



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

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In Reply Refer To:
4120 (NVB0100)

MAY 31 2016

PROPOSED DECISION

ON THE ARGENTA SETTLEMENT AGREEMENT RANGE IMPROVEMENT ENVIRONMENTAL ASSESSMENT EA# DOI-BLM-NV-B010-2016-0008-EA

Dear Interested Public:

On December 18, 2015 the Bureau of Land Management (BLM) Mount Lewis Field Office (MLFO) consulted, coordinated, and cooperated by means of a scoping letter followed by an Environmental Assessment issued to the public for a 30 day comment period on January 22, 2016, in response to an application to construct three permanent range improvement projects within the Argenta Allotment. BLM has determined that the proposed range improvements would help provide natural resource protection by allowing for recovery of priority riparian resources and, following the withdrawal of the application for one of the three improvements, the MLFO is issuing this Proposed Decision to authorize construction of two riparian fencing projects.

BACKGROUND

On June 24, 2015, BLM entered into a Settlement Agreement with Julian Tomera Ranches, Inc., Chiara Ranch, Henry Filippini Jr., and John Carpenter to address ongoing concerns regarding drought and livestock grazing on the Argenta Allotment. This Settlement Agreement was reached after involving the National Riparian Service Team (NRST) to assess range conditions and resource protection needs, and resolved pending appeals from the BLM's Full Force and Effect Decision on the Argenta Allotment dated August 22, 2014. On June 22, 2015, the Interior Board of Land Appeals dismissed appeals: IBLA 2015-162, IBLA 2015-163, IBLA 2015-164, and IBLA 2015-165, and on June 24, 2015 Administrative Law Judge, James H. Heffernan, dismissed the following appeals: NV-06-14-03, NV-06-14-04, NV-06-14-05 and NV-06-14-06, based on the Settlement Agreement. The Settlement Agreement identifies an Interim Management Period during which the permittees must implement grazing management practices that ensure resource protection until permit renewals for the applicable permittees have been completed. Under this agreement, BLM will issue a Final Decision to renew the grazing permits by February 28, 2018.

The Argenta Allotment encompasses approximately 331,520 acres of which 141,689 acres are BLM-administered public lands. In a normal year, under the terms and conditions of the existing permits, cattle are permitted to graze year round and sheep are permitted to graze from April 1 to September 30. The allotment is located southeast of Battle Mountain, Nevada and is characterized by high steep mountains, sagebrush/grass foothills, and salt desert shrub valley bottoms with areas dominated by cheatgrass (*Bromus tectorum*). There are no wild horse and burro Herd Management Areas (HMA) within the boundaries of the allotment. There is however a considerable amount of Greater sage-grouse priority habitat management areas (PHMA) and general habitat management areas (GHMA), which consists of important seasonal habitats that Greater sage-grouse require for breeding, brood-rearing and overwintering.

Riparian areas, wetland zones and aspen stands occur within the mountainous drainages throughout the allotment. Based on the US Geological Survey's National Hydrography Dataset, Version 210 (released 5/7/2014), the BLM manages 42 miles of perennial stream, and 43 springs on public land within the boundary of the allotment. Proper Functioning Condition assessments, which are indicative of riparian health, were conducted by the BLM using established interagency protocols (BLM Technical Reference (TR) 1737-15 and TR 1737-16) from 2003 to 2013 which indicate that only 8% of Lentic and 21% of Lotic sites on BLM lands in the allotment are in Proper Functioning Condition.

In the June 24, 2015, Settlement Agreement, BLM committed to process applications for a limited number of range improvement projects that could serve a resource protection purpose during the Interim Management Period before a fully processed permit is issued. On September 2, 2015, the MLFO issued a Final Decision authorizing six small riparian exclosures in the Argenta Allotment. These riparian lentic¹ exclosures were identified by NRST as a high priority for spring source protection to jump start their recovery and to increase water storage capacity for riparian health. BLM analyzed these range improvement projects under a Categorical Exclusion (CX) and a Determination of NEPA Adequacy (DNA).

