# United States Department of the Interior

BUREAU OF LAND MANAGEMENT
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APR 07 2023

In Reply Refer To:
4160 (AZG020)
Allotment No. 5232

CERTIFIED MAIL – RETURN RECEIPT REQUESTED No: 7005 3110 0000 4645 2383

True Ranch Beef
9251 W. Twin Peaks Road
Tucson, AZ 85743

**NOTICE OF FINAL DECISION**
**Three Brothers Allotment Grazing Lease Renewal (No. 5232)**

Dear True Ranch Beef:

This Notice of Final Decision (NOFD) follows the receipt of timely protests of a Notice of Proposed Decision (NOPD) which was mailed on December 21, 2022, to you and other interested publics regarding the renewal of the 10-year term grazing lease on the Three Brothers Allotment that was analyzed in Environmental Assessment (EA) No. DOI-BLM-AZ-G020-2021-0013-EA.

## INTRODUCTION AND BACKGROUND

The Bureau of Land Management (BLM) Tucson Field Office completed a Land Health Evaluation (LHE) and final determination of land health for the East San Pedro Riparian National Conservation Area (SPRNCA) Complex (which includes the Three Brothers Allotment) in 2022 in accordance with 43 Code of Federal Regulation (CFR) § 4180 (2005) and Manual Handbook H-4180-1. The LHE identified land health standards as either being met (Standard 1) or not being met due to factors other than current livestock grazing management (Standard 3) (see 2022 East SPRNCA Complex Allotments Final Determination of Land Health Standards). The LHE identified the development of an adaptive management framework and integrated vegetation management (IVM) treatments for the Three Brothers Allotment as management actions necessary to move the allotment toward meeting land health standards where standards are not currently being met.

In April 2022, the BLM released an EA (DOI-BLM-AZ-G020-2021-0013-EA) for a 30-day public comment period. The EA analyzed four alternatives as well as two modifications (Alternatives A.1 and A.2) to the Proposed Action (Alternative A). The Proposed Action (Alternative A) includes renewing the 10-year lease while placing 50% of the Animal Unit Months (AUMs) into temporary suspense until objectives are achieved, adaptive management to move the allotment toward meeting land health standards, and range improvements to allow for separate management of the portions of the public lands in the allotment that are located in the SPRNCA. The Proposed Action (Alternative A) also includes IVM treatments to move vegetation conditions, resulting from historic land uses, that are not currently meeting Land Health Standard 3 toward meeting the Standard. The IVM treatments component of the Proposed Action (Alternative A) is addressed in a separate decision (see Decision Record for SPRNCA Allotments Lease Renewals IVM Treatments).

The BLM received 21 comment letters during the public comment period from which 199 unique substantive comments were identified. Comments voiced concerns about the impacts from livestock grazing and the BLM's ability to meet the intent of the Arizona-Idaho Conservation Act of 1988 (AICA), Public Law 100-696 and to meet Land Health Standards given current temperature and precipitation trends and on-going unauthorized livestock grazing. Comments were generally in opposition to renewing the Three Brothers livestock grazing lease and to authorizing livestock grazing in the SPRNCA. The BLM's responses to the substantive public comments are in Appendix I of the final EA. The BLM received three letters from potentially affected Tribes. The White Mountain Apache Tribe and the San Carlos Apache Tribe stated in their respective emails that "the proposed lease renewal[s] will 'Not have an Adverse Effect' on the tribe's cultural heritage resources and/or traditional cultural properties." The Hopi Tribe requested additional information to determine the likelihood of potential impacts. The BLM provided the Hopi Tribe with the requested information.

The BLM finalized the SPRNCA Allotments Lease Renewals EA and associated Finding of No Significant Impact (FONSI) on December 21, 2022. The EA and associated documents were made available, and continue to be available, electronically on the project website: https://eplanning.blm.gov/eplanning-ui/project/2013674/510.

The BLM mailed a NOPD for the Three Brothers Allotment lease renewal to the lessee and interested publics on December 21, 2022. The decision was subject to a 15-day protest period.

