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DEPARTMENT of NATURAL RESOURCES

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**Memorandum**

**To:** Legislative Committee on Public Lands  
**From:** Jon Hutchings, NRM  
**CC:** Eureka County Natural Resources Advisory Commission, Grazing Board Central Committee, Nevada Cattlemen's Association, BLM State Director  
**Date:** March 31, 2006  
**Re:** grazing permit renewals

The purpose of this memo is to respond to Senator Rhoads' request for information about BLM's National priority for processing the backlog of federal grazing permits by 2009. Included with this memo is 1) a March 2004 EMS Transmission to field offices describing the permit backlog situation and the importance of PL 108-108 ("the rider"), 2) an open letter to congressmen exemplifying opposition to renewal of the rider and 3) a draft strategy being considered by the Battle Mountain District. The permit renewal problem is ripe for hearing by the Legislative Committee on Public Lands; however, I recommend that we preface any hearings with a meeting between the Senator, BLM leadership and industry representatives in order to fully understand the problems BLM and industry are facing. A summary of the permit renewal issue follows.

During the late-1990s, in response to successful legal challenges related to environmental analysis under the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA), the BLM established policies calling for greater rigor in the permit renewal process. Permit renewals were thereafter strongly linked to formal evaluations of rangeland health standards.

Congress recognized immediately that more rigorous environmental requirements would exacerbate the mounting backlog of expiring permits. In order to ensure that the administrative backlog would not unnecessarily disrupt livestock grazing operations and to allow BLM adequate time to conduct the NEPA analysis and ESA consultation necessary for full compliance, Congress passed and renewed annual legislation that allowed expiring permits to be renewed on the basis of existing terms and conditions. In the FY2004 Omnibus Appropriations Bill (now PL 108-108) Congress extended the annual legislation by providing that permits expiring in FY2004 through FY2008 could be renewed in the same fashion. More recently, BLM set a FY2009 goal for processing all permits with full NEPA and ESA compliance.

The year 2009 is rapidly approaching and BLM Nevada is faced with processing 635 expired or expiring permits. Battle Mountain Field Office alone must process 35 ten-year grazing permits on 35 allotments (20 issued under the rider and 15 that will expire between now and the end of FY2008). The task is not likely to be accomplished if permit renewal remains tied to the comprehensive, time-sensitive and often contentious Allotment Evaluation/Final Multiple-Use Decision process. The unfavorable outcome is that BLM will not be able to timely renew permits and graziers will be prevented from turning out.

**EXHIBIT BB - LANDS**  
**Document consists of 12 pages.**  
**Entire Exhibit Provided**  
**Meeting Date: 04-28-06**

There seem to be two actions that can prevent this outcome. First, BLM, industry and other interests must work to reduce the burden of processing permit renewals. This effort is underway. Discussions between the BLM State Director and industry groups have identified a grazing agreement program that could streamline permit renewal, comply fully with NEPA and honor ten-year evaluation requirements. Details are still being worked out, but the prognosis is good. Benefits to graziers are likely to include no immediate AUM reductions and assurance that progress toward rangeland health standards is documented before their ten-year Allotment Evaluation/Final Multiple-Use Decision comes due.

The second action that must be considered is lobbying congress to extend the PL108-108 provisions. If BLM and industry show due diligence in processing permits, then congress will be more likely to consider an extension of the rider. That said, political changes between now and then may make renewal legislation difficult to obtain in 2009; therefore, we should work to secure an extension as soon as possible.

**BATTLE MOUNTAIN DISTRICT STRATEGY TO FULLY PROCESS RIDER  
AND EXPIRING GRAZING PERMITS  
BY 2010**

**PERMIT RENEWAL STATUS**

The BMFO must fully process 35 grazing permits by the end of FY2009. These permits are associated with 35 grazing allotments covering over 2.2 million acres of public land. Of the 35 permits, 20 permits have been issued under the rider and the remaining 15 permits have not been fully processed and will expire before 2010. It is anticipated that Section 7 consultation under the ESA will be required on one allotment.

The TFS must fully process 12 permits. Seven of which were issued under the rider. The TFS plans on completing Rangeland Health Assessments on 18 allotments between now and 2009 which will result in fully processing the majority of the required permits.

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**REGULATORY AND POLICY REQUIREMENTS**

In order to fully process a grazing permit and issue a new 10 year grazing permit the following regulatory requirements will apply:

1. Preparation of a monitoring summary with reference to allotment specific/land use plan objectives and in some cases a full S&G determination. This will be required if a change in permitted use is going to be implemented as required in 4110.3.
2. Public consultation/NEPA scoping in accordance with 4120.2 (a), 4130.2 (b) and 4130.3-3.
3. NEPA/Section 7 Consultation.
4. Proposed and Final Grazing Decision where new 10 year permits with or without changes in permitted use are being issued.

