



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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To: California Desert District Manager

From: State Director

Subject: Implementing provisions within the Consolidated Appropriations Act, 2012 (Public Law 112-74) related to livestock grazing authorizations in the California Desert Conservation Area (CDCA)

Program Area: Livestock Grazing and Land Use Planning

Purpose: To provide direction for implementing provisions within the Consolidated Appropriations Act, 2012 (Public Law 112-74) related to livestock grazing authorizations in the California Desert Conservation Area (CDCA).

Introduction: The Consolidated Appropriations Act, 2012 (Public Law 112-74) includes one modified and three new general provisions which affect management of the Bureau of Land Management's (BLM) livestock grazing program. Washington Office–Instruction Memorandum WO-IM-2012-096 provides direction to the Field regarding implementation of P.L. 112-74 except for specific provisions that apply solely to the CDCA. The WO IM directed the California State Office to provide policy addressing these provisions.

The specific provisions of P.L. 112-74 that apply solely to the CDCA are:

Section 122 (b) "Acceptance of Donation of Certain Existing Permits or Leases"

(b) Acceptance of Donation of Certain Existing Permits or Leases-

(1) During fiscal year 2012 and thereafter, the Secretary of the Interior shall accept the donation of any valid existing permits or leases authorizing grazing on public lands within the California Desert Conservation Area. With respect to each permit or lease donated under this paragraph, the Secretary shall terminate the grazing permit or lease, ensure a permanent end (except as provided in paragraph (2)), to grazing on the land covered by the permit or lease, and make the land available for mitigation by allocating

the forage to wildlife use consistent with any applicable Habitat Conservation Plan, section 10(a)(1)(B) permit, or section 7 consultation under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(2) If the land covered by a permit or lease donated under paragraph (1) is also covered by another valid existing permit or lease that is not donated under such paragraph, the Secretary of the Interior shall reduce the authorized grazing level on the land covered by the permit or lease to reflect the donation of the permit or lease under paragraph (1). To ensure that there is a permanent reduction in the level of grazing on the land covered by a permit or lease donated under paragraph (1), the Secretary shall not allow grazing use to exceed the authorized level under the remaining valid existing permit or lease that is not donated.

The Appropriations language directs the Secretary of the Interior to accept “the donation” of any valid existing grazing permit or lease within the CDCA.¹ The term donation in this provision is interpreted by the BLM to mean “voluntary relinquishment” of the permit or lease to graze on a public land grazing allotment *and* the preferential position that the permittee or lessee enjoyed, in relation to other applicants, to receive that permit or lease.

Policy/Guidance:

1. Section 122(b)(1).

a. Relinquishment and termination. With limited exceptions for allotments with multiple permits or leases (common allotments, discussed below), the Secretary must terminate the permit or lease upon confirmation of relinquishment of a valid existing permit or lease and ensure a permanent end to grazing the lands subject to the relinquished authorization. While termination is automatic, the BLM must update its records to reflect termination of the permit or lease.

b. Individual cattle and sheep allotments. Generally, only one permit or lease holder is authorized to graze on each CDCA designated cattle allotment. There are several CDCA sheep allotments authorized for use solely by one permittee or lessee as well. The relinquishment of preference for these allotments would be accomplished under section 122(b)(1) of the Act. Where a CDCA cattle allotment is grazed by more than one permittee or lessee (“grazed in common”), each permit or lease typically provides that the permit or lease holder’s use must occur in specific areas (pastures) of the allotment. In these situations, the permanent ending of livestock grazing on the land that is subject to the permit or lease is limited to the areas specified by the permit or lease, not the entire allotment. As such, relinquishment in this situation would likewise be accomplished under section 122(b)(1) of the Act.

2. Section 122(b)(2). The limited exception in section 122(b)(1), mentioned above, applies to common allotments (i.e., allotments that are grazed by more than one permittee or lessee).

