



United States Department of the Interior
BUREAU OF LAND MANAGEMENT
Bruneau Field Office
3948 Development Avenue
Boise, Idaho 83705



In Reply Refer To:
4160 (ID-020)

May 15, 2014

CERTIFIED MAIL – 7011 2970 0002 6310 5947 - RETURN RECEIPT REQUESTED

Gilbert King
19100 King Lane
Murphy, Idaho 83650

Notice of Field Manager's Final Decision Effective Upon Issuance

Dear Mr. King:

Introduction

This Final Decision addresses authorization of three temporary water haul sites in Pasture 12 of the East Castle Creek Allotment #00893 in response to on-going drought conditions in the area. This Final Decision also addresses authorization of a temporary electric fence to prevent livestock grazing in the portion of Pasture 12 burned by the 2013 Shoofly Fire.

Background

2014 Livestock Grazing Management

On March 25, 2014, you submitted a modified application for 2014 grazing use in response to my request for a 20-30% reduction in permitted use in response to ongoing drought conditions, annual indicator criteria that were unmet, and the Shoofly Fire. Your modified application incorporated by reference the attachments to your January 24, 2013, application and your January 30, 2013, amendment. I approved your application on April 1, subject to the additional adjustments discussed with you on March 31.

This Final Decision addresses only additional measures that are necessary in Pasture 12 to complement grazing management that is incorporated into your approved grazing application for 2014. The following mandatory terms and conditions for use in Pasture 12 of the East Castle Creek Allotment are currently in effect under your paid grazing bill:

Pasture	# of Livestock	Period of Use	% Public Land	Type of Use	Public Land AUMs
12	375	5/23 – 6/7	94%	Active	185

Per your 2014 application and referenced attachments, the grazing use described above will require conformance with the AICs, as described in the 2009 Stipulation to Dismiss Appeals (p. 6, 7, 12, and 13). Should monitoring data disclose that the indicator(s) have exceeded required

thresholds, BLM will further modify grazing use in accordance with the applicable regulations, including USDI-BLM IM No. ID-2005-074. Applicable AICs for grazing use in Pasture 12 are:

- *AIC#4*: Utilization of key upland grass species (bluebunch wheatgrass, Idaho fescue, Sandberg bluegrass, Thurber's needlegrass, needle-and-thread, ricegrass) does not exceed an average of 50% (pasture 11B, 12, 28, 28A, 29A, 29B), as measured at key areas.
- *AIC#6*: Utilization by livestock of woody species (including young willows) on Poison, Birch, and West Shoofly Creeks will not exceed an average of light use of current year's annual production at key areas according to *Monitoring Stream Channels and Riparian Vegetation – Multiple Indicators* (Idaho BLM Technical Bulletin [TB] 07-01))
- *AIC#7*: A minimum pasture average of 4 inches of stubble height will remain on Poison, Birch, and West Shoofly Creeks, on the greenline at key areas. This applies to herbaceous-dominated or potentially herbaceous-dominated reaches of stream. This does not apply to water-gap areas. Streambank alteration attributable to livestock grazing is a pasture average of 10% or less based on MIM monitoring methods at key areas.
- *AIC#8*: Bacteria in Battle Creek and Poison Creeks will not exceed the State of Idaho Water Quality Standards . . . BLM agrees to use state protocol for determining water quality.

During 2013, AICs were also mandatory based upon your approved 2013 grazing application. A recent review of monitoring data collected during 2013 indicated that both the stubble height and streambank alteration portions of AIC #7 were not met in Pasture 12. Your 2014 application and subsequent modifications incorporated in your billing reflect your efforts to modify livestock use to meet applicable AICs in 2014 by reducing the number of cattle that will graze in Pasture 12 from 561 in 2013 to 375 in 2014.

