



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Tucson Field Office
3201 E. Universal Way
Tucson, AZ 85756

June 1, 2016

In Reply Refer To:
4120 (AZG021)
Allot. No. 5232

CERTIFIED MAIL NO. RETURN RECEIPT REQUESTED: 7009 0960 0000 7836 2249

Wallace Coleman
P.O. Box 591
Willcox, Arizona 85644

PROPOSED DECISION

Dear Mr. Coleman:

INTRODUCTION AND BACKGROUND

The East SPRNCA Boundary Fence DNA (DOI-BLM-AZ-G020-2014-0023-DNA) is proposed to implement the construction of a 2.5 mile barbed wire fence originally analyzed by the SPRNCA Boundary Fence EA (EA_AZ_069_2003_0001). The lease holder of the Three Brothers grazing allotment, Mr. Coleman, would be constructing the fence utilizing fencing materials provided by the BLM and reimbursed for his time through an Arizona Game and Fish funding source.

PROPOSED DECISION

It is my proposed decision to implement the proposed action described in the DNA #: DOI-BLM-AZ-G020-2014-0023-DNA as summarized below.

Proposed Action

The following information is directly taken out of the DOI-BLM-AZ-G020-2014-0023-DNA, which describes the proposed action in detail.

The proposed action is the construction of a new fence line on the Three Brothers Allotment (#5232) along the San Pedro Riparian National Conservation Area boundary. The Environmental Assessment (EA_AZ_069_2003_0001) and this DNA includes project level analysis for the new fence construction project that total 2.5 miles. The project is described below.

Fence Project Design Features

The fence construction would take place shortly after the authorization is approved. A survey for nesting birds would be required if the project is implemented between March 1 and October 1. Total time from start to finish should take 2-3 weeks' worth of working days but is dependent on the amount of time Mr. Coleman can set aside to complete the project. The construction for this fence was originally brought

forward by Mr. Coleman in 2014 to better distribute livestock within the Three Brothers allotment which currently does not have pasture fencing and is under no rotational grazing system. The location for the fence construction is just south east of Fairbank on the eastern SPRNCA boundary. This fence was never installed due to funding constraints after the designation of the NCA along with another 2 miles in the Lucky Hills allotment just south of this location. Cadastral surveys have already taken place for exact placement, within 1 foot, of the NCA boundary line. Using a 25 foot buffer on each side of the fence as a maximum possible disturbance area for the construction of this fence, this project has a total area affected of 14 acres. Only one side will be utilized for construction access and realistically 10-12 feet next to the fence would be affected.

Utilizing Arizona Game and Fish funding there has also been a cultural clearance done by Desert Archeology. From the cultural clearance report BLM has identified certain locations for minimal tool impact and avoidance areas due to the presence of cultural resource sites. The fence construction will require clearing the boundary line to be within the 1 foot requirement of the cadastral survey.

The lessee will access the fence construction site by driving on Powerline Road (black in figure 1) and then up 3 major washes (green in figure 1) across Arizona State Land Department Land (see figure 1). The lessee and associated vehicles will drive for approximately a total of 1 mile up the three major washes. The washes come in from the west from the Powerline Road as well as from an existing road that cross the boundary fence line. The majority of traffic will be directly down the project fence line (blue in figure 1). After construction is complete access road will be blocked and sign to prevent further use. The cultural site to avoid (red in figure 1) will have a 100 foot buffer to the south (blue in figure 1). Vehicles will include truck, atv, utv and a backhoe. The backhoe will be used to dig the corner braces, quarter mile braces and to pull out vegetation from the construction line. The truck, atv and utv will be used to haul supplies, stretch wire and remove any old materials from the site. There is one cultural site located in the project area; minimal tools will be used around the cultural site.

