WESTERN WATERSHEDS PROJECT, ) AZ-LLAZCO1000-09-01
) Appellant
) Appeal and Petition for Stay from
) Assistant Field Manager's Final
) Decision dated September 30, 2008,
) involving the Alamo Crossing.

v.

BUREAU OF LAND MANAGEMENT, ) Primrose, Planet, and Crossman Peak
) Allotments, Kingman Field Office,
) Arizona

ORDER GRANTING SUMMARY JUDGMENT

The Western Watersheds Project ("WWP" or "Appellant") has appealed the above captioned decision of the United States Department of the Interior, Bureau of Land Management's Kingman, Arizona, Field Office ("BLM"). This order grants WWP's motion for summary judgment and remands this matter to BLM to remedy the gaps in its review of this decision pursuant to the requirements of the National Environmental Policy Act, 43 U.S.C. §4321 et seq. ("NEPA").

Factual and Procedural Background

- Special Ephemeral Rule

On September 30, 2008, BLM issued a final decision issuing a ten-year grazing permit under the "Special Ephemeral Rule" for four allotments: the Alamo Crossing, Primrose, Planet, Crossman Peak Allotments located in western Arizona. The permit would apply to four permittees: the City of Scottsdale - Planet Ranch; Jim Fernandez; Gordon and June Huffaker; and Steve Eady of Phelps Dodge Safford, Inc.

in certain years when, due to above normal rainfall, an unusual abundance of annual vegetation suitable for livestock forage is present. In general, such ephemeral grazing is expected to occur in no more than two years in a ten-year period, for a maximum of 120 days in late winter or early spring. The occurrence of years with such favorable conditions is highly unpredictable.

When sufficient forage becomes available or is anticipated, the rancher files an application indicating the desired number of livestock and period of use. BLM personnel must then inspect the allotment to determine the quantity and quality of annual forage available, and to document range conditions on an ephemeral worksheet. Assessments are made of the sufficiency of soil moisture to allow for continued plant growth, and of the availability of sufficient annual and perennial vegetation to satisfy other resource concerns, including wildlife and watershed needs. BLM must also assess the availability of waters and the condition of range improvements to ensure proper distribution of livestock. Areas of use within the allotments will be determined based on forage and water availability. BLM's authorization of ephemeral grazing use is made on a case-by-case basis in the exercise of professional judgment in consideration of all available data and resource concerns.

If ephemeral grazing is authorized, the permittee is then required to submit an actual use report at the end of the grazing season and pay all grazing bills when due. Unlike ordinary grazing permits, the level of use will vary depending on conditions when authorized. BLM has limited livestock use in accord with an objective of 50% proper use when applying the Special Ephemeral Rule in the western Arizona area. The permittees for ephemeral grazing use are also not required to maintain substantial use of base property or regular yearly grazing operations.

- **Description of the Allotments**

The Alamo Crossing, Primrose, Planet, and Crossman Peak Allotments consist of 100% BLM-administered public lands located contiguously in west-central Arizona, in Mohave and LaPaz Counties, generally east of Lake Havasu City and Parker, Arizona, and west of the Alamo Lake reservoir. The Bill Williams River flows westward from Alamo Lake, through, in turn, the Alamo Crossing, Primrose, and Planet Allotments, where it enters the Colorado River in the Bill Williams
National Wildlife Refuge. The Crossman Peak Allotment lies to the northwest of the Planet Allotment. The total area of these four allotments is about 412,000 acres.

The Lake Havasu Field Office ("LHFO") Proposed Resource Management Plan and Final Environmental Impact Statement ("RMP/EIS"), issued in September 2006, designated the Crossman Peak and Planet Allotments to the "custodial" category, and the Alamo Crossing and Primrose Allotments to the "improve" category. (RMP/EIS at 3-87). Custodial allotments are described as those with limited or no resource conflicts, poor resource potential, which "may or not meet objectives and standards." Allotments in the "improve" category "exhibit vegetation and watershed conditions not meeting objectives and standards." (RMP/EIS at F-2).

