



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Arizona Strip Field Office
345 East Riverside Drive
St. George, UT 84790
www.blm.gov/az/

IN REPLY REFER TO:
LLAZA01000
4160

RUESCH, DEVIN D,
350 S MAIN ST
HURRICANE, UT 84737

NOTICE OF PROPOSED DECISION (NOPD) PROPOSED ARIZONA STRIP FIELD OFFICE WATER DEVELOPMENT PROJECTS DECISION

This decision only applies to the projects proposed within the Antelope Spring Allotment.

Authorize the following Range Improvement Projects for construction within the Antelope Spring Allotment. (Refer to Project Maps attached to this Proposed Decision.)

- *Antelope Spring 1 Catchment:* This project will provide reliable water to the Antelope Spring Pasture within the Antelope Spring Allotment. This catchment will be located in T. 41N., R. 9 W., sec. 28, SE $\frac{1}{4}$. This water will be available for wildlife yearlong.
- *Antelope Spring 2 Catchment:* This project will also provide reliable water to the Antelope Spring Pasture within the Antelope Spring Allotment. This catchment will be located in T. 41N., R. 10 W., sec. 26, SW $\frac{1}{4}$. This water will be available for wildlife yearlong.
- *Ruesch Spring Storage Tank:* This project will consist of installing a storage tank (of up to 100,000 gallons) and trough at the southwest corner of T.40 N., R. 10 W., sec. 01. This would allow for water storage throughout the year and provide a reliable water source for wildlife year round and cattle during the short time they are in this pasture.

Range Improvement Projects within the Antelope Spring Allotment will be Subject to the Following Project Standards:

Catchment Apron and Storage Tank: The Proposed Action is to fence off approximately 2 acres for both catchments. Within the enclosure, a water catchment apron will be constructed, up to 1½ acre in size; an 80 to 200 thousand gallon lined pond or storage tank will be constructed at

each catchment and at Ruesch Spring, and water will be piped from the apron or spring to a tank or pond. An option included within this action is either the construction of excavated ponds with flexible liners or large storage tanks. The location in which either the pond or storage tank will be constructed has been cleared for both cultural and special status species purposes. The excavated ponds with flexible liners are typically 8 – 10 feet deep and begin at ground level using heavy equipment. The slope ratio around the entire pond will be 1:1. It will then be lined with a plastic Firestone product called EPDM 45 mil. This plastic comes in approximately 50' widths and is bonded together using an adhesive. A fence will be constructed around the perimeter of the pond, impeding animals from entering the storage pond so that they do not get trapped in the pond. If the storage tank option is chosen it will consist of a tank which will sit above ground approximately 15' tall. Either lids or wildlife escape ramps and floating bird ladders will be installed. Water from the pond or tank would then be piped to troughs and available to livestock and wildlife. The trough will be constructed using a heavy equipment sized tire and secured to the proposed location using concrete. Wildlife escape ramps will be secured in the trough before it is filled. No new structures will be placed around the trough.

The Proposed Action includes future maintenance activities for the life of the project, which is expected to be at least 20-50 years. The exact maintenance requirements are not known but are expected to include annual inspections of the catchment apron material and replacing or patching material when repairs are needed, and annual inspections of the pipelines to each trough, which includes digging to find and repair leaks or clogs in the pipe. No onsite camping by the construction crew will be necessary.

The Range Improvement Projects will be Subject to the Following Best Management Practices:

The range improvement projects will be subject to the following best management practices (BMPs) in an effort to minimize the impacts of the projects to social and natural environmental resources.

- Construction will be limited to daylight hours to minimize impacts to wildlife.
- Open trenches have the potential to trap and injure wildlife. During construction of any pipelines, these risks will be mitigated by minimizing the length of time trenches are left open, providing escape avenues (lateral trenches) for wildlife when left overnight, and inspecting the trenches prior to backfill activities.
- Construction activities will be limited to periods when the soil and ground surface are not wet in order to avoid soil compaction.
- Construction activities will be conducted in a manner that will minimize disturbance to existing vegetation where possible.
- At no time will vehicle or equipment fluids (including motor oil and lubricants) be dumped on public lands. All accidental spills will be reported to the authorized officer and be cleaned up immediately, using best available practices and requirements of the

law, and disposed of in an authorized disposal site. All spills of federally or state listed hazardous materials which exceed the reportable quantities will be promptly reported to the appropriate agency and the authorized officer.

