

**U.S. Department of the Interior
Bureau of Land Management**

Proposed Decision

(DOI-BLM-NV-L030-2013-0019-EA)

December 15, 2016

Robert Lewis
Authorization Number 2705062
on the Breedlove (11010), Cottonwood (21021), Grapevine (11032), and Henrie Complex
(11034) Allotments

Lincoln County, Nevada

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PROPOSED DECISION

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(11034) Allotments

Background Information

On December 14, 2016, the Bureau of Land Management signed a Finding of No Significant Impact (FONSI) for Robert Lewis (#2705062) on the Breedlove (11010), Cottonwood (21021), Grapevine (11032), and Henrie Complex (11034) Allotments. The Final Environmental Assessment (DOI-BLM-NV-L030-2013-0019-EA), FONSI, and Standards Determination Documents are available in ePlanning. To view the EA go to https://www.blm.gov/epl-front-office/eplanning/nepa/nepa_register.do. This proposed decision is issued in accordance with 43 CFR § 4160.1.

The proposed action, associated with DOI-BLM-NV-L030-2013-0019-EA (EA), is to fully process and issue new term grazing permit to the aforementioned on the Breedlove, Cottonwood, Grapevine, and Henrie Complex Allotments, totaling approximately 386,591 acres.

The current grazing permit has been issued for the period 10/01/2014 to 09/30/2017 under Public Law 112-74 (Appropriations Act). The new grazing permit will reflect terms and conditions in accordance with the Final EA.

On August 15, 2016, BLM received a memorandum from USFWS which provided an informal consultation, dated August 9, 2016, regarding the southwestern willow flycatcher and yellow billed cuckoo. Their conclusion stated: *"The Service does not anticipate adverse effects to the southwestern willow flycatcher or yellow-billed cuckoo based on the proposed action, project description, and the proposed minimization measures. Should project plans change, or if additional information on the distribution of listed or proposed species becomes available, this determination may be reconsidered. This concludes informal consultation pursuant to the*

regulations implementing the Act, promulgated under 50 CFR § 402.13. This informal consultation does not authorize take of listed species.”

On August 19, 2016, BLM received a memorandum from USFWS which provided a formal consultation, dated August 16, 2016, regarding the desert tortoise. The USFWS concluded that: *“After reviewing the current status of the desert tortoise, the environmental baseline for the action area, and the effects of the proposed action, it is the Service’s biological opinion that the proposed action is within the scope of the PBO issued to the BLM’s Ely District Office and is therefore, is not likely to jeopardize the continued existence of the threatened Mojave desert tortoise nor is likely to adversely modify designated critical habitat for the desert tortoise.”*

Fully processing and renewing the term grazing permit for Robert Lewis (#2705062) on the Breedlove, Cottonwood, Grapevine, and Henrie Complex Allotments provides for a legitimate multiple use of public lands. The permit will include terms and conditions, for grazing use, that conform to grazing Guidelines which will aid in continuing to achieve the Resource Advisory Council Standards in the unburned portions of the allotment for Nevada’s Mojave-Southern Great Basin Area in accordance with all applicable laws, regulations, and policies; and, in accordance with Title 43 CFR §4130.2(a) which states in part: “Grazing permits or leases shall be issued to qualified applicants to authorize use on the public lands and other lands under the administration of the Bureau of Land Management that are designated as available for livestock grazing through land use plans.”

Consequently, this decision specifically identifies management actions and terms and conditions deemed appropriate to achieve livestock management, multiple use, and resource condition objectives.

Conclusions of the Standards Determination Documents

Current monitoring data were reviewed and an evaluation of the rangeland health was completed during the permit renewal process. As a result, Standards Determination documents were prepared for each allotment (Appendix II of EA). The results of the findings, regarding the achievement or non-achievement of the Mojave-Southern Great Basin Area Standards for Rangeland Health for the aforementioned allotment are summarized in Table 1, below

Table 1. Summary of Assessment of the Mojave-Southern Great Basin Area Standards for the Breedlove Allotment.

<i>Standard</i>	<i>Status</i>
1. Soils	Uplands Achieved Stream Reaches 1 & 2 Not Achieved Stream Reach 3 Achieved
2. Riparian and Wetland Sites Standard	Uplands Achieved Stream Reaches 1 & 2 Not Achieved Stream Reach 3 Achieved
3. Habitat and Biota Standard	Achieved

Table 2. Summary of Assessment of the Mojave-Southern Great Basin Area Standards for the Cottonwood Allotment.

<i>Standard</i>	<i>Status</i>
1. Soils	Uplands Achieved Riparian Achieved
2. Riparian and Wetland Sites Standard	Achieved
3. Habitat and Biota Standard	Achieved

Table 3. Summary of Assessment of the Mojave-Southern Great Basin Area Standards for the Grapevine Allotment.

<i>Standard</i>	<i>Status</i>
1. Soils	Unburned Area Achieved Burned Area Not Achieved
2. Riparian and Wetland Sites Standard	Uplands Achieved Burned Uplands Not Achieved Riparian Not Achieved
3. Habitat and Biota Standard	Unburned Area Achieved Burned Area Not Achieved

Table 4. Summary of Assessment of the Mojave-Southern Great Basin Area Standards for the Henrie Complex Allotment

<i>Standard</i>	<i>Status</i>
1. Soils	Unburned Area Achieved Burned Area Not Achieved
2. Riparian and Wetland Sites Standard	Not Achieved
3. Habitat and Biota Standard	Standard not Achieved in Burned and Unburned Uplands Standard not Achieved in Riparian Stream Reaches 2, 3, and 4 Standard Achieved in Riparian Stream Reaches 1, 5, and 6

The data indicate that grazing is in conformance with all applicable Guidelines for a majority of the allotments area. However, the new term permit will include terms and conditions directed at working towards:

- Continued achievement of the Standards and Guidelines for Grazing Administration in the unburned portions of the allotments and riparian areas that are meeting Standards.
- Progress towards achievement of the Standards and Guidelines for Grazing Administration in burned portions of the allotments and riparian areas that are not meeting the Standards.
- Achievement of habitat requirements for wildlife, Wilderness Area objectives, and other pertinent land use objectives.

Although the shrub component appears to be slowly re-establishing in the burned portions of the allotment, the shrub understory is lacking in density of perennial grasses and forbs, and consists primarily of red brome (*Bromus rubens*), an invasive annual grass. It is a species which begins growth in late winter/early spring prior to the green-up of perennial vegetation. With sufficient precipitation, even into April, this grass could potentially reproduce in copious amounts; thereby, yielding vegetation capable of contributing to highly destructive wildfires. It appears that without intervention (e.g., seeding, targeted grazing, fuel breaks, etc), invasive annuals will continue to dominate a majority of the burned portions of the allotment. Consequently, in an effort to reduce the accumulation of fine fuels, livestock grazing is the most readily available tool for use during the interim.

In addition, Best Management Practices (BMPs) will be included, as Terms and Conditions, in the term grazing permit. Utilization objectives are a quantification of the land use plan objectives and will be included as a BMP.

Consultation and Coordination

On March 24, 2010, the permittee of record was sent a letter informing them of the proposed term permit renewal process, associated with their permit on the Breedlove, Cottonwood, Grapevine, and Henrie Complex Allotments. The letter notified the permittee of the upcoming evaluation and invited participating in the collection of monitoring information.

On September 19, 2012, BLM sent the authorized representative for authorization #2705062 a letter informing them of the upcoming permit renewal process and invited them to participate in monitoring of their allotments.

On January 3, 2013, the aforementioned Ely BLM annual CCC letter was mailed to establish the Public Mailing List for 2013.

On April 3, 2013, a phone conversation between the BLM and the authorized officer for Grazing Authorization #2705062 discussed possible changes on the grazing permit.

