



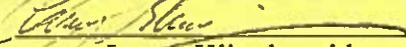
# United States Department of the Interior

BUREAU OF LAND MANAGEMENT

White River Field Office  
220 East Market Street  
Meeker, CO 81641



Certified Mail No. *hand delivered March 11, 2016*

Return Receipt Requested   
Lenny Klinglesmith

In Reply Refer To:  
4100 (LLCON05000)

March 11, 2016

LK Ranch Livestock, LLC  
Attn: Lenny Klinglesmith  
P.O. Box 1404  
Meeker, CO 81641

## NOTICE OF PROPOSED DECISION

Dear Mr. Klinglesmith:

The Bureau of Land Management (BLM) White River Field Office (WRFO) has reviewed your application for revised livestock grazing permits on the Blacks Gulch and West Shutta Allotments. Land health assessments, field observations, and other information was evaluated and reviewed for these allotments. Information provided by you through consultation was also considered in development of the proposed grazing permits and associated grazing schedules.

### BACKGROUND

The grazing permits currently held by LK Ranch Livestock needed to be revised to reflect changes within the Blacks Gulch allotment, the reconfiguration of pastures, and changes to associated grazing rotation resulting to coordinate use between the West Shutta and Blacks Gulch allotments. Changes to grazing schedules also incorporate measures to help meet identified habitat objectives for Greater sage-grouse.

A three year rotation will be incorporated in both allotments to allow reduced grazing in most pastures either every year (Blacks Gulch pasture), two in three years (West Shutta allotment), or one in three years (Oil Well and Middle pasture of Blacks Gulch allotment). Reduced use in the Scenery and Tschuddi pastures will be provided by rotations between specific use areas within each of these pastures. Overall, the schedules address the timing, duration, and intensity of grazing to varying degrees in every pasture.

To comply with the National Environmental Policy Act, the WRFO conducted an environmental assessment (DOI-BLM-CO-N05-2016-052-EA) for the issuance of new/revised grazing permits to determine whether or not significant impacts would result from implementation of the proposed grazing permits and their associated grazing schedules. The EA analyzed three alternatives: the Proposed Action (Alternative A), Continuation of Current Management (Alternative B), and a No Grazing Alternative (Alternative C).

In general, Alternative A considered grazing by up to 600 cattle on the Blacks Gulch Allotment in the spring and early summer for 93 days for a total of 1849 AUMs, 291 of which have been placed in agreed upon conservation non-use. Additionally Alternative A considered grazing by up to 200 cattle on the West Shutta allotment in the spring and early summer for 46 days for a total of 327 AUMs. This is described better on the proposed grazing schedules. See Section 3.1 of the EA for a detailed description of this alternative.

Alternative B also considered grazing by 600 cattle on the Blacks Gulch allotment in the spring for 93 days with an annual rest rotation during the critical growing season for a total of 1859 AUMs, 465 of which were scheduled as non-use. The grazing rotation included two additional pastures. Additionally Alternative B would considered grazing by 200 cattle on the West Shutta allotment in the spring and early summer for 36 days and grazing 150 cattle in the late fall for another 36 days for a total of 415 AUMs. See Section 3.2 of the EA for a detailed description of this alternative.

Pasture reconfiguration between the allotments results in 16 AUMs of forage being shifted from the Blacks Gulch Allotment to the West Shutta allotment. Additionally, the percent public land in the Blacks Gulch allotment has been adjusted from 76 percent (Alt B) to 85 percent (Alt A). The difference in percent public land changes the number of BLM AUMs between alternatives even with the same livestock numbers and same use dates.

**FINDING OF NO SIGNIFICANT IMPACT**

The Proposed Action was analyzed in DOI-BLM-N05-2016-0052-EA and it was found to have no significant impacts, thus an EIS is not required.