The plant community on these allotments is dominated by desert shrubs and cacti, with creosote bush prevalent on most sites. Perennial grass cover is sparse, and annual grasses make up a large percentage of the community when present. Perennial vegetation is mostly not palatable for livestock. Hence ephemeral grazing depends on annual vegetation when it is available. A wide range of desert soil types are found on the allotments. Ecological sites include granitic and volcanic hills and slopes, separated by limey and sandy uplands and valley bottoms. Elevations range from about 400 feet along the lower Bill Williams River on the Planet Allotment to 5100 feet at Crossman Peak on the allotment of the same name.

This area is hot, dry, and mostly low desert. Average annual precipitation ranges from about 3 inches in the lower elevations near the Colorado River to about 7 inches at higher eastern locations such as Alamo Lake. Precipitation is highly variable from year to year. About 60% of annual precipitation falls during the winter from Pacific Ocean systems that reach Arizona. Most of the remaining rainfall occurs during infrequent localized summer "monsoon" thunderstorms. Summer temperatures regularly reach near 110°F, and winter low temperatures are around 45°F.

These four allotments provide habitat for desert bighorn sheep, collared peccary (javelina), mule deer, antelope squirrels, desert cottontail rabbits, and other species. Sensitive, threatened, or other special status species within the allotments and surrounding area include the desert tortoise, bald eagle, several species of bats, and other plants, reptiles, and birds. Bighorn sheep remain mostly in the small,
rugged, desert mountains, in areas inaccessible to cattle. Wild burros are present in two Herd Management Areas ("HMAs") extending across parts of all four allotments.

There are two wilderness areas within the allotments: the Swansea Wilderness Area in the Planet and Primrose Allotments, and part of the Rawhide Mountains Wilderness in the Alamo Crossing and Primrose Allotments. Three segments of the Bill Williams River within the allotments were determined to be suitable for inclusion in the National Wild and Scenic Rivers System in a 1994 environmental impact statement issued by the U.S. Fish and Wildlife Service. There are three Areas of Critical Environmental Concern ("ACECs") within the allotments, in which special management is warranted to protect important cultural, historic, scenic, or other resources. Those are the Crossman Peak ACEC in the allotment of the same name; the Swansea Historic District which straddles the border of the Planet and Primrose Allotments; and part of the Three Rivers Riparian ACEC, along the Bill Williams River in the Alamo Crossing and Primrose Allotments.

Hundreds of archeological sites representing more than 7000 years of human occupation have been recorded within the four allotments. There are also many more recent historical sites dating from European settlement and mining activity in the area. Currently, the allotments are increasingly used for recreation, particularly by off-road vehicles ("ORVs"), due to the population growth of the nearby metropolitan areas of Phoenix, Las Vegas, and Southern California. In addition to ORV use and organized races, other recreational activities include camping, hunting, birding, and hiking.

- Grazing Operations

Prior to BLM’s September 30, 2008, Final Decision, grazing on these allotments had been authorized by Congress annually under Public L. No. 108-108 (2003), in accord with the Special Ephemeral Rule and the Arizona Guidelines for Grazing Administration approved by the Secretary of the Interior in 1997. However, these four allotments have not actually been grazed for 18 to 25 years. The last grazing use on any of the allotments was for 48 AUMs on the Alamo Crossing Allotment in 1991. The Primrose Allotment was last grazed in 1988, for 274 AUMs; the Crossman Peak Allotment in 1984 for 60 AUMs; and the Planet Allotment in 1983 for 314 AUMs. Grazing is limited to cattle only. Domestic sheep grazing is not
allowed due to the presence of desert bighorn sheep on these four allotments. There is no information in BLM’s documentation for the Final Decision describing water developments, fences, or any other range improvements on these allotments.

- BLM Environmental Review and Decision

BLM issued its grazing decision on these four allotments in conjunction with its review of management over a broad range of resource issues in the entire Lake Havasu area, pursuant to NEPA. This review culminated in BLM’s issuance of the LHFO RMP/EIS in September 2006, followed by the LHFO Record of Decision and Approved Resource Management Plan in May 2007 (“ROD”).

