



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

Phoenix District
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21605 North 7th Avenue
Phoenix, Arizona 85027
www.blm.gov/az/

FEB 27 2012

In Reply Refer To:
4000 (P030)

CERTIFIED MAIL - RETURN RECEIPT REQUESTED NO. 7009 1410 0001 9976 8774
Ms. Patsy Cordes McDonald
Cordes Ranch
16475 South Antelope Creek Road
Mayer, Arizona 86333

CERTIFIED MAIL - RETURN RECEIPT REQUESTED NO. 7009 1410 0001 9976 8781
Mr. Joe Manterola
Manterola Sheep Co Inc.
PO Box 11227
Casa Grande, Arizona 85130

CERTIFIED MAIL - RETURN RECEIPT REQUESTED NO. 7009 1410 0001 9976 8798
Mr. Joe Auza
Auza Ranches
PO Box 10008
Casa Grande, Arizona 85130

NOTICE OF FINAL DECISION

Dear Lessees:

In June 2011, you, and Interested Publics who have expressed interest in the Bureau of Land Management (BLM), Agua Fria National Monument (AFNM) management activities and livestock grazing within the Cordes allotment, received notification letters regarding the Badger Springs Well and Fence Project.

The purpose of the Badger Springs Well and Fence Project is to implement a portion of management decision GM-6, "*Remove the immediate area surrounding Badger Springs Wash*

from the Cordes allotment to provide for developing a visitor parking area, information kiosk, campground, and infrastructure,” of the AFNM Record of Decision (ROD) and Approved Resource Management Plan (RMP), April 2010.

An environmental assessment (EA) was written to analyze alternatives that would implement the aforementioned decision.

BACKGROUND

The AFNM was established by Presidential proclamation on January 11, 2000, to preserve and protect its significant archaeological and biological resources. The Monument is located approximately 40 miles north of the Phoenix Metropolitan area, bordered on the south by Black Canyon City and the north by Cordes Lakes. The AFNM is host to a wide variety of recreational uses which include motorized recreation, hiking, biking, equestrian use, camping, hunting, and sightseeing. Historic and modern uses have been dominated by homesteading, ranching, and mining. Additionally, the BLM administers 11 grazing authorizations on 10 allotments within the AFNM.

The most popular and frequently visited area of the Monument is Badger Springs Recreation Area. The recreation area is also located within the Cordes allotment. Two separate livestock operators are authorized to make grazing use of the allotment. One of the grazing leases is for a traditional cattle operation and the other is a seasonal sheep operation.

Following years of public involvement and planning, the Agua Fria National Monument ROD and Approved RMP took effect in April, 2010. The Approved RMP is primarily designed to resolve identified planning issues. The BLM used an extensive public input process to identify issues relevant to the AFNM. As a result of public participation and the planning process, the aforementioned management decision was established for public lands management by the BLM in the AFNM.

The current Badger Springs Well and Fence project has been developed with considerable public input from individuals, interest groups, affected livestock lessees, interested community landowners, other interested public individuals, other agencies, and BLM resource specialists. Coordination with the affected livestock lessees began early in 2009. The BLM initiated formal consultation, cooperation, and coordination with the affected lessees in January 2011. Four meetings and two field trips occurred between January and October 2011.

Formal public scoping for these projects was initiated in June 2011. Notification letters were distributed on June 8, 2011, to more than 400 individuals and organizations who have expressed interest in Monument management activities and planning processes. The letters included the

purpose and need for action, a summary of the proposed projects, and solicitation for feedback on 1) project designs, 2) potential impact to resources, 3) alternatives development, and 4) additional information/data needs for conducting the analysis. Feedback regarding the proposed action was received in writing and the public scoping period was completed in July 2011.

In November 2011, an EA was completed for the proposed projects. Based upon the analysis of potential environmental impacts contained in Badger Springs Well and Fence Project Environmental Assessment, DOI-BLM-AZ-P030-2011-003-EA, public involvement throughout the environmental analysis, and all other information it was determined that impacts are not expected to be significant.

On November 28, 2011, a Notice of Proposed Decision was sent to you, interested parties and interested public for a protest period. On December 9, 2011, a letter of protest was received from Ms. McDonald (Protestant) by the BLM Phoenix District Office. The protest points were carefully considered before issuance of the final decision.