On April 5, 2013, a letter was sent to local Native American tribes requesting comments regarding the permit renewal process for authorization number 2705062 on the Breedlove, Cottonwood, Henrie Complex, and Grapevine Allotments. No comments were received.

On April 24, 2013, the proposal to fully process the term permit associated with livestock grazing on the Breedlove, Cottonwood, Henrie Complex, and Grapevine Allotments was posted on the following E-Gov for Planning (ePlanning) and National Environmental Policy Act (NEPA) website.

On July 11, 2013, BLM Caliente staff met with the authorized officer for Grazing Authorization #2705062 to discuss preliminary results of the term permit renewal process.

On April 6, 2016 (NOPA-040-16-2), a Notice of Proposed Actions in Wilderness was posted on the Ely District website for a 30 day period. Subsequently, all entities on the Ely District Wilderness mailing list were either sent a postcard containing the Ely District website address, or

sent the website address in an email depending upon the preferred form of contact received from each entity. No comments were received.

On April 18, 2016, a meeting was held with the permittee in Cedar City, Utah to further discuss the Term Permit Renewal. BLM discussed actions needed to address the SWFL habitat in the allotments.

On June 6, 2016, the BLM sent a memorandum to the U.S. Fish and Wildlife Service (USFWS) requesting Section 7 consultation and a request to append the proposed action to the Programmatic Biological Opinion for the Ely RMP (2008), file number 84320-2008-F-0078, for the federally threatened Agassiz's desert tortoise (*Gopherus agassizii*) and the Southwestern Willow Flycatcher (*Empidonax traillii extimus*).

On June 6, 2016, the BLM sent a memorandum to the U.S. Fish and Wildlife Service (USFWS) requesting Section 7 consultation and a request to append the Programmatic Biological Opinion for the Ely RMP (2008) (file number 84320-2008-F-0078) regarding the proposed action, for the federally threatened Agassiz's desert tortoise (*Gopherus agassizii*), the endangered southwestern willow flycatcher (*Empidonax traillii extimus*), and the threatened yellow billed cuckoo (*Coccyzus americanus*).

On June 23, 2016, the Preliminary EA was posted on the NEPA Register webpage (https://www.blm.gov/epl-front-office/eplanning/nepa/nepa_register.do) in preparation for a 30 day public review and comment period with the direct link to this webpage also posted on the Ely BLM Homepage.

On June 23, 2016, a request was made to post the Preliminary EA on the Nevada State Clearinghouse website for a 30 day public review and comment period. Statements regarding general state water laws and existing water rights were cited by the Division of Water Resources, and received as comments by the BLM. The Nevada Department of Wildlife commented that they supported the proposed action along with suggested minor editorial revisions.

On June 23, 2016, a postcard was mailed to all interested publics (using the 2016 Interested Publics Mailing List as described in section 6.2 of the EA) that contained the aforementioned NEPA Register webpage link and instructions on how to navigate to the Preliminary EA. The due date for all comments ended at the close of business on July 23, 2016. No comments were received.

On June 23, 2016, a physical copy of the Term Permit Renewal Preliminary EA was mailed to the permittee for a two week comment period, ending July 23, 2014. No comments were received.

On June 28, 2016, USFWS contacted BLM stating that federally endangered southwestern willow flycatcher (SWFL) and federally threatened yellow-billed cuckoo (YBCU) is not in the original RMP Biological Opinion and that it must undergo informal consultation.

On July 15, 2016, the USFWS received BLM's request for informal consultation regarding southwestern willow flycatcher and yellow-billed cuckoo habitat and the proposed action.

LIVESTOCK MANAGEMENT DECISION

In accordance 43 CFR §4130.2, §4130.3, §4130.3-1, §4130.3-2, and §4120.3 the grazing permit for Robert Lewis (#2705062) for the Breedlove (11010), Cottonwood (21021), Grapevine (11032), and Henrie Complex (11034) Allotments will be issued, and range improvement projects will be implemented according to the following:

Breedlove

Part 1: Maintain the full Active Use of 698 Animal Unit Months (AUMs)

Part 2: Temporarily reduce the Season of Use from year-long to October 1 through February 28—a fence is to be constructed to prevent livestock from accessing the riparian area. Upon the completion of fence construction, the Mandatory Terms and Conditions would be changed back to those shown in the “From” table.

In accordance with 43 CFR §4130.3-1, the Mandatory Terms and Conditions (Season of Use, Active Use, Suspended Use and Number and Kind of Livestock) for Robert Lewis (#2705062) on the Breedlove Allotment (11010) will be changed according to the following:

FROM:

ALLOTMENT		Auth. Num.	LIVESTOCK		GRAZING PERIOD		** % Public Land	Active Use	AUMs	
Name	Number		* Number	Kind	Begin	End			Hist. Susp. Use	Permitted Use
Breedlove	11010	2705062	58	cattle	3/1	2/28	100%	698	166	864

* This number is approximate

** This is for billing purposes only.

TO:

ALLOTMENT		Auth. Num.	LIVESTOCK		GRAZING PERIOD		** % Public Land	Active Use	AUMs	
Name	Number		* Number	Kind	Begin	End			Hist. Susp. Use	Permitted Use
Breedlove	11010	2705062	140	cattle	10/1***	2/28	88%	698	166	864

* This number is approximate

** This is for billing purposes only.

*** This is only until a fence is constructed to prevent livestock from accessing the riparian zone. Upon the completion of such fence construction, the Mandatory Terms and Conditions would be changed back to those shown in the “From” table.

Range Improvements

Part 3: Construct riparian enclosure—construction of a riparian enclosure would exclude grazing from approximately 55 acres of riparian habitat. The enclosure, which would require approximately 6,200 feet of fencing, will be constructed according to BLM Handbook H-1741-1 fence construction specifications, for fence construction in bighorn sheep and deer habitat. The project will be constructed under a Cooperative Range Improvement Agreement (Form 4120-6), with the permittee being responsible for all fence maintenance following construction. Construction will not occur from March 1 – October 31 to comply with the Ely RMP (2008), Management Action SS-32 (Special Status Species).

Cottonwood

Part 1: Maintain the full Active Use of 1296 AUMs.

Part 2: Change the season of use from May 1 -October 31 to March 1 -October 31.

The Mandatory Terms and Conditions (Season of Use, Active Use, Suspended Use and Number and Kind of Livestock) for Robert Lewis (#2705062) on the Cottonwood Allotment (21021) will be changed according to the following:

From:

ALLOTMENT		Auth. Num.	LIVESTOCK		GRAZING PERIOD		** % Public Land	Active Use	AUMs	
Name	Number		* Number	Kind	Begin	End			Hist. Susp. Use	Permitted Use
Cottonwood	21021	2705062	214	cattle	5/1	10/31	100%	1296	1704	3000

- * This number is approximate
- ** This is for billing purposes only

TO:

ALLOTMENT		Auth. Num.	LIVESTOCK		GRAZING PERIOD		** % Public Land	Active Use	AUMs	
Name	Number		* Number	Kind	Begin	End			Hist. Susp. Use	Permitted Use
Cottonwood	21021	2705062	161	cattle	3/1	10/31	100%	1296	1704	3000

- * This number is approximate
- ** This is for billing purposes only

Range Improvements

Part 3: Sagebrush Restoration—restore approximately 7,285 acres of sagebrush rangeland in the northern half of the allotment which have become dominated by pinyon and juniper trees.

