

MINUTE ITEM

This Calendar Item No. 48
was approved as Minute Item
No. 47 by the State Lands
Commission by a vote of 3
to 0 at its 12-12-90
meeting.

CALENDAR ITEM

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R 9

PRC 7485

12/12/90

W 24563

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APPROVE A MEMORANDUM OF UNDERSTANDING BETWEEN
BUREAU OF LAND MANAGEMENT AND THE
STATE LANDS COMMISSION

This Memorandum of Understanding (MOU) is proposed between the Bureau of Land Management (BLM) and the State Lands Commission for the construction, use and maintenance, of a BLM grazing allotment pasture fence. The proposed fence will be constructed within BLM's Susanville, Eagle Lake Resource Area, Cal-Neva Planning Unit.

The fence project is known as the "North Deep Cut Pasture Fence" and will consist of approximately eight miles of steel and wire fence constructed in accordance to BLM fence specifications. Of this total, approximately 0.5 miles of the fence will cross State land. A cattleguard and gate will also be placed at the junction of the fence and dirt road which crosses said State land. The fence, cattleguard, and gate will be constructed and maintained at no cost to the State.

The Commission is being asked to enter into this MOU by BLM because the fence route, as proposed, will cross certain unfenced State lands located in T31N R15E, Sections 24 and 25, T31N R16E, Section 19 and Section 30, Lassen County. Commission staff believes it is in the best interest of the State to enter into the MOU, as opposed to leasing, because staff costs associated with establishing and maintaining a low revenue-producing lease outweigh the revenue which would be generated.

The proposed fence is vital to implementing a rotational grazing system on both BLM's and the Commission's property. The fence will enable BLM to implement this rotational grazing system by confining livestock to specific portions of the property during specific periods of the year.

The fence will provide better livestock control over the Deep Cut Creek riparian area and the wetland area located on the State's property. The fence would split an existing pit tank (watering area) on State property so that water will remain available for wildlife and livestock from either side. The proposed fence will enhance and protect wildlife and watershed values by excluding animals from the riparian and meadow habitat.

There is authorized grazing activity occurring on both State and BLM property. The lessee, Robert Clark, leases the State's property as base property for acquiring his allotment with BLM and is aware of and in agreement to the proposed fence.

BLM has prepared an environmental Assessment (CA-026-90-17) and has adopted a Finding of No Significant Impact for the entire proposed fence project.

AB 884: N/A.

OTHER PERTINENT INFORMATION:

1. This activity involves lands which have NOT been identified as possessing significant environmental values pursuant to P.R.C. 6370, et seq. However, the Commission has declared that all tide and submerged lands are "significant" by nature of their public ownership (as opposed to "environmental significant"). Since such declaration of significance is not based upon the requirements and criteria of P.R.C. 6370, et seq., use classifications for such lands have not been designated. Therefore, the finding of the project's consistency with the use classification as required by 2 Cal. Code Regs. 2954 is not applicable.
2. A Finding Of No Significant Impact (FONSI) CA 026-90-17, SCH#90040076, was prepared and adopted for this project by the U.S. Bureau of Land Management. The document was circulated for public review as broadly as State and local law may require and notice was given meeting the standards in 14 Cal. Code Regs. 15072(a). Therefore, pursuant to 14 Cal. Code Regs. 15225, the staff recommends the use of the federal FONSI in place of a Negative Declaration.

CALENDAR ITEM NO. 49 (CONT'D)

EXHIBITS:

- A. Land Description.
- B. Location Map.
- C. Memorandum of Understanding
- D. Finding of No Significant Impact (FCNSI).