The following is a summary of BLM's response to the protest points:

1. **In the protest letter the Protestant stated that if the proposed decision is implemented, one-fourth of an already small pasture will be lost. The Protestant expressed that if there is not enough grazing for the sheep in the spring at Badger, they will move them to the west side of the allotment causing a hardship since they will be there longer and will use up the forage.** See a direct quote.

Response: Under the Proposed Action, approximately 240 acres will be removed from livestock grazing. The Badger Pasture will be reduced from 3,090 acres to 2,850 acres; this is an 8% reduction in the size of the pasture. Approximately 90 acres of the land proposed for removal from the allotment is highly disturbed from past Interstate construction activities and recreational activities. As a result, the forage productivity is low and the plant community is dominated by non-native invasive species and annual grasses. Because a portion of the area under the proposed action has been heavily impacted by past authorized uses, loss of acreage would not have an adverse effect on current authorized grazing use. It was determined the loss of acreage will reduce 1667 AUMs available for livestock to 1647 AUMs and would not cause a hardship for the authorized livestock operators nor constitute a change to the livestock leases.

2. **The Protestant stated that none of the respondents to the scoping process thought that the recreation area should be north of the main road; that was an arbitrary area set by the Monument Manager.**

Response: The defined boundary of the Badger Springs Recreation Area, accepted by

the Monument Manager was determined through an interdisciplinary team process consisting of a Wildlife Biologist, Natural Resource Specialist, Park Ranger, and Archaeologist. The purpose of defining the Badger Springs Recreation Area was to identify a footprint for reasonable and foreseeable recreation expansion and development within the area. The footprint encompasses areas currently used by recreationists including Badger Springs Road, restrooms, kiosks, parking areas, campsites, trailhead, and hiking trail while taking into consideration landscape features to provide for future recreational development.

3. **The Protestant stated that the proposal made by Scott Smith, neighboring EZ Ranch operator, for the water to be moved north from the existing well did not call for the fence to be moved north.**

Response: Alternative 5 was developed in consultation and coordination with Interested Publics, and the affected Lessees. Mr. Smith submitted an alternative proposal for livestock water development in the Badger pasture during the public scoping period. At that time, a fencing location was not submitted with the proposal. Mr. Smith received a copy of the EA and Proposed Decision on December 12, 2011 and did not protest the decision.

4. **The Protestant expressed that Alternative 3 does separate the recreationists from the cattle; all the people are south of the main road and Alternative 3 has the cattle north of the main road.**

Response: After careful consideration of all alternatives analyzed in the Badger Springs Well and Fence Project Environmental Assessment, DOI-BLM-AZ-P030-2011-003-EA, it was determined the proposed action is the best course of action. Fencing off the entire area of Badger Springs Recreation Area from livestock as described in the proposed action provides for a better recreational experience and separation of conflicting uses.

5. **Protestant stated that there is no risk to public safety because the water will be north of the road and the fence, where people and vehicles are prohibited.**

Response: The public is not restricted from the surrounding area of the arsenic contaminated water site. Vehicles are prohibited from off-road travel but the public can access the area by foot. Recreationists and visitors use Badger Springs Recreation Area for a number of purposes such as hunting, camping, and hiking. The public will have access to the existing livestock water unless it is relocated or removed from use. Under Alternative 3, the area would continue to pose potential health and safety risks from arsenic contamination to recreationists, domestic animals, and the general public;

however, no known observations of animal poisoning have been reported.

6. **The Protestant stated the riparian area in Badger Springs Wash is still ‘At Risk’ even though there have not been cattle in the Wash since 2000 and feels the wash has been destroyed by people and vehicles and not livestock. The Protestant expressed that the grazing decision in 2000 which excluded livestock from a portion of Badger Springs Wash is no longer applicable and should be changed.**

Response: The protest point is outside the scope of the proposed action and decision to be made.