## BATTLE MOUNTAIN DISTRICT PERMIT RENEWAL STRATEGY

Permits will be fully processed using the following approaches:

### **1. Formal Rangeland Health Evaluations and Multiple Use Decisions.**

In order to meet the 2009 deadline, no RHE/MUDs will be issued by the BMFO between now and 2009. The TFS plans on completing RHE on 18 allotments during this time. If resources become scarce or other unforeseen actions arise that prevent completion of these evaluations, the TFS will employ the actions specified below to fully process grazing permits.

### **2. Development and implementation of interim livestock grazing agreements following established predetermined sideboards where it is determined that changes in permitted use are warranted.**

Interim grazing agreements will in essence resemble Allotment Management Plans (AMP) and will exist as functional equivalents. IGAs will guide livestock grazing management until formal evaluations or re-evaluations are completed. IGA will consist of a monitoring summary, relationship to land use plan and allotment specific objectives and the Standards for Rangeland Health, grazing management plan with terms and conditions, rationale to support agreement and monitoring plan. The proposed grazing decision will implement the agreement in accordance with the grazing regulations. IGAs will be the preferred alternative for fully processing grazing permits where RHEs are not being completed.

In accordance with draft BLM NV guidance on the matter, potential sideboards will be identified that will limit the scope of this task. Sideboards associated with IGAs will be no change in permitted active use, no commitment to develop new range improvements, no evaluation of AML for wild horses and burros, no recommendation for horse gathers and no identification or commitment to undertake specific recovery actions for listed species etc.

Involvement by the permittee will be critical in the year prior to developing the agreement in terms of monitoring. BLM and affected permittee will work together in collecting necessary monitoring information and conducting informal allotment field tours to determine problem areas/resource concerns.

IGAs will probably be complex when multiple permittees or allotments are involved. Each situation will be evaluated and the best course of action will be selected on a case by case basis. Common permittees, not subject to the permit renewal exercise will likely be asked to participate when appropriate.

The rationale for the decision implementing the agreement and completing the environmental analysis will be based on how the IGA will ensure *progress* is

made toward the attainment of multiple use objectives and the standards for rangeland health.

**3. Grazing decisions based on monitoring data where grazing agreements cannot be reached.**

In the unlikely event agreements cannot be reached, those permit renewals may be postponed to a later time in order to provide a sufficient opportunity to collect the necessary monitoring data to support an adequate NEPA analysis and defensible grazing decision.

**4. Transfers of grazing preference when applicable.**

**IMPORTANT CONSIDERATIONS**

1. Coordination and support from the Nevada Cattlemen's Association, Eureka County Commissioners, NDOW, Nevada Department of Agriculture and Cooperative Extension will be of paramount importance. Acquire formal support from these entities once consensus is reached on the various approaches.
2. Inform all affected permittees/leasees both in writing and verbally of the task at hand. Develop a time table with each that clearly identifies the planned actions.
3. Once grazing agreements are reached with the permittee(s), engage members of the interested public such as WWP who will likely challenge the NEPA and/or decisions that are made. Squash the rumor mill and paranoia.
4. Ensure that everyone is aware that the intent of the changes/grazing agreements that are implemented are to at a minimum to ensure that significant progress is made to meeting objectives/standards, not to solve all the world's problems at this time.
5. Where agreements cannot be reached, post pone fully processing grazing permit and issuing decision until 2009 in order to complete required monitoring to support NEPA document and decision.
6. Where agreements are reached, the decision would be to implement the agreement. This concept simplifies the development of a reasonable range of alternatives required under NEPA.
7. If properly undertaken, this task will result not only in meeting the congressional mandate but will also result in multiple benefits to the land and permittees affected (i.e. positive change in management where needed, opportunity to solve problems now in advance of a formal evaluation, permittee will have a fully processed grazing permit for 10 years.)

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
WASHINGTON, D.C. 20240

March 2, 2004

EMS TRANSMISSION 03/08/2004  
Instruction Memorandum No. 2004-126  
Expires: 09/30/2005

To: AFO's

From: Assistant Director, Renewable Resources and Planning

Subject: Grazing Permit Lease Renewal In Accordance With Public Law 108-108

**Program Area: Grazing Administration**

**Background:** As a result of several decisions issued by the Office of Hearings and Appeals, the BLM issued considerable guidance in 1999 and 2000, which established policy and processes for renewing grazing permits and leases. At the same time, a "spike" in permit/lease (permit) expirations in 1999 and 2000 occurred, which resulted in a backlog of expired permits that needed to have these processes completed. The guidance for renewing permits has been strongly linked to completing evaluations of land health standards.