The BLM received timely protests from Sharon Rock, Ann Prezyna, Charles Quiroz, the Lower San Pedro Watershed Alliance, and Western Watersheds Project/Sierra Club/Center for Biological Diversity/Maricopa Audubon Society/Tricia Gerrodette. I have carefully considered each reason for protest and respond to the relevant reasons for protest below.

## REASONS FOR PROTEST AND BLM RESPONSES

**Reason for Protest:**

## A. Land Health

1. ***One protester raised a concern that the BLM should have assessed the impacts of the proposed grazing decisions using the Historic Climax Plant Community (HCPC) as the ecological baseline.***

**BLM Response:** Using HCPC as a baseline for vegetation was not appropriate for assessing impacts from this grazing decision due to shifts in plant communities that have occurred in the action area before it came under BLM management. The BLM used the resource objectives in the SPRNCA Resource Management Plan (RMP) (2019) to create allotment specific objectives (Desired Plant Community [DPC] objectives) which the BLM used in the LHE.

## B. Monitoring and Data

1. ***One protester raised a concern about the need for more than a single year's data to make a determination of land health, trend, and progress.***

**BLM Response:** The BLM used the best available data to evaluate land health and determine causal factors where standards were not achieved. Trend was not evaluated in the LHEs due to the lack of consistent and comparable historical monitoring data. The adaptive management framework is designed to allow the BLM to monitor and adjust grazing management to prevent impacts from livestock grazing. Trend will be determined in the future as additional monitoring data are collected. As described in the EA, the BLM will collect an additional two years of Assessment Inventory and Monitoring (AIM) data at Key Areas to fine tune the adaptive management objectives (see EA Section 2.2.2) and will evaluate the data and make management adjustments if needed through the process described in the Proposed Action (See EA Sections 2.2.2 and 2.2.7.1).

2. ***One protester raised a concern that the BLM should have used additional upland monitoring points.***

**BLM Response:** The monitoring points and locations used were designed to evaluate upland condition. The BLM specifically designed the monitoring points by using previously established Key Areas and additional AIM points that were selected because of their location, use, or value that reflect overall conditions at larger scales, such as a pasture, grazing allotment, wildlife habitat area, herd management area, watershed area, etc. The Key Areas and AIM monitoring locations were determined to adequately represent upland conditions on the allotment.

3. ***One protester raised a concern that the BLM failed to consider the best available science and that the BLM has ignored or minimized the science about the adverse impacts of livestock grazing in the SPRNCA.***

**BLM Response:** The BLM uses the best available data relevant to the actions being analyzed and has reviewed other applicable science and information. Appendix J of the final EA describes how literature submitted during the April-May 2022 preliminary EA comment period was or was not incorporated into the EA.

## C. Livestock Management

1. ***One protester raised a concern about the baseline used by the BLM in assessing impacts from this grazing decision in light of supposed procedural defects in previous grazing leases.***

**BLM Response:** The area that includes the Three Brothers Allotment has a long history of livestock grazing, predating the establishment of the SPRNCA or the BLM, and which has contributed to the current baseline against which the effects of future actions must be measured. For the past 30 years, grazing has occurred in the allotment subject to a federal grazing lease, which has been authorized under the same terms and conditions throughout that period and has been renewed through various authorities, including Section 402(c)(2) of the Federal Land Policy and Management Act (FLPMA). Most recently, the lease was renewed under FLPMA Section 402(c)(2) in 2016.

2. ***One protester raised a concern that the BLM failed to analyze ongoing trespass livestock impacts and that the Land Health Evaluation (LHE) does not account for trespass livestock.***

**BLM Response:** Unauthorized livestock use on the Three Brothers Allotment is addressed in the EA in the discussions of the affected environment and current conditions of the allotment. Potential impacts from unauthorized livestock use were captured in the LHE as part of the environmental baseline against which Standards were compared.

