

**SETTLEMENT AGREEMENT FOR ARGENTA ALLOTMENT  
(BATTLE MOUNTAIN DISTRICT, BLM)**

THIS SETTLEMENT AGREEMENT (“Agreement”) sets forth the agreements of the signatory parties (“Parties”) about the interim use and operation of the Argenta Allotment in the Battle Mountain (“BM”) District from the Effective Date and during the term of this Agreement. The Parties will work together in good faith and cooperation to achieve the purposes and goals provided in the following provisions of this Agreement.

**RECITALS**

- A. On August 22, 2014, the BLM BM District issued a drought decision (“Decision”) to temporarily close nine of the 20 grazing Use Areas on the Argenta Allotment to protect the range during drought conditions.
- B. Multiple appeals from the Decision were filed with the Hearings Division in the Office of Hearings and Appeals, and were docketed as follows: Julian Tomera Ranches Inc., Battle Mountain Division, Chiara Ranch, Daniel E. and Eddyann U. Filippini, and Henry Filippini, Jr. v. BLM, NV-06-14-03 (Western Watersheds Project, Intervenor); John Carpenter v. BLM, NV-06-14-04; Western Watersheds Project v. BLM, NV-06-14-05; and Nevada Land Action Association and Public Lands Council v. BLM, NV-06-14-06.
- C. Under the challenged Decision, it is difficult for Permittees to continue grazing on the open areas of the 330,000+ acre checker boarded allotment because there are only a few fences to keep cows out of the closed areas.
- D. Coming into the 2015 grazing season, the Permittees and BLM initiated discussions to determine whether it would be possible to replace the temporary drought closure with a short-term grazing management strategy that prevents overgrazing -- particularly in riparian areas.
- E. The NV State Director, BM District Manager, and Permittees requested National Riparian Service Team (“NRST”) assistance in working with the various stakeholders to explore development of an alternative short-term grazing management plan that protects range resources while allowing for replacement of the temporary closures with management.
- F. The NRST agreed to serve as a convener and neutral third party on the allotment. The NRST agreed to review the situation, provide recommendations, and facilitate discussions.
- G. Based on site visits, discussions with all of the parties and their knowledge of the existing situation, the NRST proposed and initiated a strategy for addressing ongoing concerns regarding drought and livestock grazing on the Argenta allotment. As part of this process, the following activities were undertaken:
  - a. Field/Technical Tour (March 2015)
  - b. Stockmanship Workshop, coaching, and grazing plan development (March through May 2015)
  - b. Facilitated discussions in (April and May 2015), and development of an agreement framework

- H. As part of this process, NRST has highlighted the need for grazing management that addresses long-term resource objectives, and has identified opportunities for more effectively managing grazing in a manner that continues to achieve, achieves, or makes progress in achieving resource objectives as an alternative to the temporary partial closure of use areas in the Argenta Allotment.
- I. The parties desire to resolve the pending administrative appeals by entering into the following agreement that will re-open the closed use areas to grazing that is consistent with the terms set forth in this agreement, so as to continue to achieve, achieves, or makes progress in achieving resource objectives.

## **AGREEMENT**

### **Section 1. Purpose of Agreement**

The purpose of this Agreement is to set out the parameters for re-opening the temporarily closed Use Areas to grazing and for interim grazing management on the currently open Use Areas in the Argenta Allotment, using management techniques that are effective, feasible, and designed to achieve resource objectives. The Agreement is designed as a three-year interim management initiative that will include ongoing assistance and oversight by the NRST.

### **Section 2. Goals**

The Parties' goals under Agreement are to:

- a) Protect important riparian-wetland sites;
- b) Pilot an adaptive grazing management project to improve resource condition on the allotment largely through the use of riding and supplement placement to effectively distribute livestock across the landscape;
- c) Implement and identify through the interim management period improved grazing management that can achieve resources objectives and provide lessons for long-term grazing use on this allotment;
- d) Achieve overall allotment success (as defined below) that ensures appropriate levels of grazing use consistent with resource objectives;
- e) Collect important implementation and effectiveness monitoring data throughout the interim management period to inform development of a long-term management strategy (including identification of range improvement needs as appropriate) for the allotment (i.e., for the permit renewal process);
- f) Maintain Permittee operations, consistent with Rangeland Health Standards and applicable federal laws and regulations;
- g) Foster a more collaborative and cooperative working relationship between the Parties;
- h) Provide valuable knowledge and experience on adaptive grazing management; and
- i) Ensure a timely permit renewal for the Argenta Allotment.

### **Section 3. Definitions**

3.1 “Annual Review Process” means the CMG process to review and discuss all of the monitoring information relative to Use Area End of Season Assessment Process Flow Chart (see Appendix 1).

3.2 “Argenta Allotment” or “Allotment” refers to an area of approximately 330,000+ acres that include checkerboard public and private lands, located in Lander County and managed by the BLM’s BM District Office.

3.3 “BLM” means the U.S. Department of the Interior’s Bureau of Land Management.

3.4 “Cooperative Monitoring Group” or “CMG” is inclusive of NRST, BLM, Appellant Permittees, and at their choice, Appellants WWP, NLAA/PLC, and John Carpenter, and may include the Nevada Department of Wildlife (NDOW) to address wildlife issues. The CMG serves as a fact finding group, with opportunities for information sharing, education, and individual input into decision-making processes as part of this trial. (See section 5).

3.5 “DMA” means Designated Monitoring Area. A DMA is a monitoring site in a riparian complex where the Multiple Indicator Monitoring methodology is used.

3.6 “End of Season Use Level” means riparian and upland use levels that will determine Use Area success/failure. End of season refers to the time period that reflects conditions at the end of the annual growing season and the end of the grazing season, whichever is later. These use levels will be measured at the same key areas and DMAs where within season Use Levels are measured.

- The End of Season use levels for upland areas (except for the Mule Canyon Use Area) will be light use, i.e. 30% use for key woody species and 40% use for key herbaceous species, respectively (not a combined average use of the two), as measured at Key Areas.
- The End of Season use levels in the Mule Canyon Use Area will be light to moderate use, i.e., 30% use of all key woody species and 50% use of all key herbaceous species, respectively (not a combined average of the two), as measured at Key Areas.
- In all Use Areas, the End of Season use levels for riparian areas will be 4” stubble height on all key herbaceous species and 30% use of key woody riparian browse species, as measured at DMAs.

