



THE SECRETARY OF THE INTERIOR
WASHINGTON

NOTICE OF FINAL DECISION

The purpose of this decision is to: apportion available forage within the Bridge Creek Area allotments of Hammond, Mud Creek, Hardie Summer, and Hammond FFR; assign a grazing preference; issue a 10-year livestock grazing permit with allotment management plans for the Bridge Creek Area allotments; and authorize the construction and removal of range improvements within the Bridge Creek Area allotments.

The parties are advised hereby that, as Secretary of the Interior, I am exercising jurisdiction over this matter in accordance with 43 C.F.R. § 4.5. As described below under the heading “Appeals,” there are no further administrative appeals available. The Taylor Grazing Act provides for hearings from decisions of administrative officers, 43 U.S.C. § 315h, though not from decisions of the Secretary. Similarly, the Federal Land Policy and Management Act (FLPMA) provides for a right of appeal from allotment management plan decisions issued by subordinate officials. 43 U.S.C. § 1752(f). Because the duly adopted regulations establishing these processes for decisions rendered by the BLM do not and cannot preclude the Secretary from exercising reserved statutory authority, this decision properly concludes administrative proceedings on this matter.

I. Procedural Background

The BLM has been authorizing livestock grazing on the Bridge Creek Area allotments since at least 1939. While the boundaries of the allotments and the authorized grazing use have changed over time, as described in the Environmental Assessment (EA) (DOI-BLM-ORWA-B060-2020-0001-EA), grazing within these allotments has been conducted historically since 1964 by Hammond Ranches, Inc. (HRI).

In 2014, the BLM determined that HRI did not meet the qualifications under the livestock grazing regulations to be issued a renewed 10-year permit. The reasons therefore are set forth in that decision. HRI sought administrative review of that decision before the Office of Hearings and Appeals (OHA), contesting a number of issues and claiming that HRI maintained its grazing preference despite the cancellation/non-renewal of its permit. These proceedings were still ongoing in late 2018 when Secretary Zinke assumed jurisdiction over the appeal and issued a decision bringing the matter to a close. In 2019, acting under direction from Secretary Zinke, the BLM reversed course and issued HRI a renewed permit. Litigation ensued over the issuance of this renewal permit in the United States District Court for the District of Oregon, resulting in a truncated and aberrational 2019 grazing season (that will be discussed in more detail below), as well as, ultimately, the vacatur of the permit and related Secretarial decision.

The District Court remanded the case to the Department, whereby I continued to exercise jurisdiction. In the limited proceedings that followed, the BLM, pursuant to the order I issued on March 19, 2020, provided public notice of conditionally available forage in the Bridge Creek Area allotments that might become available depending on whether HRI continued to pursue its administrative appeal. In response to that notice of available forage, the BLM received four applications by the April 14, 2020, deadline, and informed all parties to the HRI administrative appeal of the applications it received in a notice dated April 21, 2020. HRI nonetheless elected to withdraw its administrative appeal, asserting it was doing so without prejudice. Regardless, my order issued on May 15, 2020, closed the case, and the forage was then available in the Bridge Creek Area allotments.

II. Review of the Competing Applications & NEPA Process

The BLM Burns District Office initially reviewed the applications received on April 14, 2020, and made an informal, preliminary determination that all the applicants met the mandatory qualification criteria in 43 C.F.R. § 4110.1 (2005).¹

Competing applications for grazing authorizations are governed by 43 C.F.R. § 4130.1-2. The rule provides that, when one or more qualified applicants apply for grazing use of the same public lands, “the authorized officer may authorize grazing use...on the basis of any of the following factors.”² The regulation then lists the following eight factors:

- (a) Historical use of the public lands (see § 4130.2(e));
- (b) Proper use of rangeland resources;
- (c) General needs of the applicant’s livestock operations;
- (d) Public ingress or egress across privately owned or controlled land to public lands;
- (e) Topography;
- (f) Other land use requirements unique to the situation;
- (g) Demonstrated stewardship by the applicant to improve or maintain and protect the rangeland ecosystem; and
- (h) The applicant’s and affiliate’s history of compliance with the terms and conditions of grazing permits and leases of the Bureau of Land Management and any other Federal or

¹ All references to the livestock grazing regulations herein are to the version published in the 2005 edition of the Code of Federal Regulations (C.F.R.).

² Section 4130.1-2 also allows the authorized officer to resolve competing applications by reference to § 4110.3-1. Under 43 C.F.R. § 4110.3-1(b), additional forage available on a sustained yield basis must be apportioned to satisfy suspended use of an existing permittee. This is inapplicable here, as there is no existing permittee on the Bridge Creek Area allotments. Similarly, under 43 C.F.R. § 4110.3-1(c)(1) and (2) establish a system that favors existing permittees to the extent of their proportional stewardship efforts or permitted use. Again, these are inapplicable here.

State agency, including any record of suspensions or cancellations of grazing use for violations of terms and conditions of agency grazing rules.³

To address the regulatory criteria for competing applications for available forage in 43 C.F.R. § 4130.1-2, the BLM developed and distributed to the applicants a questionnaire to solicit additional detail related to the regulatory factors. The BLM also requested a grazing plan from each of the three remaining applicants.⁴ After the BLM received the supplemental information from the applicants, the BLM redacted names and any identifying information from the packages of supplemental information it received. The redacted supplemental information was then put before a panel of eight experienced BLM specialists for evaluation. The panel consisted of two specialists from the local Burns District BLM office, three specialists from other Oregon/Washington BLM offices, one specialist from Idaho BLM, one specialist from the BLM Headquarters office, and one District Manager from an office with a large range program. Convening a “blind” panel is not a required statutory or regulatory step to resolve competing applications; nonetheless it is a tool that the BLM has utilized before to evaluate competing applications for available forage and make recommendations. The panel’s recommendations are not binding on an authorized officer.

The panel members were asked individually to review each applicant in connection with each separate regulatory factor, provide his or her overall rationale, and rank the applicants (optional). The panelists provided their input to the Andrews/Steens Resource Area Field Manager.

The Burns District did not seek input from the panel on two of the regulatory factors, § 4130.1-2(d) (public ingress or egress over private land to public land), and (h) (compliance history). As to factor (h), the BLM Burns District Range Management Lead conducted a review of compliance history for the three applicants in the BLM grazing files to identify violations of prohibited acts as described in the 2005 grazing regulations. That review found as follows:

HRI: 2 instances of unauthorized burning, spraying, removing vegetation; 2 instances of interfering with lawful use of public lands; 6 instances of unauthorized grazing (trespass). Earliest violation on record for HRI occurs in 1977.

Applicant 2: No documented instances of prohibited acts.

³ In their protests, the Sierra Club and Western Watersheds Project take issue with the lack of public involvement in the competing applications process. Section 4130.1-2 does not provide for consultation, cooperation, and coordination with the interested public (or anyone else). The Sierra Club also claims BLM “ignored” requests from a different organization and did not make the competing applications available to the public. Western Watersheds Project makes similar statements in its protest. This is inaccurate. The BLM responded to a FOIA request filed by the Western Watersheds Project (2020-067); however, the BLM subsequently suspended it following request by Paul Ruprecht.

⁴ As noted above, prior to the BLM sending a request for supplemental information out to the four qualified applicants, one withdrew its application from consideration on September 1, 2020.

Applicant 3: No documented instances of prohibited acts.

The feedback from the BLM panel on the remaining six factors varied. This summary of the panel's feedback focuses mostly on the rankings provided by the panelists, as the rankings are a distillation of the narrative rationale of the panelist and give some detail on rationales. For the most part, however, the rationales reflect the opinion of the individual panelist and are neither binding on an authorized officer nor outcome determinative. In response to factor (a), historical use of the public lands, three panelists did not rank the applicants. Of the five panelists who ranked the applicants on this factor, none ranked HRI first, generally indicating in their rationales that the response appeared to be written by a "lawyer" and was either unclear or not as responsive as what the panelist hoped to see. The collective tally from the panelists' responses ranked Applicant 2 the highest for this factor, seemingly due to its familial tie to livestock grazing, a 30+ year history of being a livestock grazing permittee, and receiving an award for "Grassman of the Year."

In response to factor (b), proper use of rangeland resources, four panelists⁵ ranked HRI first, and three panelists ranked HRI last among the applicants. The rationales generally reflect the different perspectives of the respective panelists as to the strength of the response provided by the applicant in the questionnaire and how the panelist individually weighted whether the response was specific enough. For example, one panelist ranked HRI the highest, favorably identifying HRI's history of meeting rangeland health standards. Another panelist, however, ranked HRI lowest on this factor, based on the view that the response was insufficient. Nonetheless, HRI and Applicant 3 overall outranked Applicant 2.

In response to factor (c), general needs of the applicants, three panelists did not rank the applicants. Of those who did complete a ranking, two ranked HRI's need the highest, and one panelist determined HRI and Applicant 3 tied for second and the other ranked HRI second. Applicant 2 scored lowest, generally due to its application being limited to two pastures.

In response to factor (e), topography, four panelists did not rank the applicants. Of those who did complete a ranking, three ranked HRI's application highest, and one panelist determined HRI and Applicant 3 tied for second. The collective tally from the panelists' responses that included a ranking ranked HRI highest, followed by Applicant 2, and then Applicant 3. Generally, the panelists thought that HRI provided the response that demonstrated the most knowledge of the area, as it explained how its livestock move from the lower elevation base property up to summer pastures.

In response to factor (f), land use requirements unique to the situation, six panelists ranked HRI highest (although one of the panelists who provided a ranking did so for two of the four allotments and did not rank the other applicants or identify a separate ranking for the other two allotments). Panelists tended to credit HRI's response with an awareness of management issues arising due to its intermixed private lands and water rights in the area that give HRI more options

⁵ One panelist broke this factor down into specific subsections, which ranked the applicants differently for sage-grouse and riparian issues. This summary refers to the generic ranking.

than other applicants currently have. Applicant 2 outranked Applicant 3 for the second-highest ranking based on the panelists' responses.

In response to factor (g), demonstrated stewardship, none of the panelists ranked HRI highest. Four panelists ranked HRI lowest on this factor. The panel's collective response ranked Applicant 3 the highest, due to descriptions of examples that relate to improving or protecting rangeland ecosystems as a whole and photo documentation to help illustrate the examples. Applicant 3 also discussed reducing numbers during droughts to protect resources. Applicant 2 described a BLM award for cooperating with BLM and referred to fences it built and adjusted grazing during fire rehabilitation efforts. By contrast, panelists tended to view HRI's response as limited due to its reliance on past conformance with rangeland health standards and lack of specific examples in response to this factor in the questionnaire.⁶

While the review of the competing applications was ongoing within the BLM, the BLM simultaneously moved forward with analyzing the potential effects of authorizing livestock grazing on the Bridge Creek Area allotments. Recognizing that the terms and conditions contained in past permits for these allotments may be inadequate to allow the BLM and permittee flexibility to respond to changing ecological and vegetative conditions while meeting the multiple use mandate required by FLPMA and the needs of other resources including GRSG and riparian concerns, the BLM sought public input specifically on developing allotment management plans for the allotments both in a scoping period and during a comment period provided on the EA and preliminary FONSI. The grazing plans provided by the applicants and/or developed with applicant input in coordination with the BLM, followed by additional consultation, cooperation, and coordination with each applicant helped to inform the BLM's development of alternatives for the NEPA analysis.

On December 31, 2020, Mr. Casey Hammond, Principal Deputy Assistant Secretary, Land and Minerals Management, signed a Proposed Decision to issue a 10-year grazing permit with terms and conditions that included allotments management plans to HRI and authorize various range improvement projects. During the protest period for the Proposed Decision, the BLM received 160 protests before the protest period closed.⁷ The BLM also continued to review and address public comments received on the EA during the protest period.

III. Resolution Of Competing Applications

Many protests contested the issuance of a grazing permit to HRI. Protests generally asserted that HRI did not have a satisfactory record of performance and did not meet that mandatory qualification requirement to obtain a livestock grazing permit, generally due to the prior arson convictions of its principals and the other non-criminal conduct previously identified by the

⁶ As noted above, the BLM also asked the applicants to submit grazing plans. The BLM panelists also evaluated the grazing plans. The panelists' review and ranking of the plans is not included in this summary, however, as they do not pertain to the factors in 43 C.F.R. 4130.1-2.

⁷ BLM accepted protests via email pursuant to the May 26, 2020, Memorandum from Mike Nedd, BLM Deputy Director of Operations to All State Directors, Subject: Grazing Decisions, Protests and Appeals via Email.

BLM when it determined HRI was not eligible for a renewal grazing permit in 2014. Sierra Club, Western Watersheds Project, WildEarth Guardians, and Mr. Marlett find fault for the failure to explain why there is a departure from the 2014 BLM decision. HRI, the Sierra Club, WildEarth Guardians, Harney County Stock Growers Association, and Western Watersheds Project protested the nature of an implicit finding. Because competing applications under § 4130.1-2 are only those that are submitted by qualified applicants and because there is an important distinction between qualification requirements for new permits and renewal permits under § 4110.1(b), this Final Decision analyzes mandatory qualification in more explicit detail.

The grazing regulations have different standards of qualification for *new* permits than for renewal permits. The BLM denied HRI a renewal permit in 2014 based on its determination that HRI did not have a satisfactory record of performance under 43 C.F.R. § 4110.1(b)(1)(i). The 2019 permit issued to HRI was a renewal permit, and the District Court found that the prior Secretarial decision did not comply with the permit renewal regulation, as it did not expressly find that HRI was in “substantial compliance.”⁸

To the contrary, the permit that will be issued following resolution of competing applications for available forage in the Bridge Creek Area allotments is not a renewal permit. It is a new permit, and applicants for new permits are deemed to not have a satisfactory record of performance, when, as relevant here, the applicant and its affiliates have had a Federal permit cancelled for violation of the permit within the 36 calendar months immediately preceding the date of the application. 43 C.F.R. § 4110.1(b)(2)(i). In contrast to the standards for a satisfactory record of performance for a renewal permit, the regulations do not identify any other requisite benchmarks for the authorized officer to use to determine that a new permit applicant has a satisfactory record. The specificity in § 4110.1(b)(2), as to when a new permit applicant absolutely cannot qualify, implies that, in the absence of triggering any of those criteria, a new permit applicant may still be eligible. The preamble accompanying the adoption of these criteria for new applicants is not to the contrary, stating simply that the final rule:

includes a provision to disqualify applicants for new or additional grazing permits and leases if: (1) The applicant or affiliate has had any Federal grazing permit or lease, or any State grazing permit or lease within the grazing allotment for which a Federal permit or lease is sought, cancelled for violation of the permit or lease within the 36 calendar months immediately preceding the date of application; or (2) the applicant or affiliate is barred from holding a Federal grazing permit or lease by order of a court of competent jurisdiction.

These requirements do not apply to applicants for renewal of grazing permits or leases.

⁸ *Western Watersheds Project et al. v. Bernhardt et al.*, 428 F. Supp. 3d 327, 344–46 (D. Or. 2019). The Court also determined that the Secretarial decision improperly relied on post-permit conduct and overlooked non-criminal conduct. *See id.* at 346–53.

60 *Fed. Reg.* 9898 (Feb. 22, 1995). Because the circumstances that require an adverse determination are largely confined to the 36-month period leading up to an application (the only exception being where an applicant or its affiliate are barred judicially from holding a permit), I am applying the same time period to conclude that HRI has a satisfactory record of performance to meet the mandatory qualification requirements for a new permit.

The date of the decision not to renew HRI's prior permit was February 14, 2014. HRI submitted an application for conditionally available forage on the Bridge Creek Area allotments on April 14, 2020, which is well beyond the 3-year regulatory period that otherwise precludes a prior permittee on the receiving end of a cancelled permit from qualifying for a new permit.⁹ Under this standard, HRI meets the mandatory qualification criterion for a satisfactory record of performance for a new permit, as it has not been subject to any adverse permit actions within the 36 months preceding its application.¹⁰

Contrary to assertions raised in some of the protests received, I disagree that HRI's performance during the 2019 grazing season renders it ineligible for a new permit. To be sure, the grazing that occurred in 2019 varied from terms and conditions on the permit face; however, HRI was responding to direction provided by the BLM, which, in turn, was reacting to court-ordered limitations on specific allotments. Given the circumstances, I decline to treat the departures from the terms and conditions of the permit in effect in 2019 as substantial compliance issues or regulatory violations that preclude HRI's eligibility. Had HRI willfully failed to adhere to permit terms or refused to comply with direction from the BLM in the 2019 season, a different result may have been appropriate, but that was simply not the case.

