

**UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
COLORADO STATE OFFICE  
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In Reply Refer To:  
4130 (CO-930) P

July 19, 2012

EMS TRANSMISSION 07/19/2012  
Instruction Memorandum No. CO-2012-031  
Expires: 09/30/2013

To: District and Field Managers  
Attn: Colorado Rangeland Program Leaders, Cultural Program Leaders, and  
NEPA Program Leaders

From: State Director

Subject: Processing Livestock Crossing Permit Applications

**Program Area:** Rangeland Management

**Purpose:** The purpose of this Instruction Memorandum (IM) is to provide guidance concerning the issuance of livestock crossing permits resulting from applications to trail across public lands from current livestock grazing permittees/lessees and non permittees/lessees. This management guidance establishes a consistent approach to the review and issuance of livestock crossing permits based on Grazing Regulations (43 CFR 4100), the National Environmental Policy Act (NEPA) 42 U.S.C. 4321 et seq.), National Historic Preservation Act, as amended (NHPA) 16 U.S. C. 470 et seq.), and the Endangered Species Act of 1973 (ESA) 16 U.S.C. 1531-1534 et seq.).

The following guidance is the prescribed approach for livestock grazing decisions addressing livestock crossing public lands issued throughout the Bureau of Land Management (BLM) in Colorado.

**Policy/Action:** Follow the guidance in the grazing regulations (43 CFR 4100); WO IM 2012-096; the BLM NEPA Handbook (H-1790-1); Colorado IM No. CO-2012-002 – Processing Livestock Grazing Permit Applications; 36 CFR 800, BLM Manual 8100, and the Colorado Protocol (1998) as clarified in this memorandum.

The following approach is how BLM Colorado will address the review and issuance of livestock crossing permits prior to the 2013 trailing period:

1. Since the BLM does not control and are not responsible for public activities which occur on Colorado State and County roadways, it is not appropriate for the BLM to issue crossing permits for those livestock trailing activities that occur solely on State and County roadways and on private lands. As with all other non-permitted uses on public lands, livestock trailing activities which occur on State Highways and/or county roads that cause adverse impacts to adjacent BLM administered land will be considered unauthorized use and addressed appropriately.
2. Complete appropriate level of NEPA review. When considering a livestock crossing permit application independently from a grazing term permit renewal, considered effort needs to be made to develop a narrow purpose and need which focuses on the specific requested action of trailing livestock across BLM administrated lands on defined routes. By thoughtfully crafting a focused purpose and need; describing the proposed action that specifically addresses the purpose and need; and maintaining focus on relevant issues, the associated workload may be significantly reduced. Field offices should coordinate with the district office NEPA Coordinator to determine the appropriate course of action to complete the necessary level of analysis and ensure compliance with existing laws such as ESA and NHPA.
3. Each field office/district should consider combining multiple trailing routes in a single Environmental Assessment (EA) where appropriate, to increase the efficiency of analysis and review, and reduce the associated workload of completing individual EAs. Also, analyze the proposed trailing route for multiple years to coincide with the next term grazing permit renewal review for that area or operator requesting trailing.
4. Permits authorizing livestock trailing through sage grouse habitat will incorporate conservation measures outlined in WO IM No. 2012-043; Greater Sage-Grouse Interim Management Policies and Procedures, recognizing these conservation measures in some cases may also apply to the Gunnison Sage-Grouse as well. For the Gunnison Sage-Grouse the Range-wide Conservation Plan (RCP) may be used as well.
5. Each field office will treat livestock trailing as a Section 106 undertaking and will consult with the Colorado State Historic Preservation Office (SHPO) following the Colorado Protocol (1998). Tribal consultation may be required for cultural resources that have cultural and religious importance to Indian Tribes. The Area of Potential Effects (APE) will include BLM surface and immediately adjoining nonfederal surface near enter/exit points on BLM surface. The permitted corridor will define the width of the trailing APE. Ancillary developments (e.g. watering locations, overnight bedding, and corrals) must be part of the APE. A Class II inventory method can be used taking into account such factors as cultural resource site sensitivity, natural conditions, number and type of livestock, duration of trailing, and how long the trail has been in use. Mitigation and treatment measures will be developed and implemented for adverse effects to eligible and potentially eligible cultural resources in consultation with the SHPO and Tribes. If the Section 106 compliance work can't be completed by next spring, 2013, a Programmatic

Agreement will be required to phase the work. The Colorado State Office will assist field offices and help achieve consistency statewide.

6. As with the EA, develop multi-year grazing proposed decisions (the multi-year grazing decisions which respond to current permittees/lessees crossing applications, should be for the length of time remaining on their existing grazing term permit/lease) for which future trailing permit applications can be based on to reduce future workload and be more responsive to the short timeframe inherently associated with trailing applications. For fiscal years 2012 and 2013, Section 123 within the Consolidated Appropriations Act, 2012 (Public Law 112-74) removes the application of the protest and administrative appeals process of 43 CFR Subpart 4160 from the issuance of crossing permits, but does not preclude notification to affected permittees or the interested public of the issuance of a crossing permit as a decision.
7. In the long term, offices should plan to address and analyze trailing in the EA analyzing a grazing term permit renewal of an allotment or group of allotments and included in the decision issuing the new grazing permit. Where appropriate, grazing term permit renewal EAs should also address trailing activities across BLM allotments by non-permittees. Although this trailing activity would be analyzed in the grazing term permit renewal EA for those allotments, a separate grazing decision is issued to the non-permittee. Those situations where non-permittees request trailing across BLM lands that are not within grazing allotments should be handled separately.

**Timeframe:** This IM is effective upon receipt.

**Budget Impact:** None.

**Background:** In accordance with 43 CFR 4130.6-3, the BLM may issue a crossing permit to any applicant showing a need to cross the public land or other land under BLM control with livestock. The issuances of crossing permits were recently appealed. The appellant argued that the BLM violated 43 CFR 4160 which requires public notification and an opportunity for protest and appeal by any person whose interest is adversely affected by a final decision. Two rulings by both the Interior Board of Land Appeals (IBLA) and Office of Hearings and Appeals (OHA) have affirmed that the issuance of a crossing permit is subject to the provisions of 43 CFR 4160 and BLM must notify interested publics of decisions to authorize trailing and afford the opportunity to participate in the decision process through protest and appeal procedures. Historically, the BLM has considered the impacts of trailing as short term, low impact, and a low priority for review as compared to the processing and issuance of grazing permits and collection of monitoring data.

Past practices for issuing livestock crossing permits by field offices in Colorado have been inconsistent and have not always followed established regulations and policies placing the BLM at a higher risk of litigation. The application of NEPA with regards to livestock crossing applications also has not been consistently applied across all field offices. Some Crossing applications have not been thoroughly reviewed which has led to the issuance of crossing permits without an adequate "hard look" at the potential impacts to the resources affected. Some

crossing permits have been issued without adequate consultation, coordination or cooperation with affected permittees/lessees, affected interests or interested publics.

**Directives Affected:** H-1790-1, National Environmental Policy Handbook (01/30/2008), Chapter 8, with respect to grazing permit decisions only. 43CFR 4100, Range Management.

**Coordination:** This policy was coordinated with the Deputy State Director, Resources and Fire Management (CO-930), the Branch Chief of Natural Resources (CO-932), Branch Chief for Planning/NEPA, and the Branch Chief of Social and Cultural Resources (CO-931).

**Contact:** If there are any questions regarding this IM, please contact David Sjaastad, Rangeland Management Specialist, at (303) 239-3717; or Bruce Rittenhouse, Branch Chief, Branch of Natural Resources at (303) 239-3804.

Signed by:  
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