

DECISION MEMO

Mill Creek and Luke Lym S&G Livestock Grazing Allotments

Summit County, Utah
USDA Forest Service
Evanston - Mountain View Ranger District
Uinta-Wasatch-Cache National Forest

BACKGROUND

The Evanston-Mountain View Ranger District proposes to reauthorize livestock grazing on approximately 13,075 acres of National Forest System Lands on the Mill Creek and Luke Lym grazing allotments located within the Evanston-Mountain View Ranger District of the Uinta-Wasatch-Cache National Forest. Livestock grazing would be reauthorized using current Forest Plan standards and guidelines and desired conditions to manage livestock use. It is expected that by continuing to follow this direction rangelands will be maintained at current desired conditions or continue to move toward desired conditions. This proposal recognizes the continuing need for forage production from National Forest System Lands as identified in the Forest Plan.

The Mill Creek Allotment is approximately 9,570 acres, and the Luke Lym Allotment is approximately 3,505 acres of National Forest System Land. In 2006 and 2008 the Forest Service acquired private lands within the boundaries of the allotments. In the past, these private lands have been managed for grazing in conjunction with the adjacent National Forest System Lands under private land grazing permits. No change in grazing management was made on these private lands when they were added to the National Forest System. The allotments are within Summit County, Utah in the Mill Creek Watershed and are located approximately 27 miles southeast of Evanston, Wyoming.

DECISION AND RATIONALE

I have decided to reauthorize grazing on the Mill Creek and Luke Lym Grazing Allotments.

The 2007 Specialist Report for Vegetation Resources for the Mill Creek and Luke Lym Allotments determined that based upon approximately 36 different study sites located throughout the project area, the plant communities grazed by livestock are in satisfactory condition with stable trends or are trending toward desired condition (Zobell 2007). The report concludes that current management is meeting or is satisfactorily moving toward objectives. Objectives, as it is used here, is defined as meeting the Forest Plan standards and guidelines for livestock grazing.

Forest wide management direction for rangelands was first incorporated into Allotment Management Plans and existing livestock grazing permits after the Rangeland Health EIS was approved in 1996 and then again after the 2003 Revised Forest Plan was approved (USDA 2004). The Forest Plan direction and previous management direction has resulted in the lands

within these allotments demonstrating success in meeting or satisfactorily moving toward desired conditions and achieving site-specific desired ecological objectives. Livestock are currently grazing on rangelands within these allotments and the desired condition is to continue livestock grazing as directed by the Forest Plan while maintaining or moving existing resource conditions toward desired conditions. This decision will implement P.L. 104, the 1995 Rescissions Act, by having sufficient environmental analysis to support livestock grazing.

Grazing permits allow the number, kind, and class of livestock, period of use, and grazing allotment specified in the permit to be modified when determined by the Forest Service to be needed for resource protection (FS-2200, clause 8,b). The Forest Plan for the Wasatch-Cache National Forest specifies an objective of monitoring 10% of allotments annually to assess/validate existing conditions and continue establishing long-term trends (USDA, 2003).

SCOPING AND PUBLIC INVOLVEMENT

The proposal was provided to the public and other agencies for comment during a scoping period from April 17 to May 20, 2008. It was sent directly to organizations, Native American tribes, and individuals. It was also available on the Wasatch Cache National Forest (WCNF) website at the following address: <http://www.fs.fed.us/r4/wcnf/projects/proposed/index.shtml>. Additionally, it was available for review at the Mountain View and Evanston District Offices. As a result of scoping, one comment letter was received. The respondent raised concerns about: 1) Forest Service authority to categorically exclude the project, 2) wildlife monitoring, 3) compliance with the Migratory Bird Treat Act, and 4) impacts of grazing on lynx. All of these concerns are addressed as part of this decision or are included in the project file. Documentation of public scoping is in the project file.

REASON FOR CATEGORICALLY EXCLUDING THE PROPOSED ACTION

My decision is consistent with agency policy concerning extraordinary circumstances as outlined in 36 CFR 220.6.b. The mere presence of one or more of these resource conditions does not preclude use of a categorical exclusion. It is the degree of the potential effect of a proposed action on these resource conditions that determines whether extraordinary circumstances exist.

Forest Service resource specialists have visited these allotments, completed specialist reports and biological evaluation and assessments, and have determined that the environmental effects will be minor (Condrat 2008, Chase 2008 Chase 2008a, Flood 2008, Flanigan 2006 & 2008, Goodrich 2008, Williams 2008, Williams 2008a, Williams 2008b, Zobell 2007). Resource conditions that were considered in determining whether extraordinary circumstances warranted further analysis are presented in the following paragraphs. There were no extraordinary circumstances related to resource conditions identified in these reports.

a. Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing of proposed critical habitat, or Forest Service sensitive species.

