Idaho State Bar
Real Property Section – Richard Andrus, Chair
Monthly CLE Program
Boise, Idaho – March 7, 2018 @ 12:15 P.M.

What is a Grazing Permit, and why it or other federal land entitlements may be critical to know about in your next real estate transaction?

Presented by W. Alan Schroeder *

* = W. Alan Schroeder, *Schroeder & Lezamiz Law Offices, LLP*, Boise, Idaho, represents a number of clients within the Western United States that are dependent upon Federal land use for, among other things, grazing, road ROWs, ditch ROWs, and land tenure matters upon Federal land. See 43 C.F.R. 1.3.

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OBJECTIVE

- Cover a hypothetical situation; providing a general, baseline due diligence approach to any real estate transaction that could implicate federal land in a Real Estate transaction.

- Cover three (3) of the most common type of federal land authorizations in Idaho; namely, a Grazing Permit, Land Use Permit, ditch or road Right-of-Way authorization

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HYPOTHETICAL SITUATION

Client is selling / buying private land, but …

- the land is intermixed with some Federal land,
- the owner also grazes livestock on Federal land,
- the owner has a pivot that crosses Federal land,
- the owner accesses the land via a road through Federal land, or
- the owner relies upon a ditch that provides water that crosses Federal land …

all that is owned by the *United States of America* (or even the State of Idaho).

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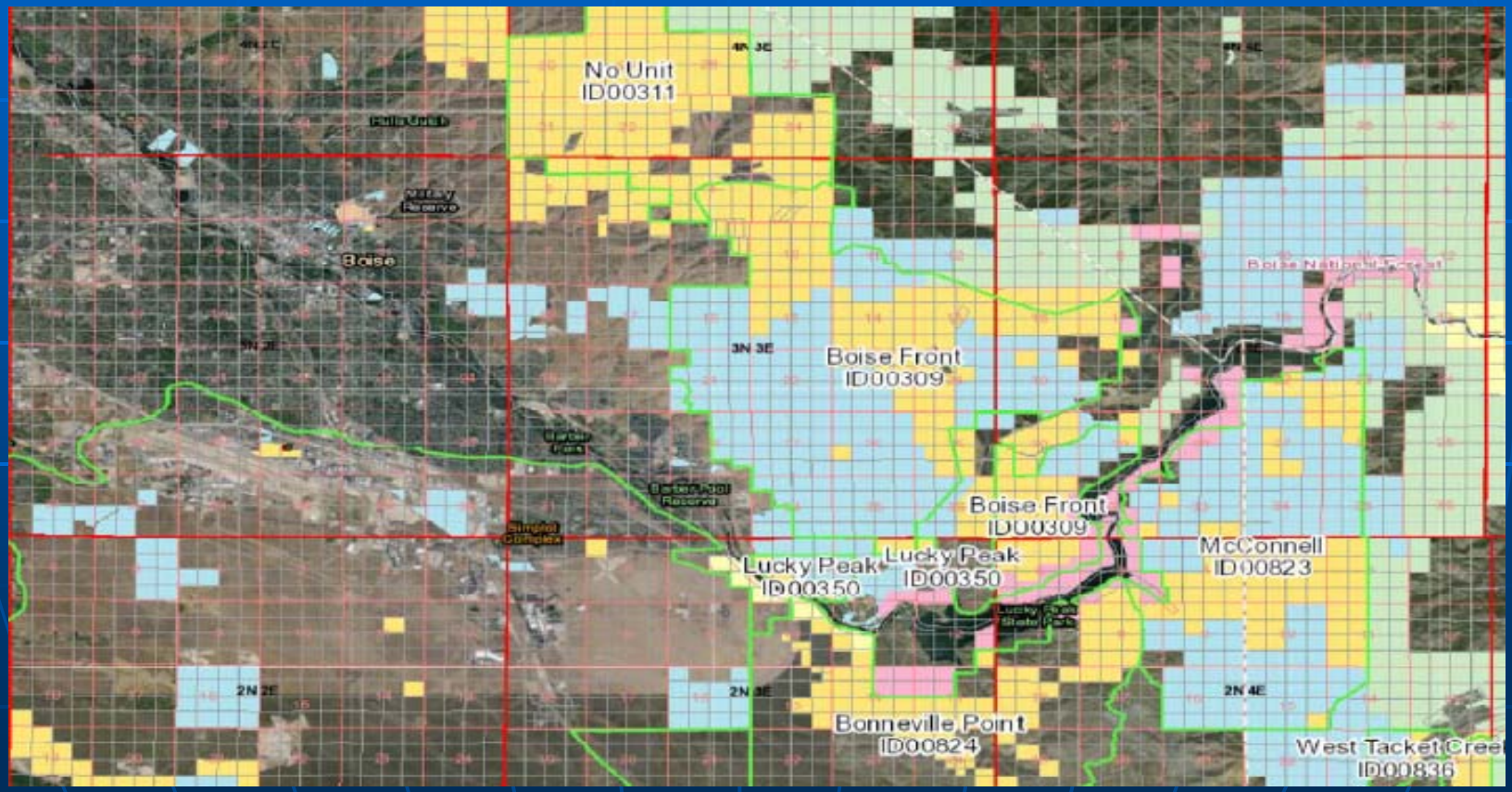
First Step

Check the Land Status



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The federal land could be managed by any of the following federal *land management* agencies **:

- **Public lands (Bureau of Land Management).**
- **National forest system lands (U.S. Forest Service)**
- **Reclamation land (Bureau of Reclamation)**
- **Tribal land (Bureau of Indian Affairs)**
- **Refuge land (U.S. Fish and Wildlife Service)**
- **Park service land (U.S National Park Service)**
- **Defense land (Department of the Defense)**

**** = Note also Idaho State Land (Idaho Department of Lands)**

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Various types of statutory or regulatory entitlements based upon the federal land management agency that could include, among others, the following:

- Grazing permits
- Land use permits and Special use permits
- Road and ditch right-of-way authorizations

- Don’t forget about water rights and mining claims!