In 2008, BLM undertook an evaluation of the Alamo Crossing, Primrose, Planet, and Crossman Peak Allotments, in accord with the RMP/EIS’s directive to assess all allotments for compliance with the Arizona Standards for Rangeland Health (“Arizona Standards”) by October 2009. As a result of this evaluation, BLM considered issuing new permits re-authorizing ephemeral grazing on these four allotments as consistent with the RMP’s objective to “provide forage on a sustained yield basis for livestock consistent with meeting Land Health Standards and multiple use objectives.” (ROD at 45-46).

BLM first conducted a Final Evaluation and Rangeland Health Analysis (“RHA”) for the four allotments, which it completed on July 23, 2008. BLM surveyed range conditions at 6 field sites that it deemed representative of the main soil and ecological sites on the allotments, and assessed two riparian segments on the Bill Williams River for proper functioning condition (“PFC”). BLM followed applicable technical references in conducting its evaluation. For the upland field sites, BLM evaluated conformance to the Arizona Standards by sampling vegetation and observing such range attributes as ground cover, gullying, and rills. The results were tabulated and summarized by ranking the degree of departure at each site from the Arizona Standards.

In summary, the RHA found that the departure from desired conditions at all sites, including the Bill Williams River segments, was none to slight. Therefore, BLM determined that the range on these four allotments met the Arizona Standards for uplands (Standard 1), riparian-wetland areas (Standard 2), and desired resource
conditions (Standard 3). WWP submitted comments to BLM that were critical of the methodology and conclusions reached in the RHA.

BLM then completed its Environmental Assessment ("EA") and Finding of No Significant Impact ("FONSI") with respect to the proposed action to issue a ten-year grazing permit under the Special Ephemeral Rule for the Alamo Crossing, Primrose, Planet, and Crossman Peak Allotments. Pursuant to NEPA, the EA was tiered to the LHFO RMP/EIS and ROD. The EA noted that the proposed action was in conformance with the RMP/EIS and would continue to maintain healthy range conditions while helping to provide an economic return to the permittees' ranch operations. The EA considered two "alternatives:" (1) the proposed action to issue a ten-year permit under the Special Ephemeral Rule; and (2) to continue current grazing management, which is also pursuant to the Special Ephemeral Rule.

The EA noted that the proposed action did create a potential for encounters or conflicts between livestock grazing and resources on the allotments, such as wilderness, ACECs, wildlife, burros, and riparian areas. However, the EA tracked the conclusions of the RHA in finding that, due to the limited and infrequent nature of ephemeral grazing, any impacts "would probably not transpire or would only occur limitedly during seasons when there is adequate availability of forage for grazing." EA at 6-7. The EA therefore concluded that application of the Special Ephemeral Rule would appropriately minimize any adverse impacts to resources on the four allotments. The EA also concluded that impacts of the "no action" alternative would be the same as those identified under the proposed action. BLM, by Assistant Field Manager for Renewable Resources Don McClure, then issued its FONSI on July 29, 2008, finding that the EA's analysis determined that environmental impacts of the proposed action would not be significant and an environmental impact statement was therefore not required.

On August 2, 2008, BLM issued its Proposed Decision in accord with the EA to issue ten-year permits under the Special Ephemeral Rule to the four permittees for the Alamo Crossing, Primrose, Planet, and Crossman Peak Allotments. WWP promptly filed a protest of the Proposed Decision.

BLM then issued its Final Decision on September 30, 2008, implementing the proposed action without change as indicated in the EA and Proposed Decision. The Decision offered the permittees grazing permits with four terms and conditions: (1)
the allotments are to be managed in accord with the Special Ephemeral Rule; (2) permittees are to file actual use reports when livestock use is authorized; (3) permittees are to be responsible for maintaining range improvements in good working order; and (4) permittees are to pay grazing bills when due. The Final Decision also contained a section addressing WWP’s protest.

- Office of Hearings and Appeals (“OHA”) Proceedings


WWP’s appeal listed a long series of alleged deficiencies in the Final Decision and its underlying documentation, including a series of alleged violations of requirements of NEPA and the Federal Land Policy and Management Act, 43 U.S.C. § 1701 et seq (“FLPMA”). WWP’s allegations included the following: violation of NEPA in finding of no significant impact; failure to analyze a range of alternatives; failure to sufficiently analyze and disclose impacts to resources, including effects on wilderness, cultural resources, soils, and wildlife; failure to consider the Final Decision’s effect on the spread of noxious weeds; failure to disclose financial costs associated with the Final Decision; failure to justify the need for the proposed action; failure to provide information on water developments on the allotments; failure to adequately address impacts on ACECs; violating FLPMA’s requirement that BLM protect public lands from unnecessary or undue degradation; and failure to provide meaningful terms and conditions governing livestock use.

