



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Prineville District Office

3050 NE Third Street

Prineville, Oregon 97754



In Reply Refer to:

7200 (ORP040)

DOI-BLM-OR-PO40-2009-0009-EA

JAN 28 2011

CERTIFIED MAIL – 7009 2820 0000 8633 4655

Mr. M.K. Campbell
78676 Echols Road
Hermiston, OR 97868

NOTICE OF THE FIELD MANAGER'S PROPOSED DECISION

Dear Mr. Campbell:

INTRODUCTION

BLM grazing is guided by land use plans, the Code of Federal Regulations (CFR), and other federal law. Guidance for the Sixmile allotment includes the 1986 Two Rivers Resource Management Plan Final Environmental Impact Statement and Record of Decision (TRRMP) direction to “Manage all streams with fisheries or fisheries potential to achieve a good to excellent aquatic habitat condition.” Additional grazing management guidance in the CFR is to promote healthy sustainable rangeland ecosystems; accelerate restoration and improvement of public rangelands to properly functioning conditions; promote the orderly use, improvement and development of the public lands; establish efficient and effective administration of grazing on public rangelands; and provide for the sustainability of the western livestock industry and communities that are dependent upon productive, healthy public rangelands (43 CFR 4100.0-2).

BACKGROUND

This project was initiated in response to a need to blend BLM livestock management with the management of the entire livestock operation in the allotment and adjacent lands. Following the installation of a Coordinated Resource Enhancement Program (CREP) livestock exclusion fence on private lands along Hay Creek, livestock use patterns have shifted to focus grazing pressure on public land riparian areas.

From 2005 to 2008, the grazing permittee and BLM discussed potential methods for adjusting grazing management of public and adjacent private lands in the allotment. The ideas from these discussions were used to craft the alternatives proposed in the Ferry Canyon and Hay Creek Fences Environmental Assessment DOI-BLM-OR-PO40-2009-0009-EA (EA). Each developed alternative was assessed and analyzed in the EA to determine if management objectives, as described in the TRRMP, would be met by the actions proposed for the alternatives. The preferred alternative described in the evaluation and EA would allow for attainment of all applicable Prineville District BLM management objectives. The applicable management objectives are consistent with, and support, the Standards for Rangeland Health and Guidelines for Livestock Grazing Management for Public Lands in Oregon and Washington (Land Health Standards and Guidelines). No public comments were received on the EA.

FINDING OF NO SIGNIFICANT IMPACT (FONSI)

The types of impacts to the human environment expected from implementation of the Preferred Alternative of the EA (DOI-BLM-OR-PO40-2009-0009-EA) were anticipated and declared within the analysis of the Two Rivers Resource Management Plan and Environmental Impact Statement of 1986 (TRRMP). The site specific impacts described in the EA are no greater than those anticipated in the EIS. The EA specifically tiers to, and incorporates by reference, the analysis in the TRRMP, in accordance with CEQ regulations Sec. 1502.20 and 1502.21. To the extent there are impacts beyond those described in the TRRMP, they are not significant.

The preferred alternative allows BLM to strike a balance between natural values and commodity uses in a manner consistent with the principles of “multiple use” and applicable law. Specific resource objectives are identified in the TRRMP. Where appropriate, these TRRMP objectives are repeated through the impact analysis section of the EA along with indications of how these objectives would be met. For the Preferred Alternative, these objectives, as well as specific objectives identified in the Standards for Rangeland Health and Guidelines for Livestock Grazing Management for Public Lands in Oregon and Washington (Land Health Standards and Guidelines), would be achieved through a variety of management actions, mitigation measures, and projects, without creating any significant impacts.

The EA thoroughly analyzes the impacts of a range of alternatives developed through scoping and it clearly indicates that the preferred alternative, with specific mitigation measures identified, would not significantly affect the human environment. Specific mitigation measures, described in the preferred alternative, would ensure that resource values are protected through avoidance, by reducing impact to a level that is not significant, by rectifying disturbance through rehabilitation actions, or by compensating for the impact by replacement. Mitigation is applied to proposed actions to minimize or avoid impacts, as noted in the EA, even though the action(s), without mitigation, may not rise to the level of “significant,” as defined in 40 CFR 1508.

