



United States Department of the Interior



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In Reply Refer To:
A010: 4160

April 12, 2019

Certified #
RETURN RECEIPT REQUESTED

NOTICE OF FINAL DECISION

*For the Proposed Grazing Permit Renewal for the Mt. Logan Allotment Environmental Assessment
(DOI-BLM-AZ-A030-2018-0002-EA)*

INTRODUCTION

A Notice of Proposed Decision (NOPD) and Finding of No Significant Impact (FONSI) was signed December 20, 2018 for the Mt. Logan Allotment Environmental Assessment (EA) # DOI-BLM-AZ-A030-2018-0002. The NOPD was signed just prior to the partial government shutdown, but not mailed to interested parties until after the shutdown. Consequently, the NOPD was not received by interested parties until after the shutdown was over. Western Watersheds Project (WWP) receiving notification on February 1, 2019. The Bureau of Land Management (BLM) received a timely protest to the NOPD from WWP on February 15, 2019. The protest reasons are addressed below in the section titled "Response to Protest Statements of Reasons". Addressing the protest reasons did not cause substantive changes to the EA analysis; however, additional narrative (for clarification purposes) was added to the EA and a new FONSI was signed.

After considering the protest reasons, this Notice of Final Decision is the next step in the decision process regarding the proposed actions in the EA.

BACKGROUND

The NOPD proposed authorizing a new ten-year grazing permit in the Mt. Logan Allotment (AZ05218); including a proposed fence, pasture rotation, and changes to the allotment boundaries to eliminate trailing conflicts. The NOPD did not propose changes in the number of livestock, season of use, or the number of Animal Unit Months (AUMs) attached to the current active preference (see Table 2-1 of the EA).

Specifically, the proposed changes would incorporate the neighboring Tuweep Forage Reserve - Kent Pasture into the Mt. Logan Allotment. The area in Paradise Canyon (also part of the forage reserve) would be included in the Mt. Logan Allotment boundary. In exchange, the Head of Tuweep Pasture of the Mt. Logan Allotment would become a pasture in the Tuweep Forage Reserve. The AUMs for the Head of Tuweep Pasture and the Kent Pasture, including the Paradise Canyon parcel in Tuweep, are approximately equal and would not increase or decrease the amount of AUMs allotted to the permittee (see enclosed copy of Figure 3, from Appendix A of EA.).

Largely for billing purposes, the percent Federal Range is reduced under this alternative by 2%, recognizing state and private land AUMs within the allotment boundary. The intent of the proposal is to consolidate lands into allotment boundaries to eliminate livestock trailing across allotments, and use fencing and pasture rotations to manage livestock more effectively.

The changes in allotment boundaries will exclude any existing water developments in the Paradise Canyon area from the Mt. Logan Allotment, making water from Nixon Spring currently used on the Tuweep Allotment still available to users of the forage reserve. No additional water from Nixon Spring will be made available to the Mt. Logan Allotment. Water that is currently available to the Mt. Logan Allotment from the H&M Schmutz Pipeline will remain available to the current and proposed additions to the Mt. Logan Allotment. The allotment boundary changes will require the construction of approximately 1.6 miles of new fence (Figure 6, Appendix A of EA). The areas where allotment boundary changes are affected will not be available for use until the new fencing is constructed.

The EA analyzed the potential effects of permit renewal and associated pasture exchange on the federal grazing allotment in compliance with the National Environmental Policy Act (NEPA) and other relevant federal and state laws and regulations. The EA, developed by an Interdisciplinary Team, discloses the direct, indirect, and cumulative environmental impacts of the proposed alternatives.

The BLM has carefully considered each protest statement of reasons as to why the proposed decision was in error and has responded to each reason below.

RESPONSE TO PROTEST STATEMENTS OF REASONS:

Protest Reason A-1 *The BLM has failed to address our concerns regarding the purpose and need for this project. The “Need for the Proposed Action” as stated at section 1.2 of the Final EA is as follows:*

A grazing permit renewal application has been received from Jimmie Bundy Hughes, the current permittee to renew the ten-year grazing permit on the Mt. Logan Allotment (AZ05218). The need for the proposed action is for the permittee to be able to continue livestock grazing on the allotment through utilization of forage at proper use levels while being in compliance with, or making significant progress towards meeting the Standards for Rangeland Health (Appendix B) and the RMP (BLM 2008).

Final EA at 2-8. The purpose is stated as a simple processing of the term grazing permit, to approve an already-approved grazing permit (approved in February 2018), and provide cover for a decision that has already been made. Final EA at 2-8.

Response to A-1 Discussed in 1.3 Purpose of the Proposed Action, the purpose of this EA is to process the term grazing permit on the Mt. Logan Allotment in accordance with all applicable laws, regulations, and policies. The grazing permit for the Mt. Logan Allotment expired on 2/28/2018, and the BLM renewed the permit for a ten year period with the same terms and conditions pursuant to Section 402(c)(2) of the FLPMA as amended by Public Law No. 113-291 and BLM Instruction Memorandum (IM) 2015-0122, pending the development of the EA. As described in the IM, BLM is instructed to renew permits with no changes whilst working to complete a “fully processed” permit renewal. This action resulted in a new permit being issued, with no changes (as added to the EA for clarification). See original comment response 2 in Appendix F of the EA.

This procedure of renewing a permit with no changes while developing an EA provides no “cover” for an “already-approved” action. To the contrary, this decision enacts changes to the permit and consolidates land use practices, making compliance enforcement more straightforward for BLM, interested parties, and the permittee. The permittee would no longer be permitted to regularly trail to an isolated parcel within the Tuweep Forage Reserve Allotment (see enclosed map).

Protest Reason A-2 *While “[l]ivestock grazing is an accepted and valid use of the BLM range management program, as provided for by the TGA [Taylor Grazing Act], FLPMA, and the Public Rangelands Improvement Act (PRIA), as amended[,]” the regulations controlling livestock grazing on public lands found in 43 CFR 4100.0-2 do not require livestock grazing to be permitted. Final EA 2-8. Importantly, and as acknowledged by BLM, “the objectives of these regulations are to ‘promote healthy sustainable rangeland ecosystems; to accelerate restoration and improvement of public rangelands to properly functioning conditions; to promote the orderly use, improvement and development of the public lands; to establish efficient and effective administration of grazing of public rangelands; and to provide for the sustainability of the western livestock industry and communities that are dependent upon productive, healthy public rangelands’.”*

As we stated in our prior comments, it is important for the BLM to recognize that the need for this project should be to determine whether or not to continue livestock grazing on the allotment and to do so only when it will not impair the productivity of federal public lands, not to simply provide for livestock grazing on public lands because an application has been submitted. While the permittee, Mr. Bundy Hughes, may really want to continue grazing his livestock on federal public lands, he has no “right” to do so and the BLM is not required to allow livestock grazing on the allotment without first determining whether doing so is appropriate in light of the ecological conditions on the ground.

