

WYOMING
GAME AND FISH DEPARTMENT

Dave Freudenthal, Governor



Terry Cleveland, Director

"Conserving Wildlife - Serving People"

July 1, 2004

WER 5482
Bureau of Land Management
Kemmerer Field Office
Draft Allotment Management Plan
Smithsfork Allotment (21005)
Lincoln County

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2004 JUL -6 AM 10:07
BLM KEL JEP

Mary Jo Rugwell
Field Manager
Kemmerer Field Office
Bureau of Land Management
312 Highway 189 North
Kemmerer, WY 83101-0711

Dear Ms. Rugwell:

The staff of the Wyoming Game and Fish Department has reviewed the draft Allotment Management Plan for the Smithsfork Allotment within the Kemmerer Field Office area. We offer the following comments.

Terrestrial Considerations:

Portions of the Smithsfork Allotment is classified as crucial winter range for the West Green River elk, Wyoming Range mule deer, and Lincoln moose herd unit. This area also contains a major mule deer migration corridor. Portions of the allotment provide breeding, nesting, and brood rearing habitat for sage grouse. The Kemmerer RMP designated this allotment as "I" category and ranked it number 1 in priority in the Field Office Area.

Past management has allowed season-long grazing in most areas. The proposed plan would require a four pasture rotational grazing system, using riders and livestock movement based on vegetative criteria. We support the criteria and objectives.

On page 32, under Vegetative Manipulation Projects, the document states Minimum treatment size for burning is approximately 4,000 acres, with 2,000 acres actually burned within that area. In many cases, 50 percent removal of sage may be excessive and we suggest a range of 20 – 50 percent.

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The document indicates that in many of the areas burned in the 1960's and 1970's, sagebrush is denser than on adjacent untreated sites. This is an indication of poor post treatment management. The document indicates that a minimum of two growing seasons rest would be required. We support this, and also feel that strict adherence to utilization standards is crucial for achieving long-term benefits of burning. In some areas, burning objectives cannot be met with two growing seasons rest and additional rest may be required.

Aquatic Considerations:

We have been working closely with the Kemmerer Field Office over the past 10 years to protect and enhance habitat in this allotment. Our agency also cooperated with the BLM through development of the Thomas Fork Habitat Management Plan (TFHMP) and efforts to implement this plan since its approval in 1982.

We are concerned with the slow rate of progress in resolving the long-term and well-documented problems throughout this allotment. The Grazing History section indicates that questions regarding the stocking rate and capacity of the allotment were apparent in the early 1960's. Although this was partially resolved through implementation of the sagebrush spraying program between 1968 and 1970 (page 15), this only provided a temporary or perceived solution. Presently, "some of these stands are actually denser than adjacent untreated sites" (page 6). This sagebrush-spraying program severely impacted willow communities, and quite likely mountain shrub communities, throughout the allotment, to the detriment of riparian community health and productivity and diversity of wildlife habitat. The TFHMP and Raymond Mountain ACEC further documented these unresolved problems and led to additional efforts to resolve them, starting in 1982 (page 3 and 16). The Kemmerer RMP identified these problems and ranked this allotment the number one priority for this area in 1986 (page 6 and 7). However, the same problems were identified in 1995 when the CRM was initiated (page 6), and more clearly defined when Proper Functioning Condition (PFC) assessments were conducted and riparian greenlines were established between 1995 and 1998. Unfortunately, over the past 40 years, little if any improvement has been made in the condition of wildlife and fisheries habitats, and some damage has resulted from misdirected and improperly implemented efforts. We offer the following recommendations to accelerate the recovery of the plant communities in this allotment for the benefit of all.

Many of our comments are identical to past comments regarding other documents associated with this allotment. However, some have been edited to reflect the current situation. Although some of our past concerns have been addressed, many have not.

While we generally support the "Allotment Resource Specific Objectives" (described on pages 9, 12-14), we have the following concerns:

The specific riparian vegetation greenline monitoring objectives, which were established for each individual stream by the "Technical Review Team" (TRT) in 1998 and approved in the 2001 Final Decision, need to be included in this AMP. While we support the more general, long-

term riparian Desired Plant Community (DPC) objectives discussed in this draft plan (pages 9, 12-13), the TRT agreed that achievement of the very specific, short-term (3-5 year) riparian objectives was a critical first step needed before the long-term objectives could be achieved. In addition, the TRT recognized that more specific, long-term riparian vegetation DPC objectives couldn't be clearly defined (as is indicated on page 12) until streams reach a minimum condition of PFC (p. 58, TR 1737-15, 1998). PFC has been documented on only 17% of the stream miles in this allotment (page 41). This accounts for only two of fourteen individual monitoring transects not located inside of exclosures. To meet all of the stream habitat objectives listed on page 14 and "provide for the greatest number of beneficial uses" (page 9), the DPC on most or all riparian areas will need to be higher than PFC.

On page 36, the monitoring plan indicates the riparian greenline and stream cross-section trend studies will be monitored on 4-year intervals, which we support. However, the plan needs to define a site-by-site monitoring schedule for each year. We have assisted the BLM with these monitoring efforts in the past and offer our continued cooperation.

The most recent data we have available indicates that none of the site-specific objectives established by the TRT in 1998 have been achieved. If proper management practices had been implemented at the time these transects were originally established in 1996, monitoring would indicate measurable improvement after this 7-year time frame. The draft plans fails to discuss these established objectives or to acknowledge that they were not achieved (page 26), or the reasons they were not achieved. Also, the plan should provide clear solutions to correct these specific problems.

Although stubble height and willow use criteria are very important for monitoring the annual impacts of grazing, these annual monitoring criteria should not take precedence over the established riparian vegetation greenline monitoring objectives to evaluate trend and condition over the long-term.

The section on "Future Reductions Based On Monitoring" (page 25-27) should include another criterion as follows: "If established riparian objectives are not met after a four year grazing cycle (by 2007), forage use may need to be reduced." Also, sheep use should be reduced starting in 2005 if objectives are not met. Reductions in forage use should be implemented each year following a season that use level objectives are not met, as opposed to waiting for two years of failure out of each three year cycle as suggested on page 27.

We recommend adding protection of the White Canyon Spring and regeneration of the adjacent aspen stand as a project on page 29.

We also recommend referencing various projects proposed in the Lower Bear River Completion Report that was finalized in 1999. This five-year watershed assessment and the subsequent project proposals documented numerous wildlife and fisheries habitat concerns we have in this area and offer numerous recommendations to address these concerns.

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Other concerns we have include the following:

The management stipulation regarding willow use on pages 22 and 34-35 states, "The allowable use criteria on willows is 40% of all available twigs on all plants within measured transects." This monitoring protocol is overly complicated and will be virtually impossible to achieve. We suggest rewording follows: "Browsing intensity on willows will be monitored and evaluated throughout the year and summarized annually. The allowable use criteria is 20% (see comment below) based on the average percent of leaders browsed along a paced transect consisting of a sample of approximately 20 plants at the federal riparian transects, or other sites where an adequate sample can be measured. The nearest available plant (less than 5 feet high) will be sampled."

Current riparian literature indicates the 3-inch and 5-inch stubble height criteria are marginal in terms of their ability to allow recovery of degraded riparian areas. In addition, when the BLM's National Riparian Service Team visited this allotment, they stated that livestock should be moved immediately when use is observed on willows, in order to ensure recovery of these important communities. Allowing 40% use on willows will hinder or prevent their recovery, preventing riparian objectives from being met. To ensure recovery of these important communities, the use criteria should not be based on measurements taken only in the fall after livestock have left the allotment. Measurements should be taken throughout the season while livestock are in a pasture or use area, and livestock moved when these use levels have been reached.

The draft plan indicates that, due to a lack of upland water sources, livestock tend to concentrate in riparian areas under season-long grazing use (page 6). While upland water sources may help alleviate this problem in some cases, it is also important to evaluate the condition of the uplands and determine the forage availability in these areas. Considering that "some of these stands of sagebrush are actually denser than adjacent untreated sites", and most are grazed more than one time during the season (e.g., sheep use followed by cattle use and vice versa), vegetation treatments with proper follow up management is suggested.

