



United States Department of the Interior
BUREAU OF LAND MANAGEMENT

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Safford, Arizona 85546
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December 05, 2017

In Reply Refer To:
4100 (G010)

CERTIFIED MAIL – RETURN RECEIPT REQUESTED NO. 7015 3010 0000 3645 6818

John and Kimberly Klump
P.O. Box 233
Cotton Gin Road
Bowie, Arizona 85605

NOTICE OF FINAL DECISION
Flying W Allotment (No. 51190) Grazing Permit Renewal

Dear Mr. and Mrs. Klump:

A Notice of Proposed Decision (NOPD) was issued to you on July 31, 2017, for the Flying W Allotment grazing permit renewal analyzed in a land health evaluation (LHE) and issued via categorical exclusion (CX) # DOI-BLM-AZ-G010-2017-0016-CX.

INTRODUCTION

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 LHEs is used as a basis to evaluate the renewal of livestock grazing permits, leases, and other authorizations of any other uses on the public lands, consistent with the land use plan documents.

The BLM grazing permit for the Flying W Allotment expired on February 28, 2009, and is currently authorized through February 28, 2019, under section 402(c)(2) of the Federal Land Policy and Management Act (FLPMA) of 1976, as amended under Public Law (PL) 113-291, Section 3023, National Defense Authorization Act of 2015. Permits issued in accordance with FLPMA are temporary pending the completion of the formal permit renewal process that includes (1) the completion of the LHE process for determining an allotment's compliance with the Arizona Standards for Rangeland Health and Guidelines for Grazing Management, and (2) fulfilling the requirements of the National Environmental Policy Act of 1969 (NEPA).

A NOPD to renew your grazing permit for the Flying W Allotment was sent to you on July 31, 2017. The environmental review of the grazing permit for the Flying W Allotment met the specified criteria for applying a CX in accordance with Section 402(h)(1) of FLPMA, departmental regulations at 43CFR §§ 46.205 through 46.215, the BLM NEPA Handbook (H-1790-1), and the Departmental Manual at 516 DM 11.

BACKGROUND

On March 26, 2014, an Annual Consultation, Cooperation, and Coordination letter was sent to you, the interested public, and other stakeholders informing of plans for the BLM to initiate the grazing permit renewal process for the Flying W Allotment.

On June 20, 2017, the BLM provided notice of the draft LHE 15-day review and comment period, and notice of intent to renew the grazing permit via the CX authority under FLPMA, if appropriate. The draft LHE was made publicly available via BLM's ePlanning website (bit.ly/FlyingW). Two timely comments were received and considered; however, substantive changes to the LHE did not occur as a result.

On July 28, 2017, the final LHE concluded that the applicable standards for rangeland health on the Flying W Allotment are being achieved and was signed by the authorized officer. Application of the CX was determined to be appropriate and the decision signed by the authorized officer.

On July 31, 2017, a NOPD for the Flying W Allotment permit renewal analyzed in DOI-BLM-AZ-G010-2017-0016-CX was sent to you, the interested public, and other stakeholders, subject to a 15-day protest period. The final LHE and CX were made publicly available on the aforementioned website.

On August 21, 2017, a timely protest to the Proposed Decision was received from the Western Watersheds Project (WWP). I have carefully considered each protest statement of reasons why the Proposed Decision was considered in error and have responded to these reasons below.

WWP Protest:

WWP protests the use of a Categorical Exclusion as the basis of the proposed decision, as doing so violates both NEPA and FLPMA, and raises substantial questions about the conformance with the Endangered Species Act.

The WWP protest, included in its entirety, is as follows:

“Under the National Environmental Policy Act (NEPA) 43 CFR § 46.215 and § 402 (h)(1) of the Federal Lands Policy and Management Act (FLMPA), the use of a categorical exclusion is limited to instances where there are no extraordinary circumstances. The 12 potential extraordinary circumstances include having significant impacts on natural resources and ecological significant or critical areas, have uncertain and potentially significant environmental effects that involved unknown environmental risks, and/or have significant impacts of species listed or proposed to be

listed on the List of Endangered or Threatened Species or have significant impacts on designated Critical Habitat. 43 CFR §46.215.