The other two applicants also have a satisfactory record of performance. Within the 36-months preceding their applications, neither had any permits cancelled nor demonstrated any significant compliance issues under their existing authorizations. Further, even if a longer time period is considered for either of these applicants, I am not aware of any issues that would preclude their eligibility to compete for the available forage.

Mandatory qualifications also require permittees to be U.S. citizens and/or business entities authorized to conduct business in the state, and own or control land or water base property. *See generally* 43 C.F.R. § 4110.1(a). HRI, Applicant 2, and Applicant 3's applications demonstrate that all three satisfy these mandatory qualifications as well. That is, all three applicants own or control land base property. HRI is a corporation authorized to do business in the state of Oregon and Applicants 2 and 3 are LLCs authorized to do business in the state of Oregon having members who are all U.S. citizens. As a result, the determination of to whom to issue a permit to

⁹ *Western Watersheds Project et al. v. Bernhardt et al.*, 428 F. Supp. 3d 327 (D. Or. 2019) has no bearing on this determination. The District Court vacated the permit based on legal errors it identified in former Secretary Zinke's decision, not based on any conduct by HRI during the 2019 season. In addition, neither HRI nor its affiliates have been barred by any court orders from holding a grazing permit. *Cf.* 43 C.F.R. § 4110.1(b)(2)(iii).

¹⁰ Because I have determined that HRI is qualified for a new permit, I do not reach HRI's suggestion in its protest that it is eligible for a renewal permit.

graze the forage available in the Bridge Creek Area allotments rests on the application of 43 C.F.R. § 4130.1-2.

The Proposed Decision relied on HRI's extensive historic use of the allotments (§ 4130.1-2(a)), past proper use of rangeland resources (§ 4130.1-2(b)), a high-level of general need (§ 4130.1-2(c)), advantages of topography (§ 4130.1-2(e)), and ownership/management of private land in three of the allotments as well as privately-held water rights that will enable dispersal of livestock to assist in the protection of riparian areas (§ 4130.1-2(f)). Timely protests contested the Proposed Decision's resolution of each of these factors. For the reasons that follow, but for a limited exception as to the historical use of the Krumbo Creek #2 pasture, I agree with the balancing of these factors articulated in the Proposed Decision among the competing applicants. In this Final Decision, however, I am exercising the discretion afforded by the regulation to give factor (c) controlling weight in this instance. Section 4130.1-2 does not require the factors all be given equal weight, nor does it require that each of the factors must be applied in every instance. *Accord, John R. Hughes III v. BLM*, MT-060-2014-01 (December 12, 2019) (ALJ Sweitzer) at 19 ("...the LFO has no obligation to consider any one specific factor. This is clear from the wording of section 4130.1-2, which provides that BLM 'may' authorize grazing use on the basis of 'any' of the listed factors."); *Western Watersheds Project v. BLM*, WYR-01-2012-2 (July 27, 2012) (ALJ Pearlstein) at 8 ("Assuming that Mr. Robbins has an extremely poor record of compliance, BLM was fully aware of that history and nevertheless exercised its discretion to issue him grazing preferences, based on other criteria in 43 C.F.R. § 4130.1-2, as that regulation authorizes BLM to do."); *Kelly v. BLM*, 131 IBLA 146, 163-64 (1994) (indicating that some factors were not relevant to a specific case and upholding determinations not comparing applicants based on them).¹¹

HRI has the greatest need of the three applicants for the available forage in the Bridge Creek Area allotments. HRI is a family-run business that has used the public lands adjacent to and intermingled with its private lands for decades. While HRI has been able to maintain its business during the years it was not authorized to graze public lands and may or may not have been able to offset the costs with federal subsidies, the determination of need here is not based on any financial considerations. Rather, it is based on the recognition that HRI's traditional operations were structured in a way that made the use of the Bridge Creek Area allotments integral to its "out and back" rotation through public lands as well as its private lands. While obtaining permits to additional forage may well enhance or facilitate the other applicants' operations, neither of these entities have the same level of operational need that reduces the utility of their private lands in the absence of obtaining access to this forage. This is not to say that HRI—or any applicant—is ever entitled to public forage, this is only to recognize that such a long-standing practice of coupling the use of public and private lands may in at least some circumstances create a comparatively exceptional need unmatched by other applicants.

¹¹ *Western Watersheds Project* states in its protest that "[t]he Bureau relied on only several of the criteria in 43 C.F.R. § 4130.1-2 without discussing the other factors." The Proposed Decision was not issued by the BLM and describing only the factors related to the successful applicant was appropriate at that stage and legally permissible.

By contrast to HRI, Applicant 2 applied for use of only two pastures, Krumbo Creek Pasture #2 in the Hammond Allotment and Bridge Creek in the Hardie Summer Allotment.¹² Applicant 2 sought a permit for the Krumbo Creek #2 pasture to facilitate the movement of its livestock to other BLM grazing allotments it is permitted to graze. The physical location of the pasture, topographic impediments, and Applicant 2's operations on other adjacent BLM allotments reflect that this is, at most, an inconvenience that could be resolved by obtaining a permit to graze this pasture rather than a true need for some critical component of its operations.¹³ Applicant 3, the only other applicant competing with HRI for all of the available forage in the Bridge Creek Area allotments, similarly cannot demonstrate a need to use this forage on par with HRI. Although the BLM panel considered Applicant 3's and HRI's needs as essentially equivalent, I disagree; the forage would enable Applicant 3 to enlarge existing operations. Applicant 3 stated in response to the questionnaire that it needs more forage to maintain economic viability, but as noted above, I am not including financial considerations in this determination of need. Accordingly, I find that HRI has the highest need for this forage and that it is within my discretion in applying 43 C.F.R. § 4130.1-2 to give this factor controlling weight.

A handful of protests received contested the Proposed Decision's determination that HRI has a high level of general need, pointing out that HRI has been able to maintain its business without access to federal forage and asserting that there is no financial evidence of such a need. My finding here is not based on financial considerations nor is it based on the relative ability of HRI to operate without access to public lands. Instead, it is reflective of the value I place on preserving family-run ranching operations and their connections to public lands, and recognizing that, in at least some instances, the public-private mix of those traditional operations may give one applicant a competitive advantage of a need for this forage compared to another.

Even if factor (c) were not given controlling weight in this case, HRI still prevails based on my evaluation of the factors collectively. As stated in the Proposed Decision, HRI has a long historic use of these specific allotments as they have been configured since at least 1991. § 4130.1-2(a). While there is no expiring permit here (making the cross-reference in § 4130.1-2(a) to § 4130.2(e) inapplicable), and although the panel may have viewed the applicants differently in connection with this factor, I find that HRI is the highest-ranking applicant on historic use¹⁴ of the majority of the public lands that make up the Bridge Creek Area Allotments. According to BLM records, Applicant 2, or its predecessor(s) in interest, had the ability to graze the two pastures identified in its application materials for several decades preceding the use by HRI, and Applicant 2 has been authorized to trail through the Krumbo Creek #2 pasture from 2004–2020. Although Applicant 3 has also been using public lands for some time, its use of lands *neighboring* the Bridge Creek Area Allotments is not as compelling nor as lengthy as

¹² Applicant 2 protested the Proposed Decision but only in connection with the Krumbo Creek Pasture #2. Accordingly, the Final Decision does not address Applicant 2's competing application for the Bridge Creek Pasture.

¹³ Indeed, the inconvenience is one that could theoretically be resolved by a crossing permit, rather than a grazing permit.

¹⁴ History of compliance associated with past use is separately evaluated under § 4130.1-2(h).

HRI's operations on these allotments. As a result, HRI is the highest ranked applicant for the historic use of the Bridge Creek Area Allotments, except for the Krumbo Creek #2 Pasture, for which Applicant 2 is the highest-ranking applicant.¹⁵

The Proposed Decision also found that HRI should be apportioned the available forage due to, *inter alia*, past proper use of rangeland resources under factor (b). Many protests challenged this determination, pointing to the BLM's 2014 decision not to renew HRI's then-expiring permit (in which the BLM identified both criminal and non-criminal actions) and generally asserting non-compliance with prior permit terms and conditions. These considerations, however, are only relevant under factor (h), which was added to the regulations specifically to add applicants' history of compliance to the criteria that can be considered when adjudicating competing applications. *See 59 Fed. Reg.* 14334 (Mar. 25, 1994); *60 Fed. Reg.* 9903 (Feb. 22, 1995). HRI has a history of its operations conforming to rangeland health standards and guidelines.¹⁶ Like some of the panelists, I also find that HRI's application describing its working with agencies on sage-grouse habitat improvement projects and with Farm Service agency on weeds treatments on private and leased lands significant.

Applicant 3 also described commendable work in its responses to the questionnaire, particularly with respect to riparian areas and noxious weeds, but was otherwise generally just willing to be cooperative with BLM. Applicant 2's questionnaire relied largely on a future commitment not to overgraze. Overgrazing would be prohibited in any event, and also unexpected due to the relatively limited authorized use sought by the applicant. While HRI and Applicant 3 are relatively closely matched on this factor, I find HRI's awareness of the importance of meeting rangeland health standards, its ability to do so consistently on these allotments, and its longer operational history than Applicant 3 result in it achieving the highest rank for factor (b).

For the reasons already described, I find HRI is the highest-ranked applicant based on general need, factor (c).

The BLM panel and the Proposed Decision do not directly address factor (d), public ingress or egress across privately owned or controlled lands to public lands. In response to the questionnaire, neither Applicant 2 nor Applicant 3 own land directly adjacent to the Bridge Creek Area Allotments, but both own private land adjacent to other public lands and indicated a willingness to allow public access through their private lands. HRI owns private land adjacent to the Mud Creek allotment and within the other allotments and noted that its land also is adjacent to other public lands. HRI was less willing to broadly entertain public access and seemed to

¹⁵ Other protests related to factor (a) did not contain specific facts. Rather they asserted that historical use did not make something "right" and that a permit should not be issued simply because of historical use. These contentions misconstrue the nature and application of the competing application factors in the Proposed Decision.

¹⁶ Western Watersheds Project suggests in its protest that finding this factor weighs in favor of HRI is arbitrary and capricious because the BLM "found that rangeland health standards were not achieved due to the impacts of fires—some or all of which were intentionally set by the HRI principals...." The focus under factor (b) is on the rangeland impacts related to past use by the Hammonds' cattle. Compliance issues are relevant under factor (h).

mistakenly believe the question pertained to BLM administrative access. To the extent this factor is applicable to the contest between these applicants, I do not believe any of them outranks the other.

The Proposed Decision found that HRI's application had advantages conferred by topography. Protests of this determination were limited, asserting only that there was no promise that those advantages would be realized. I do not agree with this premise. Instead, I reiterate the finding of the Proposed Decision that this factor weighs in favor of HRI, because it was able to articulate the benefits of the topography on the Bridge Creek Area allotments.

In connection with factor (f), other land use requirements unique to the situation, I reiterate the findings in the Proposed Decision: HRI or its principals own private land in three of the Bridge Creek Area Allotments and private water rights that enable the use of a pipeline livestock water facility in the Hammond Allotment. HRI's private water rights to a spring in the Hardie Summer Allotment could be developed, which would help protect riparian areas. As a result, HRI's application outranks the other applications, which were either unaware of any specific land use requirements unique to these allotments (Applicant 3) or narrowly focused on maintenance that is not unique (Applicant 2). Applicant 3 would not be able to use HRI's private lands or private water rights without permission from HRI, which would limit its ability to use the forage sought.

Applicant 2 protested this determination as it applies to the Krumbo Creek #2 Pasture, stating that the Hammonds have no private water rights on this pasture. Having confirmed the accuracy of this statement, I have reconsidered the application of this factor to this pasture, and find it has neutral effect and does not give any one applicant a competitive advantage over another.

In evaluating factor (g), demonstrated stewardship by the applicant to improve or maintain and protect the rangeland resources, I agree with the panel that the questionnaire responses by Applicants 2 and 3 merit a higher ranking than HRI. Applicant 2 has received the 2015 Society for Rangeland Management National Outstanding Achievement Award for Partnership for its cooperation with the BLM and Applicant 3 has participated in cooperative projects to protect streams, enhance vegetation, increase aspens, and provide nesting boxes and raptor roosts, and described an active commitment to sustainable agriculture. Both discussed how they would modify livestock use to address other resource concerns. HRI relied on its prior use that achieved rangeland health standards in response to this question. Although its responses to other parts of the questionnaire, particularly in response to factor (b) highlight cooperative projects it has participated in, I find that these are offset by the damage caused by HRI's principals to the Bridge Creek Area allotments in connection with fire-setting conduct identified by the BLM in 2014. Several protests asserted that HRI is not a good steward of the public lands, in reference to their past criminal conduct; one asserted that HRI had not helped to enhance habitat for red band trout or greater sage grouse. Neither this Final Decision, nor the Proposed Decision, weighed this factor in favor of HRI's application.

Lastly, factor (h) does not weigh in favor of HRI. Of the three applicants, it is the only one with a history of noncompliance and regulatory violations. Numerous protests received related to factor (h); many referred to the Proposed Decision's determination of past proper use of the

rangelands under factor (b), but the consideration of an applicant's history of compliance is confined to this factor. Protests raised concerns regarding criminal and non-criminal conduct, and asserted concerns due to unauthorized use and overgrazing, as well as threats or intimidation of federal employees. Neither this Final Decision nor the Proposed Decision, however, rank HRI the highest of the competing applicants in connection with this factor. Therefore, these protests do not result in any changes to the outcome of this Final Decision.

I find that five of the eight factors generally weigh in favor of HRI, with the exception of one pasture, as described below. Therefore, even if factor (c) is not given controlling weight, when the factors are considered collectively, HRI is the successful applicant. For two factors, (g) and (h), Applicant 2 and Applicant 3 outrank HRI, and for factor (a), Applicant 2 outranks HRI for the Krumbo Creek #2 Pasture, but this is insufficient to award either Applicant 2 or Applicant 3 any available forage in the Bridge Creek Area Allotments. None of the applicants outranks the other with respect to factor (d) or with respect to factor (f) as it applies to the Krumbo Creek #2 Pasture. HRI and Applicant 2 both have three factors that weigh in its favor for this particular pasture. Nonetheless, I believe it is appropriate to apportion the forage in this pasture to HRI based on my review of the collective, applicable factors.

Several protests contend that the decision to apportion the available forage to HRI is tainted with political influence, citing a variety of things to support the claim, such as the extent and duration of the public comment and protest periods; the history of HRI principals receiving Presidential pardons; and the change in position from the BLM's 2014 decision. The 2014 BLM decision applied the regulatory standard applicable to mandatory qualifications for renewal permits, not new permits. *Cf.* 43 C.F.R. § 4110.1(b)(1); (b)(2). The difference between these analyses is described in more detail above. The cases cited by Western Watersheds Project concerning U.S. Fish and Wildlife Service (FWS) listing decisions under the Endangered Species Act are inapposite. Setting aside Western Watersheds Project's characterization of those cases, FWS listing decisions are different from a decision about how to allocate forage on BLM-managed public lands. With respect to the latter, the agency has significant policy discretion about how to apply the relevant factors in 43 C.F.R. § 4130.1-2, including the relative weights to assign to each factor. In this case, officials within the Office of the Secretary have acted as the authorized officers rather than the BLM. The BLM issues grazing permits under delegated authority, but this does not preclude the Secretary from directly issuing these authorizations. This is not, as Cascadia Wildlands asserts without elaboration, a violation of the Taylor Grazing Act, FLPMA, the grazing regulations, or 43 C.F.R. § 1601.0-5(b).