3. ***One protester raised concerns about whether fences will be maintained.***

**BLM Response:** This decision assumes that the BLM and lessees will comply with its requirements, including as they relate to installation and maintenance of fencing.

4. ***One protester raised a concern that the adaptive management framework allows harm to resources that will only be addressed after the fact, once the adaptive management threshold is reached.***

**BLM Response:** The thresholds within the adaptive management framework are designed to trigger changes in grazing management and prevent potential impacts from livestock grazing. The thresholds are specifically designed so that changes in management are implemented before resources are harmed.

**D. Threatened and Endangered Species**

1. ***One protester raised a concern that the proposed decisions did not appropriately account for the current conditions on the ground in the SPRNCA, as captured in photographs provided by the protester purporting to show existing impacts to yellow-billed cuckoo habitat.***

**BLM Response:** The BLM considered current conditions with respect to yellow-billed cuckoo habitat within the allotment (see Section 3.4.5.2 of the EA and specifically page 3-42) and assessed, through the EA and in consultation with US Fish and Wildlife Service (USFWS) through the Biological Evaluation (BE) and Biological Opinion (BO), future impacts from this decision on yellow-billed cuckoo habitat.

**E. Other**

1. ***One protester raised the concern that the grazing decision would result in "unnecessary or undue degradation."***

**BLM Response:** In light of the analysis contained in the EA, the BLM concluded that this grazing decision would not result in significant impacts to the environment, let alone "unnecessary or undue degradation." See 43 USC § 1732(b).

**Compliance with the Arizona-Idaho Conservation Act (AICA)**

*Several protesters raised concerns that this grazing decision violates the AICA and argued that livestock grazing does not conserve, protect, and enhance the conservation area and its resources and is not a use that the BLM has found will further the primary purposes for which the conservation area was established.*

The AICA does not prohibit livestock grazing as a use from the SPRNCA and allows management decisions that are consistent with the statutory command to "conserve[], protect[], and enhance[] the riparian area and the aquatic, wildlife, archeological, paleontological, scientific, cultural, educational, and recreational resources of the conservation area." The BLM established goals and objectives in the SPRNCA RMP (2019) that implement the "conserve, protect, and enhance" mandate under the AICA. The allotment-specific DPC objectives that the BLM established for each of the four SPRNCA Allotments in the LHEs tier directly from those SPRNCA RMP (2019) goals and objectives. Based on the content of the LHEs, EA, BO, and this decision record, the BLM has specifically found that this grazing decision will ensure that the agency conserve, protect, and enhance the conservation values for which the SPRNCA was designated and will further the primary purposes for which the SPRNCA was designated (see the Rationale Section).

**Compliance with the National Environmental Policy Act (NEPA)**

*Several protesters raised concerns that the BLM violated NEPA on the theory that, for example, the BLM did not take a "hard look" at all foreseeable environmental impacts, adopted an impermissible Purpose and Need statement, failed to consider and fully analyze all reasonable alternatives including a "no grazing" alternative, failed to analyze and disclose cumulative impacts, and failed to disclose data and analysis to the public.*

Section 1.3 of the EA provides a "brief discussion of the need for the proposal." 40 CFR § 1508.9(c). The BLM fully analyzed all reasonable alternatives and provides rationale in EA Section 2.8 for alternatives considered but eliminated from detailed analysis. The BLM considered two No Grazing alternatives in the EA (Alternatives B and D).

The BLM took a hard look at the environmental impacts that would result from each of the alternatives, including cumulative impacts based on reasonably foreseeable trends and planned actions in the affected environment in each resource section in the EA. For example, the EA addresses cumulative effects on water quantity by incorporating the discussion of the trend for the Upper San Pedro regional groundwater flow system in the SPRNCA Proposed RMP and Final Environmental Impact Statement (EIS) (2019). EA Section 3.3.7 summarizes the analysis

from the SPRNCA Proposed RMP and Final EIS (2019) of livestock water use on base flows. In addition, impacts from the synergistic effects of drought, climate change, and grazing on vegetation are discussed in EA Section 3.4.2, page 3-22. The impacts of these effects are part of the environmental baseline which was analyzed in the LHE.