Other provisions of your 2014 application and referenced attachments that are relevant to 2014 management of Pasture 12 include:

- Permittee will have 90 – 95% of the cattle removed from Pastures 11B and 12 on or before the 15th day of use, and will ride to thoroughly clean the remainder within the five-day flexibility period or shorter time if possible (i.e., the 5-day flexibility provision is not intended to “extend” the period of use for a significant portion of the herd in these pastures, but is instead intended to provide time to clean the pastures to the best of their abilities).
- Permittee will have riders in the drainages of Poison Creek in Pasture 12 and Birch Creek in Pasture 11B, weekly, from the end of scheduled grazing in those pastures [June 7] until the end of scheduled grazing for the summer pastures and/or private/Fenced Federal Range (FFR) pastures, whichever is later (i.e., until the cows leave the mountain) to address any inadvertent drift of permittee's cattle.

Drought Conditions in 2014

Winter and spring precipitation has been deficient in 2014 for the third year in a row, and any snowpack has already melted. While perennial grasses on slopes are green and would draw cattle onto uplands in Pasture 12 during the authorized use period, water in Poison Creek is not flowing continuously. Most of the channel is dry, and even the most reliable water sources, such as the pool immediately below Summit Springs Exclosure had no water or were drying up when inspected on March 24, 2014.

Where any water is currently present, cattle could break willows, trample, and paw the channel trying to get a drink. Where water is absent, cattle are more likely to stay in established crossings through woody plants when traveling to adjoining upland areas; the dry channel is also less vulnerable to trampling damage that would undermine conformance with AIC #7. A few upland springs may also have some water, but can only support a few head, and the headboxes are not fenced to prevent damage to the source. BLM is taking necessary measures to ensure compliance, including monitoring of riparian areas and frequent compliance inspections, but cannot offset the lack of livestock water by those means alone.

2013 Shoofly Fire

The Shoofly Fire burned 43 acres, all public land, in the southern (upper) end of Pasture 12 on August 22, 2013. The Bruneau Field Office Interdisciplinary Team evaluated the burned area following the fire and did not identify any issues that warranted Emergency Stabilization and Rehabilitation treatments. As a result, the burned area will undergo natural recovery, particularly if protected from grazing livestock this first season following the fire.

Categorical Exclusions for Authorization of Temporary Water Troughs and Temporary Electric Fencing in Pasture 12

As documented in Categorical Exclusion (CX) DOI-BLM-ID-B020-2014-0004-CX¹, authorizing three temporary water haul sites is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with 516 DM 11.9 D(2): Placement and use of temporary (not to exceed one month) portable corrals and water troughs, providing no new road construction is needed. The CX concluded that authorizing placement of and water hauling to temporary troughs at three locations on public land in Pasture 12 of the East Castle Creek Allotment conforms to the 1983 Bruneau Management Framework Plan and that this categorical exclusion is appropriate as none of the Departmental exceptions (extraordinary circumstances) apply.

As documented in CX DOI-BLM-ID-B020-2014-0005-CX², authorizing the temporary electric fence is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with 516 DM 11.9 J(9): Construction of small protective enclosures (including those to protect reservoirs and springs and those to protect small study areas). The CX concluded that authorizing the temporary electric fence around the Shoofly Fire in Pasture 12 of the East Castle Creek Allotment conforms to the 1983 Bruneau Management Framework Plan and that this categorical exclusion is appropriate as none of the Departmental exceptions (extraordinary circumstances) apply.

Final Decision Effective Upon Issuance

¹ Categorical Exclusion DOI-BLM-ID-B020-2014-0004-CX is available through https://www.blm.gov/epl-front-office/eplanning/nepa/nepa_register.do. Select State = **Idaho**, Office = **ID-Bruneau FO**, Document Type = **CX**, Fiscal Year = **2014**, Program = **All**, then click **Search**. Once there, click on the CX number. If you are unable to view the document on the website, you may request that a hard copy be sent to you.

² Categorical Exclusion DOI-BLM-ID-B020-2014-0005-CX can be accessed through the same means as described in the previous footnote.