IT IS RECOMMENDED THAT THE COMMISSION:

1. FIND THAT THE FINDING OF NO SIGNIFICANT IMPACT (FONSI) CA 026-90-17, SCH#90040076, PREPARED AND ADOPTED FOR THIS PROJECT BY THE U.S. BUREAU OF LAND MANAGEMENT MEETS THE REQUIREMENTS OF THE CEQA THEREFORE PURSUANT TO 14 CAL. CODE REGS. 15225 ADOPT SUCH FEDERAL DOCUMENT FOR USE IN PLACE OF A NEGATIVE DECLARATION.
2. DETERMINE THAT THE PROJECT, AS APPROVED, WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT.
3. APPROVE THE MEMORANDUM OF UNDERSTANDING ATTACHED AS EXHIBIT "C" AND BY REFERENCE MADE A PART HEREOF.
4. AUTHORIZE THE EXECUTIVE OFFICER, OR HIS DELEGATE, TO EXECUTE THE AGREEMENT ON BEHALF OF THE COMMISSION.

EXHIBIT "A"

W. 24563

LAND DESCRIPTION

A strip of land 20 feet wide, across school lands in Sections 24 and 25, T 31 N, R 15 E and Sections 19 and 20, T 31 N, R 16 E, MDM, Lassen County, California, and lying 10 feet on each side of the following described centerline:

COMMENCING at the southwest corner of said Section 24, T 31 N, R 15 E, MDM;
thence N 89° 56' E 4000 feet more or less to the POINT OF BEGINNING; thence
N 89° 00' E 200 feet; thence S 79° 00' E 1260 feet; thence N 53° 00' E 245 feet;
thence S 59° 00' E 492 feet; thence S 17° 00' W 18 feet; thence S 15° 00' E 1100 feet
to the boundary of lands of USA in Section 30, T 31 N, R 16 E, MDM.

END OF DESCRIPTION

PREPARED NOVEMBER, 1990 BY LLB

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| CALENDAR PAGE | 303 |
| MINUTE PAGE | 3703 |

Project Name: NORTH DEEP CUT PASTURE FENCE
Project Number: _____

EXHIBIT C
MEMORANDUM OF UNDERSTANDING

between

THE CALIFORNIA STATE LANDS COMMISSION

and

THE USDI - BUREAU OF LAND MANAGEMENT
SUSANVILLE DISTRICT, EAGLE LAKE RESOURCE AREA

regarding the construction, maintenance and abandonment of that portion of

THE NORTH DEEP CUT PASTURE FENCE

which shall cross State land

A. Purpose

This Memorandum of Understanding (MOU) is to establish an agreement between the California State Lands Commission (State) and the Bureau of Land Management (BLM) regarding provisions concerning the construction, maintenance and abandonment of a BLM grazing allotment pasture fence slated to be constructed within the BLM's Susanville District, Eagle Lake Resource Area, Cal-Neva Planning Unit. This MOU is required because the fence-route, as proposed, will cross certain unfenced State lands, specifically described as T.31N., R.15E., Section 24 SE $\frac{1}{4}$ SE $\frac{1}{4}$ and Section 25 NE $\frac{1}{4}$ NE $\frac{1}{4}$, and T.31N., R.16E., Section 19 SW $\frac{1}{4}$ SW $\frac{1}{4}$ and Section 30 NW $\frac{1}{4}$ NW $\frac{1}{4}$, in addition to BLM lands. The fence route will be within 10 feet of the following centerline: Beginning at a point which bears N 89° 56' E 4000 feet, more or less, from the SW section corner of Section 24, T.31N., R.15E., MDM, then go N 89° E 200 feet, then go S 79° E 1260 feet, then go N 53° E 245 feet, then go S 59° E 492 feet, then go S 17° W 18 feet, then go S 15° E 1100 feet, more or less, to the approximate property boundary of lands of USA in Section 30, T.31N., R.16E.

B. Description/Justification Summary of Project

The project, which shall be known as the "North Deep Cut Pasture Fence," consists of approximately 8 miles of steel and wire fence constructed to BLM specifications for fences which cross pronghorn (antelope) range. Approximately 0.5 miles of the fence would cross State land and the remainder would cross BLM or private land (see map, attached). A cattleguard and gate would be placed at the junction of the fence and dirt road which crosses said State lands (in addition to other gates and/or cattleguards placed at the discretion of the BLM along the portion of the fence route which does not cross State lands).