Guideline number 7 on page 8 indicates that grazing management practices "that will restore, maintain, or enhance habitats" will assist in the recovery of various species of concern. We agree that restoring and enhancing these habitats is necessary.

We recommend forage use, other than closely restricted trailing be curtailed, in the Raymond Canyon Watershed until DPC has been achieved. This includes the area inside the watershed fence, particularly around the Igo Spring, which was used very heavily in 2003.

We are concerned that several of the "Conditions for vegetative manipulation projects" listed on page 32 will unnecessarily limit opportunities to meet vegetation management goals and objectives. These should not be necessary once an aggressive treatment schedule has begun. They could significantly reduce opportunities to create mosaics of various age classes of vegetation. We have similar concerns with limiting the treatment schedule "to provide 3 years

between projects," and limiting treatment opportunities to no more than 15% of the allotment per decade. This could slow improvements, and we recommend these conditions be deleted. Emphasis should be on meeting the plant community objectives as stated below rather than these conditions.

Landscape Objectives for Specific Upland Community Objectives (page 13):

The objective for Wyoming or Mountain Big Sagebrush/Grassland is inflexible and virtually unachievable. If the objective was possible, sagebrush community management efforts would need to be extremely intense to maintain the entire community at the stated, precise percentages. We suggest the following, more flexible, achievable, and maintainable goal, "The long term landscape goal is to attain a mosaic of different successional age classes by the year 2050, in at least 75% of the extensive sagebrush areas (added), 30% of S/G communities in < 10% canopy,...." This goal was established in the Cumberland Allotment.

This same provision for flexibility (75% of the community) should also be added to the goals for aspen and mixed mountain shrub communities.

In order to meet both of the Rangeland Health Standards (#2 and #4) and "Allotment Resource Specific Objectives", the strategies recommended by the BLM interdisciplinary team (page 14) need an added emphasis on recovery of woody riparian vegetation throughout the allotment. Habitat needs for Bonneville Cutthroat Trout (BRC) will not be completely satisfied without the recovery of these critical woody (primarily willow) riparian communities.

In the "Bank Stability Rating Data" table on page 40, three streams currently have stability ratings greater than 7. At a minimum, these current ratings should be maintained in the "planned rating" column. Furthermore, long-term DPC stability rating objectives higher than 7 are necessary for some streams to fully meet objectives for fisheries and wildlife.

We believe these issues need to be resolved before the AMP is approved and implemented. Otherwise, we expect riparian conditions throughout the allotment to remain in their current condition, or continue to decline. Also, upland habitat conditions throughout the allotment will remain in their current successional advanced condition, or will continue to decline. To meet the established objectives, much greater emphasis on the recovery of willows and improved riparian monitoring strategies and livestock movement criteria is essential. Vegetation treatments are necessary to resolve forage problems. We offer our continued cooperation in your efforts to resolve these problems, and would greatly appreciate an accelerated rate of improvement.



Thank you for the opportunity to comment.

Sincerely,

BILL WICHERS
DEPUTY DIRECTOR

BW:VS:as

cc: Kyndra Miller-Governor's Planning Office
USFWS

BLP ifr
2004 JUL -6 AM 10:03

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July 2, 2004

Via Federal Express

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BL11
2004 JUL -6 PM 12:52

Re: Smithfork Grazing Association's Comments to the Draft Allotment Management Plan for the Smithsfork Allotment

Dear Ms. Rugwell:

As you are well aware, our law firm represents the Smithfork Grazing Association and various permittees on the Smithsfork allotment. The purpose of this letter is to provide the following comments to the draft Allotment Management Plan ("AMP") for the Smithsfork allotment, dated May 5, 2004, on behalf of the Smithfork Grazing Association, Fred W. Roberts, and Hal B. Cornia. The draft AMP was also reviewed by Dr. J. Wayne Burkhardt, of Indian Valley, Idaho, and Calvin E. Ragsdale, Esq. of Green River, Wyoming. Their comments are incorporated herein as well.

Accordingly, the following comments to the draft AMP for the Smithsfork allotment, as set forth below, emphatically oppose any long-term reduction in authorized livestock grazing use of the Smithsfork allotment.

The draft AMP is based upon the resolution of perceived resource damage to the riparian and wetland vegetation located throughout the Smithsfork allotment. A long-accepted notion of rangeland management provides that reductions in authorized livestock grazing use (*i.e.*, stocking rates or authorized numbers of livestock) will not adequately resolve, or appropriately address, perceived

damage to riparian and wetland vegetation from the impacts of livestock grazing. Stated another way, draconian reductions in livestock use is an unacceptable method of addressing perceived damage to riparian and wetland vegetation. Any concerns with the utilization of riparian vegetation by livestock are more appropriately addressed by management actions relating to distribution, timing, and duration of livestock use, and not by the imposition of reductions in the numbers of livestock. Furthermore, advocating reductions in livestock use will permit available forage on the uplands to remain without use, thereby failing to promote the orderly use of the rangeland resources. See 43 U.S.C. § 315a (mandating that the BLM “provide for the orderly use, improvement, and development of the range.”)

The draft AMP is further premised on the Bureau of Land Management’s (“BLM”) assessment that the Smithsfork allotment is failing to meet certain *Standards for Rangeland Health and Guidelines for Livestock Grazing Management for Public Lands in the State of Wyoming*. In the permittees’ opinion, the standards (*i.e.*, numbers two and four) and guidelines (*i.e.*, specifically numbers six through nine) are unattainable, and do not promote the entire allocation of the permittees’ active preference in the allotment, so long as the BLM continues to unreasonably delay the implementation of vegetation manipulation (*i.e.*, brush control) and additional water developments throughout the allotment. The BLM is charged with the obligation and responsibility of “adequately safeguarding” the permittees’ grazing privileges. See 43 U.S.C. § 315b. Absent additional range improvements on the Smithsfork allotment, including further water developments, fences, and vegetation manipulation (*i.e.*, brush control), the BLM may fail in its duty to “adequately safeguard” the permittees’ grazing privileges.

In addition, the BLM’s refusal to provide for additional range improvements, as requested by the permittees, may fail to promote the orderly use of the rangeland resources, as required by 43 U.S.C. § 315a. For example, additional water developments located in the uplands, or located significant distances from riparian vegetation, will enhance livestock distribution, improve riparian vegetation from reduced livestock grazing impacts, and promote the orderly use of the range.

Accordingly, the permittees emphatically oppose any long-term reduction in authorized livestock grazing use of the Smithsfork allotment, and respectfully request the BLM to develop and schedule the implementation of additional range improvements in order to assist in the orderly distribution of livestock throughout the allotment and enhance the condition of the riparian vegetation. Such range improvements must include water developments, fences, and vegetation manipulation (*i.e.*, brush control).

The following comments are provided in support of, and in addition to, the foregoing comments:

PHYSICAL DESCRIPTION OF ALLOTMENT

The draft AMP provides on page three that “a good portion of the allotment is accessible only by foot travel or horseback, due to the rugged terrain.” The permittees concur that proper monitoring,

oversight, and management of the Smithsfork allotment can only be accomplished by individuals physically capable of accessing the entire allotment at all times.

