



# United States Department of the Interior



BUREAU OF LAND MANAGEMENT  
Tucson Field Office  
3201 E. Universal Way  
Tucson, AZ 85756

April 2016

Certified Mail No. **7009 0960 0000 7835 8266**  
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In Reply Refer To:  
4120 (AZG021)  
Allot. No. 6090

Vera Earl Ranch Inc.  
Ian Tomlinson  
P.O. Box 227  
Sonoita, Arizona 85637

## PROPOSED DECISION

Dear Mr. Tomlinson:

### INTRODUCTION AND BACKGROUND

The Empire Ranch has been a working livestock operation for nearly 150 years and includes the Empire-Cienega Allotment. It is located in the Las Cienegas National Conservation Area just northeast of the town of Sonoita in Pima and Santa Cruz counties. The Empire-Cienega allotment is made up of 36,684 acres of BLM and 37,462 acres of State Trust lands for a total of 74,146 acres. Authorized Animal Unit Months (AUMs) for BLM and State Trust lands are 8,460 and 9,552 respectively for a total of 18,012 AUMs.

The Environmental Assessment (EA) EA #: DOI-BLM-AZ-G020-2016-0016-EA (previously DOI-BLM-AZ-G020-2010-0011) provides an analysis of the proposed action to install fencing to divide the Spring Water pasture and the North Pasture on the Empire-Cienega allotment. This pasture fencing is needed to better utilize the pasture and avoid having concentrations of livestock in the lower elevations. The management goal for this fencing is to allow for better management and more uniform utilization within the two larger pastures. The EA #: DOI-BLM-AZ-G020-2016-0016-EA (previously DOI-BLM-AZ-G020-2010-0011) is available electronically: [bit.ly/EmpireFence](http://bit.ly/EmpireFence).

## **PROPOSED DECISION**

It is my proposed decision to implement the proposed action described in the EA #: DOI-BLM-AZ-G020-2016-0016 (previously DOI-BLM-AZ-G020-2010-0011) as summarized below.

### **Proposed Action**

The following information is directly taken out of the EA #: DOI-BLM-AZ-G020-2016-0016-EA (previously DOI-BLM-AZ-G020-2010-0011), which describes the proposed action in detail.

The proposed action is the construction of two new fence lines on the BLM Empire-Cienega Allotment (#6090) which includes new pasture division fences in the Spring Water and North pastures. This Environmental Assessment includes project level analysis for two new fence construction projects that total 6 miles. These projects are described below.

### **Fence Project Design Features**

**Fence Project Design:** All livestock fencing built, reconstructed or relocated on the Empire-Cienega allotment on Las Cienegas National Conservation Area (LCNCA) will follow BLM fence standards (Figures 1-4 of EA #: DOI-BLM-AZ-G020-2016-0016-EA). Note that the fence line panel standard design (Figure 1 of EA #: DOI-BLM-AZ-G020-2016-0016-EA) allows for the normal, unimpeded movement of wildlife, yet also provides a barrier to livestock movement. Dimensions for three and four strand standard designs are listed below (Table 1).

### **Physical Elements of Fence Projects, General Description:**

**Brushing:** New fence construction, and often the maintenance of existing fencing, involves “brushing” the fence line. Brushing involves the use of chainsaws/handsaws to cut limbs, brush and sometimes small trees that lie within the proposed or existing fence alignment. Brushing is undertaken so that barbed wire can be stretched and fence posts driven without the encumbrance of vegetation.

**Posts:** Posts are then driven into the ground along the “brushed” proposed alignment (or augment posts are driven in along an existing alignment for fence maintenance projects), and barbed or smooth wire is stretched tight along the line of posts.

**Transportation of Materials/Field Crew:** Fencing projects in remote locations require the transport of people and materials overland, off existing road systems. Materials to be used include wire (barbed and smooth), concrete mix (limited application), miscellaneous hand tools, chainsaws, steel posts, steel post wire ties.

**Creation or Augmentation of Physical Barrier:** Once the new fence is completed (or existing fence maintained), a barrier to movement of both livestock and in some cases wildlife is created. As noted above, BLM constructs fence on LCNCA according to BLM wildlife suitable fence designs in order to minimize or mitigate entirely the wildlife movement altering aspects of livestock fencing. Livestock fencing also alters the movement and distribution of livestock in a

pasture. Fence location is designed so that livestock movements are altered in a fashion favorable to more uniformly utilizing forage resources; that is, so that livestock use in any given portion of the pasture is not excessive and a more even grazing effect across the entire pasture is achieved.