The BLM uses the best available data and has reviewed other applicable science and information. Appendix J of the final EA describes how literature submitted during the April-May 2022 preliminary EA comment period was or was not incorporated into the EA. The BLM disclosed all of the data used in the lease renewal process culminating in this decision in the body and the appendices of the East SPRNCA Complex LHE.

**Compliance with the Endangered Species Act (ESA)**

*Several protesters raised concerns that the BLM violated the ESA and argued that the BE and BO fail to adequately address the impacts of livestock grazing that will be facilitated by the grazing infrastructure authorized by this grazing decision and because the BLM ignores the actual conditions on the ground with respect to listed species and their critical habitat.*

The effects of the decision on listed species and their critical habitat, including from livestock grazing and installation of range improvements, were analyzed during the ESA Section 7 consultation process with the USFWS. These effects were considered in the USFWS's BO.

The BLM describes the current condition of listed species and their critical habitat in the affected environment section of the EA. See EA Section 3.4.5.2. That discussion includes relevant trends and the cumulative effects of past, present, and reasonably foreseeable future actions.

## FINAL DECISION

It is my final decision to implement the Proposed Action as described in Sections 2.2.1, 2.2.2, 2.2.3, and 2.2.7 of the EA to implement the proposed range improvements and authorize livestock grazing use on the Three Brothers Allotment for a term of 10 years, upon acceptance of the lease.

**Grazing Lease**

The Three Brothers Allotment (No. 5232) grazing lease is renewed as described in EA Section 2.2.7 with the following terms and conditions:

| Allotment | Pasture | Livestock | | Period | | % Public Land | Type Use | AUMs |
|---|---|---|---|---|---|---|---|---|
| | | Number | Kind | Begin | End | | | |
| Three Brothers | -- | 68 | Cattle | 3/1 | 2/28 | 100 | Adaptive | 25 |

| Allotment | Pasture | Livestock | | Period | | % Public Land | Type Use | AUMs |
|---|---|---|---|---|---|---|---|---|
| | | Number | Kind | Begin | End | | | |
| Three Brothers | SPRNC A | 68 | Cattle | 3/1 | 2/28 | 100 | Adaptive | 171 |

*Table 1. Three Brothers Allotment Mandatory Terms and Conditions.*

**Other Terms and Conditions:**

- Type use "Adaptive" for the Three Brothers Allotment will primarily be season of use flexibility. Total herd size (total livestock number) has been changed from the current lease terms to reflect the actual total maximum use within the entire allotment and within any given timeframe in the year the authorized AUMs can be utilized.
- The livestock operator must submit an annual application prior to the start of the grazing year (3/1) to identify the grazing use that will occur. The application must include livestock number, season of use, and AUMs.
- When adaptive management triggers are met, the terms and conditions of authorized grazing (e.g., livestock number, season of use, and/or AUMs) will be modified as outlined below under "Adaptive Management."
- The lessee shall submit a report of the actual grazing use made on this allotment for the previous grazing period, 3/1-2/28. Failure to submit such a report by 3/15 of the current year may result in suspension or cancellation of the grazing lease.
- In order to improve livestock distribution on the public lands, salt and mineral supplements shall not be placed within a ¼ mile of any riparian area, wet meadow, or watering facility (either permanent or temporary) unless stipulated through a written agreement or decision in accordance with 43 CFR 4130.3-2(c).
- The operator is responsible for informing all persons who are associated with the authorized operations that they will be subject to prosecution for knowingly disturbing historic or archaeological sites, or for collecting artifacts. Any cultural (historic or prehistoric site or object) or paleontological (fossil remains of plants or animals) resource discovered during operations shall be immediately reported to the Authorized Officer or their official designee. A qualified archaeologist or paleontologist shall make an evaluation of the discovery to determine appropriate actions to prevent the loss of significant cultural or scientifically important values.
- Failure to comply with or violation of any term or condition of this lease – including livestock number, season of use and AUMs – may result in suspension or cancellation of the grazing lease in accordance with 43 CFR §§ 4140.1(b)(1) and 4170.1-1, and may subject the person or persons responsible to actions under 43 CFR § 4150 and/or other applicable civil and criminal penalties under 43 CFR Subpart 4170.
- Per 43 CFR § 4140.1(a)(5), the operator is required to maintain all range improvements, including fencing, in an operational condition.