As you are well aware, the Raymond Mountain Wilderness Study Area encompasses approximately one-third of the total acreage of the Smithsfork allotment. Section 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782(c), provides that the BLM is required to manage a Wilderness Study Area “so as not to impair the suitability of such areas for preservation as wilderness, subject, however, to the continuation of existing mining and grazing uses and mineral leasing in the manner and degree in which the same was being conducted on October 21, 1976.” See 43 U.S.C. § 1782(c) (emphasis added). Thus, valid preexisting “grandfathered” uses (*i.e.*, mining, grazing, and mineral leasing) are explicitly exempt from the nonimpairment of wilderness study areas as set forth in § 603(c). See Sierra Club v. Hodel, 848 F.2d 1068, 1087 (10th Cir. 1988); and Rocky Mountain Oil & Gas Association v. Watt, 696 F.2d 734, 749 (10th Cir. 1982); see also Colorado Environmental Coalition v. Bureau of Land Management, 932 F.Supp. 1247 (D. Colo. 1996); and Utah v. Andrus, 486 F.Supp. 995 (D. Utah 1979). Congress intended that no activity on the public lands following FLPMA’s passage be allowed to degrade lands containing wilderness values on the date of enactment, precluding their consideration for wilderness suitability before the review process was concluded. However, a qualified exception to this policy decision was made for “mining and grazing uses and mineral leasing.” See Rocky Mountain Oil & Gas Association v. Watt, 696 F.2d at 747. Accordingly, livestock grazing uses on the Smithsfork allotment are exempt to the manner and degree in which livestock grazing was being conducted on October 21, 1976.

Therefore, livestock grazing uses within the Raymond Mountain Wilderness Study Area are not subject to the “nonimpairment standard” of § 603(c), but rather are subject to the less rigorous “unnecessary and undue degradation standard.” See 43 U.S.C. § 1782(c). The BLM is also required to manage grazing uses “in the manner and degree in which the same was being conducted on October 21, 1976.” See 43 U.S.C. § 1782(c) (emphasis added). In order to maintain the level of preexisting grazing uses, the BLM is required to implement any additional range improvements, as requested by the permittees, including water developments, fences, and vegetation manipulation (*i.e.*, brush control), in order to ensure that livestock grazing is continued “in the manner and degree in which the same was being conducted on October 21, 1976.”

COORDINATED RESOURCE MANAGEMENT EFFORTS

The draft AMP provides on page six that the “major management concern of this allotment is the condition of riparian areas associated with streams and upland springs and seeps due to past grazing and other activities.” The BLM must identify which “other activities” have contributed to the decline in the condition of the riparian areas. The BLM must further assess the degree to which these “other activities” have contributed to said decline, as compared to the impacts of livestock grazing. An assessment of these “other activities,” and their contributions to the decline in the condition of the

riparian areas, must include, but is not limited to, the following activities: hunters; off-road vehicle use; wildlife concerns (*i.e.*, elk and moose); and brush infestations (*i.e.*, pinion-juniper and sage brush).

The draft AMP provides on page six that in order to “address this concern, proposals are being developed . . .” Which concern is being addressed? This paragraph should be amended in order to clarify for the reader which of the three management concerns for the allotment is being addressed through “proposals.”

The draft AMP provides on page six that an “additional concern is that cattle from the Smithsfork Allotment have been trespassing on the Kemmerer Ranger District of the Bridger-Teton National Forest north of the allotment.” The permittees believe that a fence is necessary, and must be scheduled for construction immediately, in order to prevent further trespasses. The BLM and the Forest Service should endeavor to cooperate, coordinate, and consult with one another in order to determine the proper location of this fence. The general topography in this immediate area requires the fence to be built on National Forest lands. Otherwise, the Smithsfork permittees lose additional acreage and AUMs of forage while the Forest Service permittees gain nothing. If the fence is built on National Forest lands, the Forest Service permittees will lose nothing, but the Smithsfork permittees will be able to fully utilize their allotment.

OBJECTIVES

The 1986 Kemmerer Resource Management Plan (“RMP”) specifically identified the need to improve livestock distribution by developing water for livestock, and the potential for vegetation manipulation. In order to abide by the terms of the RMP, the BLM is required to schedule the immediate implementation of these range improvements. See 43 C.F.R. § 4100.0–8 (mandating that the “authorized officer shall manage livestock grazing on public lands . . . in accordance with applicable land use plans.”).

The draft AMP provides on page twelve that a riparian objective for the allotment is that “no more than five-percent (5%) of streambanks on the greenline transect should be devoid of vegetation (eroding or agrading).” The AMP may need to clarify that such lack of vegetation along 5% of streambanks is only required along the greenline transect and not along the entire course of the streambank.

The draft AMP provides on page twelve that “twenty-five percent (25%) or more of riparian plant communities as measured on the greenline transects should be composed of willows or other desirable woody species.” This riparian objective must be assessed and implemented on a site-specific basis.

The draft AMP provides on page thirteen that “the long-term landscape goal is to attain a mosaic of different successional age classes by the year 2050.” The AMP must identify when the BLM

intends to begin the implementation of vegetation manipulation in order to achieve the diversity of age classes and canopy covers within the allotment. The AMP must also set forth a schedule for the accomplishment of this objective.

The draft AMP provides on page fourteen that the BLM intends on introducing the “Bonneville Cutthroat Trout in the potential but currently unoccupied streams.” The AMP must identify which streams have the potential to support minimum populations of the Bonneville Cutthroat Trout within the Smithsfork Allotment.

The draft AMP provides on page fourteen that the BLM conducted a Rangeland Health Standards and Guidelines Conformance Assessment and recommended four resource specific objectives, based upon that assessment. The AMP must include a fifth objective as well, based upon the foregoing comments as set forth herein: (5) critical need for vegetation manipulation in order to fully implement any long-term grazing system in the Smithsfork Allotment .

GRAZING MANAGEMENT

The AMP must establish each permittees’ authorized livestock grazing use in the allotment as it existed prior to the August 2, 2001 Final Decision, including any suspended use and conservation use. See 43 C.F.R. § 4110.2–2(a). Any reductions in the current permitted livestock use or carrying capacity in order to achieve standards, guidelines, and resource objectives must be withheld from the permittees’ permitted use and the forage placed into either suspended permitted use (see 43 C.F.R. § 4110.3–2(a)), temporary non-use (see 43 C.F.R. § 4130.2(g)(2)), or conservation use (see 43 C.F.R. § 4130.2(g)(1)).

Furthermore, the AMP shall provide that the BLM will conduct annual monitoring to determine whether additional forage is available on a sustained yield basis for livestock grazing use. Additional forage available on a sustained yield basis for livestock grazing use shall first be apportioned in satisfaction of suspended permitted use to the permittee(s) or lessee(s) authorized to graze in the allotment in which the forage is available. See 43 C.F.R. § 4110.3–1(b).

The draft AMP provides on page eighteen that “management and move criteria will be based on utilization and annual monitoring data collected in the riparian areas.” However, the draft AMP provides on page twenty-two that “pasture management and moves will be based on dates.” The BLM must clarify how, when, and under what circumstances livestock will be required to move to the next scheduled pasture. Moreover, the permittees believe that the periods of use by pasture, as set forth on page twenty-two, should be target dates, and the actual pasture move dates must be approximate and based upon annual utilization and monitoring data.

The draft AMP provides on page twenty-two that “livestock use will be monitored and livestock may be moved earlier than the dates listed for the pasture management.” Similarly, if

supported by utilization and monitoring data, livestock must be permitted to be moved later than the dates listed for the pasture management as well.

The draft AMP provides on page eighteen that “all cattle on the allotment will also have an authorized BLM ear tag.” This provision is currently being protested by several permittees, including Fred W. Roberts. Mr. Roberts’ protest against this provision is incorporated herein by reference.

The draft AMP provides a thorough discussion of grazing in the Raymond Canyon Watershed on page eighteen. The draft AMP states that “non-use will continue until conditions are such that riparian areas can withstand grazing use,” . . . “considered to have adequately recovered to allow grazing use,” . . . and “conditions are being met.” Please clarify which conditions are necessary to be met in order for the riparian area to withstand grazing use. Will the BLM authorize grazing use any time prior to the riparian area meeting proper functioning condition?

The draft AMP provides on page nineteen that livestock will be moved on established move dates unless it appears established use criteria may be exceeded. . . . Five (5) inches and 40% use on the willows will be the move criteria in the third and fourth pastures.” The permittees consider five inches to be relatively unattainable, especially in years with lesser amounts of precipitation. Therefore, the permittees request that the five inch requirement be reduced to four inches in the third and fourth pastures.

