



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Tucson Field Office
12661 East Broadway
Tucson, AZ 85748-7208
(520) 722-4289

In reply refer to:
4000/6119(060)

August 4, 2000

CERTIFIED MAIL RETURN RECEIPT REQUESTED

HAYHURST, MICHAEL J
2238 BOWERS ROAD
HUACHUCA CITY, AZ 85616

NOTICE OF PROPOSED DECISION

Dear Mr. Hayhurst:

On March 1, 1999 you were issued a grazing authorization on the Babocomari allotment (No.5208) for use through September 30, 2000, while we were processing the renewal of your grazing lease in accordance with Pub. L. 106-113.

Each lease renewal, modification, or other issuance must be reviewed to determine if it conforms with the Land Use Plan objectives for the area, Arizona's Standards for Rangeland Health, BLM regulations and policies, and other applicable laws such as the Endangered Species Act.

A resource evaluation was conducted through an interdisciplinary process to determine if the existing resource conditions are meeting Arizona's Standards for Rangeland Health, and current management of the livestock is appropriate under Arizona's Guidelines for Grazing Administration. . Input was solicited from the permittee, Arizona Game and Fish Department, Arizona State Land Department, Natural Resources Conservation Service (U.S. Department of Agriculture), and interested publics.

In addition, the BLM submitted a Biological Evaluation to the United States Fish and Wildlife Service("Service") which detailed our anticipated impacts of livestock grazing to federally listed Threatened and Endangered species in the Tucson Field Office area. This action includes the continuation of livestock grazing on the Babocomari allotment. We received a Biological Opinion (2-21-96-F-160) back from the Service on September 26, 1997. The Service determined that our proposed action is not likely to jeopardize the continued existence of the listed species affected, and is not likely to result in destruction or adverse modification of designated or proposed critical habitat.

The public lands in the Babocomari allotment were identified in the above Biological Opinion (2-21-96-F-160) as suitable habitat for the cactus ferruginous pygmy-owl and foraging habitat for the lesser long-nosed bat. Mandatory terms and conditions were included by the Service for all animal species designed to reduce incidental take of the species. BLM has incorporated the actions necessary to achieve resource objectives and maintain proper grazing management into your grazing lease as Attachment A..

SWIFL
POTENTIAL HARMFUL W/2 DAMAGE

Other measures in the September 26, 1997 Biological Opinion address predator control and future range improvements authorized, funded, or carried out by BLM, such as fences, pipelines, waters, mechanical or chemical vegetation treatments, or prescribed fire. They may not directly apply to your lease, but would apply to future actions the Bureau might consider on the public lands in the allotment. We have included them for your information see Attachment B.

The BLM will continue to develop and implement actions necessary to reduce grazing impacts on listed species and their habitats. Additional modifications to your lease may be necessary based on future habitat evaluations.

Based on the above and in accordance with 43 CFR 4100, my proposed decision is to offer you the enclosed Grazing Lease on the Babocomari allotment (No. 5208) with the following Terms and Conditions. This lease is offered to you based on your recognized grazing preference on the public lands administered by the Bureau of Land Management. You are authorized to make grazing use to the extent of the active permitted use as shown on the lease. The lease will expire February 28, 2009. If you choose to accept the Lease, please sign and date the original and return it to our Tucson office. We will mail you your copy of the approved lease for your records. You will continue to receive annual grazing applications in January, and the billing in February.

Terms and Conditions:

The Terms and Conditions for the Babocomari allotment (No. 5208) are incorporated into this Proposed Decision and included as Attachment A

Rationale:

An assessment of Arizona Standards for Rangeland Health has been conducted on the Babocomari Allotment. An interdisciplinary team completed a resource evaluation and an administrative determination to determine if the proposed action is in conformance with the Land Use Plan. In accordance with Bureau policy and regulations, this data has been examined and evaluated in order to determine progress in meeting land use plan objectives and Arizona's Standards for Rangeland Health and Guidelines for Grazing Administration. The analysis of data has revealed that resource conditions meet applicable standards for rangeland health and land use plan objectives for the allotment. The renewal of your lease with the Terms and Conditions incorporated in Attachment A is sufficient to implement proper grazing management, and no further changes in the current operation are required at this time.