Several protests also contested the duration of the protest period, generally expressing the view that 15 days was not enough time. This is the standard time period allowed under 43 C.F.R. 4160.2, which provides that the period runs within 15 days after receipt of the proposed decision. Collectively, all interested parties received the Proposed Decision when it was posted on E-Planning. In addition, the BLM made courtesy calls to all the applicants and sent courtesy emails to Western Watersheds Project and the Oregon Natural Desert Association on January 1, 2021. The BLM also followed up with copies sent by certified mail. Western Watersheds Project and Oregon Natural Desert Association dispute that this is permissible under Part 4160,

and instead date the conclusion of the protest period as January 25, 2020, based on the date they received their certified mail. Under § 4160.1(a), however, certified mail is only required for the service of proposed decisions on applicants—none of whom protested the electronic methods utilized—and need only be “sent” to the interested public. While the use of internet is not how the BLM traditionally sends proposed decisions to the interested public, the formality of certified mail was not necessary here. Typically, the BLM needs to keep track of the receipt dates to know whether a proposed decision will automatically become final under 4160.3(c). Here, however, the Proposed Decision expressly provided that it would *not* become final automatically, but instead, would require a final decision to be issued. In addition, the BLM notified interested parties via email or by telephone that the proposed decision had been posted.

Western Watersheds Project claims that its ability to respond fully to the Proposed Decision has been hampered by what it considers an unlawfully short protest period. The submission of a 183-page protest, along with its numerous attachments, belies this assertion. Oregon Natural Desert Association argues that the issuance of “a final decision before allowing the interested public to review and ... administratively protest” would be arbitrary, capricious, or otherwise not in accordance with law. This final decision, however, was preceded by the December 31, 2020, Proposed Decision, including the 15-day protest period required by applicable regulations.

For all of these reasons, I hereby deny all protests to the proposed decision apportioning the available forage in the Bridge Creek area grazing allotments and confirm the apportionment of such forage to HRI.

IV. Issuance of a Ten-Year Grazing Permit and Associated Actions

Background

The Andrews / Steens Field Office, Burns District of the Bureau of Land Management (BLM), prepared the enclosed Environmental Assessment (EA) (DOI-BLM-ORWA-B060-2020-0001-EA) and finding of no significant impact (FONSI) for the Bridge Creek Area to analyze possible actions developed through Interdisciplinary Team (IDT) recommendations, other agency and public comments, consultation with native American tribes, and in coordination with applicants for available forage within the area. The actions included in this decision record were analyzed within the EA, and provide for the issuance of allotment management plans, grazing permits, grazing management, and range improvements. The selected actions also are calibrated to accomplish resource objectives and ensure that livestock grazing would conform to (or would continue conforming to) all Oregon and Washington Standards for Rangeland Health (further referred to as Standards) and Guidelines for Livestock Grazing Management (further referred to as Guidelines; Standards and Guidelines together are referred to as S&Gs).

The Bridge Creek area consists of four allotments: Hammond, Mud Creek, and Hardie Summer allotments, and the Hammond Fenced Federal Range (FFR). This area is located approximately 60 miles south of Burns, Oregon, near the town of Frenchglen, which is situated at the foot of the

Steens Mountain (Map A – Vicinity¹⁷). The allotments are located within the Andrews / Steens Resource Area and partially within the Steens Mountain Cooperative Management and Protection Area (CMPA). The land status of each allotment is shown in Table 1 in Appendix A.

Authority & Compliance for the AMP EA

The Bridge Creek Area AMP EA is tiered to the 2004 AMU and Steens Mountain CMPA Proposed RMPs and Final Environmental Impact Statements (EISs), as amended by the 2015 Oregon Greater Sage-Grouse (GRSG) Approved RMP Amendment (ARMPA)/ROD, and relevant information contained therein is incorporated by reference.

The authorities under which the portions of the proposed decision applicable to grazing are being issued include the Taylor Grazing Act of 1934, as amended; Federal Land Policy and Management Act (FLPMA), as promulgated through Title 43 CFR Subpart 4100, Grazing Administration – Exclusive of Alaska; and 43 C.F.R. § 1601.0-5(b). My decision is issued under the following specific regulations:

- 4100.0-8 Land use plans: The Andrews Management Unit / Steens CMPA RMPs and RODs designate the Hammond, Mud Creek, Hardie Summer, and Hammond FFR allotments available for livestock grazing and the permit is in conformance with the land use plan as defined at 43 C.F.R. § 1601.0-5(b);
- 4130.2 Grazing permits or leases: Grazing permits may be issued to qualified applicants on lands designated as available for livestock grazing. Grazing permits shall be issued for a term of 10 years unless the authorized officer determines that a lesser term is in the best interest of sound management; and
- 4130.3 Terms and conditions: Grazing permits must specify the terms and conditions that are needed to achieve desired resource conditions, including both mandatory and other terms and conditions.

The FLPMA contains the Bureau of Land Management’s general land use management authority over the public lands and establishes management under principles of multiple use and sustained yield (section 302(a)). Balanced and diverse resource uses to be managed include range, timber, watershed, and wildlife (section 103(c)).

Multiple sections of the Steens Mountain Cooperative Management and Protection Act of 2000 (Steens Act) provide direction to manage for social and ecological health, and for economic purposes, including grazing.

¹⁷ All maps are created using the best information available at the time. Many of the range improvements and boundaries shown in these maps have been digitized and not GPS’d. While the BLM continues to GPS these features and is updating their data for accuracy continuously, maps should only be used to provide a general visual. The actual location of the feature on the ground takes precedence over the location on maps.

Multiple sections of BLM Manual 6330 – Management of WSAs are directly relevant to the proposed actions discussed within the Bridge Creek Area AMP EA and discuss grazing and range improvements within WSAs.

The Final Decision has been designed to conform to the following documents, which direct and provide the framework for management of BLM lands within Burns District:

- Taylor Grazing Act (43 U.S.C. §§ 315–315r)
- National Environmental Policy Act (NEPA) (42 U.S.C. §§ 4321–4347)
- Federal Land Policy and Management Act (FLPMA) (43 U.S.C. §§ 1701–1787)
- Steens Mountain Cooperative Management and Protection Act of 2000 (16 U.S.C. §§ 460nnn–460nnn-122)
- Public Rangelands Improvement Act (43 U.S.C. §§ 1901–1908)
- National Historic Preservation Act (16 U.S.C. §§ 470, *et seq.*)
- Standards for Rangeland Health and Guidelines for Livestock Grazing Management for Public Lands Administered by the BLM in the States of Oregon and Washington, August 12, 1997.
- Integrated Invasive Plant Management for the Burns District Revised EA (DOI-BLM-OR-B000-2011-0041-EA), 2015
- Greater Sage-Grouse Land Use Plan Implementation Guide, 2016
- Washington Office (WO) Instruction Memoranda (IM) 2016-139, Policy for Resource Management Plan Effectiveness Monitoring for Renewable Resources with Additional Guidance for Plans Implementing the Greater Sage-Grouse Conservation Strategy
- WO IM 2018-22, Process for Evaluation Greater Sage-Grouse Land Use Plan Adaptive Management Hard and Soft Triggers
- WO IM 2016-145, Tracking and Reporting Surface Disturbance and Reclamation
- BLM Manual 6330 – Management of Wilderness Study Areas, 2012
- BLM Manual 6340 – Management of Designated Wilderness Areas, 2012
- Oregon Revised Statute 537.141 Uses of water not requiring water right application, permit or certificate
- All other Federal laws that are relevant to this document, even if not specifically identified.

Summary of Public Participation & Response to Protests

On October 13, 2020, the Burns District BLM mailed a scoping letter to 17 interested publics, groups, and agencies regarding the proposed Bridge Creek Area AMP/EA. The scoping letter was also posted to BLM's National NEPA Register. Four letters were mailed to the Burns District BLM and four unique letters were submitted through the National NEPA Register from various individuals, groups, and agencies during the scoping period, which ended on November 14, 2020. The BLM also completed consultation, cooperation, and coordination (CCC) with six additional tribal governments, agencies, organizations, and individuals, including the applicants for available forage within the Bridge Creek Area. Comments received following the scoping period were incorporated into the draft EA as appropriate, which was released for a 13-day

public comment period on December 8, 2020 and ending on December 20, 2020. During the comment period, the BLM received a total of ten comment letters via email and hard copy letters.

Several protests contended that BLM had not provided enough time for public comment on the EA. This is addressed in Appendix L to the EA, Response to Comments 46 & 48. The Sierra Club, Western Watersheds Project, Cascadia Wildlands, and WildEarth Guardians noted in their protests that the EA did not provide responses to public comments. The EA has been revised since its release for public comment and includes a response to comments.

Protests submitted by John F. Helmer, Terry Turner, and R.W. "Jack" Jakubik, members of the Steens Mountain Advisory Council (SMAC), contend that BLM proceeded too quickly and should have brought the matter to SMAC in time for it to seek input from constituents, provide input in developing alternatives, and advise BLM on the proposed decision. The SMAC's advisory role, under the Steens Mountain Cooperative Management and Protection Act of 2000, is to "formulate recommendations for the Secretary regarding...new and unique approaches to the management of lands within the boundaries of the Cooperative Management and Protection Area; and...cooperative programs and incentives for seamless landscape management..." 16 U.S.C. 460nnn-52(a). The decision does not authorize an action that fits within the scope of the Act.

The protest submitted by the Burns Paiute Tribe contends there has been inadequate consultation with the Tribe on the project. In addition to the virtual quarterly meeting with the tribe on November 9, 2020, BLM has mailed the tribe a letter offering government-to-government consultation (Burns District to the Burns Paiute Tribe, 09/22/2020) and participated in a meeting to answer questions about the project from Burns Paiute on the projects on January 6, 2021. That meeting was attended by Don Rotell (Field Manager), Autumn Toelle-Jackson (Assistant Field Manager), Diane Teeman, and Calla Hagle. In that meeting, questions from Burns Paiute staff were answered about the Bridge Creek Proposed Decision issued on 12/31/2020. Notification letters were mailed to the tribe with the Notice of Available Forage (3/24/2020) and with the Request for Supplemental Information from Forage Applicants (08/05/2020). No response to these notification letters was received from the tribe. The BLM will conduct project specific consultation under Section 106 of the National Historic Preservation Act (NHPA) when ground disturbing undertakings, such as construction of fences, removal of fences, placement of pipeline, placement of troughs, and spring development occur. Consultation will occur with the Burns Paiute Tribal Historic Preservation Officer (THPO) and it will include potential effects on traditional contemporary tribal resources as well as archaeological resources. See EA Appendix D.

Decision

Having considered all alternatives and associated impacts based on analysis in DOI-BLM-ORWA-B060-2020-0001-EA, it is my decision to implement the actions described below. The actions below have been selected from Alternatives 2, 3, and 4.

The actions are: approval of the Hammond, Mud Creek, Hardie Summer, and Hammond FFR AMPs, issuance of a grazing permit, livestock grazing management, and range improvements,

specifically Bridge Creek water gap extension, fence removal, fence construction, and spring and pipeline development with associated troughs. With the exception of the Bridge Creek water gap extension, which has been found to meet an exception to the WSA non-impairment standard, all other range improvements would be constructed outside of WSA and Wilderness. The implementation of these actions will result in S&Gs continuing to be achieved, or if not achieved, ensure that livestock are not a causal factor.

Actions Common to All Grazing Alternatives (Goals and Objectives; Monitoring; Adaptive Management and Flexibility; Billing; Percentage of Public Land Calculations; Crossing Permits; and Salt, Mineral, and Protein Supplements) described in EA section 2.1 and Required Design Features and Project Design Elements described in EA section 2.2 would apply to the actions selected.

The following management actions will be implemented; each heading specifies which alternative or combination of alternatives from which the action is selected. This final decision and all the components described below, will become AMPs for Hammond, Mud Creek, Hardie Summer, and Hammond FFR allotments.

Grazing Permit Issuance (Alternative 2, except in the Mud Creek and Hardie Summer Allotments which Combines Portions of Alternatives 2 and 4)

The BLM will issue one 10-year livestock grazing permit for Hammond, Mud Creek, Hardie Summer, and Hammond FFR allotments.

The season of use associated with each allotment will implement livestock grazing systems that ensure periodic growing season rest in all pastures and allow flexibility to meet resource needs such as early and late use of annual grasses. This will allow desirable herbaceous plant species the ability to satisfy growth requirements, seed production, and seedling establishment, promoting and/or maintaining plant vigor in the long-term (>10 years).

Mandatory terms and conditions are shown in Table 2 in Appendix A.

Other terms and conditions applicable to all allotments on the permit will include:

- a. The AMP, as provided for in 43 C.F.R. 4120.2(a)(1–4), (b), is a term and condition of your permit.
- b. Mandatory terms and conditions shown on a grazing permit are only for public lands. When there is privately controlled land within an allotment, these only apply to the publicly managed lands, and do not limit use of private lands in any way. If the private landowner chooses to graze its private lands within the allotments, outside the terms and conditions for the public land, it is the landowner's responsibility to ensure livestock remain on the privately controlled land. Any livestock on publicly managed land outside of what has been authorized may be considered unauthorized grazing use and be subject to trespass action under 43 C.F.R. 4150.

- c. Actual livestock number may vary dependent on length of annual grazing, as long as AUMs are not exceeded within a given grazing year.¹⁸
- d. Annual period of use within each pasture can be adjusted for annual grazing, within the bounds of the grazing permit and AMP.
- e. A two-week period of flexibility may be allowed, both prior to and following the permitted season of use. This would be a nonrenewable extension of the authorized season of use. There is no guarantee to the permittee this will be authorized in any given year, and authorization of it is at the discretion of the BLM. Total active use AUMs annually authorized will not exceed the amount permitted.¹⁹
- f. Actual use billing is authorized per the AMP. An actual use record will be submitted within 15 days after completion of annually authorized grazing per 4130.3-2(d).
- g. There will be a 50 percent utilization (as measured using the Ocular Landscape Appearance/Key Species Method) threshold on upland native key species and a 60 percent utilization threshold on upland desirable nonnative key species. The response of reaching this threshold will be the timely removal of livestock. While the BLM will be responsible for monitoring, in coordination with the permittee, the permittee remains responsible for removing livestock to ensure thresholds are not exceeded, whether or not BLM has conducted monitoring. Permittee exceedances of utilization will result in decreased AUMs in the subsequent year.
- h. No salt or supplements (block, dry, or liquid) will be permitted within 0.25 mile of a water source or riparian area, or within 1.2 miles of the perimeter of an occupied or pending lek. Salt or supplements (block, dry, or liquid) will be permitted outside of these areas. Utilizing hay as a supplement will not be authorized under this term and condition and will require separate approval on an annual basis.
- i. The permittee is required to maintain all improvements unless there is an agreement in place documenting an improvement as a BLM responsibility. Prior to being issued this grazing permit, the permittee signed an Assignment of Range Improvements Form 4120-8,²⁰ which identified improvements for which the permittee is responsible. Fences that separate two BLM allotments are the responsibility of both permittees unless an agreement is in place showing specific maintenance responsibility areas. Each permittee is responsible for ensuring the boundary fence is maintained prior to turning out its livestock. Maintenance activities that involve ground-disturbing activities need to be approved by the BLM prior to beginning work.
- j. Active trailing, which is actively managed to avoid lingering or resource concerns, is allowed to occur through rested pastures. Active trailing across any of the allotments to

¹⁸ Non-renewable AUMs would be authorized separately and would be in addition to the active use AUMs shown on the grazing permit.

¹⁹ Non-renewable AUMs will be authorized separately and will be in addition to the active use AUMs shown on the grazing permit.

²⁰ The current Assignment of Range Improvement (unsigned) for allotments within the Bridge Creek area is in the EA Appendix H.

access any other allotment on the permit will be authorized, but the trailing must be documented on the actual use form.

- k. The livestock grazing permittee will be allowed to continue to utilize roads on BLM-managed land within the allotments, and adjacent to the allotments, in order to administer the grazing permit.
- l. Permittee shall provide reasonable administrative access across private and leased lands to the Bureau of Land Management for the orderly management and protection of the public lands (43 C.F.R. § 4130.3-2(h)).

