



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
PHOENIX FIELD OFFICE
21605 North 7th Avenue
Phoenix, Arizona 85027
www.az.blm.gov

In Reply, Refer To:
4100 (210)
03091

June 17, 2005

CERTIFIED MAIL - RETURN RECEIPT REQUESTED NO. 5091 6294

NOTICE OF PROPOSED DECISION

Mr. and Mrs. James B. and Marilynn Rasmussen
1081 East Montecito Drive
Globe, Arizona 85501

Dear Mr. and Mrs. Rasmussen:

BACKGROUND INFORMATION

On October 20, 2000 you were notified that the Coyote Flat and Why allotments, numbers 03020 and 03091 respectively, along with three other allotments in the Ajo area would be evaluated to determine if resource conditions were meeting the Arizona Standards for Rangeland Health and other land use plan multiple use objectives. On November 5, 2002, after completing the consultation process with the U.S. Fish and Wildlife Service (USFWS) and considering comments from various interested publics, a final allotment evaluation was mailed to you and all interested parties for a 30 day review and comment period. Through the allotment evaluation process and consultation with the USFWS, it was determined that a change in existing livestock management is required in order to meet or make significant progress toward the attainment of Standards for Rangeland Health and other multiple use objectives. On March 27, 2003, a proposed decision was issued which addressed combining grazing use on both the Why and Coyote allotments including new terms and conditions for permitted use. Protests were received from you and the Center for Biological Diversity.

After considering the reasons for protest, a final decision was issued on June 13, 2003. The final decision combined the allotments and reduced permitted livestock use on both allotments, which resulted in a reduction from 78 head to 23 head or 268 Animal Unit Months (AUMs) annually. (The BLM defines AUM as the amount of forage necessary for the sustenance of one cow or its equivalent for a period of 1 month). This decision was based on the results of the Ajo Block rangeland health evaluations, NEPA analysis, and the Biological Evaluation.

On July 16, 2003, you appealed the final decision in accordance with 43 CFR §4160.4. On February 17, 2004, at your request a field trip BLM rangeland management specialist and others knowledgeable about rangeland management in Arizona was held to review the results of the monitoring data used to evaluate both allotments. As a result of this field trip and subsequent discussions, you filed a request for a stay in order to explore the feasibility of a grazing

management plan and settlement agreement. The Field Manager in consultation with our Field Solicitor agreed to this request. On July 6, 2004, Judge Pearlstein issued an order directing the parties to hold further discussions in order to resolve the appeal. On August 20, 2004, a meeting was held at the Phoenix Field Office (PFO) between yourself and your rangeland management consultants and BLM management and range personnel in order to reach an agreement as to the future management of the Coyote Flat/Why allotments. Subsequent discussions and re-examination of data collected lead to an agreement as to the future management of livestock for the combined allotments.

Consultation with the U.S. Fish and Wildlife Service (USFWS) was reinitiated on October 13, 2004, to ensure the agreement complied with the Endangered Species Act. On March 3, 2005, USFWS issued a Biological Opinion (02-21-94-F-0192-R4/02-21-05-F-0120) concluding that the proposed actions agreed to would not jeopardize the continued existence of the Sonoran Pronghorn or the Cactus Ferruginous Pygmy-owl, nor is it likely to modify or destroy proposed critical habitat.

DECISION: Accordingly, my proposed decision is to withdraw the decision dated June 16, 2003, in order to implement the agreed upon terms and conditions for permitted use as follows:

1. The Coyote Flat and Why allotments shall be combined and managed as one ranch unit known as the Coyote Flat allotment.
2. The number of authorized livestock for the combined allotments shall be set at 31 head, or 361 animal unit months.
3. Livestock grazing shall be authorized for alternate years, rotating between the former Why and Coyote Flat allotments. During periods of ephemeral forage production livestock shall be dispersed evenly through out both former allotments.

Prior to authorizing additional livestock use based on ephemeral forage, the United States population of Sonoran Pronghorn Antelope must have an upward trend and be above 100 animals. These determinations will be made jointly by the BLM, USFWS and the Arizona Game and Fish Department.