In an order dated December 12, 2008, I denied WWP’s petition for a stay of the Final Decision. The applicable regulation, 43 C.F.R. § 4160.3(d), provides that grazing use shall be consistent with BLM’s final decision during the pendency of an appeal, when the decision relates to an application for ephemeral grazing use, or the grazing applicant had no authorized grazing during the previous year. Thus, in effect, OHA does not have power to grant a stay of a decision authorizing ephemeral grazing use, as the Final Decision does in this case. Although WWP’s petition for a stay was denied, the order indicated that further proceedings could address substantial issues raised in WWP’s appeal.
The parties then agreed that essential facts relating to the Final Decision were not in dispute, and that this appeal could be resolved by means of cross-motions for summary judgment. WWP filed its motion for summary judgment on December 26, 2008. BLM responded with its opposition to WWP's motion and its own motion for summary judgment on January 27, 2009.

Discussion

The Interior Board of Land Appeals ("IBLA") has followed the procedure authorized in the federal courts by holding that summary judgment may be granted upon a showing "that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. Rule 56(c). In considering a motion for summary judgment, all factual inferences and conflicts must be resolved in the light most favorable to the non-moving party. Larson v. BLM, 129 IBLA 250 (1997); Celotex v. Catrett, 477 U.S. 317, 322 (1986; Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A summary judgment motion filed under Rule 56 may be decided on the basis of the pleadings, documentary evidence, affidavits, and other evidence admissible or usable at trial. Celotex, 477 U.S. at 324. In this proceeding, both parties have agreed that there are no material issues of fact, and that this appeal may be resolved on the basis of the administrative record of BLM's Final Decision.

As asserted in its appeal, WWP contends that BLM violated NEPA and FLPMA in several ways. WWP argues that BLM did not conduct an adequate assessment of range conditions on the Allotments; did not adequately analyze potential impacts on soils, wilderness, wildlife, and other environmental parameters; did not consider an adequate range of alternatives to the action; and failed to justify the need for the renewal of these grazing permits pursuant to the Special Ephemeral Rule. BLM counters that its decision-making process, as shown in the RHA and EA, considered in conjunction with the LHFO RMP/EIS and ROD, did comply with the requirements of NEPA and FLPMA.

The IBLA has often considered the standards BLM must meet in order to comply with NEPA, and those an appellant must meet in order to show that BLM did not do so.
NEPA requires consideration of potential impacts of a proposed action in an environmental impact statement (EIS) if that action is a "major Federal action significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). A BLM decision approving an action based on an EA and FONSI, rather than an EIS, generally will be affirmed if BLM has taken a "hard look" at the proposal being addressed and identified relevant areas of environmental concern so that it could make an informed determination as to whether the proposal's impacts are insignificant or will be reduced to insignificance by the adoption of appropriate mitigation measures. Oregon Chapter of the Sierra Club, 172 IBLA 27, 46-47 (2007). . . . To prevail on appeal, appellants must demonstrate by a preponderance of the evidence that the EA does not support the FONSI because the EA contains either an error of law or a demonstrable error of fact, or fails to consider a substantial environmental question of material significance. Wilderness Watch, 176 IBLA 75, 87 (2008) and cases cited therein.


The Council on Environmental Quality ("CEQ") regulations implementing NEPA define an EA as a concise document that serves to "briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact." 40 C.F.R. § 1508.9(a)(1). Further, an EA "[s]hall include brief discussions of the need for the proposal, of alternatives as required by sec. 102(2)(E), of environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted." 40 C.F.R. § 1508.9(b). A site-specific EA may appropriately be "tiered" to a previously completed programmatic EIS that covers a larger area or a broader range of proposed actions. See 40 C.F.R. § 1508.28.

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (§ 1508.28). Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is
then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussion from the broader statement by reference and shall concentrate on the issues specific to the subsequent action. The subsequent document shall state where the earlier document is available.