Other allotment-specific terms and conditions would include:

- m. The increase in AUMs on the Hammond Allotment will occur over a 5-year period (226 AUMs added each year with full implementation occurring in 2025²¹) focusing on the pastures with a predominantly crested wheatgrass forage base. This increase will only occur as long as the allotment continues to meet applicable S&Gs or livestock is not a causal factor if S&Gs are not achieved. This level of use is within the range of AUMs that have historically been removed from this pasture.²² Due to Bridge Creek WSA being within the Knox Spring Pasture, AUMs authorized within this pasture will not exceed the lowest estimated carrying capacity for this pasture, as determined in the 2007 Hammond Evaluation, which is 356 AUMs. This level of authorized AUMs does not exceed those allowed during the 1976 grazing fee year and so is a grandfathered use in the WSA.
- n. AUMs permitted on the Mud Creek Allotment will be implemented in a phased in approach, beginning at 295 AUMs in the first year that is returned. After grazing is completed and monitoring occurs, if ecological conditions are being maintained or improved, AUMs will be allowed to increase by 25% (approximately 74 AUMs) the following year. This assessment will occur each year prior to increasing permitted AUMs. If, at any point, monitoring suggests desired ecological conditions are not being achieved, or would not be achieved with an additional increase, AUMs would be frozen at that prior year's level and reevaluated by BLM. If BLM makes the same determination three years in a row, AUMs will be permanently set at that level and the grazing permit would be updated to reflect that change. AUMs may be reduced if monitoring finds thresholds were exceeded and up to three years would be added onto the implementation period until it can be determined if exceeding the thresholds was due to livestock grazing, or other factors such as drought.
- o. AUMs permitted on the Hardie Summer Allotment will be implemented in a phased in approach, beginning at 204 AUMs in the first year that grazing is returned. After grazing is completed and monitoring occurs, if ecological conditions are being maintained or improved, AUMs will be allowed to increase by 25% (approximately 40 AUMs) the following year. This assessment will occur each year prior to increasing permitted AUMs. If at any point monitoring suggests desired ecological conditions are

²¹ This assumes implementation begins in 2021.

²² Including both permitted and nonrenewable AUMs.

not being achieved, or would not be achieved with an additional increase, AUMs would be frozen at that prior year's level and reevaluated. If BLM makes the same determination three years in a row, AUMs will be permanently set at that level and the grazing permit would be updated to reflect that change. AUMs may be reduced if monitoring finds thresholds were exceeded, and up to three years would be added onto the implementation period until it can be determined if exceeding the thresholds was due to livestock grazing, or other factors such as drought.

Livestock Grazing Management (Alternative 2, Except for Mud Creek and Hardie Summer, which combine Alternatives 2 and 4)

Livestock grazing management is designed to provide periodic growing season rest for plant species. Use periods may vary annually (determined in an annual authorization with prior approval of BLM) in order to provide for recommended rest periods as described in the proposed grazing systems shown in tables 3-5 in Appendix A. Livestock numbers may vary annually as outlined under "Adaptive Management"; however, total permitted AUMs will not exceed those permitted on each allotment.²³ Grazing treatments (*i.e.*, early, graze, and defer; see EA Appendix F: Grazing Treatment Descriptions) are used in the proposed grazing systems to act as guidelines. This allows for modification based on the large variability of weather conditions from year to year. This variation results in key forage species entering vegetative states on differing dates, annually. Specific livestock use dates for the allotments will be determined on an annual basis, based on the vegetative stages of key forage species and the prescribed grazing treatments. These grazing systems will allow for periodic growing season rest. Adaptive management may result in the grazing systems being modified within the terms and conditions of the grazing permits, as long as periodic growing season rest occurs. Prior to authorizing annual grazing (including annual livestock numbers, season of use, and AUMs within individual pastures), the BLM will take into consideration monitoring data and current weather conditions, such as drought. Any adaptations in grazing systems require prior BLM approval. This may result in changes to stocking levels and timing of grazing in order to best meet objectives. Any modifications to the proposed grazing system will conform to the utilization threshold of 50 percent for native key forage species and 60 percent for desirable nonnative key forage species, unless otherwise specified.

Within the Mud Creek Allotment, the initial utilization threshold will begin at a 30 percent utilization in the first year of grazing following issuance of a grazing permit. This utilization will be adjusted, up or down, based on monitoring, as described in the Adaptive Management and Flexibility Section 2.1.3. of the EA.

Hammond FFR is a "C" allotment with a low percentage of public lands (25.5 percent; based on acres) to private lands (74.5 percent), after proposed boundary adjustments. As such, the permittee is authorized to use the BLM-managed land, in coordination with any private land it may control. The use of BLM-managed land is typically minimal as it tends to be located in

²³ This excludes potential NR AUMs, which would follow specific terms and conditions, described below.

small pieces, often on steep hillsides, and with minimal draw for livestock. Use of BLM-managed land within the FFR will continue to meet applicable objectives, and any grazing use upon the public lands will conform to meeting the utilization threshold of 50 percent on native key forage species and 60 percent on desirable non-native key forage species, as well as following other thresholds and responses as described in table 6 in Appendix A. Only BLM-managed land must be managed consistent with the BLM grazing permit; additional use on private land may occur at the discretion of the private landowner.

Non-Renewable (NR) Grazing (Alternative 2 for Hammond Allotment)

Non-renewable (NR) AUMs will be made available on pastures within the Hammond Allotment where utilization after permitted use is less than 35 percent. NR Grazing will not be authorized within the Mud Creek, Hardie Summer, or Hammond FFR allotments, or the Krumbo Creek Pasture of Hammond Allotment. The objective of NR grazing will be to address the additional grass and fine fuels that build up in years of above average production. NR grazing is allowed under 43 C.F.R. § 4110.3-1(a) and § 4130.6-2. NR grazing will have the following terms and conditions:

- a. NR grazing will only be authorized following use of all permitted AUMs within the allotment, or portion of the allotment, the permittee is authorized to use.
- b. NR grazing will be allowed only when perennial bunch grasses are dormant, generally between July 15–February 28.
- c. NR grazing may be authorized in pastures where utilization levels following permitted use are 35 percent or less.
- d. NR grazing will only be authorized up to the 60 percent utilization threshold for crested wheatgrass and the 50 percent utilization threshold for natives.²⁴ Utilization calculations will include both permitted use and wildlife use. When pasture utilization reaches the utilization threshold, the response will be that livestock will be required to be removed in a timely manner. While the BLM will be responsible for monitoring, in coordination with the permittee, the permittee remains responsible for removing livestock to ensure thresholds are not exceeded, whether or not BLM has conducted monitoring. Permittee exceedances of during NR use will result in the permittee not being allowed to utilize NR the subsequent year; continued use will be at the discretion of the BLM.
- e. NR grazing will not be authorized in more than one-half of the pastures within the allotment in any given year.
- f. NR grazing will be included on the actual use form and marked as NR grazing. The permittee would be billed for these AUMs, at the standard rate, based on their submitted actual use.
- g. No NR grazing will be authorized within the Steens Mountain Wilderness.

²⁴ Utilization is used as a threshold for NR grazing because the AUMs available for removal prior to utilization reaching the 50 percent utilization threshold varies year to year due to fluctuating production. Allowing NR to adapt to current year conditions allows better flexibility to meet resource objectives and ensures overuse does not occur.

Range Improvements (Alternatives 2 and 3)

All RDFs and PDEs as described in Appendix B of this decision will be incorporated into the planning and implementation phases of all range improvements.

Refer to Map B: Final Decision Map for the approximate location of improvements.

Water Gap Modification (Alternative 2)

At the Bridge Creek water gap, the existing fence and topography has been found not to be effective at keeping livestock from entering the Bridge Creek drainage. Therefore, an extension of the existing fences, approximately 0.02-mile-long, will be added to connect the two fences on the west side of the water gap. On the east side of the water gap, a new fence, approximately 0.18-mile-long will be constructed across the creek to prevent livestock from travelling along the Bridge Creek drainage. These fences will be constructed in the Bridge Creek WSA.

Fence Removal (Alternative 2)

Within the Hammond Allotment – Krumbo Creek #2 Pasture, all interior fences, approximately 5.3 miles, will be removed. These fences are no longer functional or needed. Within the Hardie Summer Allotment – Cabin Pasture #1, all BLM interior fences, approximately 2.85 miles, will be removed.

Fence Removal (Alternative 3)

Within the Mud Creek Allotment, the northwestern fence (two sections) that currently makes up the boundary between the Mud Creek Allotment – Lower Field and Hammond Allotment – Knox Spring Pasture will be removed, approximately 1.53 total miles. This boundary will be moved northwest of Bridge Creek along the rim where current gap fences already prevent livestock from moving across the boundary. No fence removal will occur in Hammond Allotment.

Fence Construction and Boundary Adjustment (Alternative 2)

Within the Hardie Summer Allotment, approximately 4.91 miles of fence will be constructed. One new fence, approximately 1.56 miles long, will be constructed along the rim north of Little Fir Creek. Where possible, rim will be used instead of constructing a fence, which might reduce the amount of fence needed. This fence will extend east from the north-south fence of the Hammond FFR – Mud Creek Pasture, to the public land- private land boundary. Another new fence will be constructed at this point. The fence will go north following the land ownership boundary, until it reaches the currently existing fence. From the eastern end of the proposed Little Fir Creek fence, a new fence will also extend south, following the land ownership boundary, until it connects to the existing fence on the Cabin Pasture boundary; this section of fence (going north and south from the junction with the proposed Fir Creek fence) will be approximately 1.35 miles long.

Another new fence will be constructed along the public land – private property boundary in section 27. This fence will extend the existing fence between the Hardie Summer Allotment and

the Hammond FFR – Mud Creek Pasture south. The proposed fence will turn east halfway through section 27, continuing to follow the land ownership boundary. The proposed fence will then turn north, still following the land ownership boundary, until it ties into an existing fence. This proposed fence will be approximately 2.0 miles long. None of this fence will be within, or on the boundary, of a WSA. This fence will border the Fir Grove ACEC; however, no trees will be removed during construction or utilized as part of the fence.

As fences are constructed and removed, BLM will adjust allotment and pasture boundaries as described below. When possible, the new fence lines will follow the land administration boundary; however, they will follow landscape contours rather than property boundaries, where practical. Fences will not be placed on private property.

Fences will be placed within one-quarter mile of the location identified in the Final Decision Map B.

In addition to changing fence lines, some pastures and their associated AUMs will be moved to different allotments. The Knox Pond, Baca Lake, and Kern Reservoir pastures will all be removed from Hammond Allotment and moved into the Hammond FFR Allotment. In the Hardie Summer Allotment, the North and Sylvies pastures will also be moved into the Hammond FFR. In addition, the private land within the Hardie Summer Cabin Pasture will be fenced out; this area will also be moved into the Hammond FFR. Dust Bowl #1 Pasture in the Hammond FFR will be completely removed as there is almost no BLM-managed land within that pasture. These changes account for the AUM increase in the Hammond FFR Allotment and the small decrease in AUMs in the Hardie Summer Allotment. See Final Decision Map B for the allotment and pasture boundaries.

Spring and Pipeline Development (Alternative 3)

Spring and pipeline development can be seen on the Final Decision Map B. Within the Hardie Summer Allotment, Big Spring, located on private land, will be developed, utilizing a spring box to collect water to support a 2-mile-long pipeline. This pipeline will run from the spring to the northwest within the Thompson Pasture, crossing the pasture and connecting to private property in the Hammond FFR – Mud Creek Pasture. A spur line, approximately 0.64 mile long will extend into the Bridge Creek Pasture. The pipeline will be buried where possible. Three troughs of galvanized steel, measuring approximately 4'x8', will be installed on public lands. Troughs may also be round tire troughs but would have a similar footprint to the galvanized troughs. Float valves will be installed on each trough.

Goals and Objectives for the Bridge Creek Area (All Action Alternatives)

Goals are broad statements of a desired outcome that is usually not quantifiable and may not have established timeframes for achievement. Objectives are a description of a desired outcome for a resource. An objective can be quantified and measured and, where possible, can have established timeframes for achievement.

Upland Vegetation

- *Goal:* Manage vegetation to achieve and maintain healthy watersheds.
 - *Objective:* Maintain or increase the relative frequency of deep-rooted perennial grasses, big sagebrush, and forbs species that provide food and nesting cover for GRSG in the allotments over the next 10 years.
- *Goal:* Increase the resistance of GRSG habitat to invasive annual grasses and the resiliency of GRSG habitat to disturbances such as wildfire to reduce habitat loss and fragmentation.
 - *Objective:* Reduce the existing presence of invasive annual grasses over the next 10 years.

Riparian Areas

- *Goal:* Maintain or improve riparian vegetation, habitat diversity, and geomorphic stability to achieve healthy, productive riparian areas and associated structure, function, process, and products.
 - *Objective:* Achieve or maintain a rating of proper functioning condition (PFC) for perennial streams over the next 10 years.
 - *Objective:* Maintain or improve riparian/wetland vegetation communities relative to ecological status and site potential over the next 10 years.

Monitoring (All Action Alternatives)

Throughout the 10-year term of the livestock grazing permit, both short-term indicators (measurements) and long-term indicators of livestock grazing's effect on vegetative communities will be monitored. Short-term indicators provide information necessary to help determine whether the current season's livestock grazing is meeting grazing use criteria, while long-term indicators provide data to assess the current condition and trend in condition of vegetative communities and/or stream characteristics (TR 1737-23 2011). For both uplands and riparian areas, short-term indicators must be used in combination with long-term indicators to identify cause and effect relationships and to assess progress towards meeting goals and objectives (TR 1737-23 2011; BLM WO IM 2018-23). Short-term indicators, such as woody browse use, should not be confused as "objectives" for livestock grazing management because they can be highly episodic and dependent on climatic events (Mark Gonzalez, National Riparian Service Team, personal communication 2020). The short-term indicators need to be compared to trend over time for validation; both implementation monitoring and effectiveness monitoring are important. Here is another example to consider: "Stubble height is easy to use, [but] it is not a resource objective and therefore inappropriate as a prescriptive standard in grazing permits and land use plans" (Clary and Leininger 2000; USDA *et al.* 2003; Rangelands 2006). Furthermore, Heitke and others (2008) warn, "it is important to remember that no protocol can be implemented without measurement error (Krebs 1989; Ramsey *et al.* 1992; Roper *et al.* 2002). Managers should, therefore, be careful when taking action based on a single evaluation—especially when the result is near a management standard or threshold." In summary, BLM uses short-term monitoring in combination with long-term trend monitoring to adaptively manage livestock grazing (*see* Adaptive Management section below).

While monitoring will occur on the allotments, the extent and timeliness of it will depend on internal BLM factors such as funding and workforce and may not occur exactly when planned.

In any case, the permittee is responsible for removing livestock prior to exceeding utilization levels. Monitoring,²⁵ in coordination with the permittee, will take place within the allotments. All monitoring within the AMU will follow the direction provided in the AMU Monitoring Plan dated May 4, 2011 (or subsequent plan), and the 2005 AMU/Steens CMPA RMPs, as amended by the 2015 Oregon GRSG ARMPA/ROD, as appropriate.

Upland Vegetation Monitoring

- *Short-term Monitoring*
 - o Key Species Method on a landscape (pasture) scale for pasture utilization (Utilization Studies and Residual Measurements, TR 1734-3, 1999). The target utilization levels for key forage plant species are no more than 50 percent utilization²⁶ on key native upland perennial species and 60 percent utilization on desirable nonnative species, such as crested wheatgrass (AMU/Steens CMPA RMPs 2005, p. 54). These utilization levels will apply to all alternatives, unless otherwise specified within the alternative description. Utilization monitoring is performed along a route transect by vehicle, foot, and/or horseback. Utilization routes are in areas livestock are able to access, with utilization points occurring at a set interval specific to the route. At each utilization point, an estimate of utilization is made; since these points are on an interval, they may fall in areas of higher than normal use (near water or salt), or in areas of lower than normal use. All utilization points are then averaged across the pasture and overall utilization is calculated on a pasture average basis. Utilization will be collected annually at the end of each grazing period as labor, access, and funding allow. If utilization exceeds utilization thresholds, allowable AUMs would be reduced the following year.
 - o Photo monitoring provides visual records of utilization levels that can be used before, during, and after grazing. At each photo point, landscape photos will be taken in each cardinal direction. A minimum of two photo monitoring points will be established in the interior of each grazed pasture. This monitoring will occur at least following grazing for the first four years following the issuance of a grazing permit. After the first four years, photo monitoring will occur at least every 5-10 years, though may occur more often as needed.
 - o Visual Obstruction Reading (VOR) will be completed following the Robel Pole Protocol, Version 1.0 (2016), in the Lower Field of Mud Creek if livestock grazing occurs within this pasture prior to June 30th. This monitoring will occur annually for the first four years of grazing and will help document cover remaining for wildlife following livestock use. If the

²⁵ While monitoring will occur on the allotments, the extent and timeliness of it will depend on internal BLM factors such as funding and workforce and may not occur exactly when planned. In any case, permittees are responsible for removing livestock prior to exceeding utilization levels.

