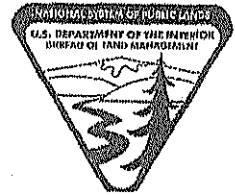




United States Department of the Interior  
BUREAU OF LAND MANAGEMENT

Safford Field Office  
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Safford, AZ 85546  
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February 14, 2022

In Reply Refer To:  
LLAZG01000: 4160

Certified Mail No. 7019 2970 0000 8153 0831  
Return Receipt Requested

Levi Klump  
726 Horse Camp Dr.  
P.O. Box 111  
Animas, NM 88020

**NOTICE OF FINAL DECISION**

**Badger Den Allotment Permit Issuance (No. 51100)**

Dear Levi Klump:

This Notice of Final Decision (NOFD) is the result of a timely protest of a Notice of Proposed Decision (NOPD) which was mailed on June 2, 2021, a corrected version was sent again on July 15, 2021, to you and other interested publics regarding issuance of the 10-year term grazing permit on the Badger Den Allotment that was analyzed in Environmental Assessment (EA) No. DOI-BLM-AZ-G010-2020-0014-EA.

**INTRODUCTION**

The Badger Den Allotment is located in Graham County, Arizona, approximately eight miles north of the town of Bowie. The Badger Den Allotment was analyzed and made available as an active grazing allotment through the Safford District Resource Management Plan (RMP) and Environmental Impact Statement (EIS) as approved by the Bureau of Land Management Safford Field Office (BLM SFO) in the Partial Records of Decision (ROD) dated September 1992 and July 1994. In addition, the Safford District RMP incorporates by reference the Upper Gila-San Simon Grazing Environmental Statement (UG) dated 1978. The Safford District RMP was amended by the Decision Record for the Statewide Land Use Plan Amendment for Implementation of Arizona Standards for Rangeland Health and Guidelines for Grazing Administration Environmental Assessment (EA) (BLM 1997).

**BACKGROUND**

On February 15, 1991, a decision was issued to cancel the grazing permit and grazing preference in whole on the Badger Den Allotment; the BLM's decision was appealed. The Interior Board of Land Appeals (IBLA) dismissed the appeal and affirmed the BLM's

decision on February 5, 1993. Since then, the allotment has been available for livestock grazing in accordance with the Safford District RMP.

On June 19, 2018, your application was approved by the BLM via the transfer process through Categorical Exclusion (CX) per Title 43 CFR § 4110.2-3 and Section 402(c)(2) of the Federal Land Policy and Management Act (FLPMA) of 1976 as amended. You were issued a grazing permit for the Badger Den Allotment on June 22, 2018.

On March 9, 2020, a BLM Notice of Proposed Decision was mailed stating that the application for grazing preference on the Badger Den Allotment was processed incorrectly and therefore the resulting permit was determined invalid and was cancelled.

On June 26, 2020, a Notice of Comment Period for Badger Den Allotment (No. 51100): Draft Land Health Evaluation (LHE) Comment Period and Draft Environmental Assessment Chapter 1 & 2 was sent to interested publics for a 15-day comment period. These scoping comments were addressed in Appendix D of the December 11, 2020 Draft EA.

On December 11, 2020, a Notice of Comment Period for Badger Den Allotment (No. 51100) Draft EA was sent to interested publics for a 30-day comment period. Comments were addressed in Appendix E of the June 2, 2021, Final EA.

On June 2, 2021, the Badger Den Allotment Permit Issuance Environmental Assessment (EA) (DOI-BLM-AZ-G010-2020-0014-EA) was completed with associated Finding of No Significant Impact (FONSI). The EA and associated documents were made available, and continue to be available, electronically through the online National Environmental Policy Act (NEPA) Register (ePlanning) or by visiting: <https://go.usa.gov/xwH8x> (case sensitive).

On June 2, 2021, a Notice of Proposed Decision for the Badger Den Allotment Permit Issuance (No. 51100) EA was mailed to interested publics. This decision was subject to a 15-day protest period. The Proposed Decision was reissued to all interested publics on July 15, 2021.

On June 24, 2021, a timely protest to the Proposed Decision was received from Western Watersheds Project (WWP). I have carefully considered each reason for protest and have responded to these reasons below.

## **REASONS FOR PROTEST AND BLM RESPONSES**

### **Reason for Protest:**

- I. **“The BLM’s Proposed Decision Violates the National Environmental Policy Act (NEPA)”**
  - A. **“BLM should have prepared an Environmental Impact Statement (EIS)”**

“An agency may prepare an environmental assessment to determine whether an EIS is needed. 40 C.F.R. § 1501.4(b). If the environmental assessment shows that the agency action may significantly affect the environment, then the agency must prepare an EIS. *Nat’l Parks & Conservation Ass’n v. Babbitt*, 241 F.3d 722, 730 (9th Cir. 2001), *abrogated on other grounds by Monsanto Co. v. Geerston Seed Farms*, 130 S. Ct.

2743, 2756-57 (2010). If an agency concludes in its environmental assessment that the proposed action will not have a significant environmental impact, then it may issue a finding of no significant impact and proceed without further study. *See Te-Moak Tribe of W. Shoshone of Nev. v. U.S. Dep't of Interior*, 608 F.3d 592, 599 (9th Cir. 2010).

“Here, BLM failed to adequately consider the fact these allotments have been off limits to livestock grazing for decades, are located in an area where there has been significant controversy or livestock grazing management and even violence directed at BLM employees who try to enforce grazing regulations. Significant and ongoing drought, extreme erosion, long-lasting damage from past and current trespass livestock use, and competing demands on these lands that preclude a Finding of No Significant Impact.

