



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Kingman Field Office
2755 Mission Boulevard
Kingman, Arizona 86401
www.az.blm.gov

May 10, 2013

In Reply Refer To:
4100 (LLAZC01000)

CERTIFIED MAIL – RETURN RECEIPT REQUESTED: 7012 1010 0003 1940 1381

NOTICE OF FINAL DECISION FOR PERMIT RENEWAL

Harold and Connie Gist
Post Office Box 901
Wikieup, Arizona 85360

Dear Harold and Connie Gist:

INTRODUCTION

On September 10, 2008, you submitted an application to renew your grazing permit for the Greenwood Community Allotment. On November 19, 2007, the Bureau of Land Management (BLM) had previously authorized your permit with existing terms and conditions pursuant to Section 325 of Public Law 108-108 until the permit could be fully processed. Fully processed includes compliance with all applicable laws and regulations; consultation, coordination and cooperation (CCC) with affected individuals, interested publics, States, and Indian Tribes; completion of the applicable level of National Environmental Policy Act (NEPA) review; consultation with the United States Fish and Wildlife Service (USFWS) under Section 7 of the Endangered Species Act (ESA); and ensuring that allotments will achieve or are making significant progress toward achieving land health standards.

In response to your application for grazing permit renewal and proposed grazing plan for the allotment, a Land Health Evaluation (Evaluation) and environmental assessment (EA) were completed in consultation, coordination and cooperation with the interested public and other stakeholders.

BACKGROUND

On September 10, 2008, you submitted an application and proposed grazing plan for permit renewal.

On December 16, 2008, a letter was sent to you, the interested public and other stakeholders informing all interested parties of BLM's plan to consider the renewal of grazing permits on Greenwood Community Allotment.

On January 20, 2009, the BLM held a project coordination meeting with members of the Interdisciplinary Team for the Greenwood Community Allotment permit renewal and associated range improvements.

On March 30-31, 2009, as part of the informal consultation concerning the Greenwood Community Allotment, the BLM and USFWS participated in a field visit to assess the suitability of southwestern willow flycatcher habitat and its associated critical habitat.

On July 23, 2009, a draft Evaluation was sent to you, the interested public and other stakeholders, for a 15 day review and comment period. Comments were received from the following individuals and/or groups: you (the permittee), Western Watersheds Project (WWP), Arizona Game and Fish Department (AZGFD), Jeff Burgess, and Mohave County Livestock Association. As a result of comments provided, additional information and clarifications were addressed in the Evaluation and issues were identified in preparation of EA # AZ-310-2008-053 titled Greenwood Community Permit Renewal and Associated Range Improvements.

On August 4, 2009, BLM held a project coordination meeting with members of the Interdisciplinary Team and an AZGFD representative to discuss the Greenwood Community Allotment permit renewal and associated range improvements.

On September 25, 2009, BLM conducted a field visit to the Greenwood Community Allotment in which you, WWP, and AZGFD attended.

On February 5, 2010, BLM mailed the final Evaluation and an EA for an additional review period. Comment letters were received from AZGFD, Jeff Burgess, Mohave Livestock Association and the Resource Advisory Council.

On March 2, 2010, BLM submitted a draft Biological Assessment to the USFWS for comments as part of informal consultation.

On April 12, 2010, a Finding of No Significant Impact was signed for EA # AZ-310-2008-053.

On April 13, 2010, a Notice of Proposed Decision was sent to you, the interested public and other stakeholders for a 15 day protest period.

On May 6, 2010, the BLM received a protest of the Proposed Decision from WWP.

On June 30, 2010, the BLM submitted a Biological Assessment to the USFWS to initiate formal consultation concerning impacts to the southwestern willow flycatcher and associated critical habitat from the proposed grazing plan on the Greenwood Community Allotment.

On December 20, 2010, the BLM received a signed Biological Opinion that contained concurrence from the USFWS for the determination of "May affect not likely to adversely

affect” for the southwestern willow flycatcher. The USFWS also concurred that the proposed action would not result in any “Adverse Modification” of critical habitat for the southwestern willow flycatcher.

On December 27, 2010, upon review of the administrative record, a letter was sent to you, the interested public and other stakeholders informing of plans to reinstate the NEPA process to renew the grazing permit on Greenwood Community Allotment.