“Here, despite being reminded in our July comments, the BLM maintained an inadequate Land Health Evaluation that failed to consider impacts to Mexican gray wolves and jaguars (Appendix A, LHE), and failed to demonstrate that the proposed action would have no significant impacts on either species or their habitats. These two sightings of federally-protected predators very near to the Flying W grazing allotment merit a close look at how the persistence of these animals, the prey base, and the habitats could be affected by the livestock operation.

“The Mexican wolf was utterly omitted from the LHE despite recent sightings in near [sic] Willcox and in the Chiricahua Mountains. The Biological Opinion on the Gila District Livestock Grazing Program (USFWS 2012) states that no wolves occur within the action area. BiOp at 226. This is no longer accurate, and the potential impacts of the Flying W grazing operation on Mexican wolves (included any associated predator control actions) should have been assessed in a complete EA rather than ignored in a brief CX.

“The Flying W LHE just says “No effect” without any acknowledgement that a jaguar was sighted on BLM lands in the Dos Cabezas mountains in November 2016. The most recent jaguar prior to last year's sighting was killed in the Dos Cabezas Mountains in 1986. The 2012 BIOP predates the latest jaguar sighting in the project area by 4 years.

“The Biological Opinion that covers Livestock Grazing in the Gila District discusses the scattered nature of the BLM allotments in the action area where jaguar may be present (BIOP at 223); this characterization fail to consider the contiguous block of BLM allotments in the Dos Cabezas Mountains extending northwest from the Forest Service lands in the Chiricahuas [sic].

“A full and fair assessment of predator killing on the allotment (both legal and unauthorized) should have also been provided in a complete EA.

“The determinations in the BiOp that the prey base for these predators species is unlikely to be adversely affected by livestock grazing neglects to consider the forage allocations for livestock as displacing prey species that the wolves and jaguars would otherwise eat. Deer were the only wildlife species allotted a forage reservation in the Upper Gila-San Simon Environmental Statement of 1978 and the utilization allowed for by livestock was up to 60 percent of the current year's growth. UG-ES at A-3. On the Flying W allotment, on 3570 public acres, wildlife were allocated only 5 AUM. Id at Appendix B.

“The impacts of the proposed action are unknown. The CX tiers to an environmental analysis completed in 1978. CX at 2. The Upper Gila-San Simon Environmental Impact Statement is grossly out of date, by nearly four decades. Simply conforming to the Land Health Standards is insufficient; the Land Health Evaluation reflects conditions at two ecological sites in the same pasture on apparently the same day in January 2014. (How the BiOp determined the allotment to be in an “upward” trend is a mystery. BiOp at 151.)

“Utilization was also measured only once, in January of 2014 at these same two areas. The LHE assumes, without evidence, that the utilization on the Flying W allotment would average 40 percent. LHE at 29. This is based on the carrying capacity developed 40 years prior and fails to consider conditions elsewhere on the allotment’s public lands, fails to incorporate any proof via enclosure data of potential vegetation production, and instead guesses at the average use of perennial vegetation over time.

“These are hardly sufficient data to demonstrate that the allotment is meeting standards and guidelines, sufficient to inform the BiOp that habitat quality and quantity for imperiled species is being maintained on this allotment.

“WWP finds the proposed decision to reissue a grazing permit for the Flying W grazing allotment to be without the requisite hard look, without a sufficiently robust basis in the data, and without consideration of the current ecological context of the allotment as habitat for critically imperiled species.”

BLM Response:

Application of a CX

Criteria listed in the FLPMA Section 402(h)(1) must be met in order to apply the CX for issuing livestock grazing permits. The criteria include: (a) the permit or lease continues the current grazing management of the allotment, (b) a land health assessment and evaluation have been completed in accordance with Manual Handbook H-4180-1 Rangeland Health Standards, and (c) the authorized official concludes from the findings of the evaluation report that either the public land subject to the evaluation is meeting land health standards, or the public land subject to the evaluation is not meeting standards due to factors other than current livestock grazing. As documented in the LHE, all three criteria have been met and the application of a CX is deemed appropriate for processing the Flying W Allotment grazing permit renewal.

