



THE STATE OF ARIZONA
GAME AND FISH DEPARTMENT

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August 9, 2011

Angelita Bullets
District Manager
21605 N. 7th Avenue
Phoenix, AZ 85027-2929

Gene Blankenbaker
Forest Supervisor
Tonto National Forest
2324 E. McDowell Rd.
Phoenix, Arizona 85006

Re: Horseshoe Ranch - Horseshoe and Copper Creek Agreement

Dear Ms. Bullets and Mr. Blankenbaker:

Please find enclosed for your files an original fully executed Agreement between the Arizona Game and Fish Commission, Bureau of Land Management, and U. S. Forest Service. The Agreement clarifies and coordinates the parties roles in the management of the Horseshoe and Copper Creek Allotments as it relates to each agencies respective rules and policies.

Thank you for your assistance in executing this agreement.

Sincerely,

Josh Avey
Habitat Branch Chief

Enclosure: Horseshoe and Copper Creek Agreement

cc: Rem Hawes, Agua Fria National Monument Manager, BLM
Louise Congdon, District Ranger, Cave Creek Ranger District, Tonto National Forest
Rod Lucas, Regional Supervisor, Region VI Mesa

HORSESHOE AND COPPER CREEK AGREEMENT

AMONG

U.S. FOREST SERVICE
TONTO NATIONAL FOREST,

BUREAU OF LAND MANAGEMENT,

AND

ARIZONA GAME AND FISH COMMISSION

This Agreement is hereby entered into by and among the U.S. Forest Service, Tonto National Forest, hereinafter referred to as Forest Service, the Bureau of Land Management, hereinafter referred to as BLM, and the Arizona Game and Fish Commission, hereinafter referred to as the Commission. The terms "Department" and "Director" shall mean the Arizona Game and Fish Department and its Director, acting as administrative agent for the Commission. This agreement recognizes the authorities and responsibilities of each party (The Parties) and nothing in this agreement is intended to abridge any of those respective authorities.

PREAMBLE

WHEREAS, the Commission is authorized to enter into this Agreement pursuant A.R.S. § 17-231(B) (7).

WHEREAS, the BLM's responsibilities referenced in this Agreement are authorized by the Taylor Grazing Act of 1934; Sikes Act of 1974; Federal Land Policy and Management Act of 1976; 43 C.F.R. Part 4100; Master Memorandum of Understanding Between United States Department of the Interior, Bureau of Land Management, Arizona State Office and State of Arizona, Arizona Game and Fish Commission, effective November 16, 2007; and Agua Fria National Monument Record of Decision and Resource Management Plan 2010 (AFNM RMP).

WHEREAS, the area of the Horseshoe Ranch and the BLM's Horseshoe Allotment and the Forest Service's Copper Creek Allotment, hereinafter referred to as the Ranch and Allotments respectively, have very high ecological value, and are home to several wildlife species of special importance to the residents of the State of Arizona and the United States.

WHEREAS, the Department has acquired the Horseshoe Ranch, which is the base property for Federal grazing privileges associated with the Allotments. The natural community diversity that occurs on these Allotments results in a wide array of wildlife species which occupy the region. These include threatened and endangered native fish, amphibians, reptiles, sensitive obligate riparian and/or grassland birds, economically important game animal species such as the pronghorn and many others. As a result of these important natural communities, these Allotments have been recognized as a

significant element of the National Audubon Society's designation of the area as an Important Bird Area. These Allotments are also the foundation of the local watershed and their condition is critical to maintaining a functional hydrologic regime.

WHEREAS, it is acknowledged that hunting for big game animals, general recreation, and ranching are socially and economically important uses of the area, creating a tie to the land and the traditions of the Southwest. The Parties to this agreement feel a unique opportunity exists to developing alternatives, including research, to managing the Allotments that preserve the domestic livestock grazing tradition, while enhancing natural resource management to the benefit of the people of the State of Arizona and the United States.

WHEREAS, the grasslands of central Arizona are recognized as highly at risk of loss or degradation and an interagency (Forest Service, BLM and Department) leadership group has developed the Central Arizona Grasslands Conservation Strategy, it is acknowledged that efforts to conserve and enhance these grasslands are a high priority. The Parties have cooperated to enhance pronghorn on the Allotments, an isolated population with critical fawning grounds on the Allotments which has been the target of intensive management. Among the efforts have been attempts to restore movement corridors for pronghorn and to reintroduce periodic fire in an effort towards maintaining the herbaceous species diversity and composition of semi-desert grassland ecosystems on the Allotments.