On March 28, 2011, you leased the base property from the other permittee of record for the Greenwood Community Allotment resulting in one operator for the allotment.

On May 19, 2011, a letter was sent to you, the interested public and other stakeholders informing of plans to complete additional NEPA analysis for the renewal of the grazing permit on Greenwood Community Allotment.

On July 26, 2011, BLM completed an EA, which in addition to other resource uses, also addressed Sonoran desert tortoise which was recently designated as a candidate species for protection under the Endangered Species Act (ESA). An interdisciplinary team prepared a NEPA document to assess the proposed terms and conditions of the permit. The EA was provided to you, the interested public and other stakeholders for a 30 day comment period. Comments were received from WWP. Through the CCC process, your input, as well as input from other affected interests, was considered. Edits were made to the EA based on comments received.

On March 30, 2012, a new Notice of Proposed Decision (NOPD) was sent to you, the interested public and other stakeholders for a 15 day protest period.

April 17, 2012, one timely protest was received from WWP. WWP alleges violations of NEPA, Federal Land Management Policy Act, Administrative Procedures Act and other state laws meant to protect public lands from undue ecological harm. No data was provided to BLM in support of the protest points.

WWP protested the renewal of the permit because they felt the BLM failed to ensure against undue harm as summarized below:

- No proper public involvement
- No reasonable range of alternatives
- Inadequate Terms and Conditions for permitted use
- Did not analyze effects of the proposed exclosure, impacts to desert tortoise, ephemeral grazing, water quality, economic analysis, impacts to bighorn sheep, and interaction of livestock and feral burros.

Response: As summarized in the background section of this decision, stakeholder and public involvement was encouraged throughout the decision making process pursuant to 43 Code of Federal Regulations (CFR) 4120.3-1(f), 4130.2(b), and 4130.3-3 and other regulatory requirements for consultation, coordination and cooperation.

The BLM has informed the public of the available alternatives that can minimize adverse impacts on the environment (40 CFR 1502.1). The EA provided a reasonable range of alternatives (EA pages 4-9). Alternatives describe modifications to existing grazing and adaptive management practices that would lead to attainment of Land Health Standards including management facilities, changes in season of use and reductions in permitted livestock numbers.

Terms and Conditions (NOPD page 3) are requirements that the grazing operator must follow when grazing livestock on an allotment and were properly developed through the decision making process. Monitoring is the responsibility of the BLM. The permittee is not required under the terms and conditions for permitted use to perform BLM's monitoring duties which is why monitoring was placed under BLM Administrative Actions. This informs the permittee what adaptive management actions will take place during authorized use periods for the upland and riparian areas.

The impacts to Sonoran desert tortoise, other wildlife and Areas of Critical Environmental Concern (ACEC) from the construction of an enclosure and range improvements were analyzed in the EA (EA pages 5, 9, 11, 13, 14, 18-20, 22 and 26). The site for the enclosure is found in the EA on page 7.

The EA discusses impacts to Sonoran desert tortoise, including possible trampling and burrow collapse (EA pages 11, 12, 18, 21 and 24-27). WWP has provided no evidence that livestock grazing increases corvid populations. The AZGFD, who is charged with managing wildlife populations, made no mention of concerns about ravens in regards to desert tortoise in their two comment letters. According to the 12 month finding, prepared by the USFWS in response to a petition to list the Sonoran population of the desert tortoise under the ESA, raven predation on the Sonoran desert tortoise is not a concern (Federal Register Vol. 75 No. 239, Tuesday December 14, 2010).

The EA analyzed ephemeral grazing (EA pages 10 and 12). The BLM follows the guidance given under the Desert Tortoise Habitat Management on the Public Lands: A Rangelwide Plan, the Arizona Interagency Desert Tortoise Team's (AIDTT) Management Plan for the Sonoran Desert Population of the Desert Tortoise in Arizona, Instruction Memorandum no. AZ-94-018 and guideline 3-5 of Arizona Standards for Rangeland Health and Guidelines for Grazing Administration.

