

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

NOTICE OF PROTEST
Application for Permit No. 65-23964

September 21, 2020

RECEIVED

SEP 21 2020 ✓

WATER RESOURCES
WESTERN REGION

Received by: KT

Date: 9/21/2020

Receipt #: W048721

1. Matter being protested

Application for Permit No. 65-23964 filed by Robert and/or Nancy Roberts

2. Name of protestant

United States Department of the Interior
Bureau of Land Management
Idaho State Office
1387 South Vinnell Way
Boise, Idaho 83709-1657

3. Protestant's Representative for service (if different than protestant)

Fredric W. Price (contact person)

4. Service mailing address

same as above

5. Service telephone no.

(208) 373-3831

6. Basis of protest (including statement of facts and law upon which the protest is based).

On August 17, 2020, Robert Roberts and/or Nancy Roberts ("Applicants") filed an Application for Permit ("Application") with IDWR. The Applicants seek 15 AF of year-round stockwater storage to an existing "onstream pond" for stockwater use (180 cattle).

The onstream pond is located on BLM land within T10N, R03W, S23, SENW and is known as Skow Reservoir (BLM Range Improvement Project #308279). The reservoir is United States property.

ISSUES:

-Water for Skow Reservoir has been appropriated by BLM pursuant to SRBA decree 65-12897. Water that is already appropriated is not subject to appropriation by another user. *Cantlin v. Carter*, 88 Idaho 179, 187, 397 P.2d 761, 766 (1964).

-The Applicants are authorized to graze livestock on federal land within the Holland Gulch Allotment (ID00301) wherein lies Skow Reservoir; however, the Applicants do not have authorization to convey this Application through BLM's facility.

-The Applicant attached a portion of a Limited Agency Agreement ("LAA") between BLM and the Applicant wherein the Applicant is acting as BLM's agent in support of United States water rights. The Application is inconsistent with the tenets of a principle/agency relationship. See attached fully executed agreement.

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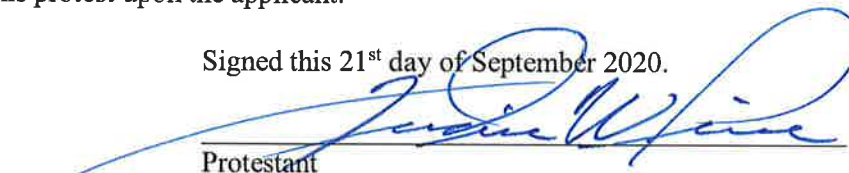
7. What would resolve your protest?

BLM's protest can be resolved by:

- 1.) Withdrawing the application.

I hereby, acknowledge that if I, or my designated representative, fail to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 21st day of September 2020.


Protestant
Fredric W. Price
Water Rights Specialist

Attachments:

- ◆Maps prepared by BLM for illustrative purposes.
- ◆Master Title Plat: T10N, R03W.
- ◆Fully executed Limited Agency Agreement

FOR DEPARTMENT USE ONLY

Received by _____ Date _____

Fee Paid \$25.00 Date _____ Receipted by _____ Receipt # _____

CERTIFICATE OF SERVICE

I certify that on September 21, 2020 I served a true and correct copy of the "**Protest of Application for Permit No. 65-23964**" with enclosures upon the following individuals by placing the documents in the United States mail in Boise, Idaho, postage paid, and addressed as follows:

Original to:

Nick Miller, P. E., Regional Manager
Idaho Department of Water Resources
Western Regional Office
2735 Airport Way
Boise, Idaho 83702-5082

Copies to:

Robert & Nancy Roberts
2109 N 9th St
Boise, Idaho 83702-2820

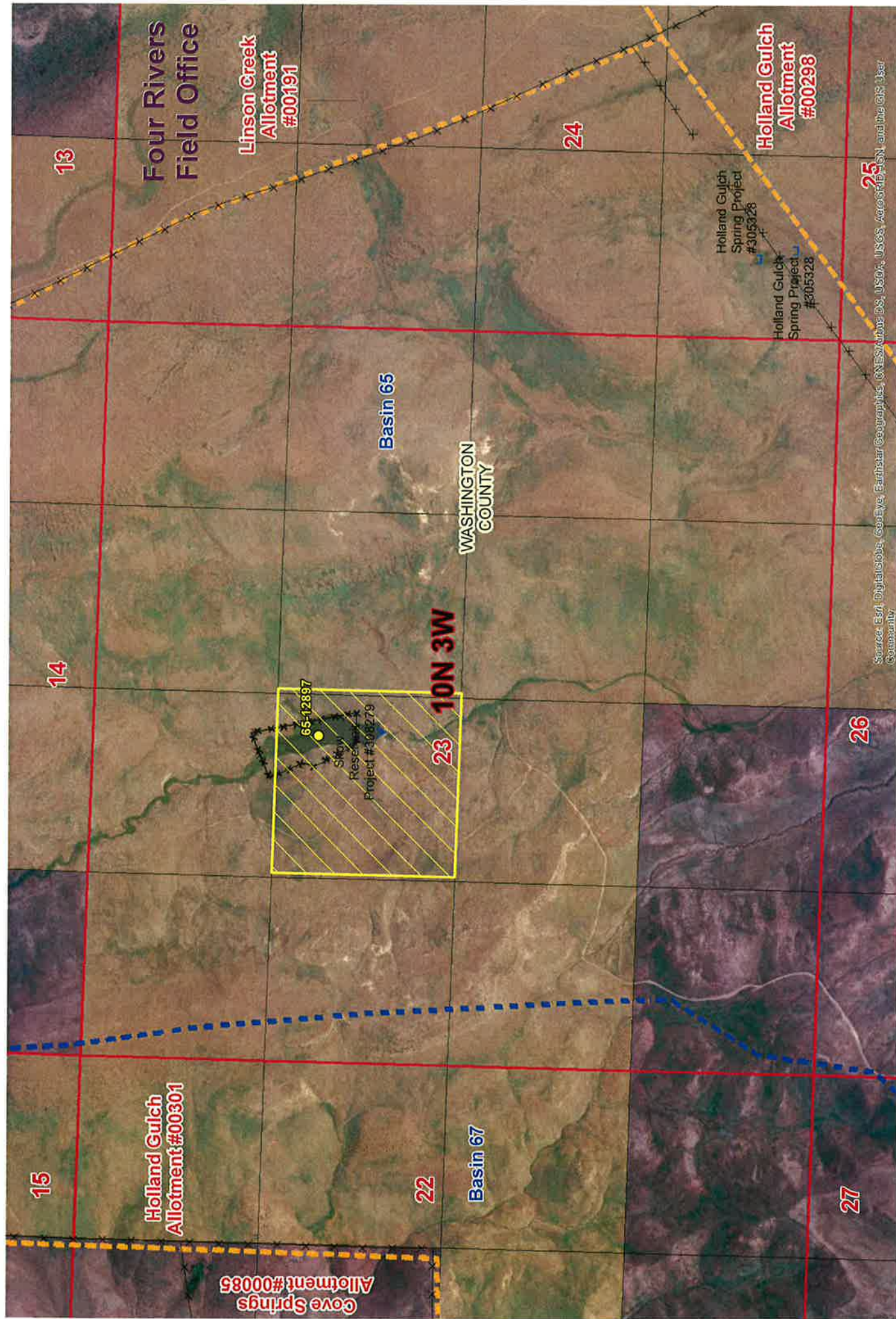
Brent Ralston, Field Manager
James Tarter, Natural Resource Specialist
U.S., Department of the Interior
Bureau of Land Management
Four Rivers Field Office
3948 South Development Avenue
Boise, Idaho 83705-5339

SANDRA MCCREA

Person Serving Documents (print name)



Signature of Person Serving Documents



WASHINGTON COUNTY 087
BOISE DISTRICT SEC 3

STATUS OF PUBLIC DOMAIN
LAND AND MINERAL TITLES

MT PLAT

[illegible]

See Cadastral Plat approved 08/09/2007 for official
acres affecting legal subdivisions:

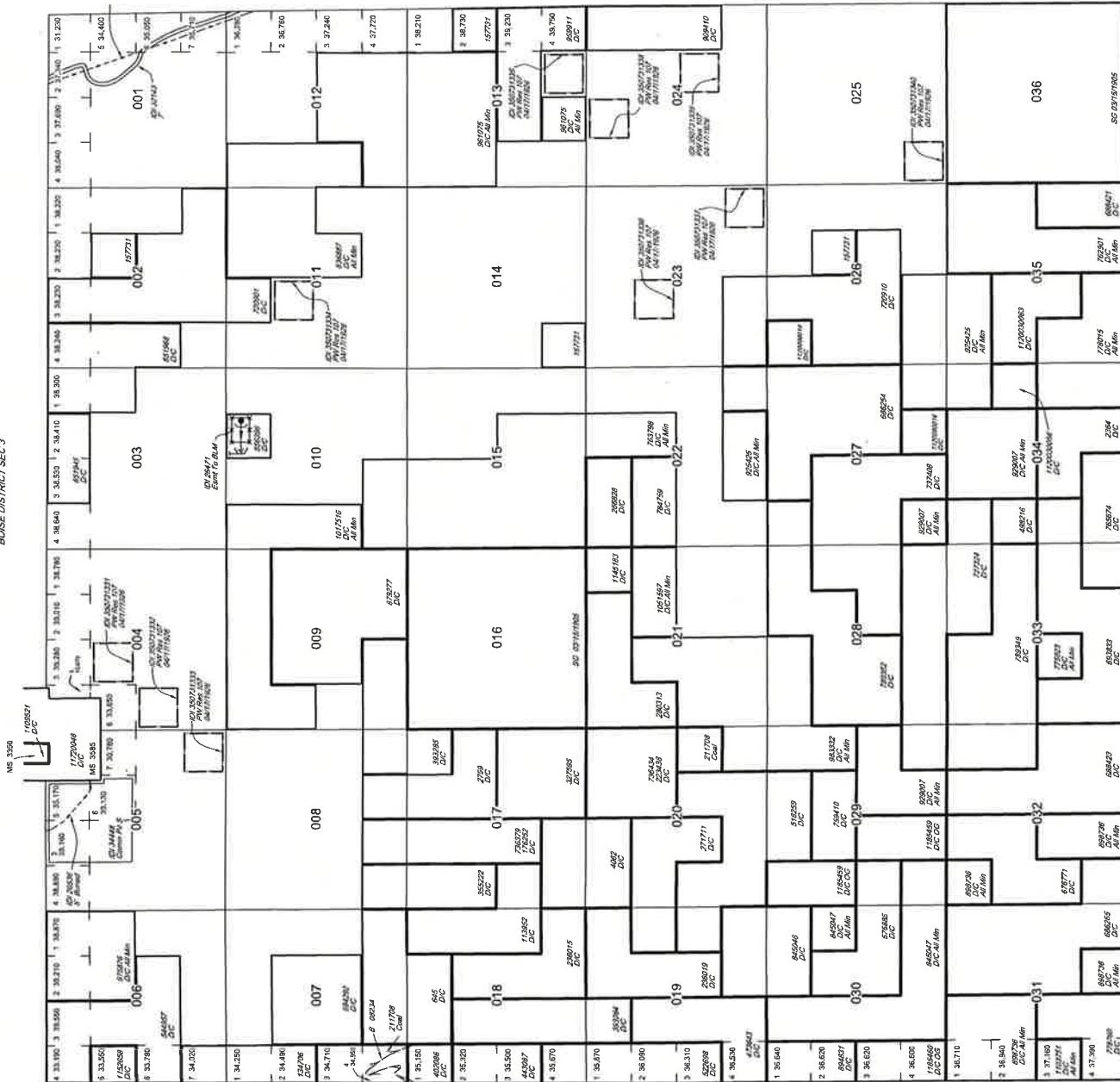
1,5

IDI 35073, PW Res 107, EO 04/16/1926; Withdraws Public Land containing a spring or waterhole from settlement, location, sale or entry, US vs. Idaho, 131 Idaho 468, 959 P. 2d 449 (1998)

FOR ORDERS EFFECTING DISPOSAL OR USE OF
UNIDENTIFIED LAND REFER TO INDEX OF
MISCELLANEOUS DOCUMENTS

FILE INFO: 02681596303044100000.dwg	
CONVERTED TPF: 1/10/2009	BY: PJP
LAST UPDATED: 2/17/2011	BY: LHM
SACD #1:	SACD #2:
POSTED TO PUBLIC RECORDS:	February 15, 2011
	BY:
PUBLIC LAND SURVEY SYSTEM (PLSS)	
ACQUISITION ACQUIRED:	SACD2005
OTHER:	N/A
PROJECTED COORDINATE SYSTEM:	UTM ZONE 14N WAD 1983
NOTE:	
USER NAME:	

T. 10 N
R. 3 W



Lat. 44° 09.5' N
Long. 116° 39' W

DISCLAIMER: This plot is only a graphic display of the Bureau of Land Management's (BLM) Record of Title and Township survey data. Records hereon do not reflect title changes which may have been affected by lateral movements of river or other bodies of water. Refer to cadastral surveys for official information.

The notation shown on withdrawals represent the last action taken, but may not be the effective date. See the historical index for the date of original withdrawal order.

No warranty is made by the Bureau of Land Management. The accuracy, reliability, or completeness of those data for individual use or commercial use with other data is not warranted.



U.S. Bureau of Land Management - Idaho State Office
1387 S. Vinnell Way Boise, Idaho 83709
(208) 373-4000



Human Resource Management -
11111 Way Boise, ID
(208) 373-4000

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JUN 25 2020

BOISE DISTRICT BLM

**LIMITED AGENCY AGREEMENT FOR THE PURPOSES OF ESTABLISHING AND
MAINTAINING STOCKWATER RIGHTS UNDER THE LAWS OF THE STATE OF IDAHO**

The United States Bureau of Land Management ("BLM") and NANCY ROBERTS and ROBERT P ("Permittee and/or Lessee" and collectively with BLM, the "Parties"), in consideration of the mutual acknowledgments and agreements stated below, and for the benefit of the Parties and that of the public lands, enter into this Limited Agency Agreement for the Purposes of Establishing and Maintaining Stockwater Rights under the Laws of the State of Idaho ("Agreement").