Since Fiscal Year (FY) 1999, in order to avoid disruption to livestock grazing operations dependent on public land permits, Congress has annually legislated a means to continue authorizing livestock grazing while the BLM analyzes environmental impacts and completes appropriate consultation under Section 7 of the Endangered Species Act.

The BLM policy, as outlined in Instruction Memorandum No. 2003-071, requires "by the end of FY 2009, all carryover grazing permits shall be fully processed using the information from the land health standards evaluations as needed to complete environmental impact analysis. By the end of FY 2009, all permits should be fully processed in the year they expire." There will be some permits and/or leases that will expire between November 10, 2003 and September 30, 2008 without being fully processed, thus requiring use of the authority provided in Public Law 108-108 outlined below.

Congress recently enacted the Omnibus Appropriations Bill for FY 2004 (Public Law 108-108). Division F, Title III, Section 325 of Public Law 108-108 states:

*SEC. 325. A grazing permit or lease issued by the Secretary of the Interior or a grazing permit issued by the Secretary of Agriculture where National Forest System lands are involved that expires, is transferred, or waived during fiscal years 2004-2008 shall be renewed under section 402 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1752), section 19 of the Granger-The Act, as amended (16 U.S.C. 5801), title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010 et seq.), or, if applicable, section 510 of the California Desert Protection Act (16 U.S.C. 410aaa-50).*

*The terms and conditions contained in the expired, transferred, or waived permit or lease shall continue in effect under the renewed permit or lease until such time as the Secretary of the Interior or Secretary of Agriculture as appropriate completes processing of such permit or lease in compliance with all applicable laws and regulations, at which time such permit or lease may be canceled, suspended or modified, in whole or in part, to meet the requirements of such applicable laws and regulations. Nothing in this section shall be deemed to alter the statutory authority of the Secretary of the Interior or the Secretary of Agriculture: Provided, That where National Forest System lands are involved and the Secretary of Agriculture has renewed an expired or waived grazing permit prior to fiscal year 2004, the terms and conditions of the renewed grazing permit shall remain in effect until such time as the Secretary of Agriculture completes processing of the renewed permit in compliance with all applicable laws and regulations or until the expiration of the renewed permit, whichever comes first. Upon completion of the processing, the permit may be canceled, suspended or modified, in whole or in part, to meet the requirements of applicable laws and regulations: Provided further, That beginning in November 2004, and every year thereafter, the Secretaries of the Interior and Agriculture shall report to Congress the extent to which they are completing analysis required under applicable laws prior to the expiration of grazing permits, and beginning in May 2004, and every two years thereafter, the Secretaries shall provide Congress recommendations for legislative provisions necessary to ensure all permit renewals are completed in a timely manner. The legislative recommendations provided shall be consistent with the funding levels requested in the Secretaries' budget proposals: Provided further, That notwithstanding section 504 of the Rescissions Act (109 Stat. 212), the Secretaries in their sole discretion determine the priority and timing for completing required environmental analysis of grazing allotments based on the environmental significance of the allotments and funding available to the Secretaries for this purpose: Provided further, That any Federal lands included within the boundary of Lake Roosevelt National Recreation Area, as designated by the Secretary of the Interior on April 5, 1990 (Lake Roosevelt Cooperative Management Agreement), that were utilized as of March 31, 1997, for grazing purposes pursuant to a permit issued by the National Park Service, the person or persons so utilizing such lands as of March 31, 1997, shall be entitled to renew said permit under such terms and conditions as the Secretary may prescribe, for the lifetime of the permittee or 20 years, whichever is less.*

**Policy/Action:**

All field officials are directed to renew permits that will not be fully processed before they expire, if they expire during the period November 10, 2003, to September 30, 2008, under authority of Section 325, Title III, H.R. 2691, Department of the Interior and Related Agencies Appropriations Act, 2004 (P.L. 108-108). The grazing regulations at 43 CFR 4130.2(d) guide determination of the appropriate term of permits or leases that are renewed under this authority.