The project is a site-specific action directly involving approximately 2,400 acres of land administered by the BLM, which by itself does not have international, national, regional, or state-wide importance. The preferred alternative, as described, would have little if any effect on the human environment at the national level or beyond. The physical effects of projects would be minuscule and largely unnoticeable even at the local level. None of the actions contemplated are irreversible and the only irretrievable commitments are in the funding and associated materials necessary to put projects in place. The short-term benefits of the new grazing systems would be immediately noticeable to only those with a trained eye and knowledge of the capability and potential of these ecological systems. The long-term effect of the preferred alternative should be a steady, measurable improvement of local ecological systems (particularly of riparian systems) that would be noticed by most observers familiar with lands in the TRRMP area.

The “intensity” of impacts, beneficial and adverse, is thoroughly described in the Environmental Impacts section of the EA. Intensity is a component of “significance” and is determined by applying ten criteria (see CEQ regulations Sec. 1508.27). In review of these criteria, relative to the preferred alternative, I have found:

- Beneficial and adverse effects (40 CFR 1508.27(b)(1)). Though on balance the cumulative effects are positive, there would be no significant effects (positive or negative) relative to the CEQ definition. Rangeland and watershed health, ecological functions, productivity, and upland wildlife habitat would be protected and riparian habitat would be improved by the combined benefits of the proposed actions. Cultural resources and special status species would be protected. Grazing operations would remain sustainable.

- Public health or safety (40 CFR 1508.27(b)(2)). There would be no significant effects on public health or safety. The area is remote, and so the chances of affecting members of the general public in any measurable way would also be remote. The fence construction projects involved, and execution of the new grazing systems, would not significantly affect public health and safety. The proposed action is designed to control livestock grazing along approximately 2.5 miles of Hay Creek. There are no known effects to public health or safety. Any threats would be localized, limited to those involved with construction and maintenance activities, and within accepted norms for such work.
- Unique geographic characteristics (cultural or historic resources, park lands, prime and unique farmlands, wetlands, wild and scenic rivers, designated wilderness or wilderness study areas, or ecologically critical areas (ACECs, RNAs, significant caves)) (40 CFR 1508.27(b)(3)). The historic and cultural resources of the area have been reviewed by an archeologist and potential impacts mitigated in the design of the proposed action. As disclosed in the EA, there are none or slight effects on unique geographic characteristics. There are no unique, specially managed areas within the project area.
- Highly Controversial Effects (40 CFR 1508.27(b)(4)). There are no effects which are expected to be highly controversial.
- Unique or unknown risks (40 CFR 1508.27(b)(5)). There are no unique or unknown risks associated with the implementation of the preferred alternative. The TRRMP and the EA cover the anticipated impacts thoroughly. They rely on applicable scientific findings, monitoring, rangeland health assessments, published studies, professional contacts, and stated mitigation measures to address and/or preclude impacts.
- Precedent for future actions(40 CFR 1508.27(b)(6)). There are no precedents, relative to future actions with significant effects, which would be established. The specific actions involved in the preferred alternative have all been done before, separately and collectively, in the course of management of public lands over the past 50 years. There are no irreversible commitments of resources involved with the preferred alternative. The fence and spring development projects involved could be eliminated and the physical disturbance rehabilitated.
- Cumulative Effects (40 CFR 1508.27(b)(7)). The impacts of proposed actions have been analyzed and considered, separately and cumulatively, at multiple scales of analysis by considering ICBEMP science findings, TRRMP, and the EA. Impacts are either not significant, are mitigated below significance, or were declared and addressed in the TRRMP. The cumulative effect of implementation of the preferred alternative is also not significant and is within the scope of the cumulative effects analysis disclosed in the TRRMP, which the EA incorporates by reference.
- Impacts to significant scientific, cultural, or historical resources (40 CFR 1508.27(b)(8)). Cultural resources (historic and prehistoric) are protected by mitigation measures that require avoidance based on surveys completed prior to any surface disturbance. Fencing of riparian areas and exclusion of grazing from these areas will protect cultural material where present. General grazing impacts on uplands are dispersed and do not pose a significant risk to cultural sites.
- Federally listed endangered or threatened species (40 CFR 1508.27(b)(9)). The project area contains Middle Columbia Distinct Population Segment (DPS) summer steelhead listed under the Endangered Species Act as Threatened. Improvement to steelhead habitat would be improved within the range analyzed in the TRRMP.

