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August 30, 2011

WESTERN WATERSHEDS PROJECT, ) AZ-P010-11-02
Appellant (WWP) )

v. ) Appeal from Field Manager’s Final

BUREAU OF LAND MANAGEMENT, ) Decision dated March 29, 2011,
Respondent (BLM) ) involving the Wickenburg Arrow Y
 ) Allotment, Hassayampa Field Office,
 ) Arizona

Order Denying BLM Request to Vacate and Remand

The Appellant, the Western Watersheds Project ("WWP"), has appealed a
March 29, 2011 final grazing decision ("FGD") issued by the Bureau of Land
Management’s Hassayampa Field Office, located in Phoenix, Arizona ("BLM"). The
FGD renewed the 10-year grazing permit for the Wickenburg Arrow Y Allotment
(the "WAY Allotment"), held by the Lemons Family Trust. The WAY Allotment
consists of 21,587 acres, of which 75% is BLM-administered public land, located just
east of Wickenburg, Arizona.

The current permit for the Allotment, scheduled to expire in 2013, authorizes
the permittee to graze 239 head of cattle year-long, for 2151 animal-unit-months
("AUMs"). BLM issued the FGD after conducting a Rangeland Health Evaluation
("RHE") on the Allotment, and issuing an Environmental Assessment ("EA") and
Finding of No Significant Impact ("FONSI") pursuant to the National Environmental
Policy Act, 42 U.S.C. § 4321 et seq ("NEPA"). The FGD retains the same grazing
system and AUM authorization as the existing permit, with the addition of two
terms and conditions: prohibiting the placement of salt blocks and mineral
supplements within 1/4 mile of riparian areas, meadows, and watering facilities; and
requiring the permittee to file annual actual use reports.

WWP’s appeal alleges that the FGD violated several provisions of NEPA and
the Federal Land Policy and Management Act, 43 U.S.C. § 1701 et seq ("FLPMA").
WWP did not petition for a stay of the FGD. Among other allegations, WWP alleges
the FGD failed to consider an adequate range of alternatives; failed to take a hard
look at the impacts on the Sonoran desert tortoise; and failed to impose any rotational grazing system for the WAY Allotment to protect range resources. WWP filed a motion for summary judgment on June 14, 2011. BLM’s response was due August 11, 2011.

However, instead of filing a response, on August 9, 2011, BLM filed a request or motion to vacate and remand the FGD. BLM did not provide any reason for its motion or any further procedural or substantive context concerning its future intentions for management of the Allotment. I then issued an order directing BLM to provide its reasons for its motion to vacate and remand the FGD. In response, BLM only stated that it “no longer wishes to implement the decision” and that “BLM is not aware of any unusual circumstances in which the option of vacating the decision would not be the most efficient method of proceeding with this appeal.” BLM cites the IBLA order in Petan Company of Nevada, IBLA 2002-223 (Order, December 23, 2005), for this proposition. The Appellant, Western Watersheds Project (“WWP”), has filed a response opposing BLM’s motion to vacate the FGD, and asking that summary judgment be granted in accord with its motion filed on June 14, 2011.

Petan stands for the proposition that ordinarily a BLM request to vacate and remand a grazing decision that it now repudiates will be granted in order to avoid the waste of the parties’ time and resources. Id at 11-12. However, in Petan the Board also noted that there may be unusual circumstances in which the option of vacating a decision would not be the most efficient and sound choice for the Hearings Division to make. Id at 9.

This case, in its current status, presents such unusual circumstances. BLM in its response has still not provided any reason for its request to vacate the FGD. Of course, merely stating that BLM does not wish to implement the FGD is not sufficient. We already knew that. BLM has still not explained why it does not wish to implement the FGD, and has not given any indications of its plans for future management of the WAY Allotment.

The effect of vacating the FGD, or BLM’s failure to implement it, would be to allow grazing to continue under the terms and conditions in the current permit—which are exactly the same as those in the FGD, except for the addition of two
insignificant terms. The terms restricting the placement of salt blocks and requiring annual use reports are required or being implemented anyway, and are not relevant to the issues raised in WWP’s appeal.\(^1\) In the absence of any indication by BLM of future plans for the WAY Allotment, it must therefore be assumed that grazing will continue indefinitely, or at least until the February 28, 2013 expiration of the current permit, under the same terms and conditions whether or not the FGD is vacated, implemented, or not implemented.

Thus, the only real effect of granting BLM’s motion to vacate the FGD would be to deprive the Appellant of its right and opportunity under the Taylor Grazing Act to challenge the grazing regime on the WAY Allotment upon the grounds stated in its appeal. This presents a set of circumstances in which vacating the FGD would not be the most efficient and sound choice for the Hearings Division to make. It would simply allow BLM to continue the same grazing system on the Allotment indefinitely while depriving WWP of its right to appeal the FGD, or, which amounts to the same thing, the decision to vacate the FGD.

In Petan, the IBLA upheld an Administrative Law Judge’s decision to vacate a grazing decision that BLM had repudiated, over the objections of an appellant. However, unlike in this case, BLM had provided its reasons for moving to vacate the decision. In Petan, BLM reconsidered its decision and determined upon further review that it did not comply with the grazing regulations at 43 C.F.R. Subpart 4180 requiring that action be taken within one year to make significant progress toward compliance with rangeland health standards. \textit{Id} at 6. Further BLM stated it intended to “revisit” the decision and issue a new grazing decision that would comply with the regulations. \textit{Id} at 6, 9. Therefore, in Petan, the Board determined it would not be efficient to proceed with an appeal on a decision that BLM repudiates, while BLM is endeavoring to issue a new decision.

Here, however, the effect of vacating the FGD with no reason given and no new decision in prospect, is to allow grazing to continue indefinitely under the same terms and conditions as are in the FGD. This amounts to an attempt by BLM to

\(^1\) The Bradshaw-Harquahala Resource Management Plan, which includes the WAY Allotment, already requires that salt blocks be placed at least 1/4 mile from water sources. (EA at 15). The permittee already apparently reports on actual use. (RHE at 21). These terms and conditions are also authorized by the grazing regulations, 43 C.F.R. § 4130.3-2(c,d).
sidestep the appeal process that presents the type of unusual circumstance in which a motion to vacate a grazing decision should be denied.

WWP has requested that summary judgment be granted at this time. However, I will give BLM an opportunity to respond to the motion, by extending the previous schedule, in accord with the order below.

Conclusion and Order

BLM’s motion to vacate and remand the FGD is denied. BLM’s response to WWP’s motion for summary judgment is now due September 21, 2011. WWP may file a reply by October 13, 2011, and BLM may file its reply by October 28, 2011.

Andrew S. Pearlstein
Administrative Law Judge

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FAX COVER SHEET

August 30, 2011

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From: Andrew S. Pearlstein
Administrative Law Judge

Subject: Western Watersheds Project v. BLM, AZ-P010-11-02

Message: Please see attached Order Denying BLM Request to Vacate and Remand.

4 page(s) to follow excluding this cover.
Hard copy to follow.

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