²⁶ Burns District BLM typically measures utilization percentage using an ocular method, not a weight method.

results are under 7" while livestock are still present, then livestock would be removed from the area. If results are under 7" after livestock grazing has occurred, then grazing the following year would be reduced and the set utilization level would be reduced by 5 percent. If results are over 7" following grazing, then grazing the following year would either stay the same, or if the set utilization level is less than 50 percent on natives and 60 percent on desirable non-natives, the utilization level would increase by 5 percent and AUMs would be adjusted, within the permitted range. These adjustments will continue annually until this monitoring provides support for a set utilization and AUM level within this pasture that will indicate that cover requirements for sage-grouse are being met while allowing livestock use consistent with meeting cover requirements.

- o Use supervision/compliance is monitoring that occurs to ensure permittees are in compliance with the terms and conditions of their permits (livestock only present if permitted, in the right locations, etc.). These forms document vegetation, livestock, wildlife, and public land visitors, among other things, and provide space to make notes and observations that can be used to adjust grazing (if needed) and plan for future project and maintenance needs while also recognizing and taking notes on other public land uses.
- o Actual use reporting is due from permittees within 15 days of end of season livestock removal from BLM-managed land. In some cases, the BLM may require actual use to be submitted on an allotment or pasture basis. Actual Use Form 4130-5 (2018) is used by permittees to document how many head of livestock they turned out or gathered from a pasture and on what date. The BLM then uses this form to calculate actual use AUMs used within that pasture and within the allotment. In some cases, the permittee will then be billed for these AUMs (instead of being billed at turnout). The BLM uses this information, combined with other information, to plan for the next year's livestock grazing.
- *Long-term Monitoring*
 - o Pace 180° (Johnson and Sharp 2012, TR 4400-4 1984) will be read to assess trend in upland condition. This method is a step-transect that allows measurements of occurrence of key forbs, shrubs, and perennial grass species composition, as well as basal cover calculations. As part of this monitoring, photos are taken, a Soil Surface Factor (SSF) form to assess soil stability is completed, as is an Observed Apparent Trend (OAT) to assess trend in condition. A modified method will be completed to include line-point intercept readings and allow a better calculation for vegetative cover. These plots will be read in years 1, 3, and 5 after grazing is reinstated. After year 5, this monitoring will be read approximately every 5 to 10 years.
 - o Terrestrial Assessment, Inventory, and Monitoring (AIM) in this area is part of a larger district-scale AIM project that was designed to conform to the GRSG Monitoring Framework (GRSG ARMPA, Appendix D, 2015,

p. D-1).²⁷ This AIM project was initiated in 2015 and completed in 2020. The second phase of this project is the revisitation of plots. These plots will be revisited in the next five to ten years.

- o Habitat Assessment Framework (HAF) analysis data has been completed at the mid, fine, and site-scale, and HAF suitability determinations for the Steens-South Pueblos Fine-Scale analysis area are done. The HAF summary report has not been completed. The BLM will continue to complete HAF suitability requirements as required in the GRSG AMRPA.
- o Remote sensing has been completed within these allotments, providing an estimate of functional group composition, bare ground, annual grasses, and juniper cover. If funding is available, remote sensing may be completed again in five to ten years, which would allow for this data to be used in determining trend.

Riparian Area Monitoring

- *Short-term Monitoring*
 - o Multiple indicator monitoring (MIM) (TR 1737-23 2011). At the end of each grazing season for the first five years, short-term indicators (measurements of the current grazing season use) of stubble height, streambank alteration, and woody browse would be collected on Little Bridge, Little Fir, and Big Fir creeks in the Hardie Summer Allotment and Krumbo Creek in the Hammond Allotment. On year five, short-term and additional long-term MIM indicators will be collected. MIM data collected will be assessed as to whether livestock grazing management is aiding in moving toward or achieving riparian objectives. If objectives are being achieved, the BLM will complete short-term MIM monitoring as needed.
 - o Use supervision/compliance. Use supervision will occur during MIM data collection and on an annual basis as staff time and funding allows. Riparian areas of perennial streams, that are accessible to livestock, will be checked to ensure livestock are present only in areas where permitted. Notes and observations will be collected on the compliance form related to condition of the creek, livestock, wildlife, public land visitors, etc. This information will be used, in addition to other monitoring, in planning grazing the next year.
 - o Photo monitoring provides visual records of utilization levels that can be used before, during, and after grazing. At each photo point, landscape photos will be taken in each cardinal direction. A minimum of two photo monitoring points will be established along each creek in the grazed pasture. This monitoring will occur at least following grazing for the first four years following the issuance of a grazing permit. After the first four years, photo monitoring will occur at least every 5-10 years, though may occur more often as needed.

²⁷ The Burns District AIM/HAF project was designed to be statistically valid with 70 percent confidence at the district level.

- *Long-term Monitoring*
 - o Proper functioning condition (PFC) assessments (TR 1737-15, 2015). PFC assessments have been conducted on the following creeks: Krumbo (2015), Webb Spring Creek (2019), Mud Creek (2003), Bridge Creek (2003), Big Fir (2006), Little Fir (2003), Fence (2019), Lake Creek (2019), and Little Bridge (2019). The PFC assessment synthesizes information that is foundational to determining the overall health of a riparian area. PFC generally lacks the sensitivity to detect incremental changes in riparian condition but can provide early warning of problems and point to opportunities by helping to identify key management issues, focus monitoring activities to maximize efficiency, and prioritize restoration actions on the “at-risk” systems or reaches of highest resource value. PFC assessments will be updated every 5-10 years or as needed following management changes or when quantitative data indicates a change in condition.
 - o MIM (TR 1737-23, 2011): Long-term indicators will be conducted on Little Bridge, Little Fir, and Big Fir creeks in the Hardie Summer Allotment and Bridge²⁸ and Krumbo creeks in Hammond Allotment every five years. This data, in combination with short-term indicator data, will be used to determine if management actions are making progress toward achieving long-term goals and riparian objectives.
 - o Photo points. Photos provide visual records of long-term streambank and riparian vegetative condition and trend (TR 1737-23 2011). These will be collected once every 2-3 years. Photos will be taken at existing photo point locations along Krumbo, Webb Spring, and Bridge creeks in Hammond Allotment, and along Little Bridge, Little Fir, and Big Fir creeks in Hardie Summer Allotment. Other riparian photo points will be established as necessary. Photo locations will be georeferenced so repeat photos could be taken. Photos will generally be taken during use supervision monitoring or end of season.
 - o Water temperature data is collected using temperature probes placed in perennial streams. This data will be gathered approximately every five years and will include two to three consecutive years of data collection.
 - o Aquatic AIM data will be re-collected approximately every five years and will follow the AIM National Aquatic Monitoring Framework: Lotic Field Protocol for Wadeable Systems (Technical Reference 1735-2). Aquatic AIM data was collected in 2019 on Krumbo, Bridge, Big Fir, Little Fir, and Mud creeks.
 - o Remote sensing data will be collected²⁹ within riparian areas to document indicators such as sinuosity and riparian and upland vegetation. Remote sensing will use a model to provide information along entire perennial creeks (instead of just at monitored areas) to use as a baseline for future

²⁸ Bridge Creek MIM monitoring would be collected in a representative area within the reach between the water gap and Malheur Refuge Boundary.

²⁹ This is dependent upon funding and contracting abilities.

comparison. Once baseline data has been collected, repeat remote sensing analysis will be completed every five to ten years.

Adaptive Management and Flexibility (All Action Alternatives)

Adaptive management is a system of management practices based on clearly identified objectives (identified in relevant RMPs and this document) and monitoring to determine if management actions are meeting desired objectives and, if not, facilitating management changes that will best ensure objectives are met. Adaptive management recognizes knowledge about natural resource systems is sometimes uncertain and, in this context, adaptive management affords an opportunity for improved understanding. Due to the uncertainties inherent in managing for sustainable ecosystems, some changes in management may be authorized, which include (but are not limited to) *adjusting the rotation, timing, annual season of use of grazing, and livestock numbers* within the constraints of the grazing permit based on numerous factors including (but not limited to) the following:

- A finding that one or more standards are not being achieved and livestock are a causal factor,³⁰
- The previous year's monitoring results considering the weather conditions (temperature and precipitation),
- The current year's forecasted weather conditions,
- Persistent drought causing reduced forage production and a lack of available water in areas originally scheduled to be used,
- Occurrence of wildfire, and
- A need to balance utilization levels.

Rangeland monitoring described above is a key component of adaptive management. As monitoring data indicates changes in grazing management are needed to meet resource objectives, changes are implemented in coordination with the grazing permittee(s). Flexibility in grazing management will be authorized and changes in rotations will only be allowed as long as they continue to meet resource objectives. Flexibility is dependent upon the demonstrated stewardship and cooperation of the permittee(s) and occurs within the confines of the grazing permits. Additional flexibility may occur within the terms and conditions of the grazing authorization.

Thresholds, or use indicators, and responses take time to develop and validate because short-term indicators of grazing use may or may not reflect the meeting of long-term management objectives (Rangelands 2006). General thresholds and responses related to grazing management in these allotments will include those described in the table 6 of Appendix A and will be applied as described in the monitoring section above. These thresholds may adjust over time through adaptive management based on short- and long-term monitoring and assessment of objectives.

³⁰ Currently (as with the previous S&G assessments) livestock grazing is not a causal factor.

Billing (All Action Alternatives)

Actual use (after-the-fact) billing will be authorized as part of this AMP because of the variability in forage production from year to year and the unreliability of water sources. Annual grazing will be authorized with a letter of authorization prior to turnout. Accurate records will be kept by the permittee(s), and an actual use grazing report will be submitted to BLM within 15 days after the authorized use is completed within the Bridge Creek Area allotments. Advance billing may be allowed at the discretion of the BLM. If the terms and conditions of actual use billing are not met, actual use billing would no longer be allowed and advanced billing would occur.

Percentage of Public Land Calculations (All Action Alternatives)

The percentage of public land (% PL) is determined by the proportion of livestock forage available on public lands within the allotment compared to the total amount available from both public lands and those owned or controlled by the permittee (43 C.F.R. § 4130.3-2 (g)). Percentage of public land will be calculated using ecological site mapping and ecological site description (ESD) estimates of grass and grass-like production in a normal precipitation year. The number of acres in each ecological site, in each pasture, within the Bridge Creek area will be determined. These acres will then be divided into public lands and lands owned or controlled by the permittee. To determine the proportion of livestock forage, the number of acres public lands and of lands controlled by the permittee, in each ecological site and each pasture, will be multiplied by the grass and grass-like production estimates (lbs/acre) from the associated ESD. This will result in production estimated for public lands and for lands controlled by the permittee. The sum of these two values will result in total production for that ESD within the pasture. To calculate % PL for that pasture, the sum of production on public lands, for all ecological sites, will be divided by total production, for all ecological sites, within the pasture.³¹ These calculations will be made after the determination of preference is made within these allotments, as the calculations will change depending on which applicant, or combination of applicants, is selected. While this value is used in calculations on the grazing authorization, it will not result in more AUMs being authorized on BLM-managed lands than what is described. However, as % PL values decrease from 100% PL, livestock head number will increase.

Crossing Permits³² (All Action Alternatives)

Crossing permits, utilizing active trailing, which is defined as livestock being pushed by a rider and not allowed to drift, will be authorized to occur across the BLM-managed land within the Hammond, Mud Creek, Hardie Summer, and Hammond FFR allotments.

³¹ Using ESDs for this calculation allows the BLM to utilize the best available data for production on BLM- and permittee-controlled lands. The BLM understands that these production estimates may be outdated, especially in areas where fire has occurred; however, it is expected that the production patterns, based on ecological sites and site potential, would be similar and can still be used to calculate % PL. This number would be updated if better production data becomes available, and when control of land or adjustment of pasture boundaries occurs.

³² This applies to all alternatives, unless otherwise described under an alternative description.

Trailing may occur by both the authorized permittee for the allotment, or an adjacent permittee (not the authorized permittee) of the allotment. If trailing occurs by an adjacent permittee, it is its responsibility to coordinate movements with the allotment permittee to minimize conflict as much as possible. If trailing livestock get mixed in with permitted livestock, it is the trailing operators' responsibility to sort livestock and ensure all livestock get removed from the pasture. Crossing permits will be authorized under 43 C.F.R. § 4130.6-3.

Trailing will only be authorized in uplands (outside of riparian corridors), though crossing of riparian corridors will be permitted when needed. Trailing operators may take breaks while trailing, to allow livestock to water and mother up. Trailing would occur along roads to the extent possible and must avoid trailing through known sage-grouse leks. If trailing is over four miles, the trailing operator may overnight in the trailing pasture. Each trailing occurrence should last no more than two days. No more than ten days total of trailing/crossing will be authorized within any allotment per year.

Salt, Mineral, and Protein Supplements (All Action Alternatives)

The BLM will continue to authorize supplementation of salt, minerals, and protein in block, dry, and liquid form in all grazing alternatives, with restrictions listed in RDFs (Section 1.1.14) and in permit terms and conditions.

Rationale for the Selection of the Management Actions Authorized by this Final Decision

A FONSI found the actions selected by the Final Decision were analyzed in DOI-BLM- ORWA-B060-2020-0001-EA and do not constitute a major Federal action that will adversely impact the quality of the human environment. The FONSI determined an environmental impact statement (EIS) is unnecessary and will not be prepared.

The selection of actions under this decision is based on public comments, consultation with tribal and local governments and State agencies, discussions with the applicants for available forage, and conformance to applicable laws and regulations. The actions selected meet the Purpose of and Need for Action by:

- responding to external requests to consider whether to issue 10-year term livestock grazing permit(s) for the Hammond FFR and the Hammond, Mud Creek, and Hardie Summer Allotments, to consider adjusting pasture and allotment boundaries where possible in order to move pastures that are dominated by private property into the Hammond FFR, and to adjust AUMs between the allotments as appropriate;
- adjusting available active use AUMs in the Hammond Allotment to address the higher production of crested wheatgrass that has occurred within the allotment, and the availability of additional forage, while staying within a determined utilization threshold;
- implementing AMPs for the allotments and installing/modifying/removing range improvement projects to aid in management of the allotments;
- reducing standing fine fuel biomass through the temporary and periodic use of nonrenewable forage;

- ensuring grazing management practices occurring on public land meet the S&Gs (43 CFR Subpart 4180);
- ensuring authorized livestock grazing is consistent with resource and management objectives from the August 2005 Andrews Management Unit (AMU) and Steens Mountain CMPA RMPs/RODs, as amended by the 2015 Oregon GRSG ARMPA/ROD;
- ensuring proper levels of permitted active use AUMs in order to maintain or increase the health, vigor, and ecological processes within the allotments; and
- reducing fine fuel biomass accumulation to decrease the risk of wildfire and subsequent spread of annual grasses.

This decision includes issuing a grazing permit, increasing AUMs within the crested wheatgrass portion of the Hammond Allotment—above what was previously authorized; adjusting pasture and allotment boundaries through fence construction and removal, and pasture reorganization; extending the Bridge Creek water gap, and constructing a pipeline in the Hardie Summer Allotment. For the Hammond Allotment and Hammond FFR, this action is most similar to what was analyzed under Alternative 2; however, it also includes some range improvements from Alternative 3. For the Mud Creek and Hardie Summer Allotments, this action includes permitting AUMs up to the level analyzed in Alternative 2; however, AUMs will be phased in and will start at the levels analyzed under Alternative 4. In addition, utilization levels will be adjustable within the entire Mud Creek allotment, as analyzed for the Mud Creek Lower Field under Alternative 2; however, with this decision, this will occur in both pastures of Mud Creek, and the beginning utilization level will be set at 30%, which was the utilization analyzed in Alternative 4. Utilization threshold (with an annual utilization limit of 50 percent on native key species and 60 percent on desirable non-native key species in the other allotments) as well as permittee flexibility and sound decisions, will help to maintain ecological conditions associated with livestock grazing and ensure livestock are not a causal factor in any S&G not being achieved. These management decisions, along with adaptive management, flexibility, additional monitoring, and thresholds and responses will continue to protect the area from ecological damage caused by livestock grazing and management.

