

# CATEGORICAL EXCLUSION

**DOI-BLM-CO-040-2016-0040-CX**

## **Grazing Permit Transfer - West Hardscrabble Common and Red Hill Common Allotments**



*Prepared by:*

United States Department of the Interior  
Bureau of Land Management  
Colorado River Valley Field Office  
2300 River Frontage Road  
Silt, Colorado 81652



## **PROJECT/ACTION.**

Transfer a Grazing Permit on the West Hardscrabble Common (#08504) and Red Hill Common (#08507) Allotments.

## **PERMIT/SERIAL/CASE FILE NUMBER.**

Case file number 0507566.

## **LOCATION.**

South of Gypsum, CO.

## **LEGAL DESCRIPTION.**

T6S 86W Sec 1-3, 10. T6S 85W Sec 6. T5S 86W Sec 10-15, 21-27,31,34, 35. T5S 85W Sec 9-17, 20-28, 31-36. T5S 84W Sec 7,8, 17-20, 30, 31

## **APPLICANT.**

Grazing Permittee.

## **PURPOSE AND NEED FOR ACTION.**

These permits/leases are subject to renewal or transfer at the discretion of the Secretary of the Interior for a period of up to ten years. The U.S. Bureau of Land Management has the authority to renew the livestock grazing permits/leases consistent with the provisions of the Taylor Grazing Act, Public Rangelands Improvement Act, Federal Land Policy and Management Act, Colorado River Valley Field Office Record of Decision (ROD) and Approved Resource Management Plan, Roan Plateau Resource Management Plan Amendment, and the Colorado Public Land Health Standards.

The mission of the BLM is “to sustain the health, diversity, and productivity of the public lands for the use and enjoyment of present and future generations”. Land Health Standards and Guidelines for Livestock Grazing Management were developed between the BLM and the Colorado Resource Advisory Council to ensure that the mission of the BLM will be achieved.

This action is needed to determine whether or not to transfer a grazing permit/lease and if so under what terms and conditions to ensure that Public Land Health Standards and objectives for resource management are or will continue to be achieved.

## DESCRIPTION PROPOSED ACTION.

The Proposed Action is to transfer grazing preference from Wilson Ranch LLC to Gerard Brothers Partnership LLLP and issue a new grazing permit with the following terms and conditions. The new permit will be issued for a 10-year period, unless the base property is leased for less, but for purposes of the CX we are assuming 10 years of grazing by this or another applicant (in case of transfer). The Proposed Action is in accordance with 43 CFR 4130.2. Scheduled grazing use, grazing preference, and terms and conditions for the proposed grazing permit are summarized below in Table 1, Table 2 and Table 3.

**Table 1. Existing Wilson Ranch LLC permit.**

Operator Name	Auth. No.	Allotment & Number	Livestock Number	Livestock Kind	Begin Date	End Date	% BLM Land	AUMs
Wilson Ranch LLC	0505469	Red Hill Com #08507	69	Cattle	5/10	6/24	100	104
		West Hardscrabble Com #08504	128	Cattle	5/25	6/25	100	135

**Table 2. Existing Gerard Brothers Partnership LLLP permit.**

Operator Name	Auth. No.	Allotment & Number	Livestock Number	Livestock Kind	Begin Date	End Date	% BLM Land	AUMs
Gerard Brothers Partnership LLLP	0507566	West Hardscrabble Com #08504	395	Cattle	5/25	6/25	100	416

**Table 3. Proposed New Gerard Brothers Partnership LLLP permit.**

Operator Name	Auth. No.	Allotment & Number	Livestock Number	Livestock Kind	Begin Date	End Date	% BLM Land	AUMs
Gerard Brothers Partnership LLLP	0507566	Red Hill Com #08507	69	Cattle	5/10	6/24	100	104
		West Hardscrabble Com #08504	523	Cattle	5/25	6/25	100	551

**Table 4. Proposed Permitted Use AUMS.**

<b>Operator Name</b>	<b>Auth. No.</b>	<b>Allotment &amp; Number</b>	<b>Active AUMs</b>	<b>Suspended AUMs</b>	<b>Temporary Suspended AUMS</b>	<b>Permitted Use</b>
Gerard Brothers Partnership LLLP	0507566	Red Hill Com #08507	104	0	0	104
		West Hardscrabble Com #08504	551	0	0	551