Pasture movements based upon utilization must provide that said utilization is from domestic livestock, as opposed to wildlife. For example, on page twenty-two, the draft AMP states that “livestock use will be monitored and livestock may be moved earlier than the dates listed for the pasture management,” based upon “40% utilization on willows.” Such references to livestock utilization must be amended to state “40% utilization by livestock on willows.” The BLM must differentiate between browsing by livestock and wildlife when managing pasture movements. Thus, all allowable use criteria must reference “use by livestock.”

The permittees request that any monitoring conducted by the Wyoming Department of Fish and Game on the Smithsfork Allotment be made available for review and inspection by the permittees and their authorized representatives. The permittees must also be informed when such monitoring has occurred.

The permittees object to the grazing rotation system as set out on page twenty-three. The current grazing rotation implemented by the permittees is in an “experimental stage” and needs several years to develop adequately. The permittees object to the proposed grazing system, because flexibility is necessary in order for the permittees to develop a grazing system that is manageable for the permittees, and provides a benefit to the rangeland and riparian resources on the allotment.

Finally, the draft AMP provides on page twenty-four that “lambing in the same area every year may be causing resource damage. Different lambing areas should be found and worked into the rotation.” There is no evidence that lambing in the same area every year may be causing resource damage; thus, the permittees request that this provision be removed from the final AMP.

FUTURE REDUCTIONS BASED ON MONITORING

The draft AMP provides on page twenty-five that “future reductions will be based on . . . 40% utilization on willow plants.” As set forth above, this statement should provide: 40% utilization by livestock on willow plants.

The draft AMP provides on page twenty-six that if the established vegetative use levels are not met, then livestock use will be reduced by 10% per year until vegetative objectives are met. The draft AMP also provides on page twenty-seven that the 10% reduction will not be implemented for the next grazing season if the use levels are met. By not permitting the permittees to reinstate previously reduced livestock use levels, the AMP will eventually force each of the permittees out of business. Therefore, the permittees request that any suspended permitted use, or temporary non-use, must be reinstated by 10% each year that the vegetative use levels are met.

RANGE IMPROVEMENTS

This section should note, on page twenty-nine, that the permittees have invested approximately \$100,000 into the Smithsfork Allotment since 2001. Specifically, the permittees have spent approximately \$58,000 on riders, \$14,000 on range management consultants, \$24,000 on fencing costs, and \$4,000 on the hauling of water.

The draft AMP provides on page thirty-two that “vegetation treatments can begin once the vegetative use level objectives are achieved.” The draft AMP fails to recognize that vegetative treatments are necessary to achieve use level objectives in the allotment. Absent vegetation treatments, the use level objectives will not be met in the allotment, unless authorized livestock grazing use is significantly reduced.

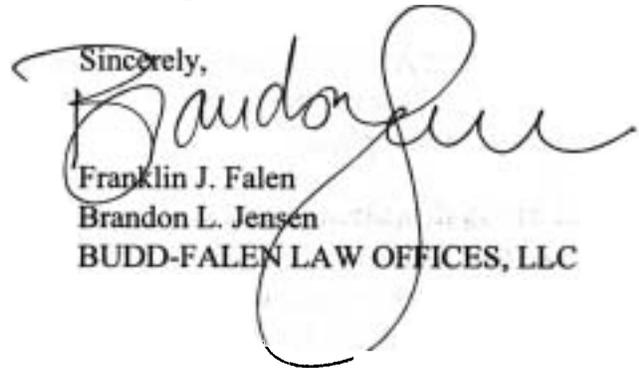
MONITORING

The final AMP must provide that no official monitoring conducted by the BLM shall occur on the allotment without the presence or assistance of the permittees, or their authorized representative. Standards and guidelines assessments must be a cooperative endeavor between the permittees and BLM range staff.

Finally, the permittees acknowledge the recent maintenance of the IGO Speedway roadway. The permittees appreciate and encourage continued efforts by the BLM to maintain the roads within the allotment in order to improve access to and management of the allotment.

Please do not hesitate to contact me with any questions or concerns you may have. Thank you for your cooperation this matter and I look forward to hearing from you shortly.

Sincerely,

A handwritten signature in cursive script, appearing to read "Franklin J. Falen". The signature is written in black ink and is positioned above the typed name and firm name.

Franklin J. Falen

Brandon L. Jensen

BUDD-FALEN LAW OFFICES, LLC

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July 5, 2004

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United States Department of the Interior
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BLM
2004 JUL -7 AM 8:30
F.O.

RE: Roberts Ranch comments
on Smithsfork allotment
draft allotment manage-
ment plan.

Dear Ms. Rugwell:

Our client, Fred Roberts of Roberts Ranch has requested us to offer certain comments on the Bureau's draft Smithsfork Allotment Management Plan. Our client and we thank you for this opportunity to review and comment on the AMP. Our comments on behalf of Roberts Ranch follow.

Since the creation of the Grazing Service and its successor, the Bureau of Land Management, those agencies have been charged with certain duties concerning livestock grazing on the public lands. Among those duties under the Taylor Grazing Act are the stabilization and the protection of the grazing industry. Another is to provide for the "orderly use, *improvement*, and *development* of the range." **See** 43 U.S.C. § 315a [emphasis added]. In its own internal determinations of whether actions taken by the Bureau are administratively proper, the Department of Interior's administrative law judges have consistently held that such decisions must have a rational basis. Congress provides generally in the Administrative Procedures Act that an agency's actions should not be arbitrary or capricious and that such actions should be authorized by statute and consistent with such authority. Bureau personnel must satisfy many charges from Congress and perform the duties they impose. It is a difficult task. Sometimes the charges seem mystifyingly inconsistent or even

Ms. Mary Jo Rugwell
Field Manager
Kemmerer Field Office
July 5, 2004
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contradictory. However perplexing to Bureau employees and to grazing permittees, it is against these several charges that proposed decisions or actions must be measured. The draft allotment management plan for the Smithsfork allotment is such a decision. It is obviously an earnest effort, but it falls short in several particulars. Overall, it is a plan that is doomed to be unsuccessful because of its failure to accurately perceive and address the true problem.

The Draft AMP lists three concerns to be addressed: first, the condition of riparian areas; second, the condition of upland plant communities; and third, cattle trespassing from the north of the allotment onto the Bridger-Teton National Forest. To address and remedy these concerns, the draft plan essentially proposes significant permanent initial reductions in grazing use across the board without consideration as to types of livestock use, with annual continued reductions, again without consideration as to types of livestock use, until such time as annual forage use on key areas meets certain criteria, together with a proposed modified rotation grazing system for whatever few livestock that remain. There is negligible discussion of how the proposed plan will resolve any of the problems perceived, simply the bald statement in the second paragraph on page 6 (relating to riparian concerns) that it should. There seems to be no claim that the AMP will resolve concerns two and three. Indeed, the fifth complete paragraph on page 6 (which would seem to relate to the third complete paragraph of that page rather than the one immediately preceding it) suggests that resolution of the second concern depends upon implementation of vegetation manipulation. The draft offers no plan for implementation of such manipulation, but only offers vague assurance that proposals for such are being developed. It does make it quite clear that no portion of any such proposal will occur until the first concern is resolved. Nothing whatever is offered with respect to the third concern. Our client's, our client's range consultant's and our review of the proposed AMP indicate that it will likely not meet the goals desired since, in our view, the most significant cause of the first

concern is a grazing distribution problem resulting from the second concern (the condition of the uplands, more precisely the availability of the uplands for grazing relief to the riparian areas). However, the plan calls for no resolution of the second concern until resolution of the first concern, which, in turn, can not be resolved without resolution of the second. A famous novel was based on such thinking; its title was Catch 22. At best, the Bureau's draft AMP presents one of the better conundrums since that novel's publication.