Response to A-2 The BLM is charged with responding to applications for grazing permit renewal, among other types of applications under a variety of authorities noted above. The

protester's issue is that BLM is required to first determine the appropriateness of grazing in light of resources conditions. Although the BLM had already determined that grazing was appropriate under the 2008 GCPNM RMP, the BLM further determined the need to analyze a "No Grazing" Alternative and did so in the EA as documented in the Purpose and Need Section and Chapter 2 of the EA (See original comment response 1). The decision maker made the decision to continue grazing with additional terms and conditions, fencing, pasture rotations, and boundary changes in the NOPD.

To address the protest, BLM has restated in the 2008 GCPNM RMP and the Presidential GCPNM Proclamation states:

The Bureau of Land Management shall continue to issue and administer grazing leases within the portion of the monument within the Lake Mead National Recreation Area, consistent with the Lake Mead National Recreation Area authorizing legislation. Laws, regulations, and policies followed by the Bureau of Land Management in issuing and administering grazing leases on all lands under its jurisdiction shall continue to apply to the remaining portion of the monument.

All of these above documents and associated rationale have made it clear to the public and WWP that livestock grazing is an appropriate use of resources in the project area. Regulations, (CFR 4100.0-2) as cited above, and various laws and policies have granted the BLM the authority to authorize grazing on Public Lands when administered consistent with these laws, regulations, and land use plans. This authorization is cited in Chapter 1 of the EA, specifically section 1.5 Relationships to Statutes, Regulations, and Other Plans. This EA has fully analyzed re-issuance of grazing permit to a qualified permittee on an open allotment in compliance with TGA and FLPMA.

BLM agrees with WWP that there is no "right" to graze the allotment by the permittee, instead, the TGA identifies grazing on public lands is a "privilege" for permittees. This is further emphasized on the BLM grazing permit, which clearly states that the permit provides no right or title (43 CFR 4130.2). BLM cannot close an allotment or stop grazing operations without cause. In this decision, the decision maker has not found cause to choose the no grazing alternative and close the allotment. The EA does not provide a resource-based reason or a regulatory reason to do so.

The BLMs obligation is to respond to this application with an analysis of the proposed action in regards to monitoring data, rangeland health evaluations, and permittee history of compliance. Other alternatives were developed by the IDT, including a no grazing alternative, and these were analyzed in the EA. See original comment response 1. See 1.3 Purpose of the Proposed Action 43 CFR 4100.0-2 Objectives as cited by WWP above, includes "provide for the sustainability of the western livestock industry and communities that are dependent upon productive, healthy public rangelands".

Protest Reason A-3 *In our comments we pointed out that Alternative A, which would change allotment boundaries, isn't even within the stated need for this project and belies the true but unacknowledged need for this project, which is to make livestock grazing on this allotment easier*

for the permittee by consolidating the allotment boundaries and eliminate the need for trailing livestock between the boundaries. This remains true in the Final EA.

BLM's response to our concerns regarding the purpose and need were simply to refer us to re-read Section 1.3 and avow that the alternatives were all within the scope of the purpose and need. Final EA at 7-92. We find nothing that actually addresses our concerns and nothing that explains how the purpose of this EA is to analyze the impacts and then "approve" a ten-year grazing permit that was approved almost one year ago.

Without fully addressing our concerns by revising the stated purpose and need for this project and analyzing the impacts of the proposed action and alternatives as if the BLM were making a determination as to whether or not livestock grazing was an appropriate use of these federal public lands, the BLM cannot make a Finding of No Significant Impact and therefore, we protest this proposed decision.

Response to A-3 BLM's purpose and need is to evaluate the permittee proposal under NEPA and associated laws. WWP asserts that there is "nothing" that addresses their concerns when it is clear that we explain this issue above, in the EA (See Purpose and Need section) and through our Comment Response 1 in Appendix F of the EA. The GCPNM RMP determined that this allotment is open to grazing as originally mentioned in the GCPNM Proclamation. The Rangeland Health evaluation originally conducted in 2005 (field portion) and the document completed and signed in 2007, was determined through an Interdisciplinary Assessment Team (IAT) to meet all applicable Rangeland Health Standards. Further, BLM re-evaluated the allotment in 2018 utilizing Interpreting Indicators of Rangeland Health, Version 4, Technical Reference 1734-6. This evaluation coupled with trend data collected for over 30 years on this allotment was again determined by an IDT to continue to meet all applicable Standards for Rangeland Health and indicated that vegetation was being properly managed where BLM has the authority to manage grazing.

Protest Reason B *The BLM failed to adequately respond to our concerns regarding the status of this allotment and the number of AUMs authorized.*

WWP raised concerns about the "improve" status of this allotment in our earlier comments. As we noted, this allotment has been in the "improve" status since at least 2004, and livestock have been permitted on the allotment during this same time period. The BLM's response to our concern was to state that any one of the criteria found at pages 3-23 and 3-24 (actually found at 3-24 and 3-25 of the Final EA) could result in an allotment classification of "improve." Our re-review of these criteria does nothing to alleviate our concerns. Instead, it makes more clear that BLM has failed to explain why an allotment in an "improve" status since 2004 or earlier should continue to accommodate livestock at the same level of AUMs. Further, BLM has not identified which of the conditions listed at pages 3-24 and 3-25 are the reason for the "improve" classification of this allotment, nor has BLM explained how or whether livestock grazing on this allotment are the cause of any of the conditions that have resulted in the "improve" classification.

In the EA at issue here, the BLM should have identified which of the resource conditions resulted in the “improve” classification for this allotment and which of these conditions was the result of livestock grazing. Without this information the public, nor the BLM, can understand why the unsatisfactory resource conditions on this allotment persist in an unsatisfactory condition, despite the requirement that this allotment be actively managed to improve those conditions.