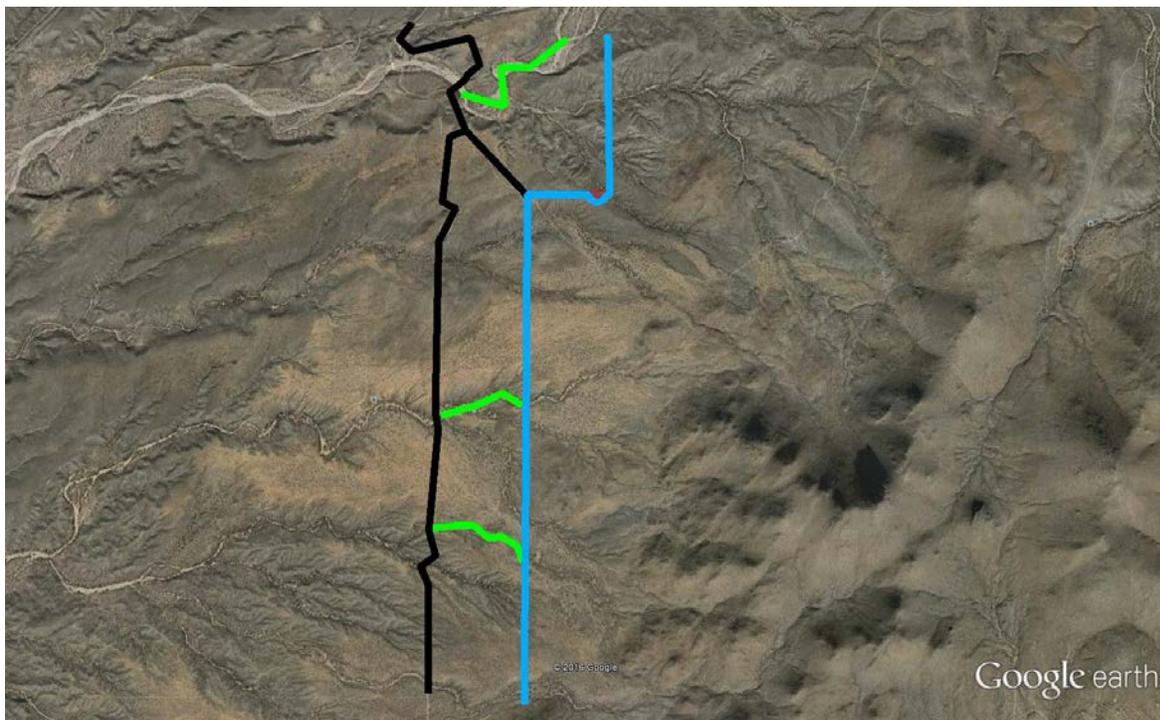


Figure 1

This action was previously analyzed under AZ-060-2003-001 SPRNCA Fence EA and is fully covered under the decision document for AZ-060-2003-001. Under this Environmental Assessment (EA) the “proposed action includes the replacement of approximately 50 miles of fence. Some brush clearing will be necessary but no blading will be used to clear fence lines. Old wooden post and old metal tee posts will be replaced with steel, angle-braced ends, corners and stress panels set in concrete and new tee posts. Old barbed wire will be replaced. Some metal gates will be installed in areas with frequent vehicle access. One or more cattle guards will be installed on major roadways.”

Fencing will be built to the specifications of BLM Manual H-1741-1 and to the BLM wire spacing standards for a combination of cattle (requiring greater restriction of livestock movement) with deer etc. as shown in Illustration 2 (4D) in BLM Manual 1741- 1. Spacing was identified in the original EA as 4 strand barbed wire with smooth bottom total height 40 inches (16 inches, 22 inches, 28 inches, and 40 inches).

The following was from the 2003 SPRNCA Fence EA (AZ-060-2003-001): "East Boundary Escapule and Lucky 7 Ranch/ Powerline Road. Approx. 7 miles. Access will be from the Powerline road up side roads and arroyos. This section will require Cadastral Survey as it is currently unfenced. The existing fence follows the Land Grant boundary but this section is included within the SPRNCA designation.”

RATIONALE

I have determined that the above actions meet the projects purpose and need. The proposed action is reasonable and can be accomplished.