At the outset, it should be noted that the proposed AMP seems to ignore significant portions of the history of the allotment. As related at page 15 of the draft AMP, in the late 1960's, an adjudication of the allotment proposed significant cuts in the level of grazing. This was later modified on appeal by stipulation and agreement between the Bureau and the permittees and lesser voluntary cuts were taken pending vegetative manipulative treatments. Apparently, those treatments were successful. The voluntary reductions were restored in 1970 by evaluation of the treatments and decision by the Area Manager. What the history does not relate is that after this determination, the Bureau did not continue these successful activities, but instead incredibly discontinued such activities after their apparent success. As a result of its continued inaction, some thirty years later, the Bureau again perceives that it faces a similar problem. Again, as before, its initial response is not to address the problem's cause, but to reduce livestock. We understand that one of the many charges the Bureau faces is to implement activities that will lead to the achievement of the *Standards for Rangeland Health and Guidelines for Livestock Grazing Management for Public Land in the State of Wyoming*. There are, of course, a variety of choices available for such implementation. But instead of proposing an allotment management plan that incorporates past successes, as reflected in this allotment and in others, the Bureau instead proposes a plan that will inevitably eliminate grazing use on the allotment and affirmatively precludes any vegetative treatments until the livestock grazing has been eliminated. This seems totally

contrary to the charges to the Bureau to stabilize the industry, to provide for orderly improvement and development of the range and to make decisions that have a rational basis. This disregard of the Bureau's past successes would also seem arbitrary, if not capricious, and does not conform to the agency's statutory authority. We suppose that it could be argued that elimination of the public lands grazing industry in an allotment is a form of stabilization (it certainly fulfills one of the dictionary definitions in that it "fixes the level"), but it hardly seems to be the form Congress had in mind when it adopted the mandate.

The essential concern of the Bureau (based upon the statements in the proposed allotment plan and in the environmental assessment that was issued with the 2001 decision reducing numbers) is with the condition of some of the riparian areas on portions of the federal lands within the allotment. It is generally accepted in the range management community that riparian problems are almost always a problem of grazing distribution and not one of overstocking. Generally, reductions in stocking rates neither address nor reduce such problems since the distribution problem remains (short of savage cuts that virtually eviscerate domestic livestock grazing use). Even draconian reductions of livestock grazing may not reduce the problem if such grazing is not, in fact, the cause of the problem. For example, at least one instance on public lands in southwest Wyoming suggests that the failure to meet monitoring requirements in that specific area is as much the result of wildlife usage as it is the livestock grazing. In that instance, a controlled pasture within the allotment had no livestock grazing during the grazing period. The only grazing usage during the grazing period was by wildlife. Post grazing season monitoring indicated that the usage of the key species on the riparian areas in that pasture during that grazing period was the same as it had been in previous years when livestock were present. However, overall that allotment has shown improvement. It has an AMP that was developed jointly by Bureau personnel and the grazing permittees to address the problems of the allotment. Among other things, it has a rational grazing

plan to improve distribution. Its improvement has occurred even though there has been implementation of only a portion of the range improvements called for in the plan to improve distribution.

For several years, the grazing permittees in the Smithsfork allotment have urged the Bureau to implement range improvements and vegetative manipulation activities to address the uplands availability problem and thereby to help allay the distribution problem. The trespass problem (the third concern) is a variation of the distribution problem and could have been solved years ago with the installation of a boundary fence. It, too, has been often requested. Few of the requested improvements and none of the vegetative treatments have been forthcoming. Instead, the Bureau responds with proposed permanent cuts of all livestock use that will fail to resolve the problem and will only succeed in eliminating the livestock. The plan totally precludes any sort of vegetative manipulation until the riparian conditions reverse, something that will never occur under the Bureau's proposed plan since the cause of the riparian problem is not being properly addressed. If the Bureau believes that grazing in this allotment should be discontinued, it should say so in the proper fashion and obtain Congressional approval for such action as Congress had provided. If that is not the intent, the plan should address the problem rationally and establish a grazing management plan that is properly calculated to address the distribution problem and is given a reasonable chance of success by the planning and implementation of needed range improvements and vegetative treatments. Without the needed improvements and treatments, this allotment has meager chances of ever meeting the *Standards and Guidelines*, whatever livestock grazing reductions might be imposed.

In addition, if grazing reductions are necessary, they should not be permanent reductions; to the extent they are implemented, they should be placed in suspended non-use or, with the cooperation of the permittees, in voluntary non-use, as was the case in the past in this allotment and is the case in most other allotments in southwest Wyoming. Nowhere in the document is there any

mention of one of the major phenomena that has affected rangeland conditions in western Wyoming and in the west generally. The area of the western states, including western Wyoming is suffering the worst and longest drought since the 1930's. It is a factor beyond the Bureau's and the permittees' control. Yet history indicates that weather can change and that western rangelands can be resilient and often quickly responsive to moisture. This spring has already presented some evidence of that. Permanent reductions are by definition permanent. Suspended non-use and voluntary non-use have tendencies in that direction, but at least when circumstances change, an argument can be made for their restoration. Under that state of affairs, when the drought breaks or when proper range management and activities are finally undertaken by the Bureau, or both, and the forage availability increased, the usage can be restored to those for whom Congress legislatively provided over seventy years ago and whose use the Bureau is charged by Congress to adequately protect. **See** 43 U.S.C. § 315(b).

There are those who might suggest that the presence of the large Raymond Mountain Wilderness Study Area precludes the necessary actions to restore the uplands since it would change the character of the study area. Those who make that suggestion fail to consider the specific language of the Federal Land Policy and Management Act of 1976 and its relationship to the other charges of Congress to the Bureau in managing the public lands. A part of that Act, specifically 43 U.S.C. § 1782(c), provides that such areas should be managed "so as not to impair the suitability of such areas for preservation as wilderness, *subject, however, to the continuation of existing . . . grazing uses . . . in the manner and degree in which the same was being conducted on October 21, 1976.*" [Words omitted and emphasis added] While the Bureau is called upon to prevent degradation (after 1976) of the area so as not to impair the suitability of the area for such preservation, it must do so without changing the manner and degree of the grazing use existing in the fall of 1976. In this allotment, that use was established in 1970 by decision of the Bureau.

Under that provision, when read with the provisions of 43 U.S.C. §§ 315(a) and (b), it is clear that designation as a Wilderness Study Area does not preclude such activities, but requires such activities if they are necessary to maintain the grazing at the 1976 level and thereby adequately protect the permittees' grazing privileges. Certainly, they should not be cavalierly relegated to some vague proposals "being developed to begin implementation of vegetation manipulation to create a mosaic of different age classes, cover, and vertical structure within these communities," such proposals to be implemented as some vague, undefined point in the future after the problems caused by their lack have been resolved by a plan that fails to see their lack as the very cause of the problem. That, of course, is where this draft AMP puts them. It would also require that old range improvements necessary to such grazing usage should be maintained, or restored and maintained, within the area.

We turn to some specifics, some of which are merely further illustrations of the general comments set out above.

On page six, the draft states that the first management concern is condition of the riparian "due to past grazing *and other activities.*" [Emphasis added] The draft fails to identify the other activities. It fails to assess the degree, if any, to which these other activities have contributed to the condition about which there is concern. Having neither identification nor assessment of the activities, one could hardly expect any analysis of whether the draft AMP addresses such activities. One's lack of expectations is confirmed. There is no such analysis. Since at least one of those other activities (brush infestation of the uplands) coupled with a couple of non-activities (lack of range improvements and vegetative treatments) is, in our view, one of the primary causes of the condition itself, the matter needs to be addressed properly in the draft, as do the other "activities," whatever they might be.