¹ Within the California Desert Conservation Area there are 44 allotments; 30 had a valid permit or lease at the time Consolidated Appropriations Act, 2012, was enacted (December 23, 2011). Thirteen allotments did not have active permits or leases on December 23, 2011. There are six common allotments. See Attachment 1 as of 12/23/11.

a. Common sheep allotments. In the CDCA, there are a number of common sheep allotments that occur on ephemeral rangelands.² The BLM authorizes grazing on these common allotments only when the production of forage is above a certain level. The BLM issued term grazing permits and leases for these allotments to preference holders in accordance with 43 CFR 4110.2-2(a), however, the term permit or leases do not specify the amount of permitted forage use allowed because the amount of forage use, if any, that the BLM allows in a particular year is established only after the amount of ephemeral forage that is being produced that year is determined.

While section 122(b)(2) does not require a reduction in the size of the allotment, specific forage levels will be eliminated from grazing activity upon confirmation of a valid request for relinquishment. In addition, the level of grazing on the allotment, when considered as a whole, will reflect a reduction in the overall level of grazing activity due to the reduction in use that had been authorized by the relinquished permit or lease.

b. Common cattle allotments. Where permits or leases are issued for the common whole of the cattle allotment, relinquishment of preference by one permit or lease holder would result in a reduction of the overall authorized number of AUMs on the allotment as a whole under 122(b)(2). While the entire allotment would continue to be grazed by the remaining permit or lease holder(s), the relinquished permit or lease would result in a reduction in the number of AUMs available for the whole of the allotment.

3. Implications for land use planning. In addition to automatic termination of the relinquished permit or lease, the Secretary is directed to permanently end grazing on the land covered by the permit or lease. Designating specific areas of land as unavailable for livestock grazing is typically a land use plan decision; however in this case Congress has directed that the lands be unavailable for livestock grazing upon relinquishment. In addition, while forage allocation is typically a land use plan decision, Congress has directed the BLM to make the land available for mitigation by allocating the forage to wildlife use.

To reflect the permanent end to grazing, to allocate the forage to wildlife use, and to bring the CDCA plan into conformance with the Consolidated Appropriations Act, the CDCA plan must be amended. The Consolidated Appropriations Act does not itself amend the CDCA Plan. These land use changes resulting from application of the Act may be accommodated during the next scheduled plan amendment. In the interim, the BLM will implement the statutory provisions and may update the CDCA plan through plan maintenance.

4. Mitigation. The phrase “make the land available for mitigation” must be read in conjunction with the rest of that sentence – “by allocating the forage to wildlife use consistent with any applicable [HCP, ESA section 10 permit, or biological opinion].” Allocating forage that would otherwise be consumed by livestock to wildlife use provides such forage for consumption by wildlife and/or as wildlife habitat for shelter or breeding. Once the permit or lease is relinquished, the forage is no longer authorized to be consumed by livestock. The extent of the value of the forage for wildlife use and mitigation will be determined by the nature, extent and location of the forage, any measures to achieve the mitigation purposes of the forage, and other relevant factors in

² *Ephemeral rangelands* means areas of the Hot Desert Biome (Region) that do not consistently produce enough forage to sustain a livestock operation but may briefly produce unusual volumes of forage to accommodate livestock grazing. 43 CFR 4100.0-5 (2005).

relation to an applicable HCP, ESA section 10 permit, or ESA section 7 biological opinion. The BLM will apply its mitigation policies and the mitigation valuation criteria (developed with the FWS) to development projects as appropriate to offset impacts and contribute to conservation of federal ESA species under section 7 or section 10 of the ESA.

Additionally, BLM and the California Department of Fish and Game have agreed in a Memorandum of Understanding (11/27/2012) to coordinate and consult regarding state compensatory mitigation on BLM lands. This compensatory mitigation may include wildlife forage allocated pursuant to the Consolidated Appropriations Act (*see* MOU section D.2.d.IX).

The CDCA plan (1980) and its land use plan amendments identify existing measures to mitigate impacts to ESA covered species. In the future, additional CDCA plan amendments may change existing mitigation measures or incorporate new mitigation measures consistent with the intent of Section 122(b) or for other purposes. Valuation of forage for wildlife will be determined at the site-specific level through the preparation of biological assessments for proposed projects; proposed projects will be subject to NEPA review.

