



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

Phoenix District

Agua Fria National Monument

21605 North 7th Avenue

Phoenix, Arizona 85027

www.blm.gov/az/

In Reply Refer To:

4130 (AZP030)

Kelton Cattle Co.

23120 E. Kelton Ranch Rd.

Mayer, AZ 86333

Cert Mail: 7015 1660 0000 0574 9762

NOTICE OF FINAL DECISION BOX BAR ALLOTMENT INDIAN CREEK RIPARIAN AREA MANAGEMENT

Dear Mr. and Mrs. Kelton:

As you are aware, the Bureau of Land Management is proposing to change livestock management in the Indian Creek riparian area located in the Box Bar Allotment (#06063). The BLM believes that changes to management are necessary for the continued existence of the Gila chub and other wildlife species dependent upon Indian Creek for habitat.

On October 26, 2015, the Bureau of Land Management, Agua Fria National Monument, released a Proposed Decision for livestock management in the Indian Creek Riparian area. On November 11, 2015 the BLM received a timely protest from Western Watersheds Project (WWP). Substantive protest points led to slight modifications of the Environmental Assessment (EA) (DOI-BLM-AZ-P030-2013-0001-EA) and proposed terms and conditions of the grazing permit for the Box Bar Allotment. BLM's responses to WWP's protest are enclosed with this Final Decision (see Attachment 1).

BACKGROUND

This proposed project is located along Indian Creek in the Agua Fria National Monument T. 11 N., R. 3 E., Sections 25, 26, 35 and 36. The reach of Indian Creek that is located within the project area is designated as critical habitat for the endangered Gila chub (*Gila intermedia*). The BLM consulted with the US Fish and Wildlife Service (Service) on the existing Phoenix Field Office Planning Decisions and Associated Activities on Gila chub and its critical habitat

(Biological Opinion 02-21-05-F-0409). Management actions covered under this Biological Opinion (BO) allow for livestock grazing from November 1 through March 1 in pastures that contain Gila chub critical habitat as long as threshold levels of bank alteration (not to exceed 25%), woody riparian species utilization (not to exceed 30%) and herbaceous riparian utilization (not to exceed 50%) are not exceeded. However, these thresholds have been routinely met or exceeded within a few weeks of livestock use in Indian Creek.

Excessive streambank alteration and overutilization can reduce habitat quality for Gila chub. In 2011, the stream was assessed as functional at risk by an interdisciplinary team of resource specialists. The rationale for this rating was that the system was not vertically stable, there was little recruitment of riparian tree species, and there was excessive erosion. Herbaceous streambank vegetation cover was sparse in places; however, vegetative cover was much greater within a livestock exclosure that currently exists on Indian Creek.

Public Involvement

This project was publicly scoped by posting a scoping letter on the BLM website for 30 days and sending letters or emails to all individuals and organizations on our interested publics list. Comments were received from Western Watersheds Project and the Arizona Game and Fish Department. This proposed project was also scoped internally with BLM specialists and managers. This project was also introduced and discussed at the BLM Phoenix District monthly NEPA coordination meeting. Site visits and subsequent scoping and collaboration took place with the Agua Fria National Monument Natural Resource Specialist and Biologist. BLM staff met with the grazing lessee for the Box Bar allotment and discussed the proposed action. Another site visit with the permittee and BLM staff took place to discuss potential livestock crossing areas. An additional site visit also took place with AGFD at Indian Creek with the AGFD Region VI Nongame Biologist and Habitat Specialist.

US Fish and Wildlife Service Consultation

The US Fish and Wildlife Service was consulted about the proposed exclosure fence and water gap corridors for the Indian Creek riparian area. In response to the consultation, a new Biological Opinion (#02-21-03-F-0409-R2) was released for the Box Bar Allotment. New species conservation measures associated with the proposed exclosure fence and livestock grazing will be added to the Box Bar grazing lease terms and conditions.

FINAL DECISION

After reviewing the analysis presented in the EA, the Finding of No Significant Impact (FONSI), and carefully considering protest points and the comments and input received through the consultation, cooperation, and coordination (CCC) process with Interested Publics, and the affected lessee, it is my Final Decision to implement the Proposed Action described in Section

2.2 of the EA, including the design features and standard operating procedures common throughout all relevant alternatives as described in Section 2.1, and as follows:

Common Design features and Standard Operating Procedures

Cultural Resources

All impacts to cultural resources shall be avoided thus preventing potential adverse effects to all cultural resources (and monument objects). The proposed enclosure fence line has been surveyed by a qualified BLM archaeologist to a class III level for cultural resources. No cultural resources were found within the footprint of the proposed fence line.

