



# United States Department of the Interior



## BUREAU OF LAND MANAGEMENT

Phoenix District

Lower Sonoran Field Office

21605 North 7th Avenue

Phoenix, Arizona 85027

[www.blm.gov/az/](http://www.blm.gov/az/)

In Reply Refer To:  
4400 (P010)

NOV 21 2014

CERTIFIED MAIL - RETURN RECEIPT REQUESTED NO. 7013 0600 0000 5945 2291

A Tumbling T Ranches  
c/o Robert Rayner  
14929 West Broadway  
Goodyear, AZ 85338

**NOTICE OF FINAL DECISION**  
*for the*  
**GRAZING PERMIT RENEWAL OF THE**  
**HAZEN-SHEPARD ALLOTMENT (#03043)**  
**FOR**  
**A TUMBLING T RANCHES**

Dear Mr. Rayner:

The *Hazen-Shepard Allotment Rangeland Health Evaluation* was conducted on the Hazen-Shepard Allotment (#03043) in 2010 through 2012, and issued to you and members of the interested public on March 8, 2013. The purpose of this evaluation was to assess whether the allotment is or is not achieving the *Arizona Standards for Rangeland Health and Guidelines for Grazing Administration* (1997), along with appropriate Bureau of Land Management (BLM) objectives of the *Lower Sonoran Resource Management Plan and Record of Decision* (LS RMP and ROD, Approved 2012).

In addition to the Rangeland Health Evaluation (RHE), the Hazen-Shepard Allotment Grazing Permit Renewal Environmental Assessment (*DOI-BLM-AZ- P020-2013-0027-EA*) was prepared to analyze any effects of the Proposed Action and alternatives on resources in the Hazen-Shepard Allotment. This EA was enclosed with the Notice of Proposed Decision to renew the Hazen-Shepard Allotment grazing permit under specific terms and conditions, and a Finding of No Significant Impact. These were issued to you and interested publics on March 7, 2014. In accordance to Sec. 43 CFR 4160.1, any applicant, permittee, lessee, or other affected interest may protest a proposed decision under in person or in writing to the authorized officer within 15

days after receipt of such decision. The protest, if filed, should clearly and concisely state the reason(s) as to why the proposed decision is in error.

On April 30, 2014, the Bureau of Land Management, Lower Sonoran Field Office, received a timely protest from Western Watersheds Project (WWP). Substantive protest points led to slight modifications of the proposed terms and conditions of the grazing permit and reanalysis of impacts of the Proposed Action. BLM's responses to WWP's protest are enclosed with this Final Decision (see Attachment 1).

## **BACKGROUND**

The Hazen-Shepard Allotment is located south of Arlington, Arizona, a small town 40 miles west of Phoenix. The allotment lies directly west of the Gila River between Buckeye and Gila Bend, Arizona. The allotment boundary encompasses 34,178 acres, of which approximately 23,129 acres is administered by BLM. The BLM lands on the allotment are west of the Gila River, while the entire portion of the allotment east of the Gila River is privately owned and is used primarily for agricultural crops and wildlife habitat.

Based on the data compiled and analyzed for the Rangeland Health Evaluation, the Hazen-Shepard Allotment is meeting all Standards and Guidelines of the Arizona Standards for Rangeland Health. Across all ecological sites, current vegetative species composition and structure provides cover and forage to support a diverse wildlife community. All Desired Plant Community (DPC) objectives are being achieved at all three key areas. Modifications to the permit's terms and conditions were made in the Proposed Action Alternative to minimize potential impacts of ephemeral livestock grazing on the allotment.

The BLM is proposing to fully process the term grazing permit on the Hazen-Shepard Allotment in accordance with all applicable laws, regulations, and policies. Because Grazing Permit #03043 expired on February 28, 2008, the BLM renewed the permit with the same terms and conditions pursuant to Section 416 of Public Law 111-88, pending compliance with applicable laws and regulations. Compliance with all applicable laws and regulations includes consultation, coordination and cooperation with affected individuals, interested publics, States, and Indian Tribes; completion of the applicable level of National Environmental Policy Act (NEPA) review; conference/consultation with the United States Fish and Wildlife Service (USFWS) under Section 7 of the Endangered Species Act; and ensuring that allotments are achieving or making significant progress toward achievement of land health standards.