3.7 “Grazing Year” means the period from March 1 to February 28.

3.8 “Interim Management Period” means the three year period encompassing the 2015, 2016 and 2017 grazing seasons, or until a Final Decision is issued for the issuance of a fully processed grazing permits on the Argenta Allotment -- whichever comes first -- during which the temporary partial grazing closure is replaced by grazing under the Stockmanship Plan and the

terms of this Agreement. If BLM fails to issue a Final Decision to renew the applicable Grazing Permits by February 28, 2018, this Agreement shall automatically terminate on August 1, 2018 . (See Section 10.6, Section 15.2)

3.9 “Key Area” means an upland monitoring site that is representative of grazing within a larger portion of the range.

3.10 “NLAA” means Nevada Land Action Association

3.11 “National Riparian Service Team” or “NRST” means a BLM and Forest Service Interdisciplinary, Washington Office team that specializes in bringing both technical and social expertise to assist diverse groups in addressing riparian conflicts. Their role has been (and will continue to be) to provide training/coaching, review/oversight, and conflict resolution/facilitation. Additionally, NRST will provide recommendations to BLM, drawing upon the monitoring information and individual input received from the CMG as well as from their own experience working on the Allotment and with the various parties. (See Section 10)

3.12 “Overall Allotment Success” for the purpose of this Interim Management Plan is defined as having 70% of Use Areas (based on grazing use measurements at key areas and DMAs) meeting the end of season prescribed utilization levels for upland and riparian areas. This will allow for the learning curve and any necessary adjustments that would be identified during the new intensive Stockmanship program to be implemented under the Interim Management Period so as to achieve demonstrable improvement in success in achieving the end of season use levels from year to year, toward an aspirational goal of 100% success. A “demonstrable improvement in success” is a steady increase in the number of monitoring sites meeting End of Year Use Level over the course of this Agreement.

3.13 “Parties” mean individuals/groups currently engaged in litigation and signatories to this Agreement.

3.14 “Permittees” means livestock operators who currently hold permits to graze on BLM managed lands within the Argenta allotment and who are signatories to this Agreement.

3.15 “PLC” means Public Lands Council.

3.16 “Stockmanship Plan” means a generalized ‘map’ developed with the assistance of an NRST range specialist of where and how livestock will move across the various Use Areas that will guide Permittee operations. The plan outlines general use dates, livestock numbers, planned movement, and ways to mitigate drift or other potential problems; it will also allow for adaptability and flexibility to respond to unexpected or changed conditions during grazing rotations.

3.17 “Use Area(s)” means the Use Areas listed in Appendix 3.

3.18 “Within Season triggers” means riparian and upland use levels that, when met within a particular season, require livestock to be moved out of those areas, which may not be an entire Use Area but a sub-portion of a Use Area located far enough away to prevent return drift.

- The Within-Season triggers for upland areas in the nine Use Areas that were temporarily closed to grazing under the August 22, 2014, Decision will be light use, i.e. 30% use of all key woody species and 30% use of all key herbaceous species, respectively (not a combined average use of the two), as measured at Key Areas.
- The Within-Season triggers for upland areas in the Use Areas that remain open to grazing under the August 22, 2014, Decision (except for Mule Canyon Use Area) will be light use, i.e., 30% use of all key woody species and 35% use of all key herbaceous species, respectively (not a combined average use of the two), as measured at Key Areas.
- The Within-Season triggers for upland areas in Mule Canyon Use Area will be light use, i.e., 30% use of all key woody species and 40% use of all key herbaceous species, respectively (not a combined average use of the two), as measured at Key Areas.
- The Within-Season triggers for riparian areas will be 4” stubble height on all key herbaceous species and 30% use of key woody riparian browse species, as measured at DMAs.

3.19 “WWP” means Western Watersheds Project.

#### **Section 4. Participation and oversight**

The Parties pledge to participate in good faith in the cooperative process described in this Agreement, and in the development and implementation of the short-term grazing strategies for the temporarily closed Use Areas and for continued grazing management on the currently open Use Areas in the Argenta Allotment, using management techniques that are effective, feasible, and designed to continue to achieve, achieve or to make significant progress in achieving resource objectives. To achieve these purposes and goals, the Parties will create the CMG and agree to the continued role of the NRST to provide consultation and oversight and recommendation.

#### **Section 5. Formation and use of the Cooperative Monitoring Group**

5.1 The BLM agrees to work collaboratively with, and to participate in, the CMG on collection of monitoring data that can be used to ensure grazing is consistent with healthy rangeland.

5.2 Promptly after the execution of this Agreement, each Party will designate at least a single professional/technical representative to serve on the CMG and provide the name(s) to all Parties. By consensus decision, the CMG may later identify and add other technical specialists to the CMG.

5.3 To the extent feasible, members of the CMG will participate in the monitoring and evaluation of the results of activities undertaken during the three year Interim

Management Period; will provide input on the monitoring sites (i.e. key areas and DMAs), monitoring methods, and key species to be monitored; will share facts and information on monitoring data, and will discuss the annual Stockmanship Plans.

5.4 The NRST will help facilitate the CMG process throughout the Interim Management Period. As provided for in Appendix 1, NRST will provide recommendation to BLM, as to the next year's annual monitoring and Stockmanship Plans, drawing upon the monitoring information and individual input received from the CMG members as well as from their own expertise and experience working on the Allotments and with the Parties.

5.5 The first meeting of the CMG will be held within no more than 30-60 days of the effective date of this Agreement; at that meeting the CMG will determine the schedule for future meetings, field visits or conference calls.

5.6 No later than by the date of the first meeting, and each year thereafter, CMG, with input from the NRST, will discuss the suitability of existing riparian and upland monitoring sites and whether there is a need to adjust any monitoring site locations. For efficiency, the CMG review will focus on those sites where a change is suggested rather than reviewing every monitoring site. The CMG will also consider whether additional/new monitoring sites are needed to reflect where livestock will be grazing, and to ensure representative information is being collected. NRST will provide its recommended monitoring plan to BLM.