Biological Resources

Construction would take place between October 1 and April 30 to avoid impacts to spawning Gila chub, nesting yellow-billed cuckoo, and other migratory birds. The BLM would continue to monitor the effects of management actions in the Indian Creek riparian area. Within the Indian Creek riparian area is a Multiple Indicator Monitoring study area that the BLM uses for quantitative and qualitative monitoring of riparian conditions. There are also several Proper Functioning Condition sites located in the riparian area the BLM uses to monitor riparian function and condition. The BLM would also continue to study the upland areas of the allotment at various Assessment, Inventory, and Monitoring (AIM) locations.

Exclosure Fence

A four-strand barbed wire fence with a smooth bottom wire would be constructed to exclude livestock from an approximate 1.3 mile reach of critical habitat in Indian Creek. This fence would adjoin an existing fenced area that currently excludes livestock from 0.7 miles of Indian Creek. The proposed fence would be built in the upland habitat near the stream and would run roughly parallel to the stream. Break-away (water gap) fences would be installed where the fence crosses the stream. Drilling may be required to set posts in bedrock areas – especially when constructing water gap fences. Hand drills would be used for drilling. Two crossing areas would be constructed to allow livestock to cross from one pasture to another and for livestock watering.

The crossings would consist of two parallel wire fences spanning across the stream, adjoining the exclosure fence in the upland habitat. The crossing areas depicted on the map are located in areas where the stream channel is armored by large rock or bedrock, making these areas more resistant to livestock impacts. The width of the crossings would be approximately 60 feet wide. The crossing areas would have gates in the upland habitat so that the crossings could be closed when they are not in use or when the water gap fences are damaged.

Once the Indian Creek exclosure is constructed, livestock would have access to the upland vegetation in adjacent pastures and minimal access to critical habitat within the riparian area. The designation of the Bald Hill and Cross S pastures would change from riparian pastures to upland pastures, making them available year round livestock grazing without seasonal use

restrictions. Once the enclosure fence and water gaps are constructed, livestock would be permanently excluded from approximately 98% of the critical habitat and the associated riparian habitat.

The enclosure fence will be inspected and repaired, if necessary, prior to turning cattle out into pastures containing Gila chub critical habitat by the lessee. The water gap fences will also be inspected and repaired, if necessary, after flood events when cattle are in pastures containing Gila chub critical habitat by the lessee. The enclosure fence will be inspected twice per year when cattle are present in the pastures containing Gila chub critical habitat. The enclosure fence and water gap inspections will be requirements added to the terms and conditions of the grazing lessee's lease. To avoid impacts to spawning Gila chub and nesting yellow-billed cuckoo, construction would take place between October 1 and April 30.

CURRENT TERMS AND CONDITIONS OF THE BOX BAR ALLOTMENT GRAZING LEASE

- Winter grazing use only (November 1 to February 28) shall be permitted on the riparian pastures (River, Big Bug, Bald Hill, and Cross S).
- Pasture rotation necessitate livestock movement riparian pastures at times outside of the season of use. Cattle must be moved within a two-week time period unless otherwise directed by the authorized officer. The majority of cattle must be gathered in upland pastures before the scheduled move date and trailed through the riparian pastures to the upland pastures scheduled for use. Concurrence with schedule deviation must be obtained in advance from Hassayampa Field Office personnel.
- Salt blocks and/or mineral supplements will not be placed within a quarter 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).
- Upland pastures shall receive growing season rest an average of one in three years.

TERMS AND CONDITIONS TO BE MODIFIED

- Winter grazing use only (November 1 to February 28) shall be permitted on the riparian pastures (River, Big Bug, Bald Hill, and Cross S).

NEW TERMS AND CONDITIONS TO BE ADDED TO THE GRAZING LEASE

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- Winter grazing use only (November 1 to February 28) shall be permitted in the River and Big Bug riparian pastures.
 - No livestock grazing use will be allowed in the Indian Creek riparian enclosure.

- The Indian Creek enclosure and water gaps must be inspected twice a year by the lessee. All fences and/or water gaps that need to be repaired must be repaired by the lessee before turning any livestock into the Bald Hill or Cross S pastures.
- Actual use must be turned into the BLM within 15-days after completing annual grazing use, or at the end of the grazing season (February 28) on a yearly basis.

RATIONALE

The livestock grazing stream bank alteration and utilization stipulations of the previously released Biological Opinion for the Indian Creek riparian area are being met sooner than expected on almost a yearly basis. This is shown in the Multiple Indicator Monitoring (MIM) data that has been collected and analyzed by the BLM in recent years. After grazing stipulations are met in the Indian Creek riparian area, livestock are removed from the entire Bald Hill pasture by the lessee. This action removes a significant amount of land adjacent to the Indian Creek riparian area that would be otherwise available to livestock grazing.