This decision will allow for grazing permits for Hammond, Mud Creek, Hardie Summer, and Hammond FFR allotments to be issued with adequate NEPA analysis.

The final decision is designed to address the BLM's requirement to manage lands for multiple use, including addressing resources and issues including, but not limited to, riparian, water quality, GRSG, annual grasses, wildfire, WSAs, and VRM. The decision includes numerous tools to return grazing into the Bridge Creek Area slowly, to ensure that livestock grazing does not negatively affect resources in the long-term. The BLM is authorizing the return of grazing in all allotments, which will help reduce fine fuel accumulation and address concerns over increased wildfire risk as well as social and economic concerns. An increase in AUMs within the portion of the Hammond Allotment that has been seeded to crested wheatgrass also addresses concerns over fuel accumulation and better balances the forage base in the seedings with use. Furthermore, by requiring that this increase in AUMs in the Hammond Allotment be phased in over 4 years, it allows the BLM to monitor the effects of this increased use and ensure that this

level of permitted AUMs will be sustainable and will maintain or improve ecological conditions. Providing NR AUMs within the Hammond Allotment will prevent fine fuel accumulation and an increase of residual vegetation from building in the crowns of the plants, protecting the health and vigor of the crested wheatgrass plants, and maintaining a health system of deep-rooted perennial grasses that is more resistant to invasion by annual grasses and more tolerant of fire. The decision also uses a phased in approach for returning livestock grazing to both Mud Creek and Hardie Summer allotments. In the first year of returned grazing the permit holder(s) will only be authorized to use 295 AUMs (Mud Creek) and 204 AUMs (Hardie Summer). When grazing is complete, BLM will conduct monitoring to assess utilization and ecological conditions. If the BLM finds that the allotments are responding well to livestock grazing and ecological conditions are being maintained or improved and grazing is still far enough below thresholds to suggest another increase in AUMs would not result in thresholds being exceeded, then AUMs will be increased by up to 25 percent of the remaining AUMs (less could be authorized, if needed, to ensure grazing does not exceed thresholds and balance resources). If monitoring finds a threshold is exceeded, AUMs will be reduced, and another year (or more) will be added onto the phase in period to allow enough monitoring to occur to determine if the level of livestock use is sustainable, and threshold exceedances were due to other factors such as drought, or if livestock grazing needs to remain lower. If a determination is made three years in a row that AUMs cannot be increased based on monitoring, and it is determined that livestock grazing needs to be maintained at a rate lower than what is currently permitted, the grazing permit will be reissued with the lower AUMs. By phasing livestock grazing back into the allotments in this way, BLM will be able to ensure that the livestock grazing remains properly managed and either maintains or improves ecological conditions, in both riparian and upland areas, and provides required habitat components for wildlife, including GRSG, providing the best and most appropriate balance of resources.

The decision also includes the removal of fences that are no longer needed, helping to reduce collision risk of GRSG, and entanglement risk to other wildlife and livestock, while increasing the area's naturalness. Fences within this decision were selected to improve livestock grazing management within this area. The extension of the Bridge Creek water gap will ensure that livestock do not have access to the portion of the Bridge Creek drainage or associated riparian areas within the Mud Creek Allotment. The new fences in Hardie Summer help separate BLM-managed land from private land and create a small pasture around Little Fir Creek, which would allow that creek to received increased rest from livestock grazing, while allowing continued grazing on adjacent uplands. Any fences constructed with a high-collision risk for GRSG would be marked with reflectors to reduce this risk. In addition, the pipeline and troughs would provide for additional sources of off-stream water, which has been proven to be a main draw to livestock and can be a successful tool in helping reducing livestock grazing and loafing in riparian areas. In addition, thresholds and responses related to riparian indicators, as well as additional monitoring, livestock grazing management, and the development of the pipeline and Little Fir Creek Pasture will ensure that riparian conditions within the Hardie Summer are maintained or improved.

In addition to the elements above that help ensure proper livestock grazing management that is balanced with other resources, the decision includes increased monitoring and thresholds and responses as a safety net to further ensure livestock grazing does not result in ecological damage. Monitoring is outlined for both short- and long-term and is provided for both upland and riparian areas. Short-term monitoring includes: utilization, photo points, use supervision, compliance, actual use reporting, and visual obstruction readings for uplands, and for riparian areas includes MIM monitoring of short-term indicators, use supervision, compliance, and photo points. Long-term monitoring will include Pace 180°, modified to allow collection of line-point intercept data, soil surface factor assessment, observed apparent trend assessment, terrestrial AIM, HAF analysis, and remote sensing for uplands, and for riparian areas would include PFC assessments, MIM, photo points, water temperatures, Aquatic AIM, and remote sensing.

Within the Mud Creek Allotment, the utilization threshold will be variable and will be set to 30 percent on key species within both pastures. This utilization level will then be increased or decreased by 5 percent for the following year, based on visual obstruction readings after grazing as described in table 6 (Appendix A). This method of variable thresholds tied to monitoring thresholds should help further ensure that livestock grazing does not have a long-term negative effect on wildlife habitat, including GRSG nesting and brood-rearing cover requirements. In addition, the season of use in the Mud Creek will be reduced to 6/1-10/15. By not allowing for early livestock grazing, GRSG and other wildlife species will be able to utilize all of the year's growth for cover during lekking and nesting. Alternative 1 (Issue Grazing Permits with Terms and Conditions Identical to the Previously Issued Permit) was not selected as it would not result in improved ecological condition or livestock management that would ensure ecological conditions are stable or improving.

Alternative 1 would not respond to portions of the purpose and needs, specifically adjusting AUMs in Hammond Allotment to address the higher production of crested wheatgrass; installing/modifying/removing range improvement projects to aid in management of the allotments; and reducing standing fine fuel biomass through the temporary and periodic use of nonrenewable forage. I have not selected Alternative 4 (Issue Grazing Permits at 50 Percent Previously Permitted Levels) in its entirety, or Alternative 5 (No Grazing: Grazing Permits Not Issued (No Action Alternative)) because I determined the 30 percent, set utilization levels would result in ecological risks associated with wildfire and accumulation of residual forage within the plants, and that this would outweigh any ecological benefits of the alternatives. In addition, this alternative did not allow for the range improvements selected that will further benefit ecological conditions. Alternatives 4 (in its entirety) and 5 would therefore not meet the purpose and need to reduce standing fine fuels within the Bridge Creek Area. I did, however, select components of Alternative 4, where appropriate to emphasize resource protection for GRSG and riparian areas in Mud Creek and Hardie Summer allotments. In selecting these components, I used them as starting points that are adjustable (utilization) or phased in (AUMs) with associated monitoring to allow for a slow return of grazing within the Mud Creek and Hardie Summer Allotments to ensure that livestock grazing would not negatively impact ecological conditions. I did not select Alternative 3 (Issue Grazing Permit(s) with Site Specific Terms and Conditions, Range Improvements, and Allotment/Pasture Boundaries – Option 2) in its entirety because some

aspects of that alternative, specifically constructing fences within the Bridge Creek WSA, are not consistent with current policy (BLM Manual 6330 – Management of WSAs and VRM Management). In addition, the large increase in AUMs is not supported by current monitoring and that these levels would not be reached, but would be consistently limited by utilization thresholds, meaning those levels would not be expected to be sustainable in the long-term. In addition, the lack of a general grazing rotation leaves many areas of livestock management up to annual discussions and does not provide any ideas on how often and where rest would occur.

Consistency with BLM Manual 6330 – Management of WSAs

The decision involves extending the Bridge Creek water gap and removing a fence that is currently the boundary between the Hammond and Mud Creek allotments, both within the Bridge Creek WSA. None of the changes will result in a permanent increase in permitted AUMs within the Bridge Creek WSA. The decision's consistency with management direction for WSAs is described below.

Bridge Creek Water Gap Extension

The extension and construction of fences within the Bridge Creek water gap will only affect naturalness in the immediate vicinity of the fence (in an area that is already impacted by the existing water gap fences) and decreasing further away from the water gap. The location of this water gap within the Bridge Creek drainage and not blading the fence line for fence construction, would ensure that the water gap fences are substantially unnoticeable. In addition, by constructing these fences, ensuring livestock are unable to get into the Bridge Creek drainage (reducing opportunities for unmanaged livestock grazing in the area) the associated riparian area will continue to improve in ecological condition, increasing the feeling of naturalness. Maintenance for these enclosures will not require motorized equipment.

The extension of the Bridge Creek water gap and protection of the Bridge Creek drainage is consistent with exceptions to the non-impairment mandate as outlined in Section 1.6.C.2.f. *Protect or enhance wilderness characteristics or values*, which states that: “actions that clearly benefit a WSA by protecting or enhancing these characteristics are allowable even if they are impairing.” Reducing the risk of livestock accessing the Bridge Creek drainage (when not authorized), will allow for associated riparian areas to be protected from over-grazing, improving their ability to function properly, enhancing ecological conditions, and improving naturalness in the area.

In addition, the Bridge Creek water gap extension is in compliance with Section 1.6.D.3.a.ii. *New Livestock Developments*, which states that “in determining whether a development meets the protecting or enhancing wilderness characteristics exception, the BLM will determine if the structure's benefits to the natural functioning ecosystem outweigh the increased presence of human developments and any loss of naturalness.” Through the associated EA, BLM has determined the benefit of protecting the Bridge Creek drainage from unauthorized grazing outweighs any unnatural effects to wilderness characteristics. Naturalness in this area will be enhanced by increasing ecological functioning.

Removal of the Current Hammond / Mud Creek Boundary Fence

Removing the current Hammond / Mud Creek Boundary Fence would result in removal of 0.7 miles of fence in the Bridge Creek WSA that currently impairs wilderness characteristics or naturalness. This is consistent with section 1.6.B.3.b. in BLM Manual 6330 allowing the BLM to remove structures and other facilities impairing wilderness characteristics. Since this fence removal will enhance wilderness characteristics, it is allowed under 1.6.C.2. *Exceptions to non-impairment class f. Protect or enhance wilderness characteristics or values.*

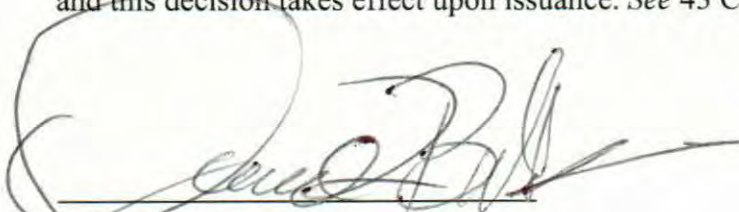
The ability to continue to maintain all existing range improvements is supported by Section 1.6.D.3.a.i., which allows for maintenance activities in the same degree and manner as was being conducted on October 21, 1976.

Based on associated analysis and consistency with BLM Manual 6330, as described above, the decision is not expected to impair any of the WSAs' suitability for preservation as wilderness by Congress, and as such will comply with Section 603(c) of FLPMA.

In summary, I have determined that Alternative 2, with a few range improvements from Alternative 3, and certain protections from Alternative 4, best meet the purpose and need for action and minimizes effects to natural resources while providing for livestock grazing in a manner consistent with the 2005 Andrews/Steens RMPs, as amended by the 2015 Oregon GRSG ARMPA, as well as the Steens Act and BLM Manual 6330 – Management of WSAs. Based on the analysis of potential impacts contained in the EA, the BLM has determined in the FONSI that the proposed Bridge Creek Area AMP will not have a significant effect on the human environment within the meaning of section 102(2)(c) of NEPA of 1969 (FONSI pp. 1–3). Thus, an EA is the appropriate level of analysis, and an EIS will not be prepared.

FINAL DECISION AND APPEALS

I hereby approve the decision described herein. My approval takes into account the analysis in the Environmental Assessment (EA) (DOI-BLM-ORWA-B060-2020-0001-EA) and accompanying FONSI. This constitutes the final decision of the Department of the Interior and is not subject to appeal under departmental regulations at 43 C.F.R. Pt. 4. Any challenge to this decision must be brought in the Federal District Court. As a decision of the Secretary of the Interior rather than an administrative officer, or an allotment management plan developed by a subordinate official, no further review is required by 43 U.S.C. § 315h or 43 U.S.C. § 1752(f). 43 U.S.C. §§ 1752(a), (d). Accordingly, 43 C.F.R. §§ 4160.4(c)-(f) and 4160.4 are inapplicable and this decision takes effect upon issuance. See 43 C.F.R. § 4.5.



David L. Bernhardt
Secretary of the Interior

11/19/2021

Date

ATTACHMENTS:

Map A—Vicinity

Map B—Final Decision Map

Appendix A – Tables

Appendix B—RDFs and PDEs for Range Improvements

PROTESTS

The BLM received timely protests from the following individuals/entities. Not everyone on this list was previously on the BLM’s list of “interested public” for the Bridge Creek Area allotments, but since the Proposed Decision was widely received by the public as a result of being sent through E-Planning, all of them have been reviewed and considered:

| | | | | |
|--|------------|-------------------------|------------|------------|
| [REDACTED] | [REDACTED] | Anonymous [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] (Northwest Resource Information Center, Inc.) | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |

| | | | | |
|--------------------|---------------------|----------------------------|--|--------------------|
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | Great Old Broads for Wilderness | Burns Paiute Tribe |
| [REDACTED] | Applicant 2 | [REDACTED] | [REDACTED] | HRI |
| PEER | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | Sierra Club | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | Harney County Stock Growers' Association | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| Cascadia Wildlands | WildEarth Guardians | Western Watersheds Project | Oregon Natural Desert Association | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |

[REDACTED] submitted by the following individuals/entities contested the determination that HRI meets the mandatory qualification criteria in section 4110.1 (primarily the satisfactory record of [REDACTED] determination) either by expressly stating so or implicitly by describing their views on HRI's record of performance in general terms or otherwise opposing HRI receiving a permit:

- (1) [REDACTED]; (2) Anonymous [REDACTED]; (3) [REDACTED]; (4) [REDACTED]; (5) [REDACTED]
- [REDACTED]; (6) [REDACTED]; (7) [REDACTED]; (8) [REDACTED]; (9) [REDACTED]; (10) [REDACTED]
- [REDACTED]; (11) [REDACTED]; (12) [REDACTED]; (13) [REDACTED]; (14) [REDACTED]; (15) [REDACTED]
- [REDACTED]; (16) [REDACTED]; (17) [REDACTED]; (18) [REDACTED]; (19) [REDACTED]
- [REDACTED]; (20) [REDACTED]; (21) [REDACTED]; (22) [REDACTED]; (23) [REDACTED]
- [REDACTED]; (24) [REDACTED]; (25) [REDACTED]; (26) [REDACTED]; (27) [REDACTED]
- [REDACTED]; (28) [REDACTED]; (29) [REDACTED]; (30) [REDACTED]; (31) [REDACTED]
- (32) [REDACTED]; (33) [REDACTED]; (34) [REDACTED]; (35) [REDACTED]; (36) [REDACTED]
- [REDACTED]; (37) [REDACTED]; (38) [REDACTED]; (39) [REDACTED]; (40) [REDACTED]; (41) [REDACTED]
- [REDACTED]; (42) [REDACTED]; (43) [REDACTED]; (44) [REDACTED]; (45) [REDACTED]
- (46) [REDACTED]; (47) [REDACTED]; (48) [REDACTED]; (49) [REDACTED]; (50) [REDACTED]
- [REDACTED]; (51) [REDACTED]; (52) [REDACTED]; (53) [REDACTED]; (54) [REDACTED]; (55) [REDACTED]
- [REDACTED]; (56) [REDACTED]; (57) [REDACTED]; (58) [REDACTED]; (59) [REDACTED]

[REDACTED]

Great Old Broads for Wilderness; (87) [REDACTED] (89) PEER; (90) [REDACTED] (94) Sierra Club; (95) [REDACTED] (96) Harney County Stock Growers' Association; (97) [REDACTED] (98) [REDACTED] (99) Cascadia Wildlands; (100) WildEarth Guardians; (101) [REDACTED] [REDACTED]; and (105) Western Watersheds Project.

