



# United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Tucson Field Office  
3201 East Universal Way  
Tucson, AZ 85756  
520-258-7200  
[www.blm.gov/az/](http://www.blm.gov/az/)



October 2, 2015

In Reply Refer To:  
4160 (AZG020)  
Allotment No. 4504

CERTIFIED MAIL No. 7009 0960 0000 7836 0702  
RETURN RECEIPT REQUESTED

Stella and Pete Ortega  
P.O. Box 1403  
Globe, AZ 85502

## NOTICE OF PROPOSED DECISION

Dear Mr. and Mrs. Ortega:

The Bureau of Land Management (BLM) is charged with evaluating public lands on an allotment basis, in accordance with the current regulations, to determine if the rangelands are meeting the Arizona Standards for Rangeland Health. The information collected in the standards and guidelines evaluations will be used as a basis to evaluate the renewal of livestock grazing leases and authorizations of any other uses on the public lands, consistent with the land use plan documents.

On July 1, 2015 the draft El Capitan Environmental Assessment and Rangeland Health Evaluation (Evaluation) was sent to you, along with various interested parties, for a 15 day review and comment period. Through the consultation, coordination and cooperation process, your input as well as input from other affected interests has been considered, and where appropriate, incorporated in the final evaluation. The Evaluation concluded that the existing resource conditions encountered on the El Capitan allotment meet Arizona's Standards for Rangeland Health, and current management of the livestock is appropriate under Arizona's Guidelines for Grazing Administration. The revised Environmental Assessment and Rangeland Health Evaluation are available electronically: [bit.ly/ElCapitanLease](http://bit.ly/ElCapitanLease)

**It is therefore, my proposed decision to offer you a new grazing lease for a period of ten years with the following terms and conditions:**

## Terms

Allotment Number	Allotment Name	Pasture Type	Number of Livestock	Type of Livestock	Year Begin	Year End	% Public Land	Type of Use	AUMs
4504	El Capitan	Upland	5	CATTLE	3/1	2/28 (year-long)	100	ACTIVE	60

## Conditions

1. Standard conditions (see Attachment A).
2. If in connection with allotment operations under this authorization, any human remains, funerary objects, sacred objects or objects of cultural patrimony as defined in the Native American Graves Protection and Repatriation Act (P.L. 101-601; 104 Stat. 3048; 25 U.S.C. 3001) are discovered, the lessee/permittee shall stop operations in the immediate area of the discovery, protect the remains and objects, and immediately notify the Authorized Officer of the discovery. The lessee/permittee shall continue to protect the immediate area of the discovery until notified by the Authorized Officer that operations may resume.
3. Maximum allowable use levels will be as follows:
  - 40% of the current year's growth on key forage species (Upper Gila-San Simon Grazing Environmental Impact Statement UG-EIS p. 1-9, GM36)

## RATIONALE:

The public lands of the El Capitan allotment are guided by the *Safford District Resource Management Plan* (RMP). The Record of Decision for the Safford RMP was signed on January 1992, with a partial Record of Decision (ROD). A second partial ROD was signed September 12, 1994. However, all decisions concerning grazing on public lands in this area were addressed in the Upper Gila-San Simon Grazing Environmental Impact Statement (UG-EIS) which was completed in 1978. The UG-EIS analyzed a full range of alternatives for grazing actions in Eastern Arizona as guided by requirements in the National Environmental Policy Act (NEPA). The UG-EIS categorized the public lands in the El Capitan allotment as suitable for Custodial (C) management and established the grazing capacity on the public lands in this allotment at 60 Animal Unit Months (AUMs). In 2009, the criteria to determine which allotments should be placed in each management category was updated to ensure land health considerations are the primary basis for prioritizing the processing of grazing permits and leases and for monitoring the effectiveness of grazing management. Based on the new criteria, the management category given to the allotment in 2009 was Maintain (M). The El Capitan allotment was changed from the "C" category to the "M" category because public land is the dominant land base in the allotment. By definition, M category allotments do not have serious resource conflicts and range condition and present management is satisfactory.

The Secretary of the Interior approved Arizona's Standards for Rangeland Health (Standards) and Guidelines for Grazing Administration (Guidelines) in April 1997. The Decision Record, signed by the BLM State Director (April 1997) provides for full implementation of the Standards and Guidelines in Arizona BLM Land Use Plans.

The El Capitan allotment Rangeland Health Evaluation was completed in June 2015. In accordance with BLM policy and regulations, all applicable monitoring data was examined and evaluated in order to determine progress in meeting Arizona Standards for Rangeland Health and other land use plan objectives. In addition, the El Capitan allotment was reviewed to determine if any new information, issues or concerns have been identified. An interdisciplinary team completed the analysis of the resource data and developed a formal evaluation which was previously sent for your review. The Terms and Conditions for the new 10 year permit reflect recommendations made in the evaluation. These Terms and Conditions will ensure that the allotment continues to meet those standards which were addressed.

The Code of Federal Regulations (43 CFR 4130.2(a)) require that, "Grazing permits or leases shall be issued to qualified applicants to authorize use on the public lands and other lands under the administration of the Bureau of Land Management that are designated as available for livestock grazing through land use plans." The authorized officer has determined that renewing this 10-year grazing lease is in conformance with the *Safford District RMP*, which incorporated by reference all grazing decision from the *Upper Gila-San Simon Grazing Environmental Impact Statement*. A subsequent review of the UG-EIS has determined that the requirements of NEPA have been adequately addressed in existing NEPA documentation.

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

§ 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 CFR 1601.0-5(b)".

§4110.3 The authorized officer shall periodically review the permitted use specified in a grazing permit or grazing 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 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.

§4130.2(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.

§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 grazing 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 of 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.”

§4180.2(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 practices or levels of grazing use on public lands are significant factors in failing to achieve the standards and conform to the guidelines that are made effective under this section. Appropriate action means implementing actions pursuant to 4110, 4120, 4130, and 4160 that will result in significant progress toward fulfillment of the standards and significant progress toward conformance with guidelines.

### **RIGHT OF PROTEST AND/OR APPEAL**

If you wish to protest this proposed decision in accordance with 43 CFR 4160.2, you are allowed 15 days from receipt of the proposed decision to send your reasons in writing (e-mails through the Internet will not be accepted) to the Tucson Field Manager at 3201 East Universal Way, Tucson, AZ 85756. Subsequent to the protest period, a final decision will be issued.

In the absence of a protest, the proposed decision will become a final decision of the authorized officer without further notice. Electronic pleading and appeals are not acceptable methods for filing.

Any applicant, 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. The appeal and petition for stay must be filed in the office of the authorized officer, as noted above, within 30 days following receipt of the final decision, or 30 days after the date the proposed decision becomes final.

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

Should you wish to file a motion 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 have any questions, please contact Kristen Duarte, Rangeland Management Specialist, at (520) 258-7215.

Sincerely,

/s/  
Karen Simms  
Acting Field Manager