The BLM Lower Sonoran Field Office conducted both internal scoping with appropriate BLM staff and external scoping with the public and interested/affected groups and agencies in order to identify issues and discuss alternatives for this analysis.

On March 8, 2013, BLM sent the Rangeland Health Evaluation out to the permittee and interested publics for a 30-day comment period. Western Watersheds Project (WWP) provided comments, received on March 28. Substantive comments were incorporated into the Environmental Assessment and the Proposed Decision, as applicable. The EA addressed a list of issues identified by you as the permittee, WWP, other interested publics, and the BLM interdisciplinary team, and fully analyzed the resources and resource uses associated with these issues. Technical recommendations from the Rangeland Health Evaluation and issues brought up

during internal and external scoping helped develop the alternatives for the EA. The terms and conditions of the permit proposed in the EA were revised slightly to due to substantive protest points made by WWP. Responses to WWP’s protest are enclosed with this Final Decision.

**FINAL DECISION**

After reviewing the analysis presented in the Hazen-Shepard Allotment Grazing Permit Renewal Environmental Assessment (*DOI-BLM-AZ- P020-2013-0027-EA*) (*EA*), making a Finding of No Significant Impact (FONSI), and careful consideration of the comments, protests and other information received through consultation, coordination, and cooperation with the permittee, stakeholders, and interested publics, it is my Final Decision to implement the Proposed Action, with the following terms and conditions for the Hazen-Shepard Allotment:

1. *Issuance of a new 10-year grazing permit for A Tumbling T Ranches/ Robert Rayner for 2014-2024.* The permit will be issued consistent with the authorized use, grazing schedule, and terms and conditions specified in the permit, as follows:

**Standard Terms and Conditions for the Grazing Permit Renewal of the Hazen-Shepard Allotment, 2014-2024.**

<b>Allotment</b>	<b>Percent Public Land Billed</b>	<b>Number and Kind of Livestock</b>	<b>Season of Use</b>	<b>Total AUMs</b>
Hazen-Shepard (#03043)	97	0 Cattle*	03/01- 03/31	0*

\* Pursuant to the special ephemeral rule, when forage becomes available, the lessee must file an application and include the desired number of livestock and period of use. BLM staff will monitor the rangeland condition and potential for continued soil moisture and forage growth before permitting livestock use.

2. *In addition to the standard terms and conditions above, the following terms and conditions shall be added to the grazing permit, pursuant to 43 CFR 4130.3-2:*

- a. The Hazen-Shepard Allotment was designated for ephemeral grazing use by agreement dated December 1968. As such, when an ephemeral application is submitted, BLM resource specialists will monitor the allotment to ensure that rangeland conditions are meeting Arizona Standards for Rangeland Health and are adequate to meet the forage needs of the number of cattle requested in the grazing application and for wildlife use in the area.
- b. When ephemeral grazing is authorized, it is the responsibility of the permittee to prevent livestock from accessing the Fred J. Weiler Greenbelt or the Gila River.
- c. In order to improve livestock distribution on the public lands, all feed supplements (e.g., salt, minerals, vitamins, protein cake, etc.) must be placed a minimum of 1/8 mile upslope from drainages/dry washes and watering facilities (either permanent or temporary) unless stipulated through a written agreement or decision in accordance with 43 CFR 4130.3-2 (c). Supplements must be removed when livestock are removed from the public lands.

- d. In accordance with the *Strategy for Desert Tortoise Habitat Management on Public Lands in Arizona* (BLM 1990) which identified Category II desert tortoise habitat across much of the western extent of the Hazen-Shepard Allotment, the following condition will apply:

“On ephemeral allotments with interim Category I or II tortoise habitat, use based on reasonable potential for feed to make can be authorized for one 30-day period only. Thereafter, forage would have to be present before extending the use. Ephemeral use after March 31 would be subject to a determination by the BLM. Use after this date will be authorized in increments of 15 to 30 days, if it is determined that adequate feed is available for both tortoise and livestock.”