Water quality was analyzed (EA pages 17, 20 and 23). The Environmental Protection Agency (EPA) states that the Big Sandy River watershed is not designated as an impaired waterway and its status for the designated uses was rated as good (EA page 17). Therefore, the potential effects to water quality from the alternatives were not considered to be substantive. NEPA regulations require the BLM to focus on issues of importance and to prepare analytic rather than encyclopedic documents (40 CFR 1500.4 and 1500.5).

Management concerns relating to bighorn sheep were not raised by any party during the Evaluation or NEPA process. AZGFD submitted written comments on the Evaluation and the EA in two letters dated August 18, 2009 and March 23, 2010. They did not express concerns with potential affects to bighorn sheep from the Proposed Action.

Internally, the BLM discussed the likelihood of bighorn sheep occurring on the Greenwood Community Allotment and the potential for impacts from the proposed action. Given the low value habitat (Kingman Resource Management Plan page 179, Map 33) and the relatively flat country where range improvements were proposed, it was determined that bighorn sheep were not likely to be impacted by the proposed action.

While economic effects may be relevant, “those economic effects matter only when they are ‘interrelated’ with ‘natural or physical environmental effects.’” (40 CFR 1508.14). NEPA does not require an agency to assess all impacts of a project, only those that have a reasonably close causal relationship with a change in the physical environment which the BLM did through the environmental analysis.

Impacts to wild burros are analyzed (EA pages 14, 25 and 26). The alternatives do not take into account unauthorized livestock. Rather, unauthorized use is addressed through appropriate regulatory actions. The BLM is taking action toward removal of unauthorized livestock on the allotment (EA page 27).

FINAL DECISION

After careful consideration of the analysis provided through the Evaluation, the EA, the statement of reasons included in the protest, and information received through consultation, communication and coordination with interested publics, and the affected permittee throughout the decision making process, my final decision is to implement the Proposed Action described in the EA (EA-AZ-310-2008-053) for authorization of livestock grazing use on the Greenwood Community Allotment with a term of 10 years beginning upon acceptance of the permit.

This decision authorizes three management actions: 1) authorization of permitted livestock use on the Greenwood Community Allotment, 2) construction of the proposed riparian pasture fence and cattleguards, and 3) construction of an enclosure fence.

1. Grazing permit: The new grazing permit will include the following terms and conditions:

From:

Allotment Number	Livestock Kind	Begin	End	% PL	Suspended	Active AUMs*
00039	CATTLE	3/1	2/28	98-99	0	993

To:

Allotment Number	Livestock Kind	Begin	End	% PL	Suspended AUMs	Active AUMs
00039	CATTLE	3/1	2/28	98	499	494

A. Grazing Plan: Deferred seasonal rotation

<u>Allot #</u>	<u>Pasture</u>	<u>Livestock Number</u>	<u>Livestock Kind</u>	<u>Begin</u>	<u>End</u>	<u>% PL</u>	<u>Type Use</u>	<u>AUMS</u>
00039	Upland	42	CATTLE	2/1	9/30	98	ACTIVE	328
00039	Riparian	42	CATTLE	10/1	1/31	98	ACTIVE	166
00039	Upland/Riparian	42	CATTLE	3/1	2/28	98	SUSPENSION	499

*AUM is the amount of forage necessary for the sustenance of one cow or its equivalent for a period of 1 month.

The period of use for livestock in the upland pasture may be adjusted based on forage and resource conditions. If necessary, livestock will be removed from the upland pasture earlier than 9/30, but not later than 9/30.

The period of use for the riparian pasture may be adjusted based on patterns of use and resource conditions. If necessary, livestock will be removed from the riparian pasture earlier than 1/31, but not later than 1/31.

- B. Permittee will provide the BLM with actual use from the prior grazing fee year by March 15 of each year detailing the number of livestock, and period(s) of use, for each pasture in accordance with 43 CFR 4130. 3-2 (d).
- C. When forage conditions warrant, additional livestock grazing may be authorized upon an approved application to utilize an ephemeral forage crop pursuant to guidelines for grazing administration, federal grazing regulations, special management requirements, and other program guidance.

2. Range Improvements:

Construct two interior upland fences totaling approximately 2.5 miles on public land and install two cattle guards on public land. See Map 1, page 7 of EA-AZ-310-2008-053, for locations of fences and cattle guards. Details on design features for the fences and cattle guards are described in the EA and evaluation report. The permittee will be responsible for maintenance of range improvements.