Protests submitted by the following individuals contested the weight applied to 4130.1-2(a), historical use of public lands, in favor of HRI: (1) [REDACTED] (2) [REDACTED] (3) Applicant 2, [REDACTED]; and (4) Western Watersheds Project.

Protests submitted by the following individuals specifically contested the weight applied to 4130.1-2(b), proper use of rangeland resources, in favor of HRI. (To the extent that these protests also identified past compliance considerations, they were considered in this Final Decision in connection with 4130.1-2(h), history of compliance as it pertains to HRI and its principals.) (1) Anonymous [REDACTED]; (2) [REDACTED]

[REDACTED]

PEER; (34) Sierra Club; (35) WildEarth Guardians; (36) [REDACTED] (40) Cascadia Wildlands; and (41) Western Watersheds Project.

Protests submitted by the following individuals that either directly, or indirectly appeared to, contest the determination of 4130.1-2(c), general needs of the applicant's livestock operation, in favor of HRI: [REDACTED] and (5) Western Watersheds Project.

Protests submitted by the following individuals contested the weight applied to 4130.1-2(e), topography, in favor of HRI: [REDACTED] (2) Western Watersheds Project.

Protests submitted by the following individuals contested the weight applied to 4130.1-2(f), other land use requirements unique to the situation, in favor of HRI: (1) Applicant 2, [REDACTED]

Protests submitted by the following individuals were considered in this Final Decision in connection with 4130.1-2(g), demonstrated stewardship to improve or maintain and protect

rangeland resources. In general, these protests asserted that HRI or its principals were not good stewards. [REDACTED]

Protests submitted by the following individuals were considered in this Final Decision in connection with 4130.1-2(h), the applicant's and affiliate's history of compliance with the terms and conditions of grazing permits and leases of the BLM and any other Federal or State agency, including any record of suspensions or cancellations of grazing use for violations of terms and conditions of agency grazing rules. Where a protest did not specifically refer to this regulation but still identified compliance issues associated with HRI or its principals, it was considered to pertain to this aspect of the Final Decision. [REDACTED]

[REDACTED] N [REDACTED] (57) Great Old Broads for Wilderness; [REDACTED]; (60) PEER; [REDACTED]
[REDACTED] (68) Sierra Club; [REDACTED]
[REDACTED] (73) WildEarth Guardians; [REDACTED] (78)
Western Watersheds Project.

Protests submitted by the following entities specifically contended that HRI violated permit terms and conditions during the 2019 grazing season: (1) Sierra Club; and (2) Western Watersheds Project.

These protests points, and others related to the adjudication of competing applications, are addressed above in the Final Decision.

The following summarizes protests received that specifically pertained to resource issues or the analysis in the EA. Many of the protests presented similar issues and are organized below not according to any one protester's specific numbering, but by theme. This section is organized to present protests and responses to resource issues first, and then respond to protests related to the contents of the EA more generally.

7" STUBBLE HEIGHT: Protests submitted by the following generally contended that the decision does not adequately protect sage-grouse and that sage-grouse require at least 7" (18 cm) of vegetation height in nesting areas to effectively hide from predators. The proposed decision does not include vegetation height as an enforceable standard, making compliance with these terms unlikely and imperiling grouse habitat. Other protests expressed concern for sage-grouse in general terms. (1) PEER, [REDACTED]

[REDACTED]
[REDACTED] (18) The Sierra Club, [REDACTED]
[REDACTED] - Cascadia Wildlands, (22) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Response: Please refer to EA section 2.1 Actions Common to All Grazing Alternatives, 2.1.2 Monitoring, where it is explained that Visual Obstruction Reading (VOR) would be completed "annually for the first four years of grazing and would help document cover remaining for wildlife following livestock use." VOR monitoring is also described in EA Table 4 Thresholds and Responses. Both sections of the EA where VOR is discussed describe the required removal of livestock in a timely manner when monitoring shows the utilization threshold is met, with adjustments to livestock timing and/or duration of use for the following season. A comment regarding opposition to the use of VOR was also addressed in EA Appendix L: Response to Public Comments, Comment 12.

INADEQUATE PROTECTION OF SAGE-GROUSE: Protest point submitted by the Western Watersheds Project states that for the following reasons, the proposed grazing regime does not adequately protect sage-grouse from livestock grazing: grazing is allowed during nesting and brooding seasons; 50-60% utilization is too high; sage-grouse require at least 7" of vegetation height in nesting areas; the placement of salt and supplements within .25 miles of springs will degrade those sites; the EA fails to analyze impacts of existing fencing and other livestock infrastructure; and the Decision allows grazing on the Mud Creek Allotment.

Response: The BLM considered the impacts to GRSG associated with each alternative. Analysis included effects to GRSG associated with proposed seasons of use, allowed utilization, and both direct and indirect effects associated with the presence of cattle. As utilization is associated by the percentage of grasses allowed to be grazed by cattle, it is assumed that the remaining percentage of grass cover available would be allowed to reach its maximum growth potential. Given that the highest percentage of utilization allowed in habitat that is currently utilized by GRSG for breeding and brood-rearing habitat is limited to 50% and native bunchgrass species occurring within those areas generally exceed 7" in

height, a minimum of 50% of available bunchgrass taller than 7" would remain in place in years where grazing occurs regardless of season of use. Please refer to pages 61-69, which describe the environmental consequences of proposed alternatives to GRSG and other sagebrush obligate wildlife.

The BLM also considered the hazard posed by existing and proposed fencing associated with the Bridge Creek Area Allotments. The Fence Collision Risk Tool developed by NRCS was utilized to determine the risk of fence collision for all existing and proposed fences within the Bridge Creek Allotment. On site field assessment by a BLM wildlife biologist identified additional moderate or high-risk sections of fence that were classified as low risk by the NRCS model. Stevens et al. (2012) showed the addition of anti-strike markers resulted in an 83% reduction in sage-grouse mortality associated with collisions with barbed-wire fences. Because fences are required in order to facilitate proper grazing, the addition of anti-strike fence markers is the most effective method for reducing sage-grouse mortality where fences are required in order to facilitate proper grazing management. All sections of fence determined by either the NRCS Fence Collision Risk Tool or field assessment to pose a high or moderate risk for collision within the Bridge-Creek Allotments have been retrofitted with anti-strike fence markers. Newly constructed fence determined to be of high or moderate risk of collision would also be fitted with anti-strike markers.

The referenced .25 miles for the placement of salt and supplements is a minimum distance. If there is resource that is at risk, or could be improved by a farther distance, the BLM would work with the permittee to change the salting or supplementation location to a more appropriate location.

FISH: Protests submitted by the following generally contended that the EA does not analyze the direct impacts to redband trout from livestock, specifically the impacts from livestock grazing during times when spawning or migrating redband trout, redds, and rearing young may be present in streams. The protest point also contends that the EA failed to implement enforceable standards that protect riparian habitat in and around occupied or potential redband trout streams, including riparian stubble height, riparian utilization, and streambank alteration. Others also generally stated that the Proposed Decision would not adequately protect redband trout habitat and/or expressed concern for redband trout. (1) PEER, [REDACTED]

[REDACTED] N [REDACTED]
[REDACTED] (15) The Sierra Club, ([REDACTED] -
Cascadia Wildlands, [REDACTED]
[REDACTED] N [REDACTED]
[REDACTED]
[REDACTED]

(45) Western Watersheds Project.

Response: See EA Appendix L: Response to Public Comments, Comment 3. In addition, none of the commenters explain how the standards are not enforceable. The AMP (including standards) are adopted as part of the Terms and Conditions of the permit upon signature. The BLM cannot assume in advance that a permittee is not going to meet the Terms and Conditions of a permit.

FISH (CONT'D): Protest submitted by Western Watersheds Project contends that BLM's conclusion does not comport with the degradation that occurred to riparian areas under past grazing on these allotments under similar terms and conditions, or known negative impacts to salmonids from allowing domestic livestock to graze along streams, as discussed in the attached Declaration of Dr. Dale McCullough, submitted to the district court in 2019.

Response: See EA Appendix L: Response to Public Comments, Comment 52; EA Comment 3 (Page 278), responds to analysis of impacts to riparian habitats and redband trout.

Dr. McCullough's Declaration is his review of the general effects of unrestricted livestock grazing on streambanks, riparian zones, and instream fish habitat. The examples of the work he reviewed are different stream systems than those that are in the Bridge Creek Area allotments due to the channel types (gradient, substrate) and riparian vegetation communities. Dr. McCullough does not describe the land use histories (including livestock grazing) in the examples he references beyond noting they are unrestricted. Because of the lack of detail regarding the timing, intensity, or duration of livestock grazing considered in the review, it is too general to compare to the alternatives in the EA. Also much of this work reviewed was done in the early 1990s when riparian areas were more of a land management focus, and simultaneously when changes were beginning to be made to livestock grazing on federally managed land to improve riparian areas and the changes studied. Based on the unrestricted term, the BLM assumes that this is likely season-long hot season grazing with no prohibition on livestock use (amount or time spent) in the riparian area. The BLM has made multiple efforts as discussed in the EA to manage livestock (much of which are restrictions) through adjacent upland utilization standards, Thresholds and Responses (EA Table 4) including riparian centric indicators, off-site water proposed range improvements, and timing of use to more closely manage livestock grazing and prevent or reduce potential impacts to riparian areas. Dr. McCullough assumes unrestricted grazing and the associated effects, but not in the context specific to the project area, or proposed management in the EA.

LACK OF REQUIREMENT FOR RIDERS: Protest submitted by the Western Watersheds Project and Sierra Club protested the Proposed Decision did not include a requirement for a permittee to use riders to move livestock out of riparian areas.

Response: The BLM agrees that riders can be one of multiple effective tools for managing livestock both in and outside of riparian areas. However, the BLM does not

have to require riders be used. The expectation is that allowable use in riparian areas is not exceeded, the suite of tools it would take to accomplish this outcome is the permittee's responsibility.

CHEATGRASS: Protest submitted by the following either contend that the level of proposed livestock grazing will continue the spread of invasive cheatgrass, elevating fire hazard, despite the agency's claims that cattle will help reduce fuel loads or otherwise generally express concern about cheatgrass spread. (1) PEER, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
Cascadia Wildlands, (19) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] (40) Western Watersheds Project, (41) Sierra Club.

Response: The concern of livestock causing cheatgrass introduction and spread were addressed in the EA Appendix L: *Response to Public Comments*, Comment 4, Comment 44 (EA Section 3.2.5.2 Issue Question 3), Comment 71, and in EA Appendix D: *Issues Considered but Eliminated from Detailed Analysis and Rationale* section 1.1.1.17 Vegetation bullet point 3.

BOBOLINK: Protest point submitted by [REDACTED] contends that the 50% utilization threshold described in the EA does not provide adequate habitat and nesting cover for ground-nesting Bobolinks. Also, that the EA fails to provide evidence of surveys of bobolink habitat or bobolink populations in the project area.

Response: The EA Appendix D: *Issues Considered but Eliminated from Detailed Analysis and Rationale* section 1.1.1.21 *Wildlife (including GRSG)* (4th bullet point) describes how, “[n]o breeding bird or other extensive migratory bird surveys have been conducted directly within the Bridge Creek area allotments. However, as habitats occurring within the nearest breeding bird survey route are similar to those present within the allotments considered here, it is assumed that similar trends in species composition and abundance would be expected in coinciding habitats within a relatively close proximity.” This section goes on to describe the potential effects to livestock grazing on ground nesting migratory birds and includes multiple references to peer reviewed journal articles noting that light to moderate use (30-50 percent utilization) and using deferred or rest-rotation grazing would limit grazing disturbances during critical bird life stages such as nesting, increase forb quality, and can improve both plant vigor and productivity of grass communities, which in turn increased the amount of vegetative cover. EA Table 4 of this section includes rationale as to why BLM determined no measurable impacts to bobolink or its habitat are expected.

ASPENS: Protest point submitted by Western Watersheds Project and the Sierra Club protest that the Proposed Decision did not provide any protection for aspens.

Response: Aspen within the riparian areas are considered stabilizing riparian species and are given the same protection as other riparian woody species, such as willows. Any grazing on younger trees would be monitored for utilization and considered in management decisions. Furthermore, the proposed disturbance/use thresholds would apply to aspens.

INADEQUATE REST POST-FIRE: Protest point submitted by the following contends the BLM has not provided adequate periods of rest supported by objective recovery criteria to allow for recovery following fire. (1) The Sierra Club, (2) Western Watersheds Project.

Response: EA Appendix D: Issues Considered but Eliminated From Detailed Analysis and Rationale section 1.1.1.17 Vegetation (2nd bullet point) explains how, “[i]f there was a fire within the Bridge Creek area, the BLM would follow existing policy from the 2005 Andrews/Steens RMP/RODs as modified by the GRSR ARMPA. In addition, the BLM would follow policy for emergency stabilization and restoration [ESR]. In areas that required seeding, the BLM would exclude livestock from the seeded areas for at least two growing seasons.” After a fire, an ESR plan would be developed that would have site specific vegetation objectives, and how they would be attained (i.e., treatments) and monitored. Because post fire conditions can vary widely based on fire severity, pre-fire conditions, and ecological potential, it would be difficult to plan an adequate plan in advance of the fire. The two years post fire rest from livestock grazing is a general guideline but does not mean that the affected area would not be rested for a longer time period depending on the rate of recovery of the burned area(s).

CARRYING CAPACITY. Protest points submitted by the WildEarth Guardians, Sierra Club and Western Watersheds Project contend the BLM did not provide evidence supporting how the BLM has appropriately determined carrying capacity.

Response: Refer to EA Appendix D: Issues Considered but Eliminated from Detailed Analysis and Rationale section 1.1.1.6 Grazing Management (3rd bullet point) and Appendix L: Response to Public Comments, Comment 23, 27, and 56.

EIS: Protests submitted by the following contend that uncertain adverse ecological effects of the actions are grossly underestimated and therefore a full Environmental Impact Statement should be prepared. (1) [REDACTED] (2) WWP.

Response: The EA analysis fully discloses the ecological effects of the alternatives analyzed in Chapter 3 and the FONSI (p. 5) determined that, “[n]one of the actions included in the Bridge Creek Area AMP would have significant effects or cause effects beyond the range of effects analyzed in the Andrews/Steens CMPA Proposed Resource Management Plan (PRMP)/Final Environmental Impact Statement (FEIS).”

PREPARATION OF EA INSTEAD OF AN EIS: Protest submitted by Western Watersheds Project contends that an EIS is required because this proposal threatens to unlawfully establish a precedent of rewarding serial bad actors who violate environmental regulations; may endanger human health; and is controversial both in the action it proposes and with respect to the environmental consequences of that action.

Response: The allocation of forage on the specific allotments at issue here is fact-specific and does not have any precedential value for other actions. Irrespective of whether this action may be politically controversial, the controversial nature of a project is not relevant to assessing its significance. With respect to the potential environmental consequences of this action, including any degree of scientific uncertainty about the effects, please refer to the FONSI associated with this EA for a description of why an EA was appropriate in this case. The terms and conditions of the permit that will issue consistent with this Final Decision are analyzed in detail in the EA.

PREPARATION OF EA INSTEAD OF AN EIS (CONT'D): Protest submitted by Western Watersheds Project contends that an EIS is required because numerous scientific studies have shown that grazing is an important cause of degradation of arid landscapes. Grazing inhibits native bunchgrasses, and harms soils, leading to cheatgrass and other annual grass infestation.

Response: The commenter asserts that any or all livestock grazing would cause a negative impact to sagebrush ecosystems. This generalization fails to account for factors like the timing, intensity, and duration of livestock grazing that are part of the considerations for management changes and activities, and ultimately relate to impacts to the sagebrush step as discussed in the EA. Local and regional (if applicable) science that parses out the differences in intensity and timing are especially valuable and were considered in the analysis (See EA Grazing Management, Upland Vegetation, and Invasive Annual Grass sections in Chapter 3).

During the EA comment period, the same commenter stated: "The EA does not evaluate and discuss any of the scientific literature that WWP attached to its scoping comments for BLM's consideration. These papers describe the specific pathways through which livestock cause cheatgrass introduction, spread, and persistence, and disclose how the proposed action would affect invasive grasses over the longer term: Reisner et al. (2013), Williamson et al. (2019), Root et al. (2019), Condon and Pyke (2018), and Baker (2011). For these reasons and others, grazing is not a viable or responsible means of reducing "fuels" thereby reducing fires. In fact, grazing will have the opposite effect with respect to fire occurrence and intensity. Without consideration of the impact to cheatgrass and other invasive grass infestations themselves, the BLM cannot adequately consider the implications of the proposal on restoration of sagebrush steppe habitat."