5.7 The Parties expect the CMG to participate in pre-season, within-season and end-of-season monitoring to the extent possible. The BLM will schedule and notify the other CMG members of planned monitoring activities at least one week in advance. All monitoring data or information collected by BLM, Permittees or others, or analyses prepared of monitoring data, shall be shared fully among the CMG within 10 working days following collection.

5.8 The CMG is responsible for completing the year-end assessment process each year by December 31, and for providing individual input into the development of needed adaptive management actions by March 1 (Appendix 1). NRST will then provide its recommendations for adaptive management actions to BLM.

5.9 To involve the public during the interim management period, the public will be invited to a public meeting at least annually between January and February so that CMG and NRST can review the previous year's monitoring information, review proposed changes in the annual Stockmanship Plans, and solicit public comments.

5.10 Nothing in this Section shall be read as delegating or abrogating BLM's responsibility to determine the reliability and appropriateness of collected data, and for analyzing and evaluating such data to guide BLM's management of grazing in the Argenta Allotment consistent with its statutory and regulatory responsibilities, and as further set forth in Sections 12 and 14 of this Agreement.

## **Section 6. Interim Management Period**

**6.1 Re-Opening of Temporarily Closed Use Areas.** As of the effective date of this Agreement, the temporary partial closure of the nine use areas within the Argenta Allotment shall be lifted and grazing within the entire Allotment, including the nine use areas, shall be

replaced with grazing under the terms of this Agreement for the Interim Management period.

**6.2 Annual Stockmanship Plans.** For each year of the Interim Management Period, an Annual Stockmanship Plan will be developed consistent with this Agreement and the Permittees' Grazing Permits. The Annual Stockmanship Plan for Year 1 (2015) identifies the fenceless grazing rotation system for the entire allotment and is attached in Appendix 2. The Parties will implement the 2015 Stockmanship Plan beginning on the Effective Date of this agreement. For each successive year of the Interim Management Period (which begins March 1), a revised Stockmanship Plan will be developed prior to March 1. Each annual Stockmanship Plan must meet the goals, and include the elements, set forth in Appendix 2.

**6.3 NRST Stockmanship Support, Permittee obligations.** The NRST will work with Permittees and BLM through the education, coaching, development, and implementation of the annual Stockmanship Plans. The Permittees agree to provide a sufficient number of adequately trained riders every year of the Interim Management Period to ensure Overall Allotment Success. Failure to have an adequate number of trained riders is not a valid reason for failing to meet the applicable Overall Allotment Success criterion, or the End of Season Use Level for a given Use Area during the Interim Management Period.

**6.4 Unauthorized use by non-parties.** The Permittees and BLM jointly agree to closely monitor livestock on the Argenta allotment to ensure only permitted livestock graze on the Argenta Allotment. If unauthorized use occurs, it will be documented by the discovering Party, reported to all Parties and CMG, and resolved, if possible, through cooperative approaches with non-party livestock owner. If issues cannot be resolved through cooperative approaches, BLM may take action against whichever non-party livestock owner is at fault.

**6.5 Within Interim Management Period Assessment.** Individual Use Areas will be assessed in accordance with Appendix 1.

**6.6 End of Interim Management Period Assessment.** At the end of the Interim Management Period, the BLM, after consulting with the CMG and NRST, will assess and report on the overall success of the Stockmanship Plan during the Interim Management Period.

**6.7 Assessment of individual Permittees.** The individual Permittees will be assessed on the merits of their own grazing operation and Use Areas, even though it is a common allotment. For the purposes of the Interim Management Period, the Argenta allotment will essentially be broken into 'three allotments', with each Permittee responsible for meeting Overall Allotment Success. The Interim Management Period process seeks to determine whether failure is within a Permittee's control (e.g., having a sufficient number of riders) as opposed to needing to 'work out the kinks' – e.g., improve the stockmanship methods, develop range improvements to help manage livestock, and/or develop exclosures to exclude certain areas from grazing use.

**6.8 Within Season Use Levels and End of Season Use Levels.**

6.8.1 Subject to Section 3.18, if either the riparian or upland Within-Season trigger is met

for a portion of a Use Area, the affected Permittees will promptly move the livestock to another part of the Use Area if feasible, or from the Use Area if rotation within the Use Area is not feasible. Subject to Section 3.18, if either the riparian or upland Use Levels is met in an entire Use Area, the affected Permittee will promptly move livestock to another Use Area that has not yet been grazed. If there is no other rotational unit available within the Use Area, then the Permittee will remove the livestock from the entire Use Area. Prompt movement either within or from the Use Area is defined as no more than 3-5 days from date the within-season trigger is met. If the Within-Season trigger is met for all Use Areas within the allotment, all livestock must be removed from the allotment within 7-10 days. Recognizing there will be a learning curve for implementation of the new Stockmanship Plan, BLM agrees that, as long as there is good communication, good faith management of livestock, and timely efforts to move/remove livestock, BLM will not pursue unauthorized use in the event of drift or delays in removing all livestock, although problems in controlling drift may be considered in the development of the next Annual Stockmanship Plan if this resulted in a failure to meet the End of Season Use Levels.

6.8.2 Both Within-Season triggers and End-of-Season Use Levels provide key pieces of information. The Parties will cooperate to ensure both Within-Season and End-of-Season utilization data are collected/recorded and provided to the CMG under Section 6.9.

## **6.9 Monitoring and communication among the Parties. See Appendix 1.**

6.9.1 Any monitoring locations, methods, key species to be monitored, and analysis of the monitoring data will be per BLM protocols.

6.9.2 NRST will provide training/coaching, review/oversight, and quality assurance/quality control relating to the collection, analysis, and interpretation of monitoring data during the interim management period.

6.9.3 Streambank alteration data will not be a basis for within-season movement of livestock. However, streambank alteration data will be monitored and assessed during the interim management period to allow for correlation of riparian stubble height to streambank alteration to help inform long-term management of the allotment.

6.9.4 BLM agrees that frequent, open and honest two-way communication between BLM and Permittees, and clear documentation of those conversations is critical to long-term success.

6.9.5 During the interim management period, the Permittees will document for each Use Area (or management units within each Use Area) information that includes: water availability, date the area is entered, the number of cattle, condition of forage when the area is entered, weather conditions (temperatures, precipitation, etc.), length of time



grazed. This may also include photo point monitoring. Information collected by the Permittees will be provided to BLM and other members of the CMG.