**PROPOSED DECISION**

In conformance with 43 CFR 4160.1, my proposed decision is to implement the Proposed Action, as described in DOI-BLM-CO-N05-2016-0052-EA for authorization of livestock grazing use on the Blacks Gulch Allotment and the West Shutta allotment for a period of 10 years expiring on February 28, 2026. as supported by 43 CFR 4130.2(d)(3). Need to make sure to pick the right number based on circumstances specific to the allotment and the term of the permit.

**Grazing Schedule**

| Proposed Grazing Permit for Blacks Gulch Allotment 06625 |           |      |      |     |      |             |          |
|--|-----------|------|------|-----|------|-------------|----------|
| Blacks Gulch Allotment                                   | Livestock |      | Date |     | % PL | Active AUMs | BLM AUMs |
|  | Number    | Kind | On   | Off |      |             |          |
|  |           |      |      |     |      |             |          |

|   |     |   |      |      |    |               |             |
|---|-----|---|------|------|----|---------------|-------------|
| Blacks Gulch  | 600 | C | 3/15 | 6/15 | 85 | 1,559         | 1,559       |
| Blacks Gulch  | 112 | C | 3/15 | 6/15 | 85 | Non-use*      | 291         |
| *Non-use AUMs are agreed upon for Greater sage-grouse habitat improvement |     |   |      |      |    | <b>Total:</b> | <b>1850</b> |

| Proposed Grazing Permit for West Shutta Allotment 06604 |           |      |      |      |      |               |            |
|---|-----------|------|------|------|------|---------------|------------|
| West Shutta   | Livestock |      | Date |      | % PL | Active AUMs   | BLM AUMs   |
|   | Number    | Kind | On   | Off  |      |               |            |
| West Shutta   | 131       | C    | 4/1  | 6/15 | 100  | 327           | 327        |
|   |           |      |      |      |      | <b>Total:</b> | <b>327</b> |

| Proposed Grazing Schedules for the Year 1 Rotation (for both allotments) |                |       |           |      |      |      |             |            |       |             |            |
|--|----------------|-------|-----------|------|------|------|-------------|------------|-------|-------------|------------|
| Year 1   |                |       | Livestock |      | Date |      | Days Grazed | Total AUMs | % PL* | BLM AUMs    | PVT AUMs   |
| Allotment  | Pasture        | No.   | Number    | Kind | On   | Off  |             |            |       |             |            |
| West Shutta  | South          | 06604 | 200       | C    | 4/1  | 4/14 | 14          | 92         | 100   | 92          | 0          |
| West Shutta  | Middle         | 06604 | 200       | C    | 4/15 | 5/7  | 23          | 151        | 100   | 151         | 0          |
| West Shutta  | North          | 06604 | 200       | C    | 5/8  | 5/14 | 7           | 46         | 100   | 46          | 0          |
| Blacks Gulch   | Oil Well Gulch | 06612 | 200       | C    | 5/15 | 6/13 | 30          | 197        | 100   | 197         | 0          |
| West Shutta  | South          | 06604 | 200       | C    | 6/14 | 6/15 | 2           | 13         | 100   | 13          | 0          |
| Blacks Gulch   | Blacks Gulch   | 06612 | 300       | C    | 3/15 | 4/10 | 27          | 266        | 93    | 248         | 18         |
| Blacks Gulch   | Middle         | 06612 | 600       | C    | 4/11 | 4/25 | 15          | 296        | 97    | 287         | 9          |
| Blacks Gulch   | Tschuddi       | 06612 | 300       | C    | 4/26 | 6/15 | 51          | 503        | 58    | 292         | 211        |
| Blacks Gulch   | Scenery        | 06621 | 300       | C    | 4/26 | 6/15 | 51          | 503        | 75    | 377         | 126        |
| <b>AUMs Year 1 West Shutta</b>   |                |       |           |      |      |      |             |            |       | <b>302</b>  | <b>0</b>   |
| <b>AUMs Year 1 Blacks Gulch</b>  |                |       |           |      |      |      |             |            |       | <b>1401</b> | <b>364</b> |