7. **The Protestant proposed a compromise of two alternatives to put the fence just north of the road as stated in the Alternative 3 and develop a water drinking system at the existing or newly proposed well location. The Protestant stated that the compromise would not affect the people at the Recreation Area; recreationists do not use the area north of the road, and would help protect Badger Springs Wash from vehicles and allow the area to recover from past abuse.**

Response: The proposed compromise provided by the Protestant does not meet the intent of management decision GM-6 of the Agua Fria National Monument Record of Decision and Approved Resource Management Plan (2010). The proposal only removes a portion of Badger Springs Recreation Area from livestock use and would continue to have negative impacts to the recreational experience by users. In addition, it would enable the greatest impacts to Badger Springs Wash riparian area from livestock grazing.

FINAL DECISION

After careful consideration of the statement of reasons included in the protest, analysis provided through the environmental assessment, information received through consultation, communication and coordination with the Interested Publics, and the affected Lessees, and other information pertinent to the matters addressed in this decision, my Final Decision is to implement the Proposed Action described in the Badger Springs Well and Fence Project Environmental Assessment, DOI-BLM-AZ-P030-2011-003-EA. Implementation of the Proposed Action will: 1) fence out livestock from the Badger Springs Recreation Area, thereby making it unavailable to livestock use, 2) discontinue use of an existing well located in the Badger Springs Recreation Area, and 3) relocate a livestock water in the southern portion of the pasture by drilling a new well, developing a drinking system, and installing water storage.

The following describes the location and design features of the fence and livestock waters for the proposed action:

Fencing: *Installation of approximately 1 mile of 4-strand barbed and smooth wire fencing, to exclude livestock use from approximately 240 acres located 0.3 mile north of Badger Springs area at T. 10 N., R. 2 E., Sec. 24. The decision includes installation of a cattle guard where the fence crosses an existing road east of I-17 and a water gap across Badger Springs Wash just north of the existing vehicle barrier. The fence will connect to the existing Badger Springs Wash riparian enclosure on the east and the Arizona Department of Transportation right-of-way fence on the west. The fence will be designed and constructed in a manner that ensures adequate control of livestock consistent with achieving wildlife, recreation, cultural, and monument resource objectives. The fencing design allows for maximum wildlife passage and unimpeded hydrological function, with minimal impacts on vegetation and soils.*

The northwest corner of the Badger Springs Wash riparian enclosure will be modified for the relocation of a water gap across the wash. The placement of the water gap was selected for its feasibility to withstand high water flows and accessibility for maintenance purposes. The modification makes 20 acres riparian/upland habitat and 0.25 miles of Badger Springs Wash available to livestock grazing. The enclosure will continue to exclude 280 acres of riparian/upland habitat and 0.75 miles of Badger Springs Wash, and prohibit access to the Agua Fria River from livestock use.

Livestock Water: *An existing well used for livestock water located in the immediate area of the Badger Springs trailhead and parking area will be removed from livestock use. A replacement well will be located at T. 10 N., R. 2 E., Sec. 24, NW1/4 NW1/4. The location may be accessed by a previously inventoried road, requiring no new route disturbance. In addition to drilling and casing the well, two recessed 10,000 gallon water storage tanks, buried pipeline, a small pump storage facility, and a series of livestock troughs with wildlife escape ramps will be installed. Only the minimum disturbance required to accomplish the task will be permitted. This requires small areas to be cleared (approximately 50 x 50 ft.) of vegetation for each storage tank, well site, and series of troughs. A minimal amount (less than 300 feet long by 3 feet wide) of trenching from the storage tanks and troughs is needed to bury the pipeline.*

However, if the water sufficiency of the new well does not support the authorized livestock operations for the Cordes Allotment then Alternative 5 will be authorized for implementation. Alternative 5 consists of three main components: 1) a mid-range fencing location (same as decision) to separate livestock grazing from the Badger Springs Recreation Area, 2) continue use of an existing well located in the Badger Springs Recreation Area, and 3) relocation of livestock water by piping water north to a newly developed water storage and drinking system.

The following describes the location and design features of the fence and livestock waters for alternative 5:

Fencing: Under Alternative 5, the fencing proposal is the same as the primary decision (see above).