More broadly, 40 CFR 1508.4 defines a categorical exclusion as a category of actions which do not individually or cumulatively have a significant effect on the human environment...and...for which, therefore, neither an environmental assessment nor an environmental impact statement is required. For reasons discussed in the paragraphs below regarding the jaguar and Mexican wolf, the following extraordinary circumstances to the application of a CX do not apply:

§45.215(b) Have significant impacts on migratory birds; or other ecologically significant or critical areas.

§45.215(h) Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant effects on designated Critical Habitat for these species.

As described on page 14 of the LHE, the grazing program for the BLM Gila District, including grazing activities within the Flying W Allotment, was assessed pursuant to Section 7 of the Endangered Species Act, as amended (ESA), to determine whether the program would jeopardize the continued existence of an endangered or threatened species or their designated or proposed

critical habitat. The U.S. Fish and Wildlife Service (USFWS) rendered Biological Opinion (BO) on the Gila District Livestock Grazing Program #22410-2006-F-0414 (2012). In addition, a current species list queried from the USFWS Information, Planning, and Conservation System (IPaC) was reviewed on May 16, 2017.

Jaguar

Jaguar appeared on the USFWS IPaC report and was considered on pages 15 and 44 of the LHE. The Flying W Allotment is located more than 50 miles from the closest jaguar designated critical habitat. Suitable habitat exists in the Dos Cabezas Mountains in the form of Madrean evergreen woodland (MEW); however, MEW characteristic vegetation composition and densities occur at such a low rate on the allotment that they are discountable. The recent documented detections of jaguar in the Dos Cabezas Mountains occurred over 10 miles from the closest boundary of the allotment and was acknowledged on pages 15 and 44 of the LHE. While this distance is within the estimated home range size of a jaguar, the Flying W Allotment is in a direction that leads toward higher human habitation, more roads, and less suitable habitat from where the detections occurred. Additionally, the recent detections of jaguar occurred under current grazing practices, which will not be changed with the proposed grazing permit renewal.

As described in the grazing BO, actions associated with grazing are “. . . not anticipated to result in significant changes to habitat quality or quantity because grazing allotments will be managed to meet the standards and guidelines. This management will not result in clearing of habitat, destruction of riparian areas, or fragmentation. Any changes to prey habitat are likely to be localized, and livestock management is not expected to significantly change prey availability throughout the areas in which jaguars may occur. These effects on jaguar foraging and travel cover, and on prey habitat, are expected to be small, not measurable, and insignificant.” (BO p. 223).

The USFWS concurred with BLM in the grazing BO (p. 224) that after reviewing the status of the jaguar, “. . . the environmental baseline for the action area, and the effects of the proposed action [grazing], that the proposed action may affect, but is not likely to adversely affect, the jaguar based upon the following:

1. The proposed action is not anticipated to result in significant changes to habitat quality or quantity because the allotments will be managed to meet the standards and guidelines, which will not result in clearing of habitat, destruction of riparian areas, or fragmentation.
2. Any changes to prey habitat are likely to be localized, and not expected to significantly change prey availability throughout the areas where jaguars . . . may occur.
3. The likelihood of a jaguar occurring in the same area where predator control activities are occurring is small and it shall require identification of the target animal to species before control activities are carried out. If the identified animal is a jaguar, that individual shall not be subjected to any predator control actions.”

The jaguar comment section of the LHE's Appendix A (Special Status Species) will be updated to provide clarity to the no effect determination on critical habitat and add the may affect but not likely to adversely affect determination described in the grazing BO above. This clarifying update will not change the LHE's (1) determinations presented in Section 7.0 *Determinations of Land Health Standards*, (2) the grazing and other management actions identified in Section 8.0 *Recommended Management Actions*, or (c) Section 11.0 *Authorized Officer Concurrence*. The criteria listed in the FLPMA Section 402(h)(1) in order to apply the CX for issuing livestock grazing permits are still valid, and no extraordinary circumstances are present. Therefore, this update is rudimentary in nature and does not change the outcome of the LHE or the grazing permit renewal decision. It merely recognizes and clarifies what was already published in the grazing BO.

