



United States Department of the Interior



In Reply Refer To:
4160

BUREAU OF LAND MANAGEMENT
Havre Field Office
3990 Highway 2 West,
Havre, Montana 59501-0911
www.blm.gov/mt

LLMTM03000

March 15, 2016

Allotment #06360

CERTIFIED MAIL NO. 7012 3050 0000 1288 1505
RETURN RECEIPT REQUESTED

NOTICE OF PROPOSED DECISION/FINAL DECISION

Dan Roark
1434 Benjamin Rd.
Oilmont, MT 59466

Dear Mr. Roark,

INTRODUCTION

This proposed decision serves as the decision record authorizing construction of the Sheep Fence. This action was analyzed in Environmental Assessment (EA) #DOI-BLM-M03000-2016-0007-EA. The Finding of No Significant Impact (FONSI) was signed March 15, 2016.

BACKGROUND

The proposed project consists of constructing approximately 6.5 miles of new fence and the modification of approximately 1.7 miles of existing fence on or adjacent to BLM administered land. The fence would be located in Toole County on the Sheep-#06360 grazing allotment in T35N R2W Sec(s) 07, 08, 17, 18, and 20

PROPOSED DECISION

It is my proposed decision to authorize implementation of the project work outlined in Alternative B – Proposed Action of the Sheep Fence Construction Proposal EA #DOI-BLM-M03000-2016-0007-EA. This proposed decision:

1. Authorizes construction of the Sheep Fence within and along the boundaries of the Sheep #06360 Grazing Allotment.

This proposed decision is contingent on meeting all stipulations, mitigation measures and design features listed below.

1. Prior to any construction activities, the BLM will enter into a cooperative agreement with the lessee for the installation and maintenance of the proposed fence.
2. The sections of the fence located on BLM public land would be built to BLM fencing standards as outlined in BLM Fencing Manual H-1741-1 for sheep.
3. All existing sections of fence within the project area built to control cattle may be modified by adding additional strands of barbed wire. After modifications, existing portions of the fence will be 5 or 6 strand barbed wire to control both cattle and sheep.
4. Any changes to the fence alignment and location agreed upon under the cooperative agreement must be approved by the authorized officer.
5. The BLM will survey and stake the fence alignment prior to any fence construction in the Northwest quarter of section 17.
6. Construction and maintenance activities shall not be performed during periods when the soil is too wet to adequately support equipment/vehicles. If equipment/vehicles create ruts in excess of 3 inches deep, operations must cease as the soil will be deemed too wet to adequately support equipment/vehicles.
7. When domestic sheep are not in the allotment pastures, gates will be opened to facilitate pronghorn movement.
8. Fence construction activities will not be permitted April 15 – July 15 to protect nesting activities of sensitive status species such as Brewer’s sparrow, Chestnut collared longspur and McCowan’s longspur.

RATIONALE

My decision is based on the information and analysis in the Sheep Fence Construction Proposal EA #DOI-BLM-M03000-2016-0007-EA. The fence is being constructed to provide options for better grazing management of the Sheep allotment. Currently this allotment is not fenced, and grazing of the allotment is infrequent and based upon the availability of a herder and/or other control methods. Upon completion of the project, two grazing pastures will have been created within the Sheep allotment boundaries which will assist in continuing to meet the Standards of Rangeland Health. The implementation of a 2-pasture grazing system coupled with the currently permitted season of use is expected to benefit rangeland resources through allotment better utilization by providing the operator more options for the control and distribution of livestock as well as the timing of use.

The public lands in the project area are managed according to decisions in the HiLine Resource Management Plan (HiLine RMP) approved in 2015. The proposed fence is not specifically addressed in the HiLine RMP; however, the construction, maintenance and modification of range

improvement projects are in conformance with the Approved HiLine RMP and its guidance for vegetation management and administration of livestock grazing section 3.2.8 on page 3-24. This decision is also consistent with the regulations for managing grazing use on public lands found under the Code of Federal Regulations, Part 43, Subpart 4100.

AUTHORITY

The authority for this proposed decision is based on the following regulations in Title 43 of the Code of Federal Regulations, Part 4100.

Subpart 4120 – Grazing Management

4120.3 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.

4120.3-2 Cooperative Range Improvement Agreements.

(a) The Bureau of Land Management may enter into a cooperative range improvement agreement with any 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 cost or labor, or both, shall be divided between the United States and cooperator.

(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 shall be through cooperative range improvement agreements. A permittee's interest in contributed funds, labor, and materials will be documented by Bureau of Land Management to ensure proper credit for the purposes of 4120.3-5 and 4120.3-6(c).

RIGHT OF PROTEST AND/OR APPEAL

Any applicant, permittee, lessee or other interested public may **Protest** this proposed decision under section 43 CFR 4160.2, in person or in writing to the Havre Field Office Manager, Bureau of Land Management, Havre Field Office, Box 911, 3990 Highway 2 West, Havre, Montana 59501 within 15 days of receipt of this notice. A protest should specify the reasons why you think the proposed decision is in error.

In order to protest a proposed grazing decision, you must be an interested public as defined by the grazing regulations. An interested public is defined as an individual, group or organization that has submitted a written request to the authorized officer to be provided an opportunity to be involved in the decision making process for the management of livestock grazing on specific

grazing allotments or has submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment.

If a protest is filed within the time period allowed, the protest statement of reasons and other pertinent information will be considered and a final decision issued with a right of appeal [43 CFR 4160.3(b) and 4160.4].

In the absence of a protest within the time allowed, the proposed decision shall constitute my **Final Decision** without further notice [43 CFR 4160.3(a)].

Any applicant, permittee, lessee or other person whose interest is adversely affected by a final BLM grazing decision may **Appeal** this decision for the purpose of a hearing before an Administrative Law Judge within 30 days following receipt of the final decision or within 30 days after the proposed decision becomes final (43 CFR 4.470, 4160.3 and 4160.4). The Appeal must be filed with the Havre Field Manager at the above address and a copy served on any other person named in this decision. The appeal must clearly and concisely state the reasons why you think the final decision is wrong.

The final decision will become effective at the expiration of the time for filing an Appeal unless a **Petition for a Stay** is filed together with the Appeal. The Appeal together with the Petition for a Stay must be filed with the Havre Field Manager at the above address (43 CFR 4.471 and 43 CFR 4160.3 and 4160.4). The Petition for a Stay of this decision pending appeal must show sufficient justification based on the following standards [43 CFR 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 not granted, and
- (4) Whether the public interest favors granting the stay.

The appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.

The appellant must also serve a copy of the **Appeal** and **Petition for a Stay** by certified mail on the Office of the Field Solicitor, U.S. Department of the Interior, P.O. Box 31394, Billings, MT 59107-1394, Billings, MT 59101, and any other person named in this decision [43 CFR 4.471].

If you have any questions or need additional information, please contact Jeremy McKellar at 406-262-2845.

Sincerely,

Stanley Jaynes
Havre Field Office Manager

Attachments: Sheep Fence Construction Proposal Project Map