

Horse Mountain Permit Renewal Protest Responses

	Document	Comment	Response
1	Proposed Decision	The change in grazing use proposed by BLM has not been discussed with the allottees. Notification of a scoping meeting doesn't meet the requirements contained in 43 CFR4130.3-3.	The proposed changes have been discussed with the permittee and the Rangeland Management Specialist assigned to the allotment. Additionally, the permittee has received copies of all documents that have gone out to all interested parties.
2	EA Comment Responses	In the document included with the Proposed Action, entitled "EA Comments and Reponses" number 8, the comment was made, "How would the grazing system work if there is no dependable water in the pastures? The answer is, "There is perennial water, from unnamed spring, on the Catchment Pasture and seasonal waters within both pastures." Once again, how can a grazing system work without dependable perennial water in both pastures?	Numerous allotments do not have perennial waters in all pastures and are reliant on seasonal or ephemeral waters. If sufficient water is not available to support livestock use, the pasture would not be utilized.
3	Proposed Decision	Furthermore, the Proposed Decision is in error on permitted numbers. If the proposed grazing system is implemented, the permittee would be able to use the grazing allotment with the same number of livestock currently permitted, but the permittee would only be able to use the allotment for 14 months out of 28. This is a 50 percent reduction in livestock use. And, by BLM's own admission, contained in "Horse Mountain Permit Renewal EA Comments and Responses" (Response #8), no perennial livestock water exists in Horse Mountain Pasture, which would result in a further loss of use of the allotment.	In years when both pastures are used the permittee may graze up to 312 AUMs, the same number that are currently permitted. Numerous allotments do not have perennial waters in all pastures and are reliant on seasonal or ephemeral waters. If sufficient water is not available to support livestock use, the pasture would not be utilized.
4	S&G and EA Comment Responses	Under EA Comments and Responses, comment number 6, it is stated, "included language relating to drought effects to EA". I find no such language. The current drought has been given no thought or analysis in either the EA or the Standards and Guidelines document. In previous comments	Drought was considered in the S&G and EA. Section 6.3 of the S&G discusses potential for vegetation changes related to drought. Table 6 of the S&G evaluation shows that the past decade was 6 inches below the previous decadal median. Section 2.1.1 and 3.1.3 of the EA reference the

		I stated, "Deer Creek was determined to be functional-at-risk, without apparent trend". Looking at the climatic information, and over 13 years of drought, I would expect the riparian area to be functional-at-risk, with a downward trend regardless of whether there was livestock grazing in the creek or not. When looking at wetland and riparian areas, I would also look at the climatic regime. Vegetation change doesn't happen in a vacuum. BLM has not adequately considered the effect of drought on riparian areas and springs.	potential effects of drought.
5	EA Comment Responses	In "Horse Mountain Permit Renewal EA Comments and Responses" (Response #29) BLM admits that it doesn't even know the location of Deer Spring but if it exists, it will be fenced to preclude livestock use. How can livestock be damaging a spring area that BLM doesn't know the location of and therefore can't determine if there is damage by livestock?	Section 2.2 of the EA states: The proposed grazing rotation with the included periods of rest in Table 2 should allow for recruitment and retention of warm and cool season grasses as well as riparian plant communities. If, after three years when PFC [proper functioning condition] is conducted, there is no improvement to the riparian habitat, an additional 190' fence would be built between the Horse Mountain corrals and pasture fence. This would create a 1.4 acre enclosure along Deer Creek which is believed to encompass the area of Deer Spring. The effectiveness of this enclosure and vegetation response would be monitored (PFC conducted at three and five years) and assessed for its effectiveness and management implications.
6	Comment and Response	BLM states that the Horse Mountain Allotment is in MLRA 38-1 when rainfall data clearly shows that it is in 38-2.	BLM stated that the allotment was in a transition zone between the precipitation zones and both were considered in the evaluation. Comment and Response number nine and S&G Table 14. Previous decadal median precipitation is below 16" which supports that the allotment, within the last decade, is on the low end of the 16-20" precipitation zone and on the high end of the 12-16" precipitation zone.
7	Comment and Response	This Proposed Decision is based on the "analysis" contained in the "Arizona Standards and Guidelines Evaluation, Horse Mountain #45240". The evaluation that serves as a basis	Several changes were made within the S&G to clarify text or add additional information and are noted in the Comment and Response table.

