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(03016)

CERTIFIED MAIL – RETURN RECEIPT REQUESTED (No.)

December 4, 2003

**NOTICE OF FINAL DECISION**

Childs Estates  
c/o Jimmy Leon  
2021 Rosser Road  
Ajo, Arizona

Dear Mr. Leon:

The Proposed Decision for reauthorizing livestock grazing on the Childs allotment was protested by the Defenders of Wildlife and the Center for Biological Diversity on May 21, 2003. My staff has reviewed the reasons outlined in the protest and I have determined the following:

1. Endangered Species Act Violations.

The protest claims the proposed decision violates the Endangered Species Act ("ESA") by allowing continued livestock grazing on the Childs Allotment, which is not directed at the recovery of the Sonoran Pronghorn or other listed species.

**Response:** The Bureau of Land Management (BLM) complied with Section 7 (a)(2) of the Endangered Species Act of 1973 as amended and 50 CFR 402.14 when issuing the proposed decision for the Childs Grazing allotment. BLM completed and submitted a biological evaluation with effects determination to the U.S. Fish and Wildlife Service (USFWS) as required by ESA. The USFWS issued a biological opinion (2-21-94-F-192R2) on livestock grazing on September 30, 2002. The results of our consultation were the USFWS finding that the proposed decision, as written, would not jeopardize the continued existence of any Federally listed species.

In accordance with CFR 402.15, the BLM has determined to implement the proposed action with requirements of Section 7 (a) (2) as outlined in the USFWS biological opinion (2-21-94-F-192R2).

2. National Environmental Policy Act Violations.

The protest also claims that the proposed decision violates the National Environmental Policy Act ("NEPA") because BLM has failed to adequately analyze the impacts of its decision on the environment by not preparing an Environmental Assessment ("EA"), as required under NEPA, and that BLM failed to consider a range of reasonable alternatives to the proposed action, as NEPA also requires.

**Response:** The BLM is in full conformance with NEPA. An environmental assessment (EA # AZ-020-2003-0060) was prepared as part of the evaluation process for issuing a new 10-year grazing permit for the Cameron allotment.

### 3. Federal Land Policy and Management Act Violations

The protest contends that the evaluation for the Childs allotment states that the Arizona Standards for Rangeland Health are not being met and therefore BLM is not in compliance with grazing regulations which require that action be taken prior to the start of the next grazing year to mitigate the cause of non-attainment of standards.

**Response:** There are three Standards for Rangeland Health in Arizona. The allotment evaluation for the Childs allotment states on page 32 that "based on the indicators, Standard 1- Upland Sites , is being met at all study sites in the Childs allotment." Standard 2— Riparian Sites, does not apply because there are no riparian sites on the allotment. The evaluation for Standard 3 – Desired Resource Conditions, states on page 33 that "based on the indicators, significant progress is being made toward the attainment of standard 3 on the Childs allotment."

4. The authorization of grazing under the "Ephemeral Rule" is illegal since passage of the Rangeland Reform rulemaking of 1995.

**Response:** The "ephemeral rule" was not superceded by changes to the grazing regulations resulting from the 1995 Rangeland Reform initiative. Current regulations still provide for the application of the ephemeral rule passed in 1968 for the states of Arizona, California and Nevada.

### DECISION

Therefore, after considering your reasons of protest, my final decision is to confirm and uphold the proposed decision of May 9, 2003. The allowable use and the new terms and conditions contained in that proposed decision are re-stated below.

#### Maintain permitted livestock use as follows:

No.	Dates	% Public Land	Animal Unit Months (AUMs)
317 C	03/01-02/28	100% PL	3,802AUMs

#### Grazing Practices for livestock use will be conducted in accordance with the following new terms and conditions:

- a. Actual use information will be submitted within 15 days of the end of the grazing year in accordance with 43 CFR 4130.3-2(d). Actual use reports will identify the amount of livestock use and period of use for each water source/pasture.
- b. Major maintenance of range improvements requiring any surface disturbing activities within Pygmy Owl habitat must be conducted during the period between July 1 and December 31.

**Ephemeral Grazing:** Ephemeral use west of highway 85 will be authorized in accordance with the Special Ephemeral Rule, Arizona Guidelines for Grazing Administration [3-5] and USFWS population requirements. Specifically, the following two requirements must be met prior to authorizing ephemeral use west of highway 85:

1. Ephemeral plant production is widespread throughout the United States portion of the Sonoran Pronghorn Antelope range and not limited to public lands in the Ajo area.
2. The United States population of Sonoran Pronghorn Antelope must be above 100 and increasing.

Prior to authorizing ephemeral use, the BLM will work with the USFWS and Arizona Game & Fish Department in evaluating the ephemeral conditions throughout the range of the pronghorn.

**RATIONALE:** Adjustments to permitted use levels, terms and conditions and management practices are necessary in order to meet and/or make significant progress toward meeting the Arizona Standards for Rangeland Health and Guidelines for Grazing Administration and other Land Use Plan Objectives. In addition, the BLM submitted a Biological Evaluation to the USFWS, which detailed our anticipated impacts to federally listed Threatened or Endangered species in the Ajo Block Evaluation area. The proposed change in authorizing AUMs based on ephemeral forage and scheduled range improvement maintenance requirements will reduce potential for competition between livestock and Sonoran pronghorn and will not jeopardize the continued existence of the other listed species affected and is not likely to result in destruction or adverse modification of designated or proposed critical habitat.

