



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Safford Field Office
711 South 14th Avenue, Suite A
Safford, Arizona 85546-3335
www.blm.gov/az/

July 24, 2014

In Reply Refer To:
4130/4180 (G010)

CERTIFIED MAIL – RETURN RECEIPT REQUESTED NO. 6532 7025

N Rail Cattle CO. LLC
P.O. BOX 625
Duncan, Arizona 85534

FINAL DECISION

Dear N Rail Cattle CO. LLC:

INTRODUCTION

The Bureau of Land Management (BLM) issued revised grazing regulations in 1995, which set forth the process of establishing Standards for Rangeland Health (Title 43 Code of Federal Regulations [CFR] 4180.2). The purpose for setting standards and identifying their indicators was to provide BLM with a rational basis for determining whether current management is meeting the Fundamentals of Rangeland Health as described under 43 CFR 4180.1.

Arizona Standards and Guidelines (S&G) for grazing administration have been developed through a collaborative process involving the Bureau of Land Management State S&G Team and the Arizona Resource Advisory Council. Together, through meetings, conference calls, correspondence, and Open Houses with the public, the BLM State Team and RAC prepared Standards and Guidelines to address the minimum requirements outlined in the grazing regulations. These S&G evaluations were conducted using interdisciplinary teams (IDTs) with various resource specialists, representing the biological and physical science disciplines. The IDTs collected, reviewed and analyzed the available data for the purpose of completing range health evaluations.

This document addresses the issuance or renewal of your grazing permit. A final decision is required by the Code of Federal Regulations (CFR) 4100 to be served on any affected applicant, permittee or lessee who is affected by the actions, terms, conditions, or modifications relating to issuance of a grazing permit.

BACKGROUND

The Bureau of Land Management grazing permit for the Ash Peak Allotment expired on 02/28/2005 and is currently authorized under a temporary permit renewed under Public Law 108-108, Section 325. The temporary permit will expire on 02/28/2015. Under Public Law 108-108, Section 325, permit renewals were meant to be temporary pending the completion of the formal permit renewal process, which includes completing rangeland health assessments, evaluating current livestock practices, and determining range health and compliance with the National Environmental Policy Act (NEPA).

The Rangeland Health field evaluation for the Ash Peak Allotment was completed in 2008 and 2013; and a preliminary determination on the results of the assessment was made September 11, 2012. The final determination documented concluded that all key areas are meeting standards of 43 Code of Federal Regulations (CFR) 4180 and all Standards and Guidelines found in the *Fundamentals of Rangeland Health and Standards for Rangeland Health and Arizona Standards for Rangeland Health and Guidelines for Grazing Administration (1997)*.

The current grazing permit for Ash Peak (#51050) allotment expired on 02/28/2005 and you, the permittee for this allotment, have requested a renewal. An Interdisciplinary team completed Environmental Assessment #DOI- DOI-BLM-AZ-G010-2013-0019-EA for this final permit renewal. The proposed decision was sent out August 29, 2013 and protests were received. These protests have been responded to in the attached table.

FINAL DECISION

In accordance with 43 Code of Federal Regulations 4130.2, and based upon the allotment evaluation, consultation with affected permittee, interested publics, and recommendations from the Interdisciplinary Assessment Team, our final decision is to offer the grazing permit for the Ash Peak Allotment for a period of 10 years with the terms and conditions identified in the Proposed Action of the EA, and listed below in Table 1, which will become effective upon acceptance of the permit. Your grazing permit shall be for a period of ten years and will reflect the mandatory terms and conditions.

Ash Peak incorporates the Santa Rita grazing system, using a three pasture rotation (see EA for details).

Table 1. Mandatory terms and conditions for the Ash Peak Allotment.

Allotment	Livestock number	Kind	Grazing Period		Type %PL	Use	AUMS
			Begin	End			
51050	92	Cattle	03/01	02/28	87	Active	960

As a term and condition of this permit, you are required to do the following:

- The permittee is required to submit a report of the actual grazing use made on this allotment for the previous grazing period, March 1 to February 28. Failure to submit such a report by March 15 of the current year may result in suspension or cancellation of the grazing permit.
- This permit is subject to future modification as necessary to achieve compliance with the standards and guidelines (43 CFR 4180).
- In order to improve livestock distribution on the public lands, all salt blocks and/or mineral supplements shall not be placed within a ¼ mile of any riparian area, wet meadow or watering facility (either permanent or temporary) unless stipulated through a written agreement or decision in accordance with 43 CFR 4130.3-2c.
- Permittees are required to maintain all range projects for which they have maintenance responsibilities.
- All troughs will be outfitted with wildlife escape structures to provide a means of escape for animals that fall in while attempting to drink or bathe.
- If in connection with allotment operations under this authorization, any human remains, funerary objects, sacred objects or objects of cultural patrimony as defined in the Native American Graves Protection and Repatriation Act (P.L. 101-601; 104 Stat. 3048; 25 U.S.C. 3001) are discovered, the permittee shall stop operations in the immediate area of the discovery, protect the remains and objects, and immediately notify the Authorized Officer of the discovery. The permittee shall continue to protect the immediate area of the discovery until notified by the Authorized Officer that operations may resume.
- This permit is subject to all terms and conditions found on the back side of the permit.

