

**Arizona Office**

738 N 5th Ave, Suite 200

Tucson, AZ 85705

tel: (520) 272-2454

fax: (208) 475-4702

email: cyndi@westernwatersheds.org

web site: www.westernwatersheds.org

**Western
Watersheds
Project**

Working to protect and restore Western Watersheds and Wildlife

Ron Tipton
Acting Field Manager
Hassayampa Field Office
21605 North 7th Avenue
Phoenix, Arizona 85027

August 21, 2019

NOTICE OF APPEAL AND PETITION TO STAY

Appeal of the Final Decision to Reissue a Livestock Grazing Permit, #06235, on the Horseshoe Allotment in the Agua Fria National Monument, Bureau of Land Management, Hassayampa Field Office, Phoenix District

This letter serves as Western Watersheds Project's Notice of Appeal, Statement of Reasons, and Petition to Stay the Bureau of Land Management (BLM) Final Decision to re-issue a 10-year term grazing permit and massive infrastructure for the Horseshoe grazing allotment, #06235, in the Agua Fria National Monument managed by the Hassayampa Field Office DOI-BLM-AZ-P030-2018-0002-EA. The Decision and the proposed action to renew this grazing permit on these public lands fails to account for the unique and irreplaceable resources found there, fails to comply with the Agua Fria National Monument Resource Management Plan, and fails to comply with other federal laws.

This appeal is filed in accordance with 43 CFR 4.470, 43 CFR 4160.1-4, and 43 CFR 4.21. Under BLM regulation, a person whose interest is adversely affected by the Final Decision may file an appeal of the Decision and submit a petition for stay within 30 days following receipt of the Final Decision.

This Decision was received in our office on July 22, 2019. This appeal is filed on August 21, 2019 and is timely filed.

The appeal is filed due to violations of federal laws including the National Environmental Policy Act (NEPA) 42 U.S.C. § 4321 et seq., the Federal Lands Policy and Management Act (FLPMA) 43 U.S.C. §§ 1701-1785, and the Administrative Procedures Act (APA), 5 U.S.C. § 551 et seq.

I. Introduction

The 29,851-acre Horseshoe grazing allotment lies in the heart of the Agua Fria National Monument. The nationally recognized and protected Monument is home to native wildlife protected by the Endangered Species Act, including the Gila chub, the northern Mexican garter snake, and the yellow-billed cuckoo.

The BLM's decision will harm the protected Monument objects with the authorization of extensive new industrial-scale livestock infrastructure, including:

- new fencing on four separate pastures
- new fencing around two wildlife troughs
- the addition of an undisclosed number of livestock water facilities
- three new wells drilled in three separate pastures requiring the use of heavy equipment including a class 8 three-axle vehicle
- construction of five new pipelines in seven separate pastures, some of which require trenching up to two feet deep
- installation of seventeen new 500 gallon troughs
- installation of five new 10,000 gallon storage tanks
- installation of three new wildlife only troughs in eight separate pastures
- development of three five-acre vegetation research plots on three separate pastures

- and the reconstruction of corrals in two separate pastures

The BLM makes much ado about the well managed livestock grazing taking place here, but this is a fiction designed to provide cover for authorizing livestock in an area where this use should not be prioritized, especially over the objects the Monument is designed to protect. The extensive development to prop up industrial scale livestock grazing is in stark contrast to the Monument designation. The Agua Fria National Monument Proclamation describes the importance of the area:

The windswept, grassy mesas and formidable canyons of Agua Fria National Monument embrace an extraordinary array of scientific and historic resources. The ancient ruins within the monument, with their breathtaking vistas and spectacular petroglyphs, provide a link to the past, offering insights into the lives of the peoples who once inhabited this part of the desert Southwest. The area's architectural features and artifacts are tangible objects that can help researchers reconstruct the human past. Such objects and, more importantly, the spatial relationships among them, provide outstanding opportunities for archeologists to study the way humans interacted with one another, neighboring groups, and with the environment that sustained them in prehistoric times...

The monument holds an extraordinary record of prehistoric agricultural features, including extensive terraces bounded by lines of rocks and other types of landscape modifications...

In addition to its rich record of human history, the monument contains other objects of scientific interest. This expansive mosaic of semi-desert grassland, cut by ribbons of valuable riparian forest, is an outstanding biological resource. The diversity of vegetative communities, topographical features, and relative availability of water provide habitat for a wide array of sensitive wildlife species, including the lowland leopard frog, the Mexican garter snake, the common black hawk, and the desert tortoise. Other wildlife is abundant and diverse, including pronghorn, mule deer, and white-tail deer. Javelina, mountain lions, small mammals, reptiles, amphibians, fish, and neotropical migratory birds also inhabit the area. Elk and black bear are present, but less abundant. Four species of native fish, including the longfin dace, the Gila mountain sucker, the Gila chub, and the speckled dace, exist in the Agua Fria River and its tributaries.

Agua Fria National Monument Proclamation January 11, 2000.

Livestock grazing is not mentioned as a monument object. The Monument Proclamation and case law makes clear that protection of monument objects should be the priority for land managers.¹

¹ See *W. Watersheds Project v. Abbey*, 719 F.3d 1035, 1042 (9th Cir. 2013) (FLPMA's "multiple-use-and-sustainable-yield mandate guides BLM's management of public lands 'except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.' 43 U.S.C. § 1732(a). Under this provision, BLM must manage the Monument in compliance with the terms of the Proclamation.").

The BLM decision here fails to protect monument objects and therefore this decision should be withdrawn.

II. Statement of Standing

“Any... person whose interest is adversely affected by a final BLM grazing decision may appeal the decision to an administrative law judge.” 43 C.F.R. § 4.470(a). Western Watersheds Project has standing to file this Appeal because its Ecosystems Specialist, Laura Welp, has been to the allotment at issue and will be harmed by the grazing decision. Ms. Welp’s standing declaration is attached to this Appeal as Appendix A.