**AUTHORITY:** The authority for this decision includes Section 7 of the Endangered Species Act (ESA) and Title 50 of the Code of Federal Regulations (CFR) Part 402, which identifies the procedures for ESA compliance.

More specifically, 50 CFR 402.14 requires "formal consultation...on all actions that may affect a listed species, its habitat, or any designated critical habitat" and 50 CFR 402.15(a) states that "Following the issuance of a biological opinion, the Federal agency shall determine whether and if in what manner to proceed with the action in light of its section 7 obligations and the Services biological opinion."

**ADDITIONAL AUTHORITY:** The authority for this decision is also contained in Title 43 of the Code of Federal Regulations including, but not limited to the following sections:

4110.3 "The authorized officer shall periodically review the permitted use specified in a grazing permit or lease and shall make changes in the permitted use as needed to manage, maintain or improve rangeland productivity, to assist in restoring ecosystems to properly functioning condition, to conform with land use plans or activity plans, or to comply with the provisions of subpart 4180 of this part. These changes must be supported by monitoring, field observations, ecological site inventory or other data acceptable to the authorized officer."

4110.3-2(b) "When monitoring or field observations show grazing use or patterns of use are not consistent with the provisions of subpart 4180, or grazing use is otherwise causing an unacceptable level or pattern of utilization, or when use exceeds the livestock carrying capacity as determined through monitoring, ecological site inventory or other acceptable methods, the authorized officer shall reduce permitted grazing use or otherwise modify management practices."

4130.3 "Livestock grazing permits and leases shall contain terms and conditions determined by the authorized officer to be appropriate to achieve management and resource condition objectives for the public lands and other lands administered by the Bureau of Land Management, and to ensure conformance with the provisions of subpart 4180 of this part."

4130.3-1(a) "The authorized officer shall specify the kind and number of livestock, the period(s) of use, the allotment(s) to be used, and the amount of use in animal unit months, for every grazing permit or lease. The authorized livestock grazing use shall not exceed the livestock carrying capacity of the allotment."

4130.3-1(c) "Permits and leases shall incorporate terms and conditions that ensure conformance with subpart 4180 of this part."

4130.3-2 "The authorized officer may specify in grazing permits or leases other terms and conditions which will assist in achieving management objectives, provide for proper range management or assist in the orderly administration of the public rangelands. These may include but are not limited to: ... (d) A requirement that permittees or lessees operating under a grazing permit or lease submit within 15 days after completing their annual grazing use, or as otherwise specified in the permit or lease, the actual use made; ... (f) Provisions for livestock grazing temporarily to be delayed, discontinued or modified to allow for the reproduction, establishment, or restoration of vigor of plants ... of for the protection of other rangeland resources and values consistent with objectives of applicable land use plans, ... ."

4130.3-3 "Following consultation, cooperation, and coordination with the affected lessees or permittees, the State having lands or responsible for managing resources within the area, and the interested public, the authorized officer may modify terms and conditions of the permit or lease when the active use or related management practices are not meeting the land use plan, allotment management plan or other activity plan, or management objectives, or is not in conformance with the provisions of subpart 4180 or this part. To the extent practical, the authorized officer shall provide to affected permittees or lessees, States having lands or responsibility for managing resources within the affected area, and the interested public an opportunity to review, comment and give input during the preparation of reports that evaluate monitoring and other data that are used as a basis for making decisions to increase or decrease grazing use, or to change the terms and conditions of a permit or lease."

4180.1 "The authorized officer shall take appropriate action under subparts 4110, 4120, 4130, and 4160 of this part as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management needs to be modified to ensure that the following conditions exist.

- (a) Watersheds are in, or are making significant progress toward, properly functioning physical condition, including their upland, riparian-wetland, and aquatic components; soil and plant conditions support infiltration, soil moisture storage, and the release of water that are in balance with climate and landform and maintain or improve water quality, water quantity, and timing and duration of flow.
- (b) Ecological processes, including the hydrologic cycle, nutrient cycle, and energy flow, are maintained, or there is significant progress toward their attainment, in order to support healthy biotic populations and communities.

- (c) Water quality complies with State water quality standards and achieves, or is making significant progress toward achieving, established BLM management objectives such as meeting wildlife needs.
- (d) Habitats are, or making significant progress toward being, restored or maintained for Federal threatened and endangered species, Federal Proposed, Category 1 and 2 Federal candidate and other special status species."

**APPEAL:** You may appeal this final decision and file a petition for a stay of the decision pending final determination on appeal under 43 CFR 4160.4, 4.21 and 4.470. The appeal and petition for stay must be filed in the office of the authorized officer (Teresa A. Raml) at 21605 North 7<sup>th</sup> Avenue, Phoenix, Arizona 85027-2929, within 30 days following receipt of the final decision.

The appeal should state the reasons, clearly and concisely, why the appellant thinks the final decision is in error.

Should you wish to file a petition for stay, the appellant shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied;
2. The likelihood of the appellant's success on the merits;
3. The likelihood of immediate and irreparable harm if the stay is not granted; and
4. Whether the public interest favors the stay.

As noted above, the petition for stay must be filed in the office of the authorized officer.

If you need more information, please call Lee Higgins at (623) 580-5565.

Sincerely,

Teresa A. Raml  
Field Manager

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