“In our prior comments we provided BLM with many reasons that a Finding of No Significant Impact is inappropriate. The BLM failed to adequately acknowledge the importance and significance of this area and the significance of impacts associated with the proposed decision.”

**BLM Response:** Livestock grazing was authorized on the Badger Den Allotment until 1993 when the grazing permit and grazing preference were canceled for failure to adhere to the terms and conditions of the permit. There were several years of repeated willful trespass by the previous permittee through 2002, and small numbers of incidental unauthorized livestock from neighboring allotments have been reported over time. While the allotment has been predominantly vacant, and has not been permitted since 1993, the allotment has remained available for grazing under the Safford District RMP.

The Land Health Evaluation (LHE) determined that due to the vacancy of the allotment, current livestock grazing was not contributing toward the allotment not meeting standards. Section 7.4 of the evaluation considered properly managed livestock grazing as an acceptable use of uplands. It further stated that grazing could be an important factor in riparian-wetland plant community health moving forward, and proper grazing management strategies should be considered. These strategies include deferment of livestock from sensitive riparian areas during critical growing periods to assist with production and maintenance of riparian-wetland plant communities. The LHE attributed current allotment conditions to a number of factors, including but not limited to historic overgrazing prior to the establishment of the Taylor Grazing Act and soil loss that resulted from that use, extended drought broken by intense thunderstorms, railroad and road development and subsequent effects on ecological function of hydrology, channel excavation in 1883 from the Gila River up the San Simon Valley to confine flow, and environmental effects from an earthquake in 1887.

Public comments, including those from WWP, regarding drought were received in previous comment periods and were responded to in Appendices D and E of the EA. The LHE (Section 7.1) discussed State and Transition Models that exhibit natural fluctuation with fire/drought as a natural factor of these arid ecosystems. The EA also analyzed how intense drought helps to reduce shrub composition and allow grasses to reestablish (Section 3.1). The EA describes how the grazing capacity was established for the Badger Den Allotment, which incorporates

varying vegetation production due to fluctuating rainfall amounts. The BLM may implement livestock use restrictions in accordance with the Safford drought policy or other grazing regulations. With these options and considerations, a decision may be made to effectively incorporate properly managed livestock grazing even during times of drought.

The Environmental Assessment (EA) identified and analyzed two scoping issues related to erosion, including determining how grazing livestock would impact water quality and bank stability in the riparian corridor, as well as how grazing livestock would affect erodibility of soils (see Section 3.2 and Section 3.3 of the EA). The EA ultimately concludes that impacts associated with implementation of the Proposed Action would not significantly impact water quality and bank stability in the riparian corridor, nor would it significantly impact the erodibility of soils.

Careful consideration has been given regarding the importance and significance of the issues analyzed in the LHE and EA, including evaluation of public comments related to the Proposed Action. This analysis and process has resulted in the signing of the FONSI which precludes the need to produce an EIS.

**Reason for Protest:**

**B. “The BLM has not analyzed an adequate range of alternatives”**

“NEPA's requirement that agencies "study, develop, and describe appropriate alternatives . . . applies whether an agency is preparing an [EIS] or an [EA]." *N. Idaho Cmty. Action Network v. U.S. Dep't of Transp.*, 545 F.3d 1147, 1153 (9th Cir. 2008) (per curiam) (citations omitted). Although an agency must still “give full and meaningful consideration to all reasonable alternatives” in an environmental assessment, the agency's obligation to discuss alternatives is less than in an EIS. *Id.* “The existence of a viable but unexamined alternative renders an [EA] inadequate.” *Westlands Water Dist.*, 376 F.3d at 868 (quoting *Morongo*, 161 F.3d at 575).

“The range of alternatives for this project remains inadequate, especially because a recommended and reasonable alternative was arbitrarily rejected by the BLM. The “reduced grazing” alternative was rejected because BLM claims the Land Health Evaluation indicated the area could support the proposed level of grazing. However, in the LHE BLM refused to consider current and ongoing trespass livestock use and refused to even consider whether areas such as Sands Draw or other “exclosures” were meeting land health standards because BLM claims that these areas are not currently grazed.

“However, BLM knows this is untrue and has simply ignored the current livestock impacts, which were reported repeatedly to BLM. WWP most recently reported trespass livestock throughout nearly the entire allotment and documented significant damage by livestock grazing at the Sands Draw Exclosure as recently as March 2021. See Appendix A.[\*]

“BLM’s rationale for rejecting the cool season, riparian exclusion, and retirement for wildlife refuge grazing alternatives is similarly flawed because BLM relies on the deeply flawed LHE to reject a full analysis of these alternatives.”

**BLM Response:** Two action alternatives were analyzed throughout the EA: (1) the Proposed Action Issue Grazing Permit (Section 2.1) and (2) a No Action and No Grazing Alternative (Section 2.2). The EA also includes alternatives considered but eliminated from detailed analysis which include a Reduced Livestock Grazing Alternative, a Cool Season Grazing Alternative, an Exclusion of Livestock Year-round from the River Channel Pastures Alternative, as well as a Retirement of Allotment for Refuge for Wildlife Alternative. These four alternatives were considered but eliminated from detailed analysis for reasons described in the EA (Section 2.3).