Grapevine

- Part 1: Maintain current permitted use of 349 AUMs**
- Part 2: Maintain the season of use of March 1 to February 28**
- Part 3: Manage livestock access to desert tortoise critical habitat**

The Mandatory Terms and Conditions (Season of Use, Active Use, Suspended Use and Number and Kind of Livestock) for Robert Lewis (#2705062) on the Grapevine Allotment (11032) will remain unchanged according to the following:

ALLOTMENT		Auth. Num.	LIVESTOCK		GRAZING PERIOD		** % Public Land	Active Use	AUMs	
Name	Number		* Number	Kind	Begin	End			Hist. Susp. Use	Permitted Use
Grapevine	11032	2705062	29	cattle	3/1	2/28	100%	349	211	560

* This number is approximate
 ** This is for billing purposes only

Range Improvements

Part 4: Construct pipeline from Grapevine Spring to Grapevine Reservoir—a new pipeline will consist of approximately 5 – 6 miles of buried polyethylene pipe from Grapevine Spring in the north east portion of the allotment to the west and northwest portions of the allotment. Formal consultation under Section 7 of the Endangered Species Act (ESA) with USFWS will be completed before construction begins. Tortoise and cultural surveys will also be completed prior to construction. The project will be constructed under a Cooperative Range Improvement Agreement (Form 4120-6), with the permittee being responsible for all fence maintenance following construction. Construction will not occur from March 1 – October 31 to comply with the Ely RMP (2008), Management Action SS-32 (Special Status Species).

Part 5: Fence Grapevine Spring riparian area—an exclusionary fence approximately 1,300 feet in length would be constructed to protect approximately 1 acre of riparian habitat. The fence will be constructed according to BLM Handbook H-1741-1 fence construction specifications, for fence construction in bighorn sheep and deer habitat. The project will be constructed under a Cooperative Range Improvement Agreement (Form 4120-6), with the permittee being responsible for all fence maintenance following construction. Construction will

not occur from March 1 – October 31 to comply with the Ely RMP (2008), Management Action SS-32 (Special Status Species).

Part 6: Create Fuel Breaks to reduce the potential for catastrophic fires—two herbicides (Imazapic and Glyphosate) will be used to create fuel breaks by treating and reducing the amount of non-native, invasive annual grasses (e.g., Bromus spp.) and their seed bank. The fuel breaks would be approximately 60 feet wide and total approximately 4 miles or 29 acres in the Grapevine Allotment.

Henrie Complex

Part 1: Maintain current permitted use of 1380 AUMs

Part 2: Change the season of use from November 1 — April 30 to October 1 — March 30

The Mandatory Terms and Conditions (Season of Use, Active Use, Suspended Use and Number and Kind of Livestock) for Robert Lewis (#2705062) on the Henrie Complex (11034) Allotment will be changed according to the following:

FROM:

ALLOTMENT		Auth. Num.	LIVESTOCK		GRAZING PERIOD		** % Public Land	Active Use	AUMs	
Name	Number		* Number	Kind	Begin	End			Hist. Susp. Use	Permitted Use
Henrie Complex	11034	2705062	232	cattle	11/1	4/30	100%	1380	2780	4160

- * This number is approximate
- ** This is for billing purposes only.

TO:

ALLOTMENT		Auth. Num.	LIVESTOCK		GRAZING PERIOD		** % Public Land	Active Use	AUMs	
Name	Number		* Number	Kind	Begin	End			Hist. Susp. Use	Permitted Use
Henrie Complex	11034	2705062	232	cattle	10/1	3/30	80%	1380	2780	4160

- * This number is approximate
- ** This is for billing purposes only.

Range Improvements

Part 3: Fence the allotment boundary between Henrie Complex and Cottonwood Allotments—a fence will be constructed at the mouth of Cottonwood Canyon to protect riparian habitat on the Henrie Complex Allotment. This fence would be approximately 500–1500 feet long and anchored in to existing rock features. The project would be constructed

under a Cooperative Range Improvement Agreement (Form 4120-6), with the permittee being responsible for all fence maintenance following construction. Construction would occur in coordination with a BLM project inspector (PI), in accordance with BLM Handbook H-1741-1 fence construction specifications, for fence construction in Bighorn sheep and deer habitat (illustrations 1 and 2 in H-1741-1). The PI would make periodic site visits during fence construction to assure compliance with BLM specifications and evaluate construction progress. Upon completion of the fence, a final inspection would be made to ensure compliance with specifications and to correct any deficiencies.

The fence would be a BLM three-strand wire fence consisting of three strands of barbed wire. White topped green steel fence posts would be used for increased visibility for wildlife purposes. In accordance with BLM specifications, the posts would be spaced 16.5 feet apart with wire stays placed between them for stability. Wire spacing, measured from ground level to each strand of wire, would be 20", 35" and 39" from the bottom strand to the top strand, respectively. This translates to 20 inch spacing between the ground and the bottom wire, 15 inch spacing between the bottom and second (or middle) wire, and 4 inch spacing between the two top wires. Consequently, the fence would be 39" high from ground level to the top wire. All fence corners and panels would consist of galvanized metal pipe.

Part 4: Create Fuel Breaks to reduce the potential for catastrophic fires—two herbicides (Imazapic and Glyphosate) will be used to create fuel breaks by treating and reducing the amount of non-native, invasive annual grasses (e.g., *Bromus* spp.) and their seed bank. The fuel breaks would be approximately 60 feet wide and total approximately 63 miles or 455 acres within the Henrie Complex Allotment.

All range improvements proposed, including fencing, pipelines, and vegetation treatments on the Breedlove, Cottonwood, Grapevine, and Henrie Complex Allotments will be in accordance with the Final EA (DOI-BLM-NV-L030-2013-0019-EA). All locations of ground

Breedlove, Grapevine, and Henrie Complex Allotments

The following Reasonable and Prudent Measures, provided by the U.S. Fish and Wildlife Service as a result of the aforementioned Section 7 consultation, will be included as Terms and Conditions in the grazing permit to minimize take of the Mojave desert tortoise that may result from the implementation of the Proposed Action:

1. Prior to initiation of an activity within desert tortoise habitat, a desert tortoise awareness program shall be presented to all personnel who will be onsite, including but not limited to contractors, contractors' employees, supervisors, inspectors, and subcontractors. This program will contain information concerning the biology and distribution of the desert tortoise and other sensitive species, their legal status and occurrence in the project area; the definition of "take" and associated penalties; speed limits; the terms and conditions of this biological opinion including speed limits; the means by which employees can help facilitate this process; responsibilities of workers, monitors, biologists, etc.; and reporting procedures to be implemented in case of desert tortoise encounters or noncompliance with this biological opinion.

2. Tortoises discovered to be in imminent danger during projects or activities covered under this biological opinion, may be moved out of harm's way.
3. Desert tortoises shall be treated in a manner to ensure they do not overheat, exhibit signs of overheating (e.g., gaping, foaming at the mouth, etc.), or are placed in a situation where they cannot maintain surface and core temperatures necessary to their well-being. Desert tortoises will be kept shaded at all times until it is safe to release them. No desert tortoise will be captured, moved, transported, released, or purposefully caused to leave its burrow for whatever reason when the ambient air temperature is above 95°F. Ambient air temperature will be measured in the shade, protected from wind, at a height of two inches above the ground surface. No desert tortoise will be captured if the ambient air temperature is anticipated to exceed 95°F before handling and relocation can be completed. If the ambient air temperature exceeds 95°F during handling or processing, desert tortoises will be kept shaded in an environment that does not exceed 95°F and the animals will not be released until ambient air temperature declines to below 95°F.
4. Desert tortoises shall be handled by qualified individuals. For most projects, an authorized desert tortoise biologist will be onsite during project activities within desert tortoise habitat. Biologists, monitors, or anyone responsible for conducting monitoring or desert tortoise field activities associated with the project will complete the Qualifications Form (Appendix D) and submit it to the Service for review and approval as appropriate. The Service should be allowed 30 days for review and response.
5. A litter-control program shall be implemented to minimize predation on tortoises by ravens drawn to the project site. This program will include the use of covered, raven-proof trash receptacles, removal of trash from project areas to the trash receptacles following the close of each work day, and the proper disposal of trash in a designated solid waste disposal facility. Appropriate precautions must be taken to prevent litter from blowing out along the road when trash is removed from the site. The litter-control program will apply to all actions. A litter-control program will be implemented by the responsible federal agency or their contractor, to minimize predation on tortoises by ravens and other predators drawn to the project site.
6. The permittee shall be required to take immediate action to remove any livestock that move into areas unavailable for grazing. If straying of livestock becomes problematic, BLM, in consultation with the Service, will take measures to ensure straying is prevented.
7. All vehicle use in listed species habitat associated with livestock grazing, with the exception of range improvements, shall be restricted to existing roads and trails. Permittees and associated workers will comply with posted speed limits on access roads. No new access roads will be created.
8. Use of hay or grains as a feeding supplement shall be prohibited within grazing allotments. Where mineral and salt blocks are deemed necessary for livestock grazing management they will be placed in previously disturbed areas at least one half mile from riparian areas wherever possible to minimize impacts to flycatchers and listed fishes and their habitat. In some cases, blocks may be placed in areas that have a net benefit to tortoise by distributing livestock more evenly throughout the allotment, and minimizing