Livestock Water: Under Alternative 5, an existing well located at T. 10 N., R. 2 E., Sec. 24, SE1/4 NW1/4 in the immediate area of the Badger Springs trailhead and parking area will continue to be utilized as a livestock water source. Approximately 1/3 mile of buried pipeline would be installed from the existing well site to the newly developed water storage and drinking system north of Badger Springs Wash recreation area. The new water development includes two recessed 10,000 gallon water storage tanks, buried pipeline, a small pump storage facility, and a series of livestock troughs with wildlife escape ramps. Only the minimum disturbance required to accomplish the task would be permitted. This will require small areas to be cleared (approximately 50 x 50 ft.) for each water storage tank and series of troughs, a 5 ft. x 5 ft. area cleared for a pump storage facility, approximately 1/3 mile of trenching, and temporary off road travel by heavy equipment (approximately 1/3 mile long by 20 feet wide).

The goal of this decision and Alternative 5 is to manage conflicting uses between recreationists and livestock grazing in the Badger Springs Recreation Area. The potential impacts of the decision and Alternative 5 were considered in the Badger Springs Well and Fence Project Environmental Assessment, DOI-BLM-AZ-P030-2011-003-EA.

The following stipulations and design features for the decision and Alternative 5 will be stipulated in the Cooperative Rangeland Improvement Agreements and implemented in accordance with this decision:

- The water source will be labeled non-potable.
- Routine maintenance will be performed on the livestock water and fencing as required by the lessees.
- Livestock operators will provide their own water pumps.
- Livestock troughs with wildlife escape ramps will be installed and maintained to facilitate access by small mammals and reptiles.
- Project construction will be carried out in 2012.

In addition, the BLM will implement the following administrative actions:

- In accordance with 43 CFR 4120.3-1 and 4120.3-2, the range improvements projects (all fences, water facilities, and pipeline systems) will be permitted under a cooperative agreement as a permanent range improvement for management of livestock and protection of the associated riparian habitat on the Cordes allotment. Following consultation, range improvement maintenance of the proposed projects will be assigned in the development of a Cooperative Range Improvement Agreement with the lessees.

- Adaptive Management: If it is determined water production from the new well is insufficient for the authorized livestock operators then Alternative 5 will be implemented.
- Based upon the level of available forage, impact analysis of the EA, and the magnitude of the change in public land acreage available, it is agreed among the authorized users and BLM resource specialists, the change of acreage is minimal and modification to the leases is unnecessary.
- BLM will monitor the effectiveness of the range improvements.

RATIONALE FOR DECISION

The decision best meets management goals and objectives of the Agua Fria National Monument ROD and Approved RMP (2010). Below is the rational for the decision:

1. Does not conflict with cultural, botanical, wildlife, riparian, recreational, range or other resource uses within the areas.
2. Is in accordance with management decision GM-6 of the Agua Fria National Monument Record of Decision and Approved Resource Management Plan (2010).
3. Separates conflicting uses between livestock and recreationists in the Badger Springs Recreation Area.
4. Provides livestock control and livestock water in the southern portion of Badger Pasture for better livestock distribution.
5. Does not require off road vehicle travel for construction and long term maintenance by lessees.
6. Increases public health and safety by removing a known arsenic contaminated ground water source from use.
7. Has a minimal impact to visual resource management objectives for the Monument.
8. Improves the quality of recreational experiences at Badger Springs Recreation Area.
9. Redesigns Badger Springs Wash riparian exclosure and associated water gap to withstand annual high water flows and is easily accessible for maintenance by lessees.

If necessary, Alternative 5 will allow for achievement of management goals and objectives of the Agua Fria National Monument ROD and Approved RMP (2010) for the following reasons:

1. Does not conflict with cultural, botanical, wildlife, riparian, recreational, range or other resource uses within Badger Springs Recreation Area.
2. Is consistent with management decision GM-6 of the Agua Fria National Monument Record of Decision and Approved Resource Management Plan (2010).

3. Separates conflicting uses between livestock and recreationists in the Badger Springs Recreation Area.
4. Provides livestock control and livestock water in the southern portion of Badger Pasture for better distribution.
5. Reduces the risk of accidental exposure to a known arsenic contaminated ground water source by relocation the source outside of Badger Springs Recreation Area and away from the public.
6. Has a small impact to visual resource management objectives for the Monument.
7. Improves the quality of recreational experiences at Badger Springs Recreation Area.
8. Redesigns Badger Springs Wash Riparian enclosure and associated water gap to withstand annual high water flows and is easily accessible for maintenance by lessees.