Additionally, the Proposed Action is considered an appropriate baseline from which to establish livestock use. As described in the EA, if use rates exceed allowable use and would result in resource damages, then standard compliance inspections allow for potential resource damage to be noted and acted upon in accordance with Title 43 Code of Federal regulations (CFR) Subpart (§) 4110.3-3.

The LHE and EA describe the current condition of resources on the Badger Den Allotment and account for impacts from past uses including unauthorized livestock use. The final version of the LHE was approved and signed on March 5, 2021 after a comment period in June 2020. The LHE “Introduction” states that it is not a decision document, but that the data and recommended management actions from the LHE would inform any federal action associated with the Badger Den Allotment.

Section 1.6.1 of the EA identifies and analyzes in brief the issue of whether grazing livestock would affect spring resources or other water resources such as Sands Draw or other exclosures. Each location was identified, and rationale was provided for eliminating the issue from detailed analysis. A primary reason for elimination was due to fencing excluding livestock use. Because riparian-wetland areas only exist on areas that are not proposed for grazing, and these excluded areas cannot be physically or legally accessed by livestock, BLM considers it reasonable to conclude that Standard 2 does not apply. Furthermore, the EA describes in Section 1.6.1 that the BLM recognizes that unauthorized livestock use has occurred on the Badger Den Allotment, and the effects of this use has been documented in the associated LHE. Unauthorized livestock use is not an authorized activity, is not a part of the Proposed or No Action Alternatives, and therefore is not analyzed in this EA. Rather, fencing will be checked and maintained as needed to keep livestock from these excluded areas.

\*The report WWP refers to as Appendix A was received by email on March 25, 2021, by the BLM and was responded to on March 31, 2021. This correspondence, which occurred outside of any public scoping and/or public comment period, is available to share by request (email [BLM\\_AZ\\_SFOWEB@blm.gov](mailto:BLM_AZ_SFOWEB@blm.gov)).

**Reason for Protest:**

**C. "BLM has not disclosed or analyzed an accurate history of livestock grazing in the project area."**

"The BLM misapprehends our request to accurately describe the history of livestock grazing as a request to disclose actual use. Rather, our request was that BLM comply with its obligation to accurately discuss the long history of livestock grazing in Arizona and on this allotment, identifying how many livestock were historically grazed, how many livestock have been grazed in the past two decades, and disclose the impacts of that livestock grazing as part of the cumulative impacts analysis. The environmental analysis should describe how livestock grazing has contributed to and continues to exacerbate altered fire regimes, invasive species, loss of species diversity, and degraded watersheds. The BLM has not adequately or accurately provided this information.

"The BLM refused to disclose underlying Indigenous land claims and address environmental justice issues related to the displacement of Indigenous peoples caused by livestock grazing.

"The BLM refused to disclose, or even acknowledge the trespass livestock use that is well-known, well-documented, and has been ongoing for decades and BLM has not adequately addressed this problem. We addressed this issue in our prior comments at pages 3-4 and append our prior comments as Appendix B[\*]. The repeated statements in the EA that riparian areas behind HX Dam and Sands Draw Enclosure are not being grazed is false and any reliance upon those statements and analysis is a violation of NEPA. At the very least, trespass livestock should have been considered as a part of the cumulative effects analysis, but it was not.

"Because the entirety of BLM's analysis of livestock grazing and subsequent decision to permit new grazing depends on livestock being managed "properly," and because BLM has a long and vast record of failing to properly manage livestock, the BLM cannot make a determination that livestock are not causing or significantly contributing to the current degraded conditions on this allotment, cannot ignore those conditions, and cannot authorize livestock grazing on the Badger Den allotment."

**BLM Response:** The BLM discussed the grazing history of the Badger Den Allotment through a comment response regarding grazing history in Appendix D of the EA (Section II). Section 1.1 of the EA also includes the background for the Badger Den Allotment including a history of grazing back to 1981. This background includes the number of livestock permitted on the allotment over time, the number of Animal Unit Months (AUMs), as well as the percent public land associated with the allotment. Permitted livestock use changed several times over the years as described in this section due to adjustments in carrying capacity and changes in land ownership. The background includes a description of intermittent trespasses involving fewer livestock than were previously permitted which ended in 2002. Between 2002 and 2020 the background section of the EA reports that the allotment was predominantly

vacant and includes small numbers of incidental unauthorized livestock from neighboring allotments which were promptly removed with no observed resource damages.

WWP also requested that the Badger Den Permit Issuance EA include a discussion of “the long history of livestock grazing in Arizona.” Section 1.1 of the EA includes a comprehensive background relative to the Proposed Action and Alternatives. The EA was written to analyze and disclose potential effects of these future actions, therefore, further discussion on the history of livestock grazing is outside of the scope of this EA. Analysis of the following issues were included as they relate to the Proposed Action or Alternatives of the EA: fire regimes (Section 3.1.3 of the EA), invasive species (Section 7 of the LHE and Appendix B of the EA), species diversity (Section 7.3 of the LHE and Section 3.1 of the EA), and watershed health (Analysis of Standards 1, 2 and 3 in Section 7 of the LHE and Section 3 of the EA). The cumulative impacts analysis considers not only the Proposed Action and other Alternatives, but also all other past, present, and reasonably foreseeable future actions within the affected environment.

The obligation of the BLM is to evaluate the application for a livestock grazing permit on the Badger Den Allotment and to make a decision about whether to issue a permit, and, if issued, what terms the permit should contain. These decisions are informed by the LHE and EA and made in compliance with the RMP and UG. Both the LHE and the EA took a “hard look” at the livestock grazing history in this affected environment.