My decision is to authorize you to place and haul water to temporary troughs at two locations along the Mud Flat Road right of way and at one location at a turnaround point along Lone Juniper Road within Pasture 12 of the East Castle Creek Allotment. Specific locations are displayed on the attached map. I am authorizing this action as follows:

- You are authorized to place up to six temporary troughs at each authorized location on or after May 21, 2014, either within the Mud Flat Road right of way or flat areas adjacent to the roads.
- You are authorized to haul water to the temporary troughs between May 21, 2014, and June 7, 2014.
- You must drain and remove all temporary troughs within 5 days after your authorized period of use in Pasture 12, or no later than June 12, 2014.
- You must place bird ladders in each temporary trough to allow escape of any animals that fall in.
- You are not authorized to conduct road construction or other ground-disturbing activities during placement or removal of the troughs.

In order to fully realize the benefits of water hauling, you will continue to use herding and salting to discourage loafing and shading of authorized cattle along Poison, Fall, and Lone Juniper Creeks and to disperse use into the surrounding uplands, in accordance with the 2009 Final Decisions and the 2009 Stipulation. BLM will continue to monitor compliance and AICs at established monitoring sites.

It is also my decision to authorize you to construct a 0.76-mile long temporary electric fence around the perimeter of the Shoofly Fire. The proposed fence location is displayed on the attached map. I am authorizing this action as follows:

- You will install the 0.76-mile long temporary electric fence prior to the scheduled Pasture 12 turnout date of May 23, 2014, in accordance with the following stipulations:
 - You will install the temporary electric fence in the location depicted on the map, which has been flagged on the ground; the fence will tie into existing fencing along the western border of the pasture.
 - The temporary electric fence will consist of 2 smooth wires with plastic insulators on standard metal T-posts with white tops, spaced approximately every 30 feet.
 - Wire spacing will be close enough (3") to complete a circuit with the body of any cattle contacting the wires, with the bottom wire generally more than 24" above the ground.
 - Flagging will be put on the 2 wires between posts to alert flying sage-grouse and other wildlife to the presence of the fence. Flagging or other markers on the top wire will be short enough to avoid contact with the ground wire.
- You must remove the temporary electric fence within 5 days after the authorized period of use, or no later than June 12, 2014.
- You are not authorized to conduct road construction or other ground-disturbing activities during installation or removal of the temporary electric fence.
- You will confine motorized travel to existing routes including the access route from Mud Flat Road; you are not authorized to use motorized vehicles for cross-country travel.
- The burned area within the temporary fence will be closed to livestock grazing to allow recovery of the burned area.

This decision is final and effective upon issuance in accordance with 43 CFR 4110.3-2(b), 4110.3-3(b), and 4160.3(f) and remains in effect for the 2014 grazing season.

Rationale

This final decision conforms to the Bruneau MFP, the Idaho Standards for Rangeland Health, the Guidelines for Livestock Grazing Management (1997), your existing grazing permits, and your 2014 applications for grazing use. This decision addresses additional measures needed to support the effectiveness of temporary adjustments in permitted use due to drought and fire in Pasture 12 of the East Castle Creek Allotment, which I have already approved. While my February 24, 2014, letter regarding drought provided for the possibility that moisture conditions would moderate in spring and summer, ongoing monitoring of the situation indicates that the approved adjustments continue to be necessary to protect public resources and that the additional measures in this decision are necessary to make those adjustments fully effective.

This final decision addresses the current lack of natural water sources in Pasture 12 due to ongoing drought conditions in the area as well as the need to rest the area burned in the 2013 Shoofly Fire from livestock grazing. This action is intended to 1) help discourage use of any springs that have water and the Hanging Meadows brood-rearing habitat at the upper end of the pasture, 2) prevent use of the area burned in the Shoofly Fire, 3) minimize cattle pressure on the electric fence protecting the Shoofly Fire burned area, and 4) promote compliance with riparian AICs for Poison Creek by shifting cattle watering to less sensitive sites during the May 23 through June 7, 2014, use period.

