



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

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

February 24, 2022

In Reply Refer To:
4160 (AZP020)

CERTIFIED MAIL – RETURN RECEIPT REQUESTED NO. 7021 0950 0000 9890 8583

James and Marilynn Rasmussen
1081 E. Montecito Drive
Globe, AZ 85501

NOTICE OF FINAL DECISION

Coyote Flat #2 Allotment (No. 03020)
Grazing Permit Renewal

Dear Mr. and Mrs. Rasmussen:

INTRODUCTION

The Bureau of Land Management (BLM) is charged with evaluating public lands, in accordance with the current regulations, to determine if rangelands are achieving the Arizona Standards for Rangeland Health. The information and analysis in the land health evaluation (LHE) and Environmental Assessment (EA) was used as a basis to evaluate the renewal of the livestock grazing permit.

BACKGROUND

In 2016, the LSFO initiated the land health monitoring for the Coyote Flat #2 Allotment (# 03020).

On September 9th, 2020, you were notified that the Allotment would be assessed and evaluated to determine if resource conditions are meeting the Arizona Standards for Rangeland Health, land use plan objectives, allotment-specific objectives, and to determine if the terms and conditions of the permit are in conformance with the Arizona Guidelines for Grazing Administration in order to fully process the reissuance of the grazing permit on the Allotment.

In 2020, a draft LHE was developed to ensure that the Allotment would continue meeting and/or make significant progress towards meeting the Arizona Standards for Rangeland Health, land use plan objectives and allotment specific objectives.

On January 11, 2021, a Biological Opinion (BO) for the reinitiation of formal consultation and conference for the renewal of 10-year grazing permits in the Ajo/Sentinel Complex was finalized and published by the United States Fish and Wildlife Service. This BO contained conservation measures for the Sonoran pronghorn and acuña cactus.

In spring of 2021, it was identified that additional data was needed to update the LHE and to fully develop and analyze a range of alternatives in an Environmental Assessment (EA) for reissuing the grazing permit.

On July 7, 2021, a 30-day public scoping period was initiated for the draft LHE and draft Ajo/Sentinel Complex Grazing Permit Renewal EA (DOI-BLM-AZ-P020-2021-0013-EA). The BLM sent notification of this document's availability to 19 individuals, organizations, or agencies by postcard. Comments were received from two individuals and one organization.

Add language about when the proposed decision was posted.

The EA, Finding of No Significant Impact (FONSI), and Proposed Decisions may be viewed or downloaded from the BLM Land Use Planning and NEPA Register Page under the following link:

<https://go.usa.gov/x6zG9> (this link is case sensitive)

RESPONSE TO PROTESTS

One party submitted a timely protest of the proposed decision. The protest had three points which are addressed below.

1. The Bureau failed to consider the cumulative impact of cross-border enforcement activities and newly constructed border wall as a cumulative impact.

There was a change in policy regarding changes to the implementation of the National Environmental Policy Act, published in the Federal Register, volume 85, number 137 on July 16, 2020, on page 43304. Implemented in September of 2020, this change eliminated the term "cumulative impact" from consideration. That said, below is our response.

The border wall is more than 19 miles from the closest BLM managed lands considered in the Environmental Assessment that forms the basis of this decision. This distance means law enforcement and Department of Homeland Security activities associated with the border enforcement are outside the scope of this EA.

The allotments near Ajo border the Organ Pipe National Monument to the south, a 517 square mile conservation area overseen by the National Park Service. The western border is shared with the Cabeza Prieta National Wildlife Refuge managed by the US Fish and Wildlife Service

(USFWS), a 1343 square mile conservation area that included over 1250 square miles of designated wilderness. Together, they provide 1860 square miles of additional federal land to help conserve habitat and mitigate the impact of border activity for wildlife.

2. The Bureau failed to take a hard look at the impacts of this decision.

In their comments, the party cited 40 C.F.R. 1508.5 which refers to the need to consider direct and indirect effect of the decision and specifically questioned the impact on Sonoran Desert Tortoise. The Sonoran Desert Tortoise is not a species listed under the Endangered Species Act (ESA). A Biological Opinion (BO) was published by the USFWS and contained conservation measures for the species within the project area that are listed under the ESA. The BO considered the best available data in formulating the conservation measures which guided the development of the alternatives in the EA.

Additionally, on February 8, 2022, USFWS determined that the Sonoran Desert Tortoise did not require protection under the Endangered Species Act (Federal Register, Volume 87, Number 26, page 7077).