AUTHORITY

The authority for this decision is contained in Title 43 CFR including, but not limited to the following:

§ 4100.0-2 Objectives

The objectives of these regulations are to promote healthy sustainable rangeland ecosystems; to accelerate restoration and improvement of public rangelands to properly functioning conditions; to promote the orderly use, improvement and development of the public lands; to establish efficient and effective administration of grazing of public rangelands; and to provide for the sustainability of the western livestock industry and communities that are dependent upon productive, healthy public rangelands. These objectives shall be realized in a manner that is consistent with land use plans, multiple use, sustained yield, environmental values, economic and other objectives stated in 45 CFR part 1720, subpart 1725; the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315, 315a-315r); section 102 of the Federal Land Policy Management Act of 1976 (43 U.S.C. 1740).

4100.0-8 “The authorized officer shall manage livestock grazing on public lands under the principles of multiple use and sustained yield and in accordance with applicable land use plans. Land use plans shall establish allowable resource uses (either singly or in combination), related levels of production or use to be maintained, areas of use, and resource condition goals and objectives to be obtained. The plans also set forth program constraints and general management practices needed to achieve management objectives. Livestock grazing activities and management actions approved by the authorized officer shall be in conformance with the land use plan as defined at 43 CFR 1601.0-5(b).”

§ 4100.0-3 Authority.

- (a) The Taylor Grazing Act of June 28, 1934 as amended (43 U.S.C. 315, 315a through 315r);
- (b) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) as amended by the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.);

§ 4120.3-1 Conditions for range improvements.

(a) Range improvements shall be installed, used, maintained, and/or modified on the public lands, or removed from these lands, in a manner consistent with multiple-use management.

(b) Prior to installing, using, maintaining, and/or modifying range improvements on the public lands, permittees or lessees shall have entered into a cooperative range improvement agreement with the Bureau of Land Management or must have an approved range improvement permit.

(c) The authorized officer may require a permittee or lessee to maintain and/or modify range improvements on the public lands under §4130.3–2 of this title.

(d) The authorized officer may require a permittee or lessee to install range improvements on the public lands in an allotment with two or more permittees or lessees and/or to meet the terms and conditions of agreement.

(e) A range improvement permit or cooperative range improvement agreement does not convey to the permittee or cooperator any right, title, or interest in any lands or resources held by the United States.

(f) The authorized officer will review proposed range improvement projects as required by the National Environmental Policy Act of 1969 (42 U.S.C. 4371 et seq.). The decision document following the environmental analysis will be issued in accordance with § 4160.1.

§ 4120.3-2 Cooperative range improvement agreements.

(a) The Bureau of Land Management may enter into a cooperative range improvement agreement with a person, organization, or other government entity for the installation, use, maintenance, and/or modification of permanent range improvements or rangeland developments to achieve management or resource condition objectives. The cooperative range improvement agreement shall specify how the costs or labor, or both, shall be divided between the United States and cooperator(s).

(b) Subject to valid existing rights, title to permanent range improvements such as fences, wells, and pipelines where authorization is granted after August 21, 1995 shall be in the name of the United States. The authorization for all new permanent water developments such as spring developments, wells, reservoirs, stock tanks, and pipelines will be through cooperative range improvement agreements. The authorized officer will document a permittee's or lessee's interest in contributed funds, labor, and materials to ensure proper credit for the purposes of §§4120.3–5 and 4120.3–6(c).

(c) The United States will have title to nonstructural range improvements such as seeding, spraying, and chaining.

(d) Range improvement work performed by a cooperator or permittee on the public lands or lands administered by the Bureau of Land Management does not confer the exclusive right to use the improvement or the land affected by the range improvement work.

§ 4120.3-4 Standards, design and stipulations.

Range improvement permits and cooperative range improvement agreements shall specify the standards, design, construction and maintenance criteria for the range improvements and other additional conditions and stipulations or modifications deemed necessary by the authorized officer.

§ 4130.3 Terms and conditions.

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

(b) Upon a BLM offer of a permit or lease, the permit or lease terms and conditions may be protested and appealed under part 4 and subpart 4160.