- e. The permittee shall provide temporary watering facilities (30 to 60-day limit) for cattle along the southern portion of the allotment along Citrus Valley Road during ephemeral grazing use. The facilities shall be placed in the uplands at least 1 mile west of the Enterprise Canal to prevent cattle from using the canal as a water source. Temporary water troughs shall be placed in previously disturbed areas and must be surveyed and approved by BLM staff prior to placement to assure no inadvertent impact to resources would occur.
- f. Standard language included in every grazing permit or lease states: “As required by the Native American Graves Protection and Repatriation Act regulations at 43 CFR 10.4(g) ‘If in connection with allotment operations under this authorization, any human remains, funerary objects, sacred objects or objects of cultural patrimony as defined in the Native American Graves Protection and Repatriation Act (P. L. 101-601; 104 Stat. 3048; 25 U.S.C. 3001) are discovered, the permittee shall stop operations in the immediate area of the discovery, protect the remains and objects, and immediately notify the Authorized Officer of the discovery. The permittee shall continue to protect the immediate area of the discovery until notified by the Authorized Officer that operations may resume’.”

## RATIONALE

The BLM's objectives for rangeland management are to carry out the intent of the Taylor Grazing Act of 1934, as amended and supplemented, the Federal Land Policy and Management Act of 1976, and the Public Rangelands Improvement Act of 1978. When compared to the other alternatives analyzed in the EA, the new terms and conditions for the Hazen-Shepard Allotment (described above) allow continued ephemeral grazing that is compliant with these Acts while providing the best protection of natural resources and special designations within the allotment.

Title 43 Code of Federal Regulations (CFR) Part 4100 govern grazing administration for public rangelands. Among other things, the regulations require the implementation of standards and guidelines to achieve the fundamentals of rangeland health (43 CFR 4180). Additionally, 43 CFR 4130.3-2 (c) provides for the placement of supplemental salt and/or mineral supplements. The *Special Ephemeral Rule*, published in the *Federal Register*, Vol. 33, No. 238 December 7, 1968, allows for the designation and management of ephemeral rangeland, and the *Lower Sonoran Resource Management Plan* (2012) provides Standard Operating Procedures for appropriate ephemeral authorization and monitoring.

## RIGHT OF APPEAL

Any applicant, permittee, lessee, or other person whose interest is adversely affected by the final decision may file an appeal in accordance with 43 CFR 4.470 and 43 CFR 4160.1-4. The appeal may be accompanied by a petition for stay of the decision in accordance with 43 CFR 4.21, pending final determination on appeal. The appeal and petition for stay must be filed in the office of the authorized officer, Edward J. Kender, BLM/ LSFO, 21605 North 7<sup>th</sup> Avenue, Phoenix, Arizona 85027-2929, within 30 days following receipt of the final decision.

The appeal shall state the reasons, clearly and concisely, why the appellant thinks the final decision is in error, and otherwise comply with the provisions of 43 CFR 4.470, which is available from the BLM office for your use in a BLM office.

In accordance with 43 CFR 4.21(b)(1), a petition for stay, if filed, must show sufficient justification based on the following standards:

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

Sincerely,



Edward J. Kender  
Field Manager

Enclosures

cc: Arizona Cattlemen's Association  
Arizona Game and Fish Department, Region 6  
Arizona Game and Fish Department, Region 4  
Arizona State Land Department  
Center for Biological Diversity  
Carter and Jack Gable  
U.S. Fish and Wildlife Service  
Western Watersheds Project  
The Wilderness Society

## Interested Publics for the Hazen-Shepard Allotment, 2014

Last Update November 2014

### Interested Publics - S&Gs

Arizona Game and Fish Dept.  
Region 6  
7200 E. University Drive  
Mesa, AZ 85207  
7013 0600 0000 5945 2208

Carter and Jack Gable  
PO Box 150  
Arlington, AZ 85322  
7013 0600 0000 5945 2284

Arizona Game and Fish Dept.  
Region 4  
9140 East 28<sup>th</sup> Street  
Yuma, AZ 85365  
7013 0600 0000 5945 2215

Arizona Cattlemen's Association  
Attn: Patrick Bray  
1401 N. 24th Street, Suite 4  
Phoenix, AZ 85008  
7013 0600 0000 5945 2222

Center for Biological Diversity  
PO Box 1178  
Flagstaff, Az. 85002  
7013 0600 0000 5945 2239

United States Fish & Wildlife Service  
2321 West Royal Palm Road  
Suite 103  
Phoenix, Arizona 85021-4951  
7013 0600 0000 5945 2246