Cultural resources were analyzed in the EA in Section 1.6.1 as being present but not impacted by the Proposed Action. Indigenous land claims are not relevant to the Proposed Action or Alternatives, and environmental justice is addressed in the EA as being not present within the area of the Proposed Action or other Action Alternatives.

Trespass livestock were discussed in Section 1.1 of the EA which includes the background for the Badger Den Allotment including a history of grazing back to 1981. Unauthorized livestock is addressed in the EA under Section 1.6.1 as an issue identified but eliminated from detailed analysis. The EA states that unauthorized livestock use is not a part of the Proposed or No Action Alternatives, and therefore is not analyzed in the EA. Previous comment responses to livestock trespass were provided in Appendix D and E of the EA. Livestock use is either authorized through the issuance of a grazing permit, or it is unauthorized, and the BLM will act according to regulation 43 CFR § 4150.

\*The WWP Protest included Appendix B which was a comment previously submitted by WWP in response to the comment solicitation letter the BLM mailed to the interested publics on December 11, 2020. This comment was reviewed and by the BLM and substantive comments were responded to in Appendix E of the EA. A copy of this comment is available to share by request ([email BLM\\_AZ\\_SFOWEB@blm.gov](mailto:BLM_AZ_SFOWEB@blm.gov)).

To ensure “proper” management of livestock, the LHE and EA determined appropriate requirements for the grazing permit and includes the mandatory and other terms and conditions established in the Proposed Action (Section 2.1). It is the livestock operator’s

responsibility to abide by the requirements of their permit. Regular compliance inspections allow the BLM to ensure compliance with the terms and conditions of the permit.

**Reason for Protest:**

**D. “BLM Acknowledges a Scientific Controversy Exists”**

“The applicant for this permit, Mr. Levi Klump, asked the BLM to recognize that livestock grazing can aid in moisture absorption and vegetation establishment by loosening topsoil and help create indentations for seeds (the “poop and stomp” theory). In response, BLM states there is a conflict in the science regarding this issue:

Some research suggests that intense livestock trampling for short periods followed by rest can lead to increased soil organic matter, increased germination of seeds, and increased ability of the soil to infiltrate and retain water, while other research suggests that this positive outlook may be speculative (Nordberg 2016). No information regarding hoof action impacts were added to the EA because literature was inconclusive.

“At page 80 of the EA. With this statement, BLM admits a scientific controversy regarding the impacts of livestock grazing exists and this precludes an EIS.”

**BLM Response:** Analysis of the EA used a scientific understanding of the effects of livestock grazing. During the solicitation of comments for the EA, many comments were received which were not implemented into the EA. One comment was to discuss positive impacts of livestock grazing such as aiding moisture absorption, loosening of topsoil, and establishment of vegetation which would then lead to reduced soil loss. While these positive benefits may occur, the scientific support was not found for this type of action in a desert southwest environment, and the benefits were therefore not included in the EA. In addition, the lack of scientific evidence does not require the BLM to prepare an EIS. Appropriate measures were advised in the LHE, analyzed in the EA, and are being issued through this decision to ensure proper livestock management for appropriate public land management.

**Reason for Protest:**

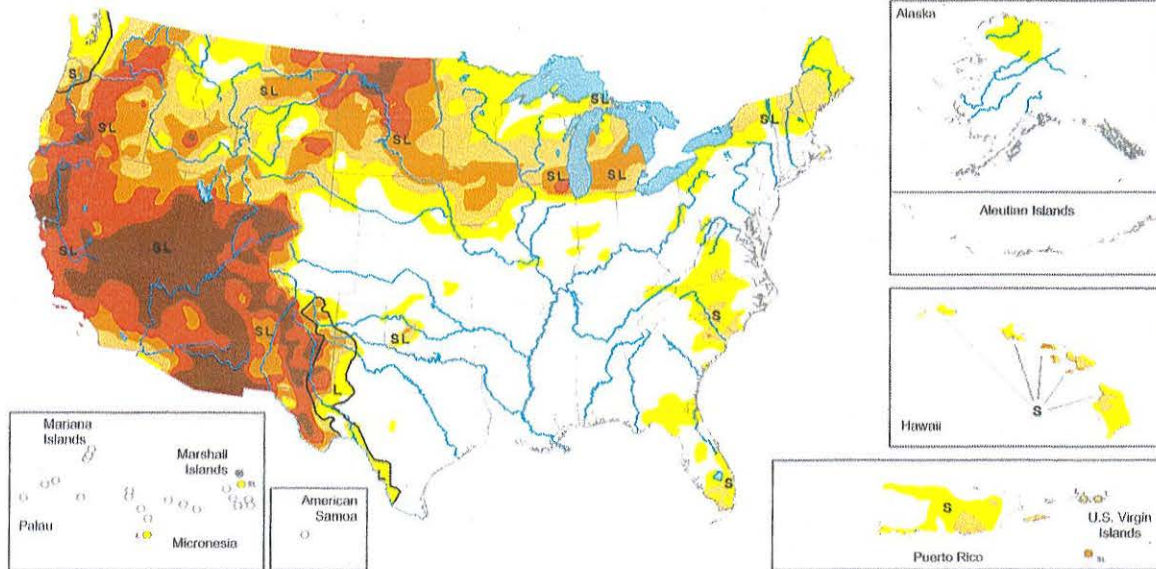
**E. “BLM Failed to Adequately Consider Drought”**

“BLM acknowledged drought is ongoing in a general way, but did not analyze whether or not it is prudent to authorize livestock grazing *on this allotment, at this time, and* in light of the extraordinary drought right now in Arizona.

