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Name	Date
<i>Jim</i>	6-13-03
<i>John</i>	6-13-03
<i>D. Chavez</i>	6-17-03

CERTIFIED MAIL – RETURN RECEIPT REQUESTED (No. 5676 3599)

June 16, 2003

### NOTICE OF FINAL DECISION

James B. & Marilyn Rasmussen  
1081 E. Montecito Drive  
Globe, AZ 85501

Dear Mr. & Mrs. Rasmussen:

I have received your protest of my proposed decision of March 31, 2003, for the Coyote Flat and Why allotments. I have also received a protest of the same proposed decision from the Center for Biological Diversity (CBD). My staff has reviewed both your reasons of protest and those of CBD. Each point of your protest is addressed below followed by the reasons of protest from CBD.

1. You state that you have a valid grazing authorization for both allotments for the current grazing fee year and have already reduced the number of animals to levels below those proposed by the Bureau of Land Management (BLM).

**Response:** The current permit for the Coyote Flat allotment allows up to 40 head of livestock to graze year-long and the permit for the Why allotment allows up to 38 head to be grazed year-long. Your voluntary non use does not meet BLM's requirement to reduce the number of animals that may be permitted to graze an allotment based on the use levels recommended for the Ajo Block.

2. You state that according to BLM's own study, no antelope have been seen on either the Coyote Flat or the Why allotment for the last ten years and that "court cases" have ruled that land may not be set aside as "potential" habitat.

**Response:** The portions of Coyote Flat and Why allotments, west of State Route 85, are within the current range of the Sonoran pronghorn as determined by the United States Fish and Wildlife Service (USFWS). Therefore, both the Coyote Flat and Why allotments contain suitable habitat contiguous with habitat on the Cameron allotment, Organ Pipe Cactus National Monument and the Cabeza Prieta National Wildlife Refuge.

3. The current low numbers of antelope are not due to livestock grazing, therefore, grazing should not be curtailed to increase their numbers.

**Response:** The reduction in the allowable number of livestock is based on the Rangeland Health Evaluation, Biological Evaluation and the USFWS Biological Opinion conducted on both the Coyote Flat and Why allotments. These evaluations indicate that conditions are not meeting the Standards for Rangeland Health in Arizona and that grazing is a contributing factor.

4. You assert that BLM does not consider annuals and mesquite beans as perennial forage and that all vegetation: annuals, perennials, cactus and trees should be considered when determining rangeland health.

**Response:** Annuals are by definition ephemeral, not perennial. When determining rangeland health, BLM does consider all types of vegetation along with soils, erosion, plant composition, site potential and other factors. Mesquite beans are indeed produced by a perennial; however, mesquite beans are not reliably produced each and every year but are dependant on the timing and amount of precipitation received and, therefore, cannot be allocated for livestock grazing on an annual basis. An abundance of mesquite beans in any given year, as with other forage species, may be allocated and authorized by either a supplemental or ephemeral application.

5. You question whether or not summer rest will benefit perennial grasses and state that, in your opinion, winter rain is more important than summer precipitation for rangeland health.

**Response:** BLM recognizes the importance of winter precipitation for both perennial and ephemeral forage in the Sonoran desert, for it is winter precipitation that produces the annual (ephemeral) forage that is so important to Sonoran Pronghorn and to grazing livestock. This is especially true in years of average to above average winter precipitation when ephemeral forage is abundant. Since livestock prefer ephemeral forage, grazing pressure on perennials is greatly reduced during these years, at least seasonally. However, providing summer rest for perennial grasses has been proven to be beneficial since this period of rest occurs during the hottest, most stressful time of the year and allows perennial vegetation to take full advantage of sporadic summer rain.

6. You state that you are already applying management practices on both the Coyote Flat and Why allotments and are developing a monitoring schedule to measure the effects of these practices.

**Response:** BLM commends your management efforts and is willing to assist you in developing and implementing a monitoring program to measure progress toward meeting the Standards for Rangeland Health in Arizona. However, the new terms and conditions for livestock grazing on the Coyote Flat and Why allotments are a result of, and determined through, an allotment evaluation utilizing accepted rangeland study methodologies and are therefore the recommended action to meet the objectives identified in that evaluation.

7. You requested that the Coyote Flat and Why allotments be considered for a "Stewardship Contract."

**Response:** Presently BLM does not have a Stewardship program. A Stewardship program has been proposed under the Sustaining Working Landscape "Initiative" but the proposed regulations and policies have not yet been finalized. If the Stewardship program is approved, the Coyote Flat and Why allotments will be given full consideration as a candidate for inclusion in the program under whatever guidelines are established.

8. You state that, at present, feed conditions are excellent and that "This is not the time to reduce the cattle herd."

**Response:** Your letter of protest was received at the BLM office on April 3, 2003. On April 25, 2003, BLM conducted an allotment inspection to assess forage conditions. Although some precipitation occurred earlier this year that provided enough moisture to initiate plant growth, conditions at the time of inspection revealed that annual (ephemeral) forage had dried out and that no new growth of perennial grasses had occurred outside of the desert washes.

The recommendation of the range inspection team was that livestock numbers should be held to the level consistent with the forage produced in the washes. This number is also consistent with the recommended number of livestock contained in the proposed decision.

9. You state that BLM should consider the economics of a 71% reduction that "makes an operation that is at best marginal even worse."

