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Working to protect and restore Western Watersheds and Wildlife

June 21, 2016

Melissa Warren
Tucson Field Office Manager
3201 E. Universal Way
Tucson, Arizona 85756

**PROTEST OF THE PROPOSED DECISION FOR THE
EAST BOUNDARY SPRNCA FENCE PROJECT
Tucson Field Office, Arizona**

Dear Melissa,

The following protest of the Proposed Decision for the East Boundary San Pedro Riparian National Conservation Area (SPRNCA) Fence Project (DOI-BLM-AZ-G020-2014-0023-DNA) is being submitted on behalf of the staff and members of Western Watersheds Project (WWP), a west-wide conservation advocacy organization with a concrete interest in the management of western public lands and, in particular, the Three Brothers allotment and the SPRNCA. WWP received a copy of the proposed decision via certified mail (7009 0960 0000 7836 1662) on June 9, 2016, and this protest of the proposed decision is timely filed in accordance with 43 C.F.R. § 4160.2.

As your staff is certainly aware, WWP has been actively engaged in planning efforts for the SPRNCA and I, Greta Anderson (member and Deputy Director of WWP), attended a field trip with BLM staff and the permittee on this allotment in March 2014. Because I intend to return to and enjoy the resources of the SPRNCA, and because the construction of the SPRNCA boundary fence will impair those interests, WWP also has standing to protest this decision.

WWP doesn't disagree that there are management problems on the Three Brothers allotment. It is plain from the field visit that there are serious issues with the upland health of the allotment, including major issues with distribution. The Standards and Guidelines Evaluation for the allotment was based on a field visit from 2008 and found no concerns for soils, uplands, or vegetation communities, but the 2012 visit reflected a vastly different state. Measurements on the allotment were also conducted in late August 2007, following the monsoon season. Annual forbs and annual grasses were a large component of the cover data that was collected during those monitoring visits, which may not be sufficient to say all is well with the vegetation on this allotment. But, notwithstanding the outdated and inconclusive results from the S&G assessment, it is worth noting that new fencing to create pasture divisions was not identified as a necessary step to improve rangeland health in the technical recommendations of that S&G. Thus, the statement in the proposed decision that the fence proposal was brought forward by the permittee to better distribute livestock is significant, both because

the BLM has not identified distribution as a problem, but also and more importantly that this rationale points to the fact that the purpose of the fence is to facilitate livestock management on the allotment.



Figure 1. Large, heavily degraded livestock concentration area on the Three Brothers allotment. Photo G. Anderson, 2014

In lieu of a complete and unbiased environmental analysis and a disclosure of the current conditions and potential impacts of the proposed action, the BLM instead used a Determination of National Environmental Policy Act (NEPA) Adequacy (DNA) for its proposed decision to construct the East SPRNCA Boundary Fence on the Three Brothers allotment. NOPD at 1. An agency may prepare a DNA where a previously completed NEPA analyses “remain adequate for the Federal action at issue and conform to land use planning decisions.” *SUWA v. Norton*, 164 IBLA 1, 30 (2004). However, a DNA is not itself a NEPA analysis. *Id.*

Here, the BLM is relying on November 1998 EA (#AZ-069-03-01) that identified the proposed action to build a Boundary fence as “necessary to delineate the NCA boundary particularly in areas where new acquisitions have changed that boundary and to separate public from private lands for public access. Adequate fencing is necessary to control livestock trespass from adjacent rangeland and to help stop ongoing off-road vehicle activity in undesignated and unsuitable areas.” EA at 1. This differs significantly (and unlawfully) from the current proposal to construct fencing to “better distribute livestock within the Three Brothers allotment which currently does not have pasture fencing and is under no rotational grazing system.” NOPD at 2.