These regulations allow an EA to be tiered to a previously completed, broader programmatic EIS. BLM thus appropriately tiered its EA supporting the Final Decision to the LHFO RMP/EIS. It remains to be seen, however, whether those documents actually did take a “hard look” at the proposed action, consider an appropriate range of alternatives, adequately justify the need for the action, and sufficiently consider substantial environmental questions of material significance.

- Need for the Proposed Action

The first apparent omission in the EA and RMP/EIS relates to the need for the proposed action. These four allotments have not been grazed for the past 18 to 25 years, even during recent years of well above average precipitation, when ephemeral forage was presumably available. Yet nowhere in the EA or RMP/EIS is any reason given for this lack of use. This fact, coupled with the complete absence of any information on the existence of waters, fences, or any other range improvements on these allotments, leads to speculation, or more likely an inference, that no such improvements are present. The next logical step is to query whether these allotments can be used for grazing at all on a practical and economic basis, even if only once every ten years or so.

The EA states the need for the proposed action as follows:

The purpose of this proposed action is to maintain and/or continue to make significant progress towards the attainment of Arizona Land Health Standards and Guidelines on these grazing allotments. The renewal of these grazing permits is needed to help
provide an economic return on these ranch operations, while providing for proper range management.

(EA at 3). There is no further elaboration in the EA on the potential economic return to the permittees' ranch operations that could ensue from grazing these allotments.

The RMP/EIS includes some general information on the economics of farming and ranching in the several counties comprising the LHFO area, but provides no specific information on the ranch operations of the four putative permittees for the Alamo Crossing, Primrose, Planet, and Crossman Peak Allotments. An applicant for ephemeral grazing is not even required to maintain any base property or regular ranch operations. Thus, it is not known if those permittees currently have any ranch operations. The permittees themselves have neither stated whether they intend to ever use these allotments, nor otherwise supplied any information for this proceeding.

BLM thus did not adequately justify any economic need for grazing these allotments. There is no substantial information in the EA or the RMP/EIS regarding the very existence of these ranch operations, let alone their need to renew grazing permits that they have not used for decades. The unsupported one-sentence assertion that these grazing permits are needed to provide an economic return to ranch operations does not satisfy the CEQ regulations' requirement that an EA include "a brief discussion of the need for the proposal." 40 C.F.R. § 1508.9(b).

- Lack of Site-Specific Information on Range Improvements

The Special Ephemeral Rule requires BLM, upon an application for ephemeral use, to confirm that there are enough serviceable waters available to provide good grazing distribution on the allotment, and that all range improvements and facilities needed for proper grazing management are properly maintained. If such waters, fences, and other range improvements are not present, livestock will not be properly distributed and managed.

The only available water mentioned in the EA and associated documents is the Bill Williams River, which flows through the Alamo Crossing, Primrose, and Planet Allotments (although the water may only be subsurface in the Planet Allotment). The river does not flow along or through the Crossman Peak Allotment.
at all. Concentration of livestock in the Bill Williams riparian area, or general poor
distribution due to lack of serviceable waters, could result in adverse impacts on
rangeland health and a lack of compliance with the Arizona Standards. Yet
nowhere in the documentation for the Final Decision is there any information on
serviceable waters or maintained range improvements on these four allotments, or
even on the potential availability of such improvements in the event that ephemeral
use is allowed in the future.

The RMP/EIS lists the 17 grazing allotments within the LHFO area, noting
that 12 are designated perennial-ephemeral, and 5, including the four that are the
subject of this proceeding, are designated ephemeral. (RMP/EIS at 3-85-88).
Perennial-ephemeral allotments are authorized for grazing yearly based on available
perennial forage, while additional ephemeral grazing can be authorized in years
when sufficient ephemeral forage is available. The RMP/EIS only generally states
that most perennial-ephemeral allotments have boundary fences, a few have interior
fences to form pastures, and notes that there are numerous springs, wells, and tanks
developed for livestock and wildlife. (RMP/EIS at 3-86). However, the RMP/EIS
does not include a map or any other specific information on the location of these
range improvements. The RMP/EIS also does not mention any fences or water
developments in the ephemeral allotments.