Pages 13 and 14 of the draft set out the objectives for the uplands. As pointed out above, there are no plans, however vague, set out for implementation. There are no time tables, no specific area planning, no suggestion as to technique or anything else that might identify what the Bureau has in mind or when it might start whatever it is that it might have in mind. If this is one of the Bureau's major management concerns (and page 6 of the draft says it is) and if our analysis is correct that the condition of the uplands is a significant reason for the condition of the riparian, we believe that there must be much more detail on this and that, at the least, the Bureau should set out when these proposals will be proposed and implemented. Just to say that it will be accomplished in forty-five years is insufficient.

On page 14, the draft sets out an allotment resource specific objective of having the "Bonneville Cutthroat Trout in the potential but currently unoccupied streams." The draft fails to identify which streams (or portions thereof) are potential. Without knowing what streams the Bureau regards as potential, we are unable to determine whether we agree and will be unable to know where to look to determine whether the goal has ever been achieved.

On page 18 of the draft AMP, the voluntary reductions in the Raymond Canyon Watershed are discussed. The statement is made that the non-use will continue until conditions are such that riparian areas can withstand grazing use without hindering fisheries habitat recovery. Upon that occurrence, the reductions will be restored as set out on that page. Unfortunately, the AMP does not describe what criteria will be used to make this determination, where the criteria will be measured or whether the conditions are specific to the Watershed or allotment wide. Without that information, we can not determine whether the proposal is reasonable. Actually, without the foregoing missing information, it is difficult to even ascertain whether the conditions can ever occur. Such information should be set forth in the AMP so that they may be evaluated.

The general problem defined in both the draft AMP and in the environmental assessment that accompanied the 2001 decision reducing livestock use is the result of improperly distributed cattle use on the riparian areas. Yet the reductions, both in the decision and in the AMP, are made without regard to the type of livestock. Our client's sheep use on riparian areas is minimal. His primary use of the allotment is for lambing, most of which takes place on his own deeded or state leased lands. His use of the public lands in the allotment for this purpose is on uplands to which he hauls water for the livestock. The sheep spend little time on the riparian areas on the public lands. Yet his cuts are proportionately the same as those whose livestock are causing the problem. This is manifestly unfair and specifically violates the charge to the Bureau to adequately safeguard his grazing privileges. In addition, the determination is not rational. Assuming, *arguendo*, that livestock reductions will resolve the riparian concern, it is evident that a reduction in the animals that do not make any great use of the riparian is not going to resolve the perceived problem. All it does is to affect adversely the permittee's economic operation without any benefit to the resource. Such a result is obviously contrary to the rationality rule of the Bureau and is further both arbitrary and capricious.

Some of the specific rules set out on pages 19 and 20 concerning sheep use fail to consider the nature of the use and are, in some instances, impossible to perform without substantial economic losses to the operator. All of them need to be reviewed with the specific operator in light of his particular use. As a matter of example, in our client's case, during lambing operations (his primary use of the allotment), it is impossible to herd the sheep to water without substantial abandonment (bumming) loss of the lambs. During lambing, it is virtually impossible to set specific watering times for the sheep. The ewes (and the lambs) during this stage go to water when they are thirsty. During this period, the sheep are substantially dispersed and are not together in traditional herds. The other specific requirements present similar problems and

simply reflect the Bureau personnel's lack of knowledge of the specifics of the operations. These can be ascertained by consulting with the permittees on each item.

Throughout the early part of the draft, it is indicated that moves should be based on the needs of the plants, i.e. by observation. Yet, when one gets to page 22, it is stated (in bold print, no less) that "moves will be based on dates." There is provision to get off early (based on observation), but there is no provision for staying on late (based on observation). Moves should be made on the bases set out on pages 9 and 18, "the phenological requirements of the vegetation" and the "utilization and annual monitoring data collected in the riparian areas."

On page 24 of the draft AMP, it is stated that "[l]ambing in the same area every year may be causing resource damage." Either it is or it is not. If it is, the area of concern should be identified so that the permittee might determine whether he agrees that the damage is occurring and if he does agree that damage is occurring, that he might determine whether he agrees that the same area lambing is its cause. Vague accusations of this nature make it extremely difficult to analyze the proposal as the permittee has no idea where the damage might be, much less whether he agrees. If there is no damage, it is unfair and supercilious on the part of Bureau personnel to make the statement.

Provision should be made for notice to and presence by all interested parties (permittees, interested publics, whatever) during formal monitoring (e.g. end of season stubble review, trend determinations and the like), specifically including the Other Use Data on page 36. Transect locations should be developed and established in consultation with the interested parties and made a formal part of the AMP.

It should be made clearer that the criteria are to be based on **livestock** use, not total use. For example, the last sentence of the first partial paragraph on page

Ms. Mary Jo Rugwell
Field Manager
Kemmerer Field Office
July 5, 2004
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35 should read "[t]he allowable use criteria for livestock on willows is 40% of all available twigs . . ." Similar sentences throughout the document should be changed appropriately.

We believe that the draft AMP is just that, a fair first draft. However, it has many problems that need to be reviewed with the Bureau in person and line by line. We suggest that you engage in another meeting with the permittees to discuss it and then do a total rewrite and resubmit the revision for additional comments.

Again, we appreciate the opportunity to offer these comments on behalf of our client. We hope they will be fairly considered and the AMP modified accordingly.

Very truly yours,



Calvin E. Ragsdale

CER:hts

ALH
2004

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Marty Short
1213 W Central Rd
Emmett, ID 83617

July 5, 2004

Ms. Mary Jo Rugwell, Field Manager
BLM Kemmerer Field Office
312 Highway 189 North
Kemmerer, WY 83101

Dear Ms. Rugwell,

I appreciate the opportunity to comment on the Smithsfork Draft Allotment Management Plan (AMP). I also want to thank the KRA office staff for the time and ongoing effort required in mailing the Smithsfork allotment documentation that allows me to follow the process. My initial interest in the Smithsfork Allotment began with hunting and hiking trips to the area starting in 1989 and has resulted in something of an education in public resource management. I have not taken an active role in the process for some time but continue to follow developments with an abiding interest in seeing this unique area managed with the respect and care it deserves.

The designation of the Smithsfork as the #1 priority "Improve" allotment in the 1986 Kemmerer RMP and the as the subject of a nine year quasi-CRM effort makes this draft AMP a welcome, if not timely, document. There are some positive aspects to working up to a management plan over many years. In general, there should not be much question as to the extent of the resource problems which, by now, are thoroughly documented, nor is there room for much more debate over corrective actions. We have a pretty good idea what does *not* work. I am confident that at this point, the BLM will move out of our nine year experiment phase and implement the necessary changes to begin restoring the ecological health of the Smithsfork allotment with fairness and integrity.

I do have a number of concerns about the draft AMP that need to be addressed:

CARRYING CAPACITY

I am aware that the original adjudication of grazing preference on the Smithsfork carries some legal weight but was so obviously and deeply flawed that it is really the source of most of the problems we are trying to work through. Estimating carrying capacity is an absolute fundamental of range science yet the Draft AMP contains no reference to what the true carrying capacity of the allotment may be. A good defendable estimate of carrying capacity, both in the current degraded state of the allotment, and under a recovery scenario may give everyone some predictability as to where this thing will eventually end up in terms of *sustainable* grazing use. We often hear the calls for "sound science" in making public resource plans and decisions. Here is where the cowpie meets the trail. Let's base this AMP on some logic and sound science.

The small incremental reductions in grazing use spread over several years as we fish for the proper carrying capacity will delay meaningful recovery on this allotment for many years and result in ongoing uncertainty. It is the most favorable approach for the permittees since it offers them the least possible short term disruption in operations while it can be said that "at least we're doing *something*". This was essentially the BLM's defense in front of Judge Brimmer in Cheyenne several years ago and it has not resulted in any substantial improvement on the Smithsfork.

We have been thoughtlessly borrowing against the future on this allotment for decades and it is painful to finally curb that habit and start paying the debt. Every justification exists for making massive grazing reductions on this allotment and then working back up toward carrying capacity as the land recovers. I think a compromise somewhere in the middle is reasonable but it really must be based on a new range survey and accurate estimates of carrying capacity.