5. NEPA review. Since termination of the permit or lease, the permanent end to grazing the lands, and the allocation of the forage to wildlife use resulting from the relinquished permit or lease is directed by the Consolidated Appropriations Act, the Secretary (acting through the BLM) has no discretion and no NEPA review is required for these actions. It is expected, however, that the allocation of forage to wildlife use will be part of a site-specific project decision, including its mitigation requirements.

Processing a Section 122(b) Relinquishment Request:

1. The relinquishment must be made in fiscal year 2012 or thereafter.
2. The relinquishment must be of a valid permit or lease in existence as of December 23, 2011, that authorizes grazing on the public lands within the CDCA. The determination whether a valid existing permit or lease exists within the CDCA will be made by the BLM in writing, based upon a review of the permittee or lessee grazing case record. The relinquishment request must be submitted by the permittee or lessee and must acknowledge that permit or lease relinquishment also serves to extinguish their preference for a permit or lease.
3. The BLM will confirm or reject the relinquishment request in writing and will send written confirmation of its action to the person or organization requesting the relinquishment.
4. The relinquishment request of the grazing permit or lease must be made to, and received by the BLM Field Office Manager (FOM) that issued the permit or lease.
5. If the BLM confirms the relinquishment, the permit or lease is automatically terminated.
6. Upon confirmation of relinquishment, the BLM will update the case files accordingly, and will provide a copy of BLM documentation evidencing the relinquishment to the relinquishing party for their record. In addition, BLM will remove the grazing authorization from the Rangeland Administration System and modify the allotment record.

7. BLM will prepare a land use plan maintenance report for the relinquishment action at the time the relinquishment is confirmed.
8. BLM will include a discussion of the relinquishment in a subsequent CDCA land use plan amendment or revision, reflect the permanent end to grazing the land subject to the relinquished permit or lease, and reflect that the land is available for mitigation by allocating to forage to wildlife use consistent with an HCP, ESA section 10 permit, or ESA section 7 biological opinion.

Guiding Principles:

Multiple Use. While relinquishment of grazing preference will result in the elimination of grazing in whole for an allotment with a single permit or in part for a common allotment, the Act provides for the elimination of grazing only and does not address other multiple use which may be authorized on the allotment. Restrictions on multiple use that could impair the forage allocated to wildlife use through relinquishment and the ability of the forage to serve mitigation purposes will be determined in relation to the applicable ESA authorization through subsequent land use planning.

Relinquishment in Whole or In Part. Section 122(b)(1) of the Consolidated Appropriations Act is interpreted to preclude the relinquishment of a permit or lease for an allotment in any manner other than in its entirety. The language in section 122(b)(1) requires relinquishment of the entire permit or lease, not merely a part of the AUMs or a portion of the permit or lease for the allotment. This is differentiated from relinquishment in part, addressed in section 122(b)(2), that applies with respect to common grazing allotments and where one permit or lease holder may relinquish his/her authorization while the remaining holders may continue to graze their assigned portions of the allotment. The CA State Office, Division of Natural Resources, should be consulted in this situation.

Compensation. Any market value ascribed to the forage that becomes available for wildlife use is not an issue that is determined or considered by the BLM. The BLM will not be a party to any agreement or contract that involves third-party compensation to a permittee or lessee that relies on their relinquishment of a valid existing permit or lease.

Project mitigation. Under the Consolidated Appropriations Act a grazing permit or lease will be terminated upon confirmation of relinquishment. The specific means of allocating forage to wildlife use for mitigation purposes are not described by the Act. The use of relinquished forage as mitigation for any particular project development will be dependent on BLM mitigation policies, the mitigation valuation criteria developed by FWS and BLM (which is dependent on the federally listed/proposed/candidate species located on the allotment), any measures that further the mitigation purposes, and the sufficiency of the potential mitigation on a site specific project basis. The timing of the relinquishment by the permittee or lessee and the identification by the BLM of the relinquished forage to be used as mitigation for any particular proposed project impact may ultimately occur at different times.

Existing permits/leases. Only valid permits or leases in existence at the time of the Consolidated Appropriations Act enactment on 12/23/2011 will be subject to relinquishment under the Consolidated Appropriations Act.