<b>Table 1. Dimensions (inches) of Standard BLM Fencing</b>			
<b>Four Strand Design</b>		<b>Three Strand Design</b>	
<b>Strand</b>	<b>Height above Ground</b>	<b>Strand</b>	<b>Height above Ground</b>
Top	42"	Top	42"
Second	30"	Middle	28"
Third	24"	Bottom (smooth wire)	18"
Bottom(smooth wire)	18"		

Note: Verified by Ron Peru, BLM Gila District Civil Engineering Technician

### **New Construction Fence**

**Spring Water Fence:** The Empire Allotment lessee proposes to divide the Spring Water pasture (10,120 acres) into 2 pastures (5,326 and 4,794 acres). The objective of this pasture division (Figure 5 of EA #: DOI-BLM-AZ-G020-2016-0016) is to provide greater livestock rotation flexibility, allow for better growing season's rest, and improve the livestock lessee's ability to move and rotate livestock.

**North Pasture Fence:** The Empire Allotment lessee proposes to divide the North Pasture (9,831 acres) into 2 pastures (6,200 and 3,631 acres). The objective of this pasture division (Figure 6 of EA #: DOI-BLM-AZ-G020-2016-0016-EA) is to create greater rotational flexibility, allow for better growing season's rest, improve opportunities to move and rotate livestock, and improve livestock utilization of the pastures.

### **RATIONALE**

I have determined that the above actions meet the projects purpose and need. The proposed action is reasonable and can be accomplished.

### **AUTHORITY**

The authority for this decision is contained in Title 43 CFR including, but not limited to the following:

#### **§ 4100.0-2 Objectives**

The objectives of these regulations are to promote healthy sustainable rangeland ecosystems; to accelerate restoration and improvement of public rangelands to properly functioning conditions; to promote the orderly use, improvement and development of the public lands; to establish efficient and effective administration of grazing of public rangelands; and to provide for the sustainability of the western livestock industry and communities that are dependent upon productive, healthy public rangelands. These objectives shall be realized in a manner that is consistent with land use plans, multiple use, sustained yield, environmental values, economic and

other objectives stated in 45 CFR part 1720, subpart 1725; the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315, 315a-315r); section 102 of the Federal Land Policy Management Act of 1976 (43 U.S.C. 1740).

4100.0-8 “The authorized officer shall manage livestock grazing on public lands under the principles of multiple use and sustained yield and in accordance with applicable land use plans. Land use plans shall establish allowable resource uses (either singly or in combination), related levels of production or use to be maintained, areas of use, and resource condition goals and objectives to be obtained. The plans also set forth program constraints and general management practices needed to achieve management objectives. Livestock grazing activities and management actions approved by the authorized officer shall be in conformance with the land use plan as defined at 43 CFR 1601.0-5(b).”

§ 4100.0-3 Authority.

- (a) The Taylor Grazing Act of June 28, 1934 as amended (43 U.S.C. 315, 315a through 315r);
- (b) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) as amended by the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.);

§ 4120.3-1 Conditions for range improvements.

- (a) Range improvements shall be installed, used, maintained, and/or modified on the public lands, or removed from these lands, in a manner consistent with multiple-use management.
- (b) Prior to installing, using, maintaining, and/or modifying range improvements on the public lands, permittees or lessees shall have entered into a cooperative range improvement agreement with the Bureau of Land Management or must have an approved range improvement permit.
- (c) The authorized officer may require a permittee or lessee to maintain and/or modify range improvements on the public lands under §4130.3–2 of this title.
- (d) The authorized officer may require a permittee or lessee to install range improvements on the public lands in an allotment with two or more permittees or lessees and/or to meet the terms and conditions of agreement.
- (e) A range improvement permit or cooperative range improvement agreement does not convey to the permittee or cooperator any right, title, or interest in any lands or resources held by the United States.
- (f) The authorized officer will review proposed range improvement projects as required by the National Environmental Policy Act of 1969 (42 U.S.C. 4371 et seq.). The decision document following the environmental analysis will be issued in accordance with § 4160.1.

§ 4120.3-2 Cooperative range improvement agreements.

- (a) The Bureau of Land Management may enter into a cooperative range improvement agreement with a person, organization, or other government entity for the installation, use, maintenance, and/or modification of permanent range improvements or rangeland developments to achieve management or resource condition objectives. The cooperative range improvement agreement shall specify how the costs or labor, or both, shall be divided between the United States and cooperator(s).
- (b) Subject to valid existing rights, title to permanent range improvements such as fences, wells, and pipelines where authorization is granted after August 21, 1995 shall be in the name of the United States. The authorization for all new permanent water developments

such as spring developments, wells, reservoirs, stock tanks, and pipelines will be through cooperative range improvement agreements. The authorized officer will document a permittee's or lessee's interest in contributed funds, labor, and materials to ensure proper credit for the purposes of §§4120.3–5 and 4120.3–6(c).

- (c) The United States will have title to nonstructural range improvements such as seeding, spraying, and chaining.
- (d) Range improvement work performed by a cooperator or permittee on the public lands or lands administered by the Bureau of Land Management does not confer the exclusive right to use the improvement or the land affected by the range improvement work.