- Compliance with Federal, State, or local law (40 CFR 1508.27(b)(10). The preferred alternative is in compliance with federal, state, and local law and requirements relative to environmental protection. Further, it is in conformance with the TRRMP and would contribute to the attainment of state water quality standards.

Therefore, based upon my review and for the foregoing reasons, no Environmental Impact Statement is required.

PROPOSED DECISION

Therefore, it is my proposed decision to implement the preferred alternative described in the Environmental Assessment (EA) # DOI-BLM-OR-PO40-2009-0009-EA. This decision adjusts the authorization of livestock grazing use on the Sixmile Allotment # 2547 by adding terms and conditions and range improvement projects identified below. Mitigation and monitoring is identified in the EA on pages 6-7 and 17, respectively. The EA specified a barbless top wire fence. However, the fence will be constructed with a barbed top wire to accommodate long term maintenance requirements.

The permittees shall maintain the range improvements shown in Table 1. The following rangeland improvement projects will be constructed in the Sixmile Allotment to facilitate livestock grazing authorized by lease:

Table 1 – Range Improvement Projects

Project	Quantity & Units
Hay Creek Riparian Corridor Fencing	Approximately 6 miles
Springs Enclosure, Restoration and Development	4 sites
Water Gaps and Gates	Approximately 6

Other terms and conditions of the grazing lease will be:

- Livestock use is generally prohibited within the fenced riparian enclosure. Livestock herding may occur in the fenced riparian enclosure for 1-2 days per year, during their annual removal from the surrounding pasture. Within the fenced corridor along Hay Creek, livestock may be used as a tool to conduct short term vegetation and weed treatment with specific written approval of the authorized officer and on a case by case basis.
- Salting of livestock within one-quarter mile of water is prohibited. Supplemental feeding of livestock on public land is prohibited without prior authorization from the BLM.
- The BLM is in the process of implementing the Standards for Rangeland Health and Guidelines for Grazing Management. This lease is subject to future modification as necessary to achieve compliance with the Standards and Guidelines (43 CFR 4180).
- Lessees are required to submit actual use grazing records within 15 days of completion of the years grazing use.
- Lessees are required to maintain all range improvements for which they have maintenance responsibilities.
- Lessees/permittees are to provide reasonable access across private and leased lands to the BLM for the orderly management and protection of the public lands as allowed in 43 CFR 4130.3-2(h).

Adaptive Management, Monitoring Methods, and Potential Grazing Management Adjustments in Project Area

BLM monitoring data shall determine if the management and mitigations of this decision result in attainment of the riparian management objectives, as described in the EA.

RATIONALE

The purpose of this project was to facilitate livestock management and distribution that are consistent with riparian, fisheries, water quality, recreation, and wildlife values in the area. The no action alternative is comprised the existing condition and did not meet the purpose and need of this project. The action alternative was chosen as the proposed decision because it best met the purpose and need. The proposed decision would facilitate livestock management and distribution. Fencing in Hay Creek would be in concert with up and downstream fencing on private land. The proposed fencing would facilitate livestock management and distribution that resolves conflict with riparian, fisheries, water quality, recreation, and wildlife values in the area. Activities include fence construction, installation of gates, spring development, spring restoration and fence removal and maintenance.

AUTHORITY

The authority for this decision is contained in Title 43 CFR including, but not limited to, the following:

§4100.0-2 Objectives.

The objectives of these regulations are to promote healthy sustainable rangeland ecosystems; to accelerate restoration and improvement of public rangelands to properly functioning conditions; to promote the orderly use, improvement and development of the public lands; to establish efficient and effective administration of grazing of public rangelands; and to provide for the sustainability of the western livestock industry and communities that are dependent upon productive, healthy public rangelands. These objectives shall be realized in a manner that is consistent with land use plans, multiple use, sustained yield, environmental values, economic and other objectives stated in 43 CFR part 1720, subpart 1725; the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315, 315a-315r); section 102 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1740).

§4100.0-3 Authority.

