INTERIOR BOARD OF LAND APPEALS

Gino Foianini v. Bureau of Land Management

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GINO FOIANINI

v.

BUREAU OF LAND MANAGEMENT

IBLA 2005-44 Decided May 7, 2007

Appeal from a decision of Administrative Law Judge Marcel S. Greenia granting BLM's motion for summary judgment and finding a rational basis for BLM's full force and effect decision closing Pasture 4 in the Sage Creek Mountain Allotment. WYW-04-2004-01.

Affirmed as modified.

1. Grazing Permits and Licenses: Cancellation or Reduction

BLM may reduce permitted grazing use when monitoring or field observations demonstrate, among other things, that grazing use is causing an unacceptable level or pattern of utilization. Where resources on an allotment require immediate protection because of conditions such as drought, fire, flood, insect infestation, or when continued grazing use poses an imminent likelihood of significant resource damage, BLM may close grazing allotments, or portions thereof, by full force and effect decisionmaking, after consulting or reasonably attempting to consult with affected permittees.

2. Grazing Permits and Licenses: Adjudication--Grazing Permits and Licenses: Appeals--Grazing Permits and Licenses: Hearings--Rules of Practice: Appeals: Burden of Proof

BLM enjoys broad discretion in determining how to adjudicate and manage grazing privileges. When BLM issues a decision taking actions affecting the grazing

privileges of a livestock permittee, those actions may be regarded as arbitrary, capricious, or inequitable only if they are not supportable on any rational basis, and an appellant seeking relief from such a decision has the burden to establish by a preponderance of the evidence that the decision is unreasonable or improper.

3. Grazing Permits and Licenses: Cancellation or Reduction

Where the administrative record demonstrates that severe drought conditions existed on a grazing allotment over a period of several years, and utilization on riparian areas, which were either functioning-at-risk or non-functional, had reached maximum levels in the final pasture to be grazed under the existing allotment grazing plan, BLM does not abuse its discretion in closing the allotment to grazing prior to the date scheduled, even though some areas of the pasture had not been grazed to maximum utilization levels.

APPEARANCES: Karen Budd-Falen, Esq., and Brandon L. Jensen, Esq., Cheyenne, Wyoming, for the appellant; Jennifer E. Rigg, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ROBERTS

Gino Foianini has appealed an October 29, 2004, decision of Administrative Law Judge (ALJ) Marcel S. Greenia, which affirmed an October 14, 2003, decision by the Acting Field Manager, Rock Springs (Wyoming) Field Office, BLM, closing Pasture 4 of the Sage Creek Mountain Allotment (Allotment) on October 15, 2003, two weeks prior to the October 31 closing date authorized by the Sage Creek Mountain Allotment Grazing Plan (Grazing Plan). Administrative Record (AR), Ex. 2. While the time period for the situation which gave rise to this appeal has passed, the appeal pertains to a BLM decision to unilaterally close an allotment, and presents issues which are capable of repetition, while evading review. It is therefore proper to adjudicate the appeal even though the relief sought by the appellant cannot be granted for the particular event at issue. *See Randall G. Nelson*, 164 IBLA 182, 187 (2004), and cases cited.

Foianini was authorized to graze 372 cattle on the Allotment during the 2003 grazing season, subject to terms and conditions set forth in a May 9, 2003, BLM decision. AR, Ex. 3, at unnumbered (un.) 4. One of those conditions was

that Foianini, along with other permittees, would have to remove his livestock if maximum use levels in the Allotment were reached. *Id.* at un. 4. The 1999 Grazing Plan established maximum utilization for riparian areas in the Allotment at 40%; for upland areas, maximum use levels were 50%. AR, Ex. 2, at un. 2. BLM issued the October 14, 2003, full force and effect (FFE) decision because it determined that maximum use limits had been reached on the riparian areas in Pasture 4. Closing Pasture 4 effectively closed the Allotment, which was on a rest/rotation grazing schedule ending on October 31 of each year from 1999 through 2004. *Id.* Foianini timely appealed the decision, and the matter was duly assigned to Administrative Law Judge Greenia pursuant to 43 C.F.R. § 4.470.

