



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

Carson City Field Office  
5665 Morgan Mill Road  
Carson City, NV 89701  
(775) 885-6000

L ~~6/30/03~~  
6/30/03  
In Reply Refer To:  
4160  
(NV-032)

Richard Huntsberger  
P.O. Box 250  
Smith, NV 89430

### NOTICE OF FINAL DECISION

#### INTRODUCTION

On March 8, 2000, an Environmental Assessment (EA-NV-030-00-013) analyzing possible alternatives to be adopted for use in the management of grazing on the Churchill Canyon allotment was completed. At that time, there was also a Proposed Decision and Finding of No Significant Impact (FONSI) signed. The Proposed Decision was to adopt and implement the Proposed Action which provided for the possibility of a certain level of temporary nonrenewable use (TNR) each season for six years, dependent upon meeting certain criteria, the construction and/or placement of a number of range improvements, and the provision for a 15 day extension of the grazing period each year, with grazing to be maintained within the permitted number of animal unit months (AUM's).

A protest of this Proposed Decision was received on March 21, 2000. Although this protest consisted primarily of simple statements opposed to grazing management on this allotment, there were two points within the protest that were determined to have merit. In a response to the protester, an agreement was made to take a more detailed look at information describing the condition of the water and riparian resources on the allotment, and also a closer look at the expected effects of the proposed action on sage grouse on the allotment. These actions have been completed.

#### BACKGROUND

The class of livestock on the Churchill Canyon Allotment was converted from sheep to cattle in 1992. The Record of Decision making this conversion stated that the Proposed Action in this case (which was a straight conversion of AUM's from sheep to cattle) would damage the resource. The AUM numbers at that time were in excess of 5,000. An alternative was selected which set the initial stocking rate at 1074 AUM's. It was also decided that a three year permit

should be issued due to a lack of monitoring data and first hand experience with how cows would behave on this particular allotment. A permit was issued to a new permittee, Richard Huntsberger, in 1993. This permit was for a period of three and a half years.

An allotment evaluation was performed on the allotment during the 1993-94 grazing season. Average utilization across the allotment was 55%, which is classified as a high moderate level. The Pine Nut Final Multiple Use Decision (FMUD) was signed the following year (08/18/95). This decision maintained the stocking rate at 1074 AUM's, calling this level "reasonable". The decision also said that the BLM would obtain further data to refine the estimate and establish a preference which is sustainable.

A subsequent grazing permit was issued to Mr. Huntsberger in 1997 for a one year period. The permit stated that an analysis would be made following the 1998 grazing season and preference would be adjusted based on that analysis.

A new 10 year grazing permit was issued in 1998 which maintained the stocking rate at 1074 AUM's. This permit is still in effect at the current time.

Mr. Huntsberger has maintained the position that he should receive an increase in permitted AUM's over the original 1074 allocated during the conversion in 1992. The above referenced EA prepared in 2000 was in response to his formal request for an increase in stocking rate in 1998. The EA found that data collected prior to that time suggested that there might indeed be additional AUM's on the allotment, and proposed a course of action for future management.

### **FINDING OF NO SIGNIFICANT IMPACT (FONSI)**

Based on the analysis of potential environmental impacts for federal lands contained in EA-NV-030-00-013, I have determined the impacts associated with the proposed action are not expected to be significant and an Environmental Impact Statement (EIS) is not required.

### **FINAL DECISION**

After careful consideration of the statement of reasons included in the protest received, information collected through the consultation, communication and coordination process with various interested publics, and other information pertinent to the matters addressed in this decision, **My Final Decision is to implement the following elements of the Proposed Action described in EA-NV-030-00-013:**

- 1. Maintain the permitted stocking rate at 1074 AUM's and provide for the possibility of a temporary increase in stocking rate of up to a maximum of 883 additional AUM's each year, for the next five grazing seasons, based on certain requirements. These requirements are that the excess forage (over and above the 1074 AUM's) must be present and verified by BLM range specialists each year that TNR is applied for, and range condition on the allotment must be such that additional grazing will not cause a deterioration in such condition. The excess forage so verified must be in locations that the permittee has demonstrated are usable by his livestock under the conditions existing on the allotment at that time.**