\* The percent public land (% PL) here is the percentage of forage produced on BLM land (active AUMs) in relation to the overall forage production (BLM and private or in this case CPW lands) within each pasture whereas in the grazing permit table the percent public land is the average for the entire allotment so a direct comparison cannot be made between the permit and grazing schedule tables.

| Proposed Grazing Schedules for the Year 2/3 Rotation (for both allotments) |                |       |           |      |      |      |             |            |      |          |          |
|--|----------------|-------|-----------|------|------|------|-------------|------------|------|----------|----------|
| Year 2 and 3   |                |       | Livestock |      | Date |      | Days Grazed | Total AUMs | % PL | BLM AUMs | PVT AUMs |
| Allotment  | Pasture        | No.   | Number    | Kind | On   | Off  |             |            |      |          |          |
| West Shutta  | South          | 06604 | 200       | C    | 4/1  | 4/2  | 2           | 13         | 100% | 13       | 0        |
| West Shutta  | Middle         | 06604 | 200       | C    | 4/3  | 4/17 | 15          | 99         | 100% | 99       | 0        |
| West Shutta  | North          | 06604 | 200       | C    | 4/18 | 4/23 | 6           | 39         | 100% | 39       | 0        |
| Blacks Gulch   | Oil Well Gulch | 06612 | 200       | C    | 4/24 | 6/13 | 51          | 335        | 100% | 335      | 0        |
| West Shutta  | South          | 06604 | 200       | C    | 6/14 | 6/15 | 2           | 13         | 100% | 13       | 0        |
| Blacks Gulch   | Blacks Gulch   | 06612 | 300       | C    | 3/15 | 4/5  | 22          | 217        | 93%  | 202      | 15       |
| Blacks Gulch   | Middle         | 06612 | 600       | C    | 4/6  | 4/25 | 20          | 395        | 97%  | 383      | 12       |
| Blacks Gulch   | Tschuddi       | 06612 | 300       | C    | 4/26 | 6/15 | 51          | 503        | 58%  | 292      | 211      |
| Blacks Gulch   | Scenery        | 06621 | 300       | C    | 4/26 | 6/15 | 51          | 503        | 75%  | 377      | 126      |

|                             |      |     |
|-----------------------------|------|-----|
| AUMs Years 2/3 West Shutta  | 164  | 0   |
| AUMs Years 2/3 Blacks Gulch | 1589 | 364 |

\* The percent public land (% PL) here is the percentage of forage produced on BLM land (active AUMs) in relation to the overall forage production (BLM and private or in this case CPW lands) within each pasture whereas in the grazing permit table the percent public land is the average for the entire allotment so a direct comparison cannot be made between the permit and grazing schedule tables.

**Range Improvements Necessary to Implement the Proposed Grazing Schedule:** There are no specific range improvements proposed or necessary to implement the proposed grazing schedule.

### **Standard Terms and Conditions**

Livestock grazing permits and leases must specify terms and conditions pursuant to 43 CFR 4130.3, 4130.3-1, and 4130.3-2. The Standard Terms and Conditions that are applied to every permit in Colorado are as follows:

1. Grazing permit or lease terms and conditions and the fees charged for grazing use are established in accordance with the provisions of the grazing regulations now or hereafter approved by the Secretary of the Interior.
2. They are subject to cancellation, in whole or in part, at any time because of:
  - a. Noncompliance by the permittee/lessee with rules and regulations.
  - b. Loss of control by the permittee/lessee of all or a part of the property upon which it is based.
  - c. A transfer of grazing preference by the permittee/lessee to another party.
  - d. A decrease in the lands administered by the BLM within the allotment described.
  - e. Repeated willful unauthorized grazing use.
  - f. Loss of qualifications to hold a permit or lease.
3. They are subject to the terms and conditions of allotment management plans if such plans have been prepared. Allotment management plans MUST be incorporated in permits or leases when completed.
4. Those holding permits or leases MUST own or control and be responsible for the management of livestock authorized to graze.
5. The authorized officer may require counting and/or additional or special marking or tagging of the livestock authorized to graze.
6. The permittee's/lessee's grazing case file is available for public inspection as required by the Freedom of Information Act.
7. Grazing permits or leases are subject to the nondiscrimination clauses set forth in Executive Order 11246 of September 24, 1964, as amended. A copy of this order may be obtained from the authorized officer.