Appellant maintained before Judge Greenia, as he does in this appeal, that BLM arbitrarily violated the terms of the 1999 Grazing Plan by closing Pasture 4 two weeks early, because maximum use levels in the uplands portions of the Pasture had not been reached. We find that, under the circumstances set forth in the administrative record, Judge Greenia properly granted BLM's motion for summary judgment. Accordingly, we affirm his decision, as modified in footnote 7 of this opinion.

I. FACTUAL SUMMARY

In October 1998, BLM issued a Wyoming Rangeland Standards Conformance Review Summary that found that neither riparian conditions nor upland vegetation across the Henry's Fork Allotment, located in southwest Wyoming about 20 miles southwest of the town of Green River, met the Wyoming Rangeland Standards. BLM Cross-Motion for Summary Judgement (Cross-Motion), Ex. D; Foianini Motion for Summary Judgment (MSJ), Ex. G, at 8. Accordingly, in 1999, after consultation with affected grazing permittees and completion of an environmental analysis, BLM divided the Henry's Fork Allotment into two new allotments with associated fencing, the Cedar Mountain Allotment and the Sage Creek Mountain Allotment. In addition, BLM established the new Allotment Grazing Plan (Grazing Plan).[1] MSJ, Exs. D-G.

The Grazing Plan established a deferred rotation grazing system for the four pastures in the Allotment for years 1999 through 2004. Grazing Plan, AR, Ex. 2. The Grazing Plan provided that cattle would be rotated out of each pasture when grazing approached 40% of maximum utilization levels in riparian areas, and 50% utilization levels on uplands. *Id.* It specifically stated that "[w]hen utilization levels are reached for areas within a pasture, the permittees are required to *either* move the livestock to an area within the pasture where utilization levels are not met, *or* to move the

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[1] Additional background information about the Sage Creek Mountain Allotment and its predecessor, the Henry's Fork Allotment, is summarized in Judge Greenia's decision at pages 1-3.

livestock to the next scheduled pasture." *Id.* It also stated that "[u]pon scheduled move dates, attainment of, or projected attainment of utilization levels, the permittees *will* move their livestock," and it granted permittees five days to move all livestock after utilization levels are reached, or are projected to be reached. *Id.,* emphasis supplied.

The Allotment suffered severe drought conditions for four consecutive years, including 2003. AR, Ex. 3, un. 2-3. Various adjustments in grazing authorizations were made in 2001 and 2002 to accommodate drought conditions, including early closures. *Id.* at un. 3. At the start of the 2003 grazing year, BLM required all six cattle permittees to reduce their herds using Allotment lands by 20 percent, and notified the permittees that if the drought continued through the season, they would be subject to an early removal date, as permitted by the Grazing Plan. *Id.* at un. 1, 3. The 20% reduction in herd size brought the total number of cattle permitted to graze in 2003 from about 1,600 to about 1,280 head. *Id.* at un. 1. Thus, the other five permittees collectively used the Allotment to graze approximately 900 head.[2]

Pasture 4 was scheduled for cattle grazing from August 20 to October 31. AR, Ex. 2, at un. 2. In early October 2003, after assessing the condition of the range in Pasture 4, BLM sent certified letters to all allottees grazing cattle on the Allotment informing them that riparian use in Pasture 4 was nearing the 40% maximum use level permitted by the Grazing Plan, and that, as a result, all cattle would need to be removed from the Allotment by October 15, 2003. AR, Exs. 5 and 7. Foianini spoke with BLM Rangeland Management Specialist Joanna Forliano on October 7, 2003, stating that he disagreed with that decision and thought his cattle should continue grazing on the uplands. AR, Ex. 8.

As the result of her discussions with Foianini, Forliano again measured levels in Pasture 4, accompanied by Glen Iorg, one of the other permittees using the allotment. Forliano and Iorg documented that the sedge in the Dry Creek area had been reduced from an ungrazed height of 5 inches to 2.95 inches, confirming that the 40% maximum use level had been exceeded. AR, Ex. 9, at un. 2. Iorg's notes also stated, "We also found heavy use on the willows and all of us except Gino [Foianini] agreed to start bring[ing] the cows home on 10/11/03." *Id*.