- 2. Construct six miles of pasture fence as described in the above mentioned EA in order to implement a rotation grazing system on the allotment.**
- 3. Install a short pipeline and water trough at Presto Spring.**
- 4. Construct a one-half acre corral to aid in livestock handling.**
- 5. Designate up to 25 areas within the allotment to be used for temporary watering and/or salting areas.**
- 6. Provide for the extension of the grazing season for a maximum of 15 days each year, if resource conditions are appropriate. The BLM may grant an extension any time between 11/01-11/15 and 05/15-05/30, as long as the 15 day period and permitted livestock AUM's are not exceeded.**

### **RATIONALE**

The Proposed Action outlined in EA-NV-030-00-013 responds to the purpose and need to finalize a proper stocking rate for cattle on the Churchill Canyon Allotment, while providing for multiple use and ensuring ecosystem health. Implementation of the proposed action, as modified by this Final Decision, will provide an opportunity to monitor resource use and evaluate stocking levels for livestock. The proposed range improvements will enhance livestock management and reduce environmental impacts due to livestock grazing.

This Final Decision is slightly different than the Proposed Decision. One of the range improvements analyzed in the EA, and included in the Proposed Decision, has been dropped from this Final Decision. The range improvements listed herein will provide for better livestock management across the allotment.

Additional information concerning the points validated in the protest process was gathered and considered in making this Final Decision. This information is discussed below.

All actual water sources and riparian areas were assessed for Proper Functioning Condition (PFC). All sources examined were in either proper functioning condition, or were functional at risk but with an upward trend (indicating improvement and movement toward PFC), save one. Mud Spring, in the northeast portion of the allotment, was found to be functional at risk with a downward trend. This is an undeveloped, intermittent spring. Although this spring does receive some use by livestock during the winter/spring grazing season, the factor determining the functionality of the spring and its downward trend, is overuse by wild horses in the area throughout the entire year. A horse gather, which will reduce numbers back down to the proper level, is planned for this summer. This action should provide the opportunity for this spring to recover to an acceptable condition.

Subsequent to the Proposed Decision, the areas identified as sage grouse habitat were reevaluated for evidence of sage grouse nesting, as well as for general habitat condition and potential. The Nevada Division (now Department) of Wildlife provided maps of existing and potential sage grouse nesting habitats. Field examinations of these habitats indicated that wild horse use and

pinyon invasion were impacting the nesting habitat quality for sage grouse, and that present permitted livestock use in existing and potential nesting areas is minimal. Livestock use within the mapped areas of nesting habitat does not occur every year, due to the lack of water in the area. Use should be maintained in the "slight" category (1-20%) in this area in order to enhance potential nesting habitat. The Proposed Decision was, therefore, amended through the deletion of one livestock water project that would have tended to increase the permitted livestock use in existing and potential sage grouse nesting habitats.

### Mitigation

Pasture use and timing on the allotment will be implemented as follows in order to minimize effects of grazing on the range vegetation.

There are currently three pastures within the Churchill Canyon Allotment. These pastures are known as the northeastern, northwestern and southern pastures. The northeastern pasture is the lowest in elevation, and both the Sario and the Churchill Canyon wells are located in this pasture. The southern pasture is the mid elevation pasture and contains the old JW ranch. The northwestern pasture is the high elevation pasture and contains Stone and Mud springs. Drift fences separate the three pastures.

**Northeastern Pasture (Sario Well)** – Cattle will typically utilize this pasture between 11/15 and 3/15. However, if resource or weather conditions in the area require a change in use, dates may be adjusted by the BLM.

**Southern Pasture (JW Ranch)** -- Cattle use in this pasture will normally occur throughout the permitted period. Cattle may utilize the entire pasture during the period 11/15-3/15. After March 15, cattle will be allowed in only half of this pasture, with use rotating from one half to the other each year. This will prevent use of any of this area during consecutive growing seasons. If resource or weather conditions require a modification of this schedule, dates may be adjusted by the BLM.

**Northwestern Pasture (Stone Spring)** -- Cattle grazing in this pasture will normally be scheduled between 3/1 and 5/15. Again, if resource conditions require modification of use dates, they will be adjusted by the BLM.