- Vehicles and equipment will be power washed off-site before construction activities begin to minimize the risk of spreading noxious weeds. This will include cleaning all equipment before entering the Arizona Strip. The project area will be monitored for noxious weeds for two years following completion of the project.
- The project sites will be cleaned up at the end of each day the work is being conducted (e.g., trash removed, scrap materials picked up) to minimize the likelihood of condors visiting the site. BLM staff may conduct site visits to the area to ensure adequate clean-up measures are taken.
- Any cultural (historic/prehistoric site or object) or paleontological resource (fossil remains of plants or animals) discovered in the project areas will immediately be reported to the Arizona Strip Field Office Manager or her designee. All operations in the immediate area of the discovery shall be suspended until written authorization to proceed is issued. An evaluation of the discovery shall be made by a qualified archaeologist or paleontologist to determine appropriate actions to prevent the loss of significant cultural or scientifically important paleontological values.
- If in connection with this work any human remains, funerary objects, sacred objects, or objects of cultural patrimony as defined in the Native American Graves Protection and Repatriation Act (Public Law 101-601; 104 Stat. 3048; 25 U.S.C. 3001) are discovered, operations in the immediate area of the discovery will stop, the remains and objects will be protected, and the Arizona Strip Field Office Manager (or her designee) will be immediately notified. The immediate area of the discovery will be protected until notified by the Arizona Strip Field Office Manager (or her designee) that operations may resume.
- The work crew chief must notify the BLM wildlife team lead if California condors visit the worksites while construction is underway. Project activities will be modified or delayed where adverse effects to condors may result.
- If an active bird nest is located within a project area, the Arizona Strip Field Office Manager (or her designee) will be immediately notified in order to develop appropriate measures to avoid disturbance to the nesting birds.
- No hazing or harassment of wildlife is permitted.
- No smooth or barbed wire t-posts structures will be used to strengthen the integrity of the troughs to keep them from moving. Instead, heavy equipment sized tires will be secured using concrete. This will facilitate ingress and egress of wildlife, particularly bat species.

- Wildlife escape ramps will be secured in each trough before it is filled. Wildlife escape ramps and floating bird ladders will be installed to the storage tanks or ponds.

Rationale

The Antelope Spring Allotment is grazed year round, is divided into three pastures, and uses a deferred rotational grazing system. There are several earthen reservoirs on the allotment, but they are unreliable as they depend on rainfall events in order to fill, lack in water storage capabilities, and leak due to the soils' inability to retain water. Currently there are no reliable water sources in the Antelope Spring Pasture of the allotment. In an effort to more uniformly distribute livestock and therefore achieve more uniform utilization of key forage species, and give the permittee more reliability for pasture use in this grazing system, two water catchments and a water storage project are being proposed for this allotment.

The purpose of the projects is not to increase permitted use, or animal unit months, but to encourage and achieve better livestock distribution within the allotment. The projects will create new (reliable) water sources in the Antelope Spring Pasture of the allotment. These additional water sources will aid in keeping livestock dispersed throughout the allotment at all times of the grazing season, which will result in more uniform utilization of key forage species. The Reusch Spring project will be near an existing spring (to which the permittee has water rights). The spring produces approximately ½ gallon per minute; this is too little water to provide a reliable water source and keep cattle evenly distributed. However, on a long term basis, ½ gallon per minute equates to 262,800 gallons a year. This project will install a storage tank of up to 100,000 gallons near the spring, in order to store the water output of this spring.

The projects will also provide additional (reliable) water sources for wildlife (including mule deer and pronghorn). The *Arizona Strip Interdisciplinary Mule deer Management Plan 2015-2019*, which was developed jointly by the BLM and AGFD states that “water distribution should be improved in [Unit 13A] by utilizing both cooperative projects and wildlife catchments” (AGFD and BLM 2015). The *Arizona Statewide Pronghorn Management Plan* (AGFD 2009) identifies a number of management objectives, including objectives related to water availability. It should be noted that habitat management for non-listed, non-game species are typically provided in the form of supplemental benefits from actions designed to address other, targeted (i.e., threatened, endangered, candidate, or game species). These most often take the form of water developments or vegetative treatment projects. Thus, other wildlife species (along with mule deer and pronghorn) will benefit from the water projects by improving water distribution and improving habitat use by these species as well, which are also objectives contained within the Arizona Strip Field Office Resource Management Plan (RMP) (2008).

AUTHORITY

- The authority for this decision is contained in part in Federal Land Policy and Management Act of 1976 (43 United States Code [USC] 1707 et seq.) and Title 43 of the Code of Federal Regulations (CFR), which state in pertinent parts:

§4100.0-8 Land Use Plans

The authorized officer shall manage livestock grazing on public lands under the principle of multiple use and sustained yield, and in accordance with applicable land use plans. Land use plans shall establish allowable resource uses (either singly or in combination), related levels of production or use to be maintained, areas of use, and resource condition goals and objectives to be obtained. The plans also set forth program constraints and general management practices needed to achieve management objectives. Livestock grazing activities and management actions approved by the authorized officer shall be in conformance with the land use plan as defined at 43 CFR 1601.0-5(b).

§4120.3-1 Conditions for Range Improvements

(a) Range improvements shall be installed, used, maintained, and/or modified on the public lands, or removed from these lands, in a manner consistent with multiple-use management.

(b) Prior to installing, using, maintaining, and/or modifying range improvements on the public lands, permittees or lessees shall have entered into a cooperative range improvement agreement with the Bureau of Land Management or must have an approved range improvement permit.

(c) The authorized officer may require a permittee or lessee to maintain and/or modify range improvements on the public lands under §4130.3-2 of this title.

(d) The authorized officer may require a permittee or lessee to install range improvements on the public lands in an allotment with two or more permittees or lessees and/or to meet the terms and conditions of agreement.

(e) A range improvement permit or cooperative range improvement agreement does not convey to the permittee or cooperator any right, title, or interest in any lands or resources held by the United States.

(f) Proposed range improvement projects shall be reviewed in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4371 *et seq.*). The decision document following the environmental analysis shall be considered the proposed decision under subpart 4160 of this part.

§4160.1 Proposed Decisions

(a) Proposed decisions shall be served on any affected applicant, permittee or lessee, and any agent and lien holder of record, who is affected by the proposed actions, terms or conditions, or modifications relating to applications, permits and agreements (including range improvement permits) or leases, by certified mail or personal delivery. Copies of proposed decisions shall also be sent to the interested public.

(b) Proposed decisions shall state the reasons for the action and shall reference the pertinent terms, conditions and the provisions of applicable regulations. As appropriate, decisions shall state the alleged violations of specific terms and conditions and provisions of these regulations

alleged to have been violated, and shall state the amount due under §§4130.8 and 4150.3 and the action to be taken under §4170.1.

(c) The authorized officer may elect not to issue a proposed decision prior to a final decision where the authorized officer has made a determination in accordance with §4110.3-3(b) or §4150.2(d).

§4160.2 Protests

Any applicant, permittee, lessee or other interested public may protest the proposed decision under §4160.1 of this title in person or in writing to the authorized officer within 15 days after receipt of such decision.

§4160.3 Final Decisions

(a) In the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice unless otherwise provided in the proposed decision.

(b) Upon the timely filing of a protest, the authorized officer shall reconsider her/his proposed decision in light of the protestant's statement of reasons for protest and in light of other information pertinent to the case. At the conclusion to her/his review of the protest, the authorized officer shall serve her/his final decision on the protestant or her/his agent, or both, and the interested public.

(c) A period of 30 days following receipt of the final decision, or 30 days after the date the proposed decision becomes final as provided in paragraph (a) of this section, is provided for filing an appeal and petition for stay of the decision pending final determination on appeal. A decision will not be effective during the 30-day appeal period, except as provided in paragraph (f) of this section. See §§4.21 and 4.470 of this title for general provisions of the appeal and stay processes.

(d) When the Office of Hearings and Appeals stays a final decision of the authorized officer regarding an application for grazing authorization, an applicant who was granted grazing use in the preceding year may continue at that level of authorized grazing use during the time the decision is stayed, except where grazing use in the preceding year was authorized on a temporary basis under §4110.3-1(a). Where an applicant had no authorized grazing use during the previous year, or the application is for designated ephemeral or annual rangeland grazing use, the authorized grazing use shall be consistent with the decision pending the Office of Hearings and Appeals final determination on the appeal.

(e) When the Office of Hearings and Appeals stays a final decision of the authorized officer to change the authorized grazing use, the grazing use authorized to the permittee or lessee during the time that the decision is stayed shall not exceed the permittee's or lessee's authorized use in the last year during which any use was authorized.

(f) Notwithstanding the provisions of §4.21(a) of this title pertaining to the period during which a final decision will not be in effect, the authorized officer may provide that the final decision shall be effective upon issuance or on a date established in the decision and shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals when the authorized officer has made a determination in accordance with §4110.3-3(b) or §4150.2(d). Nothing in this section shall affect the authority of the Director of the Office of Hearings and Appeals or the Interior Board of Land Appeals to place decisions in full force and effect as provided in §4.21(a)(1) of this title.

§4160.4 Appeals

Any person whose interest is adversely affected by a final decision of the authorized officer may appeal the decision for the purpose of a hearing before an administrative law judge by following the requirements set out in §4.470 of this title. As stated in that part, the appeal must be filed within 30 days after receipt of the final decision or within 30 days after the date the proposed decision becomes final as provided in §4160.3(a). Appeals and petitions for a stay of the decision shall be filed at the office of the authorized officer. The authorized officer shall promptly transmit the appeal and petition for stay and the accompanying administrative record to ensure their timely arrival at the Office of Hearings and Appeals.

§4180.1 Fundamentals of Rangeland Health

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 are 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.