		for this Proposed Decision is fatally flawed. My comments on the Evaluation, dated July 10, 2013, clearly illustrated the flaws present in the evaluation. No changes have been made in the document so my comments are still pertinent.	
8	S&G	Probably the most egregious flaw is the failure to link the Ecological Sites on the allotment to the actual locations where trend information is collected. Therefore, neither the BLM, permittee or an interested party can determine whether or not Standard 3, Desired Resource Conditions are being met. Desired Resource Conditions have been determined by Ecological Site, but the trend locations are not defined by ecological site. BLM could not possibly determine that the allotment was meeting Standard 3 without measuring conditions on each ecological site. No data is presented showing that this crucial determination was done. Even a map showing ecological sites and the locations of the key areas would aid in determination of whether or not the allotment is meeting Standard 3. The analysis is fatally flawed and the Proposed Decision should be vacated.	The upland health evaluation is conducted on a site(s) which is believed to be representative of the condition of the allotment. The information that was available at the time of the assessment was used in the analysis. See response #9 below.
9	EA	The Environmental Analysis, on Page 19 states that "a completed soil survey of the area has not been conducted and ecological site descriptions and reference sheets have not been developed for all of the ecological sites found within the Horse Mountain Allotment." This statement is untrue. The soil survey for AZ673. Soil Survey of Graham County, AZ, Southwestern Part, has been completed but not officially published. The Natural Resource Conservation Service has included the map units on its Web Soil Survey, online. Ecological Site information is also available.	At the time the evaluation was completed the soil survey was not completed. Review of updated information on NRCS website confirms that the soil survey is done. There are four ecological sites within the Horse Mountain Allotment. A reference sheet for one of the Ecological Sites (R038xB204AZ) was approved on March 28, 2013. The other three ecological sites (R038XB205AZ, R038XB215AZ, R038XC317AZ) do not have approved reference sheets available on the NRCS website. The information that was available at the time of the assessment was used in the analysis.
10	EA	The proposed thinning of brush on the 5.5 acre sub-watershed does not result from any scientific analysis. First, as mentioned in my original comments, there is no	The proposed thinning and scattering of brush is a feature of the proposed action that was developed and approved by an interdisciplinary team of BLM specialists to meet

		evidence that the sub-watershed actually supplies water to the spring. Second, chaparral vegetation sprouts from the roots after trimming or cutting and will quickly use the same amount of water as before treatment. Third, the mechanism for conducting the thinning work, specified in "Horse Mountain Permit Renewal EA Comments and Responses" (Response #5) using the thinning as seasonal fire staff training session is not allowed by BLM policy and would constitute misuse of Government funds. A previous allottee has stated that Horse Spring has not had water for over 25 years.	multiple resource objectives. The reference to the use of a youth conservation corps crew or training activity for fire staff was intended as an example of the relative scale of the activity.
11	Proposed Decision	Required consultation and coordination has not been done. Therefore the proposed decision should be vacated.	All requirements of consultation and coordination, including with the permittee and interested parties have been fulfilled.
12	Proposed Decision	The change in grazing use proposed by BLM has not been discussed with the allottees.	The change in use was discussed with the permittees when they were applying for preference on the allotment.
13	EA	Also during the time the Environmental Analysis was being completed the Horse Mountain allotment was not being maintained to exclude cattle from neighboring allotments and there was also a high number of unworked remnant cattle from the previous allottee grazing the allotment. The current permitted number of cattle is 26 head year round, however, due to poorly maintained fences on the north boundary of the allotment the and a high number of remnant cattle in the area, there was a much higher number of livestock making use of the allotment when the EA was being completed. In the spring of 2012 60 to 75 head of cattle were observed in the Horse Mountain allotment around the "unnamed" spring and throughout the riparian area. On page 52 of the EA it states: "During the assessment cattle were seen moving under the southwestern allotment boundary gap fence, which is located across Deer Creek. Under current conditions livestock can move freely between the Horse Mountain and	The condition of the allotment was discussed in depth with the current permittee during their application process. The range management specialist conducted compliance checks regularly and never counted more than 14 head of cattle. The cattle count from the Forest Service Allotment that is adjacent to Horse Mountain should not be included. The BLM has contacted the San Carlos Apache Tribe and is tendering negotiations for fence repair. The permittee is responsible for boundary fences under the mandatory terms and conditions. All of these items were discussed and acknowledged by the permittee.