On November 3, 2018, WWP submitted timely comments on the Proposed Grazing Renewal for this project. On November 21, 2018, the BLM issued a Proposed Decision. WWP received the Proposed Decision on November 28, 2018, and on December 11, 2018, WWP filed a timely Protest of the Proposed Decision. WWP received notice of the Final Decision on July 22, 2019. With this letter, WWP appeals the Final Decision and has a procedural interest in this decision.

III. Statement of Reasons

A. Violations of the National Environmental Policy Act (NEPA)

The fundamental purpose of NEPA is to ensure that federal actions receive appropriately detailed environmental review. 42 U.S.C. § 4332. NEPA requires federal agencies to take a “hard look” at their actions, and to assess the environmental impacts of those actions in a forthright and public way. NEPA requires agencies to analyze and disclose cumulative impacts. 40 C.F.R. § 1508.25. The BLM must disclose to the public “[w]hether the action is related to other actions with individually insignificant but cumulatively significant impacts.” *Id.* § 1508.27(b)(7). A cumulative impact results from the incremental impact of the proposed action when added to other past, present, and reasonably

foreseeable future actions. *Id.* § 1508.7. Impacts can result from individually minor actions taking place over a period of time. *Id.*

Here, the BLM violated NEPA for the following reasons:

1. The use of an EA for this project is inappropriate

The use of an EA for this project fails to comply with National Environmental Policy Act requirements. The proximity to and overlap with specially designated areas require a higher level of analysis in light of the intensity and context of this specific project. *See* 40 C.F.R. §§ 1508.27(a) (context), b (intensity)). Here, both the context and intensity of this project require the preparation of an Environmental Impact Statement.

a. Context

In assessing “context,” agencies must look at different geographic scales and the short- and long-term impacts of the proposed action within those different geographic scales (40 C.F.R. § 1508.27(a)). Here, the project covers 29,851 acres of Monument lands and authorizes livestock grazing for 10 years. The project is located entirely within the Agua Fria National Monument and includes rare desert riparian ecosystems. The Horseshoe allotment “falls within one of the richest cultural landscapes in the American southwest” and the nation’s largest Archaeological District, Perry Mesa. EA at 9.

This decision is related to other livestock grazing authorizations that each have cumulatively significant impacts, and these impacts are never analyzed in a collective context. It is reasonable to anticipate a cumulatively significant impact on the environment in light of the numerous livestock grazing authorizations on adjacent and nearby public lands. Unfortunately, BLM continues to avoid identifying and analyzing the significance of these authorizations by terming these collective actions as temporary and by breaking them down into small component parts identified as “allotments.”

b. Intensity

In assessing “intensity,” agencies must look at the severity of the impact based on several factors. 40 C.F.R § 1508.27b(1-10). Here, the impacts of the decision to rare-riparian-obligate wildlife protected by the Endangered Species Act, including the western yellow-billed cuckoo, Gila chub, Gila topminnow, and northern Mexican garter snake are significant. These species “would largely benefit” from the no grazing alternative, indicating a significant negative impact from the selected alternative. EA at 36. Cool season grazing in the riparian pasture will continue to degrade habitat elements required by these protected species under the selected alternative, again indicating significant impacts. EA at 14.

i. Impacts to Cultural Resources

Livestock grazing and the associated infrastructure projects will harm the cultural and historic objects that should protected as part of the Agua Fria National Monument, which is a violation of Federal law imposed for the protection of the environment. Protection of cultural resources is the chief reason for the designation of the Agua Fria National Monument. As noted above, this allotment falls within one of the richest cultural landscapes in the American southwest. Fence construction, spring developments, wells, water holes, salt licks, stock tanks, pumps, pipelines, water storage, use of heavy equipment or fire for vegetation type conversions, cattle guards and nonstructural projects such as noxious weed treatments, forage improvement, and livestock grazing all affect cultural resources.

The actions of the livestock can result in chiseling in damp soils; compaction of soil and artifacts by concentration in small areas, such as around water tanks; collapse of stream banks and other soil features that may contain cultural resources; and displacement of artifacts (affecting site significance), which can compromise site integrity and research. Livestock grazing can negatively impact sites directly by trampling, artifact breakage, soil compaction, soil removal, toppling masonry

walls and other types of damage to features as livestock walk through a site. Grazing can indirectly impact sites through loss of ground cover, which in turn leads to erosion. WWP cited to several sources identifying the significant negative impacts livestock have on cultural resources in our prior comments, including: Horne, S. and J. McFarland. 1993. Impacts of livestock grazing on cultural resources. USDA Forest Service Heritage Resources Program, Los Padres National Forest, Santa Barbara, CA.; Jackson, R. J. 1999. Heritage Resources Management Module for Rangeland Management Activities on National Forest of the Sierra Nevada, USDA Forest Service, Pacific Southwest Region. Prepared for Sequoia National Forest. On file Sequoia National Forest, Porterville, CA. There is no dispute that livestock grazing impacts archaeological sites. The decision here to develop a vast array of new water sources in uplands will increase cattle use in these areas, where many cultural sites also occur, focusing the negative impacts on these protected monument objects.

Management Actions for the Agua Fria National Monument identify “a variety of protection measures” to protect the integrity of specific sites at risk, including restricting grazing. Agua Fria National Monument ARMP CL-11, at 36.

ii. Scientific Controversy

This project is not without scientific controversy. When determining whether a proposed action is highly controversial, the issue is “[t]he degree to which the effects on the quality of the human environment are likely to be highly controversial.” 40 CFR 1508.27(b)(4) (Emphasis added); *see* 162 IBLA 303, 322 (2004), 167 IBLA 347, at 356 (2002). Thus, the term “controversial” refers to cases “where a substantial dispute exists as to the size, nature, or effect of a major Federal action rather than to the existence of opposition to a use.” *Rucker v. Willis*, 484 F.2d 158, 162 (4th Cir. 1973); *Mary Lee Dereske*, 162 IBLA at 322; *The Sierra Club, Inc.*, 107 IBLA 96, 107 (1989). As WWP stated in our Protest, BLM’s plan to utilize livestock as a tool to reduce invasive annual grasses is untested. There is

research disputing the effectiveness of such a proposal. WWP 2018 Protest at 4.² WWP also provided research that raised many questions about the efficacy and practicality of using targeted livestock grazing to reduce cheatgrass. *Id.*³