- (a) The Taylor Grazing Act of June 28, 1934 as amended (43 U.S.C. 315, 315a through 315r);
- (b) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) as amended by the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.);
- (c) Executive orders transfer land acquired under the Bankhead-Jones Farm Tenant Act of July 22, 1937, as amended (7 U.S.C. 1012), to the Secretary and authorize administration under the Taylor Grazing Act.
- (d) Section 4 of the O&C Act of August 28, 1937 (43 U.S.C. 118(d));
- (e) The Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.); and
- (f) Public land orders, Executive orders, and agreements authorize the Secretary to administer livestock grazing on specified lands under the Taylor Grazing Act or other authority as specified.

§4120.2 Allotment management plans and resource activity plans.

Allotment management plans or other activity plans intended to serve as the functional equivalent of allotment management plans may be developed by permittees or lessees, other Federal or State resource management agencies, interested citizens, and the Bureau of Land Management. When such plans affecting the administration of grazing allotments are developed, the following provisions apply:

- (a) An allotment management plan or other activity plans intended to serve as the functional equivalent of allotment management plans shall be prepared in careful and considered consultation, cooperation, and coordination with affected permittees or lessees, landowners involved, the resource advisory council, any State having lands or responsible for managing resources within the area to be covered by such a plan, and the interested public. The plan shall become effective upon approval by the authorized officer. The plans shall—

- (1) Include terms and conditions under §§4130.3, 4130.3-1, 4130.3-2 4130.3-3, and subpart 4180 of this part;
 - (2) Prescribe the livestock grazing practices necessary to meet specific resource objectives;
 - (3) Specify the limits of flexibility, to be determined and granted on the basis of the operator's demonstrated stewardship, within which the permittee(s) or lessee(s) may adjust operations without prior approval of the authorized officer; and
 - (4) Provide for monitoring to evaluate the effectiveness of management actions in achieving the specific resource objectives of the plan.
- (b) Private and State lands may be included in allotment management plans or other activity plans intended to serve as the functional equivalent of allotment management plans dealing with rangeland management with the consent or at the request of the parties who own or control those lands.
 - (c) The authorized officer shall provide opportunity for public participation in the planning and environmental analysis of proposed plans affecting the administration of grazing and shall give public notice concerning the availability of environmental documents prepared as a part of the development of such plans, prior to implementing the plans. The decision document following the environmental analysis will be issued in accordance with §4160.1.
 - (d) A requirement to conform with completed allotment management plans or other applicable activity plans intended to serve as the functional equivalent of allotment management plans shall be incorporated into the terms and conditions of the grazing permit or lease for the allotment.
 - (e) Allotment management plans or other applicable activity plans intended to serve as the functional equivalent of allotment management plans may be revised or terminated by the authorized officer after consultation, cooperation, and coordination with the affected permittees or lessees, landowners involved, the resource advisory council, any State having lands or responsible for managing resources within the area to be covered by the plan, and the interested public.

§4120.3-1 Conditions for range improvements.

- (a) Range improvements shall be installed, used, maintained, and/or modified on the public lands, or removed from these lands, in a manner consistent with multiple-use management.
- (b) Prior to installing, using, maintaining, and/or modifying range improvements on the public lands, permittees or lessees shall have entered into a cooperative range improvement agreement with the Bureau of Land Management or must have an approved range improvement permit.
- (c) The authorized officer may require a permittee or lessee to maintain and /or modify range improvements on the public lands under Sec. 4130.3-2 of this title.
- (d) The authorized officer may require a permittee or lessee to install range improvements on the public lands in an allotment with two or more permittees or lessees and/or to meet the terms and conditions of agreement.
- (e) A range improvement permit or cooperative range improvement agreement does not convey to the permittee or cooperator any right, title, or interest in any lands or resources held by the United States.
- (f) Proposed range improvement projects shall be reviewed in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4371 et seq.). The decision document following the environmental analysis shall be considered the proposed decision under subpart 4160 of this part.

§4120.3-4 Standards, design and stipulations.

Range improvement permits and cooperative range improvement agreements shall specify the standards, design, construction and maintenance criteria for the range improvements and other additional conditions and stipulations or modifications deemed necessary by the authorized officer.

§4130.3 Terms and conditions.

Livestock grazing permits and leases shall contain terms and conditions determined by the authorized officer to be appropriate to achieve management and resource condition objectives for the public lands and other lands administered by the Bureau of Land Management, and to ensure conformance with the provisions of subpart 4180 of this part.