The public lands in the Babocomari allotment are designated as available for livestock grazing through the Phoenix District Resource Management Plan, which adopted the Eastern Arizona Grazing Environmental Impact Statement.

43 CFR 4130.3 states that, "livestock grazing permits or 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.

Authority: The authority for this decision is contained in Title 43 Code of Federal Regulations Part 4100, which states in pertinent parts:

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)."

4130.2(a) "Grazing permits or leases shall be issued to qualified applicants to authorize use on public lands and other lands under the administration of the Bureau of Land Management that are designated as available for livestock grazing through land use plans. Permits or leases shall specify the types and levels of use authorized, including livestock grazing, suspended use, and conservation use. These grazing permits or leases shall also specify terms and conditions pursuant to 4130.3, 4130.3-1, and 4130.3-2."

4130.2(b) "The authorized officer shall consult, cooperate and coordinate with affected permittees and lessees, the State having lands or responsible for managing resources within the area, and the interested publics 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 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."

4130.3-2 "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..."

4160.1(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 modification 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 interest publics."

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

Protests:

Any applicant, permittee or lessee, or other affected interests may protest the proposed decision under 43 CFR. 4160.1 in person or in writing to the authorized officer, Jesse J. Juen, at 12661

East Broadway, Tucson, Arizona 85748, 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. In the absence of a protest, the proposed decision will become a final decision of the authorized officer without further notice.

Any applicant, permittee or lessee, or other person whose interest is adversely affected by the final decision may file an appeal and petition for stay of the decision pending final determination on appeal under 43 CFR 4160.4, 4.21 and 4.470. 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 30 days after the date the proposed decision becomes final. The appeal shall state the reasons, clearly and concisely, why the appellant thinks the final decision is in error.

Should you wish to file a motion for stay, the appellant shall 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.

As noted above the petition for stay must be filed in the office of the authorized officer.

Sincerely,

William Aubrey
acting for Jesse J. Juen
Field Manager

cc: Forest Guardians
Center for Biological Diversity
Jeff Burgess

Enclosures:

- Attachments-
- "A" - Terms and Conditions
- "B" - Other Measures

Attachment A

**Babocomari Allotment No. 5208
Grazing Lease - Terms and Conditions**

This Grazing Lease is issued subject to the following conditions:

1. Any changes in grazing use must be applied for prior to the grazing period.
2. Each year billing notices are issued which specify, for the current year, the allotment(s), number and kind of livestock, period(s) of use, animal unit months of use, and the grazing fees due. These billing notices when paid, become a part of this grazing permit/lease.
3. Grazing fees are due upon issuance of a billing notice and must be paid in full prior to making any grazing use under this grazing permit/lease, unless otherwise provided for in the terms and conditions of this grazing permit/lease.
4. This grazing permit/lease is subject to the terms and conditions of an allotment management plan if such plan has been prepared. If an allotment management plan has not been prepared, it must be incorporated in this permit/lease when completed.
5. No grazing use can be authorized under this grazing permit/lease during any period of delinquency in the payment of amounts due in settlement for unauthorized grazing use.
6. Grazing use authorized under this grazing permit/lessee may be suspended, in whole or in part, for violation by the permittee/lessee of any of the provisions of the rules or regulations now or hereafter approved by the Secretary of the Interior.
7. This grazing permit/lease is subject to cancellation, in whole or in part, at any time because of:
 - a. Noncompliance by the permittee/lessee with rules and regulations now or hereafter approved by the Secretary of the Interior.
 - b. Loss of control by the permittee/lessee of all or a part of the property upon which it is based.
 - c. A transfer of grazing preference by the permittee/lessee to another party.
 - d. A decrease in the lands administered by the Bureau of Land Management within the allotment(s) described herein.
 - e. Repeated willful unauthorized grazing use.
8. This grazing permit/lease is subject to the provisions of executive Order NO. 11246 of September 24, 1965, as amended, which sets forth nondiscrimination clauses. A copy of this order may be obtained from the authorized officer.
9. The permittee/lessee must own or control and be responsible for the management of the livestock authorized to graze under this grazing permit/lease.