This information gap is not filled in RHA, EA, or Final Decision. There is no
map or any other indication of the presence or potential development of waters,
fences, or any other range improvements on these four allotments. It is therefore not
known if livestock could be properly distributed and managed on these allotments.
The EA is supposed to provide such site-specific information when it is tiered to a
broader programmatic EIS. The failure of BLM to provide any information on the
presence or the potential availability of serviceable waters, fences, and other range
improvements on these four allotments amounts to a “failure to consider a
substantial environmental question of material significance.” Escalante Wilderness
Project, 176 IBLA at 303.

- Alternatives

WWP points out that BLM did not consider any real alternatives to the
proposed action in the EA. The only alternative mentioned was the “no action”
alternative. This “alternative,” however, would simply continue managing these
four allotments under the Special Ephemeral Rule, just as would the Final Decision. Thus, the EA stated that the impacts from the no action alternative would be the same as under the proposed action.

BLM points out that the RMP/EIS considered five alternatives for resource management, including for grazing management. Alternative 1, the no action alternative, represented current or pre-existing management. Alternative 2 emphasized resource protection and minimal human use and influence. Alternative 3 emphasized maximum resource use. Alternative 4 sought to balance uses in different areas in the LHFO. Alternative 5, the proposed action, was designed to respond to each of the issues and management concerns recognized during the planning process, and to provide an optimal balance between resource use and protection. (RMP/EIS at S-10-11, 2-22-26). BLM adopted Alternative 5 in the LHFO ROD. (ROD at S-10).

With respect to grazing, Alternative 2 would have eliminated all grazing within the LHFO area, on all perennial-ephemeral as well as ephemeral allotments. The RMP/EIS noted that under this alternative, the 16 permittees on the perennial-ephemeral allotments would lose the use of their 14,051 authorized AUMs. With respect to the ephemeral allotments under consideration here, however, the RMP/EIS noted that since there had been no licensed use on those allotments for the last 10 years (the period reviewed by the RMP/EIS), "there would be no impacts to these operators." (RMP/EIS at 4-139). Thus, to the extent it considered closing these four allotments to grazing at all, the RMP/EIS concluded there would be no impacts since they have not been used.

The adopted action, Alternative 5, retired one of the five ephemeral allotments, the Havasu Heights South Allotment, from grazing, but allowed continued grazing as previously authorized on all other allotments, including the four ephemeral allotments that are the subjects of this appeal. The RMP/EIS noted that the Havasu Heights South Allotment had not been grazed for 20 years, and was currently unpermitted. Hence, "there would be no impacts of retiring this ephemeral permit." (RMP/EIS at 4-138-139).

Neither the RMP/EIS nor the EA considered the obvious, more site-specific alternative of retiring the other four ephemeral allotments from grazing as well, while allowing grazing to continue on the 12 perennial-ephemeral allotments. The
Alamo Crossing, Primrose, Planet, and Crossman Peak Allotments are in essentially the same status as the Havasu Heights South Allotment - not having been grazed for about 20 or more years. Although the four allotments under consideration here may have putative named permittees, while the Havasu Heights South Allotment apparently did not, those permittees have not attempted to activate their permits for ephemeral grazing for a long time, and there is no indication that they will do so in the future. If BLM had considered this alternative, we may have learned if there is any reasonable prospect that these allotments would be grazed in the future. A "hard look" at the proposed action would have required BLM to consider the alternative of retiring the grazing permits for these four allotments.

- Environmental Impacts of Ephemeral Grazing

As contended by WWP, and noted in my Order Denying Petition for Stay, BLM's analysis of the potential environmental impacts from renewing these permits for grazing pursuant to the Special Ephemeral Rule is cursory, to say the least. BLM simply relies on the expected infrequent or even non-occurrence of ephemeral grazing to conclude that impacts would be minimized to such resources as wilderness, ACEC's, and wildlife. The EA states repeatedly, with respect to each potentially affected resource, that due to the ephemeral grazing strategy of these allotments, impacts would probably not transpire or would only occur limitedly during seasons when there is adequate availability of forage for grazing. (EA at 6-7). I think we need a little more than this.