In response to WWP's concerns regarding the scientific controversy over the use of livestock as a method of controlling exotic species, first BLM acknowledges the scientific controversy regarding targeted livestock grazing use, noting that one paper, Smith et al, critiqued the findings of another, Davies et al. NOPD at 7. The BLM cites (for the first time) to a single publication, "Briske, 2011,"⁴ with the statement that "[l]ivestock as biotic control agents have been well documented in research literature." Notice of Final Decision at 7. Unfortunately, BLM has not provided the full citation for "Briske, 2011." WWP searched for this referenced article and found the following, *which largely supports WWP's position* that livestock management for biotic control is indeed scientifically controversial:⁵

The debate regarding the benefits of rotational grazing has eluded resolution within the US rangeland profession for more than 60 yr. This forum examines the origin of the debate and the major reasons for its persistence in an attempt to identify common ground for resolution, and to search for meaningful lessons from this central chapter in the history of the US rangeland profession. Rotational grazing was a component of the institutional and scientific response to severe rangeland degradation at the turn of the 20th century, and it has since become the professional norm for grazing management. ***Managers have found that rotational grazing systems can work for diverse management purposes, but scientific experiments have***

² Citing Reisner, M.D., J.B. Grace, D.A. Pyke, and P.S. Doescher. 2013. Conditions favouring *Bromus tectorum* dominance of endangered sagebrush steppe ecosystems." *Journal of Applied Ecology* (concluding that the best way to reduce catastrophic wildfire is to promote native vegetation to reduce colonization of weeds); Smith, A.M.S., Tallhelm, A.F., Kolden, C.A., Newingham, B.A., Adams, H.D., Cohen, J.D., Yedinak, K.M., Kremens, R.L., 2016 (the ability of winter grazing to reduce wildfire size and fire-induced plant mortality was not demonstrated: a comment on Davies et al. (2015). *International Journal of Wildland Fire*. <https://doi.org/10.1071/WF15163>) and Jones, A., Carter, J.G., 2016. Implications of Longer Term Rest from Grazing in the Sagebrush Steppe: an Alternative Perspective. *Journal of Rangeland Applications* 3, 1–8. (asserting that the level of grazing necessary to have an effect on weed control would have so much impact to resources (removal of vegetation, selective grazing of plants and changes in plant species composition, trampling of soils, pollution of water ways, spread of exotic invasive plants, effect on wildlife adapted to higher vegetation amounts, nutrient cycling, and reduced animal diversity.)

³ Citing Hempy-Mayer, K., Pyke, D.A., 2008. Defoliation effects on *Bromus tectorum* seed production: Implications for grazing. *Rangeland Ecol Manag* 61, 116–123. <https://doi.org/10.2111/07-018.1>.

⁴ WWP believes the correct citation is Briske et al., 2011.

⁵ Briske et al. 2011. Origin, Persistence, and Resolution of the Rotational Grazing Debate: Integrating Human Dimensions Into Rangeland Research. *Rangeland Ecol Manage* 64:325:334. July 2011.

demonstrated that they do not necessarily work for specific ecological purposes. These interpretations appear contradictory, but we contend that they can be reconciled by evaluation within the context of complex adaptive systems in which human variables such as goal setting, experiential knowledge, and decision making are given equal importance to biophysical variables. ***The scientific evidence refuting the ecological benefits of rotational grazing is robust, but also narrowly focused, because it derives from experiments that intentionally excluded these human variables.*** Consequently, the profession has attempted to answer a broad, complex question—whether or not managers should adopt rotational grazing—with necessarily narrow experimental research focused exclusively on ecological processes. ***The rotational grazing debate persists*** because the rangeland profession has not yet developed a management and research framework capable of incorporating both the social and biophysical components of complex adaptive systems.

The BLM must acknowledge that Briske et al. 2011 discusses *rotational* grazing, not *targeted* grazing. Rotational grazing is a method of moving livestock around to prevent impacts to resources in general, while targeted grazing is more specific. Targeted grazing addresses discrete vegetation goals, such as removing an undesirable species like cheatgrass. They are two very different things.

The only mention of targeted grazing in Briske et al. 2011 is where they cite to Launchbaugh and Walker, 2006.⁶ And Briske et al. are only using the term “targeted” in a generalized way to mean grazing that emphasizes management outcomes:

Effective management of grazed ecosystems is sufficiently dynamic and complex that it should not be envisioned to have any one correct solution; rather, effective management requires an ongoing, dynamic, and systematic approach to decision making that identifies opportunities, constraints, and potential outcomes. The concept of targeted grazing represents an important step in this direction by explicitly emphasizing management outcomes (Launchbaugh and Walker 2006).

Notably, nothing in Briske et al. 2011 says anything about using cattle to control cheatgrass.

Furthermore, Launchbaugh and Walker 2006 is a single chapter in what looks like an industry publication and it contains no citations. It is not a peer-reviewed publication in a reputable journal, and therefore it is not scientifically more valid than the references WWP cited. And, perhaps most

⁶ *Targeted grazing—a new paradigm for livestock management.* In: K. Launchbaugh, J. W. Walker, and R. J. Daines [EDS.]. Targeted grazing: a natural approach to vegetation management and landscape enhancement. Centennial, CO, USA: American Sheep Industry Association. p. 2–8

importantly, Launchbaugh and Walker 2006 consistently refers to using sheep and goats, not cattle, to control weeds. While the reason for this might be because it's published by the American Sheep Industry Association, it is still inapplicable to the project that is subject to this Appeal and Petition to Stay.

To summarize our above concerns, citing to Briske et al. 2011 is not an appropriate response to our prior comments and cannot be used by BLM to justify using cattle for targeted grazing. Briske et al., 2011 nor Launchbaugh and Walker 2006 say what the BLM are relying upon them for. The BLM cannot say this plan is not controversial based on one citation that does not actually support the proposed action. The concept of targeted grazing is indeed a controversial topic in the sense that it's not scientifically settled.