§4180.2 Standards and Guidelines for Grazing Administration

(c) The authorized officer shall take appropriate action as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the standards and conform with the guidelines that are made effective under this section. Appropriate action means implementing actions pursuant to subparts 4110, 4120, 4130, and 4160 of this part that will result in significant progress toward fulfillment of the standards and significant progress toward conformance with the guidelines. Practices and activities subject to standards and guidelines include the development of grazing-related portions of activity plans, establishment of terms and conditions of permits, leases and other grazing authorizations, and range improvement activities such as vegetation manipulation, fence construction and development of water.

DECISION PROTEST AND APPEAL PROCEDURES

In accordance with 43 CFR 4160.2, any applicant, permittee, lessee or other interested public may protest the Proposed Decision under 4160.1 of this title, in person or in writing to the authorized officer (Lorraine M. Christian, Field Manager, Arizona Strip Field Office, 345 East Riverside Drive, St. George, Utah 84790) within 15 days after receipt of such decision. The protest, if filed, must clearly and concisely state the reason(s) as to why the Proposed Decision is in error.

In accordance with 43 CFR 4160.3 (b), should a timely protest be filed with the authorized officer, the authorized officer, at the conclusion to her review of the protest shall serve the Final Decision on the protestant and the interested public.

In the absence of a protest, the Proposed Decision shall constitute the Final Decision without further notice unless otherwise provided in the Proposed Decision in accordance with 43 CFR 4160.3(a).

In accordance with 43 CFR 4.470, 4160.3(c), and 4160.4, any person whose interest is adversely affected by a final decision of the authorized officer may appeal the decision for the purpose of a hearing before an administrative law judge. The appeal must be filed within 30 days after the date the proposed decision becomes final or 30 days after receipt of the final decision. In accordance with 43 CFR 4.470, the appeal shall state clearly and concisely the reason(s) why the appellant thinks the final decision of the authorized officer is wrong.

Pursuant to 43 CFR 4.471 and 4160.3(c), an appellant also may petition for a stay of the final decision pending appeal by filing a petition for stay along with the appeal within 30 days after the date the proposed decision becomes final or 30 days after receipt of the final decision.

The appeal and any petition for stay must be filed at the office of the authorized officer (Lorraine M. Christian, Field Manager, Arizona Strip Field Office, 345 East Riverside Drive, St. George, Utah 84790). Within 15 days of filing the appeal and any petition for stay, the appellant also must serve a copy of the appeal and any petition for stay on any person named in the decision and listed at the end of the decision, and on the Office of the Field Solicitor located at U.S. Department of the Interior, Sandra Day O' Connor U.S. Courthouse, 401 West Washington Street, SPC

44, Suite 404, Phoenix, Arizona 85003-2151. Pursuant to 43 CFR 4.471(c), a petition for stay, if filed, must 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 granting the stay.

43 CFR 4.471(d) provides that the appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.

Any person named in the decision from which an appeal is taken (other than the appellant) who wishes to file a response to the petition for a stay may file with the Hearings Division in Salt Lake City, Utah, a motion to intervene in the appeal, together with the response, within 10 days after receiving the petition. Within 15 days after filing the motion to intervene and response, the person must serve copies on the appellant, the Office of the Solicitor and any other person named in the decision (43 CFR 4.472(b)).

At the conclusion of any document that a party must serve, the party or its representative must sign a written statement certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service (43 CFR 4.422(c)(2)).

AUTHORIZED OFFICER'S SIGNATURE:

The decision is consistent with 43 CFR 4100 and 43 CFR 4180 and the Standards and Guidelines for Healthy Rangelands.

Lorraine M. Christian
Field Manager
Arizona Strip Field Office

Date

Antelope Spring Allotment - Proposed Developments
NEPA No. DOI-BLM-AZ-A010-2016-0027-EA
 Bureau of Land Management - Arizona Strip Field Office

BLM



Proposed Developments

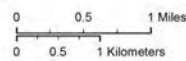
- Catchment
- Storage Tank

Existing Developments

- Developed Spring
- Livestock Catchment
- Livestock Trough
- Unfenced Reservoir
- Water Storage Tank

Grazing Boundaries

- Allotment
- Pasture



Public Land Survey System

- PLSS Township
- PLSS Section

Surface Management

- Bureau of Land Management
- State
- Private

Transportation Routes

- Primary Road Paved
- Secondary Road Paved
- Primary Road Unpaved
- Secondary Road Unpaved
- Tertiary Road Unpaved
- Single Track
- Reclaiming



Map Produced by: BLM - Arizona Strip District GIS Program
 User: bhansain
 Document: ASFO_water_dev_EA_Antelope_Spring.mxd
 Date: 10/4/2016

Coordinate System: NAD 1983
 Reference System: U.S. PLSS GSRB&M
 Ratio Scale: 1:70,000 at 8.5x11 page output

Data Sources: All layers: BLM and ASDO Geodatabases

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Arizona Strip District