Terrestrial Wildlife: A Biological Assessment (BA) was completed for terrestrial wildlife species. The wildlife biologist determined that there would be no effect due to lack of habitat on the following federally listed species: bald eagle (threatened), black-footed ferret (endangered), or western yellow-billed cuckoo (proposed/candidate). It was also determined that grazing “may affect, but is not likely to adversely affect” the Canada lynx (threatened) (Williams 2008b). The US Fish and Wildlife Service concurred with these determinations (USFWS 2008). There are five Forest Service sensitive species identified in the Biological Evaluation (BE) that may be affected by this project: wolverine, boreal owl, flammulated owl, northern goshawk, northern three-toed woodpecker, and the great gray owl. The wildlife biologist determined that the project “may impact individuals or their habitat, but will not likely contribute to a trend towards Federal listing or loss of viability to the population or species” of the six sensitive species (Williams 2008b).

Aquatic and Semi-aquatic Species: There are no endangered or threatened aquatic or semi-aquatic species on the Wasatch-Cache National Forest. Of those aquatic species listed as sensitive for the Wasatch-Cache National Forest only the Bonneville cutthroat trout occur within the project area. This project “may impact individuals or habitat, but will not likely contribute to a trend towards federal listing or cause a loss of viability to the population or species.” (Chase 2008a).

Plants: No plant taxon is listed as Endangered for the Wasatch-Cache National Forest. The only plants listed as threatened are Maguire’s primrose (*Primula maguieri*) and Ute ladies’-tresses (*Spiranthes diluvialis*). Maguire’s primrose is restricted to Logan Canyon in the Wasatch Range. Ute ladies’-tresses is not known from above about 7,200 ft elevation in the Uinta Mountains. Lowest elevation of these allotments is about 8,300 ft or about 1,100 ft above the range of Ute ladies’-tresses. Based on this information a determination of no effect is made for Threatened and Endangered plant species. A “no impact” determination was made for the following sensitive species or Proposed Sensitive plants: Spruce wormwood, Clustered lady’s slipper, Rockcress draba, Utah Ivesia, Arctic poppy, Echo spring-parsley, Uinta greenthread, and Starvling milkvetch (Goodrich 2008, Goodrich 2008a).

b. Flood plains, wetlands or municipal watersheds. The Forest Hydrologist completed a Water Resources Technical Report for the Mill Creek and Luke Lym Allotments. The main findings are that the water resources, including flood plains and wetlands, in the allotments are functioning properly, are in very good condition, and are impacted very little by livestock grazing. Water flowing through the allotments is in very good condition, meets State water quality standards, and provides high quality water to municipal watersheds. (Condrat 2008).

c. Congressionally designated areas, such as Wilderness, Wilderness Study Areas, or National Recreation Areas. There are no congressionally designated areas in these allotments.

d. Inventoried Roadless Area. A small portion (less than 400 acres), of the project are within an inventoried roadless area (High Uintas Roadless Area). This decision will

not affect the roadless character of the area as no road construction or timber harvesting will occur as part of this decision.

- e. **Research Natural Areas.** There are no Research Natural Areas in these allotments.
- f. **American Indians and Alaska Native religious or cultural sites.** The Forest Archeologist, working with the Utah State Historic Preservation Office determined that the continued livestock grazing would have no adverse effect on American Indian and Alaska Native religious or cultural sites and documentation is included in the project file (Flanigan 2006, 2006a 2008, 2008a).
- g. **Archeological sites, historic properties or areas.** Same as above.

Based upon the findings described herein, I have determined that these actions are consistent with the types of actions described in Section 339 of the FY 2005 Consolidated Appropriations Act (P.L. 108-447). This legislation provides that certain decisions to authorize allotment grazing shall be categorical excluded (CE) from documentation in environmental assessments and environmental impact statements under the National Environmental Policy Act (NEPA).

The Consolidated Appropriations Act, 2008 (Public Law 110-161), Section 421 extends the previous provision of Section 339 through fiscal year 2008 allowing the Forest Service to use categorical exclusions for certain grazing activities, but excludes use of this authority in federally designated wilderness areas.

The full text Section 339 of the FY 2005 Consolidated Appropriations Act (P.L. 108-447).follows:

SEC. 339. For fiscal years 2005 through 2007, a decision made by the Secretary of Agriculture to authorize grazing on an allotment shall be categorically excluded from documentation in an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) if: (1) the decision continues current grazing management; (2) monitoring indicates that current grazing management is meeting, or satisfactorily moving toward, objectives in the land and resource management plan, as determined by the Secretary; and (3) the decision is consistent with agency policy concerning extraordinary circumstances. The total number of allotments that may be categorically excluded under this section may not exceed 900.