**Terms and Conditions.**

1. An actual use report shall be submitted annually to the BLM office no later than 15 days after livestock have been removed (i.e. the grazing end period on the bill or permit/lease).
2. Adaptive management will be employed on this allotment. The BLM will allow up to 14 days of flexibility in the start and end dates on this permit depending on range readiness. Livestock use different than that shown above must be applied for in advance.
3. Maintenance of range improvements is required and shall be in accordance with all approved cooperative agreements and range improvement permits/leases. Maintenance shall be completed prior to turnout. Maintenance activities shall be restricted to the footprint (previously disturbed area) of the project as it existed when it was initially constructed. The Bureau of Land Management shall be given 48 hours advance notice of any maintenance work that will involve heavy equipment. Disturbed areas will be reseeded with a certified weed-free seed mixture of native species adapted to the site.
4. The permittee/lessees and all persons associated with grazing operations must be informed that any person who injures, destroys, excavates, appropriates or removes any historic or prehistoric ruin, artifact, object of antiquity, Native American remains, Native American cultural item, or archaeological resources on public lands is subject to arrest and penalty of law. If in connection with allotment operations under this authorization any of the above resources are encountered, the proponent shall immediately suspend all activities in the immediate vicinity of the discovery that might further disturb such materials and notify the BLM authorized officer of the findings. The discovery must be protected until further notified in writing to proceed by the authorized officer.
5. Average utilization levels by livestock should not exceed 50% by weight on key grass species, and 30% of the key browse species current year’s growth. Grazing in riparian areas should leave an average minimum 4-inch stubble height of herbaceous vegetation. If utilization is approaching allowable use levels, livestock should be moved to another portion of the allotment, or removed from the allotment entirely for the remainder of the growing season. Application of this term may be flexible to recognize livestock management that includes sufficient opportunity for regrowth, spring growth prior to grazing, or growing season deferment.

## LAND USE PLAN CONFORMANCE.

The Proposed Action is subject to and has been reviewed for conformance with the following land use plan (43 CFR 1610.5, BLM 1617.3).

**Name of Plan.** Colorado River Valley Field Office Record of Decision (ROD) and Approved Resource Management Plan (RMP) (BLM 2015).

**Date Approved.** June 2015.

**Decision Number/Page.**

- Decision Number GRZ-GOAL-01. Livestock Grazing Management page 68.
- Decision Number GRZ- OBJ-01. Livestock Grazing Management page 68.

**Decision Language.**

- **GRZ-GOAL-01.** Apply flexible and sustainable livestock grazing, in accordance with BLM Colorado Standards for Public Land Health and Guidelines for Livestock Grazing Management to contribute to local economies, ranching livelihoods, and the rural western character integral to many communities.
- **GRZ-OBJ-01.** Meet the forage demands of livestock operations based on active use, by providing approximately 441,600 acres for livestock grazing, and provide approximately 35,500 AUMs of livestock forage.

## COMPLIANCE WITH NEPA.

The proposed action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with Section 402(h)(1) of Federal Land Policy and Management Act (FLPMA) as per Instruction Memorandum (IM) No. 2015-121 which provides guidance for applying a categorical exclusion (CX) to an environmental review of a grazing permit.

The Departmental Manual (516 DM 2.3A (3) & App. 2) requires that before any action described in the following list of categorical exclusions is used, the exceptions must be reviewed for applicability in each case. The proposed action cannot be categorically excluded if one or more of the exceptions apply, thus requiring either an EA or an EIS. When no exceptions apply, the following types of bureau actions normally do not require the preparation of an EA or EIS.

None of the following exceptions in 516 DM 2, Appendix 2, apply.

**Table 5. Exclusions.**

EXCLUSION	YES	NO
1. Have significant impacts on public health or safety.		X
2. Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands;		X

wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds; and other ecologically significant or critical areas.		
3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)].		X
4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.		X
5. Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.		X
6. Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.		X
7. Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by either the bureau or office.		X
8. Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.		X
9. Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.		X
10. Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).		X
11. Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007).		X
12. Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112).		X

## INTERDISCIPLINARY REVIEW.

**Table 6. BLM Interdisciplinary Team Authors and Reviewers.**

Name	Title	Areas of Participation
Kristy Wallner	Rangeland Management Specialist	Preparer, Livestock Grazing, Invasive, Non-native species (Noxious weeds)
Brian Hopkins	Assistant Field Manager	NEPA Compliance

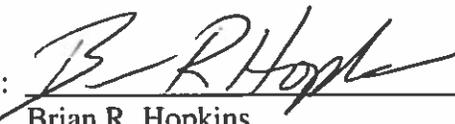
## REMARKS/MITIGATION.