§4160.1 Proposed decisions.

- (a) Proposed decisions shall be served on any affected applicant, permittee or lessee, and any agent and lien holder of record, who is affected by the proposed actions, terms or conditions, or modifications relating to applications, permits and agreements (including range improvement permits) or leases, by certified mail or personal delivery. Copies of proposed decisions shall also be sent to the interested public.
- (b) Proposed decisions shall state the reasons for the action and shall reference the pertinent terms, conditions and the provisions of applicable regulations. As appropriate, decisions shall state the alleged violations of specific terms and conditions and provisions of these regulations alleged to have been violated, and shall state the amount due under §§4130.8 and 4150.3 and the action to be taken under §4170.1.

§4160.2 Protests.

Any applicant, permittee, lessee or other interested public may protest the proposed decision under §4160.1 of this title in person or in writing to the authorized officer within 15 days after receipt of such decision.

§4160.3 Final decisions.

- (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.

RIGHT OF PROTEST AND/OR APPEAL

Any applicant, permittee, lessee or other interested publics may protest this proposed decision in accordance with 43 CFR § 4160.1 and § 4160.2, you are allowed fifteen (15) days from receipt of this notice to file such a protest with:

Homer Faver
Central Oregon Resource Area Manager
Prineville District Bureau of Land Management
3050 NE 3rd Street
Prineville, Oregon 97754

A protest may be made in writing and should specify the reasons clearly and concisely as to why you think the proposed decision is in error. Upon the timely filling of a protest, the authorized officer shall reconsider the proposed decision in light of the protestant's statement of reasons for protest and in light of other information pertinent to the case. At the conclusion of this review of the protest, the authorized officer shall serve a final decision on the protestant, or his agent, or both, and the interested public in accordance with 43 CFR § 4160.3 (b).

In the absence of a protest, the Proposed Decision will become the Final Decision of the authorized officer without further notice. Any person whose interest is adversely affected by a Final Decision of the authorized officer may appeal the decision for the purpose of a hearing before an administrative law judge. A period of **45 days** from your receipt of the proposed decision is provided for filling an appeal and petition for stay of the decision pending final determination on appeal, as provided in 43 CFR § 4.470 and 43 CFR § 4160.4.

Any appeal should state clearly and concisely as to why the final decision is in error. All grounds of error not stated shall be considered waived, and no such waived ground of error may be presented at the hearing unless ordered or permitted by the administrative law judge. Any appeal should be submitted in writing to:

Homer Faver
Central Oregon Resource Area Manager
Prineville District Bureau of Land Management
3050 NE 3rd Street
Prineville, Oregon 97754

Filing an appeal does not by itself stay the effectiveness of the final BLM decision. The appeal may be accompanied by a petition for a stay of the decision pending final determination on appeal, in accordance with 43 CFR § 4.471 and 4.479. Any request for a stay of the final decision in accordance with 43 CFR 4.21 must be filled with the appeal. In accordance with 43 CFR 4.21 (b) (1), a petition for a stay must show sufficient justification based on the following:

- The relative harm to the parties if the stay is granted or denied,
- The likelihood of the appellant's success on the merits,
- The likelihood of immediate and irreparable harm if the stay is not granted, and
- Whether the public interest favors granting the stay.

Additionally, in accordance with 43 CFR § 4.471(b), within 15 days after filing the appeal and petition for a stay with the authorized officer, the appellant must also serve copies on:

- (1) all other person(s) named in the Copies sent to: section of this decision; and
- (2) the appropriate office of the Office of the Solicitor as follows, in accordance with 43 CFR § 4.413(a) and (c):

US Department of the Interior
Office of the Regional Solicitor
805 S.W. Broadway, Suite 600
Portland, OR 97205

Finally, in accordance with 43 CFR 4.472(b), any person named in the decision from which an appeal is taken (other than the appellant) who wishes to file a response to the petition for a stay may file with the Hearings Division a motion to intervene in the appeal, together with the response, within 10 days after receiving the petition. Within 15 days after filing the motion to intervene and respond, the person must serve copies on the appellant, the appropriate office of the Office of the Solicitor in accordance with Sec. 4.413(a) and (c), and any other person named in the decision.

Sincerely,


for H. F. "Chip" Faver
Field Manager, Central Oregon Resource Area