In addition to the six small riparian exclosure projects approved by BLM in the September 2, 2015, Final Decision, the Settlement Agreement provided that BLM would process permittees' applications, based on the NRST resource based recommendations, for a small number of riparian lotic fencing projects that would require NEPA analysis beyond a CX or DNA. The Settlement Agreement set a specific timeframe within which the BLM must issue a decision on permittees' applications for those proposed lotic fencing projects.

On January 22, 2016, BLM issued the preliminary EA for public comment analyzing a proposed action to construct three riparian lotic exclosures at: Fire Creek; Ferris Creek; and North Fork of Mill Creek. After the public comment period for the preliminary EA ended, one of the permittees withdrew their application for a riparian fence at Fire Creek. As a result, the proposed fence at Fire Creek was removed from the proposed action. On May 31, 2016 the BLM finalized

¹ Lentic means: an area that is associated with still waters such as lakes, seeps, springs and fens. Lotic means: an area that is associated with flowing water such as streams, creeks and rivers.

The Argenta Settlement Agreement Range Improvement EA# DOI-BLM-NV-B010-2016-0008-EA (Argenta EA) and a Finding of No Significant Impact (FONSI) was signed May 31, 2016. These documents can be viewed at <http://1.usa.gov/1VZyHs>. BLM's decision-making process included public consultation, cooperation and coordination, which included a public scoping letter inviting comments prior to BLM's NEPA analysis, and a 30- day public comment period on the preliminary EA. The MLFO response to comments is also available at the above link as an appendix to the final Argenta EA. The MLFO is issuing this proposed decision in accordance with §4160.1.

PROPOSED DECISION

After careful consideration of the comments received, it is my Proposed Decision to:

1. Approve the construction of two range improvements in accordance with 43 CFR 4120.3, as described in the Proposed Action in the Argenta Settlement Agreement Range Improvement DOI-BLM-NV-B010-2016-0008-EA which includes the following actions:
 - a. The installation of a jack-rail enclosure fence at Ferris Creek as described in the Proposed Action of the Argenta EA.
 - b. The installation of a jack-rail enclosure fence and 2 cattle guards at the North Fork of Mill Creek as described in the Proposed Action of the Argenta EA.
2. Authorization of cooperative range improvement agreements and assignment of range improvements between the BLM and affected permittees for the implementation of the Proposed Action as follows:
 - a. Ferris Creek- Coop agreement and assignment of range improvements with Julian Tomera Ranches Inc.
 - b. North Fork of Trout Creek- Coop agreement and assignment of range improvements with Julian Tomera Ranches Inc. and Chiara Ranch.
3. All design features identified in section 2.2 of the Argenta EA will be followed.

RATIONALE

The June 24, 2015, Settlement Agreement establishes a three-year interim management plan that includes ongoing support and oversight by the NRST to ensure implementation of appropriate grazing management practices that are consistent with range protection for rangeland health. The interim plan includes within-season triggers for movement of livestock and end-of- season use levels for upland, riparian and woody species to ensure range resources that have been impacted by drought are not overgrazed. Each year of the interim management plan, a Stockmanship Plan will be developed by the NRST and permittees, with input from the CMG, using monitoring data collected throughout the year. Goals of the interim management plan include protecting important riparian-wetland areas and achieving overall allotment success with respect to within-season triggers and end-of-season use levels.

The stream reach at Ferris Creek has been degraded as a result of livestock trampling from historic and current grazing use as manifested by down cutting of the stream bank, bank alteration and utilization levels of vegetation. This has resulted in vegetation insufficient to stabilize stream banks. Riparian recovery requires rest from livestock use which will allow vegetation to develop sufficiently above and below ground to effectively stabilize the stream to prevent further down cutting and to allow recovery to begin. For Ferris Creek the NRST recommended to the MLFO that permanent exclusion fencing on the reach is the best way to accelerate riparian recovery, and also to provide for more effective livestock management. Riparian areas can recover quickly because they have a high resiliency to disturbances because of the increased availability to water which leads to a much longer growing season. Because riparian areas are well positioned to recover if livestock grazing can be excluded long enough to jump start recovery and to allow riparian plant and tree species to re-establish and expand, and stream channels to stabilize, constructing these riparian exclosures while BLM proceeds with its permit renewal decision-making process over the next two years will result in measurable improvements in riparian health at those stream segments.