concentrations of livestock that result in habitat damage. Water haul sites will also be placed at least one half mile from riparian areas.

9. Site visits shall be made to active allotments by BLM rangeland specialists and other qualified personnel, including Service biologists, to ensure compliance with the terms and conditions of the grazing permit. Any item in non-compliance will be rectified by BLM and permittee, and reported to the Service.
10. Livestock levels shall be adjusted to reflect significant, unusual conditions that result in a dramatic change in range conditions (e.g., drought and fire) and negatively impact the ability of the allotment to support both listed species and cattle.

The following Term and Condition (BMP) will be added to the term grazing permit for the Cottonwood Allotment:

11. Allowable Use Levels on current year's growth of perennial upland vegetation (grasses, forbs and shrubs) will not exceed 45%.

The following Term and Condition (BMP) will be added to the term grazing permit for the Grapevine Allotment:

12. Allowable Use Levels on current year's growth of perennial upland vegetation (grasses, forbs and shrubs) will not exceed 40% (Ely RMP, BO 2008).

To address the Programmatic Biological Opinion for the Ely RMP regarding livestock grazing in desert tortoise habitat; and the southwestern willow flycatcher (SWFL) habitat requirements as contained in the SWFL Recovery Plan (2002), the following Terms and Conditions (BMPs) will be added into the Term Grazing Permit for Breedlove and Henrie Complex Allotments:

13. Allowable Use Levels on current year's growth of key perennial grasses, shrubs and perennial forbs of upland vegetation will not exceed 40 percent on key species (Ely RMP, BO 2008).
14. Allowable Use Levels on current year's growth of riparian vegetation will not exceed 35 percent on palatable, perennial grass or grass-like plants, 40 percent on woody species, and stream bank alteration from livestock will not exceed 10 percent (SWFL Recovery Plan, 2002).

Breedlove, Cottonwood, Grapevine and Henrie Complex Allotments

To address travel in the Clover Mountains Wilderness, Delamar Mountains Wilderness, and Meadow Valley Range Wilderness areas, created through the Lincoln County Conservation Recreation and Development Act P.L. 108-424, the following term and condition will be added to comply with the Wilderness Act of 1964 (P.L. 88-577) and BLM Handbook 6340 (see Congressional Grazing Guidelines in (see Congressional Grazing Guidelines in Appendix C of the EA):

15. Except in the case of emergency – the definition of which is defined in BLM Handbook 6340 (Management of Designated Wilderness Areas) – the permittee(s) must obtain written authorization from the District Manager prior to using any motorized vehicles, mechanical transport or motorized equipment within the Meadow Valley Range Wilderness Area. The use of motor vehicles, mechanical transport, or motorized equipment is not allowed for herding animals or routine inspection of the condition of developments or the condition of the range.

The following Terms and Conditions (BMPs) will be added to the term grazing permit:

16. Under the discretion of the BLM, on allotments with more than one watering location, the watering locations will be used in a manner which will yield maximum livestock distribution in the allotments. Herding will be used, as needed, to achieve this objective.
17. No roads will be bladed or improved in any way, with mechanical equipment, without the expressed consent of the authorized officer.

Standard Operating Terms and Conditions on all allotments:

The new term permit will also include standard terms and conditions which further assist in achieving/maintaining the Standards and Guidelines for Grazing Administration in addition to other pertinent land use objectives.

In accordance with 43 CFR §4130.3-2, the following will also be included as terms and conditions in the term grazing permit for Robert Lewis (#2705062).

18. Livestock numbers identified in the Term Grazing Permit are a function of seasons of use and permitted use. Deviations from those livestock numbers and seasons of use may be authorized on an annual basis where such deviations are consistent with multiple-use objectives. Such deviations will require an application and written authorization from the authorized officer prior to grazing use.
19. The authorized officer is requiring that an actual use report (Form 4130-5) be submitted within 15 days after completing your annual grazing use.
20. Grazing use will be in accordance with the Standards and Guidelines for Grazing Administration. The Standards and Guidelines have been developed by the respective Resource Advisory Council and approved by the Secretary of the Interior on February 12, 1997. Grazing use will also be in accordance with 43 CFR Subpart 4180 - Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration.
21. If future monitoring data indicates that Standards and Guidelines for Grazing Administration are not being met, the permit will be reissued subject to revised terms and conditions.

22. The permittee must notify the authorized officer by telephone, with written confirmation, immediately upon discovery of any hazardous or solid wastes as defined in 40 CFR Part 261.
23. The permittee is responsible for all maintenance of assigned range improvements including wildlife escape ramps for both permanent and temporary water troughs.
24. When necessary, control or restrict the timing of livestock movement to minimize the transport of livestock-borne noxious weed seeds, roots, or rhizomes between weed-infested and weed-free areas.
25. Livestock will be moved to another authorized pasture (where applicable) or removed from the allotment before utilization objectives are met or no later than 5 days after meeting the utilization objectives. Any deviation in livestock movement will require authorization from the authorized officer.
26. The placement of mineral or salt supplements will be a minimum distance of 1/2 mile from known water sources, riparian areas, winterfat dominated sites, sensitive sites, populations of special status plant species, and cultural resource sites. Mineral and salt supplements will also be one mile from active sage-grouse leks. Placing supplemental feed (i.e., hay, grain, pellets, etc.) on public lands without authorization is prohibited.

The following terms and conditions, from the settlement agreement that was reached to resolve Appeals NV-040-06-01, NV-040-07-01 and Trespass Notice NV-045-11-07-001, through the Hearings Division and Judge Schweitzer on September 14, 2007, are for inclusion in the term grazing permit:

27. Breedlove Allotment will be administered as 88 percent public land and 12 percent private land, the private land being owned by Robert Lewis, until a forage survey of Lewis's private land is conducted by the BLM or by the Natural Resource Conservation Service (NRCS) per a request by the permittee.
28. Henrie Complex Allotment will be administered as 80 percent public land and 20 percent private land, the private land being owned by Robert Lewis, until a forage survey of Lewis's private land is conducted by the BLM or by the Natural Resource Conservation Service (NRCS) per a request by the permittee.

Henrie Complex and Grapevine Allotments

The following mitigation measures, also from the *Programmatic Biological Opinion* (pp. 132-134), will be followed prior to and during project implementation regarding the construction of fuel breaks:

29. Project implementation will occur from November 1 to mid-March to avoid active desert tortoise seasons.
30. Prior to initiation of an activity within desert tortoise habitat, a desert tortoise awareness program shall be presented to all personnel who will be onsite, including but not limited to contractors, contractors' employees, supervisors, inspectors, and subcontractors. This program will contain information concerning the biology and distribution of the desert tortoise and other sensitive species, their legal status and occurrence in the project area; the definition of "take" and associated penalties; speed limits; the terms and conditions of this biological opinion including speed limits; the means by which employees can help facilitate this process; responsibilities of workers, monitors, biologists, etc.; and reporting procedures to be implemented in case of desert tortoise encounters or non-compliance with this biological opinion.
31. Tortoises discovered to be in imminent danger during projects or activities covered under this biological opinion, may be moved out of harm's way.
32. Desert tortoises shall be treated in a manner to ensure they do not overheat, exhibit signs of overheating (e.g., gaping, foaming at the mouth, etc.), or are placed in a situation where they cannot maintain surface and core temperatures necessary to their well-being. Desert tortoises will be kept shaded at all times until it is safe to release them. No desert tortoise will be captured, moved, transported, released, or purposefully caused to leave its burrow for whatever reason when the ambient air temperature is above 95°F. Ambient air temperature will be measured in the shade, protected from wind, at a height of two inches above the ground surface. No desert tortoise will be captured if the ambient air temperature is anticipated to exceed 95°F before handling and relocation can be completed. If the ambient air temperature exceeds 95°F during handling or processing, desert tortoises will be kept shaded in an environment that does not exceed 95°F and the animals will not be released until ambient air temperature declines to below 95°F.
33. Desert tortoises shall be handled by qualified individuals. For most projects, an authorized desert tortoise biologist will be onsite during project activities within desert tortoise habitat. Biologists, monitors, or anyone responsible for conducting monitoring or desert tortoise field activities associated with the project will complete the Qualifications Form (Appendix D) and submit it to the Service for review and approval as appropriate. The Service should be allowed 30 days for review and response.
34. A litter-control program shall be implemented to minimize predation on tortoises by ravens drawn to the project site. This program will include the use of covered, raven-proof trash receptacles, removal of trash from project areas to the trash receptacles following the close of each work day, and the proper disposal of trash in a designated solid waste disposal facility. Appropriate precautions must be taken to prevent litter from blowing out along the road when trash is removed from the site. The litter-control program will apply to all areas where tortoises and cattle may potentially coexist, and distance (one mile or greater) to corrals or cattle watering locations.

Rationale

Breedlove

Part 1: Maintain the full Active Use of 698 Animal Unit Month (AUM)

All Standards were achieved for uplands (Table 2) and grazing use is within acceptable limits. Ely RMP (2008) states on page 85, "*LG-3: Allow allotments or portions of allotments within desert tortoise habitat, but outside of ACECs to remain at current stocking levels as shown in Table 15 (Ely RMP 2003) unless a subsequent evaluation indicates a need to change the stocking level*" The authorization of the 698 total Active AUMs for the permittee, during any given year, will be based on annual forage availability; and the terms and conditions and Best Management Practices included in the new term permit.

Riparian standards, which were not met in sections of Meadow Valley Wash, and grazing use in these areas is addressed by the proposed actions in Parts 2, 3, and 4.

Part 2: Temporarily reduce the Season of Use from year-long to October 1 through February 28 until a fence is constructed 2020.

Current grazing practices in the southern most stream reaches (55 acres, less than 1 percent of the allotment) are not meeting standards and current grazing use does not allow for regeneration and development of willows, riparian grasses and other vegetation because of use during the critical growing season (early to late spring). Bank trampling was also found to be excessive and contributing to bank erosion and unstable soils. Without proper vegetation established along banks, flood events can result in excessive erosion, down cutting, and further degradation of the system.

Changing the season of use from year-long to late fall and winter grazing will exclude cattle from portions of stream reaches 1 and 2 until an exclusion fence can be constructed, upon which time the season of use could return to year long. This will facilitate compliance with the Southwestern Willow Flycatcher (SWFL) Recovery Plan and avoid grazing during critical growing seasons for riparian habitats.

Part 3: Construct riparian exclosure and restore Season of Use

Construction of a riparian exclosure fencing will provide protection of the riparian habitat in order to work towards achievement of the standard, as well as bring grazing in to compliance with the Ely RMP/BO (2008) and the SWFL Recovery Plan (2002) with a year-round season of use.

Cottonwood

In order to work towards achieving and maintaining RAC Standards, and in following the recommendations from the SDD, the following actions are proposed for the Cottonwood Allotment:

Part 1: Maintain the full Active Use of 1296 AUMs.

All Standards were achieved and grazing use is within acceptable limits (Table 3). Ely RMP (2008) states on page 85, "*LG-3: Allow allotments or portions of allotments within desert tortoise habitat, but outside of ACECs to remain at current stocking levels as shown in Table 15 (Ely RMP 2003) unless a subsequent evaluation indicates a need to change the stocking level*" The authorization of the 1296 total Active AUMs for the permittee, during any given year, will be based on annual forage availability; and the terms and conditions and Best Management Practices included in the new term permit.

Part 2: Change the season of use from May 1 -October 31 to March 1 -October 31.

Changing the season of use will accommodate changes on other allotments intended to decrease livestock disturbance to southwestern willow flycatcher and Yellow-billed cuckoo habitat. Use levels by livestock were measured as being none to slight.

Part 3: Sagebrush Restoration

On the northern half of the allotment, vegetation treatments will be implemented to restore sagebrush communities where pinyon and juniper trees have become established. Removal of the pinyon and juniper trees will ensure that these areas remain in a sagebrush community vegetative type and provide habitat to native species dependent on sagebrush dominated communities.

Grapevine

In order to work towards achieving and maintaining RAC Standards, maintaining and achieving habitat standards, and facilitating the recovery of burn areas, the following actions were developed for the Grapevine Allotment:

Part 1: Maintain current permitted use of 349 AUMs

All Standards were achieved in unburned uplands (Table 4) and grazing use is within acceptable limits. Ely RMP (2008) states on page 85, "*LG-3: Allow allotments or portions of allotments within desert tortoise habitat, but outside of ACECs to remain at current stocking levels as shown in Table 15 (Ely RMP 2003) unless a subsequent evaluation indicates a need to change the stocking level*" The authorization of the 349 total Active AUMs for the permittee, during any given year, will be based on annual forage availability; and the terms and conditions and Best Management Practices included in the new term permit. Riparian standards and grazing use are a result of cattle distribution and will be corrected by implementing the proposed actions in Parts 3, 4, and 5.

Part 2: Maintain the season of use of March 1 to February 28

All Standards were achieved for unburned uplands and grazing use is within acceptable limits. However, grazing was not in conformance in burned areas and the Grapevine Spring riparian area. Grazing issues in burn areas are related to cattle distribution and water availability and is addressed by the proposed actions listed under Parts 3, 4 and 5.

Part 3: Manage livestock access to desert tortoise critical habitat

The Grapevine Allotment contains 1,299 acres (approximately 4 percent of the allotment) of unfenced desert tortoise critical habitat, of which 450 acres is accessible to cattle. Given the small amount of area of critical habitat open to grazing, it is proposed to control grazing in critical tortoise habitat using existing range improvements, additional proposed improvements, the implementing of best management practices and the addition of proposed terms and conditions. Establishing new watering locations in the north half of the allotment will help move livestock out of critical habitat and allow for better distribution. Implementation of BMPs and the proposed terms and conditions will further reduce cattle use in critical habitat. Grazing in critical habitat will be removed from critical habitat if utilization levels of 40 percent or greater are reached. Grazing will be removed by shutting off Willow Spring, which services the critical habitat area, and forcing livestock in to the northern half of the allotment.

Part 4: Construct pipeline from Grapevine Spring to Grapevine Reservoir

Improvement of the Grapevine Reservoir and other supplemental locations, with water provided through additional pipeline from Grapevine Spring, are needed to better distribute cattle in order to achieve and maintain RAC Standards at current permitted grazing use. The addition of multiple watering locations will spread use over a greater area as well as provide a means of controlling use. Different watering locations can be rotated on a seasonal basis in order to maximize forage and prevent grazing in unfenced desert tortoise critical habitat during the critical times for tortoise.

Part 5: Fence Grapevine Spring riparian area

Downstream of the spring source conditions exist for riparian vegetation and habitat. However, the area failed to meet RAC Standards. An exclusionary fence will be constructed to protect approximately 1 acre of riparian habitat.

Henrie Complex

Part 1: Maintain current permitted use of 1380 AUMs

All Standards were achieved for unburned uplands and grazing use is within acceptable limits. Ely RMP (2008) states on page 85, "*LG-3: Allow allotments or portions of allotments within desert tortoise habitat, but outside of ACECs to remain at current stocking levels as shown in Table 15 (Ely RMP 2003) unless a subsequent evaluation indicates a need to change the stocking level*" The authorization of the 1380 total Active AUMs for the permittee, during any given year, will be based on annual forage availability; and the terms and conditions and Best Management Practices included in the new term permit Grazing use issues are a result of cattle distribution and season of use and will be corrected by implementing the proposed actions in Parts 2, 3, and 4.

Part 2: Change the season of use from November 1 — April 30 to October 1 — March 30

Livestock grazing in the riparian zone of Meadow Valley Wash is not in conformance with RAC Guideline 1.2 and 1.3. 1.4. Livestock use on willows, riparian grasses, and other vegetation is occurring to the detriment of the riparian area. Changing the season of use to later in the season will remove grazing pressure during the early growing season and facilitate the development riparian vegetation. This will also aid in compliance with the Southwestern Willow Flycatcher Recovery Plan (2002) by removing grazing during critical times for riparian dependent species.

Part 3: Fence the allotment boundary between Henrie Complex and Cottonwood Allotments at the mouth of Cottonwood Canyon to protect riparian habitat on the Henrie Complex Allotment.

Currently cattle are able to move freely between the south end of the Cottonwood Allotment and the north end of the Henrie Complex Allotment. Because cattle will be authorized to graze on the Cottonwood Allotment during the critical times for SWFL, a division fence is needed to prevent cattle drift.

Henrie Complex and Grapevine

Fuel Breaks

During the 2005 wildland fire season, wildland fires occurred on approximately 52 percent of the Henrie Complex Allotment and approximately 41 percent of the Grapevine Allotment. One of the lessons learned from the 2005 wildland fire season is that landscape level management of invasive species and the resulting increase in fire potential should be a high priority for agencies (Rogstad et al. 2009). Fire behavior modeling of the proposed fuel breaks in the Wildland Fire Decision Support System (WFDSS) demonstrates that fuel breaks could significantly reduce the number of acres of habitat lost to wildland fire under a fuel loading and weather condition scenario similar to the 2005 fires. These fuel breaks will interrupt the annual grass/fire cycle by reducing the connectivity of the fuel bed. The fuel breaks will create a block effect within the allotment; if a wildfire did start, its overall size could be reduced by containing it within one of the blocks.

Terms and Conditions applicable to respective allotments

Adding Best Management Practices to the permit will further aid in maintaining the Mojave-Southern Great Basin Standards within the unburned portion of the allotments.

The term and condition, regarding wilderness, is necessary for compliance with the Wilderness Act of 1964 (P.L. 88-577) and BLM Handbook 6340, while providing for proper management of livestock grazing activities in the Meadow Valley Range Wilderness.

The Reasonable and Prudent Measures provided by the U.S. Fish and Wildlife Service, as a result of Section 7 consultation, will be included as Terms and Conditions in the grazing permit to minimize incidental take of the Mojave desert tortoise that may result from livestock grazing.

Allowable use levels in upland and riparian habitat will aid in the restoration and enhancement of riparian value and function, help in achieving and maintaining RAC Standards, bring grazing in to conformance with the SWFL Recovery Plan (2002), and Desert Tortoise Recovery Plan (revised 2011).

Land Use Plan Conformance

The proposed action is in conformance with the Ely District Record of Decision and Approved Resource Management Plan (Ely RMP) (August 2008), which states as a goal (p. 85): “Manage livestock grazing on public lands to provide for a level of livestock grazing consistent with multiple use, sustained yield, and watershed function and health.”

It further states as an objective (p. 86): “To allow livestock grazing to occur in a manner and at levels consistent with multiple use, sustained yield, and the standards for rangeland health.” Management Action LG-1 states; “Make approximately 11,246,900 acres and 545,267 animal unit months available for livestock grazing on a long-term basis.”

Management Action LG-3 states, “Allow allotments or portions of allotments within desert tortoise habitat, but outside of Areas of Critical Environmental Concern (ACECs) to remain at current stocking levels unless a subsequent evaluation indicates a need to change the stocking level.”

Management Action LG-5 states: “Maintain the current grazing preference, season-of-use, and kind of livestock until the allotments that have not been evaluated for meeting or making progress toward meeting the standards or are in conformance with the policies are evaluated. Depending on the results of the standards assessment, maintain or modify grazing preference, seasons-of-use, kind of livestock and grazing management practices to achieve the standards for rangeland health. Changes, such as improved livestock management, new range improvement projects, and changes in the amount and kinds of forage permanently available for livestock use, can lead to changes in preference, authorized season-of-use, or kind of livestock. Ensure changes continue to meet the Ely RMP goals and objectives, including the standards for rangeland health.”

Management Action LG-8 states, “Implement management actions for desert tortoise habitat contained in the 2008 Biological Opinion.”

AUTHORITY: The authority for this decision is contained in Title 43 of the Code of Federal Regulations (2004), which states in pertinent part(s):

§4120.3 Range Improvements

- (a) Range improvements shall be installed, used, maintained, and/or modified on the public lands, or removed from these lands, in a manner consistent with multiple-use management.
- (b) Prior to installing, using, maintaining, and/or modifying range improvements on the public lands, permittees or lessees shall have entered

into a cooperative range improvement agreement with the Bureau of Land Management or must have an approved range improvement permit.

- (c) The authorized officer may require a permittee or lessee to maintain and/or modify range improvements on the public lands under Sec. 4130.3-2 of this title.
- (d) The authorized officer may require a permittee or lessee to install range improvements on the public lands in an allotment with two or more permittees or lessees and/or to meet the terms and conditions of agreement.
- (e) A range improvement permit or cooperative range improvement agreement does not convey to the permittee or cooperator any right, title, or interest in any lands or resources held by the United States.

§4130.2 Grazing Permits and Leases

- (a) States in part: “Grazing permits or leases shall be issued to qualified applicants to authorize use on the public lands and other lands administered by the Bureau of Land Management that are designated as available for livestock grazing through land use plans.”

§4130.3 “Livestock grazing permits and leases shall contain terms and conditions determined by the authorized officer to be appropriate to achieve the management and resource condition objectives for the public lands and other lands administered by the Bureau of Land Management, and ensure conformance with the provisions of subpart 4180 of this part.”

§4130.3-1 Mandatory terms and conditions.

- (a) “The authorized officer shall specify the kind and number of livestock, the period(s) of use, the allotment(s) to be used, and the amount of use, in animal unit months, for every grazing permit or lease. The authorized livestock grazing use shall not exceed the livestock carrying capacity of the allotment.
- (b) All permits and leases shall be made subject to cancellation, suspension, or modification for any violation of these regulations or of any term or condition of the permit or lease.
- (c) Permits and leases shall incorporate terms and conditions that ensure conformance with subpart 4180 of this part.”

§4130.3-2 Other Terms and Conditions

“The authorized officer may specify in grazing permits or leases other terms and conditions which will assist in achieving management objectives, provide for proper range management or assist in the orderly administration of the public rangelands.”

§4160.1 Proposed Decisions

- (a) “Proposed decisions shall be served on any affected applicant, permittee or lessee, and any agent and lien holder of record, who is affected by the proposed actions, terms or conditions, or modifications relating to applications, permits and agreements (including range improvement permits) or leases, by certified mail or personal delivery. Copies of proposed decisions shall also be sent to the interested public.
- (b) Proposed decisions shall state the reasons for the action and shall reference the pertinent terms, conditions and the provisions of applicable regulations. As appropriate, decisions shall state the alleged violations of specific terms and conditions and provisions of these regulations alleged to have been violated, and shall state the amount due under §§4130.8 and 4150.3 and the action to be taken under §4170.1.
- (c) The authorized officer may elect not to issue a proposed decision prior to a final decision where the authorized officer has made a determination in accordance with §4110.3-3(b) or §4150.2(d).”

§4180.1 Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration.

“The authorized officer shall take appropriate action under subparts 4110, 4120, 4130, and 4160 of this part as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management needs to be modified to ensure that the following conditions exist.

- (a) Watersheds are in, or are making significant progress toward, properly functioning physical condition, including their upland, riparian-wetland, and aquatic components; soil and plant conditions support infiltration, soil moisture storage, and the release of water that are in balance with climate and landform and maintain or improve water quality, water quantity, and timing and duration of flow.
- (b) Ecological processes, including the hydrologic cycle, nutrient cycle, and energy flow, are maintained, or there is significant progress toward their attainment, in order to support healthy biotic populations and communities.

- (c) Water quality complies with State water quality standards and achieves, or is making significant progress toward achieving, established BLM management objectives such as meeting wildlife needs.
- (d) Habitats are, or are making significant progress toward being, restored or maintained for Federal threatened and endangered species, Federal Proposed, Category 1 and 2 Federal candidate and other special status species.”

Protest

In accordance with 43 CFR §4160.2, any applicant, permittee, lessee or other interested public may protest the proposed decision under §4160.1 of this title, in person or in writing within 15 days after receipt of such decision to:

Christopher Carlton
Field Manager
Caliente Field Office
Box 237
Caliente, NV 89008

The protest, if filed, must clearly and concisely state the reason(s) why the protestant thinks the proposed decision is in error.

In accordance with 43 CFR §4160.3 (a), in the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice unless otherwise provided in the proposed decision.

In accordance with 43 CFR §4160.3 (b), should a timely protest be filed with the authorized officer, the authorized officer will reconsider the proposed decision and shall serve the final decision on the protestant and the interested public.

APPEAL

In accordance with 43 CFR §§4.470 and 4160.4, any person who wishes to appeal or seek a stay of a BLM grazing decision must follow the requirements set forth in 4.470 through 4.480 of this title. The appeal or petition for stay must be filed with the BLM office that issued the decision within 30 days after its receipt or within 30 days after the proposed decision becomes final as provided in §4160.3 (a).

The appeal and any petition for stay must be filed at the office of the authorized officer:

Christopher Carlton
Field Manager
Caliente Field Office
P.O. Box 237
Caliente, NV 89008

Within 15 days of filing the appeal and any petition for stay, the appellant also must serve a copy of the appeal and any petition for stay on any person named in the decision and listed at the end of the decision, and on the Office of the Solicitor, Regional Solicitor, Pacific Southwest Region, U.S. Department of the Interior, 2800 Cottage Way, Room E-1712, Sacramento, California 95825-1890.

Pursuant to 43 CFR 4.471(c), a petition for stay, if filed, must show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied;
- (2) The likelihood of the appellant's success on the merits;
- (3) The likelihood of immediate and irreparable harm if the stay is not granted; and,
- (4) Whether the public interest favors granting the stay.

43 CFR 4.471(d) provides that the appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.

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

At the conclusion of any document that a party must serve, the party or its representative must sign a written statement certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service (43 CFR 4.422(c)(2)).

It is my decision to approve the Caliente Field Office actions, for the Robert C. Lewis grazing permit renewal under Authorization #2705062, for the Breedlove, Cottonwood, Grapevine, and Henrie Complex grazing Allotments.

A handwritten signature in black ink, appearing to read "Christopher Carlton", with a long horizontal line extending to the right.

Christopher Carlton
Field Manager
Caliente Field Office

Enclosures

cc:

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Nevada State Clearinghouse

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(Electronic Copy)

FINDING OF NO SIGNIFICANT IMPACT

Robert Lewis (#2705062) on the Breedlove, Cottonwood, Grapevine, and Henrie Complex Allotments.

DOI-BLM-NV-L030-2013-0019-EA

I have reviewed Environmental Assessment (EA) (DOI-BLM-NV-L030-2013-0019-EA). After consideration of the environmental effects as described in the EA, and incorporated herein, I have determined that the proposed action associated with fully processing the term permit renewals identified in the EA will not significantly affect the quality of the human environment and that an Environmental Impact Statement (EIS) is not required. Environmental Assessment DOI-BLM-NV-L030-2013-0019-EA has been reviewed through the interdisciplinary team process.

Rationale:

I have determined the proposed action is in conformance with the Ely District Record of Decision and Approved Resource Management Plan (RMP/ROD) to manage the public lands administered by the Bureau of Land Management's Ely District Office (August 20, 2008).

This proposed term permit renewal will be effective in maintaining rangeland health and watershed condition on public lands within the Breedlove, Cottonwood, Grapevine, and Henrie Complex Allotments. Through the introduction and implementation of the sound livestock management practices associated with the proposed action, progression will be made towards achievement of Standards and conformance to the Guidelines for Grazing Administration.

The finding and conclusion of no significant impact is based on my consideration of the Council on Environmental Quality's (CEQ) criteria for significance (40 CFR 1508.27), both with regard to the context and the intensity of impacts described in the EA.

Context:

The Breedlove, Cottonwood, and Henrie Complex Allotments, are land based and the Grapevine Allotment is a water based allotment, all having the same permittee, are located in the south-central portion of Lincoln County, Nevada. Cattle are the type of livestock grazed on the allotments.

For a detailed description and analysis by allotment, please refer to the associated Standards Determination Documents and the Environmental Assessment.

Breedlove

The Breedlove Allotment, a land based allotment having one permittee, is located in south central Lincoln County, Nevada. It is approximately 40 miles south of Caliente, Nevada and approximately seven (7) miles north of Moapa, Nevada. It is located within the Lower Meadow Valley Wash (#204) and the Muddy River Springs (#219) Watersheds (Appendix I, Map 4.1 of

EA), and is approximately 121,065 acres in size. Elevations range from approximately 6,000 feet to 2,000 feet. Most of the allotment is characterized with sparse, low growing Mojave Desert shrubs indicating the low precipitation zone of the area.

Table 1. Areas of Special Designation on the Breedlove Allotment

Name	Acreage	Percentage Of Allotment
Breedlove Allotment	121,065	**
Kane Springs ACEC*	388	0.3%
Mormon Mesa ACEC*	31,202	26%
Lower Meadow Valley Wash	2,571	2%
Desert Tortoise General Habitat	110,178	91%
Desert Tortoise Critical	22,489	19%
Southwestern Willow Flycatcher Habitat (S)	104	0.08%
Southwestern Willow Flycatcher Habitat (P)	14	0.001%
Fire history (Landsat - 2 fires)	26,086	22%
Meadow Valley Range	75,434	62%
Mormon Mountains Wilderness	18,258	15%
* Withdrawn from Grazing- Includes overlap from ACEC and Critical Habitat	56,652	47%

Cottonwood

The Cottonwood Allotment, a land based allotment with one permittee, is located in central Lincoln County, Nevada, approximately 8 miles southeast of Caliente, Nevada. It is located in the Clover Valley (#204) and Lower Meadow Valley Wash (#205) Watersheds (Appendix I, Map 4.1 of EA), and is approximately 62,222 acres in size. Cattle are the type of livestock grazed on the allotment. Elevations range from approximately 6,900 feet on mountain peaks in the center of the allotment to approximately 3,200 feet near the southern boundary. (Appendix I, Map 3.8 of EA)

Table 2. Areas of Special Designation on the Cottonwood Allotment

Name	Acreage	Percentage of Allotment
Cottonwood Allotment	62,221	**
Meadow Valley Wash ACEC*	644	1%
Fire history (Landsat)	7,227	8.6%
Clover Mtns. Wilderness	37,523	60%

Grapevine

The Grapevine Allotment, a water based allotment having one permittee, is located in central Lincoln County, Nevada. This allotment is approximately 40 miles south of Caliente, Nevada and approximately 26 miles east of Alamo, Nevada. It is located within the Kane Springs Valley Watershed (#206) (Appendix I, Map 4.1 of EA), and is approximately 34,160 acres in size. Cattle are the type of livestock grazed on the allotment. Elevations range from approximately 2,500 feet at the valley floor to approximately 6,300 feet in the Delamar Mountains. (Appendix I, Map 3.15 of EA)

Table 2. Areas of Special Designation within the Grapevine Allotment

Name	Acreage	Percentage of Allotment
Grapevine Allotment	34,160	100
Kane Springs ACEC (closed to grazing)	12,213	36
Desert tortoise General Habitat (not ACEC below 4000' elevation per Ely	21,947	64
Desert tortoise critical habitat outside	1,299	4
Fire history (Landsat)	14,028	41
Meadow Valley Range Wilderness	6,216	18
Delamar Mountains Wilderness	12,627	37

Henrie Complex

The Henrie Complex is a land-based grazing allotment with one permittee, and is located in south-central Lincoln County, Nevada. It is approximately 21 miles south of Caliente, Nevada and is approximately 169,143 acres in size. The allotment is located in the Lower Meadow Valley Wash Watershed (#205) (Appendix I, Map 4.1 of EA). Cattle are the type of livestock grazed on the allotment. Elevations range from approximately 2,900 feet at the southern boundary to 6,200 feet at the northern end of the allotment. (Appendix I, Map 3.22 of EA)

Table 3. Areas of Special Designation within the Henrie Complex Allotment

Name	Acreage	Percentage of Allotment
Henrie Complex Allotment	169,143	100%
Meadow Valley Wash ACEC	7,912	18%
Desert Tortoise General Habitat	84,720	50%
Southwest Willow Flycatcher Habitat (Suitable and Potential)	287	.2%
Fire history (Landsat)	76,951	45%
Mormon Mtns Wilderness	30,284	18%
Meadow Valley Mtns Wilderness	27,882	16%
Clover Mtns Wilderness	3,593	2%

Lincoln County is sparsely populated, with approximately 5,345 (2010 census) people living mostly within five towns. Although the acreage involved is extensive, impacts from livestock grazing are dispersed, and compatible with the rural, agricultural setting throughout most of the County.

Intensity:

- 1) *Impacts that may be both beneficial and adverse.*

The Environmental Assessment considered both, beneficial and adverse impacts of the proposed action. None of the impacts disclosed in the EA approach the threshold of significance (i.e., exceeding air or drinking water quality standards, contributing a decline in the population of a listed species, etc.). None of the resource impacts are intensely adverse or beneficial.

2) ***The degree to which the proposed action affects public health or safety.***

The proposed action will not result in potentially substantial or adverse impacts to public health and safety.

3) ***Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.***

Impacts from livestock grazing on Cultural Resources are analyzed on page 4.9-5 of the Ely Proposed Resource Management Plan/Environmental Impact Statement (November 2007); and, decisions were made to eliminate grazing in areas where the impacts could cause unacceptable degradation to natural resources and unique geographic characteristics.

A cultural review was completed on June 16, 2016. In accordance with the State Protocol Agreement, all documented cultural resources in the allotment were analyzed for potential effects from grazing. The report of this effort is on file in the Caliente Field Office and available upon request. Historic properties are cultural resources that are listed or eligible for listing in the National Register of Historic Places. There were no historic properties noted that have a greater than normal potential for impacts from current grazing practices. Additionally, one of the proposed range improvements will virtually eliminate potential grazing impacts to a nearby eligible site.

An additional cultural resources inventory, for the range improvement actions being analyzed in this document, will be completed prior to the authorization of the construction of any range improvements. All potential impacts to cultural resources will be avoided through project redesign in accordance with the BLM 8100 Manual Series.

There are no parks, wetlands, prime farmland or wild and scenic rivers found within the allotment.

4) ***The degree to which the effects on the quality of the human environment are likely to be highly controversial.***

Whereas, it may be controversial to continue to permit livestock grazing on public lands in spite of the effects, there is little controversy as to what they are. The Ely Proposed Resource Management Plan/Final Environmental Impact Statement (Ely PRMP/FEIS, Volumes I and II) (November 2007) analyzed several alternatives with various effects to conflicting uses of natural resources and disclosed these effects. Decisions were made to continue livestock grazing in areas deemed appropriate.

5) ***The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.***

The effects of livestock grazing are well known and documented. Management practices are employed to meet resource objectives and maintain or achieve rangeland health. The

Ely PRMP/FEIS analyzed the effects of livestock grazing throughout the district and has eliminated grazing in areas where unique environmental risks could occur.

- 6) ***The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.***

The proposed action will not establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration. Renewing the grazing permit does not establish a precedent for other Rangeland Health Assessments and Decisions. Any future actions or projects - within either the proposed action area or surrounding areas - will be analyzed and evaluated as a separate action; and, independently of the current proposed action.

- 7) ***Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.***

No significant cumulative impacts have been identified in the EA. Past, present, and reasonably foreseeable future actions in the cumulative impact assessment area will not result in cumulatively significant impacts. For any actions that may be propose in the future, further environmental analysis, including the assessment of cumulative impacts, will be required.

- 8) ***The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the NRHP or may cause loss or destruction of significant scientific, cultural, or historical resources.***

See number 3, above, regarding cultural resources.

- 9) ***The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the ESA of 1973.***

The BLM is required by the Endangered Species Act of 1973, as amended, to ensure that no action on the public lands jeopardizes a threatened, endangered, or proposed species.

Wildlife species (plant and animal) that occur in or near the project area are listed in Appendix VIII of the EA.

See the discussion under “Context”, above, regarding the federally threatened Agassiz’s desert tortoise.

On August 15, 2016 BLM received a memorandum from USFWS concerning the informal consultation for the term permit renewal in which they conclude: *“The Service does not anticipate adverse effects to the southwestern willow flycatcher or yellow-billed cuckoo based on the proposed action, project description, and the proposed minimization measures. Should project plans change, or if additional information on the distribution of listed or proposed species becomes available, this determination may be reconsidered. This concludes informal consultation pursuant to the regulations implementing the Act, promulgated under 50 CFR § 402.13. This informal consultation does not authorize take of listed species.”*

On August 30, 2016 BLM received a memorandum from USFWS concerning the formal consultation and request to append Programmatic Biological Opinion (PBO) (File No. 84320-2008-F-0078) for the Ely RMP (2008). The memorandum concluded that: *“After reviewing the current status of the desert tortoise, the environmental baseline for the action area, and the effects of the proposed action, it is the Service’s biological opinion that the proposed action is within the scope of the PBO issued to the BLM’s Ely District Office and is therefore, is not likely to jeopardize the continued existence of the threatened Mojave desert tortoise nor is likely to adversely modify designated critical habitat for the desert tortoise.”*

10) *Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.*

The proposed action will not violate or threaten to violate any Federal, State, or local law or requirement imposed for the protection of the environment.



Chris Carlton
Field Manager
Caliente Field Office



Date