10. The authorized officer may require counting and/or additional or special marking or tagging of the livestock authorized to graze under this grazing permit/lease.

11. The permittee's/lessee's grazing case file is available for public inspection as required by the Freedom of Information Act.

12. Actual Use information, for each use area, will be submitted to the authorized officer within 15 days of completing grazing use as specified on the grazing lease and/or grazing billings in accordance with 43 CFR 4130.3-2(d).

13. In order to improve livestock distribution on the public lands, all salt blocks and/or mineral supplements will not be placed within a 1/4 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).

14. In Accordance with 43 CFR 4130.8-1(F): Failure to pay grazing bills within 15 days of the due date specified in the bill shall result in a late fee assessment of \$25.00 or 10 percent of the grazing bill, whichever is greater, but not to exceed \$250.00. Payment made later than 15 days after the due date, shall include the appropriate late fee assessment. Failure to make payment within 30 days may be a violation of 43 CFR Sec. 4140.1(b)(1) and shall result in action by the authorized officer under 43 CFR Secs. 4150.1 and 4160.1-2.

15. Grazing in this allotment shall strictly adhere to the Arizona Standards for Rangeland Health and Guidelines for Grazing Administration, the Safford Upland Livestock Utilization and Drought Policies.

Attachment B.

**Babocomari Allotment No. 5208
Other Measures**

To Protect the Lesser Long-nosed Bat:

1. Prior to construction of range improvement projects, pre-construction surveys shall be conducted for paniculate agaves and saguaros that may be directly affected by construction activities, or in the case of new water sources, may occur within 0.5 mi of the proposed water source. If agaves or saguaros are found during pre-construction surveys, the following measures shall be implemented:
 - a. Fences, pipelines, waters, and other range improvement projects shall be located to reduce as much as possible injury and mortality of agaves and saguaros.
 - b. Disturbance shall be limited to the smallest area practicable and projects shall be located in previously-disturbed areas whenever possible.
 - c. Vehicle use shall be limited to existing routes and areas of disturbance except as necessary to access or define boundaries for new areas of construction or operation.
 - d. All workers shall strictly limit their activities and vehicles to designated areas. Construction workers shall be informed of these terms and conditions.
2. No seeding/planting of nonnative plants shall occur on any public lands in the allotment.
3. Any chemical and mechanical vegetation manipulation, or use of prescribed fire shall be designed and planned to minimize adverse effects to lesser long-nosed bat forage plants. Measures shall be developed to ensure that no more than 20 percent of agaves that are burned during prescribed fire are killed by the fire and that injury and mortality of saguaros are negligible.
4. A mitigation plan shall be developed by the Bureau in coordination with the Service for each prescribed fire or chemical or mechanical vegetation management project within 0.5 mile of a lesser long-nosed bat roost or in areas that support paniculate agaves or saguaros. The mitigation plan shall ensure that effects to lesser long-nosed bat roosts and forage plants are minimized and shall include monitoring of effects to forage plants. The plan shall be approved by the Service.

To Protect Huachuca Water Umbel

5. The lessee will cooperate with the Bureau to implement grazing management practices to establish a long-term upward trend in range condition in those areas where condition is fair or poor, and implement watershed improvement projects that will increase infiltration.

To Protect Southwest Willow Flycatcher

6. The lessee will cooperate with the Bureau to develop an Allotment Management Plan which

implements grazing management practices to establish a long-term upward trend in range condition in those areas where condition is fair or poor, and implement watershed improvement projects that will increase infiltration. Actions the Bureau could take may include developing grazing strategies, planning and developing range improvement projects and vegetation management, and providing technical assistance.

To protect Jaguar

7. Jaguars will not be subjected to any predator control activities on this allotment.