The BLM's failure to adequately analyze the impacts of targeted livestock grazing artificially minimized the significance of the impacts of the proposed project. As we noted in our Protest, the BLM did not provide any supporting evidence for its assertion that grazing can be used to reduce exotics and instead hints at increased impacts by shortening the period of rest. WWP 2018 Protest at 4. Where the lessee would be prescribed to use livestock as a tool for vegetation treatments of invasive annual grasses (e.g. wild oats) by the BLM, this may decrease the amount of rest between grazing cycles. FEA at 10. This practice will do more harm than good if it allows more trampling and grazing in an area and does not in the end reduce wildfires. Ironically, the BLM speculates, without support in the record, that the No Grazing alternative will result in increased wildfire. FEA at 42.

2. *The decision is unlawful because the BLM failed to take a hard look at past, present, and reasonably foreseeable future impacts.*

a. *The BLM failed to adequately address the ongoing impacts of livestock grazing in the riparian zone*

Many riparian areas in the Monument are Functioning At Risk, some as recently as 2013. PFC assessments show increased erosion and bank shear from livestock trampling, which can happen any time of year, yet the BLM proposed to limit livestock grazing to the winter season, rather than prohibit livestock grazing in riparian areas entirely. There is no explanation as to how winter season grazing will reduce livestock trampling and bank shear. Authorizing livestock grazing in riparian areas is counter to the Coordinated Resource Management Plan's draft goal to "[p]rotect, restore, and enhance native riparian habitats toward their natural potential." CRMP at 32.

BLM acknowledges that drought and wildfire are causal factors for the allotment not meeting Standard II, but fails to identify how authorizing livestock grazing will *improve* riparian conditions. Notice of Final Decision at 9-10. If drought and fire are likely to increase and are causal factors that cannot be controlled by BLM, BLM must choose to manage the factors it can control, such as livestock grazing. The Arizona Standards and Guidelines, specifically 2-1, requires that management practices maintain or promote sufficient vegetation to maintain, improve, or restore riparian-wetland functions including bank stability. However, BLM makes unsupported statements that allowing livestock to graze riparian vegetation and damage bank structure will "help these riparian areas recover better." Notice of Final Decision at 9-10.

b. The BLM failed to adequately analyze the impacts related to noxious and invasive species

It is well established that livestock grazing reduces native plant abundance and increases bare ground, conditions that facilitate establishment of early successional, invasive exotic species such as the red brome and oatgrass seen in such abundance on Agua Fria National Monument. *See* WWP 2018 Protest at 3, citing multiple sources for this assertion. As we noted in our prior comments and our protest, a study of historical grazing *in the project area* found that Black Mesa and Perry Mesa both

had high cover of native perennial tobosa grasslands prior to the introduction of high amounts of livestock and water available to livestock.

The BLM failed to analyze the impacts of increased grazing pressure on the uplands that will result from increased water availability despite the known impacts such increased water availability has had on the project area:

The year-round availability and high density of watering places for livestock on Black Mesa had consequences for the natural grassland vegetation. Black Mesa and Perry Mesa have the same kinds of geological formations and soils, which typically support a relatively dense cover of ... tobosa grass (*Pleuraphis mutica*). This grass is still found in both areas, but the coverage of tobosa on Perry Mesa is far more extensive. In contrast, large areas on Black Mesa entirely lack tobosa grass, and for that matter, any native perennial plant with the exception of a few scattered, small catclaws.⁷

The BLM is aware that Tobosa grasslands are particularly vulnerable and difficult to restore.

Id. and cited in WWP's 2018 Protest at 3. The number of new developments proposed is excessive and contrary to the monument's mission to protect natural resources. If the area can't support grazing without such a large amount of infrastructure, reducing AUMs and preserving the *relatively* unimpacted Perry Mesa is the logical choice, both economically and biologically, and it comports better with the AFNM ARMP and the monument management plan (MMP), which both emphasize restoring and maintaining native plant communities and controlling exotics. Weedy species are a significant resource concern on this allotment, according to the Land Health Evaluation (LHE): "Non-native annual forbs and grasses now occur everywhere on the allotment." LHE at 28.

In the BLM's response to WWP's protest on this point, BLM fails to address WWP's concerns and dismisses the information we provided specific to the project area by stating that the study we provided "discusses anthropogenic changes on Black Mesa such as the construction of Interstate 17, the infrastructure to support the Sunset Point rest area, and the gas pipeline, in addition to the livestock

⁷ See McAuliffe, J. 2011. Seven years of research on Agua Fria National Monument. *Sonoran Quaterly* 65 (1): 4-9.

developments that show environmental changes at the landscape level.” Notice of Final Decision at 6. It is unclear if BLM is attempting to blame the range conditions on the construction and infrastructure related to I-17, but it does seem that BLM is ignoring the impacts of livestock grazing. BLM acknowledges, in the Protest Response, that there has been “severe disturbance” to soils in the past that allowed for the invasion of non-native exotic grass species that changed the fire regime, but failed to analyze these cumulative impacts in the EA for the project. BLM again attempts to minimize the impacts of livestock grazing in the project area by stating that “livestock use has been well documented before the recorded change in vegetation” without any analysis of how historic livestock grazing impacted native vegetation and without including this analysis in the EA for the project. *Id.*

c. The BLM failed to take a hard look at the impacts to soil resources

The large amount of range improvement projects would allow increased livestock grazing in areas of the Monument that previously saw little to no livestock grazing. WWP 2018 Protest at 2-3. As we note above, these improvements include three wells, five 10,000-gallon water storage tanks, seventeen miles of pipeline, ten miles of fence, and seventeen 500 gallon watering troughs. FEA at 12; FEA at 13, Table 4. The BLM’s analysis of impacts assumed that increasing water sources would distribute cattle more evenly and reduce impacts on heavily used areas (FEA at 28), but failed to analyze the increased grazing pressure on the vast areas in the drier, more vulnerable uplands. The BLM also failed to analyze the increased impacts to soils and vegetation and increased likelihood of exotic invasion in newly-impacted areas, despite acknowledging that:

Soil compaction can occur from concentrated hoof action. Heavy livestock use can reduce litter and vegetative cover. These can result in reduced water infiltration, increased runoff, increasing erosion and soil loss. Less than satisfactory soil conditions can result in a reduction in soil productivity (USDA 1999). Livestock trailing on steeper slopes results in soil disturbance leading to greater erosion and soil loss. Livestock tend to use gentler slopes resulting in a greater level of impact (Holechek 1992) from hoof action.