None.

## SUMMARY OF FINDINGS AND DECISION.

I have considered this action and determined that transfer of a grazing permit on the Red Hill Common #08507 and West Hardscrabble Common #08504 Allotments meets the criteria (WO IM No. 2015-121-Attachment 1) for application of a CX under the amended Section 402 of FLPMA. Furthermore, I have evaluated the Proposed Action relative to the 12 criteria listed above and have determined that it does not represent an exception and is, therefore, categorically excluded from further environmental analysis.

### Signature.

Authorizing Official:  Date: 2-10-16  
Brian R. Hopkins  
Assistant Field Manager

**Contact Person.** For additional information concerning this CX review, contact Kristy Wallner, Rangeland Management Specialist at 970-876-9023, Colorado River Valley Field Office, 2300 River Frontage Road, Silt, CO 81652.



United States Department of the Interior  
BUREAU OF LAND MANAGEMENT  
Colorado River Valley Field Office  
2300 River Frontage Road  
Silt, CO 81652



IN REPLY REFER TO:  
ON 0507566 (CON040)

**CERTIFIED MAIL 70142120000179919317**  
**RETURN RECEIPT REQUESTED**

Gerard Brothers Partnership, LLLP  
c/o Clayton Gerard  
0899 Daggett Lane  
Gypsum, CO 81637-0419

### **NOTICE OF PROPOSED DECISION**

Dear Mr. Gerard:

#### **Introduction & Background.**

Gerard Brothers Partnership, LLLP applied to transfer grazing preference on the Red Hill (#08507) and W Hardscrabble (#08504) Allotments from Wilson Ranch, LLC on January 21, 2016. Subsequently an application was submitted for a grazing permit on the Red Hill (#08507) and W Hardscrabble (#08504) Allotments.

The review and NEPA compliance has been completed as documented in Categorical Exclusion (CX) DOI-BLM-CO-N040-2016-0040 in accordance with Section 402(h)(1) of Federal Land Policy and Management Act (FLPMA) and per Instruction Memorandum (IM) No. 2015-121 which provides guidance for applying a categorical exclusion (CX) to an environmental review of a grazing permit. A copy of the CX is enclosed.

#### **Proposed Decision.**

As a result of this process, it is my proposed decision to cancel the existing permit #0505469 for Wilson Ranch, LLC, approve the grazing preference transfer, and to re-issue grazing permit #0507566 to Gerard Brothers Partnership, LLLP for a period of 10 years (March 21, 2016 – November 21, 2026). The following tables outline Scheduled Grazing Use, Grazing Preference, and other terms and conditions of the permits.

**Table 1. Mandatory Terms and Conditions (Scheduled Grazing Use).**

Operator Name	Auth. No.	Allotment & Number	Livestock Number	Livestock Kind	Begin Date	End Date	% BLM Land	AUMs
Gerard Brothers Partnership LLLP	0507566	Red Hill Com #08507	69	Cattle	5/10	6/24	100	104
		West Hardscrabble Com #08504	523	Cattle	5/25	6/25	100	551

**Table 2. Grazing Preference AUMS.**

Operator Name	Auth. No.	Allotment & Number	Active AUMs	Suspended AUMs	Temporary Suspended AUMS	Permitted Use
Gerard Brothers Partnership LLLP	0507566	Red Hill Com #08507	104	0	0	104
		West Hardscrabble Com #08504	551	0	0	551

**Terms and Conditions.**

1. An actual use report shall be submitted annually to the BLM office no later than 15 days after livestock have been removed (i.e. the grazing end period on the bill or permit/lease).
2. Adaptive management will be employed on this allotment. The BLM will allow up to 14 days of flexibility in the start and end dates on this permit depending on range readiness. Livestock use different than that shown above must be applied for in advance.
3. Maintenance of range improvements is required and shall be in accordance with all approved cooperative agreements and range improvement permits/leases. Maintenance shall be completed prior to turnout. Maintenance activities shall be restricted to the footprint (previously disturbed area) of the project as it existed when it was initially constructed. The Bureau of Land Management shall be given 48 hours advance notice of any maintenance work that will involve heavy equipment. Disturbed areas will be reseeded with a certified weed-free seed mixture of native species adapted to the site.
4. The permittee/lessees and all persons associated with grazing operations must be informed that any person who injures, destroys, excavates, appropriates or removes any historic or prehistoric ruin, artifact, object of antiquity, Native American remains, Native American cultural item, or archaeological resources on public lands is subject to arrest and penalty of law. If in connection with allotment operations under this authorization any of the above resources are encountered, the proponent shall immediately suspend all activities in the immediate vicinity of the discovery that might further disturb such

materials and notify the BLM authorized officer of the findings. The discovery must be protected until further notified in writing to proceed by the authorized officer.