The Three Brothers allotment does not have pasture fencing and is under no rotational grazing system because grazing management on this allotment has never been analyzed. In fact, as WWP has

repeatedly pointed out, the current permit for the grazing allotment is long overdue for analysis by BLM because:

1. The San Pedro River Riparian Management Plan (SPRRMP), the only management plan ever written for the river, excludes livestock grazing from the SPRNCA for the life of the plan. SPRRMP and EIS ROD at 5, SPRRMP at 9, Safford RMP at 21.
2. This plan was completed in 1989 and addressed 47,668 acres. An additional 6,521 acres were acquired from the State of Arizona before the designation of the SPRNCA in 1988 and the total acreage recognized by Congress was 54,189 acres. Safford RMP at 20.
3. The additional 6,521 acres were acquired by exchange and were “subject to existing livestock grazing leases.” Safford RMP at 20. Those leases were originally state trust land leases and were not analyzed in the Eastern Arizona Grazing EIS (1978) which provide grazing authorizations for all other allotments in the field office. Safford RMP at 12.
4. Because the newly-acquired acres on the SPRNCA were acquired in the middle of the SPRRMP planning process, they were not addressed in the SPRRMP and instead, the management of the 6,521 acres were addressed in the Safford RMP. Safford RMP at 20. The Safford RMP states (at page 21), “The decisions of the San Pedro River Riparian Management Plan will apply to the 6,521 acres of the National Conservation Area not covered in the plan, with the following exceptions:
 1. Livestock grazing will continue on the added 6,521 acre area in accordance with the State exchange agreements. This area includes state lands acquired through exchange; state grazing leases will be recognized for the term of the leases. (Emphasis added).
 2. Allotment categorization will be changed from “Maintain” to “Improve” to intensively manage livestock on all allotments in the 6,521 acre area.
 3. Allotment management plans will be prepared for all allotments in the 6,521 acre area to provide for continued livestock grazing and protection of riparian values of the National Conservation Area.” (Emphasis added).
5. The Safford RMP also contains the following statements concerning plans to continue livestock grazing in the SPRNCA, “...BLM will continue to issue permits and licenses, implement, monitor and modify allotment management plans and increase or decrease grazing authorizations through the allotment evaluation processes. As necessary, National Environmental Policy Act (NEPA) compliance documents will be prepared prior to any action being implemented.” Safford RMP at 14.
6. The environmental assessment of the land exchange (undated, but before the 1988 exchange) says, “Unless the land is to be dedicated to a use that would preclude grazing,” and “Both agencies have agreed to continue the present uses and management policies for a period of time[.]” EA AZ-040-6-04 at 2 (Emphasis added).
7. The phrase, “Unless the land is to be dedicated to a use that would preclude grazing,” is also included in the Memorandum of Understanding signed by the BLM and the Arizona State Land Department on March 5, 1985. MOU at 4.
8. There are currently four active allotments in the SPRNCA: Three Brothers (5232), Brunchow Hill (5251), Babocomari (5208), and Lucky Hills (5252).
9. The BLM apparently used the authority of the Rescissions Act to renew the permits on the Three Brothers allotment. The permits were renewed without a full NEPA analysis, and have not been thoroughly analyzed by any RMP. Thus, grazing on the Three Brothers allotment has never been analyzed.

10. The BLM has pledged to consider a range of alternatives regarding livestock grazing in the new SPRNCA RMP that is underway: “The compatibility of grazing on the SPRNCA with the conservation values of the SPRNCA will be analyzed and evaluated in this RMP.”¹

If the BLM constructs fencing for the sake of creating a pasture rotational grazing system on the Three Brothers allotment, it will be doing so without ever having taken a hard look at grazing on this allotment at all. If BLM authorizes livestock grazing infrastructure prior to deciding whether to continue livestock grazing on the SPRNCA, this would be an unlawful commitment of public resources that prejudices and predetermines the outcome of the new RMP. *See* 40 C.F.R. 1502.2(f). BLM could determine that it will exclude livestock grazing from the SPRNCA under the next RMP and the viability of the Three Brothers allotment for off-SPRNCA grazing would need to be assessed. Without evidence now that future grazing is unrelated to the fence proposal, the BLM is violating this important federal regulation.