Mexican Wolf

A species listing for the Mexican wolf (*canis lupus baileyi*) did not appear on either the USFWS IPaC or the Arizona Game and Fish Department (AGFD) Heritage Data Management System report, likely due the lack of suitable habitat. The Flying W Allotment is located in an area classified as experimental by the USFWS, with all Mexican wolves within that area classified as "experimental, non-essential" under the 10(j) rule of the ESA. The recent detection, and subsequent relocation, of one individual Mexican wolf occurred approximately 30 miles south of the allotment. This individual was known to have been introduced in Mexico and was believed to be traveling alone, as there had been no other wolf sightings in the area. Considering that (1) the verified occurrence was distant in proximity to the Flying W Allotment, (2) the individual is now in captivity, and (3) no other sightings have occurred within 50 miles in recent history, it is unlikely that the Mexican wolf will occur on the allotment. For this reason, combined with the lack of reporting from the USFWS IPaC, the species was eliminated from further consideration for purposes of the LHE.

Per the grazing BO, the USFWS concurred with BLM's determination concerning the Mexican wolf (p. 226):

"No wolves occur within the action area. If individual wolves disperse from the experimental population south or north into the action area, humans working near individuals could disturb the wolves, but they would only move to other areas. Livestock grazing would be managed to improve or maintain the productivity of the area, and would not affect the native prey base of the wolf.

"We concur with your determination that the proposed action may affect, but is not likely to adversely affect the Mexican gray wolf. No critical habitat will be affected because none has been designated. Our concurrence is based on the following:

1. Any wolves likely to be found in the action area are considered part of the experimental, non-essential population, so no action could lead to jeopardy for the species.
2. The survival and reproduction of any wolves that may disperse from the experimental population into the action area would not be affected because the wolves would move to another area if disturbed, and the prey base is unlikely to be adversely affected by livestock management."

After discussions with subject matter experts, we cannot verify the claim of Mexican wolf “recent sightings near Willcox.”

Predator Control

The BLM has entered into a multi-agency agreement with United States Department of Agriculture – Animal Plant Health Inspection Service (USDA-APHIS), Wildlife Services to allow for the removal of predators that pose a threat to livestock and humans. Their protocols have been reviewed, and agreed upon, by agency representatives from the BLM, AGFD, and USFWS. USDA operates under their own Biological Opinion, and employs methods for ensuring that threatened and endangered species are not affected. Predator hunting by the public of legally permitted species is authorized and enforced by the AGFD. Illegal or unauthorized predator hunting is a crime and is enforced by the agency with the appropriate jurisdiction by law. These factors provide for the legal removal of predators on public and private lands across the entire state.

As discussed above regarding jaguar, the USFWS concurred with BLM in the grazing BO (p. 224) that “3. The likelihood of a jaguar occurring in the same area where predator control activities are occurring is small and it shall require identification of the target animal to species before control activities are carried out. If the identified animal is a jaguar, that individual shall not be subjected to any predator control actions.”

Utilization

The LHE documents slight to moderate utilization data at or below 41 percent of key forage species on the allotment. This is within the acceptable range of key forage use per the Safford District Resource Management Plan (RMP), Grazing Management Objective 32 (LHE page 18):

Proper stocking is an essential principle of range management, which should precede or coincide with the initiation of any grazing management system. With stocking rates in balance with the proposed grazing capacities, utilization of key forage species in the key areas would average about 40 percent over a period of years. At a given stocking rate during years of high forage production (e.g. above normal rainfall) utilization in the use pasture might be as low as 20 percent. During years of low forage production utilization could be as high as 60 percent.

Grazing management on the allotment is set to reach and maintain desired resource conditions, which are near to the historic climax plant community. The current utilization level will maintain habitat for forage and cover for wildlife that dispersed throughout the allotment in varying densities as resources are scattered through the landscape.

Utilization was measured as a baseline for each key area and combined for analysis with actual use. Livestock utilization of grasses at the key areas on the Flying W Allotment is at or below the light to moderate utilization rating. This indicates current water placement and livestock distribution is supporting current acceptable levels of livestock use.