6.9.6 The Permittees, BLM and/or other members of the CMG will collect utilization or stubble height information when livestock are moved out of a Use Area, which information will be shared with the CMG.

6.9.7 NRST recommends that BLM and Permittees select appropriate forms and photo monitoring protocols from the *Nevada Rancher's Monitoring Guide* to ensure appropriate information is gathered to provide a basis for better understanding by the cooperative monitoring group during the end of year review.

(<https://www.unce.unr.edu/publications/files/AG/2006/eb0604.pdf>).

6.9.8 Because it is difficult to predict in advance where cattle will be in a location, on which days, how many, and for how long, CMG-member photo point monitoring and observation notes will be important to document what happened in terms of the grazing management strategy employed during the grazing year to inform end of grazing year review and plans for the next grazing year. Because the Stockmanship Plan is driven not by number of livestock but rather by when within-season move triggers are reached, this Agreement requires that Permittees provide consistent reporting of actual use numbers and what was done throughout the year in terms of movement, when Within Season triggers were met, End-of-Season Use Levels, weather, water, etc. This information is critical to informing the assessment and interpretation of year end conditions and planning for subsequent grazing years.

6.9.9 Reporting of actual numbers and any non-use taken to protect resource values during drought will not, on its own, result in permittees' grazing levels being limited in subsequent years, absent other monitoring data and evaluation of range conditions.

## **6.10 End of year assessment & adaptive management.**

Before March 1<sup>st</sup> (i.e., the start of the next grazing season), an end of year review will assess all of the monitoring information and develop new Stockmanship plans designed to meet Overall Allotment Success. The Use Area End-Of-Season Assessment Process Flow Chart (Appendix 1) will be used to guide the assessment. Where change in grazing management is needed, changes may be made to the timing, duration, and/or intensity of grazing (e.g., stock density/livestock numbers, season of use, length of use, range improvements, and/or rest). If end of season use levels are exceeded two years in a row, the NRST and BLM will consider whether the Use Area needs to be rested in the following grazing year.

## **Section 7 Protection of important water storage and riparian areas**

7.1 The Parties agree that protection of critical riparian-wetland sites that serve as important wildlife habitat and water storage areas is critical to long term success and land health within the Argenta allotment.

## LENTIC

7.1.1 The Parties agree that within 30-days of the Effective Date of this agreement, BLM will issue a decision in accordance with 43 C.F.R. subpart 4160 for 5 small lentic area exclosures identified as high priority for riparian recovery and water storage potential: Slaven, Mill, Fire, N. Mill Creek, and The Park, provided no resources are identified that by law require consultation (e.g., under Section 106 of the NHPA), in which case BLM will make every effort to expedite such consultation process. If a proposed decision is protested, BLM will issue a Final Decision within 15 days of its receipt of the protest(s).

7.1.2 If NRST identifies other high priority lentic exclosures that are a high priority for riparian recovery and to increase water storage capacity within the Interim Management Period, BLM will issue a decision in accordance with 43 C.F.R. subpart 4160 within 30 days within receipt of NRST's proposal, provided no resources are identified that by law require consultation (e.g., under Section 106 of the NHPA), in which case BLM will make every effort to expedite such consultation process. If a proposed decision is protested, BLM will issue a Final Decision within 15 days of its receipt of the protest(s).

7.1.3 It may be possible to complete 7.1.1 and 7.1.2 within the same 30 day timeframe if additional high priority small lentic exclosures are promptly identified by NRST.

## LOTIC

7.1.4 BLM commits to meet with members of the CMG and NRST to consider some *smaller* lotic exclosure or fencing proposals. NRST will visit the site and recommend if any of the proposals are a high priority for riparian recovery and water storage capacity building and should therefore be expedited for processing by BLM during the Interim Management Period. Permittees have submitted applications for fencing the following lotic areas: Slaven, Mill, Fire, North Mill Creek, Ferris, Ratfink Canyon, Trout Creek, and/or others. For small lotic exclosures identified by NRST as a high priority for construction during the Interim Management period, and so long as such exclosures qualify for a Categorical Exclusion under NEPA, BLM commits to issuing a decision in accordance with 43 C.F.R. subpart 4160 within 30 days of receipt of NRST's proposal(s), provided no resources are identified that by law require consultation (e.g., under Section 106 of the NHPA), in which case BLM will make every effort to expedite such consultation process. If a proposed decision is protested, BLM will issue a Final Decision within 15 days of its receipt of the protest(s). If a priority proposal under this Section does not qualify for a Categorical Exclusion under NEPA, the lotic fencing application would be processed under Section 7.1.5.

7.1.5 BLM commits to meet with the CMG and NRST to discuss permittees' *larger* lotic proposals. NRST will visit the site and identify whether fencing any of those lotic areas is a high priority and should therefore be expedited during the Interim Management period. BLM commits to issuing a decision in accordance with 43 C.F.R. subpart 4160 within 8 months of receipt of permittees' completed application for 1-3 high priority larger lotic fence proposals if identified as such by NRST. Upon receipt of an application,

BLM will inform applicant within 10 working days of any additional information needed for a completed application.

7.2 The Parties jointly agree that riparian enclosures or fences that may be approved within the Argenta Allotment during the Interim Management Period will be developed in a way that provides for continued water availability at those sites while protecting resources, including Greater Sage-grouse life cycle needs.

7.3 The Parties agree that areas excluded from grazing through selective use of enclosures or fencing will be managed into the future for resources (i.e. water, wildlife, vegetation, etc.) other than livestock forage. All enclosures or fences will be constructed using appropriate wildlife mitigation techniques, including but not limited to sage grouse design features. Permittees will have assigned responsibilities for normal maintenance of riparian enclosures or fencing under the grazing regulations.

7.4 BLM will expedite the decision-making process for headcuts to be mechanically repaired on Fire Creek, to allow for recovery of the stream channel and to prevent further degradation of the wet meadow.

## **Section 8 Allotment boundary fencing and other fencing**

8.1. The Permittees and NRST have expressed a priority for an allotment boundary fence is the southern allotment boundary between Argenta and Carico Lake Allotments. BLM commits to issue a decision in accordance with 43 C.F.R. subpart 4160 for such boundary fence by December 31, 2015, provided a completed application is received by BLM by the date this Agreement is signed, or within 8 months of BLM's receipt of a completed boundary fence application. Upon receipt of an application, BLM will inform applicant within 10 working days of any additional information needed for a complete application.