Additionally, the 1998 EA analyzes just one alternative: The No Action alternative. EA at 3. The DNA claims that this “range of alternatives” is appropriate with respect to the new proposed action, given the current environmental concerns, interests, and resource values. DNA at 4. This is not true. If grazing management is a problem on the Three Brothers allotment, there is a range of alternatives to building a fence or “No Action” that could be explored. By tiering to an unrelated EA, and by failing to consider alternatives to the proposed action, the BLM is violating the letter and spirit of NEPA’s requirements to assess alternatives. NEPA requires BLM to “rigorously explore and objectively evaluate” a range of alternatives to proposed federal actions. *See* 40 C.F.R. §§ 1502.14(a) and 1508.25(c).

The DNA claims that EA AZ-060-2003-001 analyzed the impacts from the proposed fenceline. DNA at 4. The 10-page EA analyzed (nominally) the impacts of fence construction on cultural/historic resources. The EA doesn’t even *list* livestock grazing as a resource that would be affected, though clearly, the fence would serve as a livestock management mechanism on the Three Brothers allotment under the current proposed decision. NEPA requires that an environmental impact statement (EIS) “provide full and fair discussion of significant environment impacts of the proposed actions and shall inform decision-makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.” *See* 40 C.F.R. § 1502.1.

NEPA requires the BLM to assess impacts and effects that include: “ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.” 40 C.F.R. § 1508.8.

NEPA requires federal agencies to take a “hard look” at their actions, and to assess the environmental impacts of those actions in a forthright and public manner. Here, there is no discussion of how the proposed pastures would be managed in regard to livestock watering sites, a fundamentally important piece of information that would affect the utility of the fence. The EA to which the DNA tiers does not include this information and, having never prepared a full assessment for the Three Brothers allotment, it is not clear the BLM has considered this basic context.

¹ <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage¤tPageId=48118>

It is clear that the proposed action is not the same project to construct approximately 50 miles of fence along the SPRNCA boundary as analyzed in 1998 and approved in 2003. The current proposal obviously overlaps geographically with that decision, but in no other way does the EA address the proposal to create pastures within the Three Brothers allotment and the BLM's attempt to avoid a full and fair public process by tiering to a decades-old, tangentially-related, and extremely brief EA is an abrogation of its duties under federal law.

WWP encourages BLM to withdraw the proposed decision and focus on completing the proper NEPA analyses concerning the future of the SPRNCA before adding expensive infrastructure to public lands.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, reading "Greta Anderson", with a long, sweeping horizontal line extending to the right.

Greta Anderson, Deputy Director
Western Watersheds Project



United States Department of the Interior

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August 18, 2016

In Reply Refer To:
4120 (G021)
Allot. No. 5232

CERTIFIED MAIL NO. RETURN RECEIPT REQUESTED: 7009 0960 0000 7835 5364

Greta Anderson, Arizona Director
Western Watersheds Project
738 N. 5th Ave, Ste. 200
Tucson, AZ. 85705

Dear Ms. Anderson,

This letter is in reference to the proposed fence project, otherwise referred to as the Three Brothers Fence. The Bureau of Land Management (BLM) received a protest from Western Watersheds on this proposed decision. BLM has evaluated and considered all of those points made in that protest and has decided to postpone further consideration of this project until a later date. The purpose and need for the proposed project deviated substantially from the purpose and need for the original Environmental Assessment (EA) that we were trying to tier from. In order to proceed with analyzing the fence project, BLM would be required to complete a new EA specific to this project.

The reason for the delay is for multiple reasons. As you are aware, BLM is currently working on a Resource Management Plan (RMP) for the San Pedro Riparian National Conservation Area (SPRNCA). In addition to the RMP effort, the Field Office is also at capacity with regards to current project workloads.

If you have any questions, please contact Eric Baker, Rangeland Management Specialist at (520)439-6405.

Sincerely,

Melissa Warren
Tucson Field Manager