1. Livestock grazing use will occur as outlined in the grazing schedules (Allotment Management Plan) for the selected alternative in the EA (DOI-BLM-CO-110-2016-0052-EA) that analyzes grazing on the Blacks Gulch and West Shutta Allotments.
2. Noxious weed infestations on the Blacks Gulch and West Shutta allotments shall be treated in a manner consistent with BLM protocol as outlined in the White River RMP. For noxious weed populations on BLM administered lands, weeds will be treated by a certified pesticide applicator hired by the permittee, or by the BLM. The permittee will be responsible for coordinating and implementing appropriate weed control measures where livestock grazing practices result in the spread of noxious weeds on BLM lands.
3. Approximately 200 feet of drift fence will be constructed to mitigate impacts to fossil formation 5RB 8588 and to direct cattle trailing through a steep narrow area as they trail between pastures. The location and best construction material of this fence will be determined during a site visit with LK Ranch and BLM staff in the spring of 2016.
4. As a term of the Cooperative Maintenance Agreement range improvement #3564 the permittee will contact the WRFO prior to performing any maintenance activities to coordinate and obtain prior approval.
5. BLM spring surveys on BLM administered lands within the affected allotments should occur within the 10 years of this permit issuance including assessment for potential livestock impacts. Consistent with the White River ROD/RMP Appendix B, where BLM spring surveys determine that livestock grazing is having an adverse impact to spring sources; mitigation (e.g., fencing) will be developed in coordination with the permittee.
6. Cultural resources survey of all cattle concentration areas on BLM administered lands within Blacks Gulch and West Shutta allotments should occur within 10 years of permit issuance. Any cultural resources identified as NRHP-eligible also should be assessed for potential livestock impacts. Continued livestock use of the area is appropriate, if any identified impacts to NRHP-eligible resources are mitigated. Should the BLM-WRFO archaeologist determine that livestock grazing is having an adverse effect on historic properties; mitigation will be developed in coordination with the Tribes and SHPO.
7. In order to improve livestock distribution on the public lands, no salt blocks and/or mineral supplements will be placed within ¼ mile of any riparian area, wet meadow, or watering facility (either permanent or temporary) unless stipulated through a written agreement or decision. (43 CFR 4130.3-2(c))
8. The permittee/lessee shall provide reasonable administrative access across private and leased lands to the BLM for the orderly management and protection of public lands. (43 CFR 4130.3-2(h)).
9. Thirty days prior to turnout, the permittee/lessee will submit a grazing application and plan of operation for the grazing year to the BLM for approval. The plan of operation will include the anticipated turnout dates, numbers of animals, and the sequence that the allotments and/or pastures will be used, consistent with the approved grazing schedules.