Under existing grazing capacities, utilization of key forage species in the key areas would average about 40 percent over a period of years. At the given stocking rate during years of high forage production (e.g., above normal rainfall) utilization could be as low as 20 percent. During years of low forage production utilization could be as high as 60 percent.

It is important to keep in mind that utilization data is just one tool to assist in determining rangeland health in both the short- and long-term. Utilization data must be taken into account with other data for a comprehensive evaluation. “Utilization and residue measurements are not management objectives. They are tools to be used with other information in evaluating whether desired resource conditions are being achieved.” (AZ1375 Smith et al, 2016)¹. As noted on page 1 of Technical Reference 1734-4², “Utilization data and residual measurements should not be used alone to determine stocking rates. Adjustment in stocking rates should also include trend data, climatic information, actual use data, and other information.” Using the best available information in total, as discussed in the Flying W LHE, the conclusion is that the Arizona standards for rangeland health are being achieved.

In summary, data presented in the LHE are in conformance with the Safford District RMP and achieve land use plan management objectives (LHE pages 18-19).

FINAL DECISION

Therefore, it is my final decision to authorize a new grazing permit for a period of 10 years in accordance with the terms and conditions listed below. With implementation of this final decision, no changes in grazing management from that which is currently authorized will occur.

Mandatory Terms and Conditions

Grazing management on the Flying W Allotment will continue in accordance with the mandatory terms and conditions of the term permit, as follows:

Allotment	Number and Kind of Livestock	Season of Use	Percent Public Land	Number of Animal Unit Months (AUM)
Flying W (No. 51190)	50 Cattle	March 1 – February 28	72	432

Other Terms and Conditions

The other terms and conditions described below will be implemented to administratively convey requirements regarding livestock use and management on public land managed by the BLM.

¹ Smith, Lamar, George Ruyle, Jim Maynard, Steve Barker, Walt Meyer, Dave Stewart, Bill Coulloudon, Stephen Williams, and Judith Dyess. 2016. AZ1375 Principles of obtaining and interpreting utilization data on rangelands. University of Arizona, College of Agriculture and Life Sciences, Cooperative Extension. Tucson, Arizona.

² USDA and US Department of the Interior, BLM. 1996. Utilization studies and residual measurements. Denver, Colorado

- Only cattle bearing the specified ear tags furnished by the Bureau of Land Management are authorized to graze on this allotment. As of August 21, 2006, the ear tagging Term and Condition will be placed on hold. If unauthorized use becomes a problem on the allotment, the ear tagging Term and Condition will be reinstated.
- Placement of supplement in the form of salt block and or mineral supplement is authorized on public lands within the Flying W Allotment. In order to improve livestock distribution on the public lands, all salt blocks and/or mineral supplements will not be placed within a 1/4 mile of any riparian area, wet meadow or watering facility (either permanent or temporary) unless stipulated through a written agreement or decision in accordance with 43 CFR 4130.3-2C.
- 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 (PL 101-601; 104 Stat. 3048; USC 3001) are discovered, the permittee/lessee shall stop operations in the immediate area of the discovery, protect the remains and objects, and immediately notify the authorized officer of the discovery until notified by the authorized officer that operations may resume.
- The Permittee shall submit a report of the actual grazing use made on this allotment for the previous grazing period, March 1 to February 28. Failure to submit such a report by March 15 of the current year may result in suspension or cancellation of the grazing permit.
- Permittees shall maintain all range projects for which they have maintenance responsibilities.
- All troughs and open top storage tanks located on BLM administered lands shall be outfitted with wildlife escape structures to provide a means of escape for animals that fall in while attempting to drink or bathe.

RATIONALE

The public lands on the Flying W Allotment are guided by the Safford District Resource RMP, incorporating by reference the 1978 Upper Gila-San Simon Environmental Statement (UG ES) and grazing decisions therein. The UG ES analyzed a full range of alternatives for grazing actions in this area of Arizona as guided by requirements in the NEPA.

The Secretary of the Interior approved Arizona Standards for Rangeland Health and Guidelines for Grazing Administration (Standards and Guidelines) 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.