8.2 Following the 2015 grazing season, the CMG may identify additional proposed fencing needs for review by the NRST, which will recommend to the BLM whether additional fencing proposals should be prioritized for consideration during the Interim Management Period.

## **Section 9 Water developments**

Upon its receipt of permittees' applications, BLM will issue a decision in accordance with 43 C.F.R. subpart 4160 on proposed water hauls sites within 30 days, provided no resources are identified that require consultation (such as under Section 106 of the NHPA), for the following sites identified by Permittees as high priority for water hauling: East Flat, Mule Canyon, North Maysville, South Maysville, Harry Canyon, and Indian Creek Use Areas. If a proposed decision is protested, BLM will issue a Final Decision within 15 days of its receipt of the protest(s). BLM commits to review other proposals as appropriate and to expedite consideration of such proposals where appropriate during the Interim Management Period.

## **Section 10 BLM prioritize and set timeframes for allotment for permit renewal**

10.1 BLM commits to prioritize the Argenta Allotment for permit renewal, which will be assigned to the State Permit Renewal team as a top priority for a fully processed permit.

10.2 BLM commits to promptly begin compiling the necessary information and dedicating the necessary staff resources for the permit renewal decision-making process.

10.3 BLM will collect (or contract for the collection of) additional trend data by the end of the field season in 2016.

10.4 BLM will notify all parties at least 1-2 weeks in advance of when monitoring for the permit renewal is scheduled to occur. Any party may be present at the time such monitoring takes place.

10.5 BLM will complete the Rangeland Health Evaluation, Standards and Guidelines Determination, and environmental analyses by early 2017.

10.6 BLM will complete the permit renewal process for the Argenta Allotment and issue a Final Decision under 43 C.F.R. Subpart 4160 before the start of the 2018 grazing year. BLM will do everything in its power and timely complete all of the interim steps necessary to meet this goal. In the event that BLM is unable to issue a fully processed final permit decision prior to February 28, 2018, this Agreement shall remain in effect until no later than August 1, 2018, at which time it will automatically terminate.

## **Section 11 NRST assistance**

NRST will continue providing training/ coaching, review/oversight, and conflict resolution or facilitation assistance and consultation to the CMG throughout the Interim Management period, accommodating potential changes in personnel. Additionally, NRST will provide recommendations to BLM, drawing upon the monitoring information and individual input received from the CMG as well as from the NRST's expertise and experience working on the Allotment and with the various parties and publics. No less frequently than every six months, NRST will convene a meeting or conference call among the Parties and CMG members to assess how the Stockmanship Plan is working under this Agreement, to consider improvements in implementation, and address disputes or disagreements among the Parties.

## **Section 12 Notice**

When notice or communication is intended under this Agreement, it will be addressed to those listed in Appendix 4.

## **Section 13 Dispute resolution**

13.1 Any disputes or controversies about this Agreement and the actions to be taken under this

Agreement, including claims of breach of the Agreement, will be initially and promptly brought to the CMG in an effort to find resolution. If resolution is not quickly found, then NRST will recommend a resolution to the BLM Field Manager first, then to the District Manager, if necessary. The District Office will give significant weight to such recommendation. If the District Manager does not accept the NRST recommendation, then the issue will be raised to the NV BLM State Director who will render a final determination on such dispute.

**13.2 Retained OHA Jurisdiction.** Any party may seek to have disputes or controversies about this Agreement or actions to be taken under this Agreement, including claims of breach of the Agreement, resolved by an Administrative Law Judge in the Office of Hearings and Appeals.

**13.3 New laws/regulations.** Nothing in this Agreement shall be construed as preventing BLM's compliance with any laws, regulations, or land-use plan amendments, as they may apply to management of grazing in the Argenta Allotment, if these conflict with the provisions of this Agreement. In the event that new laws, regulations or land-use plan amendments affect the implementation of this Agreement during the Interim Management Period, the Parties will meet and confer to determine its effect. If the Parties do not agree on how this affects the Agreement, any party may terminate this Agreement as to any use area(s) for which management actions under this Agreement would change, at which time the BLM retains its authority to issue a new decision based upon the new law, new regulation, new land use plan amendment and/or new information at that time for such use area(s).

#### **Section 14 Dismissal of pending administrative or legal proceedings**

14.1 Within no more than 7 days after the execution of this Agreement, all signatory Parties will promptly file, with the US DOI Office of Hearing and Appeals' Interior Board of Land Appeals or Hearings Division, or both, such Joint Motions or other briefs/papers as are necessary to permit the dismissal of signatory Parties' appeals and the prompt approval and implementation of this Agreement.

14.2 Time is of the essence. This Agreement replaces and supersedes the BLM August 22, 2014 Decision as of the effective date of this Agreement, which is the date on which this Agreement is approved by the US DOI Office of Hearings and Appeals, as provided for in Section 14.1. If this Agreement is not approved within 15-days of submission of the Joint Motion, this Agreement can be terminated at the option of any party by filing a Motion to Withdraw the Joint Motion filed under Section 13.3.

14.3 If the Agreement is not approved or is withdrawn under the provisions of this section, then the August 22, 2014, Decision shall remain in effect and Appellants may continue with their administrative appeals.

#### **Section 15. General Provisions**

15.1 This Agreement will be effective after the parties have signed this agreement and the signed Agreement is approved by the US DOI Office of Hearings and Appeals.

15.2. This Agreement will remain in effect until August 1, 2018 or until BLM's issuance of a Argenta Settlement Agreement Page 13

final fully processed permit decision for the Argenta Allotment – whichever is earlier -- when it will automatically terminate, unless already terminated in accordance with Section 13.3. See also Sections 3.8 and 10.6.

15.3. Should any proposed decision, as opposed to a final, *full force and effect*, decision be issued in accordance with 43 C.F.R. subpart 4160, as provided herein, and should any such proposed decision be timely protested, BLM commits to issuing a final decision within 15-days of receipt of any protest as set forth in Sections 7 and 9.

15.4 Nothing in this Agreement shall be interpreted as precluding any parties' right to appeal any final decision issued by BLM in accordance with 43 C.F.R. subpart 4160.