All three conditions for application of this authority have been met:

1. There are no changes to the current grazing management on these allotments (McConkey 2008).
2. The range Studies Evaluation indicates that current grazing is meeting or moving toward desired conditions and objectives in the Forest Plan (Zobell 2007).
3. As noted above, Biological Assessments and Biological Evaluations were prepared along with specialist reports from the following specialists, Hydrologist, Soils Scientist, Archeologist, Fish Biologist, Rangeland Management Specialist, Ecologist, and Wildlife Biologist. There were no extraordinary circumstances related to resource conditions identified in these reports.

As such, this decision will be categorically excluded from documentation in an Environmental Assessment or Environmental Impact Statement. Based on past experience with similar

management activities, and upon the environmental analysis that has been conducted of this project, the effects of implementing this action will be of limited context and intensity.

CONSIDERATION OF SCIENCE

In making this decision I used current and accurate science. My conclusion is based on a review of the project record that shows a thorough review of relevant scientific information, a consideration of responsible opposing views, and the acknowledgment of incomplete or unavailable information, scientific uncertainty, and risk. The project record contains specialist reports on vegetation, wildlife, fisheries, watershed, and soils. These reports contain documentation of field visits to the allotments and contain the specialist's assessment of conditions found on the allotments. I consider these on-the-ground visits by knowledgeable resource specialists to be the application of current and accurate science along with the scientific methods they applied and the literature they reviewed.

FINDINGS REQUIRED BY OTHER LAWS

My decision will comply with all applicable laws and regulations. I have summarized pertinent ones below.

National Forest Management Act (Forest Plan Consistency) - This Act requires the development of long-range land and resource management plans and requires that all projects and activities are consistent with the Forest Plan.

I have reviewed the Wasatch-Cache National Forest Land and Resource Management Plan (Forest Plan). The actions in this project comply fully with the goals of the Forest Plan, the "Management Area Direction" and the "Forest-Wide Standards and Guidelines" (See Chapter 4 of the 2003 Forest Plan).

The livestock grazing allotments are within the following management prescriptions: **(1.5)** Recommended Wilderness; **(3.1a)** Protection, Maintenance or Restoration of Aquatic/Watershed Integrity; **(4.4)** Emphasis on Recreation Motorized Setting; **(5.1)** Multiple Resource Use, Forested Vegetation Management Emphasized; which all allow livestock grazing to meet desired conditions. The actions in this project are consistent with the types of activities permitted under the Management Prescriptions 1.5, 3.1a, 4.4, 5.1, and the Desired Future Conditions of the Western Uintas Management Area.

Population trends for Management Indicator Species are identified in the Management Indicator Species of the Wasatch-Cache National Forest Report (USDA 2008). A fisheries biologist and wildlife biologist determined that the continued grazing of livestock within the two allotments is not likely to affect the population trend for snowshoe hares, beavers, goshawks or Bonneville cutthroat trout (Williams 2008, Williams 2008a, Chase 2007).

The document, Assessment of Management Indicator Species Capability and Suitability on the Wasatch-Cache National Forest with the Management and Restoration Direction (USDA 2007)

documents how the 2003 Wasatch-Cache Forests Plan identifies and restores Management Indicator Species habitat with regard to grazing.

The Forest Plan identified 289,800 acres of land that are suitable for livestock grazing (Table RN-4) in the FEIS of the Plan (USDA 2003a). Each of these allotments contains lands that are suitable for livestock grazing as specified in the 2003 Forest Plan (McConkey 2008b). A tentative grazing capacity for the allotments was determined in the 1960s using range analysis data. Recent utilization monitoring conducted on these allotments indicates light to moderate utilization as a result of the current stocking rates and management (Zobell 2007).

National Environmental Policy Act - This Act requires public involvement and consideration of potential environmental effects. This Decision Memo is in compliance with NEPA and the Council on Environmental Quality (CEQ regulations 40 CFR 1500-1508) for implementing NEPA.

Endangered Species Act - This Act directs that all Federal departments and agencies shall seek to conserve endangered, and threatened (and proposed) species of fish, wildlife and plants. This obligation is further clarified in a National Interagency Memorandum of Agreement (dated August 30, 2000), which states our shared mission to "...enhance conservation of imperiled species while delivering appropriate goods and services provided by the lands and resources." (See "Reasons for Categorically Excluding the Proposed Action" section of this document.)