**AUM Reduction**

Upon acceptance of the lease, 50% of authorized use for the Three Brothers Allotment (98 AUMs) will be placed into Temporary Suspended Use until DPC objectives are met.

**Adaptive Management**

The terms and conditions for the Three Brothers Allotment lease include the adaptive management framework described below to meet the quantitative allotment-specific objectives associated with the SPRNCA RMP objectives. If the allotment-specific objectives are not being met, the BLM would reduce AUMs as described below.

*Table 2. Three Brothers Allotment adaptive management objectives and current conditions.*

| Key Area | Ecological Site | Adaptive Management Objective | Current Condition (2019 data) |
|---|---|---|---|
| **TB-01** | Limy Upland | Perennial grass foliar cover of ≥11% | 12.7% perennial grass foliar cover |
| | | Bare ground of <41.3% | 41.3% bare ground cover |
| **TB-081** | Limy Upland | Perennial grass foliar cover of ≥8% | 8.7% perennial grass cover |
| | | Bare ground of <34.0% | 34.0% bare ground cover |
| **GRZ-04** | Limy Upland | Perennial grass foliar cover of ≥2% | 2.0% perennial grass foliar cover |
| | | Bare ground of <25.3% | 25.3% bare ground cover |

**Monitoring for Upland Adaptive Management**

On an annual basis, the BLM will monitor the ecological attributes at each of the three key areas. Each year, the BLM will use the annual monitoring data to conduct adaptive management assessments to determine attainment of key area objectives and determine if adaptive management thresholds have been reached.

The adaptive management criteria are as follows:

***Perennial grass foliar cover and bare ground***

Limy Upland Site

Maintain perennial grass foliar cover objectives (see Table 2) at each Limy Upland Key Area and decrease bare ground cover as compared to current conditions (see Table 2).

1. If, based on monitoring or routine inspections, conducted annually, adaptive management perennial grass foliar cover objectives are not being met or there has not been a decrease in bare ground cover compared to current conditions, livestock numbers would be

reduced by 50% of remaining authorized use (through temporary suspension) in the portion of the allotment within the SPRNCA boundary (SPRNCA Pasture).

2. If annual reassessment from a reduction under number 1 (above) shows that adaptive management perennial grass foliar objectives continue not to be met or there is no improvement with respect to bare ground, livestock would be completely removed (through temporary suspension) from the portion of the allotment within the SPRNCA boundary until perennial grass foliar cover meets adaptive management objectives and bare ground decreases as compared to current conditions.

Livestock reduction as part of adaptive management would be carried out through the temporary suspension of AUMs. The AUMs placed in temporary suspension would be reassessed annually. Once perennial grass foliar cover meets the adaptive management objectives and bare ground cover decreases as compared to current conditions, all AUMs placed in temporary suspension under this adaptive management framework would be restored.

**Range Improvements**

In order for the BLM to implement the adaptive management on the BLM-administered portion of the allotment that is located within the SPRNCA and to be able to manage that portion separately from the rest of the allotment, the BLM will construct range improvements through the implementation of this decision as described in EA Section 2.2.7.2 and according to the range improvement features described in EA Section 2.2.3.

**Compliance Inspections**

The BLM will periodically, at least monthly, conduct compliance inspections both within the Three Brothers Allotment and on adjacent BLM administered land. In addition, the BLM will conduct compliance inspections based on credible reports of livestock use outside of the Three Brothers Allotment or outside of the grazing lease terms and conditions. The BLM will make every effort to identify the livestock owner and take the appropriate action under 43 CFR §§§ 4150, 4160 and/or 4170, which may include impoundment.