Before this permit can be approved, the BLM must identify which of these conditions have caused the “improve” classification and which of those conditions is caused by or made worse by livestock grazing:

- a. Present range condition is unsatisfactory.*
- b. Allotments have high to moderate resource production potential and are producing at low to moderate levels.*
- c. Serious resource-use conflicts/controversy exists.*
- d. Opportunities exist for positive economic return from public investments.*
- e. Present management appears unsatisfactory.*
- f. Other criteria appropriate to the ES area.*

The BLM’s failure to provide this information renders the EA invalid and precludes a Finding of No Significant Impact and therefore, we protest this proposed decision.

Response to B The stated Purpose and Need of this EA is not to make a determination of the allotment management category. The EA stated the category largely for informational purposes. Previous statements about the allotment category have been clarified in the EA by adding the following GCPNM RMP decision to Section 1.4 of the EA:

MA-GM-07: The category of grazing allotments will be changed as objectives are accomplished and/or conditions change. See Appendix D [of the RMP Record of Decision] for current specific allotment category assignments, grazing systems, preference, etc.

To be clear, the management category is not needed to render an EA valid or necessarily inform the issuance of the FONSI under existing BLM policy. Instead, improve categorization may be based on any one or several of the above cited criteria. The improve status may provide opportunities for positive economic return from public investments. The EA, land health assessment, and trend monitoring indicate that conditions have not changed to necessitate a change in management category. Therefore, there is no substantial need to change the category from the Improve category to the Custodial or Maintain category. The intent of management under the Improve category is to provide for enhanced opportunities to create better grazing conditions. As discussed above, BLM disclosed in the EA and NOPD, that grazing management could be improved by eliminating trailing across affected allotments, installing fencing, and enacting pasture rotations. This shows that BLM is working to improve the land it manages.

To answer the protest question, however, BLM has determined that present federal range conditions are satisfactory, that the allotment has a moderate resource production potential, that positive economic returns can be realized from public investments, that present management could be improved, thus the allotment boundary changes. Past investments in range

improvements, including structural and vegetation treatments on this allotment recognize the production capability and return on labor and capital investments. This includes improvements made cooperatively by partners including the Arizona Game and Fish Department (AGFD), which benefit both game and non-game wildlife. BLM hopes that the actions being taken will further show WWP and others that we are working to improve the affected lands.

Protest Reason C *The Rangeland Health Data are outdated and BLM has failed to address this concern.*

In response to our concerns regarding the outdated Rangeland Health Evaluation data, the BLM states: “Comment noted, see Section 3.3 of the EA which describes the method used to complete the land health assessment for the allotment. Based on the assessment, a determination document is now attached to the EA in Appendix F.” Final EA at 7-95, Appendix F (the Response to Comments).

As you can see, the appendix to which the BLM refers WWP for a more thorough explanation regarding the land health assessment is the same Appendix in which BLM makes the statement. Appendix F is the response to comments and the entire response to our concerns is a circular reference to that same Appendix. WWP searched the Final EA and did not find any additional information or explanation regarding the outdated information upon which this decision is based. BLM also included Appendix C, which is a collection of tables of actual use based on information reported by the permittee, precipitation information, trend and utilization information. As is clear from these excerpts from Appendix C, this information also fails to address our concerns:

Final EA at 7-72 – 7-5, Appendix C. The BLM’s failure to provide this information renders the EA invalid and precludes a Finding of No Significant Impact and therefore, we protest this proposed decision.

Response to C The referenced comment response erroneously referred to Appendix F rather than Appendix E, where the Rangeland Health Determination is located. BLM has corrected the error.

WWP also noted that they searched the document and could not find additional information. Table 3.3 Rangeland Health Evaluation indicates how BLM conducted field evaluations of rangeland health conditions on the Mt. Logan Allotment in 2005, completed and signed the final rangeland health determination in 2007 (see maps in EA Appendix A) and then revisited the allotment with an interdisciplinary team in 2018 in order to update the evaluation. Both evaluations were made in accordance with the applicable Standards for Rangeland Health (Appendix B). The 2018 evaluation was completed by conducting Interpreting Indicators of Rangeland Health Version 4 ((BLM 2005). The technical reference explains in detail the methodology used for both land health evaluation as well as interpreting results. The conclusion of this 2018 evaluation by the IDT was that the allotment continues to meet all applicable Standards. It is clear that that the Land Health Evaluation is current and supported by trend data in Appendix C of the EA and discussed in Alternative A. Utilization data is not as consistent as

desired, but is adequate to use alongside trend data and current land health assessment data to make an informed decision.

Protest Reason D *The BLM has failed to address trespass livestock.*

WWP asked the BLM to “[a]nalyze the degree to which trespass occurs and assess the likelihood of it occurring under each of the alternatives.” BLM’s response was to state simply, “[t]respass actions are addressed through administrative actions as per 43 CFR 4150.” Final EA at 7- 96, Appendix F.

WWP specifically asked BLM to identify whether trespass grazing occurs on this allotment, and if so, how often and how likely it was to occur again under each alternative. BLM did not respond at all, leaving unanswered the question whether there are issues of trespass or unauthorized livestock use on this allotment. While this is not surprising,¹ identifying and addressing trespass livestock is an important step in complying with the Federal Land Policy and Management Act (FLPMA) of 1976, which requires land managers to improve deteriorated lands and manage lands in a manner that would ensure their productive capacity in perpetuity, and the Public Rangelands Improvement Act of 1978 which reaffirms the requirements found in FLPMA and requires rangeland conditions are improved so that they become as productive as possible for all users. 43 U.S.C. 1701 et seq., 43 U.S.C 1901 et seq.

As a result of informal record keeping regarding trespass livestock, the BLM has incomplete information on the extent of unauthorized grazing. Our comments on the draft EA sought to have exactly that information provided so that the public (and the BLM) would have an accurate understanding of the impacts of livestock grazing on this allotment. Until the BLM requires that all incidents of unauthorized grazing are recorded, including those incidents resolved informally, BLM and the public will not have a complete record of unauthorized grazing incidents with which to identify any potential pattern of violations and the impacts of unauthorized, trespass livestock will not be understood and cannot therefore, be properly managed.