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| CALENDAR PAGE | 305 |
| MINUTE PAGE | 3705 |

The fence would allow for the implementation of a rotational grazing system on the BLM's Deep Cut allotment, thereby allowing for improved livestock management by confining livestock to specific portions of the allotment during specific periods of the year (as directed by BLM). In concert with other appropriate range management actions (e.g., proper season and periods of use, appropriate stocking rate, etc.), construction of the fence will allow for improvement in range condition as well as improvement of the conditions of the riparian area associated with Deep Cut Creek.

It was identified within Environmental Assessment CA-026-90-17 (available for review at the BLM's Eagle Lake Resource Area Office in Susanville, California) that the fence is expected to impede pronghorn movements during the winter when snows are too deep for them to move under the lowest wire on the fence and burro movements during periods when livestock are in the pasture and the gates are closed. However, these negative impacts are offset by the anticipated improvement in range and riparian condition expected to result from the improved management capability provided by the fence and net benefits to the environment will result. In addition, the gates in the fence will be open during the period when livestock are not in the pasture (11/1 to 3/31, annually) in order to minimize disruption of the migratory habits of these animals.

C. Provisions of this Memorandum of Understanding

1. This MOU is for the purpose of administering the construction, maintenance and abandonment of that portion of the North Deep Cut Pasture Fence which will cross State lands as described under Section A of this MOU, above.
2. This MOU pertains only to those State lands which are necessary for construction and maintenance activities associated with the fence, generally described as within 10 feet of either side of the fence line. The parties of this MOU are the USDI-BLM, Susanville District, and the California State Lands Commission.
3. This MOU does not grant to BLM any right, title or interest in the State's property. Permission is granted to BLM to construct and maintain the fence and cattleguard.
4. The fence shall be constructed and maintained at no cost to the State. The BLM, its agents and Cooperative Parties¹ shall be allowed access to and egress from said State lands for the purposes of constructing and maintaining the fence.

¹ The Cooperative Parties with the BLM for the purposes of fence construction and maintenance are Robert Clark of Litchfield, California, his successors or assigns, and Todd Suickard of Hapes Ranch Inc., California, his successors or assigns. See Cooperative Agreement which is attached to and made a part of this MOU.

5. The implementation period for construction of this project shall be during the Federal fiscal year 1991 (10/01/90 - 9/30/91), with maintenance continuing for the life of this agreement, pending funding appropriation by the BLM. Should fence construction be delayed from said implementation period, the BLM will promptly notify the State of the delay and inform them of the adjusted anticipated period of implementation. Should this project be cancelled, the BLM will promptly notify the State and upon such notification, this MOU shall be null and void.
6. Adherence to all construction stipulations as described in EA-CA-026-90-17 shall occur during fence construction.
7. The BLM shall ensure that the fence and cattleguard are maintained in good and serviceable condition. The anticipated useful life of the project is for as long as it serves the purpose for which it is intended.
8. Should the project be abandoned pursuant to the authority of the BLM, the BLM shall ensure that any improvements are removed. Such removal will be at the State's sole discretion, and such removal shall be at no cost to the State. Prior to any abandonment, the BLM shall notify, in writing, the State of the intent to abandon.
9. The State is held harmless by BLM from any liability which may result from the construction, use and maintenance of this project.
10. This MOU shall be in effect from date of approval, unless otherwise negated pursuant to the provisions contained within or other reasons agreed upon by the State and BLM.