FEA at 38.

Instead, the BLM unjustifiably asserts that the proposed action will result in increased vegetation, which will then lead to greater protection for soils. FEA at 43. The BLM analysis then inexplicably states that the No Grazing alternative will result in negligible benefit for soils because the increased vegetation will increase fuel loads, which may then lead to more fire and more bare ground. FEA at 43. As we noted in our protest, it is arbitrary and capricious to say that increased vegetation under the proposed alternative will result in improved soil protection but increased vegetation under the no grazing alternative will result in reduced soil protection. WWP 2018 Protest at 3. While the no grazing alternative will likely result in an increase in grass cover, the response to our Protest point regarding fire, BLM states, without providing any citation, that it is “well documented” that increases in canopy cover encourage conditions that increase likelihood of fire in grasslands.” While this may be true based on some undisclosed study BLM has apparently reviewed, the removal of livestock grazing, at least in the short term, will not result in a significant increase in canopy cover.

In BLM’s further response to WWP’s protest on this point, BLM states that “compaction and runoff analysis from the NRCS Web Soil Survey show that the vast majority of the soils of the Allotment are *only* moderately susceptible to compaction and runoff.” Notice of Final Decision at 4-5, emphasis added. It is telling that the BLM chose to insert the word “only” into the description of impacts in an apparent attempt to minimize the fact that *the vast majority* of the soils are moderately susceptible to compaction and runoff.

d. *The BLM failed to adequately analyze the impacts to threatened and endangered species*

Three species protected under the Endangered Species Act are also riparian-obligate species, these listed species are all negatively impacted by livestock grazing, and the BLM has failed to adequately analyze the impacts of this project on these species.

i. Gila Chub

The Gila chub draft recovery plan identifies livestock grazing as a primary threat to this species in Agua Fria National Monument (at page 19), and suggests (at page 53) that “[t]he Agua Fria River mainstem was historically occupied, but that population is now considered extirpated.” U.S. Fish and Wildlife Service. 2015. Gila chub (*Gila intermedia*) Draft Recovery Plan. U.S. Fish and Wildlife Service, Southwest Region, Albuquerque, New Mexico. 118 pp. + Appendices A-C. Continued grazing in the mainstem of the Agua Fria River or its tributaries does not contribute to the recovery of this species, which has been lost from 85-90% of its formerly occupied habitat in the Gila River basin. USDI Fish and Wildlife Service. 2005. Endangered and Threatened Wildlife and Plants; Listing Gila Chub as Endangered With Critical Habitat. Federal Register, Vol. 70, No. 211. The Monument designation protects aquatic systems in the Agua Fria National Monument, but species like the Gila chub are at high risk of species extirpations, considering that U.S. Fish and Wildlife Service estimates that “90 percent of the Gila chub’s currently occupied habitat has been degraded, either by the presence of nonnative species or land use that degrades habitat, such as livestock grazing.” *Id.* at 66679.

ii. Northern Mexican Garter Snake

The northern Mexican garter snake is limited almost entirely to small, isolated populations at risk of extirpation. On the Agua Fria River, the loss of fish and frog prey base, as well as overgrazing of cover vegetation and degradation of streambanks have led to range reduction and habitat loss. USDI Fish and Wildlife Service. 2014. Endangered and Threatened Wildlife and Plants; Threatened Status

for the Northern Mexican Gartersnake and Narrow-Headed Gartersnake. Federal Register, Vol. 79, No. 130.

iii. Yellow-billed Cuckoo

The yellow-billed cuckoo survives in scattered locations in small numbers, including along the Agua Fria River in Agua Fria National Monument, and depends on healthy streamside areas for breeding, nesting and feeding. USDI Fish and Wildlife Service. 2014. Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Western Distinct Population Segment of the Yellow-Billed Cuckoo. Federal Register, Vol. 79, No. 158. The cuckoo's disappearance from vast expanses of its former habitat is due in part to livestock grazing. *Id.* As we stated in our 2018 Protest, all proposed critical habitat for the cuckoo should have been closed to livestock grazing to allow recovery of cottonwood-willow vegetation communities. WWP 2018 Protest at 5-6. Unfortunately, the BLM failed to address the issue of tamarisk invasion of riparian areas and how that affects the habitat for the cuckoo, and how livestock grazing exacerbates the risks faced by the bird.

Cool-season grazing in the Agua Fria River riparian pasture will continue to degrade the riparian habitat elements required by these three species, increasing the likelihood of extirpation and will contribute toward extinction. In light of the Monument Proclamation to protect Monument objects, including riparian dependent wildlife, the BLM should have excluded riparian areas from livestock grazing. Had BLM adequately analyzed the impacts of livestock grazing in riparian areas, there would be no rational basis for continuing to allow livestock grazing in riparian areas during any time of year.

e. The BLM failed to adequately analyze the permitted number of livestock

The LHE states that the total permitted number of livestock is 381 (4,572 AUMs). FEA at 3. There is no data presented to explain how this number was achieved. BLM relies heavily on compliance with the standards and guidelines as proxy for being within the carrying capacity.