An additional fence that excludes livestock from accessing critical reaches of the stream would make livestock management in the riparian area easier for the lessee; but would also make much of the upland area in the Bald Hill pasture available to grazing without stipulations for riparian management. The proposed action would also likely increase Gila chub habitat productivity through increased vegetation abundance and water holding capacity in the stream by excluding livestock grazing in the riparian area. The overall functionality of the Indian Creek riparian ecosystem would likely be improved through the implementation of the proposed action.

AUTHORITY

The authority for this decision is contained in Title 43 of the Code of Federal Regulations, as amended, effective July 11, 2006, which states in pertinent subparts and sections:

§ 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 C.F.R. 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, or improve rangeland productivity, to assist in restoring ecosystems to properly functioning condition, to conform with land use plans or activity plans, or 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.

§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 the 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.

§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 of this part, except as provided in paragraph (b) of this section.

§4130.3 Livestock grazing permits and leases shall contain terms and conditions determined by the authorized officer to be appropriate to achieve the management and resource condition objectives for 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) Provisions 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, 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 or this part. To the extent practical, shall provide to affected permittees or lessees, States having lands or responsibility for managing resources within the affected area, and the interested public an opportunity to review, comment and give input during the preparation of reports that evaluate monitoring and other data that are used as a basis for making decisions to increase or decrease grazing use, or to change the terms and conditions of a permit or lease.

§4160.2 Any applicant, permittee, lessee or other interested public may protest the proposed decision under 4160.1 of this title in person or in writing to the authorized officer within 15 days after receipt of such decision.

§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 management practices or levels of grazing use on public lands are significant factors in failing to achieve the standards and conform with the guidelines that are made effective under this section. Appropriate action means implementing actions pursuant to subparts 4110, 4120, 4130, and 4160 of this part that will result in significant progress toward fulfillment of the standards and significant progress toward conformance with the guidelines.

APPEAL OF THIS DECISION

Any applicant, permittee, lessee or other person whose interest is adversely affected by the final decision may file an appeal and petition for stay of the final decision pending final determination on appeal under 43 CFR §4160.4, §4.21 and must follow the requirements set forth in §§ 4.470 through 4.480 of this title. The appeal and petition for stay must be filed in the office of the authorized officer, Rem Hawes, HFO Field Manager, 21605 North 7th Avenue, Phoenix, Arizona 85027, within 30 calendar days following receipt of this final decision.

The appeal shall comply with the provisions of 43 CFR 4.470 and state the reasons, clearly and concisely, why the appellant thinks the final decision is in error. When filing a petition for stay, the appellant must show sufficient justification based on the following standards:

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

Sincerely,



Rem Hawes
Field Manager
Hassayampa Field Office

Enclosures: As stated

Box Bar Allotment Interested Parties list:

Arizona Antelope Foundation
PO Box 12590
Glendale, AZ 85318
Cert Mail: 7015 1660 0000 0574 9779

Arizona Cattlemen's Association
Attn: Patrick Bray
1401 N. 24th Street, Suite 4
Phoenix, AZ 85008
Cert Mail: 7015 1660 0000 0574 9786

Arizona Game and Fish Dept.
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Flagstaff, AZ 86001
Cert Mail: 7015 1660 0000 0574 9793

Arizona Game and Fish Dept.
Region 4
9140 E. 28th Street
Yuma, AZ 85365
Cert Mail: 7015 1660 0000 0574 9809

Arizona Game and Fish Dept.
Region 6
7200 E. University Drive
Mesa, AZ 85207
Cert Mail: 7015 1660 0000 0574 9816

Arizona State Land Department
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Phoenix, AZ 85007
Cert Mail: 7015 1660 0000 0574 9823

Center for Biological Diversity
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Jeff Williamson
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United States Fish & Wildlife Service
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Phoenix, Arizona 85021-4951
Cert Mail: 7015 1660 0000 0574 9878

Western Watersheds Project
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Tucson, AZ 85705
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ATTACHMENT 1

BLM's response to Protest by Western Watersheds Project for the Indian Creek Riparian Management Proposed Decision

A notice of Proposed Decision for the Indian Creek Riparian Management Environmental Assessment (EA), located in the Box Bar livestock grazing allotment, was issued on October 26, 2015. In accordance with 43 CFR 4160.2, any applicant, permittee, lessee, or other interested public may protest the proposed decision under Section 4160.1 of this title in person or in writing to the authorized officer within 15 days after receipt of such decision.