WHEREAS, portions of the Copper Creek Allotment were severely impacted by the Cave Creek Complex wildfire in 2005, and may require special management considerations to restore watersheds and stream channels to properly functioning conditions and habitat qualities similar to pre-fire condition.

WHEREAS, the Allotments and the roadways crossing the Horseshoe Ranch property are important access routes for administrative and public access to Game Management Unit 21 and the Agua Fria National Monument, it is acknowledged that preserving this access is a priority for the Parties.

A. PURPOSE:

The purpose of this Agreement is to clarify and help coordinate the Parties' roles regarding management of the Allotments in accordance with the various regulations and policies of the Parties. This management is to be based on the Department working with the other Parties to ensure the tradition of livestock grazing is maintained on the Allotments while still meeting the desired conditions, which was the principal driving purpose of the Horseshoe Ranch acquisition by the Department. As such, the purpose of this Agreement has four elements:

1. To coordinate and ensure compliance with BLM grazing regulations pertaining to base property acquisition by entities that do not meet mandatory qualifications for

exercising a grazing preference as required by the Taylor Grazing Act and 43 C.F.R. § 4110.1.

2. To coordinate and ensure compliance with Forest Service grazing regulations set out at 36 C.F.R. Part 222 – Range Management, Subpart A – Grazing and Livestock Use on the National Forest System, and Forest Service policy to leave the Copper Creek Allotment vacant;
3. To document an agreement among the Forest Service, BLM, and the Commission to manage in coordination, consultation and cooperation the Forest Service's Copper Creek Allotment and the BLM's Horseshoe Allotment under one coordinated resource management plan; and
4. To underscore a multidisciplinary and scientifically-based approach for managing the Allotments that ensures that land, water, wildlife, and domestic livestock grazing on the Allotments are maintained or enhanced for the enjoyment and use by future generations.

B. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

The Forest Service, BLM, and the Commission are committed to sustaining or improving watershed and ecosystem health, fish and wildlife habitat, and the tradition of ranching on these public lands. The Parties' shared goals include maintaining or restoring rangeland vegetative conditions as well as riparian and other natural ecosystem components that exist within these lands. The Parties are further committed to protecting and enhancing wildlife habitat in a manner that sustains ecosystem function and economic benefits to rural communities.

The Parties agree that the Allotments contain examples of high social and environmental value. The desired future condition objectives associated with these high values, in accordance with the AFNM RMP and Forest Service Plans, include:

- The conservation and restoration of native fishes and their habitats, including designated critical habitat for the Gila chub.
- The conservation and restoration of native grassland and scrubland communities which are the essential habitats for jeopardized grassland bird communities, pronghorn and other wildlife.
- The conservation and restoration of terrestrial and emergent riparian habitat communities which serve as the foundation for numerous species of wildlife such as Neotropical Migratory Birds.
- The conservation of the tradition of ranching and livestock grazing as a suitable and historically admired utilization of these lands and a contributor to

local economies. The continuation of outdoor recreation in accordance with Presidential Proclamation and AFNM RMP.

C. KEY CONSIDERATIONS FOR IMPLEMENTATION OF THIS AGREEMENT:

The Parties will develop a Coordinated Resources Management Plan, hereinafter referred to as CRMP, which will guide management of both the BLM (Horseshoe) Allotment in accordance with 43 C.F.R. §4120.2 and Forest Service (Copper Creek) Allotment.