As of October 14, Foianini had not begun removal of his herd. BLM issued the FFE Decision to Foianini on October 14, 2003, pursuant to 43 C.F.R. § 4110.3-3(b) and 4160.3(f). Regulation 43 C.F.R. § 4110.3-3(b) permits BLM to close allotments or portions thereof in order to immediately protect resources jeopardized by adverse conditions or overgrazing, after consultation with appropriate parties, and provides

[2] Judge Greenia's opinion notes that the total number of cattle grazing on the allotment was over 1,000 head. *E.g.*, ALJ decision at 9, 10.

that such closures may be made effective upon issuance of the decision, or upon a date specified. Regulation 43 C.F.R. § 4160.3 permits BLM to place grazing decisions into effect immediately, notwithstanding 43 C.F.R. § 4.21(a)(1), which generally provides that a BLM decision will not be effective during the 30 days in which an affected party may file a notice of appeal with this Board. Foianini timely appealed, and the matter was referred by this Board to the Hearings Division on November 13, 2003.[3]

Although the FFE decision pertained only to Foianini, BLM shortened the grazing season by approximately two weeks for all six permittees authori zed to use Pasture 4 for cattle grazing. Oct. 6, 2003, certified letter to Allotment permittees.

II. FOIANINI'S ARGUMENTS AND JUDGE GREENIA'S DECISION [4]

Before the ALJ, Foianini argued, *inter alia*, that BLM's decision to close the allotment was not in accordance with the Grazing Plan (AR, Ex. 5, at 10), that BLM failed to consult with appellant prior to issuing the FFE decision (*Id.* at 14), and that it failed to provide a "reasoned analysis regarding utilization" that would justify closure of the allotment. *Id.* at 17. Both parties moved for summary judgment, alleging that there was no material issue of fact and that judgment could be entered as a matter of law.

Judge Greenia's decision found that (1) BLM possesses statutory and regulatory authority to force the closure of Pasture 4 two weeks prior to the end of the grazing season authorized by the Grazing Plan (Decision at 7-8); (2) the Grazing Plan does not and can not lawfully limit BLM's authority to require removal of livestock when a determination is made that public land resources require immediate protection (Decision at 11-12); and (3) Foianini did not establish that BLM's decision to require removal of livestock under the provisions of 43 C.F.R. § 4110.3-3(b) was unreasonable under the circumstances (Decision at 13). Ruling on cross-motions for summary judgment, Judge Greenia found that the record disclosed a rational basis for BLM's decision; he thus granted summary judgment for BLM. *Id.*

On appeal to this Board, Foianini first argues that Judge Greenia's decision erroneously places the burden of proof on the appellant. SOR at 9-14. Secondly, he repeats arguments he made before the ALJ: (1) the closure violates the terms of the 1999 Grazing Plan because (a) maximum use levels had not yet been reached on the

[3] Foianini filed a petition for stay of the decision, but later moved to withdraw it; the Board denied the petition as moot on Nov. 13, 2003.

[4] We summarize here only arguments made by Foianini before Judge Greenia that are relevant to this appeal.

uplands portion of the allotment, and (b) unless and until maximum use levels were reached on the uplands, the 1999 Grazing Plan authorized him to continue using the uplands in Pasture 4 through October 31 (SOR at 14-19; MSJ at 8-12); and (2) BLM failed to consult with the affected permittees prior to ordering early removal of their livestock (SOR at 19-21; MSJ at 12-13). Foianini maintains that BLM's decision "failed to reveal any reasoned analysis regarding utilization during the previous grazing season in order to justify closing of the Sage Creek Mountain Allotment to livestock grazing," and that Judge Greenia's decision affirming it is therefore in error. SOR at 21-22.

III. ANALYSIS

Section 2 of the Taylor Grazing Act, *as amended*, 43 U.S.C. § 315a (2000), authorizes the Secretary, with respect to grazing districts on public lands, to "make such rules and regulations" and to "do any and all things necessary to . . . insure the objects of such grazing districts, namely, to regulate their occupancy and use, to preserve the land and its resources from destruction or unnecessary injury, [and] to provide for the orderly use, improvement, and development of the range[.]" Title IV of the Federal Land Policy and Management Act of 1976, which amended the Taylor Grazing Act, reiterates the Federal commitment to protecting and improving Federal rangelands. *See* 43 U.S.C. §§ 1751-1753 (2000); *see also* Public Rangelands Improvement Act of 1978, 43 U.S.C. §§ 1901-1908 (2000).