15.5 Nothing herein shall constitute, nor be deemed to constitute, an obligation for the expenditure of funds in advance of Congressional appropriations by the Bureau of Land Management. This Agreement is subject to, and intended to be consistent with, all applicable federal laws and regulations.

15.6 Nothing in this Agreement shall be construed as an abrogation of the BLM's statutory and regulatory responsibilities or as waiving any Party's obligations to comply with federal law and regulation.

15.7 Nothing in this Agreement shall be construed as an abrogation or waiver of Parties statutory and regulatory rights and responsibilities.

15.8 Each Party is responsible for its own attorney's costs and/or other expenses for the above-referenced administrative appeals, as well as for any costs incurred by a Party in the implementation of this Agreement.

15.9 This Agreement applies to the Parties and their successors-in-interest, agents, and assignees.

15.10 The covenants the Parties have undertaken in this Agreement do not create any rights for the benefit of any person or entity who is not a Party.

15.11 The undersigned representatives of the Parties certify that they are authorized by the Parties they represent to execute this Agreement.

## **Section 16 Amendment**

This Agreement may be amended only with the written consent of all Parties.

## **Section 17 Execution**

This Agreement may be executed in several counterparts, all of which shall, upon execution and delivery of identical counterparts by all Parties, comprise a single agreement. Counterpart signatures may be exchanged by electronic means and shall be deemed delivered when received by the Party.

**JULIAN TOMERA RANCHES, INC., BATTLE MOUNTAIN DIVISION**

By \_\_\_\_\_  
Pete Tomera, authorized representative

\_\_\_\_\_ Date

**CHIARA RANCH, DANIEL E. & EDDYANN U. FILIPPINI**

By \_\_\_\_\_  
Daniel E. or Eddyann U. Filippini, authorize representative

\_\_\_\_\_ Date

**HENRY FILIPPINI, JR.,**

By \_\_\_\_\_  
Henry Filippini, Jr., for

\_\_\_\_\_ Date

**JOHN C. CARPENTER**

By \_\_\_\_\_  
John C. Carpenter

\_\_\_\_\_  
Date

**BUREAU OF LAND MANAGEMENT**

By \_\_\_\_\_  
Jon Sherve  
Acting Field Manager  
Mount Lewis Field Office, Battle Mountain District, Nevada

\_\_\_\_\_  
Date



**Appendix 1 Use Area End of Season Assessment Process  
Flow Chart Questions & Resulting Actions, Interim  
Management Period (IMP)**

#1 Was grazing management strategy implemented as agreed and were end of season use levels met (grazing use criteria)?

yes

No

#3 Continue Current Management YR2

#2 (Assign cause & significance) CMG completes annual review process (see agreement definitions) for failed use areas by Dec. 31.

**Question:** Is failure the result of a design problem or changed condition within the control of the permittee and/or will impacts hinder improvement of resource conditions?

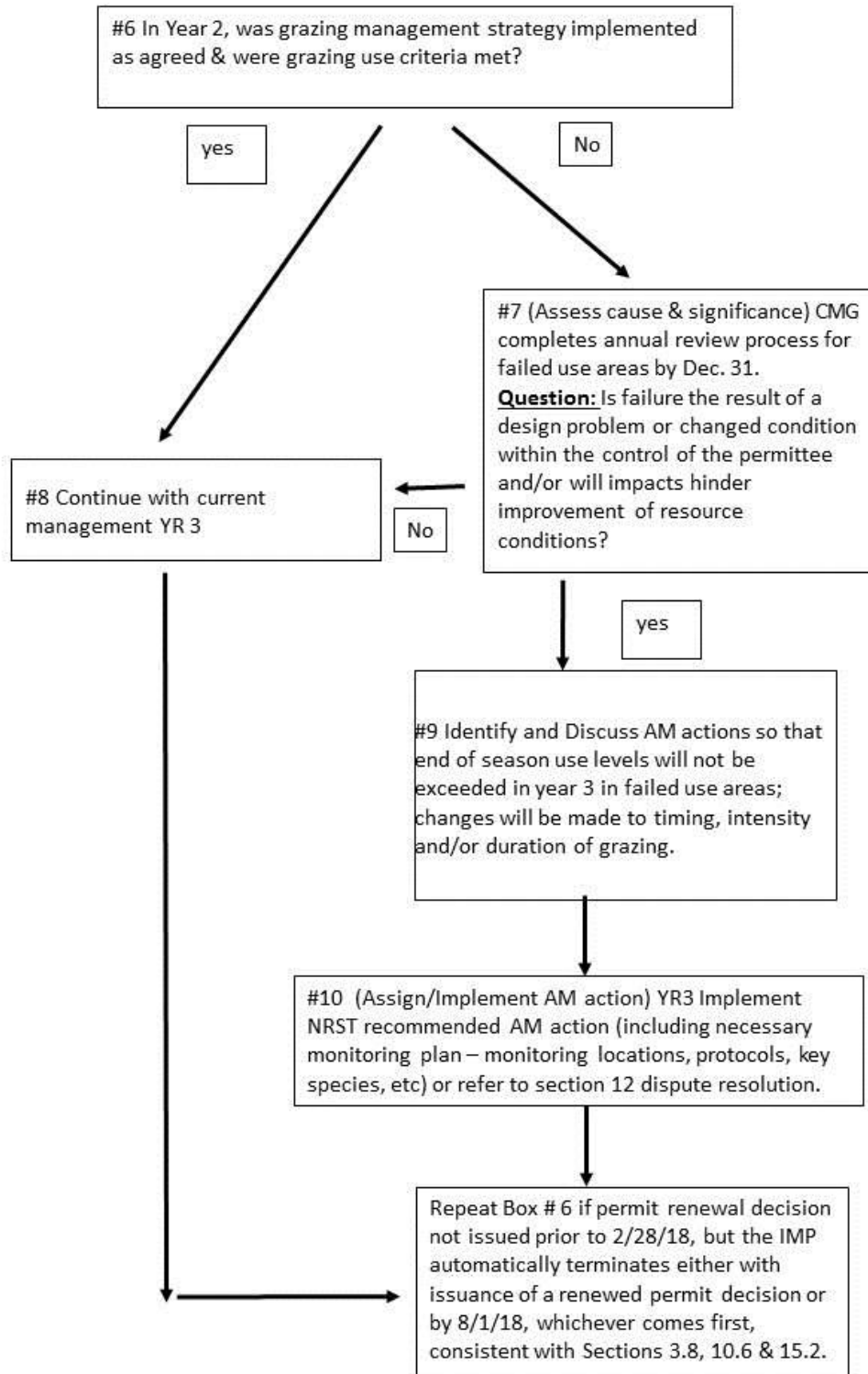
No

yes

#4 Identify and Discuss Adaptive Management [AM] Actions so that end of season use levels will not be exceeded in year 2 in failed use areas; changes will be made to timing, intensity and/or duration of grazing.