BLM has failed to address a substantive, significant issue raised during the public comment period in violation of the National Environmental Policy Act (NEPA), rendering the analysis in this EA inadequate and precluding a Finding of No Significant Impact and therefore we protest this proposed decision.

Response to D *The two documented incidents of known unauthorized livestock use on this (and neighboring) allotment have been shared with WWP previously through a Freedom of Information Act request by WWP. This includes incidents in 2016 and 2017. Both of these incidents were non-willful, and resolved in a matter of days. As documented, one incident was*

¹ The BLM has inadequately addressed trespass livestock since at least 1990 according to a Government Accounting Office report indicating that the BLM needed to strengthen efforts to prevent unauthorized livestock grazing. <https://www.gao.gov/assets/220/213458.pdf> A 2016 GAO report found that “The frequency and extent of unauthorized grazing on Bureau of Land Management (BLM) and U.S. Forest Service lands are largely unknown because according to agency officials, the agencies prefer to handle most incidents informally (e.g., with a telephone call) and do not record them.” <https://www.gao.gov/products/GAO-16-559>

due to a flash flood washing out a pasture fence. The other incident was due to a gate on a neighboring allotment being left open. Implementing the allotment boundary changes and fencing will contribute to abating future concerns about trespass. BLM does strive to document all unauthorized livestock use. As cited, these two incidents were informal, documented, and resolved in a timely manner.

Protest Reason E *The response to WWP's concerns regarding actual use data is inadequate.*

WWP raised concerns about the lack of monitoring data for 10 of the past 20 years and pointed out why monitoring data is important for understanding and assessing utilization rates. BLM's entire response to our concerns is found in a single sentence: "The actual use data is limited to the number of livestock reported by the permittee and does not directly translate into utilization percentages." Final EA at 7-98, Appendix F.

This sparse response fails to explain how, if data are lacking, utilization percentages are calculated, how the BLM can understand the impacts of livestock grazing on this allotment if utilization percentages are unknown, and whether the management for this allotment needs to change.

The BLM is not using accurate information to assist in the management of this allotment and therefore we protest this proposed decision.

Response to E BLM agrees that monitoring data is critical to sound decision-making. The BLM strives to collect annual qualitative utilization data in pastures that are used; as funding and personnel time permit. The BLM does focus efforts on areas that are perceived to be experiencing a decline as evident by a downward trend. Qualitative utilization on this allotment has rarely exceeded the 50% threshold in all pastures during the past 25 years of available data. Average annual utilization on this allotment for this period has been below 40% for all pastures. BLM agrees that more utilization data is desired, but it is not accurate to state that there is a lack of monitoring data for the 10 of the past 20 years because there is quantitative trend data collected on this allotment for over 30 years. Trend monitoring data indicates an upward trend in all but one trend site. The site with a downward trend (#2) is based on the finding that less perennial grass is correlated with the increase in sagebrush cover at this site (Appendix C Livestock Actual Use, Utilization and Trend Monitoring). The Land Health evaluation supports the trend data and available utilization data (section 3.3 Rangeland Health Evaluation and EA BLM 2018: "Rangeland Health Assessment Update for Mt. Logan Allotment"). As changes are made to the allotment boundaries, an increased attention to monitoring and a new quantitative trend-monitoring site is proposed for the Kent Pasture. A greater emphasis on both trend and utilization monitoring will inform the evaluation of the success of the boundary changes.

Protest Reason F *The BLM has failed to respond to substantive comments that are specific to this project.*

WWP made several additional substantive, project specific comments that the BLM has completely failed to address.

No response at all to comment 14. In this comment (as identified/numbered by BLM in the response to comments), WWP asked the BLM to analyze issues (air quality, fuels/fire management, visual resources) that were not analyzed in the draft EA. WWP provided rationale for why these issues should have been addressed for this allotment and the BLM is required to respond.

No response at all to comment 15. In this comment WWP simply pointed out what appeared to be a mistake, or typo, in the text of the draft EA. BLM failed to respond to this comment and left the typo or mistake in the Final EA.

No response at all to comment 16. In this comment WWP identified a lack of analysis regarding conflicts between deer and livestock for forage. BLM failed to respond in any way to this site and project specific, substantive comment.

The response to our concerns regarding monitoring is lacking. WWP noted the importance of monitoring for the implementation of rangeland health standards and to ensure the authorized utilization is not exceeded. The BLM has failed to address our concerns on this point, especially regarding the timing and frequency of monitoring.

The Council on Environmental Quality (CEQ) recommends that agencies respond to all “substantive” comments.² The BLM has defined substantive comments as follows:

“Substantive comments do one or more of the following: question, with reasonable basis, the accuracy of information in the EIS or EA; question, with reasonable basis, the adequacy of, methodology for, or assumptions used for the environmental analysis; present new information relevant to the analysis; present reasonable alternatives other than those analyzed in the EIS or EA; cause changes or revisions in one or more of the alternatives.”³

The CEQ recommends that agencies provide “a reasonable and proportionate response” to comments.⁴ For example, the CEQ notes that a brief response is appropriate if a commenter simply asserts that the agency’s methodology was inadequate, but a more thorough response should be provided if the commenter supports its comment with specific reasons why the commenter believes the methodology to have been inadequate.

Here, WWP raised substantive comments that should have been addressed by the BLM. While the vast majority of our comments required a thorough response from BLM because they either pointed out flawed analysis, missing information, or questioned the BLM’s methodology and included specific reasons for those questions, one of our comments required a simple “thank you for your comment” and a correction of an important typo in the text. The BLM has failed to address several of our concerns in violation of BLM’s own policies, guidance from CEQ, and in violation of NEPA. Therefore, WWP protests this proposed decision.

Response to F, Comment 14: The referenced omission was not intentional, and BLM thanks WWP for pointing it out. BLM has addressed comments in Appendix F and by subject below in this decision.