The stream reach at the North Fork of Mill Creek has become degraded as a result of livestock trampling from historic and current grazing use as manifested by stream bank alteration and utilization levels of vegetation. On the North Fork of Mill Creek the NRST recommended to the MLFO that fencing be constructed to provide opportunity for riparian recovery and health. By excluding grazing from the most accessible portions of the stream, this stream would respond favorably and would gain a much needed "head start" on recovery. This is critical because of vertical instability on the private land reach immediately below the BLM stream reach. Improving the channel stability of the BLM reach by allowing stabilizing vegetation to expand as soon as it is feasible could help to resist headcut migration into the BLM reach. Regardless of any adaptive management strategy employed, it would likely be difficult to keep livestock off this stream reach without exclusion due to the fact that the BLM portion is relatively short and the uplands in this canyon are steep. As a result, the impact of just a small number of cows for even a modest amount of time would continue to keep the stream in a degraded condition. Riparian areas can recover quickly because they have a high resiliency to disturbances because of the increased availability to water which leads to a much longer growing season. Because riparian areas are well positioned to recover if livestock grazing can be excluded long enough to jump start recovery and to allow riparian plants to re-establish and expand, and stream channels to stabilize, constructing these riparian exclosures while BLM proceeds with its permit renewal decision-making process over the next two years will result in measurable improvements in riparian health at those stream segments.

Another challenge within the Argenta Allotment is improving livestock distribution in the uplands and avoiding over-utilization of sensitive riparian systems. As riparian areas become degraded, they lose their ability to capture, store and safely release water. The six small riparian exclosures that were authorized in BLM's September 2, 2015, Final Decision provided protection for the spring sources (lentic system), which protection will allow for greater water storage capacity as the spring sources recover. The two additional riparian exclosures that have been identified as priorities to exclude livestock grazing provide additional or enhanced benefits with respect to recovery of riparian health and vegetation along the stream (lotic system).

Whereas protecting the spring source allows for vegetative recovery which leads to increased ground water holding capacity, protecting the stream segments from grazing use allows for vegetation recovery to better stabilize stream banks. The riparian lotic areas that would be excluded from grazing under the Proposed Decision were identified as a high priority for protection based on their high potential for channel stabilization and recovery and the resource benefits that would result from implementing such recovery now, rather than waiting until the permit renewal process is completed in two years' time.

The two proposed riparian lotic exclosures would be designed to exclude livestock grazing while still allowing for the safe ingress and egress of wildlife. Fences would be primarily jack rail fences built with steel pipe. Jack rail fencing consists of free standing corners and jack legs of welded jacks and rails setting on top of the ground. Attachable hinges allow for the fence to make corners and follow changes in contour on the ground. Each fence section is twelve feet wide with three horizontal rails in each section. The bottom rail is high enough so small game and animals such as antelope can have free ingress and egress. The top rail is high enough to prevent livestock from crossing the exclosure but low enough that wildlife (such as deer) have free ingress and egress over the top. This type of fence is durable enough to be permanent but can also be removed with minimal ground disturbance and can be fence sections can be reused after removal.

In those limited areas where jack rail fence is not practical (e.g., if slopes are too steep or the terrain is too uneven), barb wire with a smooth bottom wire would be used and designed to allow safe ingress and egress of wildlife. If any barbed wire fence is installed, then Greater sage-grouse fence markers will be installed. The two proposed fences would completely exclude livestock from the exclosed riparian areas to allow for their protection and recovery. Riparian exclosures on public lands are designed to meet the needs of both livestock and wildlife. All fencing will be made using wildlife friendly design to prevent mortality. This will be done in accordance with 43 CFR 4120.3-4 and BLM Handbook 1741-2. BLM anticipates that the fence at Ferris Creek would be entirely jack rail fencing, however, based on topography, there could be up to 200 feet of barbed wire fence if jack rail is not feasible to use in that area. BLM also does not anticipate that any barbed wire fencing will be needed for the North Fork of Mill Creek exclosure. However, if barbed wire fence is needed, it would be less than 1,500 feet. Barbed wire will only be used once on-the-ground efforts show that jack rail fencing is infeasible to use.

In order to authorize range improvements on lands managed by the BLM, a cultural inventory and section 106 consultation is required. Prior to construction, each proposed location would have a cultural inventory and section 106 consultation completed. A BLM approved Archeologist will be present during the construction period to verify final fencing placement.