D. Approval

For the California State Lands
Commission:

For the Bureau of Land
Management:

Signature

Richard H. Stark Jr.
Signature

Printed Name, Title

Richard H. Stark, Jr.
Eagle Lake Resource Area Manager

Date

11/2/90
Date

RECEIVED

APR 24 1990

Form 4120-6
(June 1985)

BUREAU OF LAND
MANAGEMENT
SUSANVILLE, CALIFORNIA

FORM APPROVED
OMM NO. 1004-90A
Expires: January 31, 1986

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

| FOR BLM USE ONLY | | |
|------------------|---|-----|
| State | C | A |
| Office | 0 | 2 6 |
| Job Number(s) | | |
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COOPERATIVE AGREEMENT
FOR RANGE IMPROVEMENTS

INSTRUCTIONS - Cooperator(s) to receive original, and one copy each to the District case or lease file and District job file.

Job Name(s)
North Deep Cut Pasture Fence

- I, (We) Todd Swickard of Mapes Ranch Inc., California
Robert Clark of Litchfield, California
of
and of

hereinafter called cooperator(s) and the United States of America, by the Bureau of Land Management, hereinafter called the Bureau, for and in consideration of the mutual benefits hereunder, and in accordance with the Taylor Grazing Act (43 U.S.C. 315, 315a-r), as amended, the National Soil Conservation Act (16 U.S.C. 590a-q(1)), as amended, the Federal Land Policy and Management Act (43 U.S.C. 1701, et. seq.), and the Public Rangelands Improvement Act (43 U.S.C. 1904) do enter into this cooperative agreement for the construction and/or maintenance of range improvements; installation of conservation works or establishment of conservation practices, hereinafter referred to collectively as improvements, for the benefit of the public lands and of the cooperator(s).

- The improvements known as the North Deep Cut Pasture Fence

will be are located upon: 1/4 Sec(s) 23, 24, 19, 30 T. 31N. R. 15E, R16E.
Mt. Diablo Meridian, County of Lassen, State of California

3. IT IS MUTUALLY AGREED:

(a) The parties hereto will furnish labor, materials, and equipment as required, the total cost or value not to exceed the amount listed below for each of the parties respectively for the initial construction and/or installation of the improvements indicated in paragraph 2.

| NAME(s) OF COOPERATOR(s) | ITEMS | TOTAL COST OR VALUE |
|---------------------------|----------------------------------|---------------------|
| Todd Swickard | Maintenance (See Stip 4c and 12) | \$ |
| Robert Clark | Maintenance (See Stip 4c and 12) | |
| | | |
| | | |
| BUREAU OF LAND MANAGEMENT | Construction | 24,900 |
| | | |

AGGREGATE COST \$ 308
CALENDAR PAGE 3708
MINUTE PAGE

(b) Upon notice from the authorized officer of the Bureau, cooperator(s) will promptly supply labor, materials, and equipment as specified in paragraph 3(a) as required. Contributed materials in excess of the amount required shall be returned to the contributor. Equipment contributed shall be returned promptly following completion of the work. Work will be conducted under the supervision and direction of the authorized officer and shall be pursued with diligence until completed.

(a) The cooperator(s) shall be liable, jointly and severally, for the repair and maintenance of the improvements following completion, i. e. good and serviceable condition. The cooperator(s), without further notice from the authorized officer shall do the necessary work promptly. If work is not performed as necessary, the authorized officer shall notify the cooperator(s) and specify a period within which to complete the work as required.

(i) In event the cooperator(s) default in the repair and maintenance of the improvements the authorized officer may do or cause such work to be done for and in behalf of the cooperator(s), and the necessary cost and expense thereof shall become a charge and obligation upon and shall be paid by the cooperator(s). It is further understood in case of default that any grazing permit or lease may be cancelled and may not be renewed or extended or any assignment thereof may not be approved unless and until all charges and costs owed by the cooperator(s) hereunder shall have been paid, and provided that the Bureau may pursue such other remedies, legal or administrative, as may be authorized.

(c) Repair and maintenance, as herein required, shall mean normal upkeep and maintenance necessary to preserve, protect, and prolong the useful life of the improvements, but shall not include major repairs where the damage is due to floods, earthquakes, or other acts of God, or fire not the result of fault or negligence of the cooperator(s) as determined by the authorized officer.