#5 (Assign/Implement AM action) YR2 Implement NRST proposed AM action (including necessary monitoring plan – monitoring locations, protocols, key species, etc) or refer to section 12 dispute resolution.

#6 In Year 2, was grazing management strategy implemented as agreed & were grazing use criteria met?



## Appendix 2 - Stockmanship Plan

### Appendix 2.1 Argenta Allotment 2015 Interim Grazing Plan for “Summer Use” Areas

#### Overview:

The 2015 grazing plan is an interim plan. The 2015 plan must rely on limited herd moves because of limited water capacity in centralized locations. Until additional water can be developed, rotating dispersed smaller groups of cattle around existing waters and some additional water haul locations using low moisture block supplements and placement of livestock on uplands is the only practical and economically feasible alternative.

Electric fence may be used to defer grazing from sensitive areas, control drift, or provide timely implementation where permanent fence may be considered. Additional permanent enclosures are proposed. These may be constructed as temporary enclosures to speed up implementation. It is the Permittees’ information that Barrick Gold currently has fence materials on hand to complete the Carico Lake/Argenta boundary fence, and is awaiting permission from BLM to install it.

Permittees have agreed to maintain individual use areas and the responsibility for livestock control that individual use areas entail.

General grazing strategies for 2015 include:

#### Dan and EddyAnn Fillipini

Dan and EddyAnn Fillipini will graze 200 cattle in Harry Canyon and Mill Creek use areas. For 2015, use would start at the upper reaches of these areas and move down slope using livestock placement and supplement placement.

A small enclosure on a wet meadow at the head of Mill Creek is required and a range improvement project for additional fencing on Mill Creek has been submitted. BLM commits to assessing these projects during the 2015 grazing season and issuing a decision relative to such projects.

#### Tomera Ranches

Tomera Ranches will start with a smaller and larger herd that will be combined early to mid-season.

*A smaller herd of 450 cattle* will begin with approximately 200 in North Fork Mill Creek, and moved to Trout Creek, then moved to Ferris Creek or Indian Creek. Approximately 100 head will be put up the FAA road into Crippen Canyon and Horse Canyon, then moved to Lewis. Approximately 150 head in the spring range will be put above the fence into Lewis. This smaller herd will join the larger herd in the “late use area” in Maysville

South, Indian, and Corral Canyon.

*A larger herd of 1350 cattle* will begin in Maysville North (Hilltop Canyon) and parts of Lewis. The gates to Bateman Canyon will be closed; Bateman and Slaven Canyon will not be used during this period.

Approximately 750 cattle will begin grazing June 1 (or earlier if permissible), and an additional 600 head will begin grazing approximately July 1<sup>1</sup>.

These combined use areas constitute an “early use area” for 2015. Multiple groups of cattle will be moved daily from water sources to low moisture block supplement sites in the uplands and placed using stockmanship techniques.

*The entire herd* will then enter a “late use area” consisting of Maysville South, Indian Creek, and Corral Canyon areas, and Bateman-Slaven Canyons.

When coming out of the “early use area”, approximately 600 head will be moved to Bateman-Slaven, and the remainder to Ferris, Indian, and Corral Canyon areas.

Tomera will use livestock placement and supplement placement to affect distribution of livestock.

Riparian range improvement projects (fencing) have been applied for. Additional small exclosures should be constructed around wet meadows. BLM commits to assessing these projects during the 2015 grazing season and issuing a decision relative to such projects (granting, denying, modifying). Additional allotment boundary fence is needed on the southern portion of the allotment between Argenta and Carico Lake Allotments. BLM commits to assessing this project during the 2015 grazing season and issuing a decision relative to such project (granting, denying, modifying).

Suitable/Accessible Potential Supplement Sites exist:

- a. Northeast of Indian Creek, in Sections 9, 14, 15, 22, 23, T29N R46E;
- b. Between Grouse Creek and Indian Creek, in Sections 7, 8, 17, 18, T29N R46E
- c. Between Chicken Creek and Grouse Creek, in Section 20, T29N R46E;
- d. South of Chicken Creek, in Section 28, T29N R46E;
- e. Northeast of Ferris Creek, in Section 4, T28N R46E and Sections 29, 32, 33, T29N R46E;
- f. Southwest of Ferris Creek, in Sections 6, 7, 8, T28N R46E and Section 31, T29N R46E;

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<sup>1</sup> Deferment of 600 head until July 1 depends upon approval by BLM of Tomera’s application to continue use in the Mule Canyon Use Area, where these cattle are at present.

- g. East and south of water haul sites, in Section 14, T30N R45E;
- h. South of water haul sites, in Sections 22, 27, T30N R45E;
- i. Southwest and east of water sources, in Sections 28, 33, T30N R45E;
- j. Between Lewis Canyon and Horse Canyon, in Section 35, T30N R45E and Sections 2, 3, T29N R45E;
- k. Between Horse Canyon and Crippen Canyon, in Sections 9, 15, T29N R45E
- l. Southeast and east of water sources, in Sections 7, 18, T30N R47E and Sections 12, 13, T30N R46E;
- m. Between Slaven Canyon and Crum/Bateman Canyon, on a ridge system in Sections 11, 14, 15, 22, 23, T30N R46E;
- n. Between Slaven Canyon and Bateman Canyon, in Sections 23, 27, T30N R46E;
- o. North of The Park and Corral Creek, in Sections 25, 26, 35, 36, T30N R46E and Section 2, T29N R46E;
- p. West of Crum Canyon, in Sections 28, 29, T30N R46E;
- q. North of East Fork, Crum Canyon in Sections 2, 3, 4, T29N R46E;
- r. North of Trout Creek, in Sections 13, 14, 23, 24, T29N R45E;
- s. Between Trout Creek and Mill Creek, in Sections 25, 36, T29N R45E and Section 31, T30N R46E;
- t. North of North Fork Mill Creek, in Sections 32, 33, 34, 35, T29N R45E;
- u. East and south of North Fork Mill Creek, in Section 31, T30N R46E, in Section 36, T29N R45E, and in Sections 1, 2, T28N R45E;

Tomera will place LMST on some or all of the above noted locations, and perhaps other sites not identified above, but found during the course of the season. This placement may be done in a rotational style or in a dispersed manner, depending on the canyon and respective water sources.