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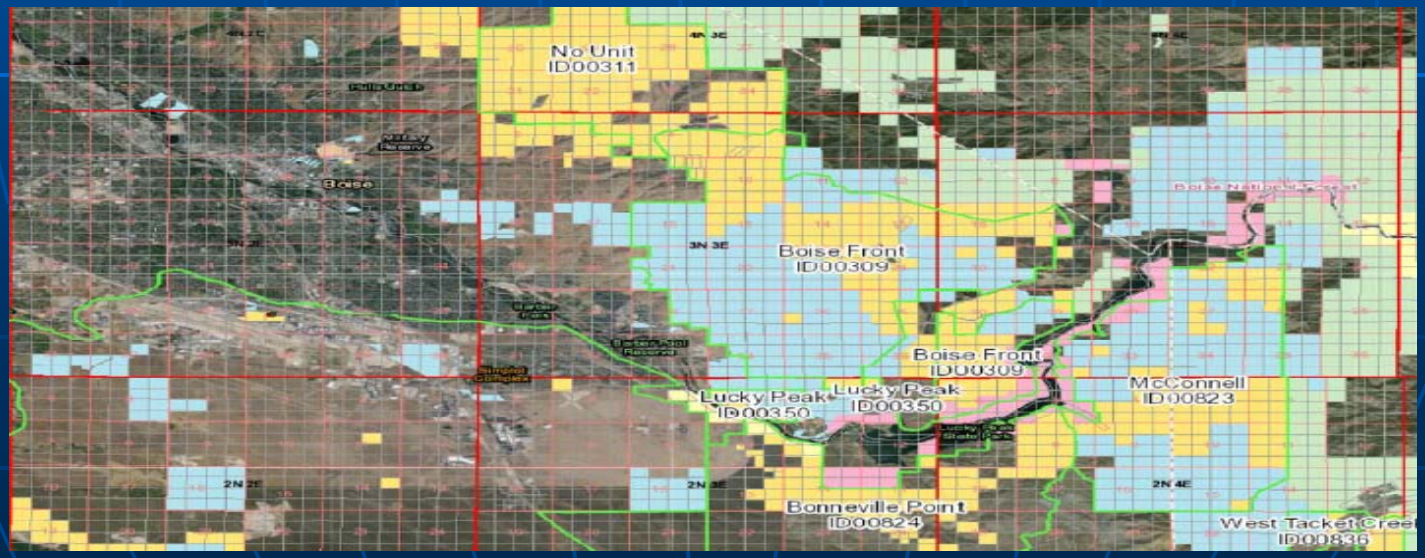
How to check the Land Status?

https://blm-egis.maps.arcgis.com/apps/webappviewer/index.html

https://blm-egis.maps.arcgis.com/apps/webappviewer/index.html?id=6f0da4c7931440a8a80bfe20eddd7550



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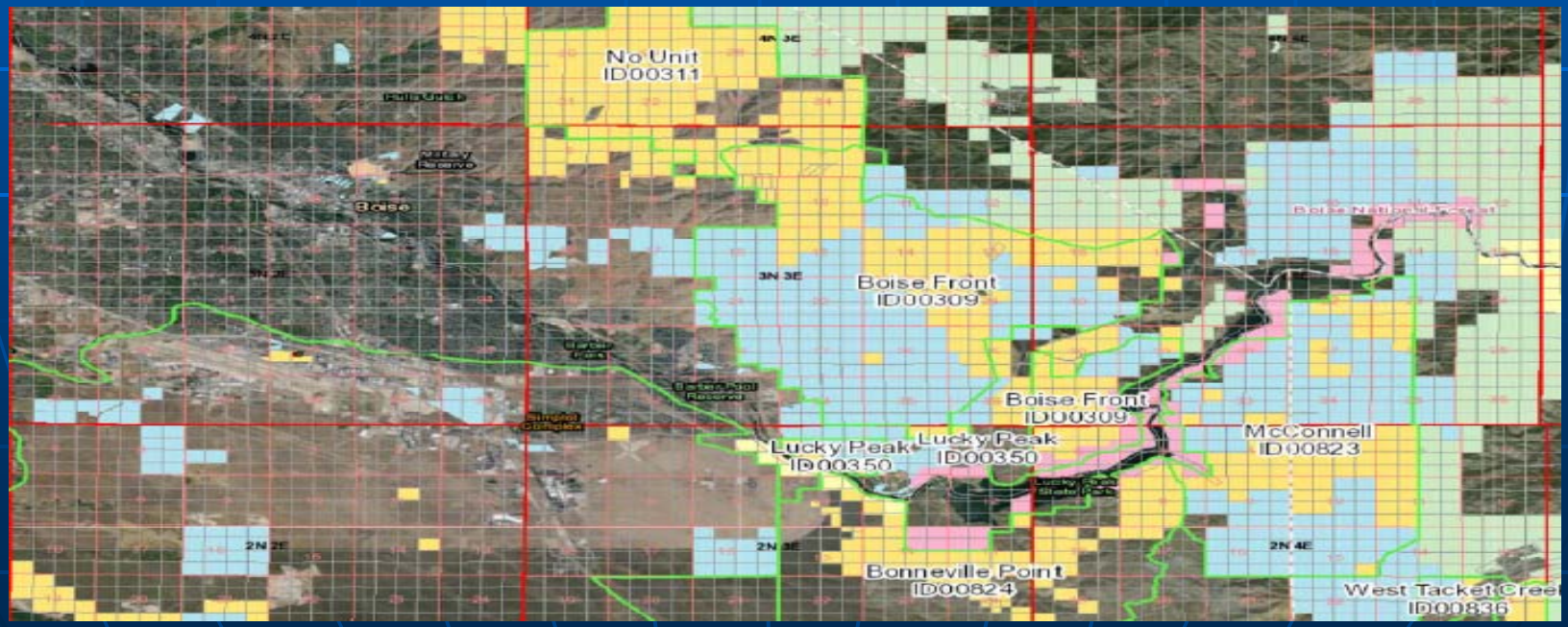
Second Step

Inquire with the client and/or federal land management agency involved as to status of authorization.

Careful about "trusting the client".