Air Quality: WWP's opinion is that vegetation is removed from large tracts of land. Land Health data, trend data, and professional knowledge of the area indicate that vegetation remains intact on the lands BLM manages. Observations of sparsely vegetated private and state lands within the Mt. Logan Allotment have been made by BLM and the National Park Service. These areas are not managed by BLM. Consequently, the following rationale was put forth in Table 3.1 explaining why Air Quality was not analyzed in detail:

The Mt. Logan Allotment is included in an area that is unclassified for all pollutants and has been designated as Prevention of Significant Deterioration Class II. Air quality in the area is generally good. Exceptions include short-term pollution (particulate matter) resulting from vehicular traffic on unpaved roads. Fugitive dust is also generated by winds blowing across the area, coming from roads and other disturbed areas. Although livestock congregating at waters can create fugitive dust, this dust creation is very localized and temporary. Thus, none of the alternatives would cause Class II standards to be exceeded. The alternatives would therefore not measurably impact air quality.

Fuels/Fire Management: Invasive species are cited as a concern with regard to fuels/fire management. Although not addressed under fuels/fire management, invasive species impacts are addressed in section 3.5.3 and 4.2.5 Vegetation and Invasive, Non-Native Species. Invasive species are also discussed in the Rangeland Health evaluation as cited in Table 3.1. Rangeland health evaluations noted that some invasive and noxious weed species are present on the allotment. The land health team determined that departures from normal conditions were none to slight for the majority of sites evaluated. One site did have a moderate increase in broom snakeweed, a native invasive shrub, but within parameters expected for the site.

BLM monitors and treats for invasive species and noxious weeds across the Arizona Strip using local personnel and through contracting. Invasive plants and noxious weeds were considered when making the determination of the allotment meeting Rangeland Health Standards.

Visual Resources: The rationale for determination regarding visual resources is documented in Table 3.1:

The project area includes VRM Class 2, 3, and 4. Livestock grazing would not create substantial changes to the basic elements of form, line, color, and texture found in the predominant natural features of the landscape. Therefore, the alternatives are not expected to impact the various VRM class objectives.

Determinations were made based on experience with similar projects and specific locations of proposals.

Monitoring:

Concerns raised about monitoring are addressed in Response to E, above.

Substantive comments: BLM has been given further comment analysis guidance, beyond CEQ, in NEPA Handbook (H-1790-1, pg. 65-67). While not all comments were considered to be substantive, BLM considered these during the decision making process.

Response to F, Comment 15: BLM thanks WWP for pointing out this error and has corrected the EA (Section 3.5.3, Vegetation and Invasive, Non-Native Species), explaining that the site was seeded in the 1970s with smooth brome, a non-native perennial grass species. This species continues to dominate much of the site.

Response to F, Comment 16: Comment 16 and Comment 19 in Appendix F are similar comments regarding conflicts between livestock and mule deer and pronghorn. Cattle are largely grazing animals (grass) and mule deer and pronghorn are largely browsing animals (shrubs). Comment 16 is considered similar to comment 19 in Appendix F of the EA. The reader was directed to Direct and Indirect Impacts of Alternative A – Proposed Action (section 4.2.10 in the current EA). This section addresses forage overlap between livestock and wildlife by fauna category including big game. In the mule deer portion: “The proposed action would therefore not affect meeting habitat (i.e., forage) objectives for mule deer.” In the pronghorn section: “The proposed action would therefore not affect meeting habitat (i.e., forage) objectives for pronghorn.” These determinations are based on the fact that unsubstantial dietary overlap exists between species and in the case of pronghorn, very few pronghorn use the area year-round, leading to the conclusion that available forage is adequate for both livestock and wildlife.

The response neglected to address the fencing conflicts that may exist between wildlife. The BLM apologizes for this error, and addresses it here. The work needed to make existing fences more wildlife friendly typically involves the replacement of the bottom barbed-wire strand with a smooth-wire, insuring adequate clearance for pronghorn to pass under the fence. The proposed fencing in this EA will be constructed as a wildlife friendly fence. Those fences recently maintained, primarily between the Tuweep Allotment and the Mt. Logan Allotment (boundary fences), now meet wildlife criteria for accessibility. There is still more work to be done on older fences across the entire district where pronghorn are found, pending funding.

Protest Reason G: *BLM refers to a revised section (4.3.12) that does not exist in the Final EA.*

WWP identified a deficiency regarding the soils analysis and BLM responded by stating “[c]omment noted, Section 4.3.12 has been updated to acknowledge the differences between alternatives.” Final EA at 7-102, Appendix F. However, the section to which BLM refers WWP for the revised analysis does not exist in the Final EA. The section on soils that is included at 4.3.8, does not address our concerns and is contained in just two paragraphs:

The project area is mostly located over two soil types largely positioned along the existing topography, consisting of a 5-50 degree slopes along the base of Tuweep Valley incorporating the Curhollow Prieta soil series which is juxtaposed with the second unit Showlow Thimble soil series. A third soil type Wutoma Lozinta soil series become prominent in the uplands elevated portions of the project area.

The cumulative impact area of analysis for soil resources issues consists of the general project area to include the original allotment boundaries as well as the separate allotment area for the proposed modification which would allow a swap of acreage. The temporal scope of analysis extends 20 years into the future. This temporal scope was chosen because 20 years is a reasonable time frame when considering foreseeable actions as soil resources in the project area

2 CEQ, "Forty Most Asked Questions Concerning CEQ's NEPA Regulations" (March 16, 1981), Question 14d; see also 40 CFR 1503.4(b).

3 Bureau of Land Management, NEPA Handbook (Jan. 2008), p. 66.

4 CEQ, "Improving the Process for Preparing Efficient and Timely Environmental Reviews under NEPA" (March 6, 2012), p. 13.

will succumb to natural erosion, seismic events, recreation usage, grazing activities, and sudden flash flood events.

WWP believes BLM may have meant to refer us to section 3.5.6. Final EA at 3-40. However, our review of that section in both the Final and draft EA indicates that these two sections are identical and no revisions have been made. It appears that BLM has failed, again, to adequately address our substantive comment or has failed to actually finalize this Final EA. While WWP certainly understands that mistakes are made when drafting and revising NEPA documents, the BLM cannot submit to the public an incomplete EA upon which a Finding of No Significant Impact is based. The failure to provide the correct copy of the EA does preclude a Finding of No Significant Impact and, therefore, WWP protests this proposed decision.

Response to G: WWP is correct, the revisions referred to were not correctly identified and BLM apologizes for the confusion. Revisions were made to the Final EA in Section 4.2.13-16 for Soils. Alternatives A and B would result in similar impacts to soils except in different areas of the allotment based on changes in fencing and livestock operations. Section 4.2.16 discloses the impacts to soils from implementing Alternative C, No Grazing, by indicating increased vegetative growth with the absence of grazing, although impacts from existing roads and trails largely used by the public would remain at present conditions. These differences were taken into consideration when making this final decision.