The following term and condition should be included on permits and leases that are renewed in accordance with the above paragraph:

In accordance with Sec. 325, Title III, H.R. 2691, Department of the Interior and Related Agencies Appropriations Act, 2004 (P.L. 108-108), which was enacted on November 10, 2003, this grazing permit or lease is renewed under Section 402 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1752), title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010 et seq.), or , if applicable, section 510 of the California Desert Protection Act (16 U.S.C. 410aaa-50). In accordance with Public Law 108-108 the terms and conditions contained in the expired or transferred permit or lease have been incorporated into this permit or lease and shall continue in effect under the renewed permit or lease until such time as the Secretary of the Interior completes processing of this permit or lease in compliance with all applicable laws and regulations, at which time this permit or lease may be canceled, suspended, or modified, in whole or in part, to meet the requirements of such applicable laws and regulations.

**Contact:** If you have any questions regarding these matters, please contact Ken Visser at 775-861-6492 or Richard Mayberry at 202-452-7750.

Signed by:

Jeff Rawson

Acting Assistant Director

Renewable Resources and Planning

Authenticated by:

Barbara J. Brown

Policy & Records Group, WO-560



- example of opposition  
to allowing annual permit  
renewals

July 11, 2002

Dear Representative,

We wish to express our deep concern about a rider in the pending fiscal year 2003 Interior Appropriations bill that would require the Bureau of Land Management (BLM) and the Forest Service to renew grazing permits that do not comply with environmental laws. We are teachers of natural resource law and related subjects at law schools across the United States. Many of us live and work in the western states most affected by this rider.

There is widespread recognition by government agencies, the scientific community, the public, and the livestock industry that livestock grazing can cause significant environmental damage if it is not properly limited, controlled, and managed. On federal public lands, legal control of livestock grazing is achieved through the terms and conditions of the grazing permits issued by the BLM for its lands and by the Forest Service for lands in National Forests. Although numerous laws - including the National Environmental Policy Act, the Federal Land Policy and Management Act, the National Forest Management Act, the Endangered Species Act, and the Clean Water Act - require consideration and protection of environmental resources, these laws do not affect actual grazing practices unless and until they are implemented through specific terms and conditions in grazing permits.

Unfortunately, although the major environmental laws have been on the books for over two decades, many public land grazing permits still do not contain the terms and conditions required by these laws. If environmental resources such as water quality, soils, and wildlife habitat are to be protected, it is essential that expiring grazing permits be reformed to comply with environmental laws before they are renewed.

The grazing permit rider to the fiscal year 2003 Interior Appropriations bill, however, would not only allow but would require the BLM and the Forest Service to renew expiring grazing permits, without any changes, whenever these agencies have not completed the analyses and procedures required by environmental and other laws. Moreover, this rider provides no schedule or timetable for the BLM and the Forest Service to bring its permits into compliance with these laws. In effect, the rider would exempt grazing permits from environmental laws for an unlimited period of time.

Even worse, the rider could prevent the BLM and the Forest Service from making adjustments to grazing permits in order to protect environmental resources in the (indefinitely long) interim while the agencies work on environmental compliance. In this sense, the rider turns environmental laws on their heads. Normally, a government agency may not authorize an activity that threatens environmental harm without first ensuring compliance with environmental laws. Under the rider, however, any failure by the BLM or the Forest Service to comply with environmental laws in its processing of a grazing permit could result in a requirement that harmful grazing practices continue unabated!

For the past few years, Congress has included a rider pertaining to renewal of BLM grazing permits in annual Interior Appropriations bills. The rider in this year's pending bill, however, is more harmful than past riders because it extends to National Forest grazing permits as well as BLM permits. The new rider effectively nullifies a provision of the Rescissions Act of 1995 that required the Forest Service to establish and adhere to a schedule for completion of analyses of grazing permits under the National Environmental Policy Act (NEPA). Under the new rider, the Forest Service will be required to renew grazing permits, with no changes, even when it fails to meet its own schedule that it established pursuant to the Rescissions Act.

Finally, the rationale that once may have justified these riders is no longer valid. The first rider was prompted by a backlog of permit processing created by the expiration of an unusually large number of BLM grazing permits in fiscal year 1999. That backlog is now gone. In fact, the committee report accompanying the rider in fiscal year 2001 indicated that such riders would not be needed in the future.

We urge you to oppose the grazing permit renewal rider in the FY 2003 Interior Appropriations bill. In the alternative, the rider should be revised to (1) impose a schedule for processing of grazing permits in compliance with all applicable laws, and (2) make clear the authority and duty of the BLM and the Forest Service to require changes in grazing practices to protect public lands and resources in the interim while permits are being processed.

Sincerely yours,\*

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