		Aravaipa allotments along Deer Creek. Maintenance or replacement of the aging boundary fences will be very important to ensure that cattle from adjoining allotments or the San Carlos Apache tribal lands are not entering the allotment." I agree with this statement. It is and will be important to replace and maintain fences so that neighboring cattle are not grazing the allotment. However, it is my opinion that the failure to maintain the fences and the increase of cattle using the springs and allotment is the primary reason for the current condition of the allotment and should have received more attention in the EA.	
14	Proposed Decision	I also protest the proposed grazing rotation for the allotment. Under the proposed rotation the allottee would have to completely remove all livestock from the allotment after every 12 months of grazing. Due to road conditions and the steepness of the terrain cattle would have to be trucked out 2 or 3 at a time in the back of a pickup truck fitted with racks. This would have a significant and undue financial impact on the existing permit holder, and is not a feasible option.	The change in use was discussed with the permittees when they were applying for preference on the allotment.
15	EA	The EA failed to take a hard look at the technical recommendation to exclude livestock from Deer Creek Spring and the BLM's justification for this failure does not make sense. WWP raised the issue in comments that the June 2012 S&G recommended excluding livestock from Deer Creek Spring as well. Horse Mtn 2012 at 23. That document also recommended providing water away from Deer Creek. Ibid. The new proposed action and the alternatives in the new EA do not analyze these options and in fact, dismisses the alternative to fence Deer Creek for lack of upland water. The BLM rationalized its dismissal of technical recommendations in the response to comments by saying that it is unclear where Deer Creek Spring even is due to the absence of perennial water.	<p>The potential exclosure fence on Deer Creek would involve installation of 190 feet of fencing, which would need to be monitored post flood events for integrity and repaired as needed. To fence all of Deer Creek, the majority of which is ephemeral-intermittent and does not support riparian obligate species, would require approximately six miles of fencing and, as discussed in Section 2.5 would have additional negative impacts to wildlife and would pose an impractical maintenance requirement.</p> <p>During the interim three year period, as staff time allows, additional visits to Deer Creek to attempt to locate Deer Creek Spring, will be made in an attempt to see if Deer Creek Spring maintains any hydrologic surface connection.</p>

		<p>Response to Comments #29. To remedy this, in three years, BLM will attempt to locate Deer Spring during the PFC assessment. <i>Id.</i> But, "If after three years of the proposed rest-rotation, PFC indicates that the riparian area, including the Deer Spring area have not improved, an enclosure fence will be built." <i>Id.</i> It is unclear how BLM intends to measure "improvement" in an area it has not even located yet, not will try to locate until the end of the period allotted for that improvement.</p>	<p>The adaptive management decision framework described in the EA and Proposed Decision allows for the BLM to protect the Deer Creek Spring should conditions on the allotment change.</p>
16	EA	<p>Also, the EA and proposed decision fail to be explicit about timing for the PFC. The EA reveals that the riparian assessment in June 2011 noted, "{Sapling sycamores and sedges are being grazed and trampled throughout the area assessed." EA at 20. The timing of the next PFC is important relative to whether it is a rest or use year on the pasture. If there are no livestock present, it is likely that the impacts to annual growth (sapling and sedges) will show improvements. But will this improvement be undone in the next grazing cycle?</p>	<p>PFC will be done according to BLM protocol.</p>
17		<p>The proposed action fails to address the immediate protection of Deer Creek. The EA "considered but eliminated from detailed analysis" an alternative that would fence off the riparian area of Deer Creek. It was dismissed because "it would not addressing {sic} the resource management objectives of the RMP mentioned in the purpose and need an impracticably....maintenance would be impractical." EA at 14. The agency dismisses this alternative for immediate implementation to address the failing conditions of Deer Creek, but retains it without analysis as a potential future management tool: "If, after three years, there is no improvement in the riparian habitat, an additional 190' fence will be built between the Horse Mountain corrals and pasture fence. This will create a 1.4 acre enclosure along Deer Creek." NOPD at 3. This</p>	<p>The proposed rest-rotation and enclosures are intended to improve riparian conditions on the allotment. The potential enclosure fence on Deer Creek would involve installation of 190 feet of fencing, which would need to be monitored post flood events for integrity and repaired as needed. To fence all of Deer Creek, the majority of which is ephemeral-intermittent and does not support riparian obligate species, would require approximately six miles of fencing and, as discussed in Section 2.5 would have additional negative impacts to wildlife and would pose an impractical maintenance requirement.</p>