On November 10, 2015, the Bureau of Land Management, Agua Fria National Monument, received a timely protest from Western Watersheds Project (WWP). Each of the following are protest points that were deemed substantive, and led to slight modifications of the proposed terms and conditions of the grazing permit and reanalysis of impacts of the Proposed Action in the EA.

Protest Point 1: "WWP protests the failure to fully consider the impacts of the crossing areas on the riparian habitats. While the EA and the proposed action are right to situate the crossings in areas of stable soils so as to reduce soil impacts, the EA utterly fails to consider the downstream water quality impacts of these new livestock concentration areas. The analysis of the EA is limited largely to the benefits to species that would gain from the deeper pools within the enclosure but says nothing more about the decreased water quality in the immediate vicinity of the funnel points.

Additionally, because the crossing points would be heavily impacted in terms of vegetation connectivity, the riparian corridor is effectively interrupted and travel by wildlife in the dense understory of the riparian area would be disconnected. This impact is not disclosed or analyzed in the EA, nor is this difference assessed under Alternative 3."

BLM Response: The positive and negative impacts from the proposed action (enclosure and crossing areas) on riparian vegetation and soils, as well as water quality, are examined in detail in several places in the EA. Please refer to sections 3.3.2.1 (pg. 21-22), 3.3.2.3 (pg. 21-22), 3.4.2 (pg. 26), and 4.2.2 (Table 6.). Several scientific papers were also cited as references as to the impacts from the proposed action to riparian areas.

Additionally, the proposed fences would be built to meet BLM fencing specifications to be wildlife friendly. While wildlife movement may be inhibited by fencing, none of the proposed enclosure fences would completely exclude wildlife from the riparian area. Wildlife movement

within the riparian enclosure is discussed in further detail in section 3.3.2.3 (pg. 22) and 4.22 (Table 6, pg. 28) of the EA.

Protest Point 2: “WWP protests the failure to analyze the forage availability of the allotment under the various alternatives. The analysis of Alternative 4 allows that removing the Cross S and Bald Hill pastures would require a concurrent reduction in AUM. EA at 28. It is not clear that the numbers are anything than a pro rata reduction based on the total acreage. But not all acres are created equal and it is not clear that the allocation of forage in the Cross Y and Bald Hill pastures doesn’t depend heavily on the use of fast-growing riparian vegetation.”

BLM Response: The AUM reduction numbers are based on current AUMs per acre in each pasture. Riparian vegetation is not typically used to calculate livestock carrying capacity and was not likely used when stocking rates were initially set for the allotment; therefore excluding riparian vegetation from the allotment would not change the livestock carrying capacity and/or stocking rates for the upland areas of the allotment. Further, there is a 40% livestock utilization threshold for key forage species within the upland areas of the allotment. When the 40% utilization threshold is met, regardless of the stocking rate, livestock would be moved to a new area of the allotment, leaving 60% of the forage as residual forage for wildlife and ecosystem functionality. Furthermore, the current terms and conditions for the livestock grazing lease for the Box Bar Allotment states that upland pastures will only be used two out of three years, which allows for one season of rest in upland pastures out of every three grazing seasons.

Protest Point 3: “WWP protests the failure to protect the unnamed riparian tributary from the impacts of livestock grazing. The tributary is largely outside of the fenced area, as shown in Figure 6 where the water diversion is proposed under Alternative 2. EA at 15. While not dedicated as Gila chub critical habitat, the BLM’s failure to analyze the likely increased impacts to this sensitive habitat under Alternative 1 is a major failing of the EA.”

BLM Response: Impacts to the unnamed tributary from the proposed action are analyzed in detail in sections 3.3.2.1, 3.3.2.3, and 4.2.2 (Table 6).

Protest Point 4: “WWP protests the failure to disclose relevant details regarding permittee compliance with existing restrictions. If the BLM has records detailing permittee disregard for riparian closures, utilization limits, permit violations, or other evidence of livestock mismanagement, that should be disclosed in the EA. The public and the decision-maker should know the viability of the proposed action as it entails maintenance of the water gaps and other fencing, and the proposed action is a considerable expense for the taxpayer if it will be rendered ineffective by willful or negligent trespass.”

BLM Response: Please refer to Table 1 in the EA which outlines when the lessee was in non-compliance with the Terms and Conditions of their grazing lease and the Biological Opinion for the Indian Creek Riparian area as related to describing the past and current ecological conditions in the area. Additional details regarding records of non-compliance are outside the scope of this analysis.
