



# United States Department of the Interior

BUREAU OF LAND MANAGEMENT  
Prineville District Office  
3050 N.E. 3rd Street  
Prineville, Oregon 97754

IN REPLY REFER TO:

4160 (ORP040)  
GRN 3605251

**MAR 27 2009**

CERTIFIED MAIL – 7008 1300 0000 4697 5398  
Return Receipt Requested

## **NOTICE OF THE FIELD MANAGERS PROPOSED DECISION**

### **INTRODUCTION**

This document addresses the renewal of your grazing lease of the Herbert Asher Allotment (No. 2501). A proposed decision is required by the Code of Federal Regulations (CFR) 4100 to be served on any affected applicant, or permittee, who is affected by the proposed actions, terms, conditions, or modifications relating to issuance of a grazing permit/lease.

### **BACKGROUND**

The current grazing lease for the Herbert Asher Allotment (No. 2501) expired on February 28, 2008. We received your application dated January 16, 2008, requesting us to process the renewal of that lease. That lease has not yet been renewed.

On June 23, 2008 you were charged with a violation of 43 CFR 9264.1 for damaging public lands without authorization. According to the U.S. Attorney's Office, a verbal settlement in principle was reached on March 18, 2009, and is expected to be finalized and signed within the next few days.

On February 9, 2009 we received your grazing application to turn out 28 head into Pasture "A" beginning on March 25, 2009. No annual authorization has been given to date.

### **PROPOSED DECISION**

It is my proposed decision to issue the grazing lease (No. 2501) for a period of two years due to the incident involving unauthorized development of and damage to public lands. The evidence supporting the allegations made in the criminal case filed against you also provides evidence of violations of civil regulations concerning grazing authorizations and range improvements.

If, at the end of two years, the Bureau of Land Management (BLM) finds that the settlement agreement has been fulfilled successfully and no other violations have occurred, it may reissue the grazing lease for a period of 10 years, under the terms of 43 CFR 4130.2(d) subject to all other regulations. In other words, if you successfully fulfill settlement terms and have no other violations, then the existing trespass alone will not be used as a basis to deny renewal of the lease for a standard 10 year period.

Grazing on public lands is not authorized until a final decision has been issued.

### **RATIONALE**

You have been charged with damaging public lands through the prohibited act of installing range improvements without authorization. The improvements include trail construction with no drainage features in steep terrain. You have removed all vegetation in this trail feature. Erosion and soil loss are occurring as a result. The civil penalties for that act allow me to withhold issuance of the grazing lease in whole or in part. Due to the resolution of this matter that calls for your performance of restoration over the next year, I find it appropriate to issue the grazing lease for a two-year period to assure this restoration occurs. The grazing lease will include, as an express condition, the requirement that you comply with the terms of the settlement agreement.

### **AUTHORITY**

The following sections of the Code of Federal Regulations, chapter 43, provide authority for the actions proposed in this grazing decision. The language of the cited sections can be found at a library designated as a federal depository or at the following web address:  
<http://www.gpoaccess.gov/cfr/index.html>

**§4170.1-1 (a) Penalty for violations**

**§4140.1 (b) (1) (i) Acts prohibited on public lands**

**§4160.1 (a) Proposed decisions**

### **RIGHT OF PROTEST AND/OR APPEAL**

Any applicant, permittee, lessee or other interested public may protest a proposed decision under Sec. 43 CFR 4160.1 and 4160.2, in person or in writing to Christina Welch, Field Manager, Central Oregon Resource Area, 3050 NE Third St., Prineville, OR 97754 within 15 days after receipt of such decision. The protest, if filed, should clearly and concisely state the reason(s) why the proposed decision is in error.

At the end of the protest period, if no protests are received, a final decision will be issued with the settlement agreement and rehabilitation plan attached.

In accordance with 43 CFR 4160.3 (b) upon a timely filing of a protest, after a review of protests received and other information pertinent to the case, the authorized officer shall issue a final decision.

Any applicant, permittee, lessee or other person whose interest is adversely affected by the final decision may file an appeal in accordance with 43 CFR 4.470 and 43 CFR 4160.3 and 4160 .4.

The appeal must be filed within 30 days following receipt of the final decision, or within 30 days after the date the proposed decision becomes final. The appeal may be accompanied by a petition for a stay of the decision in accordance with 43 CFR 4.471 and 4.479, pending final determination on appeal. The appeal and petition for a stay must be filed in the office of the authorized officer, as noted above. The appellant must serve a copy of the appeal by certified mail on the Office of the Solicitor, U.S. Department of the Interior, Pacific Northwest Region, 805 SW Broadway, Suite 600, Portland, OR 97205 and person(s) named [43 CFR 4.421(h)] in the Copies sent to: section of this decision.

The appeal shall clearly and concisely state the reasons why the appellant thinks the final decision is in error, and otherwise complies with the provisions of 43 CFR 4.470.

Should you wish to file a petition for a stay, see 43 CFR 4.471 (a) and (b). In accordance with 43 CFR 4.471(c), a petition for a stay must show sufficient justification based on the following standards:

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

As noted above, the petition for stay must be filed in the office of the authorized officer and served in accordance with 43 CFR 4.473.

Any person named in the decision that receives a copy of a petition for a stay and/or an appeal see 43 CFR 4.472(b) for procedures to follow if you wish to respond.

If you have any questions, feel free to contact either Colleen Wyllie at 541-575-3146 or John Zancanella at 541-416-6735 respectively.

Sincerely,



Christina M. Welch  
Field Manager, Central Oregon Resource Area

cc:  
Neil Evans, U.S.A.O.