Henry Filippini Jr. (Shawn and Angie Mariluch):

Shawn and Angie Mariluch will rotate a maximum of 450 cattle<sup>2</sup> through the Sansinena use area, through Fire Creek use area, and through Whirlwind Valley and Horse Heaven using livestock placement and supplement placement.

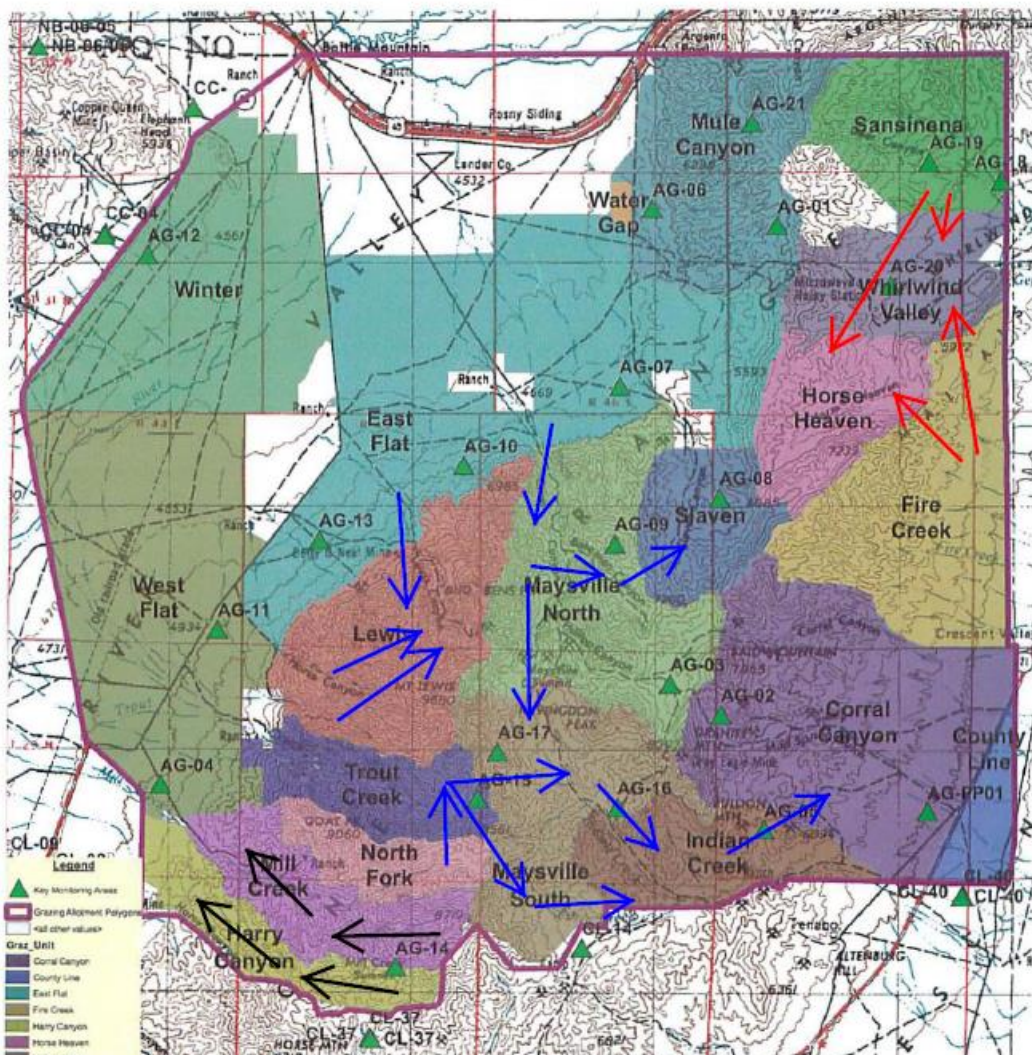
Cattle have already been rotated through the Sansinena Use Area, from March 15, 2015 through April 30, 2015; this period of use should permit nearly complete regrowth of key forage species because it avoided the critical growth period of the species.

Depending upon the results of monitoring, Mariluch may also wish to request cool season fall use in this area in fall, 2015.

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<sup>2</sup> This will include approximately 252 head leased to Julian Tomera Ranches, Inc., in cooperation with Tomera's management in the same rotation as described.

## ARGENTA USE AREAS



### Appendix 2.2

Plans for Years 2016 and 2017 will include a generalized ‘map’ of where and how livestock will move across the various Use Areas will be developed each year and used to guide Permittee operations. The map or plan will outline general use dates, livestock numbers, planned movement, and ways to mitigate drift or other potential problems. It should also describe how movement will be affected if additional water hauls/developments are approved.

The annual Stockmanship Plans are intended to allow for adaptability and flexibility to respond to unexpected or changed conditions during rotation. Timing, intensity, and duration of grazing within Use Areas will be managed to limit the number of times individual forage plants are defoliated (grazed), Moving supplement tub locations throughout the grazing period will result in increased uniform grazing across the entire unit and reduce the incidences of repeated grazing on key plant species within the growing season. Supplement locations will be at least 1/4 mile from riparian areas, springs, and meadows.

### **Appendix 3 - Argenta Allotment Use Areas**

1. Corral Canyon
2. County Line
3. East Flat
4. Fire Creek
5. Harry Canyon
6. Horse Haven
7. Indian Creek
8. Lewis
9. Maysville North
10. Maysville South
11. Mill Creek
12. North Fork
13. Sansinena
14. Slaven
15. Trout Creek
16. Water Gap
17. West Flat
18. Whirlwind Valley
19. Winter

## **Appendix 4 - Means of Providing Notice**

[names and contact data]