurred at all, would not happen until after the 2012 growing season. Roaring Springs Ranch, Inc., had previously orally agreed to rest the pasture for one growing season prior to the fire and two growing seasons following the fire in order to let the pasture recover from the prescribed fire. Roaring Springs Ranch, Inc., requests use of the pasture now that the planned prescribed fire has been postponed indefinitely. The request was taken by Autumn Toelle, Rangeland Management Specialist, and a Grazing Schedule/Grazing Application (Form 4130-1) was completed.

1. Timeline of Key Events

Since 1993, Roaring Springs Ranch, Inc., has held Grazing Permit #3602570 authorizing grazing preference on allotments, including South Steens Allotment (#06002) within Burns District. While authorized grazing has changed from the original permit, due to the Steens Mountain Cooperative Management and Protection Act (Steens Act) of 2000 and multiple land exchanges, Roaring Springs Ranch, Inc., still holds a permit authorizing the use of the South Steens Allotment. The terms and conditions on the current grazing permit allow Roaring Springs Ranch, Inc., to use the South Steens Allotment beginning on April 1 through October 31, for a total of 9,576 AUMs, annually.

The 1995 South Steens Allotment Management Plan (AMP) is a term and condition on the current grazing permit. While many aspects of the AMP are outdated due to the changes that occurred within the allotment following the Steens Act, a few key components still apply to grazing within the allotment such as adaptive rotational grazing, key plant species requirements, determination of annual prescription for grazing, and target utilization levels.

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, native 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 Bureau of Land Management (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).

In 2008, the South Steens Allotment was assessed for conformance to Oregon and Washington Standards for Rangeland Health (further referred to as Standards) and Guidelines for Livestock Grazing Management (further referred to as Guidelines; Standards and Guidelines together are referred to as S&Gs) by an Interdisciplinary Team. The Tombstone Pasture was found to have achieved all Standards and was meeting Guidelines. The entire Tombstone Pasture has been determined to be core habitat for sage-grouse.

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 in December 2009.

In February 2011 Tombstone Unit #5 cut was completed. A burn treatment for these three Tombstone Units was planned for fall 2011. As analyzed in the North Steens EIS, when a prescribed burn 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 is also common in order to ensure that fine fuels are sufficient to carry the prescribed fire (ROD Page 24). While Roaring Springs Ranch, Inc., has 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.

On November 1, 2007, Oregon Natural Desert Association (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 not ruled on the merits of the case, therefore, the BLM is unable to continue implementation of the North Steens Project, including prescribed burning within Tombstone Pasture. There is still, however, a possibility that the court will rule, and North Steens Project activities such as piling and burning, may occur this fall and winter.

During the summer of 2009, the Burns District, in cooperation with Roaring Springs Ranch Inc., conducted road maintenance work on four roads within South Steens Allotment, with the purpose of allowing access by larger vehicles to support a proposed horse gather, three units of juniper cutting under the North Steens Ecosystem Restoration Project, use of the roads as fire breaks/safety zones during the subsequent burning of juniper units, to bring equipment and materials in for the Burnt Car Spring Development, and to support recreation use. Soon thereafter, the BLM was challenged in Federal District Court for the District of Oregon (09-CV-862-PK) for a number of alleged legal violations relating to road maintenance. Following the challenge, the BLM completed a fact-finding report (August 29, 2009) which concluded that the road work was in compliance with some, but not all applicable laws, regulations, policies, and planning documents, and that while maintenance of these roads was considered in the Steens Mountain Cooperative Management Project Area (CMPA) RMP/ROD (August 2005) and the subsequent Travel Management Plan, no additional National Environmental Policy Act (NEPA) analysis regarding the level of specific road work had been completed prior to maintenance occurring.

On October 2, 2009, Roaring Springs Ranch, Inc., filed a Motion to Intervene in Case 09-CV-862-PK. This motion was denied by Judge Papak on February 12, 2010; however, Roaring Springs Ranch, Inc., was given leave to refile later in the proceedings.

The BLM entered into settlement agreements with the plaintiff and reached a settlement agreement under which BLM agreed to consider closure of certain road segments and rehabilitation of others. As part of the road rehabilitation, BLM would consider reseeding disturbed areas and, to allow the reseedings to become firmly established, to close the Tombstone Pasture for three growing seasons following reseeding. At the time, BLM expected the reseeding closure to coincide with the agreed-upon closure for juniper burning. The attorney for Roaring Springs Ranch, Inc., had been notified of settlement discussions, but made no effort to participate.