Protest Reason H: *The BLM has mischaracterized the Proclamation designating the Grand Canyon-Parashant National Monument as requiring the continuation of livestock grazing.*

The BLM misstates the text and direction found in the Proclamation designating the Grand Canyon-Parashant National Monument. The text relevant to grazing states:

The Bureau of Land Management shall continue to issue and administer grazing leases within the portion of the monument within the Lake Mead National Recreation Area, consistent with the Lake Mead National Recreation Area authorizing legislation. Laws, regulations, and policies followed by the Bureau of Land Management in issuing and administering grazing leases on all lands under its jurisdiction shall continue to apply to the remaining portion of the monument.

Nowhere does the proclamation state that grazing shall continue throughout the entire monument. Rather, grazing shall be managed consistent with the BLM's existing laws, regulations and policies. This means that grazing on this allotment could be terminated. This is quite different than the BLM's response to our comment on this issue which states "The proclamation does state that livestock grazing shall continue."

As we pointed out in our prior comments, it appears that BLM believes grazing must continue on this allotment and has approached grazing permit renewals with this pre-determined outcome in mind. The result is that the analysis in this EA is flawed, the proposed decision was not reached by a full and fair analysis of the conditions on the allotment, and the Finding of No Significant Impact is rendered invalid. This misstatement must be corrected, the analysis should be revised, and the decision revisited. For this reason and all of the foregoing, we protest the proposed decision.

Response to H: This protest reason is addressed above under Protest Response A-2, regarding the GCPNM Proclamation and livestock grazing.

DECISION

After considering the analysis contained with the above referenced EA, protest points, and comments submitted during the comment period, it is my proposed decision to cancel the existing term grazing permit (#0201510) and issue a new ten-year term permit with updated Mandatory Terms and Conditions within the Mt. Logan Allotment. Alternative A is selected as the approved alternative to be enacted through this proposed decision, as described in the referenced EA and discussed in this decision.

The specific decision is outlined as follows:

A new grazing permit will be issued for a period of 10-years in the Mt. Logan Allotment (AZ05218). The proposed action is to cancel the existing grazing permit for the Mt. Logan Allotment and issue a new permit for a period of ten years. There will be no proposed change in number of livestock or season of use for the allotment (see Table 2-1). Livestock grazing will occur during the season of use, and with the number of Animal Unit Months (AUMs) limited to the current active preference (Table 2-1). The proposed changes to the permit shall be to incorporate the neighboring Tuweep Forage Reserve - Kent Pasture (2522 acres) into the Mt. Logan Allotment. This will add approximately 897 acres of the Paradise Canyon area to the Mt. Logan Allotment (see enclosed map).

This incorporation will exclude any existing water developments in the Paradise Canyon area. Water from Nixon Spring currently used on the Tuweep Allotment will remain available to Tuweep Allotment. No additional water from Nixon Spring will be made available to the Mt. Logan Allotment. Water that is currently available to the Mt. Logan Allotment from the H&M Schmutz Pipeline will remain available to the current and proposed additions to the Mt. Logan Allotment. The addition of this parcel will require the construction of approximately 1.6 miles of new pronghorn/wildlife friendly fence (see Appendix A, Figure 6 of the EA). This additional parcel will not be available for use until this new fence is constructed. In exchange for this inclusion, the Mt. Logan Head of Tuweep Pasture (4289 acres) will become a pasture in the Tuweep Forage Reserve. The AUM's for the Head of Tuweep Pasture and the Kent Pasture including the additional parcel (Paradise Canyon) in Tuweep are approximately equal. The percent Federal Range is reduced by 2% under this alternative, as the permittee will be credited for the unfenced private land within the allotment.

Table 1. Livestock Grazing Season and AUMs Proposed Under Alternatives A.

Allotment Name	No.	Kind	Season of Use	Active AUMs	Suspended AUMs	Public Land (acres)	% Federal Range
Mt. Logan	88	Cattle	03/01 -2/28	930	519	17,859	86

There will be no increase or decrease in AUMs and the percent public land is based on AUMs (Animal Unit Month).

Currently there are two Arizona state land sections within the Mt. Logan-Head of Tuweep Pasture that the current permittee leases from the State of Arizona. Under the proposed action, the permittee will relinquish these, but will continue to lease one state section in the Kent Pasture, as well as the two state sections in the Mt. Logan Allotment current boundaries.

The proposed action will make the Mt. Logan Allotment contiguous, and eliminate the need for trailing across neighboring allotments for rotation purposes (see enclosed map). The Mt. Logan Allotment is permitted for year round grazing (March 1 to February 28). A four-pasture deferred rotation system, which includes winter and summer pastures, is currently used on the allotment.

Terms and Conditions of Grazing Permit

- Permittees must submit the actual use report within 15 days after their billing year-ends. Livestock may be moved to other pastures within the allotment 15 days before or after scheduled move dates.
- The use of nutritional livestock supplements is allowed, including protein, minerals and salt. However, any supplements used must be dispersed at a minimum of ¼ mile from any known water sources, and cultural or sensitive sites. Any hay or other feed used in administering the livestock operation must be certified weed-free and subject to approval prior to use.
- If any human remains, funerary objects, sacred objects or objects of cultural patrimony as defined in the Native American Graves Protection and Repatriation Act (Public Law 101-601; 104 Stat. 3048; 25 U.S. Code 3001) are discovered in connection with allotment operations under the grazing permit, the permittee will be required to protect the immediate area of the discovery and immediately notify the BLM authorized officer or authorized representative.
- The 1997 Mt. Logan AMP will be followed and amended with the updated allotment boundaries and project specifications.

Range Improvements

Existing range improvements will be maintained as currently required. Any new range improvements, beyond what is analyzed in this EA and Decision to assist in grazing practices

and promote rangeland health will be considered through a separate NEPA process. The BLM will assess resource conditions through field inspections and determine, in consultation with the permittee, whether management changes (e.g., changes in livestock numbers, adjustment of move date, or other changes or use within the parameters identified under these alternatives) may be implemented prior to reaching maximum utilization. Move dates may be adjusted as needed when monitoring indicates maximum utilization has been reached, or due to unusual climatic conditions, fire, flood, or other acts of nature. If maximum utilization is reached on key species/areas in the allotment before a scheduled move, the use of salt, herding, control of water, or other management options may be used to distribute livestock away from an area where maximum utilization has been reached, or livestock may be removed from the use area or allotment as deemed necessary by the BLM.