5. IT IS FURTHER AGREED:

(a) This agreement does not convey right, title, or interest in any lands or resources held by the United States.

(b) Title to nonstructural or nonremovable improvements authorized by this agreement shall be in the United States of America.

(c) Title to structural or removable improvements authorized by this agreement shall be shared by the United States and the cooperator(s) in proportion to the actual amount of their respective contribution to the initial construction of said improvements. The improvements may be removed, in whole or in part, during the term of this agreement or any extension thereof, by mutu-

al consent of the parties or by direction of the authorized officer, such removal shall be made by the cooperator(s), or by the Bureau at its option. During the course of salvaging material, the United States assumes no responsibility for the protection or preservation of said material. Upon removal of the improvements, any salvageable materials, after deducting an amount to compensate for the actual cost of removal, shall be available for distribution to the parties then subject to this agreement in proportion to the actual amount of their respective contributions to the initial construction of the improvements. The parties shall take possession and remove their portion of the salvaged materials within one hundred and eighty (180) days after first notification in writing that such material is available, upon failure to do so within the time allowed, the materials shall be deemed to have been abandoned and title there-to shall thereupon vest in the United States.

(d) In the event lands containing improvements described under (a) or (b) above are devoted to another public purpose which precludes grazing, including disposal, the cooperator(s) shall be entitled to compensation for the adjusted value of the cooperator's contribution to the improvements.

6. If the cooperator(s) shall assign or transfer any grazing permit or lease embracing the lands upon which the improvements are constructed or in connection with which they are used, the cooperator(s) shall include in such assignment or transfer his interest in this Cooperative Agreement. Before the assignee or transferee will be recognized as successor to the cooperator(s)'s interest hereunder, such assignee or transferee will be required by the authorized officer to accept an assignment of this agreement and agree to be bound by the provisions respecting the use and maintenance of the improvements.

7. The cooperator(s) use of the improvements will be in conformance with any special conditions, the grazing permit(s) or lease(s), and regulations of the Secretary of the Interior.

8. This agreement shall not accord to cooperator(s) any preference, privilege, or consideration with respect to any grazing permit or lease not expressly provided herein or in the rules and regulations governing such grazing permit or lease.

9. Items 2, 3, and 4(a) of this agreement may be modified or cancelled by written agreement of the parties, which agreement shall become a part hereof.

10. This contract is subject to the provisions of Executive Order No. 11246 of September 24, 1965, as amended, which sets forth the nondiscrimination clause.

A copy of this order may be obtained from the authorized officer.

11. This agreement shall remain in effect indefinitely from date of signature unless (1) otherwise designated under item 12. Special Conditions, or (2) terminated by

12. Special Conditions

Gates will be left open after the grazing season to allow movement of wintering antelope and closed at the beginning of the grazing season.

Bob Clark to take maintenance from Highway 395 to the cattleguard on State Lands in Section 30 T.31N. R.16 E. as shown on the attached map.

Mapes Ranch to take maintenance from the cattleguard on the State Lands to the Cal-Neva 1/2 Division fence as shown on the attached map.

mutual written consent of parties, or (3) terminated by the authorized officer after notice in writing because of the cooperators default or violation, or (4) terminated by the authorized officer after notice in writing because the improvements are not compatible with adopted land use plans or classification under the public land laws.

COOPERATOR(S)

THE UNITED STATES OF AMERICA

Todd Swickard
(Signature)

Todd Swickard

(Date)

State of California

Robert Clark
(Signature)

Robert Clark

(Date)

District Susanville

(Signature)

(Date)

By

Richard H. Stark, Jr.
(Signature)

Richard H. Stark, Jr.

(Signature)

(Date)

Area Manager
(Title)

(Title)

(Signature)

(Date)

4/24/90
(Date)

(Date)

CALENDAR PAGE

310

MINUTE PAGE