



**Western
Watersheds
Project**

WWP Nevada-Oregon
PO Box 12356
Reno, NV 89510
(208) 421-4637
paul@westernwatersheds.org

Working to protect and restore Western Watersheds and Wildlife

September 3, 2020

By email to jlrose@blm.gov; drotell@blm.gov

Bridge Creek AMP Reviewing Panel/Authorized Officer
Burns District BLM
Andrews/Steens Field Office
28910 Hwy 20 West
Hines, OR 97738

Re: Conflicting applications for “forage available” in Bridge Creek Area allotments

Dear BLM:

I am writing on behalf of Western Watersheds Project (WWP) to provide information relevant to your decision whether to award preference and issue a grazing permit(s) and/or develop an allotment management plan (AMP) for the Bridge Creek Area (currently designated as the Hammond, Hammond FFR, Mud Creek, and Hardie Summer allotments), and more specifically, for your consideration in making a determination on the four conflicting applications received for the advertised forage available in the Bridge Creek Area.¹

According to your recent letter to interested public, BLM will compile information on the conflicting applications, which will be reviewed by a panel of BLM employees, and the authorized officer “when determining how to apportion the available forage.” BLM will also “gather other relevant information pertaining to the management of these allotments and provide it to Authorized Officer.” This information will be used in the NEPA process and ultimate decision “whether or not to issue a grazing permit” and assign grazing preference, and if so, “how the forage is apportioned.” Please add this letter and its attachments to the relevant allotment/permit files and project and decision records, and provide it to the reviewing panel and authorized officer to consider in this process.

WWP has been designated interested public for these allotments for many years and has specifically requested opportunities to be involved with decisionmaking for the public lands and resources within them, including in this process. WWP’s members, staff, and supporters use and

¹ BLM issued a public notice of “forage available” and opened an application period that ended April 14, 2020. See <https://eplanning.blm.gov/eplanning-ui/project/1504684/510> (last visited August 26, 2020).

enjoy the public lands within the Steens Mountain Cooperative Management and Protection Area, including these allotments, and the Malheur National Wildlife Refuge, as well as surrounding areas, for aesthetic, recreational, and many other purposes, and frequently work, study, hike, hunt, camp, photograph, and observe wildlife there, and will continue to do so into the future.

WWP submits this information pursuant to 43 C.F.R. §§ 4110.2-4, 4110.3-1, 4120.2, 4130.1-2, 4130.2, 4130.3-3 and other applicable authority, and will continue to participate in this process at further opportunities. WWP reserves the right to submit additional information at any time. BLM has not publicly disclosed who the applicants are or made their applications publicly available, frustrating the public's ability to meaningfully provide input on the relative qualifications of the applicants to use these public lands for livestock grazing. Accordingly, WWP is only able to submit the information it has available at this time, but urges BLM to carefully collect information for all of the applicants and, in the future, to commit to greater transparency in its decisionmaking processes for managing livestock grazing on public lands.

Conflicting Applications

BLM has received four applications for grazing use of the same public lands. In this situation, the authorized officer will consider several factors when deciding whether to authorize grazing for any applicant, including:

- (a) Historical use of the rangeland resources;
- (b) Proper use of rangeland resources;
- (c) General needs of the applicant's livestock operations;
- (g) Demonstrated stewardship by the applicant to improve or maintain and protect the rangeland ecosystem;
- (h) The applicant's and affiliates' history of compliance with the terms and conditions of grazing permits and leases of the Bureau of Land Management and any other Federal or State agency, including any record of suspensions or cancellations of grazing use for violations of terms and conditions of agency grazing rules.

See 43 C.F.R. § 4130.1-2.

Relevant Information for BLM to Consider Regarding these Factors

In making your decision, please consider the following information relevant to Hammond Ranches, Inc. (HRI) and any of its affiliates with respect to the regulatory factors listed above.

HRI's noncompliance under its 2004–2014 grazing permit. HRI held a grazing permit for the Hammond, Hammond FFR, Mud Creek, and Hardie Summer allotments from 2004 to 2014. In 2014, BLM issued a decision denying HRI's application for permit renewal due to a series of permit violations, and other noncompliance with laws and regulations governing the public lands, as well as the criminal convictions of HRI's principals for arson. HRI's unsatisfactory record of performance, detailed in BLM's decision, is well known to BLM and

should be fully considered in this process, including HRI's conduct prior to the 2004–2014 permit term, as well as conduct that did not lead to HRI's principals' criminal convictions, but was attributed to them "by a preponderance of the evidence." Hammond Ranches, Inc. 189 IBLA 41, 46 (2016).