**\*\*If a 15 day extension period should be granted by the BLM, grazing could occur in the following locations at the indicated times: No extensions will be granted in the Northwestern pasture; Northeastern pasture could be used 11/1-11/14; and Southern pasture either 11/1-11/14 or 5/16-5/31, in the half of the pasture in use during that grazing season.**

If fences are built in sage grouse habitat on the allotment, flagging will be used on the fences in order to make them more visible to wildlife.

## AUTHORITY

All citations referenced below come from grazing regulations found at 43 CFR.

4100.0-8 -- The authorized officer shall manage livestock grazing on public lands under the principle of multiple use and sustained yield, and in accordance with applicable land use plans. Land use plans shall establish allowable resource uses (either singly or in combination), related levels of production or use to be maintained, areas of use, and resource condition goals and objectives to be obtained. The plans also set forth program constraints and general management practices needed to achieve management objectives. Livestock grazing activities and management actions approved by the authorized officer shall be in conformance with the land use plan as defined at 43 CFR 1601.05(b).

4110.3 -- The authorized officer shall periodically review the permitted use specified in a grazing permit or lease and shall make changes in the permitted use as needed to manage, maintain, or improve rangeland productivity, to assist in restoring ecosystems to properly functioning condition, to conform with land use plans or activity plans, or to comply with the provisions of subpart 4180 of this part. These changes must be supported by monitoring, field observations, ecological site inventory or other data acceptable to the authorized officer.

4120.3-2(a) -- States in pertinent part: (a) The BLM may enter into a cooperative range improvement agreement with any person, organization, or other government entity for the installation, use, maintenance, and/or modification of range improvements or rangeland developments to achieve management or resource condition objectives...

4130.3 -- Livestock grazing permits and leases shall contain terms and conditions determined by the authorized officer to be appropriate to achieve the management and resource condition objectives for the public lands and other lands administered by the Bureau of Land Management, and to ensure conformance with the provisions of subpart 4180 of this part.

4130.3-1(a) -- The authorized officer shall specify the kind and number of livestock, the period(s) of use, the allotment(s) to be used, and the amount of use, in animal unit months, for every grazing permit or lease. The authorized livestock grazing use shall not exceed the livestock carrying capacity of the allotment.

4130.3-1 (c) -- Permits and leases shall incorporate terms and conditions that ensure conformance with subpart 4180 of this part.

4130.3-2 -- States in pertinent part that: The authorized officer may specify in grazing permits or leases other terms and conditions which will assist in achieving management objectives, provide for proper range management or assist in the orderly administration of the public rangelands...

4130.6-2 -- States in pertinent part that: Nonrenewable grazing permits or leases may be issued on an annual basis to qualified applicants when forage is temporarily available...



## RIGHT OF APPEAL

Any applicant, permittee, lessee or other person whose interest is adversely affected by the final decision may file an appeal in accordance with 43 CFR 4.470 and 43 CFR 4160.3 and 4160.4. This appeal may be accompanied by a petition for a stay of the decision in accordance with 43 CFR 4.21, pending final determination on appeal. The appeal and petition for stay must be filed in the office of the authorized officer, as noted above, within 30 days following receipt of the final decision.

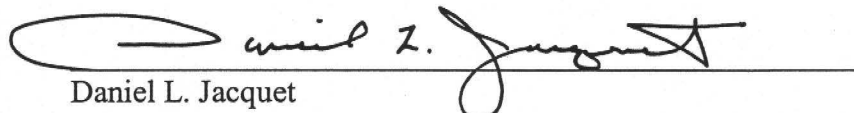
The appeal shall state the reasons, clearly and concisely, why the appellant thinks the final decision is in error and otherwise comply with the provisions of 43 CFR 4.470 which is available at the BLM office.

Should you wish to file a petition for a stay, you must file within the appeal period. In accordance with 43 CFR 4.21(b)(1), a petition for a stay must show sufficient justification based on the following standards:

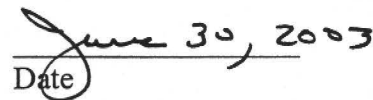
1. The relative harm to the parties if the stay is granted or denied.
2. The likelihood of the appellant's success on the merits.
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

As noted above, the petition for stay must be filed in the office of the authorized officer.

If you have any questions pertaining to this matter, please feel free to contact either Russell Suminski at (775)885-6166, or myself at (775)885-6116.



Daniel L. Jacquet  
Assistant Manager, Renewable Resources  
Carson City Field Office

  
Date