However, the BLM does not analyze AUMs in light of the actual use. Indeed, because the lessee has not used the full AUMs since obtaining the lease in 2011 (LHE at 3) and because the BLM expects that only between 2,500-3,000 AUMS will be used annually (FEA at 10), the actual use on the allotment more closely mirrors what the allotment could support than what the BLM is proposing here. The total permitted numbers should be adjusted to reflect the forage capacity of the allotment. We requested this adjustment in our prior comments and protested BLM's failure to address our concerns. WWP 2018 Protest at 6. However, BLM has not adjusted the AUMs authorized, nor assuaged our concerns. Instead, the public is simply "assured" that the permittee will adjust livestock numbers and timing to protect natural resources. Notice of Final Decision at 12.

B. Violations of the Federal Land Management Policy Act (FLPMA)

1. *The Agua Fria National Monument affords these lands with a higher level of protection*

Because this allotment is within the AFNM, there is a higher standard for the protection of natural resources than typical multiple-use managed BLM lands. This higher standard has been affirmed by the Interior Board of Land Appeals (IBLA), upholding a ruling on a BLM decision to deny a grazing permit on lands designated as the Cascade-Siskiyou National Monument. *Walt v. BLM*, 172 IBLA 300 (2007). In *Cascade-Siskiyou*, the IBLA relied on the authority of the Proclamation and stated that "BLM has no authority to ignore the Proclamation, and as Judge Sweitzer recognized, 'the lands within the Monument are now to be managed primarily for the protection of objects of interest identified in the Proclamation.'" 172 IBLA 313 (emphasis added). The priority for the BLM in managing the Horseshoe allotment, therefore, is to ensure protection of Monument objects.

Where FLPMA requires that goals and objectives for public lands be established by law as guidelines for public land use planning, and that management is on the basis of multiple use and sustained yield, it adds, "unless otherwise specified by law." §102(a)(7). And "multiple use" is

specifically defined in the statute as, in part, “making the most judicious use of the land for some or all of these resources... the use of some land for less than all of the resources... with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.” §103(c). Simply because the overarching RMP describes these allotments as “available” for grazing doesn’t preclude the agency from taking a hard look at the balance of uses at the site-specific level.

Section 302(a) of FLPMA provides that “the Secretary shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 1712 of this title when they are available, except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.” 43 U.S.C. § 1732 (emphasis added). National Conservation Lands (NCS) direction requires the BLM to manage the lands “in a manner that protects the values for which the components of the system were designated.” (16 U.S.C. § 7202(c)(2)) and that in balancing considerations under FLPMA per 43 U.S.C. §§ 1702(c), 1732, BLM specifically should prioritize protections of those values (emphasis added). Courts have recognized that this provision requires BLM to manage lands in accordance with monument proclamations and nothing in FLPMA requires or envisions that the balance among competing uses shall be struck one way or another. *See* 43 U.S.C. § 1732(a) (2000). No violation of FLPMA is shown where BLM exercises its discretionary authority under FLPMA in a manner that complies with the priorities established by a duly issued Presidential Proclamation, and therefore BLM could decline to renew a grazing permit and still be in full compliance with FLPMA, but authorizing livestock grazing in violation of a Presidential Proclamation that should protect natural resources in the area that authorization is made can be a violation of FLPMA. 172 IBLA 300 at 313, 2007. Here, the vegetation communities and wildlife are specifically

mentioned in the Agua Fria National Monument (AFNM) Proclamation as object of protection but livestock grazing is not.

In Instruction Memorandum 2009-215, which amended BLM's Land Use Planning Handbook H-1610- 1, Appendix C, BLM interpreted the exception clause in section 302(a) to mean that FLPMA specifically provided for the multiple-use policy to give way when other law requires elevation of a specific use. The identification of an object for protection under the Antiquities Act, and the reservation of land necessary to protect that object, dedicates the land for the purposes of the monument, and withdraws it from uses incompatible with that purpose. Although the BLM Manual is not promulgated with the procedural protections accompanying regulations and, therefore, does not have the force and effect of law, BLM employees are obliged to follow its terms. *See* 124 IBLA 104, 108 (1992); 105 IBLA 285, 288 (1988); 129 IBLA 158, at 162 (1994).

The Omnibus Public Land Management Act of 2009 (OPLMA) also requires BLM to manage components of the NLCS to “conserve, protect, and restore nationally significant landscapes” and to do so “in accordance with any applicable law (including regulations) relating to any component of the system ... and in a manner that protects the values for which the components of the system were designated.” The proclamation establishes the values for which the monument lands were designated, and is applicable law with which BLM must comply in determining how to conserve, protect, and restore the landscape. Therefore, in developing any plan for the management of areas within the monument, BLM must consider the impact on monument objects, including impacts from grazing.

In the Affected Environmental and Environmental Consequences chapter (pp 19-40) of the FEA, the BLM consistently describes the No Grazing alternative as being the least impactful and best for natural resource recovery and stability of upland and riparian vegetation, soil health, and other

ecosystem functions. The other alternatives have grazing impacts to some degree. This analysis makes the case that Agua Fria National Monument would best be set aside as a grazing-free area devoted to native species and ecosystem function in accordance with the monument proclamation stipulating that “the national monument shall be the dominant reservation.”

Because the mandate to protect the Monument’s objects imposed by the Antiquities Act, and by the Proclamation, overrides the multiple-use mandate where incompatible, even where the proclamation does not expressly restrict or preclude certain uses, the BLM should have weighed the potential uses in light of the values protected by the proclamation. The requirement to elevate protection of the Monument resources above other values was not followed, despite the clear mandate and the significant negative impacts livestock grazing will have on Monument objects.

2. The BLM failed to adequately analyze the impact of developed waters on wildlife

In WWP’s prior comments and in our Protest, we identified our concern that the BLM was falsely identifying the development of wildlife waters in the proposed action as a benefit to wildlife without acknowledging that wildlife waters can be developed without the re-authorization of this livestock grazing permit. The BLM’s response was to state, quite simply, that “the consideration of water projects for wildlife exclusively is outside the scope of the FEA.” Notice of Final Decision at 12. While WWP agrees that the consideration of the development of wildlife waters is beyond the purview of this particular project, the analysis of the impacts of wildlife waters is not. Importantly, the BLM does apparently analyze the impacts of removing existing waters as part of the No Action alternative: “The removal of livestock may result in less water availability across the Allotment as well as lower quality and less forage for some wildlife species such as pronghorn (Loeser et al. 2005).” FEA at 36. However, BLM does not explain why waters would be removed and fails to acknowledge the

possibility that wildlife waters could be maintained without livestock. Indeed, the Arizona Game and Fish Department has a comprehensive public awareness campaign and is fundraising to develop and maintain wildlife waters across the state.