Western Watersheds Project  
C/o Greta Anderson  
738 N.5th Ave, Suite 200  
Tucson AZ 85705  
7013 0600 0000 5945 2253

Arizona State Land Department  
1616 West Adams Street  
Phoenix, AZ 85007  
7013 0600 0000 5945 2260

Mike Quigley  
The Wilderness Society  
PO Box 18404  
Tucson, AZ 85731  
7013 0600 0000 5945 2277

## ATTACHMENT 1

### **BLM's Response to Protest by Western Watersheds Project of the Hazen-Shepard Allotment Grazing Permit Renewal**

A Notice of Proposed Decision (NOPD) for the Grazing Permit Renewal of the Hazen-Shepard Allotment (#03043) for A Tumbling T Ranches was issued on March 7, 2014. 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 April 30, 2014, the Bureau of Land Management, Lower Sonoran Field Office, 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: We protest the lack of analysis of the permitted number of livestock.** The NOPD states that the number of livestock on the allotment during an ephemeral authorization will be limited to 50 cow/calf pairs or 100 non-lactating cattle. Where does this number come from? . . . There is no information about past use of the allotment.

**Response:** The Proposed Action has been revised to remove Term and Condition #2 concerning the proposed stocking rate limit of 50 cow/calf pairs or 100 non-lactating cattle.

Information about past livestock use on the allotment is provided on page 30 of the RHE, which was sent to the permittee and interested publics on March 8, 2013, and again as an appendix to the EA on March 7, 2014.

**Protest Point 2:** The purpose and need of the EA does not provide a reason and, lacking an explanation, the upper limit can only be described as arbitrarily and capriciously set.

**Response:** The Proposed Action has been revised to remove Term and Condition #2 concerning the proposed stocking rate limit of 50 cow/calf pairs or 100 non-lactating cattle. The Proposed Action without this condition was reanalyzed in the EA.

**Protest Point 3: We protest the characterization of the proposed action as "low intensity."** The BLM is proposing to authorize 100 cattle for a month or two...in a limited area of the allotment proximate to a water haul site. By characterizing it thusly, the BLM is skewing the reader's perception of the likely impacts to the natural resources of the allotment. It is actually high intensity, short duration grazing under the maximum use of the proposed action, but the BLM does not analyze the action in the appropriate context. The EA admits that the ephemeral washes will receive more browsing and loafing than the upland sites, but this is still not discussed as a high-intensity stocking rate.

**Response:** BLM is not proposing to authorize 100 cattle. See Response to Protest Point 1. Ephemeral use will be authorized in accordance with the Special Ephemeral Rule and the Standard Operating Procedures stated in Section 1.3 of the EA.

**Protest Point 4: We protest the failure to include meaningful terms and conditions that will protect the public trust resources on the allotment.** BLM's proposed action does not entail post-grazing monitoring or land health assessments, which means that grazing impacts will not be assessed until the next permit renewal, if then.

**Response:** The terms and conditions in the Proposed Action Alternative were developed specifically to address the wide array of public trust resources on the allotment (see EA pages 16-17).

Monitoring plans for the allotment are not required to be included in the terms and conditions of a grazing permit. The BLM will conduct monitoring as part of its enforcement responsibilities outside of the terms and conditions that are required of the permittee. However, management actions are addressed in Condition #7 of the proposed Terms and Conditions in the event that "livestock grazing practices are causing non-attainment of resource objectives." Further, the Lower Sonoran RMP and the Special Ephemeral Rule have established Standard Operating Procedures by which to monitor and assess allotments before, during, and after ephemeral use.

**Protest Point 5:** The BLM does not explain how the impacts of this sporadic use on soils, vegetation, cultural resources, or other resources will be measured except to say it will ensure compliance with the Arizona Land Health Standards and Guidelines. . . .How will BLM ensure no downward degradation or unnecessary damage is occurring in the near term?

**Response:** See Response #4. Impacts of the proposed action on soils, vegetation, cultural resources, and other resources are analyzed in detail in Chapter 4 of the EA. Methods for the impact analysis are described on page 36 of the EA.

**Protest Point 6:** The nature of this permit and the temporary water haul locations suggest that intensive use will occur within the vicinity of the troughs. Are there key areas in the immediate vicinity? Will the BLM be monitoring the preferred forage species of desert tortoise?