#### § 4120.3-4 Standards, design and stipulations.

Range improvement permits and cooperative range improvement agreements shall specify the standards, design, construction and maintenance criteria for the range improvements and other additional conditions and stipulations or modifications deemed necessary by the authorized officer.

#### § 4130.3 Terms and conditions.

(a) Livestock grazing permits and leases shall contain terms and conditions determined by the authorized officer to be appropriate to achieve management and resource condition objectives for the public lands and other lands administered by the Bureau of Land Management, and to ensure conformance with the provisions of subpart 4180 of this part.

(b) Upon a BLM offer of a permit or lease, the permit or lease terms and conditions may be protested and appealed under part 4 and subpart 4160.

(c) If any term or condition of a BLM-offered permit or lease is stayed pending appeal, BLM will authorize grazing use as provided in § 4160.4 with respect to the stayed term or condition.

#### § 4160.1 Proposed Decisions.

(a) Proposed decisions shall be served on any affected applicant, permittee or lessee, and any agent and lien holder of record, who is affected by the proposed actions, terms or conditions, or modifications relating to applications, permits and agreements (including range improvement permits) or leases, by certified mail or personal delivery. Copies of proposed decisions shall also be sent to the interested public.

(b) Proposed decisions shall state the reasons for the action and shall reference the pertinent terms, conditions and the provisions of applicable regulations. As appropriate, decisions shall state the alleged violations of specific terms and conditions and provisions of these regulations alleged to have been violated, and shall state the amount due under §§4130.8 and 4150.3 and the action to be taken under §4170.1.

#### § 4160.2 Protests.

Any applicant, permittee, lessee or other interested public may protest the proposed decision under §4160.1 of this title in person or in writing to the authorized officer within 15 days after receipt of such decision.

#### § 4160.3 Final decisions.

(a) In the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice unless otherwise provided in the proposed decision.

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

Any applicant, lessee or other affected interest may protest this decision in accordance with 43 CFR § 4160.1 and § 4160.2, you are allowed fifteen (15) days from receipt of this notice to file such a protest with:

Melissa Warren  
Tucson Field Office Manager  
3201 E. Universal Way  
Tucson, AZ 85756

A protest may be made in writing and should specify the reasons clearly and concisely as to why you think the proposed decision is in error. Upon the timely filing of a protest, the authorized officer shall reconsider the proposed decision in light of the protestant's statement of reasons for protest and in light of other information pertinent to the case. At the conclusions of this review of the protest, the authorized officer shall serve a final decision on the protestant, or his agent, or both, and this interested public in accordance with 43 CFR § 4160.3 (b).

In the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice. Any applicant, lessee or other person whose interest is adversely affected by the final decision may file an appeal of the decision for the purpose of a hearing before an administrative law judge. A period of **45 days** from your receipt of the **proposed decision** is provided for filing an appeal and petition for a stay of the decision pending final determination on appeal, as provided in 43 CFR § 4.470 and 43 CFR § 4160.4. An appellant may also file a petition for stay of the decision pending final determination on appeal. The appeal and petition for stay must be filed in the office of the authorized officer, as noted above, within 30 days following receipt of the **final decision**, or within 30 days after the date the proposed decision becomes final.

The appeal must be in writing and shall state the reasons, clearly and concisely, why the appellant thinks the final decision is in error and also must comply with the provisions of 43 CFR 4.470. Any appeal should be submitted in writing to:

Melissa Warren  
Tucson Field Office Manager  
3201 E. Universal Way  
Tucson, AZ 85756

Filing an appeal does not by itself stay the effectiveness of the final BLM decision. The appeal may be accompanied by a petition for a stay of the decision pending final determination on appeal, in accordance with 43 CFR § 4.471 and 4.479. Any request for a stay of the final decision in accordance with 43 CFR § 4.21 (b) (1) must show sufficient justification based on the following:

- (1) The relative harm to the parties if the stay is granted or denied.

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

As noted above, the petition for stay must be filed in the office of the authorized officer and additionally to:

- (1) All other parties named in the cc section of this Decision; and
- (2) The appropriate Office of the Solicitor as follows, in accordance with 43CFR § 4.413(a) and (c):

US Department of Interior  
Office of the Field Solicitor  
Sandra Day O'Connor U.S. Courthouse  
401 W. Washington St. SPC 44  
Suite 404  
Phoenix, AZ 85003-2151

Finally, in accordance with 43 CFR § 4.472(b), any person named in the decision from which an appeal is taken (other than the appellant) who wishes to file a response to the petition for a stay may file with the Hearings Division a motion to intervene in the appeal, together with the response, within 10 days after receiving the petition. Within 15 days after filing the motion to intervene and respond, the person must serve copies on the appellant, the appropriate Office of the Solicitor in accordance with Sec 4.413 (a) and (c), and any other person named in the decision.

Sincerely,

/s/

Melissa Warren  
Tucson Field Manager