The BLM prepared an Environmental Assessment (EA) to evaluate the environmental impacts of the proposed road rehabilitation action. Roaring Springs Ranch, Inc., submitted comments on the Burnt Car Road Rehabilitation EA, DOI-BLM-OR-B060-2010-0006-EA and unsigned Finding of No Significant Impact (FONSI) on July 6, 2010, during the public comment period. On Page 4 of the comments Roaring Springs Ranch, Inc., states "I am not comfortable with the language of this EA stating that fires will happen in 2012 and that grazing will not occur until after 2014." In Chapter III. *Descriptions of the Affected Environment and Environmental Consequences* of the EA, Grazing Management was considered "Not Affected" as "No changes to grazing management would occur as access to the permittee would not be affected and grazing would continue as authorized. Grazing closures were analyzed in the North Steens Ecosystem Restoration Project FEIS and included in the ROD" (EA Page 12).

Roaring Springs Ranch, Inc., filed a Second Motion to Intervene on July 8, 2010. However, by this point an unofficial settlement agreement between the BLM and ONDA had already been reached.

The Burnt Car Road Rehabilitation EA, DOI-BLM-OR-B060-2010-0006-EA and associated FONSI and Decision Record were completed and signed on July 14, 2010, with the purpose to rehabilitate the disturbance resulting from maintenance actions with the need to address resource concerns associated with the maintenance as indicated in the BLM fact-finding report. The BLM provided for a 30-day appeal opportunity on the Burnt Car Decision. Roaring Springs Ranch, Inc., did not appeal the decision. The Decision Record for the Burnt Car Road Rehabilitation EA, 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 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.

On Page 19 of the Decision Record, one decision factor is "How well do the alternatives provide for...[m]eeting grazing operational needs?" The response is based on permittee access; grazing management limitations were not addressed. Another decision factor asks "How well do the alternatives provide for...[s]ocial and economic values?" (EA Page 20). The response to this decision factor states that "No economic effects to the permittee or landowner are expected as access will still be allowed to conduct grazing management activities and provide access to private lands." Grazing Management was not discussed in the Burnt Car EA as BLM was in negotiations with ONDA on the North Steens Ecosystem Restoration lawsuit and it was expected the project would occur as planned, with the Tombstone Units within the Tombstone Pasture being burned in the fall of 2011. Therefore, any changes to grazing management would occur with implementation of the North Steens Project not the Burnt Car EA.

On 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. Within the Settlement Agreement Part B. Route Restoration, Rehabilitation and Reclamation, Section 5(1), Reseeding, states 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.

No other mention of grazing management within the South Steens Allotment or the Tombstone Pasture is found within the Settlement Agreement.

Roaring Spring Ranch, Inc.'s Second Motion to Intervene was denied on August 30, 2010. The judge denied the request for intervention as a moot point due to a settlement agreement already having been reached on August 27, 2010.

B. PROPOSED DECISION

It is my proposed decision to deny Roaring Springs Ranch, Inc., their application to graze the Tombstone Pasture in the fall of 2011 by 1,500 head of cattle from September 20 through November 1.

Based on the Burnt Car Rehabilitation EA and Burnt Car Settlement Agreement, the BLM has agreed to rest Tombstone Pasture through the 2013 growing season in order to allow reseeding associated with road rehabilitation to become firmly established. Therefore, no grazing will be authorized within that pasture through the 2013 growing season, regardless of the status of the North Steens Project.

C. RATIONALE

Having reviewed the 1995 South Steens AMP and current Grazing Permit #3602570, I have found that the Roaring Springs Ranch, Inc.'s request to graze the Tombstone Pasture in the fall of 2011 could, under the appropriate circumstances, be in compliance with both (if livestock were removed on October 31, when the permitted season of use ends, not on November 1 as requested). However, the grazing regulations provide that the BLM may modify the terms of the grazing permit to address resource concerns (43 CFR 4130.3-3). The BLM has already issued two decisions regarding resource issues within the Tombstone Pasture, both of which rely on closure of the pasture, at least through the 2013 growing season, to address resource concerns. First, the North Steens juniper treatment EA provides for grazing closures prior to and following juniper treatments. Roaring Springs Ranch, Inc., had agreed to closure of the Tombstone Pasture as part of this action. Second, the road rehabilitation decision provided for three growing seasons of rest from grazing in order to allow the new seedings along the roads to become firmly established.

Further, after reviewing the Burnt Car Road Rehabilitation EA, FONSI, and Decision Record, as well as the Settlement Agreement in 09-CV-862-PK, I conclude that the BLM agreed, in a court-approved settlement agreement, to rest the Tombstone Pasture through the 2013 growing season. Therefore, I have concluded that I cannot authorize the requested use and remain in compliance with the settlement agreement.

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 Treatment¹.

¹ **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.

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 CMPA 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.

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: section of this decision.

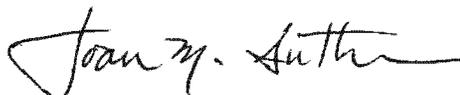
Should you wish to file a petition for a stay, see 43 CFR 4.471 (a) and (b). In accordance with 43 CFR 4.471(c), a petition for a stay must show sufficient justification based on the following standards:

- (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,



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.
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P.O. Box 8, Hines, Oregon 97738

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