5. Average utilization levels by livestock should not exceed 50% by weight on key grass species, and 30% of the key browse species current year's growth. Grazing in riparian areas should leave an average minimum 4-inch stubble height of herbaceous vegetation. If utilization is approaching allowable use levels, livestock should be moved to another portion of the allotment, or removed from the allotment entirely for the remainder of the growing season. Application of this term may be flexible to recognize livestock management that includes sufficient opportunity for regrowth, spring growth prior to grazing, or growing season deferment.

### **Rationale for the Proposed Decision.**

Transferring and issuing grazing permits is in conformance with the Colorado River Valley Field Office Record of Decision (ROD) and Approved Resource Management Plan (RMP) (BLM 2015).

An interdisciplinary team prepared CX-DOI-BLM-CO-N040-2016-0040 for the proposed permit. My proposed decision is based on the findings of the analyses contained in the CX. The analysis of the proposed action indicated that the current conditions and land health standards in the Red Hill (#08507) and W Hardscrabble (#08504) Allotments expected to be maintained or improved. The grazing use proposed allows for adequate plant growth recovery and promotes healthy rangelands as it relates to rangeland standards.

Other terms and conditions outlined in the other terms and conditions section of the permit have been included to mitigate potential impacts from grazing use.

### **Authority.**

43 CFR 4110.2-2(a) states: "Permitted use is granted to holders of grazing preference and shall be specified in all grazing permits or leases. Permitted use shall encompass all authorized use including livestock use, any suspended use, and conservation use, except for permits and leases for designated ephemeral rangelands where livestock use is authorized based upon forage availability, or designated annual rangelands. Permitted livestock use shall be based upon the amount of forage available for livestock grazing as established in the land use plan, activity plan or decision of the authorized officer under § 4110.3-3, except, in the case of designated ephemeral or annual rangelands, a land use plan or activity plan may alternatively prescribe vegetation standards to be met in the use of such rangelands."

43 CFR 4110.2-3(a) states: "Transfer of grazing preference in whole or in part are subject to the following requirements: (1) The transferee shall meet all qualifications and requirements of 4110.1, 4110.2-1 and 4110.2-2."

43 CFR 4130.2(a) states: "Grazing permits or leases authorize use on the public lands and other BLM-administered lands that are designated in land use plans as available for livestock grazing. Permits and leases will specify the grazing preference, including active and suspended use. These grazing permits and leases will also specify terms and conditions pursuant to §§4130.3, 4130.3-1, and 4130.3-2."

43 CFR 4160.1(a) states: "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".

### **Protest and/or Appeal.**

Any applicant, permittee, lessee or other interested publics may protest a proposed decision under Sec. 43 CFR 4160.1 and 4160.2, in person or in writing to Brian Hopkins, Assistant Field Office Manager, Bureau of Land Management, 2300 River Frontage Road, Silt, Colorado 81652 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), 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.

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 accordance with 43 CFR 4.470 and 43 CFR 4160.3 and 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 and 4.479, pending final determination on appeal. 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 any person named [43 CFR 4.421(h)] in the decision and the Office of the Solicitor, United States Department of Interior, 755 Parfet Street, Suite 151, Lakewood, Colorado 80215. The BLM does not accept appeals by facsimile or email.

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:

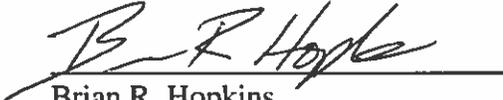
(1) The relative harm to the parties if the stay is granted or denied.

- (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 serviced in accordance with 43 CFR 4.473. 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 Hearings division a motion to intervene in the appeal, together with the response, within 10 days after 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 4.472(b)).

Please take a moment to review your enclosed grazing permit. **If you do not have any concerns with the permit as offered, please sign, date, and return both copies to our office.** If you have any questions about this proposed decision please contact Kristy Wallner (Rangeland Management Specialist) at 970-876-9023.

Sincerely,



Brian R. Hopkins  
Assistant Field Manager

2-10-16  
Date

Enclosure(s)  
Form 4130-2a (Grazing Permit)  
CX# DOI-BLM-CO-N040-2016-0040