Newly issued permits and leases. The Consolidated Appropriations Act does not preclude the issuance of permits or leases within the CDCA for those allotments that were inactive as of the date of enactment of the Act (12/23/2011).

Preference transfer and permit renewal. Existing permits and leases may be transferred or renewed upon application pending applicable NEPA and ESA review.

Protest and appeal. The BLM's confirmation of a valid relinquishment request is not a decision for purposes of protest and appeal under 43 CFR 4160. Because the BLM does not have the discretion to reject or deny a properly executed relinquishment request, no formal decision is necessary.

Permanent end to grazing. Under the Consolidated Appropriations Act, relinquishment of a valid existing permit or lease terminates the permit or lease. The BLM is directed to ensure a permanent end to grazing the allotment upon confirmation of a valid relinquishment. The BLM will reflect the permanent end to grazing the allotment through an amendment or revision of the CDCA plan.

No obligation to compensate for range improvements. When the BLM confirms a voluntary request for relinquishment, the relinquishing party's permit or lease is automatically terminated. Relinquishment under existing law does not obligate the United States to compensate the permittee/lessee for any interest in authorized range improvements used in conjunction with the permit or lease (*see* 43 U.S.C. 1752(g); 43 CFR 4120.3-6(c)). The Consolidated Appropriations Act makes no change to existing law in this regard. Relinquishment of a party's permit or lease generally has no effect on water rights.

Release of base property lien required as part of relinquishment. If the base property to which the preference for a permit or lease that is the subject of a relinquishment request is attached is encumbered or otherwise used to secure a financial or other obligation, then the request for relinquishment must show that the preference holder has obtained written consent to the relinquishment from the base property lienholder(s) or entity(ies) holding the security interest.

Conditional relinquishment. The BLM will not recognize as valid, or be bound by, any provisions that purport to make a relinquishment conditional upon specific action(s) by the Bureau or any other party. If such provisions accompany a proposal of relinquishment, the relinquishing party will be informed that the relinquishment will not be processed and that the BLM will continue to administer the grazing preference and permit or lease on public lands accordingly.

Trespass. If livestock are discovered grazing on lands where grazing has been ended due to relinquishment, the BLM will take appropriate enforcement actions in accordance with 43 CFR subpart 4150.

Background: The BLM permits livestock grazing use on public lands that have been deemed available for livestock grazing by land use plans developed pursuant to the Federal Land Policy and Management Act.

Under the regulations at Title 43, Part 4100 (2005), to qualify for a permit or lease, an applicant must own or control base property.³ Typically, a prospective permittee or lessee purchases base

³ 43 CFR 4110.1(a) “. . . to qualify for grazing use on the public lands an applicant must own or control land or water base property . . .”

property to which the BLM has previously attached a preference⁴, or applies to the BLM to have an existing preference holder transfer preference from their base property to property owned or controlled by the prospective permittee or lessee. The BLM issues the preference holder a permit or lease that specifies how grazing use will be made (generally and at a minimum, the number and kind of livestock authorized, the allotment(s) to be used and periods that use will occur). The number of animal unit months (AUMs) of grazing use that each permit authorizes is based on the total AUMs attached to the base property for that permit.⁵ A permit or lease conveys no title to public land.⁶

Relinquishment of grazing preference for a grazing permit or lease typically results in forage becoming available for livestock grazing by another applicant, or for other purposes depending on land use plan provisions.⁷ Relinquishment of the permit or lease does not typically result in the land becoming unavailable for livestock grazing.⁸ In a typical situation, in order to make an allotment unavailable for livestock permitting, the BLM must amend the applicable land use plan. Relinquishment under the Consolidated Appropriations Act section 122(b) has modified the meaning of relinquishment of valid existing permits or leases within the CDCA as of December 23, 2011, the date of its enactment.

Timeframe: This guidance is in effect immediately.

Budget Impact: None

Manual/Handbook Sections Affected: Qualifications and Preference (H-4110-1) Grazing Management (H-41120-1) and Land Use Planning Handbook (H1601-1).

Contact: For further information contact Dianna Brink, Range Program Lead (916) 978-4645.