An analysis of environmental impacts must at least assume that some ephemeral grazing would occur, and then at least briefly discuss what impacts would ensue. Cattle are not ghosts. They are a lot bigger and heavier than any native wildlife. Even one season of grazing would be expected to have some effects on soil resources, an impact not discussed at all in the EA or RMP/EIS. Since we have no information on water developments or fences, there is also no indication in the EA of where the cattle might concentrate. It may then be inferred that they would concentrate on the only known riparian areas along the Bill Williams River, potentially affecting that resource. The EA also does not address the potential of livestock facilitating the spread of invasive weeds on these allotments.

The RHA cannot provide a baseline for predicting the effects of ephemeral grazing, since there has been no grazing at all on these allotments for 18 to 25 years.
Rather, the apparent good health of the range can be attributed to the lack of grazing on these allotments for decades. A "hard look" at the environmental consequences of the proposed action would have required BLM to more adequately discuss and consider the actual physical effects of ephemeral livestock grazing on the Alamo Crossing, Primrose, Planet, and Crossman Peak Allotments.

It may well be that ephemeral grazing on abundant annual forage only once every ten years will have minimal environmental impacts, or impacts that can be effectively mitigated. However, the discussion in the RHA and EA, even when considered with the RMP/EIS, furnishes no confidence in that conclusion. While mitigation would raise another issue that is not necessary to explore in detail at this point, the Special Ephemeral Rule alone, upon which BLM relies, does not include any real mitigation measures, and there are none proposed in the Final Decision. The Final Decision does not even include the 50% utilization limit or guideline that the RHA indicated BLM would impose in ephemeral grazing authorizations. If ephemeral grazing is to be permitted, BLM should at least discuss, in response to WWP's comments, whether more specific standards for assessing the abundance of forage, and mitigation measures such as utilization limits, should be incorporated into permits for ephemeral grazing.

**Summary Conclusions and Order**

In summary, for the above reasons, I find that BLM's Final Decision to renew the permits for grazing pursuant to the Special Ephemeral Rule on the Alamo Crossing, Primrose, Planet, and Crossman Peak Allotments did not comply with NEPA. WWP is therefore entitled to summary judgment, and the Final Decision must be reversed and remanded.

In its NEPA review for this Final Decision, BLM failed to take a hard look at the proposed action and failed to make "a convincing case that the environmental impacts are insignificant or that any such impact will be reduced to insignificance by the adoption of appropriate mitigation measures." Gerald H. Scheid, 173 IBLA 387, 396 (2008). BLM also failed to consider substantial environmental questions of material significance. These failures relate primarily to the four main categories outlined above: the failure to justify any economic need for the action; the failure to provide site-specific information on range improvements; the failure to consider the alternative of retiring these allotments from grazing; and the failure to meaningfully...
analyze the potential environmental impacts of ephemeral grazing on these allotments.

Therefore, by this order, summary judgment is granted to WWP and denied to BLM. The September 30, 2008, Final Decision of the Kingman Field Office to renew the grazing permits on the Alamo Crossing, Primrose, Planet, and Crossman Peak Allotments under the Special Ephemeral Rule, is reversed and remanded to BLM to reconsider the renewal of these grazing permits, by conducting an adequate review in compliance with NEPA that remedies the gaps identified in this ruling.

Appeal Information

Any person who has a right to appeal under 43 C.F.R. § 4.410 or other applicable regulation may appeal this order to the Interior Board of Land Appeals. The notice of appeal must be filed with the office of the Administrative Law Judge who issued the order within 30 days of receiving the order, and a copy of the notice must be served on the other parties. In accordance with 43 C.F.R. § 4.478(c), the Board will issue an expedited briefing schedule and decide the appeal promptly.

Andrew S. Pearlstein
Administrative Law Judge

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Distribution

By Fax and Certified Mail:

Greta Anderson, Arizona Director
Western Watersheds Project
P.O. Box 2264
Tucson, Arizona 85702
Fax: 520-623-1878 (call before faxing)

John Gaudio, Esq.
U.S. Department of the Interior
Office of the Field Solicitor
Sandra Day O'Connor Courthouse, Suite 404
401 West Washington Street, SP 44
Phoenix, Arizona 85003-2151
Fax: 602-364-7885