**Response:** Key Area 3 is within 0.2 miles of the proposed water haul sites, but will no longer meet the criteria of a "key area" (see Hazen-Shepard Rangeland Health Evaluation, 2013, p. 35). Therefore, Key Area 3 will be converted to a utilization monitoring site to assess ephemeral utilization during ephemeral use authorizations. A new Sandy Wash key area will be established to study the impacts of livestock grazing on vegetation and soils resources along desert washes, including the availability of preferred forage species of desert tortoise. Key Area 1 is approximately 0.6 miles from the proposed water haul site and meets the criteria of a key area, and will continue to be monitored for rangeland health and trends in the future.

**Protest Point 7: WWP protests the potential impacts to Wilderness.** The BLM did not analyze whether the proposed action would result in an increase in grazing impacts in Wilderness, and ephemeral authorizations cannot be considered “established” use by livestock since it varies from year to year. . . . Here the BLM is proposing a plan that will enable grazing in parts of the allotment that otherwise lack sufficient water, effectively *increasing* grazing use. The BLM has not discussed how to prevent livestock use in the Wilderness.

**Response:** The EA at pages 66-67 analyzed potential impacts from livestock grazing on Special Designations, including Woolsey Peak Wilderness Area. Under the Proposed Action, the Wilderness Area lies outside the area of expected livestock use, and therefore no impacts to wilderness resources or characteristics are expected.

As stated in the EA on page 10, grazing has long been established on the Hazen-Shepard Allotment by virtue of the Taylor Grazing Act of 1934, the Federal Land Policy and Management Act of 1976, (FLPMA), the Public Rangelands Improvement Act of 1978 (PRIA), Title 43 CFR Part 4100, and under various district land use plans. “In 1973, the Hazen-Shepard Allotment was designated as southwest desert ephemeral range, and cattle were managed under the authority of the Ephemeral Range Special Rule” (RHE, p. 29). Further, the Hazen-Shepard RHE, at page 30, states, “Actual use records show that cattle were grazed on the allotment from August 1964. . . .Recollections of BLM staff and the current permittee indicate that this allotment was last grazed in the early 1990s.”

**Protest Point 8: WWP protests the failure to take a hard look at the potential for weed infestation under the action alternatives.** Here on the Hazen-Shepard, there is no grazing plan, no utilization limit on grasses, and the EA contains no hard look at the nativity of the forage that will comprise the bulk of the ephemeral authorization. There is no discussion of the agency monitoring use on the Hazen-Shepard to prevent weed spread by removing livestock before seeding, and no discussion of revegetation. . . . The EA should have also analyzed the connection between the proposed action and the likelihood of weed spread. . . .This is not addressed and WWP protests the failure of the agency to take a “hard look” at the proposed action.

**Response:** Invasive weeds are discussed on pp. 18-19 of the EA, and in Cumulative Impacts, Section 4.6. Monitoring for invasive weeds and prevention of the spread of weeds is discussed on page 70 of the EA. A discussion of revegetation is outside the scope of this permit renewal EA.

**Protest Point 9:** If BLM had taken a hard look, it might have looked at the literature synthesis prepared for BLM regarding the impacts of livestock grazing in the Sonoran desert. See Hall et al 2005. This review was conducted at the behest of BLM for lands immediately adjacent to the Hazen-Shepard allotment and should have been incorporated into the analysis.

**Response:** BLM has reviewed Hall et al’s (2005) literature review of impacts of livestock grazing in the Sonoran Desert, and has determined that it does not substantively change any considerations in the EA. Excerpts applicable to the proposed action include the following:

- “Although the literature, when viewed comprehensively, does document that livestock grazing can cause adverse impacts, it does not provide sufficient information regarding thresholds of grazing intensity that can enable one to distinguish between benign and damaging grazing intensities (Hall et al, 2005, p. ES.1).”
- “The BLM’s use of ephemeral allotments could be an appropriate starting point for a Sonoran Desert-specific livestock grazing management strategy. For most of the Sonoran Desert, as described in this report, only grazing in response to winter rains may be feasible...[T]he ability to set flexible stocking rates and to remove livestock quickly in response to changing conditions will be paramount.” (Hall et al, 2005, p. ES.4)

*Please note that all the protest points have been reviewed. If they have not been responded to above, they are either vague, outside the scope of the proposed action, opinion or redundant.*