We must insist that BLM cannot have it both ways. BLM cannot on the one hand assert that wildlife waters are beyond the scope of the project, then on the other use the removal of existing wildlife waters as a rationale for artificially minimizing the impacts of the proposed action and artificially maximizing the negative impacts of the No Action.

Therefore, the BLM's decision to authorize livestock grazing on these fragile and important lands for the next ten years is a violation of FLPMA.

IV. Petition to Stay

In order to prevail on a stay petition, sufficient justification must be shown based upon the following factors: (A) the relative harm to the parties if the stay is granted or denied; (B) the likelihood of success on the merits; (C) the likelihood of immediate and irreparable harm if the stay is not granted; and (D) whether the public interest favors a stay. 43 C.F.R. § 4.471(c).

A. The relative harm to the parties

Because livestock grazing will continue regardless of whether or not a stay of the Horseshoe grazing decision is granted, a stay of the grazing permit renewal is unlikely to cause harm to the permittee of the allotment. However, by denying a stay to WWP, the conservation interests of the organization and its members will be harmed by the Court's failure to immediately enforce the fundamental laws protecting those interests and guiding public lands decision-making. A stay would be an early indication that the Office of Hearings and Appeals will not allow ill-considered and unsupported grazing permits and their associated infrastructure projects to proceed.

Additionally, a stay would prevent livestock from grazing on 3,280 previously ungrazed and ecologically critical riparian areas, preclude the construction of the following range infrastructure that will cause physical changes on the ground and significantly increase resource damage to areas that were previously not heavily impacted by livestock use: installation of 7.9 new miles of fencing, including fencing in riparian areas; installation of 19.4 miles of new water pipeline; installation of 2 new wells, four tanks, and sixteen new troughs. Final EA at Table 4. The new wells would produce up to 150,000-200,000 gallons of water per year, creating a significant impact on nearby natural water resources and requiring the use of a class 8 (3 axle) vehicle for construction in habitat for species that should be protected by the Endangered Species Act. The installation of pipelines will require trenches up to two-feet deep in some areas. All of this was authorized without any analysis of the impacts to hydrological function. Further ecological impacts from the three “study plots” will begin when BLM begins to use chemicals and mechanical equipment in these plots, including six different types of herbicides and livestock as biological control agents.

A stay would prevent the unnecessary expenditure of funds for these improvements and, in the event that WWP succeeds on the merits of this appeal, would prevent the need for the expenditure of additional funds to remove that infrastructure and repair resource damage caused by that infrastructure and vegetation treatment.

A stay will protect the permittee and the public from suffering financial harm, will protect natural resources, will protect WWP’s procedural interests, and protect WWP’s member’s scientific, spiritual, educational, aesthetic, recreational and other interests.

B. The likelihood of success on the merits.

A decision based on an EA will withstand a challenge under section 102(2)(c) of NEPA, 42 U.S.C. 4332(2)(c) where the record demonstrates that BLM considered all relevant matters of environmental

concern, took a “hard look” at potential environmental impacts, and made a convincing case that no significant impact will result or will be reduced to insignificance with appropriate mitigation measures. WWP has objectively demonstrated above that BLM failed to take a “hard look,” that a scientific controversy exists, and the level of NEPA analysis is inadequate.

WWP has an overwhelmingly high likelihood of success on the merits, warranting a stay of the flawed grazing decision at issue here. The decision’s failures to comply with major federal environmental laws renders it improper. WWP has clearly demonstrated that the level of NEPA analysis for this project is insufficient, and that a scientific controversy exists.

C. The likelihood of immediate and irreparable harm if the stay is not granted.

As discussed above, the issuance or denial of a stay in this case will not affect ongoing grazing on the Horseshoe Allotment because BLM regulations allow grazing to continue even if a stay is granted. However, if the stay is not granted new grazing infrastructure will be constructed and installed, livestock grazing will occur in previously ungrazed riparian areas that provide habitat for three species protected by the Endangered Species Act, causing considerable on-the-ground damage to natural resources and attracting livestock to areas that have previously not been subject to concentrated livestock use.

D. Whether the public interest favors a stay.

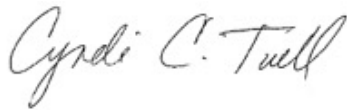
The public interest is best served by staying the proposed action, thereby protecting the environment from unnecessary degradation and harm until the merits of the appeal can be fully addressed. If the stay is denied but WWP ultimately prevails on the merits of our appeal, the environmental degradation will be unnecessary.

Issuance of a stay in this case would serve the public interest by immediately putting the BLM on notice that it should not proceed with a final decision until the issues raised in this appeal are resolved.

There are threatened and endangered species that will be harmed by this decision, including the Gila chub, the northern Mexican garter snake, and the yellow-billed cuckoo. Because it would also prevent the waste of public and private resources, an issuance of a stay in this case is in the public interest.

V. Conclusion and Request for Relief

The Agua Fria National Monument is a unique and important landscape that was designated to protect scientific and natural resources under the National Conservation Lands system. These lands were selected for their values and they should be managed to protect those resources as a priority. Under that standard, managing the monument to protect and improve desert tortoises and their habitat clearly should take precedence over livestock grazing. WWP respectfully requests an order from the hearings division that vacates and remands the Final Decision pending resolution of the violations of federal law alleged herein.