(c) If any term or condition of a BLM-offered permit or lease is stayed pending appeal, BLM will authorize grazing use as provided in § 4160.4 with respect to the stayed term or condition.

§ 4160.1 Proposed Decisions.

(a) Proposed decisions shall be served on any affected applicant, permittee or lessee, and any agent and lien holder of record, who is affected by the proposed actions, terms or conditions, or modifications relating to applications, permits and agreements (including range improvement permits) or leases, by certified mail or personal delivery. Copies of proposed decisions shall also be sent to the interested public.

(b) Proposed decisions shall state the reasons for the action and shall reference the pertinent terms, conditions and the provisions of applicable regulations. As appropriate, decisions shall state the alleged violations of specific terms and conditions and provisions of these regulations alleged to have been violated, and shall state the amount due under §§4130.8 and 4150.3 and the action to be taken under §4170.1.

§ 4160.2 Protests.

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.

§ 4160.3 Final decisions.

(a) In the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice unless otherwise provided in the proposed decision.

RIGHT OF PROTEST AND/OR APPEAL

Any applicant, lessee or other affected interest may protest this decision in accordance with 43 CFR § 4160.1 and § 4160.2, you are allowed fifteen (15) days from receipt of this notice to file such a protest with:

Melissa Warren
Tucson Field Office Manager
3201 E. Universal Way
Tucson, AZ 85756

A protest may be made in writing and should specify the reasons clearly and concisely as to why you think the proposed decision is in error. Upon the timely filing of a protest, the authorized officer shall reconsider the proposed decision in light of the protestant's statement of reasons for protest and in light of other information pertinent to the case. At the conclusions of this review of the protest, the authorized officer shall serve a final decision on the protestant, or his agent, or both, and this interested public in accordance with 43 CFR § 4160.3 (b).

In the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice. Any applicant, lessee or other person whose interest is adversely affected by the final decision may file an appeal of the decision for the purpose of a hearing before an administrative law judge. A period of **45 days** from your receipt of the **proposed decision** is provided for filing an appeal and petition for a stay of the decision pending final determination on appeal, as provided in 43 CFR § 4.470 and 43 CFR § 4160.4. An appellant may also file a petition for stay of the decision pending final determination on appeal. The appeal and petition for stay must be filed in the office of the authorized officer, as noted above, within 30 days following receipt of the **final decision**, or within 30 days after the date the proposed decision becomes final.

The appeal must be in writing and shall state the reasons, clearly and concisely, why the appellant thinks the final decision is in error and also must comply with the provisions of 43 CFR 4.470. Any appeal should be submitted in writing to:

Melissa Warren
Tucson Field Office Manager
3201 E. Universal Way
Tucson, AZ 85756

Filing an appeal does not by itself stay the effectiveness of the final BLM decision. The appeal may be accompanied by a petition for a stay of the decision pending final determination on appeal, in accordance with 43 CFR § 4.471 and 4.479. Any request for a stay of the final decision in accordance with 43 CFR § 4.21 (b) (1) must show sufficient justification based on the following:

- (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.

As noted above, the petition for stay must be filed in the office of the authorized officer and additionally to:

- (1) All other parties named in the cc section of this Decision; and
- (2) The appropriate Office of the Solicitor as follows, in accordance with 43CFR § 4.413(a) and (c):

US Department of Interior
Office of the Field Solicitor
Sandra Day O'Connor U.S. Courthouse
401 W. Washington St. SPC 44
Suite 404
Phoenix, AZ 85003-2151

Finally, in accordance with 43 CFR § 4.472(b), any person named in the decision from which an appeal is taken (other than the appellant) who wishes to file a response to the petition for a stay may file with the Hearings Division a motion to intervene in the appeal, together with the response, within 10 days after receiving the petition. Within 15 days after filing the motion to intervene and respond, the person must serve copies on the appellant, the appropriate Office of the Solicitor in accordance with Sec 4.413 (a) and (c), and any other person named in the decision.

Sincerely,

/s/
Melissa Warren
Tucson Field Manager