RAYMOND CANYON

I was very surprised to see stipulations that allow grazing back in the Raymond Canyon watershed written into the draft AMP. These steep, shale walled, narrow bottomed canyons can never conceivably sustain much, if any, grazing pressure from domestic livestock without being damaged further. I have personally witnessed, over several years, the destruction of meadows and erosion on a large scale in the canyons as the vegetation was virtually stripped clean from grazing year after year. Healthy vegetative communities in the upper reaches of the watershed are essential to controlling runoff through the canyons. Attempts to graze the upper parts of the watershed not only remove this critical cover but there is simply no way to keep the livestock out of the narrow bottoms. I'm not necessarily opposed to trailing through the canyons but even that has significant impacts. I think it is unwise and unfair to create expectations that Raymond canyon can ever be relied on as a significant source of livestock forage. The relatively small forage production capacity of Raymond Canyon is not really even a consideration in light of its wilderness, wildlife, watershed, fisheries, and aesthetic values.

REED ALLOTMENT

I've always had difficulty understanding how the Reed Allotment can be virtually ignored in this process when it lies entirely within the Smiths Fork. Is a concurrent AMP being developed for the Reed Allotment?

I THOUGHT THIS WAS THE PLAN?

The third paragraph on page 17 indicates that the penchant for year-to-year, seat of the pants management is still alive and in full flower at the KRO and is even written into the draft AMP! (please don't take offense at that, I'm a lot that way myself!) Cumulative impacts of all projects have not been considered in this AMP and it is certainly arguable that NEPA requirements have not been addressed. If it is "*apparent* that additional permanent range improvements, along with changes to the management prescriptions, will be necessary to fully implement any long term grazing system" why are they not more fully documented here?

OTHER

There is also a good deal of ambiguity remaining in this draft AMP with regard to such important items as requirements for riders and enforcement of the AMP provisions. A brief statement at the bottom of page 26 stipulates what will be considered a violation of terms and conditions but no mention is made of monitoring for compliance or what specific enforcement actions will be taken and when. If past experience on this allotment is any indicator, this will be an essential part of the AMP and must be carefully detailed in the final plan.

Thank you for your time and consideration of these comments.

Marty Short

mail to BLM
ed
Date 7/7/04

COMMENTS ON THE MAY 5, 2004 ALLOTMENT MANAGEMENT PLAN ON THE SMITHFORK ALLOTMENT.

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Page 6 paragraph 4 Smithfork cattle trespassing on the Bridger Teton Forest.

Livestock that should be on the B.T.F. have been Trespassing on the Smithfork allotment The difference here is that the Smithfork Grazing Assoc. have day riders that work to prevent this, I am sure that occasionally some cattle from the Assoc get on the forest. If the BTF is so concerned maybe they would grant an easement to build a fence that would be manageable for both parties. Also maybe the BLM should Trespass the BTF livestock that are on the Smithfork Allotment. Perhaps the BTF should have a rider to keep these trespasses from occurring, would that not be fair and equitable?

Page 7 Other Decisions Bullet One. Wyo Game and Fish Dept. strategic population objectives for wildlife will not be jeopardized.

Should not the Wyo Game and Fish Dept. have to manage their wildlife as does everyone else. If the Riparian areas are overgrazed why is the WG&F not held accountable for their over objective numbers??

The WG&F should take herd cuts just as livestock producers have too (10% per year or 38% since the CRM process started) .

When is the BLM going to hold the WG&Fish accountable??

When is the WG& Fish going to hold themselves accountable??

These are some of the questions the Public and the Permittees have been wanting an answer for since the beginning of this CRM process.

Page 12 Riparian Vegetation Desired Plant Community Objectives:

This cannot be achieved in a Wilderness Study Area. Regeneration of Aspen cannot be achieved because of two main contributory factors.

1. Conifer encroachment, without some sort of timbering plan the conifers will continue to push out the aspen this AMP has no plan to manage conifers. The wilderness study area also has no plan for this.
2. Beaver Control. If Mr. Short with the WOC would have bothered to investigate the area where he took the photos of the so-called livestock damage area he would have noticed that the beaver had desecrated every willow and aspen in a 1 mile radius. Bite marks are insignificant compared to the damage that beavers have been allowed to do in these small creeks and spring areas(see the 2nd 3rd and 4th creek areas). Again the BLM has no contingency plan for this nor does the wilderness study area.
3. Does the BLM know what the Current Aspen population percentage on the Range is Today?? How can desired plant communities be established if the BLM will not manage Sagebrush and other undesirables?

Page 14 Allotment Resource Specific Objectives:

Forth Bullet: Have Bonneville Cutthroat Trout in potential but currently unoccupied streams:

Most all of these so-called streams by the BLM and WG&Fish are nothing but small springs that cannot provide fish habitat on a consistent basis, could this be why there is no fish in them? These

so-called streams barely run in drought years and some times freeze solid in the Winter. It is not the Livestock or Big Game that cause this poor habitat. Why don't the Biologists check these streams when its -40 Deg Far. and see what kind of oxygen levels they get out of a block of ice?

Fifth Bullet: Reach the Stream stability criteria of Good (7) or better on all greenlines. See appendix B:

Could These Goals be set to high and unachievable? The livestock numbers have been reduced by 38% and there appears to be no difference. Last year in areas up Salt Creek Canyon in the right of way next to the creek in the riparian area that had no Livestock, it did not achieve a 5" stubble height. How can we achieve this where there is grazing?
Has the BLM set up the SmithFork Grazing Association to Fail??

Page 19 Sixth Bullet: The boundary Fence on Etcheverry/Esterholdt pasture will be moved back to the federal land-line. This was Approved by the BLM now years after the fence was built they have changed their mind. The only thing consistent with The BLM is their inconsistency.

Page 20: No sheep camps will be allowed in the riparian areas on federal lands:
Has the BLM notified the WY Travel Commission, WOC and the WG&Fish that only campers and hunters with modern campers will be allowed in these areas? Will Campers that use their restored sheep camps no longer be allowed to camp in these areas? Does this include all Campers or is this just another one of BLMs double standard that only applies to the Livestock Industry ?

Page 22 Second Bullet: Dates for moves are listed in the Final Decision.
How can a pasture be properly utilized by picking some arbitrary date years before turnout?
Notice how the BLM hedges the date by noting that if Stubble height is not achieved they will move livestock early. There is no plan or mention if stubble height exceeds criteria that livestock will be allowed to stay an extended period of time. This is another indication that the BLM is not dealing in good faith with the Livestock Industry and their objective is clearly aligned with other special interest groups who want the livestock off.

Page 25 Future Reductions Based on Monitoring:
5" Stubble height is the minimum criteria. The Cumberland Allotment has a minimum 4" Stubble height Criteria. Why is not the 4" criteria used on the Smith Fork? Is it because the 5" criteria cannot be met so the BLM can further reduce livestock numbers?

There is no mention of how good the feed is above and away from these riparian areas. This is deliberately withheld as to paint the worst possible picture for the public who read these AMP, RMP, and final decisions.

Is this the results of a Cooperating Agency dealing in good faith?

The reason Riparian areas are being utilized by Wildlife, Livestock, and Humans is because it is where all the water is. This is why it is critical to develop water sources above these areas. The BLM has this on their priority list which falls well below increasing their Staff, and growing their budget for other things like enforcement. They are not getting projects to the ground. It is obvious it does not include Water Development or Brush Management.

Page 32 Post treatment management: minimum two years rest.

Since the invention of herbicides and the airplane environmentally safe herbicides can be applied that will slowly kill sagebrush over a 2-4 year period allowing ongoing use and no rest periods. But instead the BLM will not allow this without a rest period. They have no scientific justification

for this Policy when spraying, it is just Their Policy and everyone will follow it, again making it as difficult as possible for the Livestock Industry.

Last Bullet: No more than 15% of the allotment will be treated per decade: Sagebrush will regenerate itself in less than ten years after it has been controlled. This basically indicates that for all practical purposes there will be no brush management on the Smith Fork Allotment. Again another example of being set up to fail by a cooperative agency.