“As the BLM is aware, the southwest is experiencing extreme and long-term drought. The Badger Den allotment is within the area identified as experiencing “exceptional drought” by the U.S. Drought Monitor:



Map released: June 17, 2021  
 Data valid: June 15, 2021

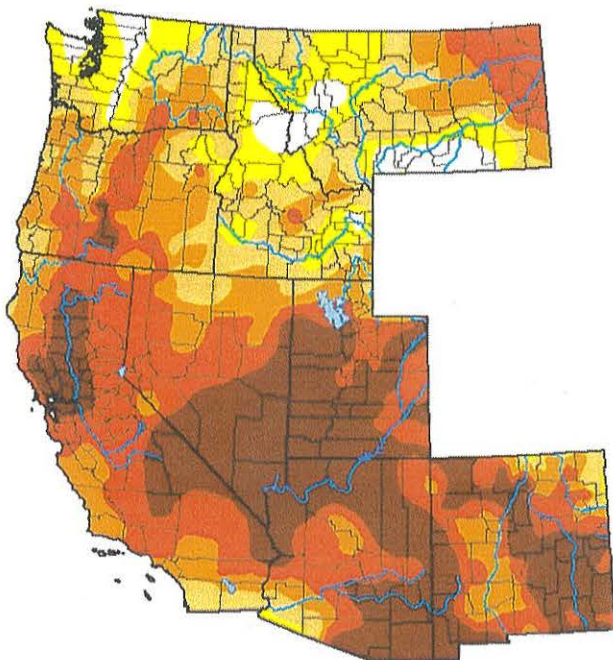


United States and Puerto Rico Author(s):  
**Curtis Riganti**, National Drought Mitigation Center

Pacific Islands and Virgin Islands Author(s):  
**Richard Tinker**, NOAA/NWS/NCEP/CPC

### U.S. Drought Monitor West

**May 25, 2021**  
 (Released Thursday, May 27, 2021)  
 Valid 8 a.m. EDT



Drought Conditions (Percent Area)

	None	D0-D4	D1-D4	D2-D4	D3-D4	D4
Current	3.79	96.21	87.12	71.34	52.88	26.92
Last Week 05-18-2021	3.47	96.53	87.56	71.74	52.63	25.14
3 Months Ago 02-27-2021	8.64	91.36	75.63	58.28	42.49	22.94
Start of Calendar Year 01-01-2021	13.52	86.48	75.49	63.25	45.40	23.76
Start of Water Year 09-01-2020	9.96	90.04	73.14	51.29	32.19	2.50
One Year Ago 05-26-2020	40.31	59.69	40.36	15.35	1.71	0.00

**Intensity**  
 None (white)      D2 Severe Drought (orange)  
 D0 Abnormally Dry (yellow)      D3 Extreme Drought (red)  
 D1 Moderate Drought (light orange)      D4 Exceptional Drought (dark red)

The Drought Monitor focuses on broad-scale conditions. Local conditions may vary. For more information on the Drought Monitor, go to <https://droughtmonitor.unl.edu/About.aspx>

Author:  
 Adam Hartman  
 NOAA/NWS/NCEP/CPC



[droughtmonitor.unl.edu](https://droughtmonitor.unl.edu)

“In light of this drought, BLM should be reducing the number of livestock on federal public lands, especially where these lands and grazing authorizations overlap with threatened and endangered species habitat, especially riparian areas, which act as refuges for wildlife stressed by these exceptional drought conditions.”

**BLM Response:** BLM considered drought during the Badger Den LHE and EA process. Previous responses to comments on drought were provided in Appendix D of the EA (Response to Comments from Public Scoping) in Sections III, VIII, and twice in Section XI. Responses to comments on drought were also provided in Appendix E of the EA (Summary of Response to Comments from Public Comment Period) in Sections JB, WWP – II.A. (4), WWP – II.B. (1), WWP – V (2), WWP – VII. (1), and WWP – VII. (2). Section 7.1.1 of the LHE *Standard 1 Determination* includes Ecological Site Description (ESD) State and Transition Models. These models show that the ecological sites exhibit natural fluctuation associated with fire and/or drought within the reference state conditions as a natural and expected factor of these arid ecosystems.

Section 3.1.3 of the EA describes how the grazing capacity was established for the Badger Den Allotment. The established grazing rate allowed for an average of 40 percent utilization of perennial grass species in order to keep grasses at healthy viable populations and maintain plant type compositions. Section 1.4 of the EA shows that this grazing rate considers drought; management objective GM32 states that at a given stocking rate during years of high forage production (e.g., above normal rainfall) utilization in the use pasture might be as low as 20 percent. During years of low forage production utilization could be as high as 60 percent. The Safford drought policy follows the Upper Gila-San Simon Grazing EIS decision document which states utilization limits clearly. Issuing a grazing permit with full use, as identified in the Proposed Action, does not preclude the BLM from implementing livestock use restrictions in accordance with the Safford drought policy. Also, if use rates exceed allowable use and would result in resource damages, then allowed use may be adjusted in accordance with Title 43 CFR § 4110.3-3. With these options and considerations, a decision may be made to effectively incorporate properly managed livestock grazing even during times of drought.