- The permittee will waive the grazing permit for the Copper Creek Allotment back to the United States (Forest Service Form 2200-12); while the BLM Horseshoe Allotment grazing preference remains attached to the base property. Future management of both Allotments will focus primarily on the desired future condition objectives itemized above while maintaining livestock grazing in a compatible manner.
- The Forest Service will maintain the Copper Creek Allotment in a vacant status (i.e. no permanent term grazing permit will be issued). The Forest Service agrees, however, to give priority for livestock grazing on the Copper Creek Allotment to the BLM's lessee for the Horseshoe Allotment via an annual temporary grazing permit.
- The Commission will hold title for the Horseshoe Ranch, which currently is the base property for the BLM's Horseshoe Allotment. The Department will secure a base property lease with a qualified livestock operator or nonprofit organization within 180 days. The lessee will apply for grazing preference and lease for the Horseshoe Allotment and complete all application forms within 90 days of entering into a base property lease with the Department in accordance with 43 C.F.R. § 4110.2-3(a)(4) and 43 C.F.R. § 4110.2-3(b).
- The BLM will recognize that the preference for the Horseshoe Allotment will remain with the Horseshoe Ranch and will recognize the Commission's Lease arrangement with a qualified livestock operator.
- The Department, in coordination with the lessee, voluntarily will assume responsibility for maintenance of range improvements as required for the Horseshoe and Copper Creek Allotments.
- The BLM and Forest Service agree to provide a current inventory of all range improvements to be designated as the responsibility of the Department's lessee to maintain. This will be provided prior to the commencement of any grazing under this agreement.

- The Parties recognize the economic value and feasibility of livestock grazing for the Ranch and Allotments so long as strategies or management practices do not compromise the desired future condition objectives.

D. FOREST SERVICE SHALL:

1. Maintain the Copper Creek Allotment in a vacant status (i.e., no term grazing permit will be issued) for the term of this Agreement after the existing term grazing permit is waived back to the United States.
2. Allow and give priority livestock grazing on Copper Creek Allotment to the BLM's lessee (private party or nonprofit organization) for the Horseshoe Allotment. Manage livestock grazing under the terms of the CRMP, in concert with the other Parties, permitting grazing to occur in pastures where allocation of forage resources to livestock is compatible with the desired future condition objectives outlined in the sections above. Specifically, the CRMP should strive to maintain or improve the condition of watersheds, riparian and stream habitats, water quality, and grassland habitats. These objectives should be a priority for the life of this agreement.
3. Serve jointly with the other Parties to develop and implement a CRMP for the Allotments and assume responsibility in completing the NEPA and associated clearances and consultation in order to implement management actions and projects necessary to achieve desired future condition objectives for the Copper Creek Allotment.
4. Permit and administer grazing activities within the Copper Creek Allotment consistent with the purpose and intent of this Agreement, and supporting NEPA documentation and the CRMP.
5. Jointly monitor implementation of the CRMP and/or coordinate monitoring efforts and share information between the Parties, and include the Department in activities to develop operating instructions for the livestock operator.
6. As appropriate and available seek internal Forest Service staff, equipment and funding for habitat and range improvements and range management actions needed to achieve CRMP objectives and/or comply with Forest Service grazing administration policy.
7. In concert with the other Parties, consider the installation, removal, modification and maintenance of range improvements using volunteer or other sources of materials and labor, when appropriate.

E. BLM SHALL:

1. Honor the Commission's base property public grazing preference by not seeking or processing other applications under 43 C.F.R. § 4110.3-1(a) during the grazing approval process and recognize the Department's lessee as the authorized livestock operator for the Horseshoe Allotment, if approved.
2. Serve jointly with the other Parties to develop and implement a CRMP for the Allotments and assume responsibility in completing the NEPA, associated clearances, and consultation in order to implement management actions and projects necessary to achieve desired future condition objectives for the Horseshoe Allotment.
3. Manage livestock grazing under the terms of the CRMP, in coordination with the other Parties. The CRMP should strive to maintain or improve the condition of watersheds, riparian and stream habitats, water quality, and grassland habitats.
4. Administer grazing management within the Horseshoe Allotment in accordance with applicable federal statutes, BLM regulations and policy, the CRMP, as outlined in Sections B and C above.
5. Jointly monitor implementation of the CRMP and/or coordinate monitoring efforts and share information between the Parties, and include the Department in activities to develop operating instructions for the livestock operator.
6. As appropriate and available, seek BLM staff, equipment and funding for habitat, range improvements and range management needed to achieve CRMP objectives and/or comply with BLM grazing administration/policy.
7. In concert with the other Parties and in accordance with BLM grazing regulations and land use plan and grazing decisions, consider the installation, removal, modification and maintenance of range improvements using volunteer or other sources of materials and labor, when appropriate.