3. Exclosure:

Construct an exclosure of approximately 5 acres on the same ecological site type as key area # 1 in order to monitor impacts of the grazing plan. Design features for the fence are to be followed as described in the evaluation. The location of this exclosure can be found on Map 1, page 7 of EA-AZ-310-2008-053.

ADMINISTRATIVE ACTIONS

The BLM will monitor the effectiveness of the management changes. Monitoring, as described in the EA and Biological opinion, will be used to determine progress toward achieving, or achievement of land health standards and other multiple use objectives as described in the

evaluation report and EA for upland and riparian habitat. Attributes to monitor could include any of the following: utilization (apical bud and current year's growth), frequency, cover, density, production, structure, and composition.

RATIONALE

The terms and conditions and range improvements will allow for the attainment of Arizona Standards for Rangeland Health and other Land Use Plan multiple-use objectives on public and private land. The USFWS concluded that the proposed grazing plan and associated monitoring plan identified in the EA and biological opinion would significantly reduce the long-term effects of grazing on the primary constituent elements of critical habitat and is expected to allow habitat development over the 10-year life of this grazing permit (USFWS biological opinion December 15, 2010, page 16).

Adaptive management practices will improve upland, riparian and wildlife habitat conditions. The majority of the riparian habitat is found along the Big Sandy River and Burro Creek. In order to reduce grazing pressure on the riparian habitat in this allotment, the spring season of use will be shortened to allow for re-growth of grazed vegetation during the remainder of the growing season as described above allowing for vegetative production, recruitment and increase of riparian-wetland species.

The grazing plan and prescribed levels of livestock use will also reduce the intensity of grazing use on key forage plants and allow continued livestock use while providing a growing season rest for key riparian plant species.

If monitoring data indicates further rest periods are needed, the BLM in cooperation with the permittee will rest this pasture during the spring or summer by rotating cattle on private and leased ground.

The fences and cattle guards are needed to separate riparian habitats along the Big Sandy River and Burro Creek from the uplands in order to implement the proposed managed grazing plan. Fences will be constructed between September 1 and February 28, outside of migratory bird breeding season to prevent impacts to nesting birds. If the fences are constructed during the breeding season (March 1 through August 30), a biologist will conduct a nest survey within 150 feet of both fence lines before beginning fence construction. These fences will establish the upland and riparian pastures. Fences will be designed to facilitate the movement of wildlife. The design features are described in the EA. The authorized officer will specify the standards, design, and construction standards in the statement of work before construction begins. A Rangeland Cooperative Agreement shall include the maintenance criteria for the range improvements and other additional conditions and stipulations or modifications deemed necessary by the authorized officer.

The enclosure will be constructed on the same ecological site(s) as the key area in order to monitor both natural and management-related influences. The enclosure, along with information from reference areas, will be used to separate the effects of management, weather, and other factors.

AUTHORITY

The authority for this decision is contained in 43 CFR 4100 in effect on July 11, 2006, which states in pertinent subparts and sections:

§4100.0-8 Land Use Plans. The authorized officer shall manage livestock grazing on public lands under the principles of multiple-use/sustained yield and in accordance with applicable land use plans. Land use plans shall establish allowable resource uses (either singly or in combination), related levels of production, or use to be maintained, areas of use, and resource condition goals and objectives to be obtained. The plans also set forth program constraints and general management practices needed to achieve management objectives. 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 Changes in permitted use. 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). Decreasing permitted use. 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 inventory or other acceptable methods, the authorized officer shall reduce permitted grazing use or otherwise modify management practices.

§4110.3-3 (a). Implementing reductions in permitted use. 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, reduction 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 this paragraph (b) of this section.

§4120.3-1 ... (b) Prior to installing, using, maintaining, and/or modifying range improvements on the public lands, permittees or lessees shall have entered into a cooperative range improvement agreement with the Bureau of Land Management or must have an approved range improvement permit. **(c)** The authorized officer may require a permittee or lessee to maintain and/or modify range improvements on the public lands under Sec. 4130.3-2 of this title.