**Reason for Protest:**

**II. “Base Property and Water”**

“The BLM admits, in the response to comments at page 59-60 of the EA, that the permittee applied for a grazing permit without holding the requisite base water because the BLM states that the Badger Den well “is in the process of being repaired.” This means the water has not been used for some undisclosed but presumably long period of time, and there is nothing in the EA that assures the public the applicant permittee has met the required base property or base water requirements to hold the permit.”

**BLM Response:** Base waters may be owned or controlled without being functional. Further, Section 3.1.3 of the EA states “Non-functional base water will result in permitted AUMs being temporarily reduced by the amount identified for each base water according to grazing regulations (Title 43 CFR § 4110.2-2 and 4110.3-2).”

**Reason for Protest:****III. “Grazing as a Public Service”**

“The BLM states that grazing is a public service, at page 64 of the EA. This is simply untrue. Allowing grazing on federal public lands is not a public service. It is a service to a very small, very select subset of the public who benefits financially while the general public is left responsible for paying for or restoring the damage caused by livestock. Furthermore, livestock permittees receive payments for projects, EQIP funding, disaster funding, and other state and federal dollars to prop up their chosen hobby or profession that otherwise is not economically sustainable. The BLM should provide an accurate economic analysis and disclose for public review the costs and benefits of public lands ranching.”

**BLM Response:** Comment response for WWP comment IX.D in Appendix D of the EA states “an analysis of program costs is beyond the scope of this Environmental Assessment. Grazing is considered a public service and is part of the BLM mission, as defined in FLPMA. As part of the agency mission, program administration is considered a public service and is not in any kind of comparative competition with private or state government programs.”

In response to the previous requests that an economic analysis be disclosed (WWP-IX.D in Appendix D, and WWP-IX in Appendix E), we stated that the “BLM does not analyze economic impacts at the individual level. At the industry level, the addition of roughly 1,500 AUMs from the leasing of the Badger Den Allotment would not be reasonably expected to have significant impacts to the livestock industry in either Graham County, or the State of Arizona. No further economic or social impact analysis is warranted.”

**Reason for Protest:****IV. “The BLM’s Proposed Decision Violates the Endangered Species Act (ESA)”****A. “Inadequate consultation”**

“Several commenters raised concerns about BLM’s failure to adequately consider impacts to threatened or endangered species. In response, BLM dismissed those concerns, especially about the southwestern willow flycatcher’s reported presence on the allotment, and forged ahead with this decision without adequate consultation with the U.S. Fish and Wildlife Service. This is a violation of the Endangered Species Act and precludes a Finding of No Significant Impact.”

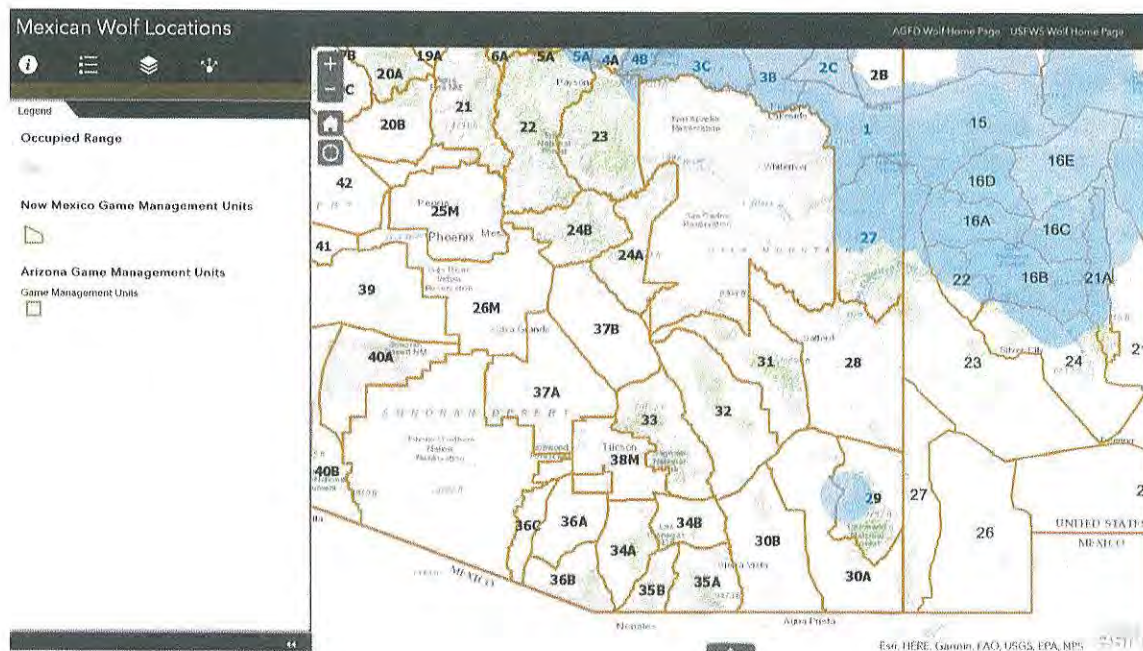
**BLM Response:** The Badger Den Allotment was considered in the 2012 Gila District Grazing Biological Opinion (BO). During the preparation of the Biological Assessment, BLM concluded that the southwest willow flycatcher (SWFL) was not present within the allotment, nor was there any critical, potential, or occupied habitat. Therefore, BLM found that the BO stipulations for SWFL do not apply to the Badger Den Allotment. This analysis was conducted using vetted government data from Arizona Game and Fish (AZGFD) and the U.S. Fish and Wildlife Service (USFWS). This determination was verified and confirmed during the preparation of the Badger Den LHE and the Badger Den Permit Issuance EA. The effects determinations for all Threatened & Endangered species that were reported by the USFWS and AZGFD to be present, or have the potential to be present, within 3 miles of the allotment, can be found in Appendix C of the EA. Due to multiple comments during public involvement

regarding SWFL, it has been included in Appendix C of the EA with an effects determination of “No Effect”.