RATIONALE

The actions in this Final Decision respond to the Purpose and Need explained in DOI-BLM-AZ-G010-2013-0019-EA to keep the current grazing rotation schedule in order to maintain rangeland health. Furthermore, the renewal conforms to the applicable land use plan and the NEPA documentation fully analyses the proposed action and alternatives and constitutes BLM's compliance with the requirements of NEPA.

FINDING OF NO SIGNIFICANT IMPACT (FONSI)

A finding of no significant impact (FONSI) was signed on August 30, 2013, and concluded that the decision to implement the selected action, is not a major federal action that will have a significant effect on the quality of the human environment, individually or cumulatively with other actions in the general area. That finding was based on the context and intensity of impacts organized around the 10 significance criteria described at 40 CFR § 1508.27. Therefore, an

environmental impact statement is not required. A copy of that FONSI was sent with the proposed decision. The EA and FONSI are also available on-line here: <http://bit.ly/AshPeakEA>

AUTHORITY

My authority for this decision is found in statutory and regulatory authorities contained in the Taylor Grazing Act as amended, the Federal Land Policy and Management Act of 1976, as amended, and Title 43 of the Code of Federal Regulations (CFR), Part 4100 (Grazing Administration-exclusive of Alaska), including but not limited to the following sections:

§4100.0-2 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 45 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 Management Act of 1976 (43 U.S.C. 1740).

§ 4100.0-8 The authorized officer shall manage livestock grazing on public lands under the principle of multiple use and sustained yield, and in accordance with applicable land use plans...Livestock grazing activities and management actions approved by the authorized officer shall be in conformance with the land use plan as defined at 43 CFR 1601.0-5(b).

§4110.3 The authorized officer shall periodically review the permitted use specified in a grazing permit or grazing lease and shall make changes in the permitted use as needed to manage, maintain or improve rangeland productivity, to assist in restoring ecosystems to properly functioning condition, to conform with land use plans or activity plans, or to comply with the provisions of subpart 4180 of this part. These changes must be supported by monitoring, field observations, ecological site inventory or other data acceptable to the authorized officer.

§4110.3-2(b) When monitoring or field observations show grazing use or patterns of use are not consistent with the provisions of subpart 4180, or grazing use is otherwise causing an unacceptable level or pattern of utilization or, when use exceeds the livestock carrying capacity as determined through monitoring, ecological site inventory or other acceptable methods, the authorized officer shall reduce permitted grazing use or otherwise modify management practices.

§4110.3-3(a) After consultation, cooperation, and coordination with the affected permittee or lessee, the State having lands or managing resources within the area, and the interested public, reductions of permitted use shall be implemented through a documented agreement or by decision of the authorized officer. Decisions implementing §§4110.3-2 shall be issued as proposed decisions pursuant to 4160.1 of this part, except as provided in paragraph (b) of this section.

§ 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 §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) The authorized officer will review proposed range improvement projects as required by the National Environmental Policy Act of 1969 (42 U.S.C. 4371 et seq.). The decision document following the environmental analysis will be issued in accordance with § 4160.1.

§ 4120.3-2 Cooperative range improvement agreements.

- (a) The Bureau of Land Management may enter into a cooperative range improvement agreement with a person, organization, or other government entity for the installation, use, maintenance, and/or modification of permanent range improvements or rangeland developments to achieve management or resource condition objectives. The cooperative range improvement agreement shall specify how the costs or labor, or both, shall be divided between the United States and cooperator(s).
- (b) Subject to valid existing rights, title to permanent range improvements such as fences, wells, and pipelines where authorization is granted after August 21, 1995 shall be in the name of the United States. The authorization for all new permanent water developments such as spring developments, wells, reservoirs, stock tanks, and pipelines will be through cooperative range improvement agreements. The authorized officer will document a permittee's or lessee's interest in contributed funds, labor, and materials to ensure proper credit for the purposes of §§4120.3–5 and 4120.3–6(c).
- (c) The United States will have title to nonstructural range improvements such as seeding, spraying, and chaining.
- (d) Range improvement work performed by a cooperator or permittee on the public lands or lands administered by the Bureau of Land Management does not confer the exclusive right to use the improvement or the land affected by the range improvement work.