8. Livestock grazing use that is different from that authorized by a permit or lease **MUST** be applied for prior to the grazing period and **MUST** be filed with and approved by the authorized officer before grazing use can be made.
9. Billing notices are issued which specify fees due. Billing notices, when paid, become a part of the grazing permit or lease. Grazing use cannot be authorized during any period of delinquency in the payment of amounts due, including settlement for unauthorized use.
10. The holder of this authorization must notify the authorized officer immediately upon the discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony (cultural items), stop the activity in the area of the discovery and make a reasonable effort to protect the remains and/or cultural items.
11. Grazing fee payments are due on the date specified on the billing notice and **MUST** be paid in full within 15 days of the due date, except as otherwise provided in the grazing permit or lease. If payment is not made within that time frame, a late fee (the greater of \$25 or 10 percent of the amount owed but not more than \$250) will be assessed.
12. No Member of, Delegate to, Congress or Resident Commissioner, after his/her election of appointment, or either before or after he/she has qualified, and during his/her continuance in office, and no officer, agent, or employee of the Department of the Interior, other than members of Advisory committees appointed in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 1) and Sections 309 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) shall be admitted to any share or part in a permit or lease, or derive any benefit to arise therefrom; and the provision of Section 3741 Revised Statute (41 U.S.C. 22), 18 U.S.C Sections 431-433, and 43 CFR Part 7, enter into and form a part of a grazing permit or lease, so far as the same may be applicable.
13. This grazing permit conveys no right, title or interest held by the United States in any lands or resources.
14. This grazing permit is subject to a) modification, suspension or cancellation as required by land plans and applicable law; b) annual review of terms and conditions as appropriate; and c) the Taylor Grazing Act, as amended, the Federal Land Policy and Management Act, as amended, the Public Rangelands Improvement Act, and the rules and regulations now or hereafter promulgated thereunder by the Secretary of the Interior.

### **Other Terms and Conditions**

Livestock grazing permits may also contain site-specific terms and conditions “determined by the authorized officer to be appropriate to achieve management and resource conditions objectives”, to ensure conformance with Colorado Public Land Health Standards and fundamentals of rangeland health, and to “assist in the orderly administration of the public rangelands” (43 CFR 4130.3, 4130.3-2). The following terms and conditions will also be added to the permit:

10. The permittee/lessee will be required to submit actual grazing use records 15 days after the end of grazing. (43 CFR 4130.3-2(d)).
11. As a term of the Cooperative Maintenance Agreement range improvement #3564, an existing pond (T2N R96W Sec 35 SWNW) within the Black Mountain Wilderness Study Area (WSA), the permittee will contact the WRFO prior to performing any maintenance activities to coordinate and obtain prior approval.
12. Livestock grazing on these allotments will be managed to achieve the Colorado Public Land Health Standards and sage-grouse habitat management objectives. If the proposed livestock grazing results in undesirable impacts the grazing schedules will be modified to make progress toward meeting these standards/objectives.
13. The permittee/lessee is responsible for informing all persons who are associated with any project that they will be subject to prosecution for knowingly disturbing archaeological sites or for collecting artifacts.
14. If any archaeological materials are discovered as a result of operations under this authorization, activity in the vicinity of the discovery will cease, and the BLM WRFO Archaeologist will be notified immediately. Work may not resume at that location until approved by the authorized officer (AO). The permittee/lessee will make every effort to protect the site from further impacts including looting, erosion, or other human or natural damage until BLM determines a treatment approach, and the treatment is completed. Unless previously determined in treatment plans or agreements, BLM will evaluate the cultural resources and, in consultation with the State Historic Preservation Office (SHPO), select the appropriate mitigation option within 48 hours of the discovery. The permittee/lessee, under guidance of the BLM, will implement the mitigation in a timely manner. The process will be fully documented in reports, site forms, maps, drawings, and photographs. The BLM will forward documentation to the SHPO for review and concurrence.
15. Pursuant to 43 CFR 10.4(g), the permittee/lessee must notify the AO, by telephone and 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), the operator/holder/applicant must stop activities in the vicinity of the discovery and protect it for 30 days or until notified to proceed by the AO.
16. The permittee/lessee is responsible for informing all persons who are associated with allotment operations that they will be subject to prosecution for disturbing or collecting vertebrate or other scientifically-important fossils, collecting large amounts of petrified wood (over 25lbs./day, up to 250lbs./year), or collecting fossils for commercial purposes on public lands. If any paleontological resources are discovered as a result of operations under this authorization, the permittee/lessee must immediately contact the appropriate BLM representative.