		doesn't seem so impractical or unreasonable" and this alternative should have been considered. 42 U.S.C. § 4332(2)(c)(iii).	
18	Proposed Decision	The EA fails to demonstrate that the proposed action is within the carrying capacity of the range, in violation of the Federal Lands Policy and Management Act. The S&G for this allotment indicates that the last comprehensive management plan for the allotment determined a carrying capacity of 23 CYL (276 AUM). S&G at 31. Then, it says, "In 1986 the permit was increased to 312 AUM (26 CYL)," but it does not described the basis for that increase and no new study or evidence is cited to suggest that the carrying capacity of the land was higher, just that "the permit was increased The proposed decision maintains this arbitrary and capricious adjustment. NOPD at 2.	There is no evidence that the continuation of the decision in 1986 to increase the permitted AUMs to 312 would cause undue degradation, the allotment is currently meeting land health standards for upland sites and the difference in AUMs would not be expected to change the riparian condition. Changes in management to address riparian areas were analyzed and will be implemented.
19	S&G	The carrying capacity estimates and stocking rates were set prior to the decades of intervening drought and that the EA did not contain sufficient data to demonstrate that the status quo stocking rate was appropriate, such as utilization data or consistent monitoring. WWP Comments at 1. The BLM did not address this comment and we protest on this basis.	<p>The BLM provided frequency and monitoring data from 1979 through 2011 which indicate general trends of improvement in cover and composition in upland vegetation.</p> <p>In addition to any available monitoring data, the BLM uses the 17 indicators of rangeland health to evaluate land health conditions. The interrelated attributes of soil/site stability, hydrologic function, and biotic integrity were evaluated by an interdisciplinary team to determine if ecological processes related to those attributes are functioning within a normal range of variation. As described in Technical Reference 1734-6, Interpreting Indicators of Rangeland Health, these evaluations "provide early warnings of potential problems and opportunities by helping land managers identify areas that are potentially at risk of degradation or where resource problems currently exist." As a result of the land health evaluation on this allotment and based on the indicators used in that</p>

			assessment, it was determined that the Arizona Standards for Rangeland Health were being met for Standards 1 and 3 for upland sites and were not being met for Standards 2 and 3 for riparian areas. Changes in management to address riparian areas were analyzed and will be implemented.
20	EA	<p>The proposed action fails to address invasive and non-native species in substantive ways. The EA indicates that red brome and tamarisk occur on the allotment and on neighboring allotments, and that livestock can play a role in the distribution of seeds and the infestation in new areas. EA at 23. The EA then concludes, "The potential would be reduced with the proposed rest-rotation and exclosures." Id. Why is that? "The EA fails to take a hard look at how the proposed action would affect the incidence of these species on the allotment or in the riparian areas. Is there some reason, unknown to science, that these plants can't establish every other year? The EA effectively dismisses this issue, despite the ecosystem changes that introduced native species can create. Also, since the EA admits that authorized livestock congregate in riparian areas for the majority of the year (EA at 19). It is unclear how the agency expects the rest-rotation schedule of authorized livestock to address this impact. Certainly, excluding all livestock from the riparian areas would be a safer bet to limit the infestations of these species.</p>	<p>The EA addresses potential differences in the potential for the introduction and spread of invasive and non-native species in the Alternatives analyzed. To clarify, the potential for the introduction and spread of invasive and non-native species would be reduced with the proposed rest-rotation, exclosures, and subsequent increase in plant cover and vigor.</p> <p>Rationale for not fencing Deer Creek in its entirety (provided in section 2.5 Alternatives Considered but Eliminated From Detailed Analysis) include additional impacts to wildlife and the impracticality of maintenance due to the presence of several side canyons and relatively large flood events.</p> <p>The BLM believes that the proposed rest-rotation and exclosures will allow for the establishment and growth of riparian vegetation on the allotment. As indicated in the proposed action, if after conducting assessments after the implementation of the proposed actions, there are not improvements in the riparian condition, an additional riparian exclosure would be constructed and monitored for its effectiveness and management implications. Based on these future actions and resulting alternatives, additional actions would be evaluated, if needed, to prevent undue degradation of resources.</p>
21	EA	<p>The proposed action fails to address potential impacts to lowland leopard frogs, in violation of the BLM's</p>	<p>The potential for lowland leopard frogs to occur on the Horse Mountain allotment is discussed in section 3.1.5 of</p>

	<p>Sensitive Species Policy. On the Horse Mountain allotment, the EA indicates that lowland leopard frog could be present at the one masonry dam with a tank and springs. EA at 21. The analysis then claims that the proposed action would increase vegetation cover and plant diversity in wetted areas, which have the potential to benefit frogs. EA at 23. WWP commented that the EA doesn't take a hard look at livestock impacts on the potential habitat for lowland leopard frog. The BLM ignored this species in its response to comments. Response to Comments #38. The EA has not been amended with more information, and the agency has not demonstrated compliance with its own policy or NEPA.</p>	<p>the EA. The relative impacts of the Proposed Action and the No Action Alternative on lowland leopard frogs, if present, were disclosed in section 4.1.5 and 4.2.5 respectively.</p>
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