4. James B. and Marilyn Rasmussen, at their discretion, agree to remove all livestock from the Coyote Flat allotment for a period of three months beginning May 1 of each year but not later than July 1.
5. James B. and Marilyn Rasmussen agree to submit annually within 15 days of the end of the grazing year (February 28) the actual use, by livestock, of each pasture.

RATIONALE: Adjustments to permitted use levels, terms and conditions and management practices are necessary in order to meet and/or make significant progress towards meeting the Arizona Standards for Rangeland Health and Guidelines for Grazing Administration and other land use plan Objectives. In addition, the BLM submitted a Biological Evaluation to the USFWS, which detailed our anticipated impacts to federally listed Threatened or Endangered species in the Ajo Block Evaluation area. The proposed change in permitted AUMs will reduce potential for competition between livestock and Sonoran pronghorn, will not jeopardize the continued existence of the other listed species affected, and is not likely to result in destruction

or adverse modification of designated or proposed critical habitat. Implementation of the grazing rotation guidelines will allow continued livestock use while providing growing season rest for native warm season species. Growing season rest will promote recruitment of grass species and palatable shrubs and allow current species to maintain high vigor.

More stringent requirements on ephemeral authorizations combined with a summer rest period of three months, each year will help reduce the potential for competition for forage between livestock and Sonoran pronghorn.

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

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

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

§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 decision of the authorized officer. Decisions implementing 4110.3-2 shall be issued as proposed decisions pursuant to 4160.1 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 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) Provision 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, and coordination with the affected lessees or permittees, the State having lands or responsible for managing resources within the area, and the interested public, the authorized officer may modify terms and conditions of the permit or lease when the active use or related management practices are not meeting the land use plan, allotment management plan or other activity plan, or management objectives, or is not in conformance with the provisions of subpart 4180 or this part. To the extent practical, the authorized officer shall provide to affected permittees or lessees, States having lands or responsibility for managing resources within the affected area, and the interested public an opportunity to review, comment and give input during the preparation of reports that evaluate monitoring and other data that are used as a basis for making decisions to increase or decrease grazing use, or to change the terms and conditions of a permit or lease.”

§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.”

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

- a) Watersheds are in, or are making significant progress toward, properly functioning physical condition, including their upland, riparian-wetland, and aquatic components; soil and plant conditions support infiltration, soil moisture storage, and the release of water that are in balance with climate and landform and maintain or improve water quality, water quantity, and timing and duration of flow.
- b) Ecological processes, including the hydrologic cycle, nutrient cycle, and energy flow, are maintained, or there is significant progress toward their attainment, in order to support healthy biotic populations and communities.
- c) Water quality complies with State standards and achieves, or is making significant progress toward achieving, established BLM management objectives such as meeting wildlife needs.
- d) Habitats are, or are making significant progress toward being, restored or maintained for Federal threatened and endangered species, Federal Proposed, Category 1 and 2 Federal candidate and other special status species.”

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

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

PROTEST: If you wish to protest this decision in accordance with 43CFR 4160.2, you are allowed 15 days from receipt of the decision to file your reasons with the authorized officer at 21605 N 7th Ave., Phoenix, Arizona 85027.

In absence of a protest, the proposed decision shall become the final decision of the authorized officer in thirty (30) days from the date of the proposed decision.

Any applicant, permittee, lessee or other person whose interest is adversely affected by the final decision may file an appeal and petition for a stay of the final decision pending final determination on appeal under 43 CFR §4160.4, 4.21 and 4.470. The appeal and petition for a stay must be filed in the office of the authorized officer, as noted above, within thirty (30) days following receipt of the final decision, or thirty (30) days after the date the proposed decision becomes final.

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

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

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

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

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

Sincerely,



Teresa A. Raml
Field Manager

CERTIFIED MAIL - RETURN RECEIPT REQUESTED NO. 5091 6287

cc: Arizona Antelope Foundation

P.O. Box 15501

Phoenix, AZ 85060-5501