In considering overall impacts to public land resources both within and outside Pasture 12, the temporary hauling of water to 3 sites and the installation of the electric fence were deemed to be the most efficient and effective methods for providing immediate protection to public land resources and preventing significant resource damage under these drought and post-fire conditions. Other options to address this situation that were considered include:

- Taking no action;
- Requiring early removal of your livestock from Pasture 12 into your summer pastures; and
- Requiring early removal of your livestock from Pasture 12 without allowing an early move to your summer pastures, which, in effect, would impose the authorized use on FFR pastures that include public lands.

The time spent by your permitted cattle in Pasture 12 delays turnout into occupied sage-grouse nesting habitat within East Castle Creek Allotment in the summer pastures and within your higher elevation FFRs. Thus, addressing the current lack of natural water in most of Pasture 12 by moving cattle to the subsequent pastures in your rotation or to FFR pastures would not be consistent with reducing conflicts with sage-grouse nesting habitat.

Taking no action to address the current lack of water is not consistent with promoting compliance with AICs, which have been unmet in previous years on segments of Poison Creek where small amounts of surface water may still be present and are expected to attract thirsty cattle. Furthermore, the upper portions of Pasture 12 contain the unfenced 'Hanging Meadows' area, which are also valuable as sage-grouse brood-rearing habitat. Taking no action would

reinforce cattle's natural tendency to congregate below the upper fence and in and around the 'Hanging Meadows' and the adjoining Shoofly Fire.

Authority

Authority under which this decision is being issued is found in Title 43 of the 4100 Code of Federal Regulations (CFR).

- 4110.3-2(b) Reducing permitted use or otherwise modifying management practices
- 4110.3-3(b) Implementing reductions in permitted use [or other measures] due to drought and fire
- 4120.3-1(a) Installing or maintaining range improvements in a manner consistent with public land management
- 4120.3-4(a) Standards, design, construction, and maintenance criteria for range improvements
- 4130.3-2(f) Provision for temporary modification of livestock grazing to provide for the improvement of riparian areas
- 4160.3(f) Final decisions (effective upon issuance)

Provisions for Appeal/Stay

Any applicant, permittee, lessee or other person whose interest is adversely affected by the final decision may file an appeal (in writing) in accordance with 43 CFR 4.470 and 43 CFR 4160.4. The appeal must be filed within 30 days following receipt of the final decision. The appeal may be accompanied by a petition for a stay of the decision in accordance with 43 CFR 4.471, pending final determination on appeal. The notice of appeal and petition for a stay must be filed in the office of the authorized officer (Bruneau Field Manager) at 3948 Development Avenue, Boise, Idaho 83705. In accordance with 43 CFR 4.401, the BLM does not accept fax or email filing of a notice of appeal or a petition for stay. The appeal shall state the reasons, clearly and concisely, why the appellant thinks the final decision is in error. The appeal must comply with the provisions of 43 CFR 4.470. The appellant must serve a copy of the appeal by certified mail on the Office of the Solicitor, U.S. Department of the Interior, 960 Broadway Avenue, Suite 400, Boise, ID 83706 and other person(s) named (43 CFR 4.421 (h)) in the **Copies sent to:** section of this decision.

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

- (1) The relative harm to the parties if the stay is granted or denied;
- (2) The likelihood of the appellant's success on the merits;
- (3) The likelihood of immediate and irreparable harm if the stay is not granted; and
- (4) Whether the public interest favors granting the stay.

As noted above, the petition for stay must be filed in the office of the authorized officer and served in accordance with 43 CFR 4.471.

Any person named in the decision that receives a copy of a petition for a stay and/or an appeal must see 43 CFR 4.472(b) for procedures to follow if you wish to respond.

If you have any questions, please contact either Mike Boltz at 208-384-3346 or me at 208-384-3331.

Sincerely,

/s/ Tanya M Thrift

Tanya M. Thrift
Field Manager

Attachments:

Map of authorized temporary trough locations

Map of authorized temporary electric fence location

Copies sent to: