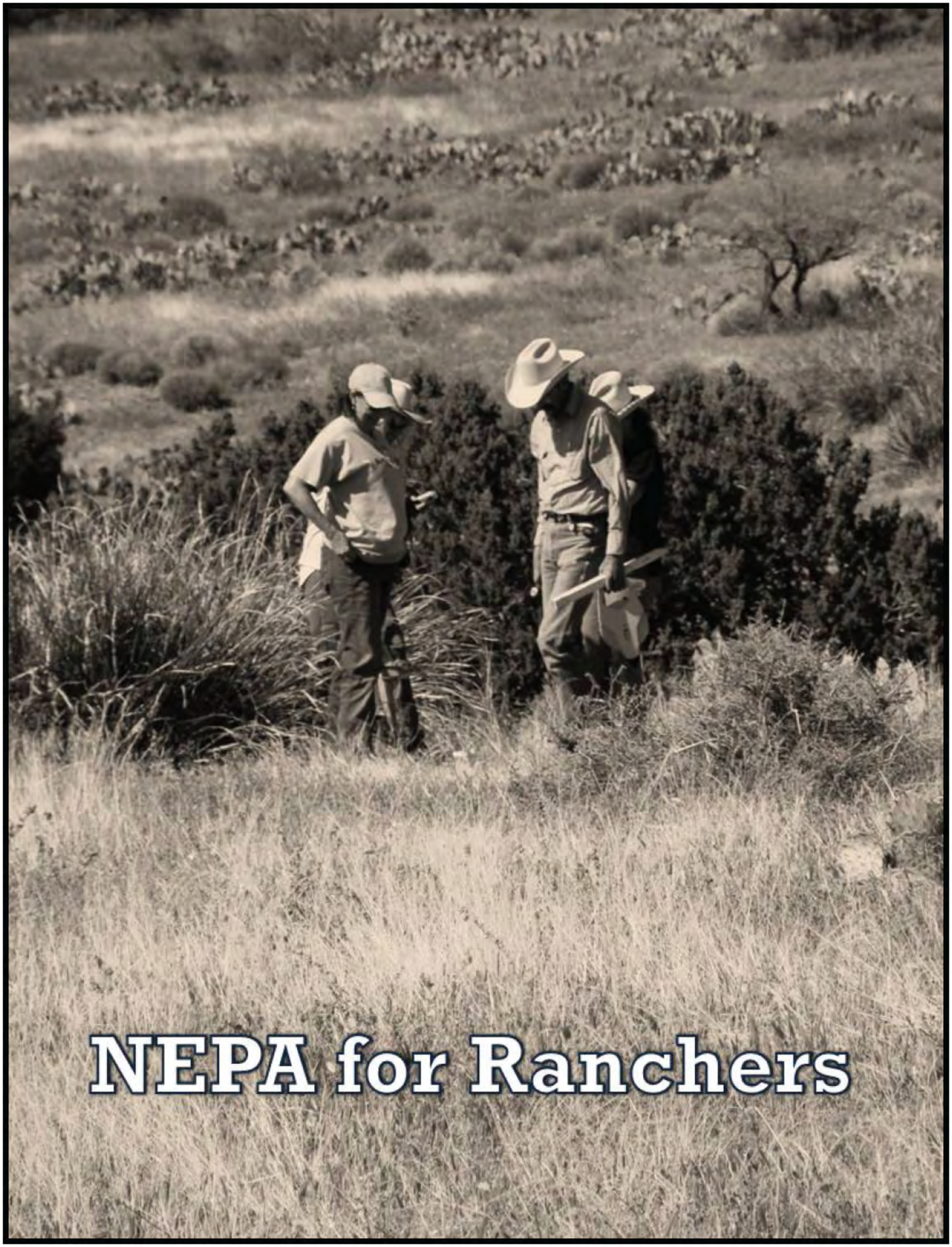

NEPA for Ranchers

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NEPA for Ranchers

Applying the NEPA process on USFS and BLM rangelands for the authorization of livestock grazing

Contributing Authors

Jim Sprinkle, University of Arizona
Carolyn Eppler, Action Analysis Partners, LLC, Payson, Arizona
George Ruyle, University of Arizona
David Cook, DC Cattle Company, LLC, Globe, Arizona

Sponsored By:

American Sheep Industry
Arizona Cattlemen's Association
Gila County Cattle Growers
National Cattlemen's Beef Association
Public Lands Council
Tonto Natural Resource Conservation District

Reviewed By:

Robbie LeValley, Area Livestock & Range Extension Specialist, Tri-River Area, CSU
Dennis Parker, Attorney at Law, Patagonia, AZ
Dave Stewart, Director of Rangeland Management, Regional Office, Region III, US Forest Service

NEPA for Ranchers

Jim Sprinkle, Area Extension Agent, Animal Sciences, University of Arizona
George Ruyle, Professor and Rangeland Management Specialist, University of Arizona
Carolyn Eppler, U. S. Forest Service (Retired), Action Analysis Partners, LLC, Payson, Arizona
David Cook, DC Cattle Company, LLC, Globe, Arizona

What is NEPA?

In 1969 Congress passed The National Environmental Policy Act (**NEPA**), a statute that substantially altered the manner in which agencies of the U.S. government make decisions regarding projects that may impact the human environment. Enacted into law on January 1, 1970, NEPA laid the foundation for a coherent national approach to the environment by requiring the integration of environmental quality concerns into Federal policymaking and decision making. Through NEPA, the Federal government began requiring three vital processes during federal project planning that had not been consistently undertaken before. These requirements are:

1. all Federal agencies consider the environmental impacts of their proposed actions
2. the public be informed of the potential environmental impacts of proposed actions
3. the public be involved in planning and analysis relevant to actions that impact the environment

In order to fulfill these requirements, Federal agencies implemented what has come to be known as the "NEPA process" when planning projects with environmental impacts. The necessity of NEPA is usually triggered whenever federal funding is used for a project or whenever federal approval is required for certain projects such as major right of ways, land exchanges, or permit renewals. For the purpose of reissuing federal grazing permits, the procedural documents used to complete this process are either an *Environmental Assessment* (**EA**) or an *Environmental Impact Statement* (**EIS**). Figure 1 provides a flow chart involved with both processes. For proposed major Federal actions perceived to have the potential to significantly affect the quality of the human environment (which by definition includes people's relationship with the natural and physical environment), an EIS is required. Most proposed grazing permit renewals are not perceived to significantly affect the environment and will be prepared using an EA. Perceived environmental consequences of proposed actions and a range of alternatives are fully considered in both documents. No specific number of alternatives is required for an EA (36 CFR 220), but in the case of an EIS a "no action" alternative is required to be present in the document (40 CFR 1502). In practice, most EAs also include the "no action" alternative (BLM NEPA Handbook). If the proposed action is not categorically excluded from detailed analysis, it is considered a major proposed management action. Presently, neither the United States Forest Service (**USFS**) nor the Bureau of Land Management (**BLM**) have authority to use a Categorical Exclusion as a means for NEPA compliance with regard to authorizing domestic grazing activities.

There may be some projects that do not require an EA or EIS, and may fall under a Categorical Exclusion (CE). With threatened, endangered, or proposed (**TEP**) species concerns, CE's are not common for USFS or BLM rangeland management. The use of CE's are usually for routine tasks, projects or operations and maintenance on an approved list that only require TEP species or archaeological clearances. The USFS and BLM have departmental manuals that provide direction on

the use of CE's. These directives may be found at BLM Categorical Exclusions and at USFS Categorical Exclusions (for USFS, choose Chapter 30 document entitled wo_1909.15_30.doc) .

Though the USFS is under the US Department of Agriculture and the BLM is under the US Department of Interior, both agencies follow similar NEPA processes as defined by the Council on Environmental Quality (**CEQ**) and NEPA regulations. The differences are found in each agency's policies and manuals and are referenced in the Literature Cited section of this handbook.

Applying NEPA

To help clarify the NEPA process, Figure 2 illustrates applying the NEPA process on USFS grazing allotments. Figure 3 illustrates the processes as described in this guide. Other federal government agencies follow similar procedures shown in Figures 2 and 3. These figures help clarify the planning process applied to issuing or reissuing livestock grazing permits (Plan-to-Project Analysis). The left side of the NEPA triangle in Figure 2 illustrates the review, planning, and data collection phase. The right side of the triangle illustrates NEPA processes necessary to fully develop management alternatives related to the project area and to accomplish project implementation. The base of the triangle illustrates implementation of the alternative chosen and subsequent monitoring for effectiveness. Figure 3 demonstrates places where ranchers should make sure they are fully involved in the NEPA process for grazing permits.

In its full intent, the NEPA document should accommodate the *Adaptive Management* process (Chapter 90 Adaptive Management; FSH 2209.13, Washington Office Amendment, 2005 for USFS; BLM Adaptive Management, 2009 for BLM). Adaptive Management is a formal, systematic, and rigorous approach to learning from the outcomes of management actions, accommodating change, and improving management. There may be supplemental Regional issuances of this directive to provide clarification and Regional level operating procedures (e.g. Region III 2209.13 Supplement 9/8/2007), so be sure to check with the office responsible for permit renewal.

Management Review or Plan-to-Project Analysis

NEPA for the reissuance of grazing permits often begins with a review of the grazing history (including actual numbers and use) and management over the last ten years. This review should be facilitated through Annual Operating Instructions between range staff and the permittee(s).

Identification of Possible Practices to Address Resource Needs

New range improvements are considered that may help the operation be more successful both ecologically and financially. Monitoring data should be summarized and used to provide background information about existing and desired conditions. Discrepancies between existing and desired conditions may be due to a variety of reasons such as climate, invasive plant species encroachment, poor livestock distribution due to a lack of water developments or fences, and myriad other factors that may or may not be under a permittee or land manager's control. As reasons for management shortcomings are discussed, accompanying management practices are identified to address these concerns such as invasive plant treatment, new water pipelines and storage tanks, changing seasons of use, herding, and cross fencing. Much of the documentation and communication between agency personnel and ranchers is outlined on the "left side of the triangle" (Figure 2).

Desired and Existing Conditions

Through the course of allotment analysis, if deficits between *Desired* and *Existing Conditions* are identified by the permittee, land management agency, or other interested parties, at least three things need to occur: 1) an examination of discovery to see if there is agreement for the reasons for the gap between desired and existing conditions; 2) to determine if there are existing data that fully describe the long term trend and extent of the deficit between desired and existing conditions; and 3) with the assistance of data collection and sound biological, economic, legal, and resource principles, come to common agreement as to some practical management actions or *alternatives* that could be applied on the grazing allotment to narrow the deficit between Desired and Existing Conditions. These discussions and data summary activities provide the framework for identifying resource management needs and development of the *proposed action* and management actions which will be analyzed in the NEPA document. Internal agency documents provide a framework for the development of a proposed action, most commonly in an EA.

Evaluating soils on Dutchwoman Butte.

Developing Your Own Proposed Action

If you want to be a part of the NEPA development for your allotment, you may ask, what should I do? The answer is, be proactive in the development of the proposed action and any alternatives.

It is important to understand that the scope of your action is focused on the authorization of livestock grazing and must include livestock management practices necessary for effects analysis (evaluation of suggested practices) and successful rangeland management.

Proposed Action and Project Initiation Letter

Permittees and agencies should fully coordinate in developing proposed actions. When an issue is raised, it is critical that there be sufficient data to fully describe the nature and reasons for differences between actual conditions on the grazing allotment and the desired conditions that are biologically obtainable. In this case, the NEPA process should not progress beyond the left side "frontloading" part of the NEPA triangle until sufficient data is collected to assist in the development of sound *proposed* management actions.

When both agency staff and the permittee feel that adequate data and ancillary information exist to form a purpose and need statement and subsequent proposed actions, a Project Initiation Letter (PIL) is executed by the agency and an interdisciplinary team is formed. As defined by the USFS NEPA Handbook 1909.15, ("Zero Code"), a PIL includes a clear statement of the purpose and need for an action and the proposed action; cites any documents, assessments, and public involvement used to generate the purpose and need; assigns team membership and leadership; defines time frames for analysis and documentation; and identifies resources available to the team. The Zero Code further defines the 'Proposed Action' as existing when an agency gives **public notice** of a proposal.

In recent years, federal agencies have more fully recognized the importance of public participation, adaptive management, coordination and collaboration. With these concepts recognized, affected parties or permittees, not just specialists, become a greater participant in NEPA processes – before public notice. Hence, many NEPA writers use the term proposal in the PIL and then define the sideboards (purpose and need for action) the team must use to prepare a suitable 'Proposed Action.'

Permittee Involvement in Agency Processes

From a technical perspective, a livestock grazing permittee is not considered a member of the NEPA interdisciplinary (ID) team. The challenge then is the constant need to 'ask' to be involved and for information and updates. A permittee should be able to stay abreast of project development through collaborative efforts with agency representatives.

As the proposal is further developed, the permittee should insist on full involvement by reviewing drafts and providing comments, especially when endangered species are involved. With TEP species, Section 7 Consultation under the Endangered Species Act with the United States Fish & Wildlife Service **(USFWS**) is concurrent with much of the NEPA process. Informal consultation can occur with the USFWS during the early stages of the proposed action development. A certified Biologist will prepare a *Biological Assessment* (**BA**) to document their determination of any effect the proposal may have on the species. If effects are determined to exist, the agency is required to consult with the USFWS. The land management agency initiates formal consultation of the proposed action with the USFWS in writing, accompanying this letter with the BA. Formal consultation takes 145 days. Informal consultation usually runs 30 to 60 days. This can be reduced with early and continuous

involvement of the USFWS in the process. It is a good idea for the biologist to collaborate with agency range staff and the permittee in the preparation of the BA. The final decision from the line officer must be preceded by a signed BA. If the proposed action is determined to be a "major federal action" (EIS), the BA should analyze alternatives.

Early in this process the permittee should apply for "applicant" status through the USFS to have opportunity to provide comments on the USFWS's draft *Biological Opinion* **(BO).** This allows the permittee to review and provide input during consultation between the USFS and the USFWS. Working together with staff biologists, the agency range specialists and the permittee collaboratively will evaluate resource conditions and provide findings that will be incorporated in the BA for the grazing allotment. If the biological determination is a "may effect" or is "likely to adversely affect," the BA is sent to the USFWS for review. If the USFWS finds the management action is "likely to affect" or "adversely affect" TEP species, mitigation measures to address these concerns will be provided in a BO authored by the USFWS. In the BO, guidance from the USFWS will be provided as to whether the proposed management action will negatively affect species of concern under the Endangered Species Act (**ESA**). Mitigation measures, reasonable and prudent measures, and any terms and conditions from the BO are coupled with the agency BA and incorporated into the NEPA document sent out for public comment. If there are potential adverse effects to a TEP species, an EIS may be required*;* otherwise an EA may be prepared. Specifically, an EIS is written when there *may be* extraordinary circumstances or significant impacts to the human environment; notification of the process is published in the Federal Register (**FR**) with a *Notice of Intent* (**NOI**) starting the scoping or comment period. The Draft EIS (**DEIS**) is made available for review prior to or at the time of transmittal to the Environmental Protection Agency (**EPA**). The EPA will issue a *Notice of Availability* (**NOA**) in the FR. The review period is calculated from the day after the EPA's NOA appears in the FR as per regulations {36 CFR 215.6(a)(1)(ii); FSH 1909.15_20 Sec. 24.1; 40 CFR 1506.9-10}.

Public Scoping

Under legal requirements engendered by the National Environmental Policy Act of 1970, major proposed management actions must be sent out to the public for examination and comment. *Public Scoping* is required for all USFS proposed actions (36 CFR 220) including EAs. Under BLM regulations, only EIS documents are specifically required to have a public scoping period. Other actions covered by an EA within the BLM are subject to the authorized line officer's discretion as to whether the action is major and thus requiring public scoping. Public Scoping allows interested parties to bring to the attention of the land management agency issues or concerns that may have been overlooked by the interdisciplinary team (BLM or Forest Specialists, State Wildlife Specialists, and others) when the proposed action was developed. Alternative management actions may be developed after receipt of comments during public scoping of Chapter 1 and 2 of the EA or EIS, which would include the proposed action, purpose and need, and alternative(s) being considered.

NEPA Document Contents

If you review agency NEPA documents that have been circulated to the public and review requirements in this guide, common themes exist for what should be included in a NEPA document. We have indicated those themes in parentheses following the suggested outline below:

1. Recitation of Issues of Concern (Purpose and Need for Action)
   If there are no major issues or concerns, the purpose may be just to reissue the grazing permit or to install some range improvements that will improve management on the allotment.
2. Description and Characterization of the Allotment (Existing Conditions)
3. Historical Information about the Allotment (Background or Existing Conditions)
4. Past Management Actions and Projects and Their Success or Failure (Existing Conditions - Management History)
5. Mitigating Factors (Existing Conditions - History and Management)
6. Monitoring Data Summary (Existing Conditions - History and Management)
7. Goals and Objectives (Desired Conditions - Proposed Action)
   As part of a Proposed Action, an adaptive management strategy should be included to provide for needed and achievable course corrections to meet goals and objectives.
8. Environmental Impacts of Proposed Action (Effects)
9. Supporting Documents (Literature Cited; Monitoring Data)
10. Compliance with pertinent laws (Proposed Action – National Historic Preservation Act (**NHPA**) clearances)

In assembling the items above, close communication needs to occur with the management agency administering the permit. The desire is to submit your own alternative after consultation with agency partners, consultants, University personnel, family members, or other parties you feel would provide helpful information. The ideal outcome for the allotment would be for the selection of the alternative for which you invested considerable effort to become the proposed action due to the thoroughness of your preparation and the completeness of the collaborative process you employed. View yourself as an investigative scientist in determining possible reasons for current conditions on the allotment and combine that with research to see if available information supports your preferred alternative.

Recitation of Issue of Concern

If there are existing conditions on the allotment that could benefit from a change in management, these should be identified. Often, issues only marginally related to grazing management may have a major effect upon current conditions (such as tree encroachment which reduces the herbaceous or grassy understory and may increase erosion). It is important to not ignore such issues that are influencing the resource conditions of the grazing allotment. If existing conditions are being negatively influenced by factors outside the realm of your control as a grazing permittee these should be identified. As you further examine what problems exist on the grazing allotment (if they do indeed exist), you may wish to view them in the following manner to help identify goals, objectives, and to develop an alternative:

Does a problem(s) exist? Do we know the reason for the problem(s)? What is the severity of the problem(s) as supported by data collection? Can we fix the problem in an economically and ecologically sustainable manner? What is the most obvious manner in which to fix the problem(s)? Does the logical action(s) we would propose comply with existing laws such as the Endangered Species Act? What is the expected outcome(s) of the proposed action and can we monitor progress for the management practices in such a way as to evaluate the appropriateness of the action? Viewing existing problems for the allotment in such a manner can help identify goals and objectives for future management and provide the genesis for the NEPA alternative you would propose.

"Ground Truthing" is an essential part of allotment evaluations.

Description and Characterization of the Allotment

This section of the document includes a general description of the allotment such as location (including maps), acreage, range and vegetation types, elevation, pastures, grazing plan, and climate. Oftentimes, information is omitted that should have been included to explain the management of the allotment as a whole. For instance, are there pastures that are better used as winter pastures due to limited water availability or increased browse cover? Are there pastures that should be used as calving pastures to limit predator loss? Information vital for the management of the allotment should not be overlooked or you may find your options limited later on. You should not agree to a management plan that is inflexible but you also should not fail to provide sufficient detail that supports your preferred alternative.

In this section, you should explain characteristics unique to your allotment. Is this a yearling or cow-calf operation, or both? Do you use the allotment year round or seasonally? Are you using a single herd or multiple herds in your grazing rotation? Sometimes, agency personnel may suggest you make this section as simple as possible. However, if your operation requires additional complexity such as breeding pastures to maintain a multiple sire breeding system, information regarding this additional complexity will need to be included. The important thing to monitor and document on the allotment is your "footprint" on the landscape and you should seek to have desired day to day management become incorporated into the document. In many NEPA documents, language related to livestock management is incomplete, chiefly due to a lack of communication between agency personnel and the permittee. Agency personnel are familiar with stocking rates and livestock movements but are often unfamiliar with the overall philosophy of the rancher's operation such as how a rotation schedule would better suit calving or breeding seasons on your operation.

As you construct this section, equip yourself with the soils and vegetation maps and ecological site guides (if they exist) that can be obtained from your agency partners. You may wish to identify areas of the allotment in excellent ecological conditions and those areas that could stand improvement. Do not overlook other information vital to the allotment such as trails and roads that are important to management. Other information that may need to be included (at least on a map or table) may be the location of gathering facilities, future controlled burns, and underutilized areas of the allotment (e.g., due to a lack of water, trails, or fences).

When documenting Existing Conditions, be sure to display all aspects, not limiting your description only to issues of concern. Past management practices or unique features of the allotment that have resulted in beneficial attributes for the action area (such as improved wildlife habitat) should also be included to assist in developing your proposed action.

Historical Information About the Allotment

In this section, you will need to provide information on historic and more recent stocking rates and management. You should provide information on the number and type of livestock that existed on the allotment early on and more recently. You may also want to provide a historical overview of when it was first settled, early management, and how cattle were gathered and sold. Excerpts from historical narratives such as journals and letters, documented oral history from older family members and early pioneers, and old photos showing what the landscape looked like during early settlement could provide valuable information that does not usually make it into NEPA documents. Climatic data may also be available online at long term weather stations that are close to the allotment. However, keep in mind that rainfall can vary greatly over just a short distance. If you have rainfall data collected by the family over the years that is even better.

Past Management Actions and Projects and Their Success or Failure

Within this section, you have the opportunity to describe past projects that have been implemented on the allotment, maintenance needs, and their relative success and why. Examples would be old juniper removal projects, seeding efforts, waterlines, riparian treatments, etc. If you had an old juniper push that is in need of maintenance due to young trees that have encroached or if roads on the allotment are contributing to hillside erosion, it is good to acknowledge the same. Have you been locked into a particular grazing system with the old NEPA? Document the need of altering it by such actions as adding pastures or grazing a shorter time period. This is a good example of when to enact Adaptive Management language. Do livestock congregate in an area more than you desire due to a lack of water developments? Have you seen improved plant diversity or reduced soil movement due to the installation of a cross fence? Acknowledging successes and failures can help you provide justification for the management actions you wish to propose.

Mitigating Factors.

Are there any special conditions or influences that explain some of the existing conditions on the allotment? Examples may be drought, timing of moisture in the warm season vs. the cool season, tree encroachment, historic soil loss or overgrazing, off road vehicles, fire, smelter shadows, etc. Some influences like fire can be either positive or negative, depending upon the frequency and intensity of rainfall following the fire, grazing pressure before the fire, and the seedbank available in the area. Temporary losses in ground cover follow fires but with lower intensity rainfall following fire, overall herbaceous ground cover can increase over time.

Monitoring Data Summary

Monitoring information is essential for NEPA documents

What can we say about this dimension of the NEPA document to emphasize how important it is? Oftentimes, this is the most incomplete section of the document. Good information leads to good decisions. If monitoring data are not being collected, begin now! Guidelines on initiating a monitoring program on your allotment are available at (Sprinkle and Ruyle, 2001) and (Johnson and Davies, 2008) and (FSH 2209.13-2007-1, choose 2209.13_90.doc, then Section 95) . In addition to data the permittee has helped collect, a review and summarization of existing monitoring data that is present in the agency project file should be pursued. You will also want to look for related data pertinent to management such as past fire occurrences on the ranch. Monitoring shall be included in the NEPA decision and includes both Implementation and Effectiveness monitoring. Implementation monitoring verifies the alternative chosen in the final NEPA decision is correctly applied. Effectiveness monitoring determines the efficacy of the chosen alternative to achieve the desired outcomes which were described in the NEPA document. Quantitative monitoring is important for adaptive management.

Goals and Objectives

Based upon issues of concern, existing conditions, livestock management, and monitoring data, what is the logical course of action and the intermediate steps required to accomplish the plan of action? Close collaboration with agency, university, family members, and other partners is necessary to develop an alternative that everyone can get behind and support. Make sure that any range improvements such as fences, waterlines, juniper treatments, and burns you wish to propose are included here. If the agency says that proposed actions such as burns will be addressed under another NEPA document specific to that action, you have at least raised the issue for future reference. As you assemble components of the alternative you wish to propose, remember to build as much flexibility into the proposed action as is possible.

Adaptive Management. Adaptive management (Chapter 90 Adaptive Management, 2005; BLM Adaptive Management, 2009) facilitates the implementation of a flexible management plan on your allotment and should be incorporated to allow for the flexibility required to accommodate the inherent variability of rangelands. Matters based upon current conditions and monitoring data, such

as flexible turn out dates and stocking rates, are accommodated with adaptive management. When livestock grazing is proposed using an adaptive management strategy, the proposed action establishes guidelines for grazing management for desired outcomes and identifies such things as timing, intensity, frequency, and duration of livestock grazing. Desired outcomes (such as ground cover, forage utilization, and vegetative trend) set standards that can be checked through monitoring to determine if actions prescribed were followed, and if changes are needed in management. The NEPA analysis discloses the effects (desired outcomes) for these standards. Following the final NEPA decision, progress towards desired outcomes can be monitored and course corrections (administrative actions) can be implemented without additional NEPA. Examples of administrative decisions include: a. Determination of specific dates for grazing; b. Specific livestock numbers; c. Class of animal; d. Grazing systems; and e. Range readiness when these variables fit within the NEPA-based decision (FSH2209.13, 92.23b)

Make sure to include desired range improvements in the NEPA document.

Environmental Impacts of Proposed Action

What do you anticipate will result from your proposed action? Are there data from neighboring allotments or research data that document the anticipated effects of the proposed action? Using the best professional judgment and data available, you will need to formulate what the predicted effects of the proposed action will be, both beneficial and detrimental. As much as possible, weave the best available science into the effects analysis, giving greater weight to peer reviewed science. The management team will also need to consider both economic and ecological impacts of the proposed

action(s), both long term and short term. Other effects that are specified by 40 CFR 1508 are aesthetic, historic, cultural, social, or health. Furthermore, direct, indirect, and cumulative effects must be analyzed for proposed actions 40 CFR 1508. The Interior Board of Land Appeals has established that the BLM "must take a 'hard look' at potential environmental impacts and reasonable alternatives for proposed actions" (IBLA Hard Look). The BLM NEPA Handbook has defined a "hard look" as a "seasoned analysis containing quanitative or detailed qualitative information". A collaborative approach is very useful for determining the effects of proposed actions.

Supporting Documents

This section allows you to compile appendix information which supports your proposed alternative. Your monitoring data should have been summarized briefly in item # 6 (Monitoring Data Summary), often in tabular fashion. Complete supporting documents for monitoring can be provided in item # 9 Supporting Documents.

It is a good idea to investigate the existence of peer reviewed published scientific studies which undergird the proposed action you desire to present for public scoping. Alternative viewpoints should be presented in a balanced manner but your analysis of the available literature and practical application of the same will lead you to propose a specific action as being "preferred". You can search for scientific studies with a keyword search at a university library (especially searchable CD databases such as JSTOR, Agricola, and CAB), with online database search engines (such as Agricola at the National Agricultural Library at http://agricola.nal.usda.gov/; select keyword search and enter search terms), and with Internet search engines such as Google Scholar. Online scientific search engines such as Google Scholar often will return a list of articles based upon key word searches but when you try to access the article the journal may want to charge a fee for access.

However, the abstract of the article will often be displayed and you will be able to evaluate the suitability of the article for your purposes. There will also be a citation displayed which you can use to submit to a librarian for retrieval by the interlibrary loan program. A resource which the University of Arizona manages is the electronic archive for the *Journal of Range Management*, currently known as *Rangeland Ecology and Management*. This is a particularly good resource for articles related to range management and you can enter search terms to access journals from 1948 to 2003. The gateway for this resource is at {Journal of Range Management Archives (1948-2003)}. Current and archived (archived since 2005) issues of *Rangeland Ecology and Management* and *Rangelands* are available at http://www.srmjournals.org/ . Once you have identified journal articles you would like included in the Literature Cited section of the NEPA document, use the suggested format for literature citations as presented in the Literature Cited Section.

Compliance with Pertinent Laws

Archaeological clearances are mandatory for actions that involve ground disturbance, such as fencing or corrals, prior to completing the effects analysis for the environmental assessment. As an example, FSH2209.13, 93.2 provides detailed direction for Region 3 Forest Service allotments in relation to the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.)

Environmental Statement (EA or EIS)

Following public scoping, an EA or a *Draft* EIS with appropriate alternatives is developed and made available to those who responded to public scoping with comments or who communicated a desire to be involved. At the end of the public scoping period, comments received are compiled and

examined by agency personnel and evaluated as to whether the comments fit within the parameters of the proposed action or are beyond the "scope" of the analysis. If additional alternatives are needed to satisfy comments received, then those alternatives are incorporated into the EA or draft EIS. After completion, the EA or EIS is submitted to the interested public and stakeholders for a review. At a minimum, there is a 30-day comment period for an EA within the USFS (may be less days for BLM) and 45 days for an DEIS. These periods of time may be extended if conditions warrant. The comments and responses to the comments throughout the process are included in the final document along with a decision document from the land management agency line officer who makes the final decision as to the management action(s) that will be implemented.

An EA is written when no significant impacts on the human environment are expected from the action. In this case, the decision document is a *Decision Notice* (**DN**) for the USFS and a *Decision Record* (**DR**) for the BLM (Figure 1). A DN or DR must be coupled with a *Finding of No Significant Impact* (**FONSI**). Proposed actions resulting in significant impacts to the human environment require preparation of a DEIS. After the review period prescribed in the Federal Register for the DEIS, a Final EIS (**FEIS**) is then written and also published in the FR, and the decision document is a *Record of Decision* (ROD). Please see Figure 1 for more clarification of the process involved for both an EA and EIS. Following the decision document and a sufficient time for appeals, the NEPA process has successfully completed actions associated with the right side of the NEPA triangle (Figure 2) and the chosen management alternative can be implemented.

Once the management action is implemented, there is a tendency to think that the NEPA process has ended. However, mistakes, new information, changed conditions, or unanticipated effects may occur. To evaluate management and related factors two types of monitoring are necessary (base of NEPA triangle). First, the management action must be monitored to see if it is being implemented properly (implementation monitoring) and secondly, the effectiveness of the management action chosen must be monitored (is it working?). If the management action chosen is producing undesirable results, then it makes no sense to proceed onward with the action. Monitoring is a vital key to adaptive management and provides information that is imperative in order to gauge success and guide future management decisions. As the bottom side of the NEPA triangle is traversed, then information on the applied management action is gained and other accompanying issues or objectives may be identified for future management actions (left side of NEPA triangle).

As described above, the more common NEPA process requires a BA (if TEP species are involved) to be conducted preceding the EA, DN or DR, and FONSI. If the proposed action might have extraordinary circumstances or significant impacts on the human environment, there is a BA coupled with an EIS and ROD. Separate from a biological evaluation (BE) or assessment (BA) needed for TEP species where recovery plans are not available, a BE or BA may be used to analyze habitat capability, determine conservation strategies, or select management indicators. Some agencies use the terms BA or BE interchangeably. A BE is essentially a review of programs or activities. A BE becomes a BA when analysis is conducted for major federal projects requiring an EIS in accordance with the ESA (see Forest Service Manual 2600, Chapter 2670, 2005). If TEP species are a concern, then a BO from the USFWS is written providing mitigation measures, reasonable and prudent measures, and terms and conditions that become additional management actions in the EA or EIS.

Appeals

Before formal appeals, always consider further communication and consensus. Often, an informal meeting with the District Ranger, Forest Supervisor or Bureau of Land Management (**BLM**) District Manager will solve the problem.

When communication fails, understand how to use the appeals process. There are a number of alternatives available depending upon the agency and level of your dissatisfaction. You can challenge agency decisions without a lawyer using procedures by the agencies and their parent agencies; the USFS and the U.S. Department of Agriculture; the BLM and the U.S. Department of Interior.

BLM Appeals

For example, for BLM decisions there are two different kinds of administrative remedies: protests and appeals. A protest is a formal request for reconsideration by a BLM official of any Proposed Decision and the appeal is for any Final Decision. The Environmental Assessment DR becomes a Proposed Decision under the BLM grazing regulations (43 CFR). Stakeholders and the interested public are notified by certified mail of Proposed Decisions. Upon receipt of the Proposed Decision, the administrative clock starts ticking. Affected entities have 15 days to protest the Proposed Decision for an EA. In the absence of any protests, the Proposed Decision becomes a Final Decision. If a protest is received, the BLM may incorporate pertinent protest points into a Final Decision. However, if the Proposed Decision proceeds to a Final Decision it can be appealed to an Administrative Law Judge (**ALJ**). Affected parties have 30 days to appeal a Final Decision to the ALJ. If a permittee is unsatisfied with the decision of an ALJ, a higher appeal can be pursued with the Interior Board of Land Appeals 43 CFR.

USFS Appeals

The kinds of decisions than can be appealed in the USFS are called planned actions. These are written decisions governing plans, projects, and activities to be carried out on the National Forest System that result from analysis, documentation and other requirements of NEPA and the National Forest Management Act. Before the decision can be appealed, it must be in writing. **However, if you did not submit written substantive comments to the proposed action or scoping letter, you will not be eligible to appeal.** To appeal a decision a person must file a written notice of appeal with the next higher line officer and simultaneously send a copy of the notice of the appeal to the Deciding Officer (the line officer whose decision is being questioned). This must be done within the specified period allowed for appeals, most often 45 days from the date of publication of legal notice. The time the agency takes to process the appeal is typically 60-90 days. For a grazing permit, typically an appeal will be done under either 36 CFR Parts 215 or 251, and the appellant must specify which administrative review regulation he or she chooses to use (36 CFR 215 or 36 CFR 251). Usually, the permittee's best choice for an appeal is 36 CFR 251 because it precludes the possibility of intervention by outside parties. However, your ranch management may also be affected by the development, amendment or revisions of Forest Plans, which you may also appeal. During the current transition period between planning rules, the USFS has *Optional Appeal Procedures* that must be used (36 CFR 219). The USFS offers an explanation of their appeal procedures at Forest Service Environmental Appeals.

The website at AZ Rangelands West NEPA offers more guidance on USFS appeals and NEPA documents. They suggest that:

> Grazing permittees may appeal a decision in an EA under subpart 215, but will most likely want to use the guidance found in sections 36 CFR 251. These regulations contain procedures established in July of 1999 allowing permittees to seek mediation of disputes involving cancellation of permits in whole or in part through USDA certified mediation programs. However, Mediation ONLY comes into play for decisions which suspend or cancel, in whole

or in part, the permit as the result of violations of the terms and conditions of the permit. It is not an option when the permitted use would change because of an analysis conducted under NEPA. In the event that mediation is not applicable or unsuccessful, permittees may continue with the appeal process. An appeal must be filed within 45 days of official notice of the decision. A written appeal should contain the following:

i. Permittee name, address, day-time phone number, and date
ii. Should be labeled as an appeal, cite the appeal regulations applied, the title and date of the decision being appealed, and name of the reviewing officer
iii. Description of the decision and name of the deciding officer for the decision being appealed
iv. A statement describing how the appellant is adversely affected by the decision
v. A statement of the facts and issues involved in the case
vi. Reference to any laws, regulations, or policies the appellant believes have been violated in issuance of the decision and reasons for such allegation
vii. Statement as to whether and how the appellant has sought to resolve the issue with the deciding officer, date of any discussions, and the outcome of those contacts.
viii. A statement of the relief being sought by the appellant

The written appeal may also include a request for an oral presentation (generally most effective) with the reviewing officer as per 36 CFR 251.97 and/or in states with certified programs, a request for mediation pursuant to 36 CFR 251.103. In the event, that implementation of the decision would cause immediate damage to the appellant; the appellant may also request a stay of the decision. Such a request must be sent to the deciding officer and the reviewing officer and should include all the elements described at 36 CFR 251.91. In the event that the permittee has sought mediation, a stay is granted automatically. The appeal process under normal circumstances will take about a month. Decisions made by the District Ranger are appealed to the Forest Supervisor. An unsatisfied permittee may then appeal to the Regional Forester.

Grounds for Appeal

What might be reasonable grounds to appeal? There can be a variety of reasons, but the following are possible candidates:

1. Establishing unattainable goals for the allotment that are beyond the site potential.
2. Failure to adequately document (i. e., monitoring data) negative effects that are ascribed to livestock grazing which are introduced as making it necessary for a proposed action. One example would be to call for a major reduction in grazing due to presence of a “management indicator species” without clearly establishing linkages to changes in preferred habitat or species survival brought about by livestock grazing.
3. Use of computer modeling techniques to establish stocking rates independent of any site specific data. Failure to provide site specific monitoring data to support conclusions on the need for action.
4. Exclusion of data that contradict hypotheses on the need for action, or in other words “cherry picking” data.
5. Using data inappropriately to support conclusions. For example, using subjective, one-time qualitative (visual categorization) inventory data as trend data. The inventory

data may present a need for action (such as a low percentage of perennial grass ground cover on vertic soils) but without comparison to prior conditions (data), it is impossible to establish trend and attribute current conditions to livestock management.

6. Failure to fully consider the economic and/or ecological effects of the proposed action.
7. Ascribing on the ground conditions solely to livestock grazing that may in fact be influenced by more powerful drivers such as tree encroachment. In this case, the adjustment of livestock grazing may not have a major effect upon problems that need resolving in another fashion (such as woody plant thinning).
8. Failure to consider other low cost alternatives that may achieve similar results without undue hardship upon the permittee. These alternatives should be fully explored through collaborative processes with the permittee and other interested parties prior to issuing the NEPA scoping letter. For example, it may be possible to winter graze livestock in riparian pastures instead of building 10 miles of fence or to exclude livestock totally.
9. Failure to follow due process in the NEPA decision, such as choosing an alternative that was not analyzed in the NEPA document.
10. Failure to adequately include the permittee in the process.

Many unfavorable agency decisions can be forestalled using the recommendations set forth in this paper. It all begins with open and honest communication, setting reasonable resource objectives and then monitoring progress. As responsible land stewards, it is up to you to take the lead in communication with land management agency personnel, stressing proper resource management, documenting results, and creating a positive image with the non-ranching public.

Implementing Actions

For USFS NEPA based decisions, a grazing permit shall be modified or a new permit issued within 90 days of final agency action consistent with the NEPA decision. Allotment Management Plans (AMPs) are developed that include livestock grazing strategies, range improvement construction and maintenance, monitoring, maps, and goals and objectives.

Developed within the scope of the NEPA decision, Annual Operating Instructions (AOI) are developed each grazing season to achieve livestock grazing operation management objectives.

Conclusion

It is important to become involved early for the NEPA renewal for your grazing permit. Since it often takes at least two years to prepare and initiate a new NEPA document, it is best to be in at the start of the process instead of at the end when alternatives have already been decided. Maintain open lines of communication with the range specialists and line officers for your grazing permit. Find out what issues are of concern for the allotment and then work collaboratively to gather data to identify possible reasons for the issues. Work with resource specialists, scientists, and other ranchers to identify options to address the concerns. Package your recommendations with preexisting data and request an audience with agency specialists and the deciding line officer to present your preferred alternative. Since the future of the ranch is dependent upon the outcome of the NEPA document, be involved!

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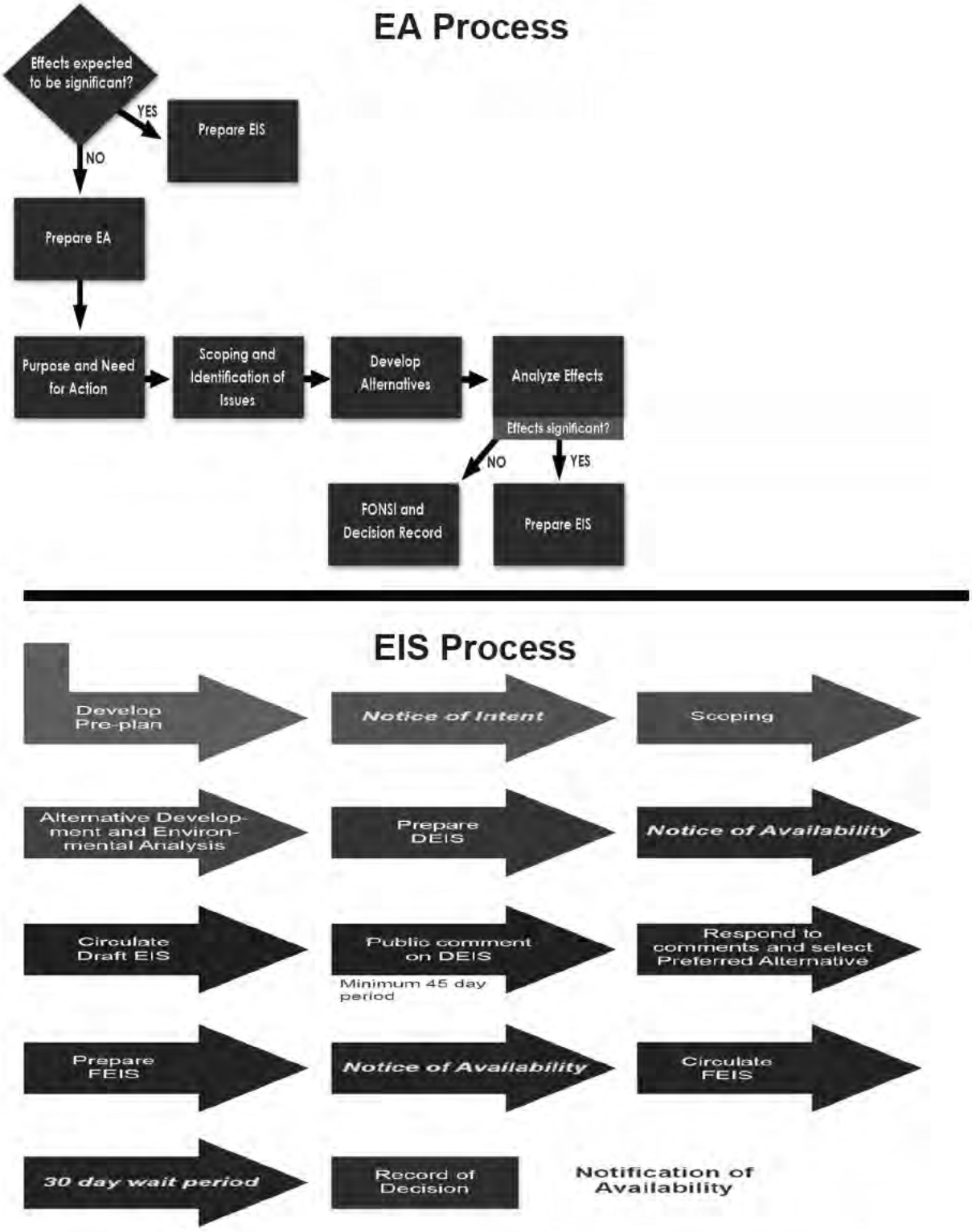


Figure 1: Adapted from BLM H-1790-1 - NATIONAL ENVIRONMENTAL POLICY ACT HANDBOOK

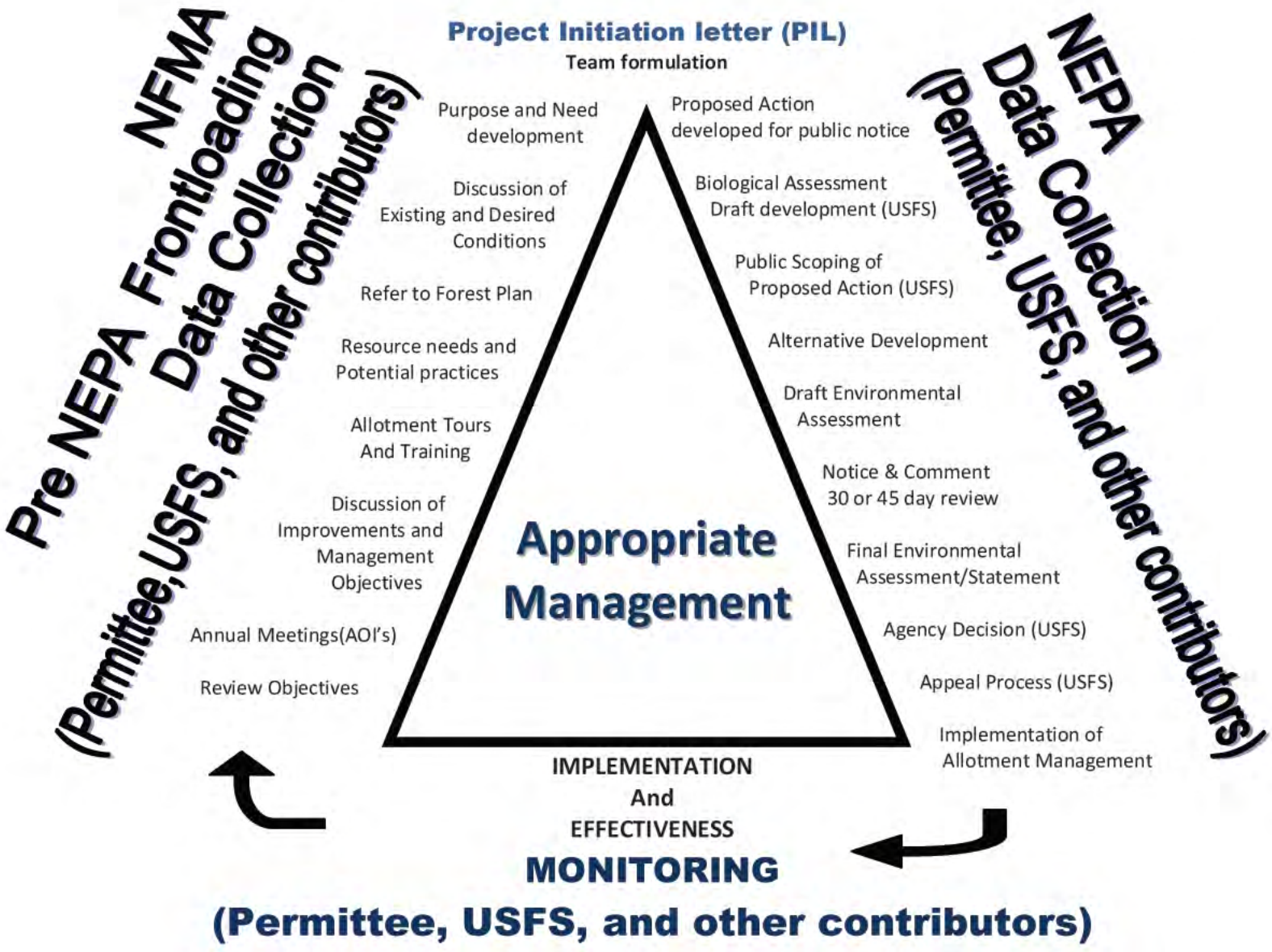

Pre NEPA Frontloading
NFMA
Data Collection
(Permittee, USFS, and other contributors)
Project Initiation letter (PIL)
Team formulation
Purpose and Need development
Discussion of Existing and Desired Conditions
Refer to Forest Plan
Resource needs and Potential practices
Allotment Tours And Training
Discussion of Improvements and Management Objectives
Annual Meetings(AOI's)
Review Objectives
Proposed Action developed for public notice
Biological Assessment Draft development (USFS)
Public Scoping of Proposed Action (USFS)
Alternative Development
Draft Environmental Assessment
Notice & Comment 30 or 45 day review
Final Environmental Assessment/Statement
Agency Decision (USFS)
Appeal Process (USFS)
Implementation of Allotment Management
Appropriate Management
NEPA
Data Collection
(Permittee, USFS, and other contributors)
IMPLEMENTATION
And
EFFECTIVENESS
MONITORING
(Permittee, USFS, and other contributors)

Figure 2

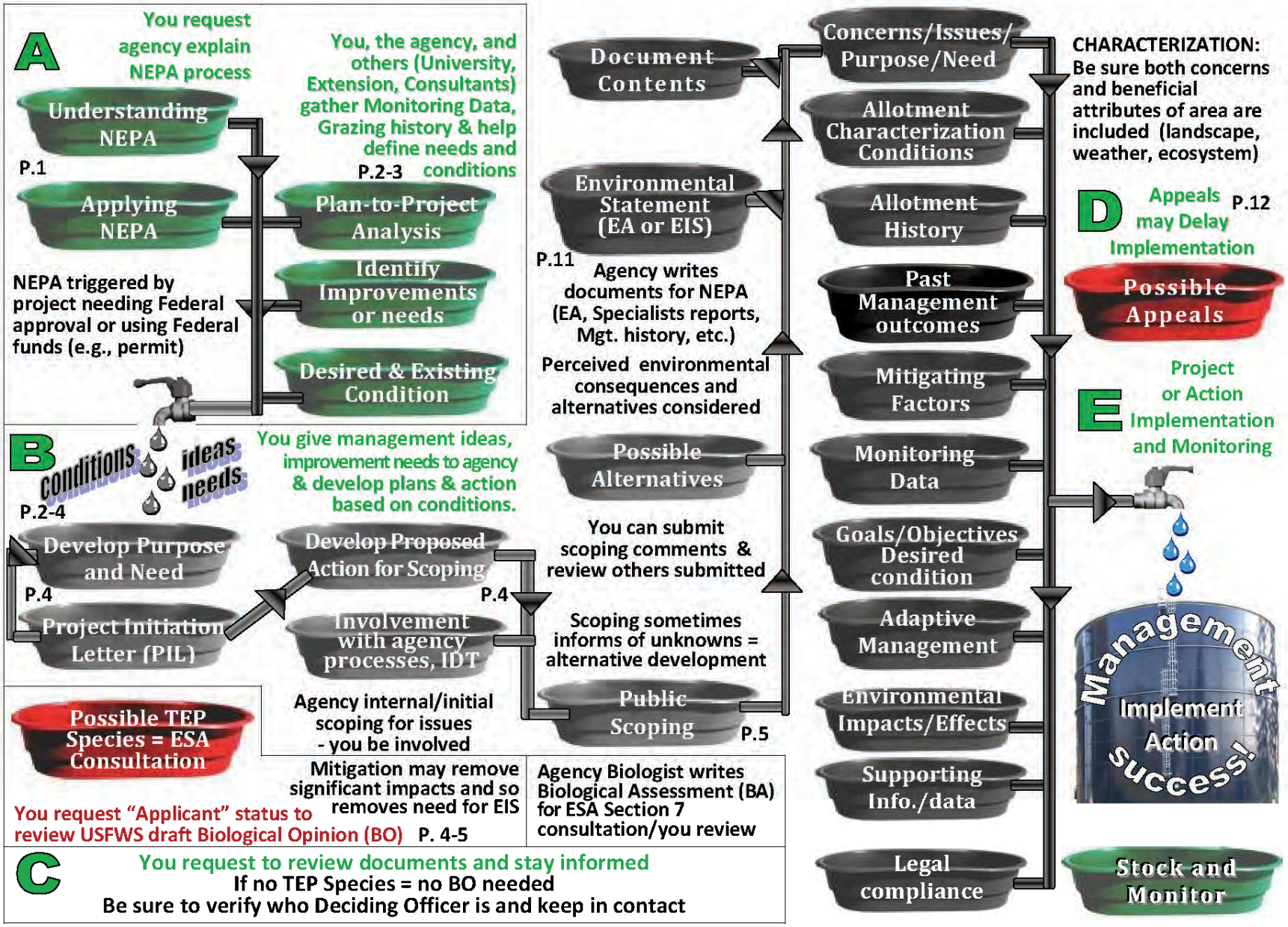


FIGURE 3: RANCH MANAGER'S NEPA FLOWCHART

C. Eppler

Case Study

Sample Case Study

Carolyn Eppler, U. S. Forest Service (Retired), Action Analysis Partners, LLC, Payson, Arizona
David Cook, DC Cattle Company, LLC, Globe, Arizona
Jim Sprinkle, Area Extension Agent, Animal Sciences, University of Arizona

The following is a hypothetical case study illustrating the interactions common in the Southwest, between a public lands livestock operator and the US Forest Service (USFS) – related to NEPA processes and livestock management on public lands. The case study highlights requirements to obtain a National Forest system lands Term Grazing Permit, NEPA process initiation through proposed management changes, review of allotment records and management information, important activities in developing a proposed action (communication and monitoring), a sample proposed action and purpose of and need for the action.

G. Cosper moved to Arizona to purchase a cattle ranching operation after selling his private land ranch in Texas. Mr. Cosper purchased 750 cattle and two private properties associated with the ranches. Both of the operations he purchased included Term Grazing Permits on National Forest system lands that had 75,000 total allotment acres.

Shortly after he finalized his purchases, he scheduled a meeting with the local National Forest District Ranger and Rangeland Management Specialist to complete the permit waiver (transfer) process and make application for new term permits in his name. The prior owner waived the term grazing permits back to the United States with Mr. Cosper indicated on the waiver form as the purchaser of the permitted livestock and designated base property. Mr. Cosper also presented to the District Ranger other documents such as brand certificates(s), bills of sales, and warranty deeds for base property necessary to complete the application for the term grazing permits. Once the grazing application was complete, as determined by the District Ranger, new term grazing permits were issued to Mr. Cosper. During this process, the District Ranger was provided sufficient documentation to insure that Mr. Cosper was the legitimate owner of the permitted livestock and that minimum base property ownership requirements were met. In Arizona the minimum required base property or ranch headquarters is typically a minimum of 10 acres, though many ranchers have larger private land holdings. The new Term Grazing Permits issued to Mr. Cosper retained the same livestock numbers and allotment management as the prior owner.

However, at the meeting, Mr. Cosper expressed his desire to manage the livestock operations differently than what was provided for in the prior permit, including combining the two allotments. The District Ranger informed Mr. Cosper that he must submit his proposal in writing so that a determination could be made if there is enough adaptive management flexibility within the existing NEPA grazing authorization to respond to his request or if additional NEPA analysis and decision making would be necessary.

The Forest Officers approved the two Term Grazing Permits and provided a copy of the associated records to Mr. Cosper. Together they reviewed: 1) Historical and existing allotment management; 2) Pasture rotations and forage use restrictions in Annual Operating Instructions; 3) Other agency documents or direction that affect the permits such as Arizona Game and Fish Department recommendations or US Fish and Wildlife Service (USFWS) Biological Opinions concerning threatened, endangered, or proposed species and critical habitat; 4) Structural maintenance responsibilities and needs; and 5) Monitoring data or reports of plant composition and forage use; forage availability, vigor, and diversity; soil conditions; precipitation; actual livestock use numbers each grazing season; and structural improvements built or repaired to specs.

Additionally shared with Mr. Cosper was: 1) Contact and background information of all people or groups interested in the use and management of the permits (i.e., local and state representatives, university researchers and professionals, county extension specialists, collaborative groups, volunteer groups, environmental activists); and 2) local suppliers for livestock feed and supplements, contractors or material suppliers. While at the District Office, the Forest officers introduced Mr. Cosper to their Wildlife Biologist, Timber Specialist, Fire Management Officer, Wilderness Ranger, Archaeologist, and administrative staff explaining each of their roles in a NEPA assessment.

After reviewing all that was given to him, Mr. Cosper realized that the monitoring and management information related to the Term Grazing Permits are very important in the development of a proposed action. He also recognized the Forest Officers had yet to agree to horseback, hike or ATV across his entire permitted areas. On his private land ranches back in Texas he understood the importance of keeping watch of all landscape events such as seasonal plant growth, moisture, changes in the soil surface, vandalism, and land management opportunities such as seeding or burning or adding new waters and structural improvements. Mr. Cosper requested the Rangeland Management Specialist and District Ranger accompany him to inspect his allotments. Unfortunately, the Forest Officers informed Mr. Cosper it would be several weeks before they would have opportunity to do so.

Mr. Cosper also felt it important to secure the opinions of neighboring ranchers as to how to do business with the Forest Service. He became involved with the county Cattle Growers Association and attended their meetings. He scheduled times with neighboring ranchers to help move cattle and discuss local range management practices. Upon advice of some of the ranchers, he also attended educational programs put on by the local conservation district, the Natural Resources Conservation Service, and University Cooperative Extension.

Mr. Cosper soon realized the complexity of managing a livestock operation on public lands. He also became more aware of the values and opportunities of public land livestock grazing. To get a head start on pulling together his management ideas for the ranch operation, Mr. Cosper asked for a sample proposed action which the district staff provided including a sample purpose and need statement.

The following was provided:

Purpose and Need for Action

The purpose of the proposed action is to implement management actions that would maintain or improve resource conditions on the XX allotment in a manner consistent with Forest Service policy and the XX National Forest LRMP.

Existing Condition

*The XX grazing allotment is located in the XX Ecosystem Management Area west of Interstate XX. The allotments are bounded on the west by the XX, on the south by XX, on the north by state and private land and on the east by other Forest allotments. Vegetation is broadleaf evergreen woodland, desert grassland and southwest desertscrub. Range condition and trend were evaluated on the allotment in XX (year). The data indicate that the allotment meets or exceeds Land Management Plan (**LMP**) standards, with all areas in fair or good condition. Utilization is under 45% in all key areas and stocking appears to be within capacity. There appears to be little need for*

change from current management. Current permitted numbers and recent grazing use on the allotment is displayed in Table 1.

Desired Condition

The XX LMP (page XX) contains the following goals for the range program on the Forest.

- *To restore rangeland to at least moderately high ecological condition (70% to 75% of potential production, fair range condition) with stable soil and a static to upward trend.*
- *Produce livestock products consistent with other resources and uses.*
- *Eliminate grazing from areas not capable of supporting livestock without significant detriment to range or other resources.*
- *Balance permitted grazing use with grazing capacity.*

Actions proposed in Tables 1 and 2 are intended to support these goals and achieve the following specific objectives, which constitute the desired condition in the analysis area:

- *Maintain or improve ecological condition of rangelands as expressed by the number of acres in fair or better condition.*
- *Occupied habitats for threatened, endangered, sensitive and management indicator species are maintained or improved and recovery objectives are being met.*

Proposed Action

The XX Ranger District, XX National Forest, proposes to authorize grazing on the XX allotment under the following terms and conditions that define the limits for the duration, intensity, frequency and timing of grazing.

- ***Duration:*** *Grazing would be authorized year-round on the XX allotment, but may be less in some years.*
- ***Intensity:*** *Forage utilization will be targeted at 30-40% of current year's growth and will be limited to 35% during the growing season (July-September) and 45% during the dormant season (October-June).*
- ***Frequency and Timing:*** *Management systems will be designed to incorporate growing season rest or deferment in order to provide for grazed plant recovery. Timing of pasture moves will be dictated by utilization monitoring and management objectives specified in allotment management plans.*

The proposed action incorporates management flexibility by providing a range of allowable numbers that reflects variations in resource conditions and management objectives over time. Within this range, annual permitted livestock numbers will be specified in annual operating instructions. Initial stocking rates will be set based on existing resource and infrastructure conditions and are based on the average sustainable stocking on the allotments over the past decade. Changes in stocking would occur as a result of changes in resource conditions or management objectives. Herd movements would be determined by utilization levels, forage conditions and water availability and will be specified in annual operating instructions.

A new allotment management plan (AMP) will be developed. The plan will also include mitigation measures and Best Management Practices to avoid or minimize effects to wildlife, soil and water quality. Monitoring of forage availability and utilization, range readiness and resource conditions will be used to determine whether management is being properly implemented and whether the actions are effective at achieving or moving toward desired conditions.

Existing range improvements are considered sufficient to accomplish management on the allotments. No new improvements are proposed.

Table 1. Season of use, permitted numbers and stocking levels for the past 5 years.	
Total Acres	18,398
Capable Acres	17,743
Permitted #	450
Season of use	Yearlong
(Animal Unit Months)	5,400
2004-2005 (AUM)	4,200
2003-2004 (AUM)	2,850 20 horses
2002-2003 (AUM)	3,600 20 horses
2001-2002 (AUM)	2,484 18 horses
2000-2001 (AUM)	5,184 18 horses

Table 2. Proposed Grazing Management -Allotment -	Grazing System	Animal Unit Months	Cattle Yearlong (cow/calf)	Change from Current Permit
XX Allotment	10-pasture deferred rotation	3600-5400	300-450	Change to a range of numbers.

On the first available day Mr. Cosper began inspection of his two allotments with Forest Officers from the local Ranger District who provided a list of management measures commonly used and that he may consider in the development of his Proposed Action. It was emphasized by the Forest Officers that management measures should be evaluated on a site-specific basis and used as a guide. During their inspection on the first and subsequent field days, an inventory of resources was conducted, soil pits were dug in each pasture, stock ponds and waters were evaluated and potential new sites identified, and areas that would benefit from prescribed burning or brush thinning were identified. Also during their inspection they mapped an area that had greater impacts from drought and erosion and noted the possibilities for reseeding or other reclamation, which would also benefit wildlife. A trailhead was located in the north pasture that needed trail work after a wildfire increased flash flooding through the area. Mr. Cosper offered to organize the local Boy Scout troop he supervises to clean up the trail.

<u>Examples of Management Measures to consider in the development of a Proposed Action</u>:

1) Know the dynamics of plant species within an allotment and their capacity for regrowth.

2) The level of forage utilization must allow for re-growth of vegetation in order to maintain the productive capacity of the pasture.
3) Timely assessments of forage utilization and determinations of plant condition in conjunction with pasture rotations will ensure the appropriate level of grazing.
4) Aggressive herding or placement of developed upland waters may prevent overuse of riparian areas.
5) Livestock grazing management considers many variables, sometimes in different combinations. Those include: a. Grazing frequency, including pasture rest; b. Livestock stocking rates; c. Livestock distribution; d. Season and timing of forage use; e. Livestock kind and class; f. Control of wildlife herd size and conflicts; g. Forage utilization; and h. Rehabilitation. These variables may increase forage or improve habitat.
6) Reduce trampling, channel modification in streams, or vegetation damage in sensitive areas.
7) Plan periods of rest from grazing to stabilize streams.
8) Consider use of "in-stream" structures such as gabions, small rock dams, debris catchers, individual boulder placement, rock jetties, or silt log drops, to stabilize stream channels against excessive incision and/or widening.
9) For pastures slated for improvement, late season grazing should occur after the growth of warm season species has peaked and seeds have been produced.
10) Use exclosures to protect areas of high risk or sensitivity.
11) Use planned grazing systems to maintain plant vigor and desired species composition.
12) Intensive practices such as reseeding or weed control may be necessary.
13) Evaluate type of livestock grazed and grazing intensity based on predicted impact to wildlife.
14) Retain flexibility in allotment permits to account for special circumstances, such as resting pastures during drought periods or other special circumstances, if necessary.
15) Monitoring of rangelands is an important activity that will provide opportunity to identify and mitigate impacts. Conduct follow-up monitoring of range trends and forage utilization. Alter actions based on monitoring data.

After Mr. Cosper and the Rangeland Management Specialist inspected all pastures across the two allotments, they met back at the Ranger District office to review their findings and to check with the district specialists to determine if there were any other management needs or issues Mr. Cosper should be aware of specific to other forest uses in or adjacent to his allotments. Mr. Cosper then focused on developing a management strategy to combine the two allotments of 75,000 acres. He also created a proposal to include goats in the brushiest pastures to help open up the landscape and encourage established native grass growth. Mr. Cosper's goals were to enhance range condition, wildlife habitat, watershed and riparian health. The specialists emphasized the importance of animal distribution, particularly with his request of a mixed livestock operation.

The District specialists worked with Mr. Cosper, the local university and county extension professionals to develop a monitoring plan that would assist in pasture management and in the NEPA assessment. They reviewed historical monitoring data and evaluated the sites where the older data were collected for adequacy in reflecting current conditions and trend. Those monitoring sites which were still appropriate and had not been compromised by recreation were reevaluated. New monitoring sites were located in pastures where it was felt sound data were missing. They made several trips across the 75,000 acres monitoring and collecting data. The group of specialists determined that the cattle management Mr. Cosper proposed was mostly within the sideboards of the

adaptive management built into his current Term Grazing Permit management direction; with a few changes it would require evaluation. However, the proposed goat operation was not. Also, the USFWS recently listed a new species as endangered and it was reported to have critical habitat in one of his pastures.

The USFWS sent the District Biologist a Critical Habitat (CH) map for the Mexican Spotted Owl (MSO). With the information from the map, the Biologist determined there was one pasture that should have restrictions on use during the owl's breeding season. The Biologist also stated the biological determination of the action was expected to be a "May Affect, Not Likely to Adversely Affect" (MANLAA). This determination should generate a letter of concurrence from the USFWS (no BO). The Archaeologist found a moderately sized ruin on the hill above the Trail head, in one of the proposed goat grazing pastures. Based on their findings in the field and the draft proposed action, the District specialists determined an Environmental Impact Statement (EIS) was not necessary because there would be no 'significant effects and/or extraordinary circumstances', however, an Environmental Assessment (EA) would be required.

With his field notes in hand, Mr. Cosper wrote a proposed action for his ranch operation he believed the Forest Officers would find compatible with his existing management direction for pasture rotations and allowable forage use by forage type. However, he believed the Biologist was wrong in the location of the MSO, so he insisted they all go as a group into the pasture and surrounding area to ground truth. They found the MSO nesting area was over 15 miles away from the allotment pasture where the Biologist wanted to place restrictions. They also found the habitat in that pasture was not the type described in the MSO Recovery Plan; it was confirmed the pasture in question did not need restrictions for the MSO and the USFWS Critical Habitat map boundaries were wrong. While they were in the field, they found an endangered Arizona Hedgehog cactus in a few scattered places. They also located the historical ruins above a trail head in one of his proposed goat grazing pastures and the group determined the grazing plan would have no effect on the ruins and the cactus would not be affected by livestock grazing as well.

Mr. Cosper scheduled a meeting with the Forest Officers that were assigned by the District Ranger to complete his NEPA and he also requested that the USFWS Biologist be present so they could discuss and negotiate his proposed action. The Forest Officers sent out the Proposed Action (PA) for further internal scoping by Forest employees, who found the action acceptable. The PA was then published in the newspaper for public scoping or mailed out to those who expressed interest in forest activities.

Several public comments were received. Most of the commenters were impressed with the coordination and early involvement by all that occurred to devise the proposed action, however, there was one commenter from an environmental activist group who insisted no livestock grazing should occur anywhere near the Arizona Hedgehog cactus and claimed the MSO needed 5 miles of protected surrounding habitat for prey. Mr. Cosper was given the opportunity to review these public comments. He was glad he met and negotiated with the USFWS representatives and forest specialists before finalizing his proposed action. He also realized the importance of his comments written in a letter and submitted during the public scoping period and that they must be substantive and specific to the action, not just opinions. Even though he was the affected party to the action, Mr. Cosper recognized the value of his public comment, which included a summary of the proposed action and how the group arrived at the proposal. It was another avenue to place documentation in the formal record and inform the public.

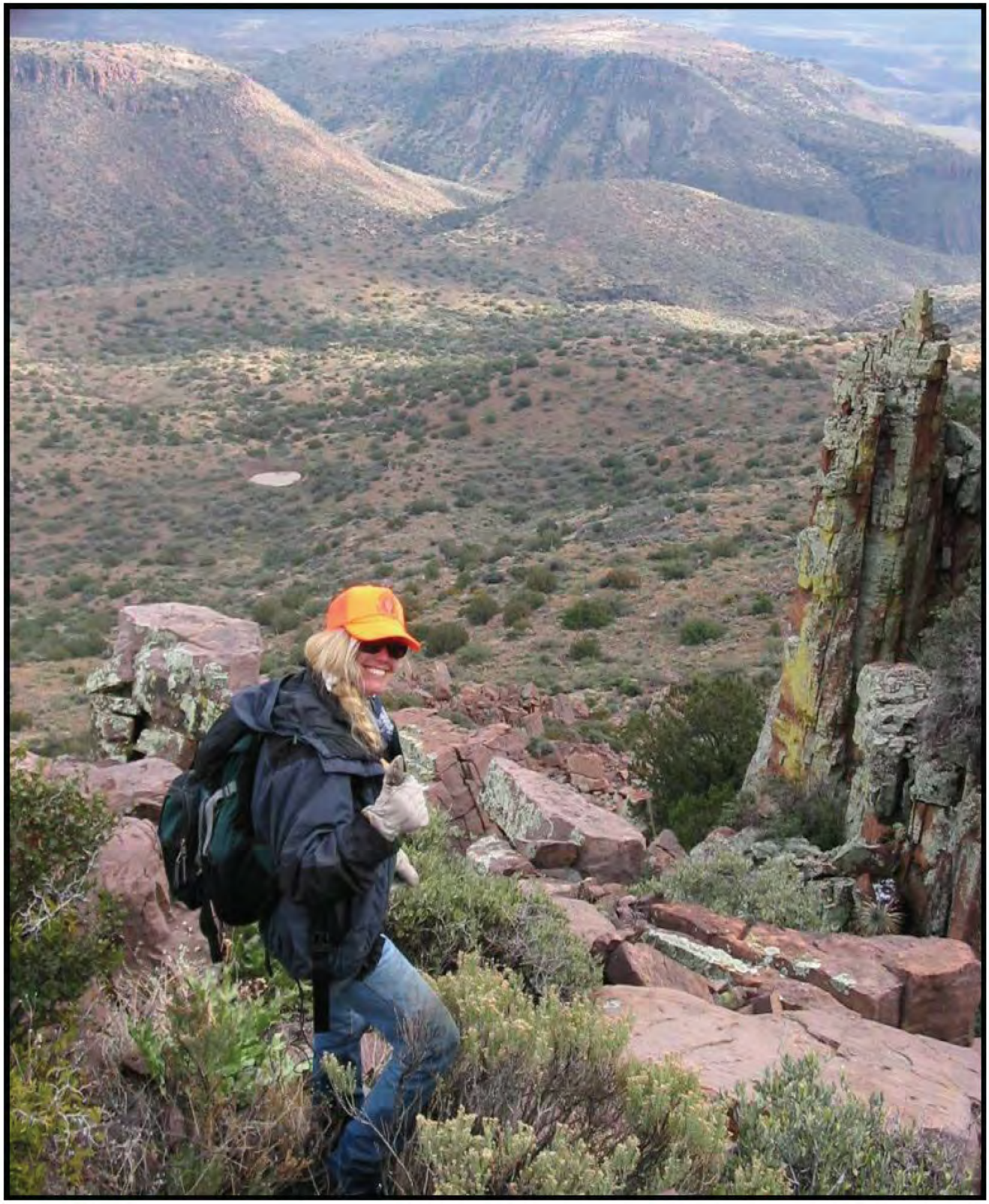
With the MSO and Arizona Hedgehog cactus present or alleged, this required Section 7 consultation with the USFWS regulatory agency. The Forest Service biologist wrote a Biological Assessment (BA) evaluating these species in the action area, which was submitted to the USFWS for

evaluation. As an affected party in the analyses Mr. Cosper requested review of the Forest's BA. He also applied for and received "applicant" status, which afforded him several procedural opportunities during the consultation process. This is important to ensure what was negotiated by the group in the field was similarly interpreted in the written documents. Mr. Cosper learned to insist that all discussions or communication be followed up with written documentation and placed in his allotment records. Trust was slowly building between the land management specialists and Mr. Cosper.

The Forest Biologist wrote the BA based on the PA that was agreed to by all and as supporting documentation for the EA. Mr. Cosper stayed in close contact with the forest specialists to ensure opportunity to review the draft documents for consistency with group discussions and negotiations. The BA was sent to the USFWS for Section 7 consultation after Mr. Cosper reviewed the document and was given adequate time to provide additional input. It took about 120 days for the USFWS to concur with the FS Biologist and issue a BO. The forest specialists determined the proposed action for livestock management, which included measures to address the Arizona Hedgehog cactus and historical ruins, incorporated the terms and conditions from the BO, as well as adaptive management to address multiple use concerns had the necessary evaluations, prescriptions, and plans in place to recommend a Decision by the District Ranger. A Decision Notice and Finding of No Significant Impact (DN and FONSI) were completed and published. However, this was done before Mr. Cosper had opportunity to review the document.

Mr. Cosper received a letter in the mail containing the DN. He then realized the Forest had written that the Arizona Hedgehog cactus would have enclosures around them. Mr. Cosper had to appeal the decision because of this error. Not understanding the appeal process he made an appointment to meet with his local livestock association and request their assistance in filing an appeal. This they did and together they met with the District Ranger to speak about the differences issued in his decision. The ranger acknowledged that it was in fact an error and directed the range staff to make the correction and resend a corrected DN and FONSI to Mr. Cosper and the public. Mr. Cosper learned the importance of communication, early involvement, negotiation, coordination and collaboration, ensuring clarity and consistency, involving others such as university professionals or county Cooperative Extension Specialists, and his local cattle association.

Finally, he was able to get back to the ranch and manage his livestock operation, which became very successful and contributed in many ways to the local economy.



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