#### Reason for Protest:

##### B. “New Information on Mexican Gray Wolf”

“The BLM did not consider the impacts of this livestock grazing permit on the Mexican gray wolf, which has very recently been documented within approximately 30 miles of the allotment, which is within the foray range of the species. The U.S. Fish and Wildlife Service has recognized this area as part of the Mexican gray wolf’s “occupied range.” See map, below.”



**BLM Response:** A species occurrence 30 miles from the allotment boundary is outside of the scope of the Proposed Action and does not warrant an analysis. The Mexican gray wolf requires areas with sufficient prey populations, such as deer and elk, and where human-induced mortality is controlled. Current populations are typically associated with evergreen pine-oak woodlands, pinyon juniper woodlands, and mixed-conifer montane forests. Due to the absence of forested habitat across the San Simon Valley, Mexican gray wolves are expected to be absent from the allotment. Due to comments during public involvement regarding Mexican gray wolves, it has been included in Appendix C of the EA with an effects determination of “No Effect”.

#### Reason for Protest:

##### V. “The Decision Violates FLPMA”

“FLPMA, at 43 U.S.C. 1701 *et seq.*, mandates that the Secretary of Interior “shall” take any action necessary to prevent “unnecessary or undue degradation” of public lands. *Id.* § 1732(b). FLPMA further provides that BLM public lands “shall” be managed “for multiple use and sustained yield.” *Id.* § 1732(a). The definition of

“multiple use” calls for “harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.” Id. § 1702(c) (emphasis added). Both the “non-impairment” and “unnecessary and undue degradation” provisions constrain BLM’s discretion in authorizing livestock uses of federally managed public lands.

“Finally, where FLPMA requires that goals and objectives for public lands be established by law as guidelines for public land use planning, and that management is on the basis of multiple use and sustained yield, it adds, “unless otherwise specified by law.” §102(a)(7). And “multiple use” is specifically defined in the statute as, in part, “making the most judicious use of the land for some or all of these resources...the use of some land for less than all of the resources... with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.” §103(c). Simply because the overarching land management plan describes these allotments as “available” for grazing doesn’t preclude the agency from taking a hard look at the balance of uses at the site-specific level. Identifying these lands as an opportunity for scientific research to study the myriad options of post-livestock grazing restoration would better fit within BLM’s mandate to avoid unnecessary and undue degradation and would facilitate multiple uses far better than allowing already degraded lands to be further degraded.”

**BLM Response:** The EA analyzes two action alternatives, the first is the Proposed Action which would allow use of the allotment for livestock grazing. This is considered appropriate because, among other reasons, it ensures appropriate use of the land, it fulfills the BLM’s “multiple use” mandate, and the Safford RMP identifies this allotment as being available for grazing. This does not preclude the BLM from considering this allotment for other “multiple uses,” and therefore the second action alternative (No Action or No Grazing) was considered and evaluated which was to take no action and to not allow grazing.

The EA purpose and need statement includes that the purpose of the action is to evaluate the application for a livestock grazing permit on the Badger Den Allotment. The need for the action is established by the Taylor Grazing Act, the Federal Land Policy and Management Act (FLPMA), Fundamentals of Range Health (Title 43 CFR § 4180), and the UG as incorporated into the Safford District RMP to respond to an application for livestock grazing on the Badger Den Allotment. The EA analyzed how the Proposed Action would impact multiple uses, specifically in relation to riparian, vegetation, soil, water, wildlife, recreation, and mining activities (See Section 3 of the EA). The analysis in the EA determined that both direct and cumulative impacts would not lead to significant environmental effects. Thus, multiple uses would still be managed in relation to permitting livestock grazing on the Badger Den Allotment.

## **FINAL DECISION**

Based upon the LHE, results of the NEPA analysis, consideration of the reasons for protest of the Proposed Decision, consultation and coordination with the interested publics, and

recommendations from the BLM interdisciplinary team, it is my Final Decision to authorize the issuance of the Badger Den Allotment permit for a 10-year term as follows:

**Mandatory Terms and Conditions:**

Allotment	Pasture	Livestock Number / kind	Period		%PL	Type Use	AUMs
			Begin	End			
AZ51100 Badger Den	Upland Pastures	150 Cattle	3/1	10/31	97	Active	1,172
AZ51100 Badger Den	River Channel and Upland Pastures	150 Cattle	11/1	2/28	97	Active	574
AZ51100 Badger Den	Upland Pastures	2 Horses	3/1	10/31	97	Active	16
AZ51100 Badger Den	River Channel and Upland Pastures	2 Horses	11/1	2/28	97	Active	8

**Other Terms and Conditions:**

- All livestock shall be indefinitely excluded from HX Detention Dam, Sands Draw Detention Dam, Ryan Detention Dam, and Joy Valley exclusion areas.
- All livestock grazing shall be deferred from the river channel pastures (San Simon Pasture, Ryan Seeding Pasture, and Joy Valley Pasture) during the critical March through October growing period for protection of the San Simon River channel.
- In order to improve livestock distribution on the public lands, all salt blocks and/or mineral supplements shall not be placed within one quarter of a mile of any riparian area, wet meadow, or watering facility (either permanent or temporary) unless stipulated through a written agreement or decision in accordance with 43 CFR 4130.3-2(c).
- The permittee shall submit a report of the actual grazing use on the Badger Den Allotment for the previous grazing period, March 1 to February 28 by March 15<sup>th</sup> of the current year (43 CFR 4130.3-2). Failure to submit a report may result in suspension or cancellation of the grazing permit.
- All troughs shall be outfitted with wildlife escape structures to provide a means of escape for animals that fall in while attempting to drink or bathe.
- The permittee shall provide reasonable administrative access across private and leased lands to the BLM for the orderly management and protection of the public lands.