Implementation of the Taylor Grazing Act, *as amended*, 43 U.S.C. §§ 315, 315a-315r (2000), is committed to the discretion of the Secretary of the Interior, through his duly authorized representatives in BLM. *Fillipini Ranching Co. v. BLM*, 149 IBLA 54, 59 (1999); *West Cow Creek Permittees v. BLM*, 142 IBLA 224, 235 (1998); *Kelly v. BLM*, 131 IBLA 146, 151 (1994); *Yardley v. BLM*, 123 IBLA 80, 89 (1992). BLM enjoys broad discretion in determining how to manage and adjudicate grazing preferences. 123 IBLA at 90.

[1] Departmental regulation 43 C.F.R. § 4110.3-2(b) authorizes BLM to reduce permitted grazing use when monitoring or field observations demonstrate, among other things, that grazing use is "causing an unacceptable level or pattern of utilization." Under ordinary circumstances, BLM would issue a proposed decision reducing use; however, under 43 C.F.R. § 4110.3-3(b), where resources on an allotment require immediate protection because of conditions such as drought, fire, flood, insect infestation, or when continued grazing use poses an imminent likelihood of significant resource damage, BLM may close grazing allotments, or portions thereof, by full force and effect decisionmaking, after consulting or reasonably attempting to

consult with affected permittees. In this case, BLM closed the Allotment two weeks early, under severe drought conditions.[5]

A. *The Burden of Proof*

Appellant argues at some length that Judge Greenia erroneously placed the burden of proof on him. SOR at 9-14. Citing 43 U.S.C. § 556(d) (2000),[6] *John L. Falen*, 143 IBLA 1, 4 (1998), and *BLM v. Ericsson*, 88 IBLA 248, 255 (1985), Foianini claims that, as the "proponent of the rule or order," BLM "has the burden to prove by a preponderance of the evidence that its decision was necessary, reasonable, and in substantial compliance with the grazing regulations." SOR at 10, 13-14.

This Board has previously rejected that argument, holding that BLM is not the "proponent of the rule or order," and that if a decision determining grazing privileges has been reached in the exercise of administrative discretion, "the appellant seeking relief therefrom bears the burden of showing by a preponderance of the evidence that the decision is unreasonable or improper." *West Cow Creek Permittees v. BLM,* 142 IBLA at 236, *citing Kelly v. BLM,* 131 IBLA at 151. We have excepted grazing trespass proceedings from this general rule, stating that "[i]n a grazing trespass case initiated by BLM upon an order to show cause, the burden of proof is properly placed upon BLM as the proponent of the order sought to establish by substantial evidence the occurrence of cattle trespass." *BLM v. Ericsson,* 88 IBLA at 248, 253-55; *see also John L. Falen,* 141 IBLA at 4, noting that "while the burden of proving willful trespass

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[5] Appellant asserts that 43 C.F.R. § 4110.3-3(b) authorizes BLM to close "only a portion of an allotment to livestock grazing." SOR at 18; emphasis in original. This is an incorrect statement of the regulation, which provides, in pertinent part:

> When the authorized officer determines that the soil, vegetation, or other resources on the public lands require immediate protection because of conditions such as drought, . . . or when continued grazing use poses an imminent likelihood of significant resource damage, after consultation with, or a reasonable attempt to consult with, affected permittees, . . . the authorized officer shall *close allotments* or portions of allotments to grazing by any kind of livestock[,] or modify authorized grazing use. . . .

43 C.F.R. § 4110.3-3(b) (emphasis supplied).

[6] 43 U.S.C. § 556(d) (2000) states, in pertinent part, as follows: "Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof. . . . A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence."

rests on BLM, the burden of showing error in the Decision appealed from, rests with [a]ppellant."

[2] The decision which Foianini appeals is not a trespass decision, but a decision involving grazing privileges. We have held that BLM enjoys broad discretion in determining how to adjudicate and manage grazing privileges. *Fillipini Ranching Co. v. BLM*, 149 IBLA at 54; *Yardley v. BLM*, 123 IBLA at 90. When BLM issues a decision taking actions affecting the grazing privileges of a livestock permittee, those actions may be regarded as arbitrary, capricious, or inequitable only if they are not supportable on any rational basis, and an appellant seeking relief from such a decision has the burden to establish by a preponderance of the evidence that the decision is unreasonable or improper. *Fillipini Ranching Co. v. BLM*, 149 IBLA at 59-60.