## RATIONALE

Renewal of the grazing lease is in conformance with the BLM's livestock grazing regulations found at Part 4100 of Title 43 of the CFR (2005) and the AICA which established the SPRNCA. This decision fully processes the grazing lease renewal and provides for livestock grazing in a manner that is consistent with the resource objectives in the SPRNCA RMP (2019), the Safford District RMP (1992 and 1994), and the Arizona Standards for Rangeland Health. Because this decision is consistent with those resource objectives, and having considered the LHE, EA, BO, and this decision record, I find that this decision ensures that the BLM would continue to manage the SPRNCA "in a manner that conserves, protects, and enhances the riparian area" and its many resources. 16 U.S.C. § 460xx-1(a). On that same basis, I find that renewal of the grazing lease on

the terms and conditions included in this decision furthers the primary purposes for which the SPRNCA was established. 16 U.S.C. § 460xx-1(b).

Of the alternatives analyzed in the EA, I am selecting the Proposed Action (Alternative A). The Proposed Action (Alternative A) was developed to respond to recommendations in the LHE to improve rangeland health and achieve resource objectives described in the SPRNCA RMP (2019). The Proposed Action (Alternative A) includes adaptive management that will require the Authorized Officer to reduce AUMs if resource objectives are not being met. Actions to install and maintain range improvements are designed to better manage livestock grazing on the public lands within the Three Brothers Allotment and the SPRNCA.

Alternative A.1 (modification to the Proposed Action) is not applicable to the Three Brothers Allotment.

Alternative A.2 (modification to the Proposed Action) is not applicable to the Three Brothers Allotment.

The No Action alternative (Alternative C) was not selected because it would renew the lease with the existing terms and conditions and without the changes described above that address concerns brought forward in the LHE process and without measures to ensure that the BLM is meeting the resource objectives described in the SPRNCA RMP (2019).

Under the No Grazing alternatives (Alternatives B and D), the grazing lease would not be renewed. These alternatives were not selected because the grazing regime and management actions in the Proposed Action (Alternative A) address the concerns identified in the LHE. Under the Proposed Action (Alternative A), the adaptive management coupled with the IVM treatments (approved by a separate decision) would allow the BLM to move toward achieving Land Health Standards and meet the objectives described in the SPRNCA RMP (2019).

In summary, I find that the Proposed Action (Alternative A) is the combination of actions that best meets the purpose and need for action and would help the BLM move toward achieving Land Health Standard 3 and meet the resource objectives described in the SPRNCA RMP (2019). Based on the analysis of potential impacts described in the EA, the BLM has determined in the FONSI that the Three Brothers Allotment lease renewal would not have a significant impact on the human environment beyond those impacts analyzed in the Final EIS for the SPRNCA RMP (2019). Thus, an EA is the appropriate level of analysis, and an EIS will not be prepared. The BLM has determined that the lessee is in substantial compliance with the terms and conditions of its existing Federal grazing lease.

## COMPLIANCE AND CONFORMANCE

My decision complies with the management standards set by the AICA and is in conformance with the SPRNCA RMP and associated Record of Decision (ROD) (BLM 2019) and the 1992 and 1994 Safford District RMP and ROD (BLM 1994) (see EA Section 1.5).

The authority for this decision is:

The Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315, 315a through 315r); The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) as amended by the Public Rangelands Improvement Act of 1978 (Public Law 95-514); and Title 43 of the CFR including, but not limited to the following subparts:

§ 4100.0-8 The authorized officer shall manage livestock grazing on public lands under the principle of multiple use and sustained yield, and in accordance with applicable land use plans....Livestock grazing activities and management actions approved by the authorized officer shall be in conformance with the land use plan as defined at 43 CFR 1601.0-5(b).