**Response:** BLM recognizes the economic impact such a reduction in authorized livestock numbers would cause. However, BLM also recognizes that its first responsibility is to ensure the health of public rangelands and provide multiple uses, including wildlife habitat, for present and future generations.

#### **Reasons of protest from the Center for Biological Diversity**

1. The BLM intends to continue livestock grazing.

**Response:** The findings of the rangeland health evaluation for the Coyote Flat and Why allotments and the Biological Opinion issued by the USFWS, found that livestock grazing could continue at the reduced levels and under the new terms and conditions proposed. BLM's use of the rangeland health evaluation is the only approved means to evaluate a decision to graze or not graze an allotment. The Lower Gila South Resource Management Plan (RMP) determined the allotments in question to be appropriate for livestock grazing.

2. The BLM does not state that new permits will be issued.

**Response:** The purpose of the reductions in permitted use and the new terms and conditions contained in the proposed decision are for the issuance of a new ten-year permit.

3. "The Center protests the piecemeal treatment of the Ajo block. A DNA for the entire block should be issued at the same time. The proposed continuation of livestock grazing in this area is harmful to endangered species. This is the worst case of 'incrementalism' we have ever seen. Why weren't these allotments closed instead of being whittled down to an absurd 268 AUMs?"

**Response:** The BLM did not piecemeal the evaluation of livestock grazing in the Ajo block. The rangeland health evaluation, biological evaluation (BE), and biological opinion (BO) (2-21-94-F-192R2) addressed impacts associated with livestock grazing for the entire Ajo block. A single grazing decision could not be issued for all four allotments at the same time because each allotment operates under individual permits.

The rangeland health evaluation for all allotments in the Ajo block found that livestock grazing could continue under the terms outlined in the evaluation. These are the same terms contained in the proposed decision.

The biological evaluation analyzed the potential impacts to the endangered Sonoran pronghorn, cactus ferruginous pygmy owl and lesser long nose bat from all aspects of livestock grazing. This evaluation was submitted to the USFWS as outlined in Section 7 (a)(2) of the Endangered Species Act of 1973, as amended, and the 50 Code of Federal Regulations 402.14. The USFWS issued a Biological Opinion (2-21-94-F-192R2) addressing livestock grazing on September 30, 2002. The BE and BO both analyzed livestock impacts and cumulative impacts on the entire Ajo block. The BO concluded that after reviewing the status of the Sonoran pronghorn, the environmental baseline for the action area, the effects of the ongoing and proposed BLM action and the cumulative effects, that livestock grazing is not likely to jeopardize the continued existence of the Sonoran pronghorn.

#### **Decision**

After careful consideration of all of the above reasons of protest, my final decision is to confirm and uphold the proposed decision of March 31, 2003. The change in permitted use and the new terms and conditions contained in that proposed decision are re-stated below.

Adjust permitted use as follows:

**COYOTE FLAT**

From:	No.	Dates	% Public Land	Animal Unit Months
	40 c	03/01-02/28	95% PL	456 AUMs
To:	11c	03/01/02/28	95% PL	125 AUMs

**WHY**

From:	38c	03/01-02/28	100% PL	456 AUMs
	11c	03/01-02/28	100% PL	132 AUMs

Yearlong livestock grazing use will be accomplished by combining the Coyote Flat and Why into one allotment. Permitted Use for the combined allotments will be as follows:

No.	Dates	% Public Land	Animal Unit Months
23c	03/01-02/28	97% PL	268 AUMs

Livestock grazing will be conducted in accordance with the following new terms and conditions:

- Summer grazing (May 1 through September 15) will be authorized for alternate years, rotating between the Why pasture and the Coyote Flat pasture. These restrictions apply only to areas west of Highway 85.
- Livestock use outside the summer use period will be at the discretion of the operator.

Ephemeral use will be authorized in accordance with the Special Ephemeral Rule only if both of the following conditions are met:

1. Ephemeral plant production is not geographically limited within the United States portion of the Sonoran Pronghorn range.
2. The United States population of Sonoran Pronghorn must be above 100 and increasing.

Prior to authorizing ephemeral use, the BLM will work with the USFWS and Arizona Game & Fish Department in evaluating the ephemeral conditions throughout the range of the pronghorn.

**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 and 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 use period of four and one-half months will help reduce the potential for competition for forage between livestock and Sonoran pronghorn.

**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 if in what manner to proceed with the action in light of its section 7 obligations and the Services biological opinion."

**ADDITIONAL 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. Decision 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) Provisions for livestock grazing temporarily to be delayed, discontinued or modified to allow for the reproduction, establishment, or restoration of vigor of plants ... of 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 water quality standards and achieves, or is making significant progress toward achieving, established BLM management objectives such as meeting wildlife needs.
- (d) Habitats are, or 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."

**APPEAL:** You may appeal this final decision and file a petition for a stay of the decision pending final determination on appeal under 43 CFR 4160.4, 4.21 and 4.470. The appeal and petition for stay must be filed in the office of the authorized officer (Teresa A. Raml) at 21605 North 7<sup>th</sup> Avenue, Phoenix, Arizona 85027-2929, within 30 days following receipt of the final decision.

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 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 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. Rami**

Teresa A. Rami  
Field Manager

cc: ✓ Arizona Antelope Foundation  
P.O. Box 15501  
Phoenix, AZ 85060-5501

(Certified Letter No. 5676 3605)

✓ Organ Pipe Cactus National Monument  
10 Organ Pipe Drive  
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