F. THE COMMISSION AGREES THAT THE DEPARTMENT SHALL:

1. Within 180 days, identify and lease the base property to a livestock operator that is qualified to hold the Forest Service and BLM Allotments.
2. Assist the BLM and Forest Service with its supervision of the operation of the designated livestock operator for both the Horseshoe and Copper Creek Allotments.
3. Serve jointly with the other Parties in the development and implementation of a CRMP for the Allotments and assume responsibility for implementation of the

management actions necessary to achieve desired future condition objectives for the Horseshoe and Copper Creek Allotments.

4. Jointly monitor implementation of the CRMP and/or coordinate monitoring efforts and share information between the Parties.
5. As appropriate and available, seek Department staff and funding for habitat for wildlife projects, range improvements and range management needed to achieve CRMP objectives and/or comply with Forest Service and BLM grazing administration/policy.
6. Conduct wildlife management activities pursuant to Department statutory authorities and in support of the CRMP and associated desired future condition objectives.

G. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES:

1. FREEDOM OF INFORMATION ACT (FOIA). Any information furnished to the BLM and Forest Service under this instrument is subject to the Freedom of Information Act (5 U.S.C. 552).
2. NO NEW LIABILITY. The Parties do not assume any otherwise inapplicable liability for claims for damages as a result of this Agreement.
3. PARTICIPATION IN SIMILAR ACTIVITIES. This Agreement in no way restricts the Parties from participating in similar activities with other public or private agencies, organizations, and individuals.
4. NONBINDING AGREEMENT. This Agreement creates no right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity. The Parties shall manage their respective resources and activities in a separate, coordinated and mutually beneficial manner to meet the purpose(s) of this Agreement. Nothing in this Agreement authorizes any of the Parties to obligate or transfer anything of value.

Specific, prospective projects or activities that involve the transfer of funds, services, property, and/or anything of value to a party requires the execution of separate instruments and are contingent upon numerous factors, including, as applicable, but not limited to: availability of appropriated funds and other resources; agency and administrative and legal requirements (including agency authorization by statute). If the Parties elect to enter into an obligation instrument that involves the transfer of funds, services, property, and/or anything of value to a party, then the applicable criteria must be met. Additionally, under a prospective instrument, each party operates under its own laws, regulations, and/or policies, and any BLM or Forest Service obligation is subject to the availability of

appropriated funds and other resources. The negotiation, execution, and administration of these prospective instruments must comply with all applicable law

Nothing in this Agreement is intended to alter, limit, or expand the Parties' statutory and regulatory authority.

5. EFFECTIVE DATE AND DURATION. This Agreement is executed as of the date of the last signature and is effective for a period of 10 years from that date, at which time it is the intent of the signatories that it will be renewed by an executed modification, signed and dated by all properly authorized, signatory officials.
6. TERMINATION. Any Party may terminate this Agreement upon sixty (60) days' written notice to the other Parties. The Parties agree to meet prior to termination of this Agreement, or periodically, to discuss any changes to the Agreement that are necessary
7. MODIFICATIONS. The Parties also agree to meet periodically to discuss if any changes to the Agreement are necessary. Modifications within the scope of this Agreement must be made by mutual consent of the Parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials, prior to any changes being performed. Requests for modification should be made, in writing, at least 30 days prior to implementation of the requested change.

The Parties (along with grazing lessee if future grazing use has already been agreed upon) will meet in emergency situations to maintain management flexibility, whether resource, climate, or grazing operation related. The agency's point of contact and the grazing lessee will seek to resolve small changes in a reasonable, timely manner, while making recommendations for changes in proposed grazing use.

8. RESPONSIBILITIES OF THE PARTIES. The Forest Service, BLM and the Department and their respective agencies and offices will handle their own activities and utilize their own resources, including the expenditures of their own funds, in pursuing these objectives. Each Party will carry out its separate activities in a coordinated and mutually beneficial manner and each is encouraged to explore opportunities to work cooperatively with the other Parties in achieving these objectives.
9. PRINCIPAL CONTACTS. Individuals listed below are authorized to act in their respective areas for matters related to this instrument.