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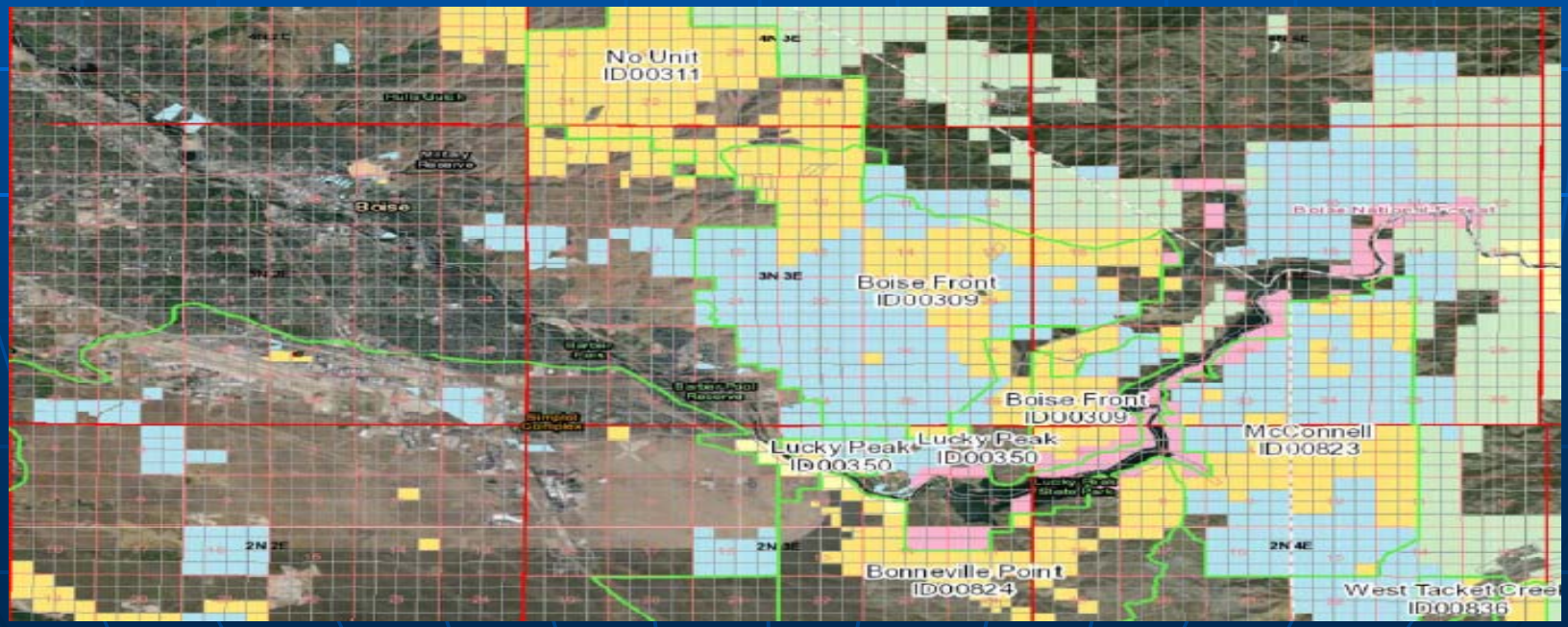
Third Step

Check out the permit / authorization involved.

Name? Term? Rental Fees? Transfer Requirements?



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COMMON TYPES OF FEDERAL LAND AUTHORIZATIONS IN IDAHO

- Grazing Permit – BLM or U.S. Forest Service

https://reports.blm.gov/reports/RAS/ (BLM grazing permits)

- Land Use Permit (BLM) or Special Use Permit (BLM/USFS)

- Road or Ditch right-of-way authorizations – *Pre-1976 Grants vs. Post-1976 Authorizations as to BLM, and Pre-Forest Reservation vs. Post-Forest Reservation as to the USFS*

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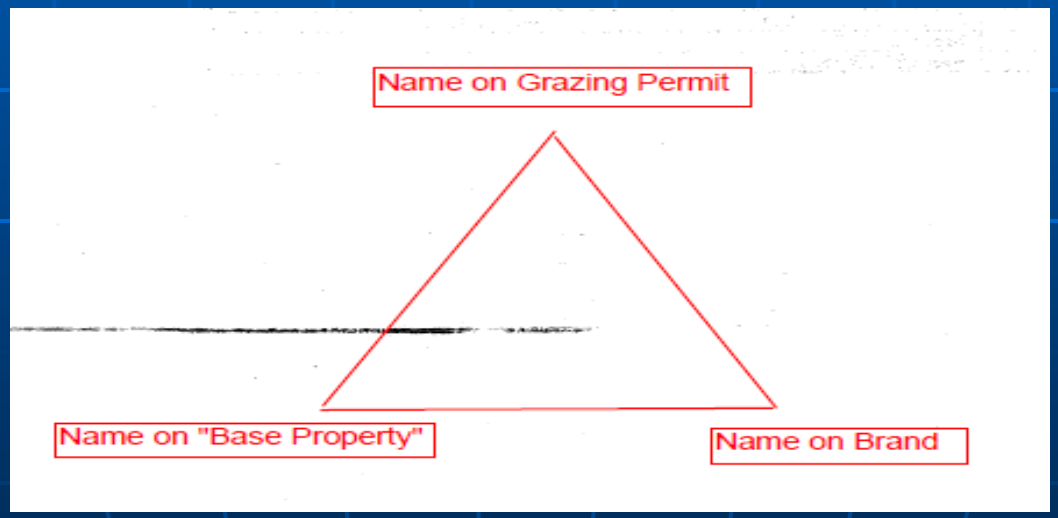
Grazing Permits

- Obtain and Review the Grazing Permit. *Note that 2005 Edition of 43 C.F.R. Part 4100 are the applicable rules for BLM*.

- As to BLM and USFS, obtain the "base property" qualifications and list of range improvements. Ensure the "triangle" exists relative to name on permit, name on "base property," and name on brand.



- Ensure applicable transfer, waiver, or assignment timely occurs as to BLM, USFS, BOR, BOI, or USFWS Grazing Permit(s).

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Grazing Permits w/ base property

CASE FILE COPY

AUTH NUMBER: 1102859
DATE PRINTED: 10/21/2009

Form 4130-2a
(February 1993)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

GRAZING PERMIT

RECEIVED
2009 OCT 29 PM 3:04
BUREAU OF LAND MANAGEMENT
POCATELLO ID

STATE OFFICE ID
AUTH NUMBER 1102859
PREFERENCE CODE 03
DATE PRINTED 10/21/2009
TERM 03/01/2010 TO 02/28/2020

BUREAU OF LAND MANAGEMENT
POCATELLO FO
4350 CLIFF DRIVE
POCATELLO ID 83204

[redacted]

THIS GRAZING PERMIT IS OFFERED TO YOU UNDER 43 CFR PART 4130 BASED ON YOUR RECOGNIZED QUALIFICATIONS. YOU ARE AUTHORIZED TO MAKE GRAZING USE OF LANDS, UNDER THE JURISDICTION OF THE BUREAU OF LAND MANAGEMENT AND COVERED BY THIS GRAZING PERMIT, UPON YOUR ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS GRAZING PERMIT AND PAYMENT OF GRAZING FEES WHEN DUE.
CONTACT YOUR LOCAL BLM OFFICE AT 208-478-6340 IF YOU HAVE QUESTIONS.

MANDATORY TERMS AND CONDITIONS

ALLOTMENT	PASTURE	LIVESTOCK NUMBER	LIVESTOCK KIND	GRAZING PERIOD BEGIN	GRAZING PERIOD END	% PL	TYPE USE	AUMS
16001 CURLEW	BLAPINC	427	CATTLE	04/16	10/31	100	ACTIVE .5391	2794
		259	CATTLE	05/01	10/31	100	ACTIVE .5023	1567
		167	CATTLE	05/01	06/15	100	ACTIVE .4987	253
	ANGER CANYON	55	CATTLE	06/16	08/30	100	ACTIVE .2204	137
	BLAPINC	167	CATTLE	08/31	10/31	100	ACTIVE .0850	240
		35	HORSE	04/16	09/30	100	ACTIVE .0.0138	83
		6	HORSE	10/01	11/15	100	ACTIVE	9

OTHER TERMS AND CONDITIONS: 5133

THIS PERMIT OR LEASE IS ISSUED UNDER THE AUTHORITY OF SECTION 137, PUBLIC LAW 111-88, AND CONTAINS THE SAME MANDATORY TERMS AND CONDITIONS AS THE REVISED OR TRANSFERRED PERMIT OR LEASE.
THIS PERMIT OR LEASE MAY BE CANCELED, SUSPENDED, OR MODIFIED, IN WHOLE OR IN PART TO MEET THE REQUIREMENTS OF APPLICABLE LAWS AND REGULATIONS.

