



# United States Department of the Interior



BUREAU OF LAND MANAGEMENT  
Billings Field Office  
5001 Southgate Drive  
Billings, Montana 59101-4669  
www.blm.gov/mt

In Reply Refer To:  
4160 (MT010.DC)

DECEMBER 8, 2015

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Philip C. DePauw  
21900 Morris Road  
Crows Landing, California 95313

*D. Pauw*  
*12/1/15*

## NOTICE OF FIELD MANAGER'S PROPOSED DECISION

Dear Mr. DePauw:

### Introduction

This decision addresses livestock grazing use and management on the Y Bar Coulee (9678) grazing allotment. It serves as a decision record for the Y Bar Coulee (9678) allotment from Categorical Exclusion DOI-BLM-MT-0010-2015-0037-CX / DOI-BLM-MT-A010-2015-0002-CX<sup>1</sup>, to issue you a grazing lease as the result of a grazing preference transfer application. The grazing lease authorizes livestock grazing use in accordance with the terms and conditions found in this grazing decision. This decision is the result of on-site monitoring and inventory data, used in the completion of an evaluation and determination of the applicable Montana Standards for Rangeland Health. In 2015, the determinations for the Y Bar Coulee allotment concluded the allotment was meeting all applicable Standards for Rangeland Health.

The Billings Field Office (BIFO) staff has conducted an interdisciplinary (ID) team review of the issuance of the lease on the Y Bar Coulee allotment to ensure that none of the 12 extraordinary circumstances would occur (DOI-BLM-MT-0010-2015-0037-CX / DOI-BLM-MT-A010-2015-0002-CX). The ID team review found that none of the extraordinary circumstances would occur.

### Background

In 2015, the Bureau of Land Management (BLM) received grazing preference and grazing lease transfer applications for the Y Bar Coulee grazing allotment. The applications indicated no change in the grazing preference or the season of use. Following receipt of these applications, the BLM conducted Rangeland Health Assessments throughout the allotment. This data was used in the determination that all Standards for Rangeland Health are being achieved. Following this determination, BLM conducted Categorical Exclusion (CX) DOI-BLM-MT-0010-2015-0037-CX / DOI-BLM-MT-A010-2015-0002-CX to ensure that none of the 12 extraordinary circumstances would occur from the proposed preference transfer and lease issuance. The CX found that none of the 12 extraordinary circumstances would occur; therefore, the preference will transfer, and a new lease will be issued.

### Compliance/Conformance

Issuance of a grazing permit/lease complies with the following federal laws and Regulations:

Taylor Grazing Act (TGA) of 1934, as amended;  
 Federal Land Policy Management Act (FLPMA) of 1976;  
 Public Rangeland Improvement Act of 1978.

The grazing permit/lease conforms to the following BLM land use plan:

**2015 Billings Resource Management Plan and Rocky Mountain Record of Decision, approved September 2015.** Specifically, the proposed action is in conformance with Management Decision *MD LG-20* which permits livestock grazing on 387,057 of public land within the Billings Field Office, and *MD LG-23*, which maintains current available AUMs (up to 54,873).

### **Proposed Grazing Decision**

My Proposed Decision is to issue you a grazing lease for the term of ten years. This lease will cover public lands in the Y Bar Coulee grazing allotment. The Mandatory Terms and Conditions will not change; the Billings Field Office Standard "Other Terms and Conditions" will be applied to the Authorization.

This decision is based on the Categorical Exclusion (CX) documenting that none of the 12 extraordinary circumstances would occur from the Proposed Action. This CX was signed on November 16, 2015 (DOI-BLM-MT-0010-2015-0037-CX / DOI-BLM-MT-A010-2015-0002-CX).

### **Mandatory Terms and Conditions**

Current and Future Mandatory Terms and Conditions are listed in the table below. There will be no change to the Mandatory Terms and Conditions. The Billings Field Office Standard "Other Terms and Conditions" will be applied to the authorization. Grazing preference will remain unchanged with 36 Active AUMs, and 0 suspended AUMs.

<b>Current and Proposed Permit Mandatory Terms and Conditions</b>					
<b>Allotment Name/Number</b>	<b>Livestock # Kind</b>	<b>Season of Use</b>	<b>% PL</b>	<b>Type Use</b>	<b>Public Land AUMs</b>
Y Bar Coulee	3 Cattle	3/1-2/28	100	Active	36

### **Other Terms and Conditions**

Other terms and conditions will apply to the grazing permit as follows. All changes will be listed in **Bold Text**:

1. **The permittee is required to notify the Billings Field Office of new noxious weed infestations in the allotment.**
2. **The operator is responsible for informing all persons who are associated with the allotment operations that they will be subject to prosecution for knowingly disturbing historic or archaeological sites, or for collecting artifacts. If historic or archaeological materials are uncovered during any allotment activities and grazing activities, the operator is to immediately stop activities in the immediate area of the find that might further disturb such materials, and immediately contact the authorized officer (AO). Within five working days, the AO will inform the operator as to:**