### **Final Decision**

In the absence of a protest, this proposed decision shall constitute my final decision without further notice in accordance with 43 CFR 4160.3(a). Should a timely protest be filed I will

consider the points of the protest and other pertinent information and issue my final decision to all persons named in this decision in accordance with 43 CFR 4160.3(b).

## **RATIONALE**

The purpose of the action is to fully process the term grazing permits (#0504375 and 0505054) on the Blacks Gulch (06625) and the West Shutta (06604) grazing allotments in accordance with 43 CFR 4130.2(a) which states, "Grazing permits or leases shall be issued to qualified applicants to authorize use on the public lands and other lands under the administration of the Bureau of Land Management that are designated as available for livestock grazing through land use plans." The need for the action is to revise these permits to address the changes in percent public land, pasture reconfiguration between the allotments, and to coordinate grazing use between the two allotments with terms and conditions for grazing use that would meet, or make substantial progress towards meeting the Colorado Public Land Health Standards, the Fundamentals of Rangeland Health (43 CFR 4180), Greater sage-grouse habitat objectives and resource objectives in the White River Resource Management Plan. This decision also includes updating of the allotment boundary to accurately reflect where the on-the-ground fencing exists which ultimately updates the percent federal range within the allotment.

## **MONITORING AND COMPLIANCE**

Allotment inspections (compliance) and resource and habitat condition monitoring will be conducted by the BLM, White River Field Office staff on an annual basis or when deemed necessary to ensure that appropriate use and resource conditions are being met and remain consistent with White River ROD/RMP. Specific mitigation developed in this document will be followed. The applicant will be notified of compliance related issues, and will be provided adequate time to resolve such issues.

## **AUTHORITY**

This proposed decision is being issued to you as an affected party under authority of 43 CFR 4160.1, and as a qualified applicant under 43 CFR 4110.1. Changes being made to the existing permit in the proposed grazing schedule are supported by regulation at 43 CFR 4130.3-3 when active use or related management are not meeting objectives in the land use plan, Colorado Public Land Health Standards, or the fundamentals of rangeland health (43 CFR 4180.2(c)). Proposed decreases in permitted use are addressed in 43 CFR 4110.3-2(b).

## **RIGHT OF PROTEST AND/OR APPEAL**

Any applicant, permittee, lessee, or other interested public may protest this proposed decision within 15 days following its receipt in accordance with 43 CFR 4160.2. The protest may be submitted in person or in writing to the White River Field Office Manager, Bureau of Land Management, White River Field Office, 220 East Market Street, Meeker, Colorado 81641.

In the event that this proposed decision becomes the final decision without further notice, any applicant, permittee, lessee, or other person whose interest is adversely affected by the final BLM grazing decision may file an appeal for the purpose of a hearing before an administrative law judge in accordance with 43 CFR 4160.3(c), 4160.4, 4.21, and 4.470. The appeal must be

filed within 30 days following receipt of the final decision or 30 days after the date the proposed decision becomes final. The appeal should state the reasons, clearly and concisely, why the appellant thinks the final BLM grazing decision is in error. A petition for a stay of the decision pending final determination of the appeal by the administrative law judge may also be submitted during this same 30 day time period. 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 White River Field Office as noted above. The person/party must also serve a copy of the appeal on any person named [43 CFR 4.421(h)] in the decision and the Office of the Solicitor, 755 Parfet St., Suite 151, Lakewood, CO 80215. The BLM does not accept appeals by facsimile or email at this time.

Should you wish to file a petition for a stay in accordance with 43 CFR Section 4.471(c), the appellant shall 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.

Within 15 days of filing the appeal, or the appeal and petition for stay, with the BLM officer named above, the appellant must serve copies to any other person named in this decision and on the Office of the Regional Solicitor located at 755 Parfet St., Suite 151, Lakewood, CO 80215, in accordance with 43 CFR 4.470(a) and 4.471(b).

If you have any questions, contact either Mary Taylor at 878-3807, or myself at 878-3800.

Sincerely,



Kent E. Walter  
Field Manager