ALLOT NO CONDITIONS
ID 16001

GRAZING USE WITHIN CURLEW ALLOTMENT MUST COMPLY WITH THE AREA MANAGER'S DECISION DATED JULY 3, 1997.

GRAZING MUST COMPLY WITH APPROPRIATE MANAGEMENT PLAN AND/OR GRAZING SCHEDULE/COOPERATIVE RANGELAND AGREEMENT.

SALT SHALL BE PLACED 1/4 MILE FROM WATER TO IMPROVE LIVESTOCK DISTRIBUTION.

ACTUAL USE RECORDS MUST BE SUBMITTED TO THIS OFFICE 15 DAYS FROM THE LAST DAY OF USE.

MAXIMUM GRAZING USE IN RIPARIAN AREAS (VEGETATION ASSOCIATED WITH SPRINGS AND STREAMS), IS LIMITED BY STUBBLE HEIGHT OF RIPARIAN VEGETATION.
RIPARIAN VEGETATION SHALL HAVE A STUBBLE HEIGHT OF NO LESS THAN 4 INCHES AFTER SEPTEMBER 1.

IT IS THE RESPONSIBILITY OF THE PERMITTEE/LESSEE TO INSTALL AND MAINTAIN WILDLIFE ESCAPE RAMPS IN ALL WATERING FACILITIES AND TROUGHS THAT OCCUR ON BLM PUBLIC LANDS WITHIN THEIR ALLOTMENT(S) OR ARE PART OF A BLM RANGE IMPROVEMENT.

THE ALLOTMENT(S) SHOWN ON THIS PERMIT/LEASE SHALL MEET THE REQUIREMENTS AS DEMONSTRATED IN 43 CFR SUBPART 4180 - FUNDAMENTALS OF RANGELAND HEALTH AND THE STANDARDS AND GUIDELINES FOR GRAZING ADMINISTRATION. ANY CHANGES IN MANAGEMENT WILL BE BASED UPON THE RESOURCE EVALUATIONS AND ANALYSIS AS SCHEDULED AND COMPLETED BY THE FIELD OFFICE MANAGER.

USDA Forest Service

FS-2200-10 (v 06-2013)

Page 1 of 10

TERM GRAZING PERMIT - PARTS 1 AND 2
(Reference FSM 2230)

Permittee Number [redacted]

Permit Number [redacted]

PART 1

[redacted] of [redacted] hereinafter

(Name of Permittee) *(Post Office Address, including Zip)*

called the permittee, is hereby authorized to graze livestock owned by the permittee upon designated lands administered by the Forest Service within the Sawtooth (X appropriate box)
[x] National Forest [ ] National Grassland under the following terms and conditions:

1. Description of range. The livestock shall be grazed only upon the area described as follows: described on attached page and/or delineated on the attached map dated 2018, which is part of this permit. (Strike out item or items not applicable.)

2. The number, kind, and class of livestock, period of use, and grazing allotment on which the livestock are permitted to graze are as follows, unless modified by the Forest Service in the Bill for Collection:

LIVESTOCK			PERIOD OF USE		GRAZING
NUMBER	KIND	CLASS	FROM	TO	ALLOTMENT
112	Cattle	Cow/calf	6/16	8/30	Sublett Troughs C&H
110	Cattle	Cow/calf	6/16	9/25	Mineral Gulch C&H

3. It is fully understood and agreed that this permit may be suspended or cancelled, in whole or in part, after written notice, for failure to comply with any of the terms and conditions specified in Parts 1, 2, and 3 hereof, or any of the regulations of the Secretary of Agriculture on which this permit is based, or the instructions of Forest officers issued thereunder; or for knowingly and willingly making a false statement or representation in the permittee's grazing application, and amendments thereto; or for conviction for failure to comply with Federal laws or regulations or State and local laws relating to livestock control and to protection of air, water, soils and vegetation, fish and wildlife, and other environmental values when exercising the grazing use authorized by the permit. This permit can also be cancelled, in whole or in part, or otherwise modified, at any time during the term to conform with needed changes brought about by law, regulation, Executive order, allotment management plans, land management planning, numbers permitted or seasons of use necessary because of resource conditions, or the lands described otherwise being unavailable for grazing. Any suspension or cancellation action may be appealed pursuant to 36 CFR 214.
4. This permit supersedes permit 1323 to The Rose of Snowville, LLC issued 4/14/2008

I HAVE REVIEWED AND ACCEPT THE TERMS OF THIS PERMIT

SIGNATURE OF PERMITTEE OR HIS AUTHORIZED AGENT			DATE
[redacted]			1-25-18
SIGNATURE OF FOREST OFFICER	**NAME (PRINT)**	**TITLE**	**DATE**
Loren P. Poppert	Loren P. Poppert	District Ranger	1/26/18

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Note the potential for other types of Grazing Permits

Contract No. [redacted]

UNITED STATES
DEPARTMENT OF INTERIOR
BUREAU OF RECLAMATION
SNAKE RIVER AREA OFFICE

VALE PROJECT, OREGON

GRAZING PERMIT

THIS AGREEMENT, made this 8th day of March, 2012, in pursuance of the act of June 17, 1902 (32 Stat., 388), and acts amendatory thereof or supplementary thereto, between the UNITED STATES OF AMERICA, hereinafter styled the United States, represented by the Bureau of Reclamation's Snake River Area Office Area Manager, the officer executing this permit, and [redacted], hereinafter styled the Permittee.

2. WITNESSETH, That in consideration of the rents and covenants herein specified, it is hereby mutually agreed by the parties hereto as follows:

3. Description of land Permitted - Subject to the conditions hereinafter set forth, the United States does hereby permit to the Permittee, for grazing purposes, the following described premises in the State of Oregon, to wit:

See Exhibits "A" and "B".

containing 1,220 acres, more or less, with privileges and appurtenances, subject, however, to the exceptions and reservations set out in the succeeding article.

4. Exceptions and Reservations - There are excepted and reserved to the United States from the permit of the premises described in Article 3, the following:

a. All lands to which other rights have lawfully attached before the date of this permit.

b. The right to remove from said lands any or all timber, both standing and down.

c. The right to take from said lands material for the construction of irrigation works and to construct, operate and maintain such works thereon.

d. The right to prospect and carry on developments for oil, gas, coal and other minerals on said lands under the act of October 2, 1917 (40 Stat. 297), and the act of February 25, 1920 (41 Stat. 437).