- whether the materials appear eligible for the National Register of Historic Places;
  - the mitigation measures the operator will likely have to undertake before the identified area can be used for grazing activities again and,
3. Pursuant to 43 CFR 10.4(g), the holder of this authorization must notify the AO, by telephone, with written confirmation, immediately upon the discovery of human remains, funerary items, sacred objects, or objects of cultural patrimony. Further, pursuant to 43 CFR 10.4(c) and (d), you must stop activities in the vicinity of the discovery and protect it for 30 days or until notified to proceed by the authorized officer.
  4. If paleontological materials (fossils) are uncovered during allotment activities, the operator is to immediately stop activities that might further disturb such materials, and contact the authorized officer (AO). The operator and the authorized officer will consult and determine the best option for avoiding or mitigating paleontological site damage.
  5. The use of prescribed fire may be used by BLM to enhance resource conditions, in which case grazing would be deferred for at least two growing seasons. Any prescribed fire would be covered in a separate analysis.
  6. Grazing use shall not exceed 50% (clipped weight) of the current years grass growth. This will be measured at pre-determined key sites. Key sites shall meet the following criteria:
    - a. Be located on rangelands accessible to the livestock authorized to graze;
    - b. Are not closer than 300 yards but not further than one mile from a usable water source;
    - c. Are located on slopes of 20% or less.
  7. If annual applications are received, issuance of Temporary Non-Renewable (TNR) free use grazing permits could be issued at the discretion of the BLM authorized officer for the sole purpose of controlling invasive weed species. The TNR would authorize only Sheep and/or Goats to control weeds for a specified period of time between May 15<sup>th</sup> and August 30<sup>th</sup>. Duration would depend on the number of livestock used, the level of weed infestation, and desired grazing effect.

### **Public Involvement**

The Billings Field Office posts current NEPA documents on the Billings Field Office web page following internal scoping. The proposed action was internally scoped on September 8, 2015. No public comment was received during this period. In addition this project was placed in ePlanning in October 2015.

### **Rationale for Decision**

A Categorical Exclusion (DOI-BLM-MT-0010-2015-0037-CX / DOI-BLM-MT-A010-2015-0002-CX) was conducted to determine if proposed action would result in any of the 12 extraordinary circumstances occurring. The CX determined that none of these circumstances would occur. In addition, the proposed mandatory terms and conditions are the same as the previous lease which had resulted in the allotment meeting all applicable standards for

rangeland health. Therefore, it was determined continuation of these terms and conditions will continue to meet all applicable standards for rangeland health. Therefore, the grazing preference will transfer, and a new lease will be issued to Philip Depauw. I have determined that issuance of the grazing lease with the specified terms and conditions is in conformance with the Billings Resource Management Plan and Rocky Mountain Record of Decision (signed September 2015) and will continue to achieve all applicable Montana Standards for Rangeland Health.

### **AUTHORITY**

The authority for this decision is contained in Title 43 of the Code of Federal Regulations (CFR), which includes:

4100.0-8, Land Use Plans.  
 4130.2, Grazing Permits or Leases.  
 4130.3, Terms and Conditions.  
 4130.3-1, Mandatory Terms and Conditions.  
 4130.3-2, Other Terms and Conditions.  
 4130.3-3, Modification of Permits or Leases.  
 4130.7, Ownership and Identification of Livestock.  
 4130.8, Fees.  
 4160.1, Proposed Decisions.  
 4160.2, Protests.  
 4160.3, Final Decisions.  
 4160.4, Appeals.  
 4180.2, Standards and Guidelines for Grazing Administration.

### **RIGHT OF PROTEST AND APPEAL**

Any applicant, permittee, lessee or other affected interest may protest a proposed decision under Sec. 43 CFR 4160.1, in person or in writing to *Jim Sparks - Field Manager, Billings Field Office, 5001 Southgate Drive, Billings, Montana 59101* within 15 days after receipt of such decision. The protest, if filed, should clearly and concisely state the reason(s) as to why the proposed decision is in error. In accordance with 43 CFR 4160.3(a), the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice unless otherwise provided in the proposed decision.

In accordance with 43 CFR 4160.3(b), upon a timely filing of a protest, after a review of protests received and other information pertinent to the case, the authorized officer shall issue a final decision.

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 or within 30 days after the date the proposed decision becomes final. 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 appeal, or the appeal and petition for stay, must be in writing and delivered in person, via the United States Postal Service mail system, or other common carrier, to the Billings Field Office as noted above. The BLM does not accept appeals by facsimile or email. The appeal and petition for a stay must be filed in the office of the authorized officer, as noted above. The person/party must also serve a copy of the appeal on the *Office of the Solicitor*,

Billings Field Office, 2021 4<sup>th</sup> Ave North Suite 112, Billings, Montana 59101 and person(s) named [43 CFR 4.421(h)] in the Copies sent to: section of this decision.

The appeal shall state the reasons, clearly and concisely, why the appellant thinks the final decision is in error and otherwise complies with the provisions of 43 CFR 4.470.

Should you wish to file a petition for a 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 see 43 CFR 4.472(b) for procedures to follow if you wish to respond.

If you have any questions, feel free to contact either Dustin Crowe, Rangeland Management Specialist, at (406) 896-5154, or myself at (406) 896-5241.

Sincerely,

/s/ Craig R. Drake, *acting*

James M. Sparks  
Field Manager

1 Enclosure

1-Categorical Exclusion (DOI-BLM-MT-0010-2015-0037-CX / DOI-BLM-MT-A010-2015-0002-CX)

cc: Mr. Tom Woodbury  
Western Watersheds Project  
Box 7681  
Missoula, Montana 59807

1. In October 2015, the Billings Field Office began using ePlanning for generating and posting new project proposals. Existing NEPA numbers were carried forward, and the new ePlanning numbers were added to existing documents.