The Proposed Action and Alternative 5 decrease the total land acreage of the Cordes Allotment by 2 percent. Based upon the level of available forage, impact analysis of the EA, and the magnitude of the change in public land acreage available, it was determined the change of acreage is minimal and modification to the leases is unnecessary.

Five alternatives were considered in the EA. Different fence and livestock water locations were considered along with varying levels of water development. Three alternatives to the Proposed Action and Alternative 5 were considered but did not meet the goals or objectives of the Agua Fria National Monument ROD and Approved RMP (2010).

AUTHORITY

The authority for this decision is contained in Title 43 of the Code of Federal Regulations, as amended, effective July 11, 2006, which states in pertinent subparts and sections:

§ 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. Livestock grazing activities and management actions approved by the authorized officer shall be in conformance with the land use plan as defined at 43 C.F.R. 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 BLM or must have an approved range improvement. (c) The authorized officer may require a permittee or lessee to maintain and/or modify improvements on the public lands under §4130.3-2 of this title.

§4120.3-2 Cooperative range improvement agreements. (a) The BLM may enter into a cooperative range improvement agreement with a person, organization, or other government entity for the installation, use, maintenance, and/or modification of permanent range improvement or rangeland developments to achieve management or resource condition objectives. The cooperative range improvement agreement shall specify how the costs or labor, or both, shall be divided between the United States and cooperator(s). (b) Subject to valid existing rights, title to permanent range improvements such as fences, wells, pipelines where authorization is granted after August 21, 1995, shall be in the name of the United States. The authorization for all new permanent water developments such as spring developments, wells, reservoirs, stock tank, and pipelines shall be through cooperative range improvement agreements. A permittee's or lessee's interest in contributed funds, labor, and materials will be documented by the BLM to ensure proper credit for the purposes of §§4120.3-5 and 4120.3-6(c).

§4120.3-4 Standards, design and stipulations. Range improvement permits and cooperative range improvement agreements shall specify the standards, design, construction and maintenance criteria for the range improvements and other additional conditions and stipulations or modification deemed necessary by the authorized officer.

§4120.3-9 Water rights for the purpose of livestock grazing on public lands. Any right acquired on or after August 21, 1995, to use water on public land for the purpose of livestock watering on public land shall be acquired, perfected, maintained and administered under the substantive and procedural laws of the State within which such land is located. To the extent allowed by law of the State within which the land is located, any such water right shall be acquired, perfected, maintained, and administered in the name of the United States.

§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 the receipt of the 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.

RIGHT OF APPEAL

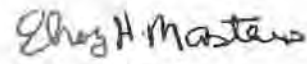
Any applicant, permittee, lessee or other person whose interest is adversely affected by the final decision may file an appeal and petition for stay of the final decision pending final determination on appeal under 43 CFR 4160.4, 4.21 and 4.470. Electronic pleading and appeals are not acceptable methods for filing.

The appeal and petition for stay must be filed in the office of the authorized officer within 30 days following receipt of the final decision. The appellant must also serve a copy of the notice

of appeal on each person named in the decision from which the appeal is taken and on the Office of the Field Solicitor, U.S. Department of the Interior, U.S. Courthouse, Suite 404, 401 West Washington Street SPC 44, Phoenix, Arizona 85003.

The appeal shall comply with the provisions of 43 CFR 4.470 and state the reasons, clearly and concisely, why the appellant thinks the final decision is in error. When filing a petition for stay, the appellant 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 the stay.


Elroy H. Masters
Acting Field Manager

Enclosures

cc: Mr. Rod Lucas
Ms. Michelle Dodds
Ms. Greta Anderson
Mr. Dwayne Fink
Mr. Jeff Gursh
Ms. Mary Hoadley
Mr. Jeff Williamson
Mr. Scott Smith
Mr. and Mrs. Gauthier
Mr. Sanford B. Cohen
Mr. Carl Birkemeyer
Mr. Michael Moore
Mr. Arnold Troph
U.S. Fish and Wildlife Service
Defenders of Wildlife
Wild Earth Guardians
Southwest Center for Biological Diversity