Form 5-5515
May 1970

Approved by the Commissioner of Indian Affairs

UNITED STATES
DEPARTMENT OF THE INTERIOR

Contract No. Hog John 2007-2016

BUREAU OF INDIAN AFFAIRS
GRAZING PERMIT

RECEIVED
WESTERN NEVADA AGENCY
2007 SEP 24 P 3:47
BUREAU OF INDIAN AFFAIRS
CARSON CITY, NV

(WRITE ALL NAMES IN FULL)

[redacted]	Western Nevada	Fort McDermitt	Paiute-Shoshone
(Range unit number or name)	(Agency)	(Reservation)	(Tribe)

By authority of law and under the regulations (25 CFR 166) prescribed by the Secretary of the Interior, [redacted], is hereby granted permission to hold and graze livestock on the Trust Indian and Government-owned lands in the foregoing range unit of the said Reservation, a schedule of which is attached and made a part of this permit, for a period beginning 15 September 2007, and terminating not later than 14 November 2016.

CLASS OF USE FOR RENTAL CHARGES, STOCKING, ETC.	NUMBER OF HEAD	KIND OF STOCK	GRAZING SEASON		*ANNUAL RENTAL	
			FROM	TO	AMOUNT	DUE DATE
Pasture 1 (500 AUM's)	250	Cattle	09/15	11/15	$7,525.00	02/15
Pasture 2 (108 AUM's)	24	Cattle	10/15	02/28	$1,625.40	02/15
Pasture 3 (92 AUM's)	19	Cattle	04/01	08/30	$1,384.60	02/15
TOTALS: 700 Animal Unit Months (AUM's)					10,535.00	02/15
BIA Administrative Fee (3%)					$316.05	02/15

Brands. Unless authorized by the Superintendent of the Agency in writing, only livestock bearing the brands and marks herein shown shall be grazed under authority of this permit:

R L — Cattle Brands; R L — Ear Mark; R L — Horse brands; R L — Ear Mark

Issued at the above Indian Agency this 24th day of September, 2007

* **PAYMENT:**
To: Bureau of Indian Affairs $316.05
Tribal Treasurer $10,535.00

[SEAL] (Superintendent)

I accept this permit and the attached stipulations.

Witness [redacted] [SEAL]
Witness [redacted] [SEAL]

[redacted] [SEAL]
(Permittee)

(SEE NEXT PAGE(S) FOR ADDITIONAL TERMS AND CONDITIONS)

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Transfer of BLM Preference / Waiver of USFS Grazing Permit

https://www.blm.gov/services/electronic-forms

https://www.fs.fed.us/rangeland-management/grazing/permits.shtml

Form 4130-1a
(January 2018)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

GRAZING PREFERENCE APPLICATION
AND
PREFERENCE TRANSFER APPLICATION
(Base Property Preference Attachment and Assignment)

FORM APPROVED
OMB NO. 1004-0041
Expires: 12/31/2020

FOR BLM USE ONLY
State: _____
Office: _____
Applicant Authorization Number: _____
Date Filed: _____

NOTICE: Payment to BLM for transfer processing service charge (see 43 CFR 4130.8-3) must accompany this application. You are encouraged to contact the BLM office that administers the subject grazing preference before you acquire base property and/or apply for grazing preference. All required forms that are needed to apply for grazing preference, to transfer grazing preference, and for a BLM grazing permit or lease are available at your local BLM office. **FORM INSTRUCTIONS:** (1) To apply for preference already attached to base property that you (transferee) recently purchased, leased or otherwise acquired legal control, and the corresponding BLM grazing permit/lease, complete page 1 of this form, BLM Form 4130-1 (Grazing Schedule – Grazing Application), and BLM Form 4130-1b (Grazing Application–Supplemental Information), and submit these forms to BLM with all documents that BLM requires to support or verify the information stated on the application forms. (2) To apply to transfer preference from base property to other property (regardless of whether the other property already is base property for a BLM grazing preference) and for a corresponding permit or lease, the transferee completes the requirements described in (1), above, and the owner or controller of the base property from which the preference is to be transferred (transferor) completes page 2 of this form. Applicants must obtain all other needed signatures as applicable (e.g. lien-holder consent) to complete the application. Upon receipt of an application for preference or an application to transfer preference, BLM will provide the parties to the transfer with an *Assignment of Range Improvements* (BLM Form 4120-8) for their completion as applicable.

PREFERENCE APPLICANT (TRANSFEREE) INFORMATION

Name: | Mailing Address:

REQUESTED PREFERENCE ATTACHMENT TO BASE PROPERTY

I offer the [ ] land [ ] water described below to meet the mandatory base property qualification in support of my application for grazing use on public lands. I request that BLM confirm the current attachment of, or request that BLM attach, grazing preference to this property as shown below and assign said preference to me for grazing use on public lands based on my ownership or control of this property. I certify that this property is described correctly and that it meets the requirements of the grazing regulations (43 CFR 4110.2-1(a) or (b), as applicable). ***You must submit a copy of documentation that you own or control this property (e.g. deed, lease) with this form. If needed, attach clearly labeled additional sheets.***

Offered Base Property Land (or Water) Property Name and Legal Description (If water base, also describe type of water (e.g. well, spring) and list State Permit/Certificate Numbers)	Number of Base Property Acres by Status: (Or Number of Livestock Served by Water Type) Owned (Full)	Controlled (Part/Availability*)	Grazing Preference Attached or Requested to be Attached To Offered Base Property (Under 43 CFR 4110.2-2(c)) For Grazing Use In: Allotment Number and Name		Forage Amount (AUM's) and Use Status Active	Suspended

Preference Applicant (Transferee) Signature:	Printed Name:	Date:

*NOTE: If part-time water, indicate period of year that it is available for livestock use.

Title 18 U.S.C. Section 1001 and Title 43 U.S.C. Section 1212, make it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

IMPORTANT INFORMATION: Upon BLM approval of this application, BLM will update its records to reflect the change in preference holders and/or attachments of preference to base property. BLM will act upon the application for the grazing permit or lease concurrently through a separate process which will include a review and possible change to the terms and conditions of grazing use from that authorized to the previous preference holder. On a regional basis, BLM land use plans identify those public lands that are available for grazing use under a permit or lease. The terms and conditions of such permits and leases are periodically changed in response to management needs or circumstances.

(Continued on Page 2) (Form 4130-1a)

USDA Forest Service

FS-2200-0012 (v07-2014)
OMB No. 0596-0003 (Exp. 9/30/2018)

Waiver of Term Grazing Permit
(Reference FSM 2230 and FSH 2209.13)

NOTE: The information requested on this form is voluntary; however, all the data requested is necessary if you wish to be considered as a qualified applicant for a grazing permit. The data is requested under authority of 5 USC 301, 36 CFR 222.3.