3. Proposed rule on Cactus Ferruginous pygmy owl (Glaucidium brasilianum cactorum) should be considered.

The Cactus Ferruginous pygmy owl (owl) is not a species protected under the Endangered Species Act and is not classified as a Sensitive Species by the Bureau of Land Management. The USFWS published a proposal to consider the species for protection under the ESA just weeks before the Proposed Decision. The BLM reviewed the Species Status Assessment (SSA) for the owl. The SSA stated that improper grazing in the Mexican state of Sonora may have had negative impacts on the owl, but indicates that grazing is not incompatible with owl conservation. Though it expressed concern that excessive grazing, particularly during droughts could degrade riparian areas used by the owl, it states on page 128 that:

There is no indication that livestock grazing precludes occupancy by pygmy-owls in any part of its range. While improper livestock grazing can have negative impacts to local pygmy-owl populations, we do not believe livestock grazing is significantly affecting pygmy-owl populations throughout its range. The best available scientific and commercial information does not appear to indicate that improper grazing is affecting pygmy-owl populations in Texas.

The BLM has decreased stocking rates for decades. Under drought conditions, stocking rates are reduced further and ephemeral allotments are generally not grazed during the drought period. This reduces the potential impact of grazing on the owl's habitat.

4. Confusion over dates

All protests were received within the 15-day protest period. Confusion with date arose in part due to difficulties in posting to Eplanning.gov site and internal signature tracking software. However, all protest periods begin when notices are delivered to interested parties and are therefore different for each party.

FINAL DECISION

After reviewing the analysis presented in the EA and approving a FONSI, it is my final decision to implement the Proposed Action described in the EA to authorize livestock grazing use on the Coyote Flat #2 Allotment with a term of 10-years, upon acceptance of the permit.

Proposed Permitted Livestock Use:

| Allotment Name | Number | Livestock Number | Livestock Kind | Percent Public Land | Type Use | Authorized AUMS |
|----------------|--------|------------------|----------------|---------------------|-------------------------------------|-----------------|
| Coyote Flat #2 | 00106 | 31 | Cattle | 97 | Perennial/ Ephemeral (Active) | 361 |

Other Terms and Conditions:

In addition to the mandatory terms and conditions and accordance with 43 Code of Federal Regulations (C.F.R.) § 4110.3-2, the following terms and conditions would be added to your permit (Authorization #0200048):

the following terms and conditions would be added to the permit under the Proposed Action:

1. When forage conditions warrant, livestock grazing may be authorized upon application to utilize an ephemeral forage crop pursuant to federal grazing regulations, special management requirements and other guidance including:
 - a. The endangered U.S. Sonoran pronghorn population must be approximately ≥ 225 .
 - b. No more than 50 percent of available ephemeral forage may be grazed.
2. The permittee/lessee must properly complete, sign and date an Actual Grazing Use Report Form (BLM Form 4230-5) annually. The completed form(s) must be submitted to the BLM, Lower Sonoran Field Office (LSFO) within 15 days from the last day of authorized annual grazing use (43 CFR 4130.3-2(d)).
3. All cattle must be removed from the allotment for three consecutive months out of the year and rotate use between the north and south pastures every other year.
4. Excavation and maintenance of earthen stock tanks may only occur between June and January.

RATIONALE

The Secretary of the Interior approved Arizona Standards for Rangeland Health and Guidelines for Grazing Administration in April 1997. The Standards and Guidelines Environmental Assessment Decision Record, signed by the BLM State Director in April 1997, provides for full implementation of the Standards and Guidelines in all Arizona BLM land use plans.

Based on the data compiled and analyzed for this LHE, the Coyote Flat #2 Allotment is failing to achieve either Standard 1 or 3 or both applicable Arizona Standards for Rangeland Health on three of the four monitoring sites. However, where Standards are achieved, vegetation attributes such as vigor, recruitment and composition are appropriate, and soils are stable. Species composition and structure were typical of the ecological communities within the Allotment. For the areas failing to achieve either Standard 1 or 3, soil site stability, hydrologic function, and biotic integrity indicators were departed and/or perennial grass composition, vegetation cover, and/or desirable palatable species objectives were not achieved.

Adjustments to terms and conditions and management practices are necessary in order to continue to meet and/or make significant progress towards meeting Standards for Rangeland Health and Guidelines for Grazing Administration and other Land Use Plan multiple use objectives. The proposed changes in terms and conditions and management practices are in conformance with Arizona Guidelines for Grazing Administration and the conservation measures contained in the USFWS 2021 BO to provide for forage on a multiple use sustained yield basis and support wildlife habitat requirements.