ACKNOWLEDGEMENTS

The Parties acknowledge the following:

1. The significant role of the livestock industry in the settlement, history, and culture of the State of Idaho;
2. The importance of stockwater rights to the livestock industry in the State of Idaho, to the BLM's grazing program, to the Permittee and/or Lessee's individual livestock operation, and to the association of water with Federal lands;
3. On March 24, 2020, Idaho Governor Brad Little signed into law Idaho House Bill 592 ("HB 592") with an effective date of July 1, 2020;
4. HB 592 removed previous state law barriers prohibiting the Parties from entering into agency agreements intended to maintain stockwater rights and historical use of those rights; and
5. Current or future grazing authorization is not impacted or restricted in any way by this agreement.

AGREEMENTS

The BLM and the Permittee and/or Lessee agree as follows:

1. The Parties wish to continue utilizing state-based stockwater rights obtained by BLM located on the grazing allotments listed in Exhibit A so that water authorized under those rights and any subsequent rights can nourish the livestock owned by the Permittee and/or Lessee for the term of any applicable federal grazing permit and/or renewal authorized by the BLM; and
2. The Parties agree that when domestic livestock owned by the Permittee and/or Lessee and located on grazing allotments associated with same, make use of water by drinking from watering points, places, or sources located on federal public lands, that such use will be deemed beneficial in adherence with the requirements of Idaho state law and shall be made pursuant to the Permittee and/or Lessee acting as a limited agent of the United States for the purposes of establishing and maintaining water rights solely in the name of the United States on federal public lands and for no other purposes.

GENERAL TERMS

1. This Agreement does not convey right, title, or interest in any lands or resources held by the United States. Nothing in this Agreement shall prevent the BLM from administering grazing, range improvements, or water rights in accordance with applicable law and does not extend rights associated with the BLM's statutory and regulatory management of its grazing program to the Permittee and/or Lessee.
2. The Parties expressly agree that the mutual acknowledgements and agreements outlined in this Agreement are supported by good and adequate consideration including, but not limited to, past and continuing use of the water associated with the applicable stockwater rights, construction and maintenance of associated range improvement projects, and the consideration for any and all applicable grazing permits or other agreements between the Parties.
3. This Agreement shall remain in effect throughout the term of any existing grazing authorization, new authorizations, and any renewals of grazing authorizations. This Agreement terminates only upon: (a) the expiration, termination, or cancellation of the applicable grazing permit/lease held by the Permittee and/or Lessee that is not renewed; or (b) upon 90 day written notice by either Party to the other of a desire to terminate the limited agency relationship.
4. The terms of this Agreement may not be modified unless consented to in writing by the Parties. If any paragraph or portion of this Agreement is deemed unenforceable, the remainder of this Agreement shall remain in full force and effect.
5. Subject to the termination clause above, the Parties agree to act in good faith and with fair dealings to fulfill, and not impede, the intent of this Agreement.
6. This Agreement shall become effective on July 1, 2020, or the date of the last signature of the Parties thereafter.
7. The signators to this Agreement acknowledge that they (a) have read this entire document; (b) fully understand and agree with all the terms of this Agreement; (c) have knowingly, voluntarily, and in good faith entered into this Agreement; and (d) have the explicit authorization to execute and bind their respective entities or selves by this Agreement.

For the Permittee and/or Lessee (Agent):



19 JUNE 2020
Date

For the BLM:


Field Manager

Brent Ralston
Field Manager
Four Rivers Field Office

6/28/2020
Date

Field Office, Bureau of Land Management

EXHIBIT A
LIMITED AGENCY AGREEMENT

THE LIMITED AGENCY AGREEMENT BETWEEN THE PERMITTEE AND/OR LESSEE AND BLM APPLIES TO ALL ALLOTMENTS ON WHICH THE PERMITTEE AND/OR LESSEE IS AUTHORIZED TO GRAZE LIVESTOCK CURRENTLY AND ANY FUTURE ALLOTMENTS ON WHICH THE PERMITTEE AND/OR LESSEE WILL BE AUTHORIZED TO GRAZE LIVESTOCK IN THE FUTURE. BLM RECORDS AT THE TIME OF SIGNING INDICATE THE PERMITTEE AND/OR LESSEE IS AUTHORIZED TO GRAZE LIVESTOCK

OPERATOR NAME

ROBERT & NANCY ROBERTS

ALLOT. NO.

ID00301

ALLOTMENT NAME

HOLLAND GULCH

FIELD OFFICE

FOUR RIVERS FIELD OFFICE