This MEMORANDUM witnesseth that:

WHEREAS, _____ of _____, hereinafter the seller, received Term Grazing Permit No. _____ from the U.S. Department of Agriculture, Forest Service on _____, authorizing the seller to graze up to _____ head of cow/calf and _____ head of _____ for the period of use from _____ to _____ on the _____ Allotment(s), _____ ☐ National Forest ☐ National Grassland ('X' *appropriate box*) ; and

WHEREAS, such term grazing permit includes a priority for renewal from one term period to the next provided that the permittee has fully complied with the terms and conditions of the expiring term grazing permit; and

WHEREAS, the seller may waive Term Grazing Permit Number 00680B to the Forest Service in favor of a third party which has purchased the base property and/or permitted livestock of the seller; and

WHEREAS, the Forest Service will issue a new term grazing permit to the purchaser of the seller's base property and/or permitted livestock provided that the purchaser is eligible and qualified to hold a term grazing permit; and

WHEREAS, the seller has under date of _____ sold to _____ of _____, hereinafter, the purchaser, _____ head of _____ which are permitted livestock and/or the following base property more particularly described below:

_____
_____
_____
_____

NOW, THEREFORE, the seller here and now surrenders unto the United States all privileges heretofore allowed under Term Grazing Permit Number _____, or that portion of the permit consisting of up to _____ head of _____ and _____ head of _____, and further agrees not to apply at any future time for a renewal of the term grazing permit herein surrendered. The seller further agrees to relinquish unto the United States any and all interest in range improvements constructed or installed by the seller on the lands described in Part 1 of the surrendered term grazing permit or portion thereof or on any other allotment on which the seller may have grazed.

Executed at _____, State of _____ this _____ day of _____, _____. Subject to conditions and requirements printed on the back hereof.

_____ *(Witness)* _____ *(Permittee)*

_____ *(Witness)* _____ *(Permittee)*

(I/We) have read and agree to the conditions and requirements printed on the back hereof.

_____ *(Witness)* _____ *(Purchaser)*

_____ *(Witness)* _____ *(Purchaser)*

Received and filed subject to the conditions and requirements printed on the back hereof, this _____ day of _____, _____.

SIGNATURE OF AUTHORIZED OFFICER	NATIONAL FOREST OR GRASSLAND

Previous versions of this form are obsolete

Page 1 of 2

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Land Use Permit or Special Use Permit

- Obtain and Review the BLM Land Use Permit or BLM / USFS Special Use Permit.
- Ensure transfer or assignment timely occurs.

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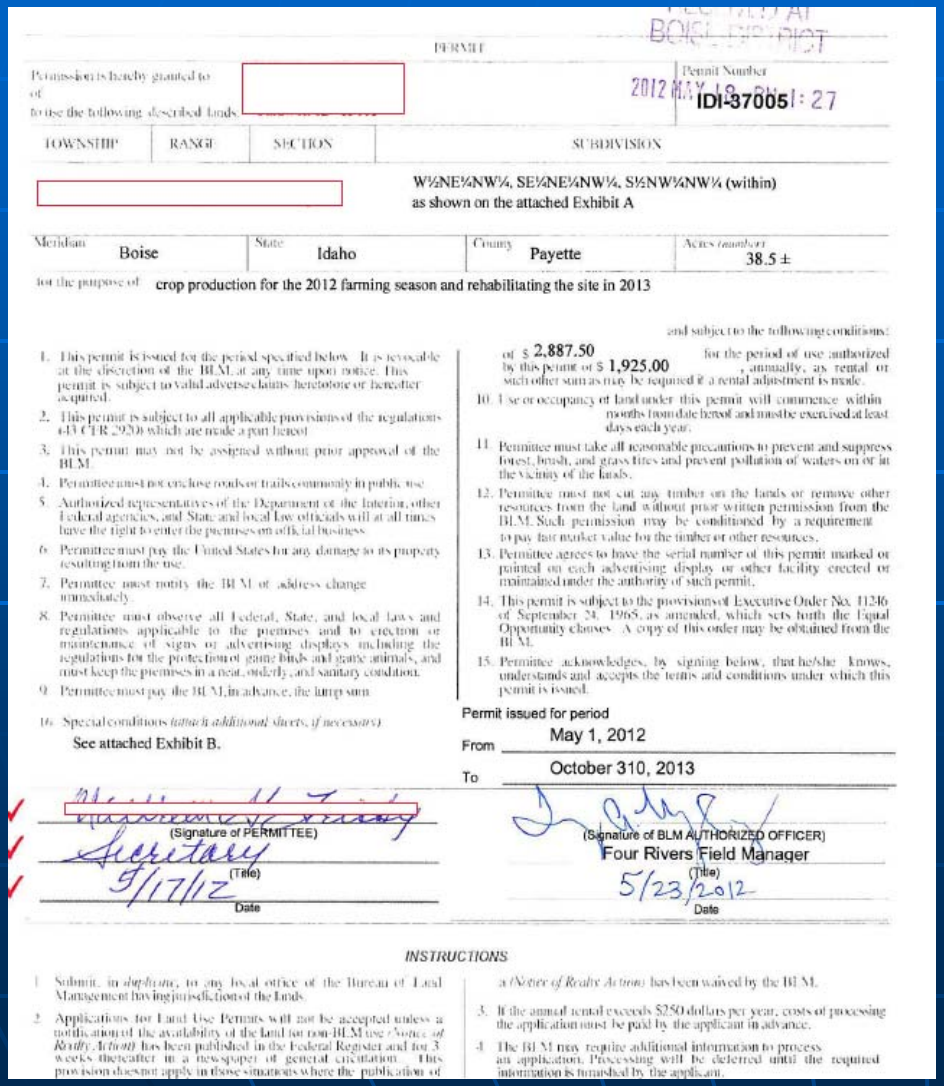
Example of BLM Land Use Permit related to a pivot.