Page 33: Projects within the Raymond wilderness study area. No permanent range improvement projects will be constructed: Range use will be allowed as it has in the past according to CFR this area has always been grazed and has been grandfathered in.

Page 34: Climatic Data: Why Collect the BLM uses dates for turnout and off?

Page 36 : #5 Other Use Data:

Big Game Populations levels will be monitored. Why? BLM does nothing to control these numbers.

Where is the Table of acceptable Numbers?

Where is the Contingency plan when these numbers are not met?

Where is the Contingency plan when these numbers are exceeded?

What is the Range use Criteria for Wildlife?

Where is BLMs Brucellosis plan For the ELK? All Cattle have to be vaccinated and proof must be provided before turn out. Another example of BLM double standard.

Why does the Wildlife get a free ride off the Backs of the Livestock Producers?

Page 37 Allotment Reductions: Where is the plan for Allotment Increases? Why does the taxpayers have to fund an organization that make our public grounds less productive? Private adjoining pastures run more Livestock and Wildlife than they used to, this is because INDUSTRY MANAGES BRUSH AND DEVELOPES WATER.

Erick W. Esterholdt.



cc: Barbara Cubin

Mike Enzi

Craig Thomas

To: Ed Feeley

From: George M. Kastars George M. Kastars

(I)
cah
7/19
RECEIVED
BLENHEIMER F.O.
2004 JUL 19 AM 9:32

I WAS HIKING Raymond Canyon ON JULY 16, 2004 AND HAD THE OCCASSION TO MEET THE RANGE RIDER "JERRY LARSON" ABOUT 10AM STARTING HIS RIDE TO REMOVE CATTLE FROM THE WILDERNESS STUDY AREA.

I ASKED HIM IF ANY CATTLE HAD BEEN ENTERING Raymond Canyon FROM Mill Creek AND HE REPLIED "A FEW".

My NEXT COMMENT WAS WELL YOU HAVE CATTLE IN HERE NOW BECAUSE ALL YOU NEED TO DO IS LOOK AT THE SILT IN THE STREAM.

He STATED THAT HE RODE THE CANYON TWICE A WEEK (Monday & Friday) AND THAT WAS ALL HE WAS GOING TO RIDE.

I THEN ASKED HIM IF THE GATE WAS BEING KEPT CLOSED AT THE INTERSECTION OF THE NORTH & SOUTH CANYONS - HE STATED NO! - HE NOW APPEARED QUITE AGGRAVATED AND AFTER

(II)

My Next Question OF How ARE you
PlANNING ON Keeping THE CATTLE
OUT OF THE Willows + Side
CANYONS below THE gate if you
don't Keep THE intersection gate
Closed.

He Stated THAT He would use His
dogs To Move THE CATTLE OUT OF
THE Willows AND THAT He WAS
"THE Cowboy" AND He did NOT see
How OR WHY Someone would Like
THIS — — — — — ETC. (ANYO
AND THEN TRY TO Tell People WHAT
TO DO. (He Neglected To mention THAT
besides being "THE Cowboy" He is also grazing
AROUND 300 PAIR IN THE ALLOTMENT)

I did NOT Respond Since He WAS
obviously AgITATED AND UPset AND
AFTER STARING AT Me For A PERIOD OF
Time He Rode UP THE CANYON WITH
A young individual WHO WAS riding
WITH Him WHO WAS identified AS
His Cousin

I know THAT you ARE AWARE

THAT I HAVE HIKE D AND HUNTED
IN RAYMOND CANYON SINCE 1994 -
IN FACT I HAVE HIKE D EVERY CANYON
AND EVERY RIDGE IN THIS WILDERNESS
STUDY AREA AND I DO KNOW SOME
OF THE PROBLEM AREAS AND I DO
HAVE A FEW IDEAS ON HOW TO
ALLEVIATE SOME OF THE STRESS.

PRIOR TO LISTING MY OPINIONS AND
OBSERVATIONS LET ME STATE THAT
I SUPPORT THE PERMITTEE'S RIGHT
TO GRAZE THEIR LIVESTOCK IN
ACCORDANCE WITH THE AGREED
TO SMITHFORK ALLOTMENT MANAGEMENT
PLAN FOR ANY SPECIFIC YEAR AND IF
THE BLM DETERMINED THAT THE
WILDERNESS STUDY AREA INCLUDING
RAYMOND CANYON WAS TO BE GRAZED,
AS PART OF THE PLAN, I WOULD
ALSO SUPPORT THAT DECISION.

HOWEVER, SINCE RAYMOND CANYON
IS NOT PART OF THE AUTHORIZED
GRAZING AREA AND THE PERMITTEES ARE
NOT PAYING THE BLM FOR GRAZING
RIGHTS IN RAYMOND I HAVE THE

Following Observations Concerning
The Lack of Urgency And The
UNAUTHORIZED USE BY THE PERMITTEES
OF THE Raymond Canyon Wilderness
Area For Livestock grazing.

I. Raymond Canyon Grazing Problems 2003

1. There was NOT AN EFFORT
by THE PERMITTEES TO Provide A
Rider TO REMOVE CATTLE FROM
RAYMOND Canyon ON A daily
basis AND/OR A weekly basis.
2. STARTING WITH THE MOVEMENT
OF CATTLE TO THE ALLOTMENT
CENTER PASTURE THERE WAS A
daily presence OF 30 TO 100
PAIR OF CATTLE IN RAYMOND
UNTIL ABOUT SEPT 15 2003.
3. FROM SEPT 20TH 2003 UNTIL
I REMOVED MY CAMP FROM THE
CANYON ON OCT. 25TH 2003 THERE
WERE IN EXCESS OF A 100
PAIR OF CATTLE IN RAYMOND
CANYON AND ONLY TOKEN EFFORTS
WERE MADE TO REMOVE THE

Cattle which were not successful

Raymond Canyon was being used as a fall holding pasture and the cattle were using all areas of the canyon during that period of time.

II. Raymond Canyon Observation 2004

1 Rd of the Canyon to be closed week on Monday & Friday
S N & F east to keep the canyon free of cattle and shows a lack of urgency on the part of the permittees regarding this problem

2 Not utilizing all barriers to limit the movement of cattle after they enter Raymond Canyon & negligence (ie not keeping the gate closed at the fork of the north & south canyon)

3 The canyon needs to be ridden

(VI)

ON a daily basis STARTING
EARLY IN THE AM (7AM).

STARTING TO RID THE CANYON
AT 10 AM DEFERS THE RELEASE
AS THE CATTLE HAVE "SHAD-
D UP" BY THEN.

4. THE PERMITTEES ARE FOLLOWING
A PATTERN ESTABLISHED IN
2003 WHICH WILL ALLOW THEM
TO GRAZE ALL OF RAYMOND CANYON
BY OCT. 31, 2004

SINCE THE FOX IS IN CHARGE OF "THE
HANTHUSE" AND THERE APPEARS TO BE
A LACK OF URGENCY, ON THE PART OF,
THE PERMITTEES, IN KEEPING RAYMOND
CANYON FREE OF LIVESTOCK I SUGGEST
THAT THE BLM SEEK RENOVATION
FOR THE USE OF RAYMOND CANYON
AS FALL PASTURE BY THE PERMITTEES
IN THE AMOUNT OF \$10,000 PER MONTH
FOR THE 3 1/2 MONTHS USE OF RAYMOND
AS FALL PASTURE.

I UNDERSTAND THAT I DO NOT HAVE
THE AUTHORITY TO TELL A PERMITTEE

(VII)

Employee How to perform His/Her
Job a certain way but BLM
Has this right and since I can
not have a conversation with
Jerry Larson about my observation
without upsetting him I have
written this letter to you with
the hope that you may be able
rectify this situation.

THANKS
George L.

CC: Jerry Larson

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BLM KEMMERER F.O
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