§ 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.

§4130.2(b) The authorized officer shall consult, cooperate and coordinate with affected permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public prior to the issuance or renewal of grazing permits and leases.

§4130.3 Livestock grazing permits and leases shall contain terms and conditions determined by the authorized officer to be appropriate to achieve the 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.

§4130.3-1(a) The authorized officer shall specify the kind and number of livestock, the period(s) of use, the allotment(s) to be used, and the amount of use in animal unit months, for every grazing permit or lease. The authorized livestock grazing use shall not exceed the livestock carrying capacity of the allotment.”

§4130.3-1(c) Permits and leases shall incorporate terms and conditions that ensure conformance with subpart 4180 of this part.

§4130.3-2 The authorized officer may specify in grazing permits or leases other terms and conditions which will assist in achieving management objectives provide for proper range management or assist in the orderly administration of the public rangelands. These may include but are not limited to: ... (d) A requirement that permittees or lessees operating under a grazing permit or lease submit within 15 days after completing their annual grazing use, or as otherwise specified in the permit or lease, the actual use made; ... (f) Provisions for livestock grazing temporarily to be delayed, discontinued or modified to allow for the reproduction, establishment, or restoration of vigor of plants ... of for the protection of other rangeland resources and values consistent with objectives of applicable land use plans,”

§4130.3-3 Following consultation, cooperation and coordination with the affected lessees or permittees, the State having lands or responsible for managing resources within the area, and the interested public, the authorized officer may modify terms and conditions of the permit or lease when the active grazing use or related management practices are not meeting the land use plan, allotment management plan or other activity plan, or management objectives, or is not in conformance with the provisions of subpart 4180 of this part. To the extent practical, the authorized officer shall provide to affected permittees or lessees, States having lands or responsibility for managing resources within the affected area, and the interested public an opportunity to review, comment and give input during the preparation of reports that evaluate monitoring and other data that are used as a basis for making decisions to increase or decrease grazing use, or to change the terms and conditions of a permit or lease.

§4160.2 “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.”

§4180.2(c) The authorized officer shall take appropriate action as soon as practicable, but not later than the start of the next grazing year upon determining that existing grazing practices or

levels of grazing use on public lands are significant factors in failing to achieve the standards and conform to the guidelines that are made effective under this section. Appropriate action means implementing actions pursuant to 4110, 4120, 4130, and 4160 that will result in significant progress toward fulfillment of the standards and significant progress toward conformance with guidelines...”

RIGHT OF PROTEST AND/OR APPEAL

Any applicant, permittee, lessee or other person whose interest is adversely affected by the final decision may file an appeal of 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 filing an appeal and petition for a stay of the decision pending final determination on appeal, as provided in 43 CFR § 4.470 and 43 CFR § 4160.4. An appellant may also file a petition for stay of the decision pending final determination on appeal. The appeal and petition for stay must be filed in the office of the authorized officer, as noted above, within 30 days following receipt of the final decision, or within 30 days after the date the proposed decision becomes final.

The appeal must be in writing and shall state the reasons, clearly and concisely, why the appellant thinks the final decision is in error and also must comply with the provisions of 43 CFR 4.470. Any appeal should be submitted in writing to:

Scott C. Cooke
Field Manager
711 South 14th Ave
Safford, Arizona 85546-3321

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 (b) (1) must show sufficient justification based on the following:

- (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.

As noted above, the petition for stay must be filed in the office of the authorized officer and additionally to:

- (1) All other parties named in the cc section of this Decision; and
- (2) The appropriate Office of the Solicitor as follows, in accordance with 43CFR § 4.413(a) and (c):

US Department of Interior
Office of the Field Solicitor
Sandra Day O'Connor U.S. Courthouse
401 W. Washington St. SPC 44 Suite 404
Phoenix, Arizona 85003-2151

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 Solicitor in accordance with Sec 4.413 (a) and (c), and any other person named in the decision.

Sincerely,

/s/ Scott C. Cooke

Scott C. Cooke
Field Manager

Attachment:
Protest Responses

cc:

Western Watersheds Project
c/o Greta Anderson and Erik Ryberg
738 North 5th Avenue, Suite 200
Tucson, Arizona 85702

Habitat Program Manager
c/o John Windes
Arizona Game and Fish Department
555 North Greasewood Road
Tucson, Arizona 85745

Arizona State Land Department
c/o Stephen Williams
1616 West Adams
Phoenix, Arizona 85007

Arizona Cattle Growers
1401 North 24th Street, Suite 4
Phoenix, Arizona 85008

Larry Humphrey
P. O. Box 894
Pima, Arizona 85543