PERMIT

Permission is hereby granted to [redacted] of [redacted] to use the following described lands:

Permit Number IDI-37005

TOWNSHIP	RANGE	SECTION	SUBDIVISION
[redacted]			W½NE¼NW¼, SE¼NE¼NW¼, S½NW¼NW¼ (within) as shown on the attached Exhibit A

Meridian	State	County	Acres (number)
Boise	Idaho	Payette	38.5 ±

for the purpose of crop production for the 2012 farming season and rehabilitating the site in 2013

and subject to the following conditions:

1. This permit is issued for the period specified below. It is revocable at the discretion of the BLM at any time upon notice. This permit is subject to valid adverse claims heretofore or hereafter acquired.
2. This permit is subject to all applicable provisions of the regulations 43 CFR 2920 which are made a part hereof.
3. This permit may not be assigned without prior approval of the BLM.
4. Permittee must not enclose roads or trails commonly in public use.
5. Authorized representatives of the Department of the Interior, other Federal agencies, and State and local law officials will at all times have the right to enter the premises on official business.
6. Permittee must pay the United States for any damage to its property resulting from the use.
7. Permittee must notify the BLM of address change immediately.
8. Permittee must observe all Federal, State, and local laws and regulations applicable to the premises and to erection or maintenance of signs or advertising displays including the regulations for the protection of game birds and game animals, and must keep the premises in a neat, orderly, and sanitary condition.
9. Permittee must pay the BLM, in advance, the lump sum of $ 2,887.50 for the period of use authorized by this permit or $ 1,925.00 , annually, as rental or such other sum as may be required if a rental adjustment is made.
10. Use or occupancy of land under this permit will commence within months from date hereof and must be exercised at least days each year.
11. Permittee must take all reasonable precautions to prevent and suppress forest, brush, and grass fires and prevent pollution of waters on or in the vicinity of the lands.
12. Permittee must not cut any timber on the lands or remove other resources from the land without prior written permission from the BLM. Such permission may be conditioned by a requirement to pay fair market value for the timber or other resources.
13. Permittee agrees to have the serial number of this permit marked or painted on each advertising display or other facility erected or maintained under the authority of such permit.
14. This permit is subject to the provisions of Executive Order No. 11246 of September 24, 1965, as amended, which sets forth the Equal Opportunity clauses. A copy of this order may be obtained from the BLM.
15. Permittee acknowledges, by signing below, that he/she knows, understands and accepts the terms and conditions under which this permit is issued.
16. Special conditions (attach additional sheets, if necessary):

See attached Exhibit B.

Permit issued for period

From May 1, 2012

To October 310, 2013

(Signature of PERMITTEE)

Secretary (Title)

5/17/12 Date

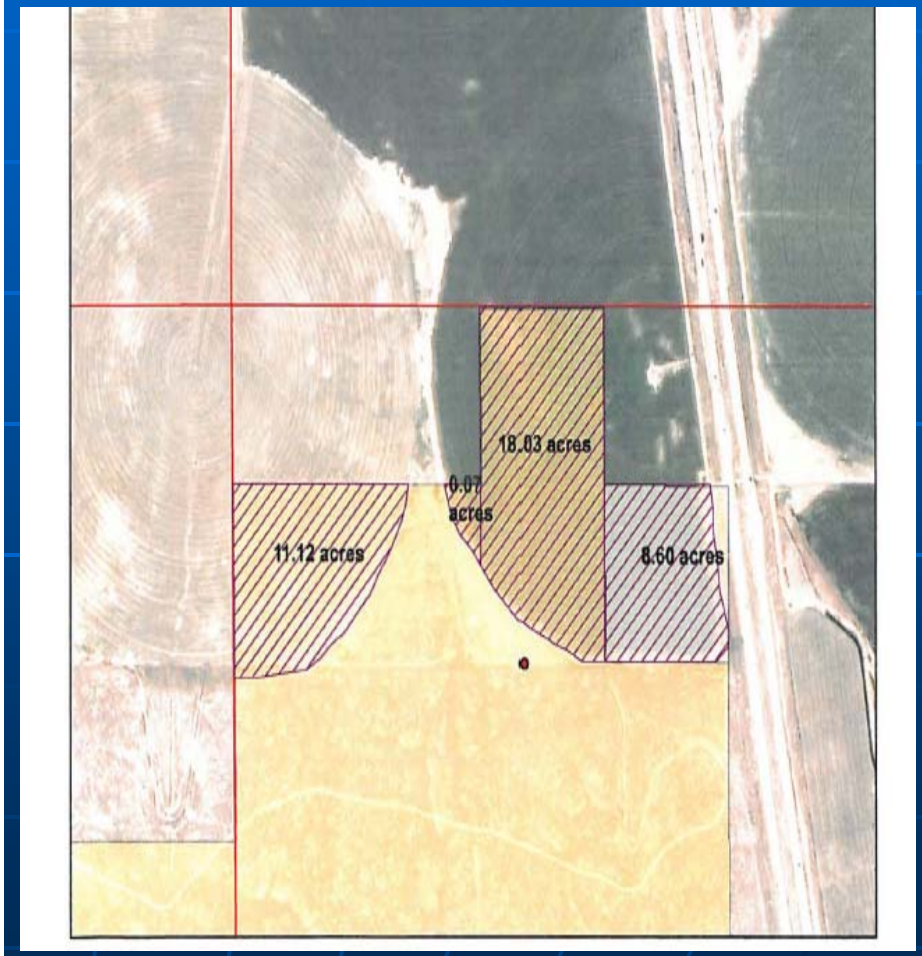
(Signature of BLM AUTHORIZED OFFICER)

Four Rivers Field Manager (Title)

5/23/2012 Date

INSTRUCTIONS

1. Submit, in duplicate, to any local office of the Bureau of Land Management having jurisdiction of the lands.
2. Applications for Land Use Permits will not be accepted unless a notification of the availability of the land for non-BLM use (Notice of Realty Action) has been published in the Federal Register and for 3 weeks thereafter in a newspaper of general circulation. This provision does not apply in those situations where the publication of a (Notice of Realty Action) has been waived by the BLM.
3. If the annual rental exceeds $250 dollars per year, costs of processing the application must be paid by the applicant in advance.
4. The BLM may require additional information to process an application. Processing will be deferred until the required information is furnished by the applicant.



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Ditch or Road Rights-of-Way

- Determine whether the ditch or road right-of-way existed prior to 1976 as to public land (BLM) or prior to forest reservation as to national forest system lands (USFS).

- *If AFTER 1976 or if AFTER reservation*, it will likely be in the form of a *Federal Land Policy and Management Act* authorization or Special Use Permit. Client or agency should have copy. You likely need to coordinate and confirm name status, term status, rental fee status, and transfer / assignment status.

- *If BEFORE 1976 or if BEFORE reservation*, this is much more challenging due to the variety of Federal Acts involved. You may likely need to coordinate and confirm name status, term status, and transfer / assignment status.

- THESE ARE TYPICALLY EXCEPTED ON ALL TITLE INSURANCE POLICIES.

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Type of pre-1976 / reservation Road Rights-of-Way

- *Act of 1866 -- If prior to 1976 or if prior to reservation*, there could exist *adjudicated or un-adjudicated road or ditch* rights under the Act of July 26, 1866, Section 8 (RS 2477, 43 U.S.C. § 932) as to roads, and Section 9 (RS 2339, 43 U.S.C. § 661) as to ditches). Note possible administrative determinations?