However, the 2014 decision is not a complete record of HRI's noncompliance under its 2004–2014 permit. BLM should also consider actual use records from that time period showing that HRI routinely grazed its cattle in excess of the numbers authorized in the permit and outside of the authorized seasons of use. Attachment (Attch.) 1 (selected actual use records from 2004–2014 permit term). HRI violated the terms of its permit by grazing excess AUMs in 2006, 2007, 2008, 2009, 2011, 2012, and 2013, as detailed in the Reply in Support of Motion to Consider Evidence Outside the Administrative Record submitted to the Federal District Court for the District of Oregon at pp. 11–14. Attch. 2.

HRI's non-compliance with its 2019–2024 grazing permit. In 2019, BLM issued HRI a grazing permit after then-Secretary of Interior Ryan Zinke unlawfully ordered BLM to "renew" HRI's permit on his last day in office. *W. Watersheds Proj. v. Bernhardt*, 428 F. Supp 3d 327, 340–42 (D. Or. 2019). While the Federal District Court for the District of Oregon partially enjoined grazing under this permit, and eventually vacated the decisions granting the permit, *id.* at 353–54, HRI grazed the Hammond, Hammond FFR and Hardie Summer allotments, and trailed through the Mud Creek allotment in 2019.

From start to finish in the 2019 grazing period, HRI demonstrated improper use of the public lands, poor stewardship of public resources, and noncompliance with the terms and conditions of its permit and annual authorizations, as well as the Court's injunction.

Early Turnout in Violation of Permit Terms

The 2019–2024 permit authorized use of Hammond allotment from April 1 to October 30. Attch. 3 (2019 permit). However, based on a May 28, 2019 letter from BLM to HRI, HRI began grazing on the allotment March 25, 2019 without prior permission to deviate from the permitted season of use, even though the permit requires that deviation from the permit terms "must be applied for prior to the grazing period and must be filed with and approved by the authorized officer." Attch. 4 (May 28, 2019 Letter from BLM to HRI). And actual use records reflect that grazing in fact began even earlier—on March 22, 2019. Attch. 5 (Actual use records from 2019). Thus, HRI's use of the Hammond allotment in 2019 apparently preceded the permitted season of use by 10 days.

Use in Excess of Authorized Livestock Numbers and AUMs in Violation of Permit Terms

The 2019–2024 permit authorized 68 cattle to graze on Hammond allotment. Notwithstanding this mandatory permit term, HRI turned out 491 cattle onto Hammond allotment, which BLM confirmed was an "exceedance." Attch. 4. At various times in 2019, HRI grazed up to 503 cattle on the allotment. Attch. 5.

The 2019 permit authorized a total of 407 AUMs on the Hammond allotment, 32 AUMs on Hammond FFR, 590 AUMs on Mud Creek, and 407 AUMs on Hardie Summer allotment for a total of 1,500 AUMs allowed under the permit for all four allotments. Attch. 3.

HRI grazed at a minimum 2,975 AUMs on Hammond allotment by BLM's calculation—and more likely 3,219 AUMs using the correct value for percent public lands in the AUM calculation formula. *See* Attch. 5. This was seven to eight times more than the 407 AUMs permitted.

When added to the approximately 192 AUMs grazed on the Mud Creek allotment and approximately 262 AUMs grazed on the Hardie Summer allotment in 2019, the actual use records show that HRI grazed a grand total of 3,429–3,673 AUMs on three of the four allotments in 2019 (not counting the Hammond FFR allotment)—far more than double the 1,500 AUMs authorized under the permit for all four allotments. *See* Attch. 5.

These use records from 2019 illustrate that HRI continued to violate, flout, and disregard the mandatory terms and conditions of its grazing permit for its economic benefit even during its most recent authorized grazing use on the allotments.

Noncompliance with Utilization Standards

While the 2019–2024 permit allowed a blanket 50% utilization standard on the allotments, the Court's injunction limited grazing on the BLM-controlled portions of Hardie Summer allotment to 30 percent utilization. *W. Watersheds Project v. Bernhardt*, 392 F. Supp. 3d 1225, 1263 (D. Or. 2019). It also ordered BLM to monitor the condition of riparian areas on the allotment. BLM did not quantitatively measure riparian utilization following grazing, but a team of four ecologists spent 5 days on Hardie Summer allotment from September 30 to October 4, 2019, recording ecological condition post-grazing using an “Enhanced Multiple Indicator Monitoring Approach.” Attch. 6. (Third Declaration and Report of Dr. J. Boone Kauffman, Ph.D.). Their report concluded that the herbaceous utilization in the riparian zones of Hardie Summer allotment ranged between 43% and 87%. *Id.* Shrub utilization in those areas ranged from 27% to 88%. *Id.* Streambank alteration ranged from 49.8% to 65.8%. *Id.* And residual herbaceous stubble height was between 1.7 inches and 8 inches. *Id.* Use at these levels again reflects improper use of the rangelands, poor stewardship, and noncompliance with required terms and conditions.