**RATIONALE**

The SFO completed an LHE to determine whether the Badger Den Allotment is meeting the standards for rangeland health as described in the Arizona Standards for Rangeland Health and Guidelines for Grazing Management. This LHE report concluded that the Arizona Standards for Rangeland Health are being achieved on the Badger Den Allotment for Standards 1 and 3. Riparian-Wetland Sites are not meeting Standard 2. Current livestock grazing is not contributing toward not meeting standards. Lands not meeting standards are a result of other historic factors identified in the LHE and EA. Properly managed livestock grazing has been considered in this evaluation as an acceptable use of uplands. Recommended management actions outlined in the LHE include that consideration should be given to deferment of livestock from sensitive riparian areas during critical growing periods to assist with production and maintenance of riparian-wetland plant communities. The terms and

conditions incorporate restrictions of use on river channel pastures during the critical March through October growing period for protection of the San Simon River channel.

Total permitted Animal Unit Months (AUMs) are the same as the preexisting permit cancelled in 1993 which included 150 cattle and 2 horses or 1,776 active AUMs. If use rates exceed allowable use and will result in resource damages, then allowed use may be adjusted in accordance with Title 43 CFR § 4110.3-3. Enclosures identified in the terms and conditions were enclosures identified on the preexisting permit cancelled in 1993 and shall remain enclosures for protection of sensitive resources. The restriction to not place salt blocks and/or mineral supplements within one quarter of a mile of any riparian area, wet meadow or watering facility is to encourage livestock distribution and to prevent excessive livestock loitering at water facilities.

#### **AUTHORITY**

My authority for this Final Decision is found in statutory and regulatory authorities contained in the Taylor Grazing Act as amended, the Federal Land Policy and Management Act of 1976, as amended, and Title 43 of the Code of Federal Regulations (CFR), Part 4100 (Grazing Administration-exclusive of Alaska), including but not limited to the following pertinent Subparts:

4100 – Land Use Plans,  
4110 – Qualifications and Preference,  
4120 – Grazing Management,  
4130 – Authorizing Grazing Use,  
4150 – Unauthorized Grazing Use,  
4160 – Administrative Remedies,  
4180 – Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration

#### **RIGHT OF APPEAL**

Any applicant, permittee, lessee, or other person whose interest is adversely affected by the final BLM grazing decision may file an appeal for the purpose of a hearing before an administrative law judge in accordance with 43 CFR § 4160.3(c), 4160.4, 4.21, and 4.470. The appeal must be filed within 30 days following receipt of the Final Decision. The appeal should state the reasons, clearly and concisely, why the appellant thinks the final BLM grazing decision is in error. A petition for a stay of the decision pending final determination of the appeal by the administrative law judge may also be submitted during this same 30-day time period. The appeal, or the appeal and petition for stay, must be in writing and delivered in person, via the United States Postal Service mail system, or other common carrier, to the SFO as noted:

Bureau of Land Management  
Safford Field Office  
Attention: Scott C. Cooke  
711 S. 14th Avenue  
Safford, Arizona 85546

In accordance with 43 CFR § 4.401, the BLM does not accept fax or email filing of a notice of appeal and petition for stay. BLM cannot accept electronic submissions of appeal documents due to the Federal Information Systems Security Awareness guidance. Please submit relevant appeal documents in hard copy form for consideration. Any notice of appeal and/or petition for stay must be sent or delivered to the office of the authorized officer by mail or personal delivery. If protest is sent by facsimile or email, the date filed is not official until BLM receives the original by mail. Electronic dates of submissions are not acceptable.

In accordance with 43 CFR § 4.413(b), failure to serve a notice of appeal will subject the appeal to summary dismissal as provided in 43 CFR § 4.402.

Should you wish to file a petition for a stay, see 43 CFR § 4.471 (a) and (b). In accordance with 43 CFR § 4.471(c), 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 granting the stay.

Within 15 days of filing the appeal, the appellant must provide BLM with proof of service to the other persons named in the List of all Persons or Groups Receiving this Notice of Final Decision section of this decision in accordance with 43 CFR § 4.475 and to the Office of the Regional Solicitor in accordance with 43 CFR § 4.413(a) and 4.413(c) located at: US Department of the Interior, Office of the Field Solicitor, Sandra Day O'Connor U.S. Courthouse, 401 W. Washington St. SPC 44, Suite 404, Phoenix, AZ 85003-2151 in accordance with 43 CFR § 4.470(a) and 4.471(b).

Sincerely,



Scott C. Cooke  
Field Manager

#### **Enclosures**

The Badger Den Permit Issuance EA, including corrections and revisions incorporated after receipt of the protest, and associated documents are available electronically through the online NEPA Register (ePlanning) or by visiting: <https://go.usa.gov/xwH8x> (case sensitive).



**List of all Persons or Groups Receiving this Notice of Final Decision**

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