Judge Greenia did not err in assigning the burden of proof to appellant in this case.[7]

B. Judge Greenia's Findings and Conclusions

[3] Appellant maintains that Judge Greenia erred because he did not hold that BLM violated the terms of the Grazing Plan by terminating grazing on Pasture 4 while upland forage was still available.

By its plain terms, the 1999 Grazing Plan permits BLM, in its discretion, to *either* require removal of cattle where utilization levels have been reached for areas within a pasture, *or* to restrict grazing to portions of the allotment not oergrazed.[8] As Judge Greenia pointed out in his decision, 43 C.F.R. §§ 4110.3-2 and 4110.3-3

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[7] Judge Greenia's decision states, at 7, that "[t]he burden is on the objecting party to show by a preponderance of the evidence that the BLM decision was arbitrary, capricious, or inequitable because it was not supported by any rational basis." On page 13, however, the decision states that "the burden is on the one challenging the decision to show by *substantial evidence* that the decision is unreasonable." (Emphasis supplied.) The proper rule is, as he stated at 7, the preponderance of the evidence rule. We accordingly modify Judge Greenia's decision to the extent it misstated the burden of persuasion on page 13. We find that this misstatement is harmless error, as appellant did not satisfy the "preponderance" test.

[8] The Grazing Plan presupposes that cattle will be removed to the next scheduled pasture until all pastures in the seasonal rest/rotation system have been grazed. In this case, Pasture 4 was the last pasture in the rotation; permittees were thus required to remove their cattle from the allotment.

permit BLM to decrease permitted use, or to close allotments entirely, if conditions warrant it. The discretion rests with BLM, not the appellant.

The Grazing Plan, agreed to by Foianini and the other Allotment permittees, established separate utilization levels for upland and riparian areas and required the permittees to move their livestock, when those utilization levels were reached, to "an area within the pasture where utilization levels are not met," or to remove their livestock from the pasture altogether. On October 1, 2003, BLM determined that the utilization level for riparian areas would soon be reached and informed all permittees of these circumstances. On October 6, Foianini indicated that he would not move his cattle until he had read the utilization levels. Foianini accompanied BLM on a field trip to Pasture 4 on October 9, 2003, at which time it was determined that utilization levels for riparian areas had been met or exceeded. As of that date, it appears that Foianini and the other permittees were in noncompliance with the terms of the Grazing Plan. The other permittees responded to these circumstances by beginning to move their cattle by October 11. Foianini responded through counsel by stating that he intended "to remain on the allotment until October 31, 2003," and that he would "keep his livestock from grazing on the riparian areas." BLM replied by issuing the decision here on appeal. Foianini contends that BLM's decision was unreasonable because it should have only required him to move his cattle to upland areas. Under the circumstances presented, we find no merit in Foianini's contention that BLM acted arbitrarily, capriciously, or unreasonably in requiring him to remove his cattle from Pasture 4.

Judge Greenia's decision emphasized the severe drought conditions which led to the Allotment closure (ALJ decision at 4, n.7, 10), and pointed to documentation in the record indicating that, "[o]f the 24.75 miles of riparian areas within the Sage Creek Mountain Allotment, not one mile has yet met the description of proper functioning condition." *Id.* at 10, referring to BLM's Cross-Motion, Exs. O and P. The decision further notes that "[t]he majority of the inventoried miles (88%) were deemed "functional-at-risk . . . , while 14% of the total inventoried riparian area [was] found to be 'nonfunctional.'" *Id.* The burden rests with the appellant to demonstrate that Judge Greenia erred in his determination that BLM did not abuse its discretion in closing Pasture 4.

Foianini argues that BLM arbitrarily required early removal of the cattle because it misjudged the situation on the ground, and it arbitrarily misjudged his trustworthiness. SOR at 15-17, Appellant's Reply in Support of Statement of Reasons (Reply) at 9-11. Foianini contends that, as all other permittees had voluntarily removed their herds prior to issuance of the FFE decision, only his cattle would have been using the allotment the last two weeks in October. It therefore would not have been problematic, he maintains, to keep his 375 cattle off riparian areas using a rider, as the uplands contained adequate forage for his herd. Moreover, he argues, BLM

arbitrarily based its decision upon circumstances which occurred during the 2002 grazing season. In 2002, appellant maintains, the uplands had been overgrazed, while in 2003, BLM judged use on the uplands as "light," but nonetheless required permittees to remove their herds. *Id.*

BLM disputes appellant's characterization of the situation in 2002, claiming that its records demonstrate that uplands utilization was at 35% during the period in 2002 to which Foianini refers. BLM Answer at 26.