Unlawful Use of Mud Creek Allotment for Trailing Livestock

The Court's injunction permitted that HRI could “quickly and methodically trail through” Mud Creek allotment to reach Hardie Summer allotment and “if needed, return” trailing through Mud Creek as well, not to exceed 14 days. *Bernhardt*, 392 F. Supp. 3d at 1263. HRI took two days to trail up across the Mud Creek allotment to the Hardie Summer allotment (July 30 and 31, 2019, see Mud Creek actual use report in Attch. 5) and thirteen days to trail back to its private lands through the Mud Creek allotment (October 1 to 13, 2019, see actual use report in Attch. 5), which is inconsistent with the Court's mandate to quickly and methodically

trail through the allotment, and also a violation of the 14-day limit the Court set for trailing through that allotment.

HRI's lack of demonstrated need to use federal land. HRI's continued operation and solvency during the five years from 2014 to 2018, and presumably in 2020 as well, when it did not hold a grazing permit for the Hammond, Hammond FFR, Mud Creek, and Hardie Summer allotments demonstrates that it is able to sustain its business without using the allotments. HRI owns or controls substantial private lands—about 12,872 acres, according to a 2019 article in *The Oregonian*.² Further, during the time it could not graze these allotments, the USDA paid HRI a total of \$587,590 in agricultural and livestock subsidies between 2014 and 2017, indicating that it can rely on federal funding to sustain its operation when it is not able to use public lands to graze its livestock. *See Bernhardt*, 392 F. Supp. 3d at 1262 (“From 2014-2017, the first four years in which the permit was denied, HRI received a total of \$587,590 in subsidies” which the Court found to be an indication “that such subsidies may be available to counter the economic harm caused by a reduced ability to graze on federal land”).

Poor ecological condition of allotments where HRI was permitted to graze livestock. Degraded conditions on the allotments resulting from past authorized and unauthorized grazing by HRI, and illegal burning attributed to HRI principals, further demonstrates that HRI improperly used public resources and was a poor steward of the public lands.

For example, Dr. Clait Braun, a noted sage-grouse expert with decades of experience studying the species, attested to the poor habitat conditions for sage-grouse on Mud Creek allotment and other areas resulting from the 2006 Granddad fire and grazing that resumed immediately following it. Attch. 7 (Third Declaration of Dr. Clait E. Braun). The sage-grouse of the Steens PAC, which use the habitat on the Mud Creek, Hammond, and Hardie Summer allotments, have seen their population decrease by 10% or more in three consecutive years, with male attendance at the leks now down 77.3% since 2003, to only 96 males in 2019 (barely above the “hard” trigger threshold in the Approved Resource Management Plan Amendments). Attch. 8.

BLM's management obligations to protect sage-grouse on Steens Mountain compel it to either award no permit, allowing these lands to remain ungrazed and recover ecologically, or to award the preference to a permittee that has demonstrated—unlike HRI—an ability to comply with its grazing permits and not unnecessarily and unduly degrade public lands, including habitat for sage-grouse, redband trout, and other native species.

Conclusion

Given its history of violating the two most recent grazing permits it has held, the poor ecological conditions (including fires) that have resulted from its use of these public lands, and its clear ability to manage and sustain its livestock operation without using public lands, HRI

² Maxine Bernstein, *Judge revokes federal grazing permit for Hammond Ranches, Inc.*, *The Oregonian* (Dec. 21, 2019), available at <https://www.oregonlive.com/crime/2019/12/judge-revokes-federal-grazing-permit-for-hammond-ranches-inc.html>.

has demonstrated that it neither needs, nor deserves, to be allowed to use federal public lands for its livestock.

Thank you for considering this input. We encourage you to more fully involve the public in these important decisions, consistent with the grazing regulations, going forward. Please contact me if you have any questions about the information provided in this letter.

Sincerely,

s/ Paul Ruprecht
Western Watersheds Project