The studies that the commenter supplied are largely "observational" studies designed to use models establish a correlation between factors, mostly cheatgrass and livestock grazing. They observe if one factor moves one way (increases, decreases, stays the same) if the other factor moves in the same or a different way (increases, decreases, stays the

same). The predominant themes of the papers are that if livestock grazing increases then cheatgrass increases, or if livestock grazing was decreased, cheatgrass would be less, whether directly or indirectly through mostly other vegetation driven variables. Because the studies are observational rather than experimental, they were not designed to establish the cause of cheatgrass as livestock grazing as the commenter claims. Examination of the assumptions under the hypothesized mechanisms (list of variables) in many of the models presented by the papers generally appears to assume up front that livestock grazing would have a negative effect to desirable vegetation and biological soil crusts, which contradicts science used in the Vegetation section of Chapter 3 of the EA. Furthermore, the studies are inconsistent with the scale of management being presented in the EA, either representing a very small percentage of the landscape examined, or the inverse in which the areas observed are limited to those that livestock are most likely to use at a higher level (nearest to water), while downplaying the larger area contained within an allotment boundary that would not receive the same concentrated use. The BLM acknowledges in the EA that livestock use is higher near water sources and is more likely to have invasive species as a result of that disturbance, as with any disturbed area associated with multiple use. However, the BLM also recognizes that that is an only a small percentage of the landscape it is charged with managing in the project area and that it does not represent livestock use across the pastures or allotments. Also, the studies supplied discuss cheatgrass cover or prevalence as it relates to their study area, which is only one component of fuel in the wildfire context. The studies supplied do not discuss in any detail the effects of grazing on the amount of fuel (i.e., pounds of production per acre), continuity of fuel, or fuel moisture (associated with ignitability) that would influence wildfire behavior as was disclosed in the Vegetation section in Chapter 3 of the EA. The commenter did not describe how the excerpts were applicable to the EA nor describe how the specific situation in the Bridge Creek Allotments was applicable to the excerpts. The BLM has reviewed the literature and/or excerpts and determined that they do not provide new information that would result in a substantial change in the analysis in the EA.

CUMULATIVE IMPACTS: Protest point submitted by the following contends that the EA associated with this decision lacks analysis of the cumulative impacts to resources from the reintroduction of grazing to the Bridge Creek Area allotments. (1) The Sierra Club, (2) [REDACTED] – Cascadia Wildlands, (3) Western Watersheds Project, (4) WildEarth Guardians.

Response: Please refer to EA Appendix L: Response to Public Comments, Comment 45

REASONABLE ALTERNATIVES. Protest point submitted by the following contends the BLM failed to analyze suggested reasonable alternatives in the EA. (1) The Sierra Club, (2) [REDACTED] – Cascadia Wildlands, (3) Western Watersheds Project, (4) WildEarth Guardians.

Response: The EA fully analyzed five alternatives which include a range of grazing related actions, including no grazing. Seven additional alternatives were considered in the EA section 2.9 Alternatives Considered but Eliminated from Further Analysis. 40 CFR 1508.1 defines *Reasonable alternatives* as a reasonable range of alternatives that are technically and economically feasible, meet the purpose and need for the proposed action, and, where applicable, meet the goals of the applicant. BLM's NEPA handbook (H-1700-1, 2008, at 6.6.1) describes how BLM must analyze those alternatives necessary to permit

a reasoned choice, how for some proposals there may exist a very large or even an infinite number of possible reasonable alternatives, and that when there are a large number of alternatives BLM must analyze only a reasonable number to cover the full spectrum of alternatives. BLM has determined that a reasonable range of alternatives was considered in the EA.

SUPPLEMENTAL NEPA REQUIRED: Protest submitted by Western Watersheds Project contends that the EA analyzed the effects of several alternatives, but never actually evaluated the effects of this combination of measures [actions from multiple alternatives] against the baseline. This violates NEPA and demands supplemental NEPA analysis to fairly consider the effects of the Alternative actually adopted. See *Hunters v. Marten*, 470 F. Supp. 3d 1151, 1168 (D. Mont. 2020).

Response: The selected actions are qualitatively within the spectrum of alternatives that were discussed in the EA and would achieve the purpose and need for action. The case cited by Western Watersheds Project is on appeal. See *Helena Hunters & Anglers Ass'n v. Martin et al.*, No. 20-35771 (9th Cir.).

THRESHOLDS/RESPONSES: Protest point submitted by the following contends the BLM has adopted thresholds and responses, but responses fail to achieve the intent of this management provision. (1) The Sierra Club, (2) Western Watersheds Project.

Response: A similar comment was received during the public comment period for the EA and responded to in EA Appendix L: Responses to Public Comments, Comment 54.

ISSUES ELIMINATED FROM DETAILED ANALYSIS. Protest point submitted by the following contends that in EA Appendix D BLM declined to analyze many important issues in detail in the EA, including climate change impacts (including carbon storage), carrying capacity, soils, pronghorn migration routes, noxious weeds, ACEC impacts, impact to pollinators, carnivores, and other species, and burned area recovery. (1) The Sierra Club, (2) [REDACTED] [REDACTED] – Cascadia Wildlands, (3) WWP, (4) WildEarth Guardians.

Response: Please see EA Appendix L: Response to Public Comments, Comment 56. In addition, the BLM has responded to specific contentions from Western Watersheds Project in the protest summaries and responses that follow.

ISSUES ELIMINATED FROM DETAILED ANALYSIS/ACEC: Protest point submitted by Western Watersheds Project contends the BLM failed to consider catastrophic wildfire is climate driven, not fuel driven, and unlikely to be significantly affected by grazing. The EA and the rationale do not discuss the likelihood that livestock trampling will inhibit development and growth of seedlings, harm roots from the fir trees, and damage the microbiomes associated with the trees' roots. There is no scientific authority cited for the unbelievable proposition that "hoof action" will help fir seeds germinate rather than disrupt and destroy them.

Response: See EA Appendix D section 1.1.1. ACEC. Areas of Critical Environmental Concern (ACECs) are managed by the BLM to promote "relevant and important" values specific to each unit. According to the Steens Mountain

CMPA ROD/RMP (2005), the 477-acre Fir Groves ACEC should be managed to maintain and promote the stands of grand fir (species) along Little Fir Creek and Fence Creek and it should remain open to livestock grazing. Typically, livestock grazing and fire exclusion combine to promote an expansion of conifers into riparian plant communities, sagebrush steppe, and other environments (Bates et al. 1999). Fire models indicate that reducing fine fuels in shrubland ecosystems reduces fire frequency, rates of spread, and fireline intensity (Scott, J. & Burgan, R. E., 2005). The level and timing of livestock use within the ACEC would not negatively impact the stands of firs as livestock do not utilize fir trees as a source of nutrition when other sources are available; utilization thresholds will ensure this occurs. Smith (1967) found that "open timber range was grazed much less than grasslands, and dense timber stands were scarcely grazed." Therefore, continuing a grazing regime that is similar to the one utilized in previous AMPs should maintain or improve the ACEC relevant and important values and this topic was appropriately eliminated from detailed analysis.

ISSUES ELIMINATED FROM DETAILED ANALYSIS/CULTURAL RESOURCES: Protest point submitted by Western Watersheds Project contends the BLM's decision not to analyze the impacts of grazing on cultural resources in detail is arbitrary and capricious.

Response: The BLM eliminated cultural resources from detailed analysis in light of the known data regarding archaeological resources in the upland areas of Steens Mountain, the known impacts of moderate grazing on archaeological resources at or near the surface of the ground, and avoidance measures that would be used during development of range improvements and other actions that concentrate livestock use (See EA page 231, Appendix D). Because of episodes of erosion over the past 10,000 years, most archaeological deposits in Great Basin upland environments are located within the upper 20 centimeters of ground surface. Buried archaeology is limited except in depositional environments such as springs, alluvial terraces or fans, and within rockshelters. Because of the intensity and magnitude of grazing that occurred on Steens Mountain prior to the Taylor Grazing Act in 1934, the proposed level of permitted grazing would not result in cumulative impacts to archaeological deposits located near ground surface. For reference, there were over 200,000 sheep concentrated on the Steens Mountain summer range at one point during the 1920s (Bright 1979). Archaeological patterning in these environments has also been altered by bioturbation and by the development of the non-native seedings in the Hammond and Hammond FFR allotments in the 1960s and again in the 1980s.

Therefore, the only grazing related activities could cause effects beyond disturbance associated with the mid 20th century disturbances would be actions that concentrate livestock near surficial cultural resources, or grazing that occurs in areas such as alluvial terraces or spring deposits that have potential for subsurface material. The effects of implementing the AMP would be completely

eliminated with appropriate Section 106 of NHPA compliance, full avoidance of identified resources, monitoring, and coordination with the permittee.

ISSUES ELIMINATED FROM DETAILED ANALYSIS /SAGEBRUSH

REESTABLISHMENT FOLLOWING FIRES: Protest point submitted by Western Watersheds Project contends that the BLM did not allow adequate time for to rest burned areas. Contends that the EA failed to discuss a study by USGS (Arkle et al. 2014).

Response: Because the BLM cannot predict exactly what the impacts of a future fire will be, until it happens (size, intensity, pre-fire conditions, ecological potential, treatments to be proposed for restoration, etc.) so the two-year growing season rest is a guideline considering the unknowns. The post-fire Emergency Stabilization and Rehabilitation plan would be created based of the specifics of the fire (intensity is one of the large factors), and resulting treatments being proposed. More than two years growing season rest may be implemented depending on the rate of recovery of the burned landscape. The goal is not to ensure sagebrush is fully reestablished before reinitiating livestock grazing. Studies have found that reduction of herbaceous component in the plant community may allow sagebrush to gain a competitive edge and enhance reestablishment (EA Appendix D, section 1.1.1.6 Grazing Management). Direct herbivory of sagebrush by cattle is not a concern because if herbaceous forage is available they will prefer eating that to sagebrush species (EA section 3.2.1.1).

Please also refer to the response to protest points pertaining to “Inadequate Rest Post-Fire.”

ISSUES ELIMINATED FROM DETAILED ANALYSIS/JUNIPER ESTABLISHMENT.

Protest point submitted by Western Watersheds Project contends the EA does not analyze in depth the impact of livestock grazing on juniper establishment despite finding that it was a factor leading to failure to achieve standards on the Mud Creek, Hardie Summer and Hammond FFR Allotments.

Response: Please refer to sections 1.1.1.6 and 1.1.1.17 of the EA Appendix D for information regarding juniper. The BLM has considered the historical impact of livestock grazing to juniper encroachment, as well as European settlement and fire suppression (see 3.2.5.1 in the EA). Grazing practices have changed substantially since then and other factors such as fire (or lack thereof), weather, and climate that have contributed have been studied and found to have influenced encroachment and infilling patterns. Current livestock grazing management, which is the focus of Standard and Guideline Determinations, did not cause juniper encroachment (many of the juniper seedlings pre-dated grazing management changes in the 1980's) nor is there evidence that current day grazing accelerates juniper encroachment beyond what would happen if there was no grazing. Nurse plants that host juniper seedlings would exist under both management scenarios. Exclusion of fire has been shown to be a major cause in continued and accelerated encroachment and infilling (Miller et al. 2005, Miller and Rose

1999). Removal or reduction in livestock grazing under current management scenarios and utilization levels is not known to slow or reverse juniper encroachment.

ISSUES ELIMINATED FROM DETAILED ANALYSIS/SOILS. Protest point submitted by Western Watersheds Project contends the rationale for not analyzing the impacts to soil crusts is irrational, based on the perspective that “heavy livestock grazing” cannot be anything but long-lasting.

Response: The commenter does not define “heavy livestock grazing,” preventing a comparison of grazing intensities from being reasonably drawn. Under all grazing alternatives analyzed in the EA, the BLM’s definition of “heavy grazing” is not being proposed. Root et al. 2019 did not use utilization the same way it is used by the BLM to measure livestock effects. Rather, that study used grazing levels based on dung abundance and density and a vague explanation whether plants were “abundantly” grazed or not. In the study area low grazing intensity areas were inside exclosures or where livestock movement was limited, so medium and high intensity plots were the only areas livestock could access. Furthermore, of the seven cheatgrass dominated plots that were added to the study, four are apparently near a road (See Figure 1, Root et al. 2019) where the sites are likely already disturbed. While the study design did not measure plots where roads run through the potential plot, it is silent on whether plots are within roadside disturbed areas where cheatgrass dominance would be more likely. The article does not disclose what grazing intensity was at what plot per vegetation type, nor where livestock concentration areas would be. The study admitted that perennial grasses did not differ significantly amongst grazing intensity, or that grazing intensities did not directly promote annual grasses.

Furthermore, Root et al. 2019 also examined an area that has less precipitation and lower elevation where higher crust cover would be expected when compared to the project area. Since total crust cover is inversely related to vascular plant cover, as less plant cover results in more surface available for colonization and growth of crustal organisms. Thus, when all crust types are combined (cyanobacterial, moss, lichen), cover is greatest at lower elevation inland sites (less than 1,000 m) compared to mid-elevation sites (1,000 to 2,500 m; Hansen et al. 1999). Root et al. 2019 would be considered a lower elevation site, whereas Bridge Creek Allotments would be considered mid-elevation and higher site.

ISSUES ELIMINATED FROM DETAILED ANALYSIS/NOXIOUS WEEDS. Protest point submitted by Western Watersheds Project protests “the agency’s conclusory determination that none of the alternatives would have a ‘significant measurable effect’ on noxious weeds.” The protest point also contends the focus on dispersal is arbitrary.

Response: Refer to EA, Appendix D, 1.1.1.10 for explanation of why BLM did not analyze noxious weeds in detail. Additional information may be found in EA Appendix L, Response 71. The Bridge Creek Area Allotments have few noxious weed species within the boundaries as discussed in EA Appendix D, section

1.1.1.10. The Burns District Invasives Program would continue to inventory and treat weeds across the Burns District, regardless of where it is and what the management activity or disturbance is (for example livestock concentration area around water, recreation site or trail, fire, vegetation treatment). The one problematic noxious listed weed in the Bridge Creek AMP area is medusahead rye and was discussed separately in Chapter 3 Vegetation / Fuels section. The EA, on page 120, discusses that the most effective way to manage against invasive annual grasses would be to maintain or improve a vigorous native, deep-rooted perennial bunchgrass population (Davies and Johnson 2012). The grazing alternatives were crafted to manage for native and nonnative deep-rooted perennial bunchgrasses through livestock utilization allowable use, pasture rotations providing growing season rest, and rangeland improvements to promote increased livestock distribution. Many weed seeds require disturbance to establish (EA page 119, and Appendix D sections 1.1.1.10). However, rather than arbitrary, analyzing dispersal of noxious weeds is responsive to the commenter's attachment, Plaintiffs' Reply in Support of Motion to Consider Evidence Outside the Administrative Record, dated November 12, 2019, that asked the BLM to consider how livestock contribute to the spread of invasive annual grasses.

INADEQUATE BACKGROUND INFO PROVIDED: Protest points submitted by the following contend the EA failed to provide adequate background information and ignored requests for these documents from WWP. These include: the 2007 rangeland health assessment upon which the agency based its determination that there was more forage available than previously permitted; any documents related to the Bureau's decision on the competing applications received (applications themselves, analysis, decision rationale, etc.); the underlying rangeland health evaluations and assessments, and their data, that the agency used to make its 2019 determinations that are included in the EA. (1) Western Watersheds Project; (2) WildEarth Guardians, (3) Sierra Club.

Response: Please refer to EA Appendix L: Response to Public Comments; Comment 24, Comment 25, and Comment 26. Western Watersheds Project received the 2007 Rangeland Health Assessments for Hammond, Mud Creek, and Hardie Summer through a 2019 FOIA request. Rangeland Health Evaluations and Assessments from 2019 and 2020 and associated updates are summarized in the EA. The underlying data is available upon request. Scoping comments are also available upon request.