Clean Water Act - This Act includes direction to restore and maintain the integrity of waters. The Forest Service complies with this Act through the use of Best Management Practices. This decision incorporates Best Management Practices to ensure protection of soil and water resources. The State of Utah has designated the streams in Utah draining the Mill Creek watersheds above the National Forest boundary as High Quality Waters – Category 1. This indicates that the existing water quality is better than the established standards for the designated beneficial uses. In addition, the State of Utah has determined that the waters draining these watersheds fully meet the beneficial uses for which they are classified. (Condrat 2008).

Executive Order 11990 (Wetlands) - This order requires the Forest Service to take action to minimize destruction, loss, or degradation of wetlands and to preserve and enhance the natural and beneficial values of wetlands. In compliance with this order, Forest Service direction requires that analysis be completed to determine whether adverse impacts would result. (See "Reasons for Categorically Excluding the Proposed Action" section of this document.)

Executive Order 11988 (Floodplains) - This order required the Forest Service to provide leadership and take action to (1) minimize adverse impacts associated with occupancy and modification of floodplains and reduce risk of flood loss, (2) minimize impacts of floods on human safety, health and welfare, and (3) restore and preserve natural and beneficial values served by floodplains. (See "Reasons for Categorically Excluding the Proposed Action" section of this document.)

Wild and Scenic Rivers Act - There are no congressionally designated or eligible wild, scenic, or recreational rivers or streams within the Allotments.

Clean Air Act - I have determined there would be no measurable effects to air quality relative to the decision. The proposed action is not expected to effect air quality on the allotment because there is no change to the management of livestock that would cause additional pollutants to be released to the atmosphere.

Migratory Bird Treaty Act and Executive Order 13186 – Based upon the analysis presented in the Wildlife Technical Reports (Williams 2008, Williams 2008a) the intent for both the Migratory Bird Treaty Act and Executive Order 13186 are being met by reducing the negative impacts and incidental take of migratory bird species on the two allotments by meeting guidelines and standards established in the Forest Plan.

National Historic Preservation Act - See “Reasons for Categorically Excluding the Proposed Action” section of this document.

Civil Rights and Executive Order 12898 of February 16, 1994 (Federal Actions to Address Environmental Justice on Minority Populations and Low-income Populations) - This order requires federal Agencies to the extent practicable and permitted by law to make achieving environmental justice part of its mission by identifying and addressing as appropriate disproportionately high and adverse human health effects, of its programs and policies and activities on minorities and low-income populations in the United States and territorial possessions. This decision complies with this Act. In compliance with this Executive Order the Wasatch-Cache National Forest through scoping and public involvement attempted to identify interested and affected parties, including minorities and low-income populations for this project. No minorities and low-income populations were identified during public involvement activities. This decision is not expected to adversely impact minority or low-income populations.

Based on comments received during scoping, no conflicts have been identified with: other Federal, State, or local agencies; Native Americans; minorities including women; or the civil rights of any United States citizen.

Roadless Area Conservation Rule of January 12, 2001 - The Roadless Area Conservation Rule (RACR) established prohibitions to road construction/reconstruction and timber harvest in areas identified in the 2000 Roadless Area Conservation Final Environmental Impact Statement. Recent opposing court orders have brought into question whether or not the 2001 Rule is in effect. In the event the 2001 Rule is in effect my decision is consistent with that Rule. Guidance for what actions are prohibited in roadless areas is provided in 36 CFR 294.10 to 294.14. My decision neither harvest trees or constructs or reconstructs roads. In the event the 2001 Rule is not in effect direction for managing roadless is set forth in the 2003 Revised Forest Plan. Consistency to the Forest Plan was explained in previous sections.

Travel Management Rule of November 9, 2005 – (36 CFR Parts 212 and 261) – The rule requires designation of roads, trails, and areas open to motor vehicle use. It prohibits the use of motor vehicles off the designated system. My decision does not designate any routes for public motorized use. It is consistent with the Travel Management Rule.

IMPLEMENTATION DATE

This decision is not subject to appeal pursuant to 36 CFR 215.12(f). The proposal is not one of the activities subject to appeal under the 215 rules as clarified on October 19, 2005, by the Federal District Court for the Eastern District of California in Earth Island Institute v. Ruthenbeck. This decision will be implemented by validating that Forest Plan management direction is included in Allotment Management Plans and Term Grazing Permits starting with the 2009 grazing season.

CONTACT PERSON

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/s/ Stephen M. Ryberg

9-26-08

STEPHEN M. RYBERG
District Ranger

DATE

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