Signed by:
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Attachment:
CDCA allotments as of 12/23/2011 (2 pp)

⁴ 43 CFR 4100.0-5 “*Grazing preference or preference* means a superior or priority position against others for the purpose of receiving a grazing permit or lease. This priority is attached to base property owned or controlled by the permittee or lessee.

⁵ 43 CFR 4110.2-2(b) “The permitted use specified shall attach to the base property supporting the grazing permit or grazing lease.”

⁶ 43 CFR 4130.2(c) “Grazing permits or leases convey no right, title, or interest held by the United States in any lands or resources.”

⁷ 43 CFR 4100.0-8 “The authorized officer shall manage livestock grazing on public lands ... in accordance with applicable land use plans. Land use plans shall establish allowable resource uses (either singly or in combination)...Livestock grazing activities and management actions approved by the authorized officer shall be in conformance with the land use plan...”

⁸ BLM IM 2007-067 “Receiving a grazing relinquishment of preference does not, in and of itself, result in the forage allocation becoming unavailable for use by livestock.”

**Attachment 1 Permits in
place as of 12/23/2011**

Allotments 100% inside CDCA	# of Existing Permits/lease	Permit/lease issue date	Permit/lease expiration date
Antelope Valley	1	4/1/2009	2/28/2018
Bissell	1	4/8/2008	2/28/2018
Boron Sheep	1	4/8/2008	2/28/2018
Buckhorn Canyon	0	N/A	N/A
Cady Mountain	0	N/A	N/A
Cantil Common	8	2/23/2009	2/28/2019
		4/1/2009	2/28/2019
		4/17/2008	2/28/2018
		4/8/2008	2/28/2018
		4/3/2008	2/28/2019
		6/9/2008	2/28/2018
		4/8/2008	2/28/2018
		3/11/2008	2/28/2018
Crescent Peak	0	N/A	N/A
Cronese Lake	0	N/A	N/A
Darwin	0	N/A	N/A
Deep Springs Valley	1	4/8/2008	2/28/2018
Double Mountain	0	N/A	N/A
Eureka Valley	1	4/8/2008	2/28/2018
Hansen Common	1	1/26/2009	2/28/2018
Harper Lake	0	N/A	N/A
Horsethief Springs	0	N/A	N/A
Hunter Mt Lee Flat	1	2/6/2009	2/28/2018
Jean Lake	0	N/A	N/A
Johnson Valley	0	N/A	N/A
Kessler Springs	0	N/A	N/A
Last Chance	1	1/13/2009	9/30/2012
Lava Mountains	1	4/8/2008	2/28/2018
Lazy Daisy	1	10/1/2004	2/28/2014
Monolith Cantil	1	5/1/2008	2/28/2018
Oak Creek	0	N/A	N/A
Oasis Ranch	1	1/16/2009	2/28/2018
Ord Mountain	1	8/17/2007	8/16/2017
Pahrump Valley	1	5/14/2010	10/30/2017
Rice Valley	1	1/31/2008	1/30/2018
Round Mountain	1	12/19/2007	12/18/2017
Shadow Mountains	1	10/24/2007	10/23/2017
South Oasis	1	4/8/2008	2/28/2018
Spangler Hills	1	4/1/2009	2/28/2019
Stoddard Mountain	1	10/24/2007	10/23/2017

Tunawee	1	12/31/2008	2/28/2018
Valley View	0	N/A	N/A
Valley Well	1	8/17/2007	8/16/2017
Walker Pass Desert	3	2/26/2009	2/28/2018
		4/1/2009	2/28/2018
		3/16/2009	2/28/2019
Warren	1	10/17/2011	2/28/2019
White Wolf	0	N/A	N/A
Allotments mostly in the CDCA			
Clark Mountain	1*	7/8/2002	7/7/2012
Lacey-Cactus-McCloud	0	N/A	N/A
Olancha Common	1	10/18/2010	2/28/2018
Rattlesnake Canyon	1	8/17/2007	8/16/2017
Rudnick Common	2	12/16/2009	2/28/2018
		4/17/2008	2/28/2018

1* The lease for Clark Mountain expired on 7/7/2012 and was reissued from 8/14/2012 to 8/13/2022.