§4120.3-2 (a) The Bureau of Land Management may enter into a cooperative range improvement agreement with any person, organization, or other government entity for the installation, use, maintenance, and/or modification of permanent range improvements or rangeland developments to achieve management or resource condition objectives. The cooperative range improvement agreement shall specify how the costs or labor, or both, shall be divided between the United States and cooperator(s).

§4130.2 Grazing Permits or leases. (a) Grazing permits or leases shall be issued to qualified applicants to authorize use on 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. Permits or leases shall specify the type and levels of use authorized, including livestock grazing, and suspended use. These grazing permits or leases shall also specify terms and conditions pursuant to 4130.3, 4130.3-1 and 4130.3-2. (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 issuance or renewal of grazing permits and leases.

§4130.3 Terms and Conditions. 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 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 Mandatory Terms and Conditions. (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. (b) All permits and leases shall be made subject to cancellation, suspension, or modification for any violation of these regulations or of any term or condition of the permit or lease. (c) Permits and leases shall incorporate terms and conditions that ensure conformance with subpart 4180 of this part.

§4130.3-2 Other Terms and Conditions. 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 rangeland.

§4130.3-3 Modification of permits or leases. 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...

§4160.3(b) Final decisions. Upon the timely filing of a protest, the authorized officer shall reconsider her/his proposed decision in light of the protestant's statement of reasons for protest and in light of other information pertinent to the case. At the conclusion to her/his review of the protest, the authorized officer shall serve her/his final decision on the protestant or her/his agent, or both, and the interested public. (c) A period of 30 days following receipt of the final decision,

or 30 days after the date the proposed decision becomes final as provided in paragraph (a) of this section, is provided for filing an appeal and petition for stay of the decision pending final determination on appeal. A decision will not be effective during the 30-day appeal period, except as provided in paragraph (f) of this section. See §§ 4.21 and 4.470 of this title for general provisions of the appeal and stay processes.

§4160.4 Appeals. Any person whose interest is adversely affected by a final decision of the authorized officer may appeal the decision for the purpose of a hearing before an administrative law judge by following the requirements set out in § 4.470 of this title. As stated in that part, the appeal must be filed within 30 days after the receipt of the decision or within 30 days after the date the proposed decision becomes final as provided in 4160.3(a). Appeals and petitions for a stay of the decision shall be filed at the office of the authorized officer.

§4180.2(c) Standards and guidelines for grazing administration. 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. Practices and activities subject to standards and guidelines include the development of grazing-related portions of activity plans, establishment of terms and conditions of permits, leases and other grazing authorizations, and range improvement activities such as vegetation manipulation, fence construction and development of water.

RIGHT OF APPEAL

Any applicant, permittee, lessee, or other person whose interest is adversely affected by the final BLM grazing decision may file an appeal for the purpose of a hearing before an administrative law judge in accordance with 43 CFR 4160.3(c), 4160.4, 4.21, and 4.470. The appeal must be filed within 30 days following receipt of the final decision or 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 BLM grazing decision is in error. A petition for a stay of the decision pending final determination of the appeal by the administrative law judge may also be submitted during this same 30 day time period. 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 Kingman Field Office as noted above. The BLM will not accept appeals by facsimile or email.

Should you wish to file a petition for a stay in accordance with 43 CFR Section 4.471(c), 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 granting the stay.

Within 15 days of filing the appeal, or the appeal and petition for stay, with the BLM officer named above, the appellant must serve copies on any other person named in this decision and on *the Office of the Field Solicitor, U.S. Department of the Interior, U.S. Courthouse, Suite 404, 401 W. Washington St. SPC 44, Phoenix, AZ 85003* in accordance with 43 CFR 4.470(a) and 4.471(b).

As noted above, the petition for stay must be filed in the office of the authorized officer. If you have any questions, feel free to contact me at (928) 718-3725.


Ruben A. Sánchez
Field Manager

cc: Michael Tarr

Emmett Sturgill, Mohave Livestock Association
Regional Supervisor, Arizona Game and Fish Department
Ms. Melissa Hailey, WildEarth Guardians
Jay Lininger, Center for Biological Diversity
Ms. Greta Anderson, WWP
Jeff Burgess
Karen Sussman, Int'l Society/Protection of Mustangs and Burros
Sue Baughman
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