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

§ 4110.3-2(b) When monitoring or field observations show grazing use or patterns of use are not consistent with the provisions of subpart 4180, or grazing use is otherwise causing an unacceptable level or pattern of utilization, or when use exceeds the livestock carrying capacity as determined through monitoring, ecological site inventory or other acceptable methods, the authorized officer shall reduce permitted grazing use or otherwise modify management practices.

§ 4110.3-3(a) After consultation, cooperation, and coordination with the affected permittee or lessee, the State having lands or managing resources within the area, and the interested public, reductions of permitted use shall be implemented through a documented agreement or by decision of the authorized officer. Decisions implementing §4110.3-2 shall be issued as proposed decisions pursuant to §4160.1, except as provided in paragraph (b) of this section.

§4130.2(b) The authorized officer shall consult, cooperate and coordinate with affected permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public prior to the issuance or renewal of grazing permits and leases.

§ 4130.3 Livestock grazing permits and leases shall contain terms and conditions determined by the authorized officer to be appropriate to achieve management and resource condition objectives for the public lands and other lands administered by the Bureau of Land Management, and to ensure conformance with the provisions of subpart 4180 of this part.

§ 4130.3-1(a) The authorized officer shall specify the kind and number of livestock, the period(s) of use, the allotment(s) to be used, and the amount of use, in animal unit months, for every grazing permit or lease. The authorized livestock grazing use shall not exceed the livestock carrying capacity of the allotment.

§ 4130.3-1(c) Permits and leases shall incorporate terms and conditions that ensure conformance with subpart 4180 of this part.

§ 4130.3-2 The authorized officer may specify in grazing permits or leases other terms and conditions which will assist in achieving management objectives, provide for proper range management or assist in the orderly administration of the public rangelands. These may include but are not limited to: ... (d) A requirement that permittees or lessees operating under a grazing permit or lease submit within 15 days after completing their annual grazing use, or as otherwise specified in the permit or lease, the actual use made; ... (f) Provision for livestock grazing temporarily to be delayed, discontinued or modified to allow for the reproduction, establishment, or restoration of vigor of plants ... or for the protection of other rangeland resources and values consistent with objectives of applicable land use plans ....

§ 4130.3-3 Following consultation, cooperation, and coordination with the affected lessees or permittees, the State having lands or responsible for managing resources within the area, and the interested public, the authorized officer may modify terms and conditions of the permit or lease when the active use or related management practices are not meeting the land use plan, allotment management plan or other activity plan, or management objectives, or is not in conformance with the provisions of subpart 4180 of this part. To the extent practical, the authorized officer shall provide to affected permittees or lessees, States having lands or responsibility for managing resources within the affected area, and the interested public an opportunity to review, comment and give input during the preparation of reports that evaluate monitoring and other data that are used as a basis for making decisions to increase or decrease grazing use, or to change the terms and conditions of a permit or lease.

§ 4180.2(c) The authorized officer shall take appropriate action as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing practices or levels of grazing use on public lands are significant factors in failing to achieve the standards and conform 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.

**RIGHT OF APPEAL**

The lessee or any other person whose interest is adversely affected by this final 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 this final decision. 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 an 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:

Colleen Dingman
Tucson Field Office
3201 East Universal Way
Tucson, AZ 85756

Should you wish to file a petition for a stay in accordance with 43 CFR Section 4.471(c), you must show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied;
2. The likelihood of the appellant's success on the merits;
3. The likelihood of immediate and irreparable harm if the stay is not granted; and
4. Whether the public interest favors granting the stay.

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 to any other person named in this decision and on the Office of the Regional Solicitor located at: US Department of the Interior, Office of the Field Solicitor, Sandra Day O'Connor U.S. Courthouse, 401 W. Washington St. SPC 44, Suite 404, Phoenix, AZ 85003-2151 in accordance with 43 CFR 4.470(a) and 4.471(b).

If you have any questions, please contact Eric Baker, Rangeland Management Specialist, or me at (520) 258-7201.

Sincerely,

Colleen J. Dingman
Field Manager
Tucson Field Office

**Interested Parties**

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**Certified receipt number:**
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