- *Other Acts -- If prior to 1976 or if prior to reservation*, there could exist other types of ditch / canal / reservoir authorizations, like, among others, the Act of March 3, 1891 (43 U.S.C. §§ 946-949), the Act of January 21, 1895 (43 U.S.C. § 956), and the Act of May 11, 1898 (43 U.S.C. § 951).

- *Boise Reclamation Project* – Note that there could exist unrecorded ditches or laterals in the Boise-Meridian area.

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Example of USDI 1891 and 1898 Reservoir Authorization.

DEPARTMENT OF THE INTERIOR

GENERAL LAND OFFICE

WASHINGTON December 15 1921.

ADDRESS ONLY THE
COMMISSIONER OF THE GENERAL LAND OFFICE

Submitting map for approval.

DEPT OF THE INTERIOR RECEIVED DEC 15 1921 SECY'S OFFICE APPTS. MAILS & FILES

File #10

The Secretary

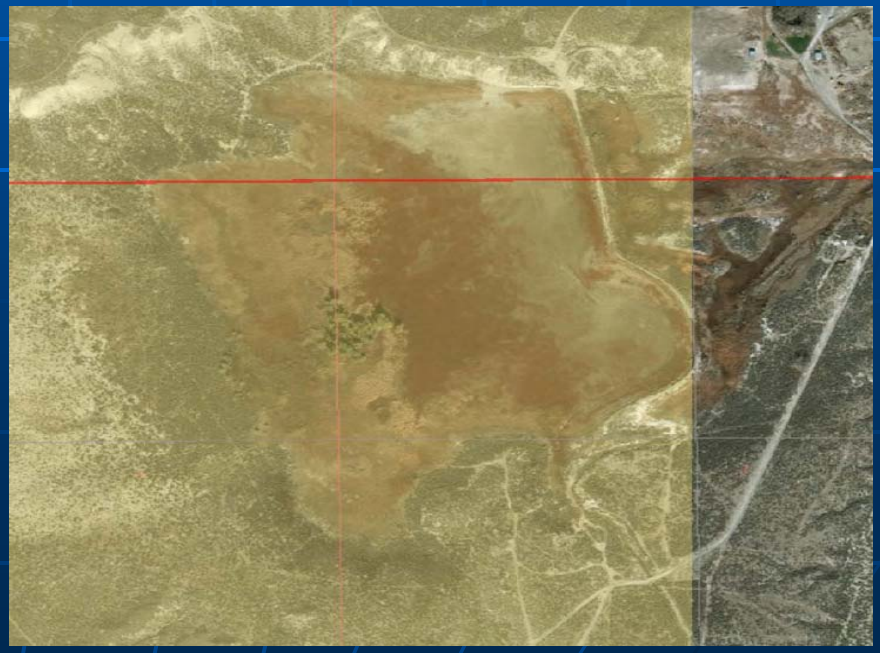
of the Interior.

Sir:

Pursuant to the provisions of the act of March 3, 1891 (26 Stat., 1095), and Section 2 of the Act of May 11, 1898 (30 Stat., 404), T. A. Foreman has applied for easement for a reservoir site covering parts

Idaho, land district, shown on the accompanying map.

This application has been examined and found to conform to the regulations and the map conforms to the township plats. Favorable reports on the applica-



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How to determine nature and scope of pre-1976 authorizations?

- Ask client and/or ask agency.
- Check the U.S. Department of the Interior, Master Title Plat.
  https://glorecords.blm.gov/default.aspx
- Check Idaho Department of Water Resources, Water Right records.
  https://www.idwr.idaho.gov/apps/ExtSearch/WRAJSearch/WRADJSearch.aspx
- Check Patent and Patent application records.
- Other. Court? Historical experts?

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Thank you

QUESTIONS?

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Comparison of USFS and BLM Grazing Administration Requirements and Processes

Term Grazing Permit Administration Comparison

Requirement / Process	Forest Service	Bureau of Land Management (BLM)
Base Property Requirements	To qualify for a term grazing permit, an applicant must own base property to be permitted. Base Property is land and improvements owned and used by the permittee for a farm or ranch operation and specifically designated by him to qualify for a term grazing permit.	BLM requires an applicant to own or control base property. The base property is land capable of serving as a base of operation for livestock use. For the desert southwest, base property can be water.
Livestock Ownership Requirement	To qualify for a term grazing permit, an applicant must own livestock to be permitted.	BLM does not require ownership of the livestock, but does require proof of control, such as a lease. A surcharge is added for grazing livestock not owned by the permittee.
Permit Acquisition Process	Qualified applicants may be issued permits with term status through prior use, the grant process, purchase of base property or livestock with waiver, or interchange of permits with other agencies.	The preference for obtaining a permit can be acquired by purchasing or leasing base property from a current permittee, or by the current permittee transferring preference to a new base property owned or controlled by someone who wants to acquire a permit.
Permit Renewal Process	Issue new permits with term status to previous holders at the end of each term permit period, provided they continue to meet eligibility and qualifications.	The current permittee has preference for receiving a new permit when the old one expires.
Permit Leasing	Holders of grazing permits with term status shall not lease base property or permitted livestock to someone else and allow the lessee to use the grazing permit.	Grazing permit preference for obtaining a permit can be acquired by leasing base property from a current permittee.

Additional BLM narrative on these topics.

Base Property Requirements

BLM requires ownership or control of base property. For most of the west, the base property is land capable of serving as a base of operation for livestock use. For the desert southwest, base property can be water.

Livestock Ownership Requirement

BLM does not require ownership of the livestock, but does require proof of control and adds a surcharge for grazing livestock not owned by the permittee (with some exceptions for sons and daughters of the permittee). The amount of the surcharge varies from state to state because it is based on the private grazing land lease rate (determined by the National Agricultural Statistics Service for each state).

Permit Acquisition Process

The BLM preference for obtaining a permit can be acquired by purchasing or leasing base property from a current permittee, or by the current permittee transferring preference to a new base property owned or controlled by someone who wants to acquire a permit. The person acquiring the preference through one of these two methods then applies for a permit, and BLM reviews if the new applicant qualifies in accordance with the regulations. If the applicant qualifies (and usually does), a permit is issued. For vacant allotments, BLM has a list of criteria for selecting from amongst multiple applicants.

Permit Renewal Process

For permit renewals in the BLM, the current permittee has preference for receiving a new permit when the old one expires. Ideally, the current permittee applies for a new permit before the existing permit expires. Existing monitoring data and assessments are reviewed to ensure land health standards are being met. Changes from the old permit can be requested by the permittee, or BLM may propose to make adjustments based on changing land conditions. A National Environmental Policy Act document (categorical exclusion, environmental assessment, or environmental impact statement) is completed. Consultation with US Fish and Wildlife is completed if the permit authorizes use on allotment(s) with T&E species habitat. The BLM issues a proposed decision, followed by a final decision. After the administrative review period during which the decision can be appealed for a hearing by an Administrative Law Judge, the renewed permit is issued.

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