As of August 22, 2002, according to BLM conversation records, the upland grazing areas were measured at 35% utilization, but use on riparian areas west of Cedar Mountain was becoming problematic. BLM Cross-Motion, Ex. Q, Conversation Record (Conv. Rec.) dated Aug. 22, 2002, at 1. Foianini initially resisted hiring a rider, but by the end of the August 22 meeting, he agreed to do so. Upon return to Pasture 4 on August 28, Forliano found that use of riparian areas had increased to 70% utilization on the west side of Cedar Mountain, and, as a result, she decided to close the pasture on August 31, a week earlier than scheduled. *Id.*, Conv. Rec. dated Aug. 28, 2002. When she questioned Foianini about whether he had hired a rider, he stated that he had not yet done so. *Id.*

With respect to Foianini's assertions that he was singled out based on BLM's "disingenous" reading of his behavior during the 2002 grazing season (SOR at 16, 17 n.8), we find no basis upon which to conclude that Judge Greenia's decision is in error. Within the context of a grazing trespass, we have held that BLM's motives in issuing a decision is irrelevant to whether the violations in question existed, and assertions of harassment, discrimination, and selective enforcement by the agency, even if established, do not excuse violations by the permittee of regulatory requirements or permit terms and conditions. *Robbins v. BLM*, 170 IBLA 219, 226 (2006), and cases cited. We find no basis upon which to distinguish BLM's intent or motivation in issuing a decision affecting grazing privileges. *See, e.g.*, *Pass Minerals*, 168 IBLA 115, 156 n.31 (2006).

We find no error in Judge Greenia's decision upholding BLM's authority to close the allotment under the terms of 43 C.F.R. § 4110.3-3(b) and the Grazing Plan, and under the circumstances evident from the record before us. The record, as Judge Greenia points out, undermines Foianini's arguments at every turn. BLM clearly had authority to close the allotment two weeks early under the circumstances; that it did not make concessions for Foianini's herd does not demonstrate that the decision was arbitrary or unreasonable.

Likewise, appellant has not demonstrated that Judge Greenia erred in his determination that BLM complied with the regulatory requirement to consult with the appellant prior to issuing the FFE decision. *See* ALJ decision at 12-13. Appellant was

fully aware, as the result of the May 9, 2003, decision reducing the number of cattle authorized to use the allotment, that closing the allotment early was on the table. Judge Greenia's decision points out the specific steps that BLM Rangeland Management Specialist Forliano took to work with the permittees as the season progressed, and to inform them when utilization levels were reached. *Id.* The requirement to consult does not suggest that BLM must reach agreement with a grazing permittee prior to taking action authorized under the grazing laws and regulations.

Finally, appellant argues that BLM "failed to reveal any reasoned analysis regarding utilization during the previous grazing season in order to justify closing of the Sage Creek Mountain Allotment to livestock grazing." SOR at 21-22. BLM's record in fact discloses a rational basis for the closure. Appellant has not provided any data of his own to contradict that established by BLM's record.

V. CONCLUSION

Judge Greenia correctly emphasized that BLM may exercise its discretion to reasonably limit grazing to prevent resource damage before resources have been depleted and the full measure of any individual permittee's privilege has been reached. We agree with the following statement, which is central to his ruling: "BLM is not required to wait until the range is damaged before it takes preventative action; proper range management dictates herd reduction before the herd causes damage to the rangeland. If the record establishes current resource damage or a significant threat of resource damage, removal is warranted." ALJ Decision at 9; *see* 43 C.F.R. § 4110.3-3(b); section 2 of the Taylor Grazing Act, *as amended*, 43 U.S.C. §§ 315a (2000); *see also* Title IV of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1751-53 (2000), *amending* the Taylor Grazing Act, and the Public Rangelands Improvement Act of 1978, 43 U.S.C. §§ 1901-1908 (2000).) For the reasons given in his decision, Judge Greenia properly granted BLM's motion for summary judgement.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, we hereby affirm Judge Greenia's decision as modified.

James F. Roberts
Administrative Judge

I concur:

James K. Jackson
Administrative Judge