The Argenta EA analyzing the impacts of the two riparian exclosures has been completed and a Finding of No Significant Impact has been made. The Argenta EA conforms to the Nevada and Northeastern California Greater Sage-Grouse Approved Resource Management Plan Amendment (ARMPA). These range improvements are in accordance with 43 CFR §4120.3 and §4160.1-3, which describe the regulatory process to approve range improvements.

AUTHORITY

All citations are from Part 43, Code of Federal Regulations (CFR), Subpart 4100 (2005).

- § 4120.3-1(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.
- § 4120.3-1(b) –Prior to installing, using, maintaining, and/or modifying range improvements on the public lands, permittees or lessees shall have entered into cooperative range improvement agreement with the Bureau of Land Management or must have an approved range improvement permit.
- § 4120.3-1(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.
- § 4120.3-1(f) –Proposed range improvement projects shall be reviewed in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4371 *et seq.*). The decision document following the environmental analysis shall be considered the proposed decision under subpart 4160 of this part.
- § 4120.3-2(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.
- § 4120.3-7 –The authorized officer may accept contributions of labor, material, equipment, or money for administration, protection, and improvement of the public lands necessary to achieve the objectives of this part.
- § 4160.1(a) –Proposed decisions shall be served on any affected applicant, permittee or lessee, and any agent and lien holder of record, who is affected by the proposed actions, terms or conditions, or modifications relating to applications, permits and agreements (including range improvement permits) or leases, by certified mail or personal delivery. Copies of proposed decisions shall also be sent to the interested public.
- § 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.

PROTEST PROVISIONS

In accordance with 43 C.F.R. § 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. In accordance with 43 C.F.R. § 4160.3 (b), upon the timely filing of a protest, the authorized officer shall reconsider her/his proposed decision in light of the protestant's statement of reasons for protest and in light of other information pertinent to the case. At the conclusion of her/his review of the protest, the authorized officer shall serve her/his final decision on the protestant or her/his agent, or both, and the interested public.

In accordance with 43 C.F.R. § 4160.3 (a), in 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. If the proposed decision were to become the final decision it may be appealed in accordance with the following section.

APPEAL PROVISIONS

In accordance with 43 C.F.R. § 4.470 and § 4160.4, any applicant, permittee, lessee or other person whose interest is adversely affected by the Final Decision may file an appeal of the Decision. 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. Within 15 days of filing the appeal and any petition for stay, the appellant also must serve a copy of the appeal and any petition for stay on any person named in the Decision and listed at the end of the Decision, and on the Office of the Solicitor, Pacific Southwest Region, 2800 Cottage Way, Rm. E-1712, Sacramento, CA 95825-1890 (CFR§ 4.471(b)). The appeal must be in writing and state the reasons, clearly and concisely, why the appellant thinks the Final Decision is in error. Other provisions of 43 C.F.R. § 4.470 also apply. The BLM does not accept appeals sent by electronic mail. Appeals transmitted by facsimile will be accepted so long as the BLM receives the original document with original signature within 7 days of the receipt of the facsimile transmittal.

A petition for stay, if filed, shall show sufficient justification based on the following standards (43 C.F.R. § 4.471(c)):

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 granted; and,
4. Whether the public interest favors granting the stay.

43 CFR§4.471(d) provides that the appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.

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 Departmental Cases Hearings Division Office of Hearings and Appeals U.S. Department of the Interior 351 South West Temple, Suite 6300 Salt Lake City, Utah 84101, a motion to intervene in the appeal, together with the response, within 10 days of receiving the petition. Within 15 days after filing the motion to intervene and response, the person must serve copies on the appellant, the Office of the Solicitor and any other person named in the Decision (43 CFR§4.471(b)).

At the conclusion of any document that a party must serve, the party or its representative must sign a written statement certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service (43 CFR§4.422(c)(2)).

Sincerely,

A handwritten signature in black ink, appearing to read "Jon D. Sherve". The signature is written in a cursive style with a large initial "J".

Jon D. Sherve
Field Manager
Mount Lewis Field Office

Enclosures

cc:
State Director, Nevada (NV-930)
Interested Public