Cyndi Tuell
Arizona and New Mexico Director
Western Watersheds Project

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of August, 2019, I sent true and correct copies of the foregoing petition for stay and appeal of the Horseshoe Allotment Final Decision, pursuant to 43 C.F.R. 4.401(c), to the following parties via certified U.S. mail:

Ron Tipton

#7016 0910 0000 1117 8734

Acting Field Manager
Hassayampa Field Office
21605 North 7th Avenue
Phoenix, Arizona 85027

Office of the Field Solicitor

#7016 0910 0000 1117 8741

U.S. Department of the Interior
Sandra Day O'Connor Courthouse
401 West Washington Street, SPC 44
Suite 404
Phoenix, Arizona 85003-2151

JH Cattle Company LLC

#7016 0910 0000 1117 8758

c/o John Holbrook
P.O. Box 1196
Mayer, Arizona 86333

I hereby certify that on this 21st day of August, 2019, I sent true and correct copies of the foregoing petition for stay and appeal of the Horseshoe Allotment Final Decision, pursuant to 43 C.F.R. 4.401(c), to the following parties via U.S. mail:

Arizona Cattleman's Association

ATTN: Patrick Bray
1401 N. 24th Street, Suite #4
Phoenix, Arizona 85008

Arizona Game and Fish Department

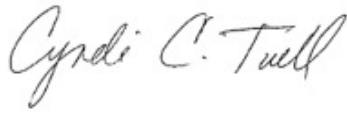
Region 6
7200 E. University
Mesa, Arizona 85207

Jeff Burgess

7650 S. McClintock Dr. #103-248
Tempe, Arizona 85284

Tonto National Forest
Cave Creek Ranger District
ATTN: Micah Grondin
40202 N. Cave Creek Road
Scottsdale, Arizona 85262

Sandy Bahr
Sierra Club, Grand Canyon Chapter
514 W. Roosevelt Street
Phoenix, Arizona 85003



Cyndi Tuell, Western Watersheds Project
August 21, 2019

Appendix A

Standing Declaration of Laura Welp

I, Laura Welp, declare as follows:

1. The following facts are personally known to me, and if called as a witness I would and could truthfully testify to these facts.
2. I hold a Bachelor's degree in Biology from the University of Alaska Fairbanks and a master's degree in Botany from the University of Wyoming.
3. I am an ecosystems specialist at Western Watersheds Project, a position I have held since 2011.
4. I have a strong interest in the management of our public lands. Since 1985 I have worked as a biological technician or botanist in national parks or monuments studying vegetation management and botany. From 2001 to 2005 I worked at the Grand Staircase-Escalante National Monument assessing rangeland health conditions that were used to develop grazing management plans. My interest in vegetation, grazing, and public lands management is based on my lifetime as a botanist and recreationist who enjoys these activities in Utah and Arizona, including Agua Fria National Monument.
5. I live in Kanab, UT, near the Arizona border. I have recreated in and around the project area, and I have concrete plans to visit the Monument again in October of 2019.
6. On behalf of WWP, I have been involved in Agua Fria's planning process for the Horseshoe allotment since 2013 when we submitted scoping comments and participated in the Coordinated Resource Management Plan (CRMP) goal workshop. In February of 2015, I attended the Horseshoe – Copper Creek Field Visit organized by Agua Fria National Monument. I submitted comments on the CRMP EA, the Horseshoe Canyon Land Health Assessment, and the Grazing

Authorization Renewal EA. I also participated in the 2015 NRI/BLM Assessment Inventory and Monitoring Grazing Land On-Site Data Collection Training.

7. As a botanist I have an interest in visiting and enjoying these native plant communities now and in the future. I am particularly concerned with anthropogenic impacts to native vegetation. I have worked on livestock management issues in Utah and Arizona since 2001, so I know firsthand the damage that cattle grazing can do. The impacts to vegetation, hydrology, and soil ecosystem functions and rare plant populations are distressingly evident to me when I visit those areas of the national monument where grazing occurs. Cattle grazing in the project area ruins my aesthetic and recreational interests in the National Monument.

8. As a botanist I know that non-native species can have a negative impact on vegetation communities and ecosystems, and I am constantly aware of how many of these impactful species are present in a given area, especially since the BLM has identified them as a significant resource concern in the project area. I get great enjoyment from observing native plant communities and photographing native species. Conversely, degraded rangelands with erosion damage and large amounts of non-native species, and the implications for negative effects on native plants and wildlife, are upsetting to me.

9. I have a strong interest in the management of national monuments in the BLM's National Conservation Areas system, including Agua Fria National Monument, and their potential to be an innovative part of public lands management. To that end, I would like Agua Fria National Monument to comply with the provisions in the Antiquities Act, the Agua Fria National Monument Proclamation, and the Omnibus Public Land Management Act of 2009. Together, this direction dedicates the land for the purposes of the monument, and withdraws it from uses incompatible with that purpose. The mandate to protect the Monument's objects imposed by the Antiquities Act, and by

the Proclamation, overrides the multiple-use mandate where incompatible. As the BLM itself states in its own analysis in the Final Environmental Assessment, not grazing the allotment is the least impactful and best for natural resource recovery and stability of upland and riparian vegetation, soil health, and other ecosystem functions.

10. The proposal to open ungrazed areas to grazing will diminish the native character of the vegetation, introduce exotic species, and impact rare plants, including species of cacti found only there. The associated infrastructure will impact soils. Research on the monument comparing grazed and ungrazed areas showed severely reduced native vegetation and increased soil impacts in the grazed portion. Introducing these impacts to the relatively unimpacted recently ungrazed portion of the monument can be expected to introduce the same impacts seen in the grazed areas. This is distressing to me as someone who values native vegetation and properly functioning ecosystems, and knows how difficult it is to restore them, especially the tobosa grasslands in the Horseshoe allotment.

11. Closing the allotment to grazing comports better with the CRMP Goals and Objectives and the monument management plan, which both emphasize restoring and maintaining native plant communities and controlling exotics. The Agua Fria National Monument proclamation describes the monument as the dominant reservation. The BLM has the authority to manage this allotment to promote recreation, vegetation rehabilitation, and the natural character of the monument. Allowing grazing in this area is inconsistent with those values.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated this 12th day of August, 2019.