Principal U.S Forest Service Contacts:

U.S. Forest Service Program Contact	U.S. Forest Service Administrative Contact
Name: Louise Congdon, District Ranger Address: 40202 N Cave Creek Road City, State, Zip: Scottsdale, AZ 85262 Telephone: 480-595-3300 FAX: 480-595-3346 Email: lcongdon@fs.fed.us	Name: Carol Engle Address: 40202 N. Cave Creek Road City, State, Zip: Scottsdale, AZ 85262 Telephone: 480.595.3300 FAX: 480.595.3346 Email: cengle@fs.fed.us

Principal BLM Contacts:

BLM Program Manager Contact	BLM Administrative Contact
Name: Rem Hawes, Monument Manager Address: BLM, 21605 N. 7 th Ave. City, State, Zip: Phoenix, AZ 85027 Telephone: (623) 580-5532 FAX: (623) 580-5580 Email: rem_hawes@blm.gov	Name: Amanda James, Natural Resource Specialist Address: BLM, 21605 N. 7 th Ave. City, State, Zip: Phoenix, AZ 85027 Telephone: (623) 580-5568 FAX: (623) 580-5580 Email: amanda_james@blm.gov

Principal Arizona Game and Fish Commission Contacts:

Commission Contact	Commission Administrative Contact
Name: Larry D. Voyles Director Address: 5000 W. Carefree Highway City, State, Zip: Phoenix, Arizona 85086 Telephone: (602) 942-3000 FAX: (623) 236-4377 Email: lvoyles@azgfd.gov	Name: Josh Avey Habitat Branch Chief Address: 5000 W. Carefree Highway City, State, Zip: Phoenix, AZ 85086 Telephone: (623) 236-7605 FAX: (623) 236-7366 Email: javey@azgfd.gov

10. **NOTICES.** All written notices concerning this Agreement shall be delivered in person or sent by certified mail, return receipt requested, to the Parties at the addresses specified in the paragraph above.
11. **NON-FUND OBLIGATING DOCUMENT.** Nothing in this Agreement shall obligate the Parties to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the various agencies and offices of the Forest Service, BLM and the Department will require execution of separate agreements and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This Agreement does not provide such authority.

Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.

12. ESTABLISHMENT OF RESPONSIBILITY. This Agreement is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.
13. COMPLIANCE WITH APPLICABLE LAW. All work performed pursuant to this Agreement shall be in compliance with all applicable state and federal laws and regulations.
14. SEVERABILITY. In the event that any provision of this Agreement or portion thereof is held invalid, illegal, or unenforceable, such provision or portion thereof shall be severed from this Agreement and shall have no effect on the remaining provisions of this Agreement, which shall remain in full force and effect.
15. NON-DISCRIMINATION. In carrying out the terms of this Agreement, the Parties agree to comply with the Civil Rights Act and Executive Order 99-4 prohibiting discrimination in employment, the provisions of which are incorporated herein by reference.
16. TERMINATION FOR CONFLICT OF INTEREST. This Agreement is subject to termination by the Department pursuant to A.R.S. § 38-511.
17. INTEGRATION. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter herein and accurately sets forth the rights, duties, and obligations of each Party. All prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. The provisions of this Agreement may be abrogated, modified, rescinded, or amended in whole or in part only by mutual written consent executed by the Parties.
18. ILLEGAL IMMIGRATION. The Parties agree to comply with Executive Order 2005-30, "Ensuring Compliance with Federal Immigration Laws by State Employers and Contractors," the provisions of which are hereby incorporated by reference

The Federal Government's liability shall be governed by the provisions of the Federal Tort Claims Act (28 U.S.C. §§ 2671, *et seq.*).

19. DISPUTE RESOLUTION. The Parties agree to comply with this Agreement and to take the following action if any parties are in conflict over the administration of the Agreement:
Evaluate the action or activity in regards to this Agreement to determine the need for any amendments to this Agreement.

20. AUTHORIZED REPRESENTATIVES. By signature below, the Parties certify that the individuals listed in this document as representatives of the Party are authorized to act in their respective areas for matters related to this agreement.

THE PARTIES HERETO have executed this instrument:

U.S.FOREST SERVICE
TONTONATIONAL FOREST

Thomas J. Klebink 8/1/2011
DATE
By: Gene Blankenbaker
Forest Supervisor

BUREAU OF LAND MANAGEMENT

Angelita Bullett 7/21/2011
DATE
Angelita Bullett
Phoenix District Manager

STATE OF ARIZONA
ARIZONA GAME AND FISH COMMISSION

Larry D. Voyles 8-5-11
DATE
Larry D. Voyles
Secretary to the Commission and Director
Arizona Game and Fish Department