The Flying W Allotment LHE was completed in June 2017. In accordance with BLM policy and regulations, all applicable monitoring data were examined and evaluated in order to determine progress in meeting the Arizona standards for rangeland health and other land use plan objectives. In addition, the Flying W 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 the formal evaluation, which was previously sent for your review. Grazing

management per the terms and conditions of the renewed 10-year permit will continue unchanged. The terms and conditions will ensure that the allotment continues to meet those standards for rangeland health addressed in the LHE.

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." I have determined that renewing this 10-year grazing permit is in conformance with the Safford District RMP and UG ES grazing decisions incorporated by reference therein. A subsequent review of the UG ES 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:

§ 4100.0-3(a) The Taylor Grazing Act of June 28, 1934 as amended (43 U.S.C. 315, 315a through 315r); (b) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) as amended by the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.)

§ 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) 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 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.

§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 of this part that will result in

significant progress toward fulfillment of the standards and significant progress toward conformance with guidelines.

RIGHT OF APPEAL AND PETITION FOR STAY

Appeal: Any applicant, permittee, lessee, or other person whose interest is adversely affected by the final decision may file an appeal of the decision in accordance with 43 CFR 4.470, 43 CFR 4160.3(c), and 43 CFR 4160.4. The appeal must be filed within 30 days following receipt of the final decision, or within 30 days after the date the proposed decision becomes final. The appeal may be accompanied by a petition for a stay of the decision in accordance with 43 CFR 4.471 and 4.479, pending final determination on appeal. The appeal, or the appeal and petition for stay, must be in writing and delivered in person via the United States Postal Service mail system, or other common carrier, to the authorized officer: The appeal and any petition for stay must be filed in the office of the authorized officer: US Department of Interior, Bureau of Land Management, Safford Field Office, ATTN: Scott C. Cooke, Field Manager, 711 South 14th Avenue, Safford, Arizona 85546. The person/party must also serve a copy of the appeal to the Office of the Solicitor in accordance with 43 CFR 4.413: US Department of the Interior, Office of the Field Solicitor, Sandra Day O'Connor U.S. Courthouse, 401 W. Washington St. SPC 44, Suite 404, Phoenix, AZ 85003-2151. *The BLM does not accept appeals by facsimile or email.*

The appeal shall state the reasons, clearly and concisely, why the appellant thinks the final decision is in error and must comply with the provisions of 43 CFR 4.470.

Should you wish to file a petition for a stay, see 43 CFR 4.471(a) and (b). Pursuant to 43 CFR 4.471(c), a petition for stay, 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 granting the stay.

Finally, 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 a stay may file with the Hearing Division a motion to intervene in the appeal, together with the response, within 10 days after receiving the petition. Within 15 days after filing a 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.

If you have any questions, please feel free to call Amelia Taylor, Assistant Field Manager, or myself at (928) 348-4400.

Sincerely,



Scott C. Cooke
Field Manager

Enclosure

cc:

Arizona Cattle Growers
1401 North 24th Street
Phoenix, Arizona 85008
CERTIFIED MAIL No. 7017 0530 0000 3047 2513
RETURN RECEIPT REQUESTED

Arizona Game and Fish Department
c/o John Windes, Habitat Program Manager
555 North Greasewood Road
Tucson, Arizona 85745
CERTIFIED MAIL No. 7017 0530 0000 3046 9377
RETURN RECEIPT REQUESTED

Arizona Game and Fish Department
WMHB – Project Evaluation Program
5000 West Carefree Highway
Phoenix, Arizona 85086-5000
CERTIFIED MAIL No. 7017 0530 0000 3046 9407
RETURN RECEIPT REQUESTED

Arizona State Land Department
c/o Ronnie Tsoie
1616 West Adams
Phoenix, Arizona 85007
CERTIFIED MAIL No. 7015 3010 0000 3645 6825
RETURN RECEIPT REQUESTED

Larry Humphrey
P. O. Box 894
Pima, Arizona 85543
CERTIFIED MAIL No. 7017 0530 0000 3046 9391
RETURN RECEIPT REQUESTED

Western Watersheds Project
c/o Greta Anderson
738 North 5th Avenue, Suite 200
Tucson, Arizona 85705
CERTIFIED MAIL No. 7017 0530 0000 9384
RETURN RECEIPT REQUESTED