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A PRACTICAL GUIDE TO GRAZING TERM PERMIT RENEWAL

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One of the most important issues facing the 18,000 Bureau of Land Management (BLM) grazing permittees and lessees and nearly 6,000 Forest Service permittees is grazing permit renewal. Although Congress has granted to each of you a temporary reprieve from being thrown off your allotments because of the failure of the agencies to get through a timely renewal process, the BLM and Forest Service are still charged with completing the term renewal process at some point. For BLM, this renewal requires the completion of a “standards and guidelines” determination. For the Forest Service, this renewal requires the gathering of monitoring data. Compliance with the National Environmental Policy Act (NEPA) and other environmental statutes is also required for both agencies.

While it is up to the federal agencies to complete these requirements, grazing permittees grazing and lessees can, and should, still play an important role in the permit renewal process. The following are a few suggestions:

1. Be thoroughly engaged in the monitoring process. If monitoring shows that there is an issue on the allotment, work with your federal agencies to determine the cause of that issue. The regulations only require a change in use or management of a term permit if livestock grazing is a significant cause of an environmental issue on the allotment. However, if range or riparian issues are being caused by excess wild horse use, wildlife use, recreation use, geomorphological or material element or some other factor, livestock grazing should still be continued. Documenting the significant cause of any range or riparian issue is critical when it comes to term permit renewal.

2. Some type of NEPA compliance will be required for term permit renewal. NEPA review can range anywhere from a full-blown environmental impact statement to a categorical exclusion. Both the BLM and Forest Service allow the use of categorical exclusions to renew term permits so long as (a) the monitoring data or rangeland health evaluation shows that the allotment is meeting all rangeland health standards or that

livestock grazing is not the causal factor in failing to meet a standard; (b) the allotment does not contain any “extraordinary circumstances,” (c) the permit is being renewed under substantially the same terms and conditions as the prior permit, and (d) Endangered Species Act and other types of reviews have been completed.

“Extraordinary circumstances” could include things like the presence of a Mexican wolf den, the need to change the management of the land to another use, significant cultural or historical sites, a request to analyze the development of water sources, fences, or other physical improvements, etc. According to the current BLM Instruction Memorandums for sage grouse, the mere presence of the species is not, in and of itself, an “extraordinary circumstance.” With all of these factors, the most important thing that has to occur is written documentation. If the agency can document why it is reaching the decision it did, it is going to be significantly harder to challenge. If the agency makes a decision and does not have a supporting rationale at the time of the decision, an administrative or legal challenge is likely to follow.

4. If the agency determines that either an environmental assessment or an environmental impact statement is necessary, a permittee also needs to have significant involvement prior to the “public comment” period. One of the ways that radical environmental groups like to attack grazing permit renewal is based on an allegedly “inadequate NEPA document.” Based on a quick review of the reported court cases, one of the most likely areas of attack is if an agency fails to consider all direct and indirect effects, cumulative impacts and connected actions between renewal of the permit and other uses of the allotment. For example, if the allotment is also subject to oil and gas or other mineral development, developed recreation, or other permitted use, those uses have to be analyzed in the permit renewal NEPA document. Additionally, permit renewal NEPA documents are attacked if the agency fails to adequately analyze alternatives. Note that the agency does not have to fully evaluate every possible alternative to permit renewal, but if the agency is going to exclude a viable alternative from consideration, it has to explain why. Third, litigation and appeals can be filed if there is a perceived data gap. Like the alternative analysis however, as long as the agency notes and explains its rationale for not endlessly collecting data, the courts will defer to the agency explanation.

Now is the time to begin discussing term permit renewal with your agency personnel to see where your permit is on the schedule and to explore any ways you can assist with this process. This is not a process that permittees should ignore, particularly since so many ranches have to have a reliable term permit to survive.

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