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 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).

§4110.2-4 After consultation, cooperation, and coordination with the affected grazing permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public, the authorized officer may designate and adjust grazing allotment boundaries. The authorized officer may combine or divide allotments, through an agreement or by decision, when necessary for the proper and efficient management of public rangelands.

§4110.3 The authorized officer shall periodically review the permitted use specified in a grazing permit or lease and shall make changes in the permitted use as needed to manage, or improve rangeland productivity, to assist in restoring ecosystems to properly functioning condition, to conform with land use plans or activity plans, or comply with the provisions of subpart 4180 of

this part. These changes must be supported by monitoring, field observations, ecological site inventory, or other data acceptable to the authorized officer.

§4110.4(a) Where there is a decrease in public land acreage available for livestock grazing within an allotment: **(1)** Grazing permits or leases may be cancelled or modified as appropriate to reflect the changed area of use.

§4120.3-1(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.

§4120.3-2(b) Subject to valid existing rights, title to permanent range improvements such as fences, wells, and 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 tanks, 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 Bureau of Land Management to ensure proper credit for the purposes of §§ 4120.3-5 and 4120.3-6(c).

§4130.2(b) The authorized officer shall consult, cooperate and coordinate with affected permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public prior to the issuance or renewal of grazing permits and leases.

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

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

§4110.3-3(a) After consultation, cooperation, and coordination with the affected permittee or lessee, the State having lands or managing resources within the area, and the interested public, reductions of permitted use shall be implemented through a documented agreement or by decision of the authorized officer. Decisions implementing §§ 4110.3-2 shall be issued as proposed decisions pursuant to 4160.1 of this part, except as provided in paragraph (b) of this section.

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

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

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

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

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

§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 within 15 days after receipt of such decision.

§4180.2(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.

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 must follow the requirements set forth in §§ 4.470 through 4.480 of this title. The appeal and petition for stay must be filed in the office of the authorized officer, as noted above, within 30 calendar days following receipt of the final decision.

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.

43 CFR 4.171(d) provides that the appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.

As noted above, the petition for stay must be filed in the office of the authorized officer and additionally to: (1) All other parties named in the CC section of this Decision, (2) The appropriate Office of the Solicitor as follows, in accordance with 43 CFR 4.413(a) and (c): US Department of Interior, Office of the Field Solicitor, Sandra Day O’Connor U.S. Courthouse, 401 W Washington St. SPC 44 Suite 404, Phoenix, Arizona, 85003-2151.

In accordance with 43 CFR 4.472(b), 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 stay may file with the Hearings Divisions a motion to intervene in the appeal, together with the response, within 10 calendar days after receiving the petition. Within 15 calendar days after filing the motion to intervene and respond, the person must serve copies on the appellant, the appropriate Office of the Solicitor in accordance with Sec 4.413(a) and (c), and any other person named in the decision.

EDWARD KENDER Digitally signed by EDWARD KENDER
Date: 2022.02.25 12:08:55 -07'00'

Edward J. Kender
Field Manager, Lower Sonoran Field Office

Date

Enclosures: CCC list

CCC List

| | |
|--|--------------------------|
| Arizona Antelope Foundation | 7021 0950 0000 9890 8545 |
| AZ Cattle Growers' Association | 7021 0950 0000 9890 8712 |
| AZ Dept. Transportation ATTN: Bruce Fenske | 7021 0950 0000 9890 8750 |
| Arizona Ecological Services Office US Fish and Wildlife Service | 7021 0950 0000 9890 8729 |
| AZ Game and Fish Dept. Region 4 | 7021 0950 0000 9890 8682 |
| AZ Game and Fish Dept. Region 6 | 7021 0950 0000 9890 8699 |
| AZ State Land Department | 7021 0950 0000 9890 8743 |
| Center for Biological Diversity | 7021 0950 0000 9890 8705 |
| Defenders of Wildlife | 7021 0950 0000 9890 8651 |
| Desert Tortoise Council | 7018 3090 0001 1156 6800 |
| Western Watersheds Project | 7021 0950 0000 9890 8736 |
| Cabeza Prieta Wildlife Refuge | 7021 0950 0000 9890 8644 |
| Jeff Williamson | 7021 0950 0000 9890 8613 |
| Organ Pipe Cactus National Monument | 7021 0950 0000 9890 8620 |