This decision includes adaptive management, which provides options for management decisions and actions to meet desired conditions as determined through monitoring. BLM resource specialists will periodically monitor the allotment over the 10-year term of the grazing permit. The University of Arizona reads trend and composition studies at key areas within the allotments at five-year intervals (see Section 4.8 on monitoring for more information on which studies are read). If monitoring indicates that desired conditions are not being achieved and current livestock grazing practices are causing non-attainment of resource objectives, livestock grazing management on the allotment will be modified in cooperation with the permittee. Adaptive management allows the BLM to adjust the timing, intensity, frequency and duration of grazing, the grazing management system and livestock numbers temporarily or on a long-term basis. For summaries of trend and composition data for each key area, see EA Section 3.5.1 Livestock Grazing and 3.3 Rangeland Health Evaluation and Appendix D for monitoring data.

RATIONALE FOR DECISION

This decision has been made after considering public comments and protest points, impacts to resources, such as vegetation, wildlife, special status species, cultural resources, and soils, while providing opportunities for livestock grazing that meets management objectives, including the Arizona Standards for Rangeland Health and Guidelines for Livestock Grazing Management and the Grand Canyon-Parashant National Monument RMP.

The NEPA analysis, documented in the above referenced EA, indicates that the proposed action is in conformance with the RMP. Impacts from the proposed action are either minimal or mitigated through adaptive management and/or design features of the proposed action. The EA constitutes the BLM's compliance with the requirements of NEPA, and procedural requirements as provided in the Council on Environmental Quality regulations. Based upon the above information and analysis, I have determined that Alternative A will allow the Mt. Logan Allotment to continue to meet the Arizona Standards for Rangeland Health and Guidelines for Grazing Administration and land use plan objectives. After considering protest points, BLM has used the above information to inform the final decision to improve livestock grazing operations by eliminating trailing, fencing, and implementing pasture rotations.

AUTHORITY

The authority for this decision is found in a number of statutory and regulatory authorities contained in: The Taylor Grazing Act, as amended; the Federal Land Policy and Management Act of 1976, as amended; and throughout Title 43 of the Code of Federal Regulations (CFR), Part 4100 (Grazing Administration-exclusive of Alaska). The following sections of Part 4100 are noted below, although other subparts of Part 4100 are used to authorize grazing activities, with this listing not meant to be exhaustive.

Sec. 43 CFR §4110.3: The authorized officer shall periodically review the permitted use specified in a grazing permit or lease and shall make changes in the permitted use as needed to manage, maintain or improve rangeland productivity, to assist in restoring ecosystems to properly functioning condition, to conform with land use plans or activity plans, or to comply with the provisions of subpart 4180 of this part. These changes must be supported by monitoring, field observations, ecological site inventory or other data acceptable to the authorized officer.

Sec. 43 CFR § 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.

Sec. 43 CFR § 4160.1(a): Proposed decisions shall be served on any affected applicant, permittee or lessee, and any agent and lien holder of record, who is affected by the proposed actions, terms or conditions, or modifications relating to applications, permits and agreements (including range improvement permits) or leases, by certified mail or personal delivery. Copies of proposed decisions shall also be sent to the interested public.

Sec. 43 CFR § 4160.3: a. In the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice unless otherwise provided in the proposed decision. b. 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.

APPEAL

In accordance with 43 CFR 4.470, 4160.3(c), and 4160.4, 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. Pursuant to 43 CFR 4.471 and 4160.3(c), an appellant also may petition for stay of the final BLM grazing decision pending final determination on appeal by filing a petition for stay along with the appeal. To do so, the appeal and petition for stay must be filed in the office of the authorized officer, as noted

above, within 30 days after the receipt of the decision as provided in 43 CFR 4160.3(c). In compliance with 43 CFR 4.470, the appeal must state clearly and concisely the reasons why the appellant thinks the BLM grazing decision is wrong.

Pursuant to 43 CFR 4.471(c), a petition for a stay, if filed, 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 the stay.

43 CFR 4.471(d) provides that the appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.

As noted above, the petition for stay must be filed in the office of the authorized officer and additionally to: (1) All other parties named in the cc section of this Decision, (2) The appropriate Office of the Solicitor as follows, in accordance with 43CFR § 4.413(a) and (c): US Department of Interior, Office of the Field Solicitor, Sandra Day O'Connor U.S. Courthouse, 401 W. Washington St. SPC 44 Suite 404, Phoenix, Arizona 85003-2151

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 Hearings Division a motion to intervene in the appeal, together with the response, within 10 days after receiving the petition. Within 15 days after filing the 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.

Sincerely,

Mark Wimmer Digitally signed by Mark Wimmer
Date: 2019.04.12 10:42:08
-06'00'

Mark Wimmer, Manager
Grand Canyon-Parashant National Monument

Enclosures:

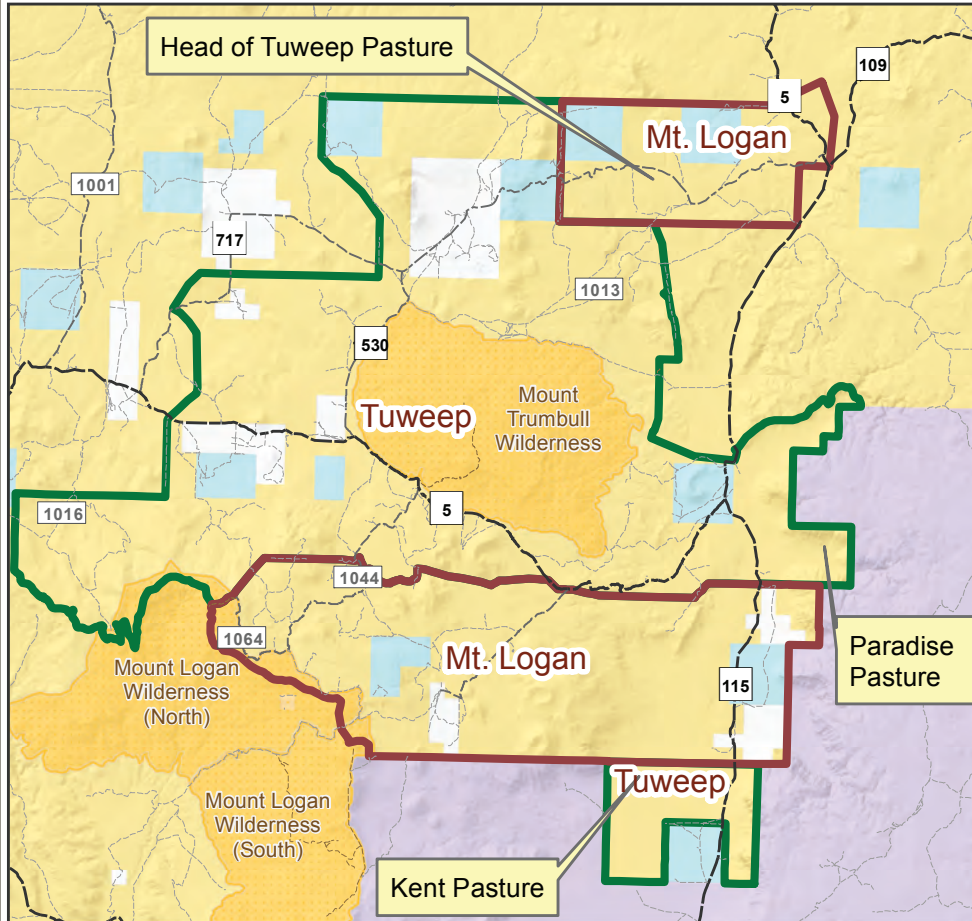
Figure 3 Current and Proposed Allotment Boundaries from EA
CC: List of Parties
Finding of No Significant Impact



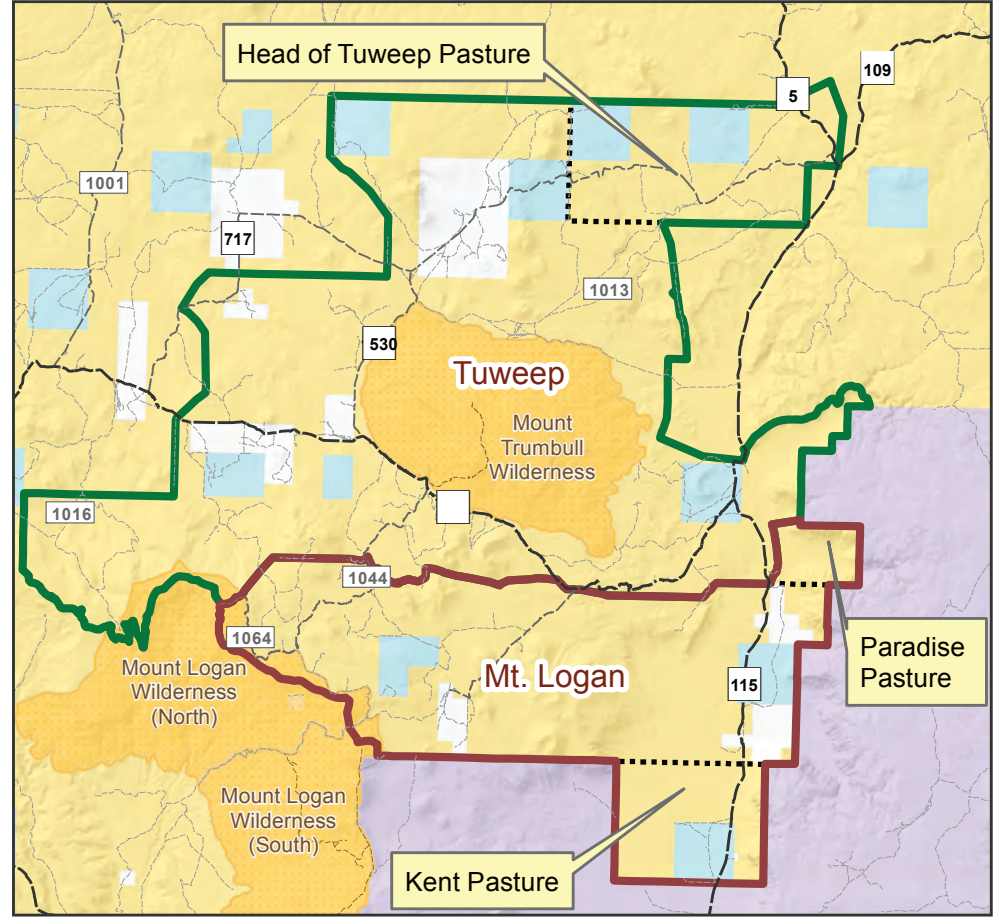
Figure 3. Mt. Logan Allotment - Current and Proposed Boundary.

DOI-BLM-AZ-A030-2018-0002-EA

Bureau of Land Management - Arizona Strip District - Grand Canyon-Parashant National Monument

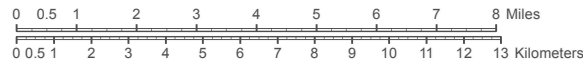


Current Allotment Boundary - No Action

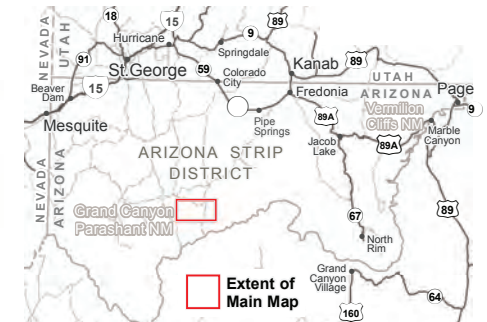


Proposed Allotment Boundary - Proposed Action

- | | | |
|--|---------------------------|-----------------------------|
| | Surface Management | Arizona Strip Routes |
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Map Produced by BLM Arizona Strip District
 File: Mt Logan comparison.mxd
 Coordinate System: NAD 1983 UTM Zone 12N
 Reference System: U.S. PLS GSR&B
 Scale: 1:202,951 at 8.5x11 page output
 User: mwimmer
 Date: 4/11/2019



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