



United States Department of the Interior



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APR 22 2020

In Reply Refer To:
4160 (NVW30.04)

Certified Mail No: 9171 9690 0935 0211 8435 54
Return Receipt Requested

Paiute Meadows Grazing LLC
P.O. Box 650
Winnemucca, NV 89445

FINAL DECISION

Temporary Water Hauling in the Dyke Hot Allotment

Dear Mr. Foster:

This Final Decision is being issued as a result of protests filed by Western Watersheds Project, the Center for Biological Diversity, and Wildlands Defense on the proposed decision issued to you on February 5, 2020. This final decision authorizes the use of two temporary water haul sites within the Dyke Hot Allotment.

BACKGROUND:

On November 5, 2019 Paiute Meadows Grazing LLC made application for a Range Improvement Permit to temporarily haul water in the Dyke Hot Allotment. The Dyke Hot Temporary Water Haul Categorical Exclusion (CX), # DOI-BLM-NV-W030-2020-0002-CX has been completed for this Decision.

On February 5, 2020 BLM issued the proposed decision for Temporary Water Hauling in the Dyke Hot Allotment. The proposed decision was sent to several interested parties. In response, three of the interested parties, Western Watersheds Project, the Center for Biological Diversity, and Wildlands Defense, protested the proposed decision.

The following is a compilation of the protests received and responses to those protests:

Western Watersheds Project (WWP) & Center for Biological Diversity (CBD)

Protest Point #1

WWP and CBD protests the Dyke Hot Temporary Water Haul CX and Decision as it is not in conformance with the 2015 Record of Decision for the Approved RMP Amendment for Sage-grouse in NE California and Nevada (ARMPA), specifically MD LG 18. This provision states:

Locate salting and supplemental feeding locations, temporary and mobile watering, and new handling facilities (e.g. corrals and chutes) at least 1 mile from riparian areas, springs, and meadows. This distance can be greater based on site-specific conditions.

Response:

After further review of the proposed water hauling sites and their proximity (within 1-mile) to riparian areas within the Dyke Hot Allotment, water hauling sites #1, #2, #5, and #6 have been eliminated due to the presence of riparian areas within 1 mile.

Protest Point #2

WWP and CBD protests the lack of reasonable alternatives to new watering sites (which will introduce degradation from livestock into new areas), such as to decrease the level of authorized livestock grazing on the allotment to a level that currently-existing infrastructure and/or natural water sources can sustainably support.

Response:

When sufficient precipitation is present (i.e. snowpack and ephemeral waters) livestock can access all lands within the allotment. Thus, temporary watering sites will not introduce livestock to “new areas”. Natural waters and currently existing infrastructure within the allotment are sufficient to support the authorized number of livestock. The intent of the Proposed Decision is to increase the distribution of livestock within the allotment, reducing pressure on natural waters and to allow for natural system improvement if system potential allows.

Protest point #3

WWP and CBD protests the likely impacts to bighorn sheep is likely to negatively impact bighorn sheep during lambing season, specifically water haul site #6.

Response:

See response to Protest Point #1.

Protest Point #4

WWP and CBD protest the lack of analysis regarding extraordinary circumstances. Specifically, at a minimum, there is a likelihood that concentrated livestock use would “contribute to the introduction, continued existence, or spread of...non-native invasive species” or “may promote the introduction, growth, or expansion” of those species.

Response:

The location(s) of proposed water hauling sites were selected in previously disturbed areas and would result in no new disturbance. These locations are along existing roads or in turnout areas. No new roads or cross-country travel would occur in conjuncture with the water hauling sites.

Wildlands Defense (WD)

Several protest points received from Wildlands Defense were outside the scope of the proposed project, and number of them were comments or opinions regarding the proposed project. Those protest points that were determined to be outside the scope of the project were not addressed, these points and/or comments/opinions (paraphrased below) included the following:

- Providing a full economic analysis of the grazing operation.
- Concern over not conducting a full and current rangeland health assessment for the Dyke Hot Allotment and other areas grazed by the Paiute Meadows permittee (several comments/points regarding collection of baseline data studies and analysis and referencing that an EIS must be prepared to analyze grazing in these areas.
- Waiting for the promised Paiute Meadows Allotment rangeland health assessment (several comments/points regarding not seeing a Paiute Meadows decision).
- Concern that there was no detailed current mapping and analysis of cheatgrass and native vegetation in the Dyke Hot and surrounding allotments. There were several comments about the threat of cheatgrass and its expansion across the arid west.
- There were concerns about geothermal leasing and development, wildfire, fire rehabilitation, vegetation treatments, fuel breaks, mining and other stresses on the landscape.
- Concern about the lack of sage-grouse and other sensitive species data (trends/populations/etc.).
- Concern about avian declines across North America in forest and grasslands.
- Concern about the reduction in biodiversity of sensitive species that are dependent on sagebrush.
- Concerns that mountains may become treeless.
- There were several articles referenced on a number of subjects including sage-grouse, microbiotic crusts, grazing, and weeds that were incorporated as references within the protest letter.
- There were also references to the Oregon Greater Sage-grouse ARMPA being violated by an EA.

Those items listed above were not addressed because they were in general outside the scope of the current action or not relevant to the action. The Dyke Hot Allotment is not contiguous to the Paiute Meadows Allotment, and there are separate FMUDS for the respective allotments. The protest refers to the "TG EA" and its lack of information; further the protest makes reference to violations of the Greater Sage-Grouse Resource Management Plan Amendment for the state of Oregon. This RMP is not applicable to the Winnemucca District and/or the Black Rock Field Office. The protest also makes references to southern Oregon; this project is located in northern Nevada approximately 25 to 30 miles outside of Oregon. The remainder of protest points, sometimes combined due to the similar nature of the protest point, are addressed below.

Protest Point #1

WD protests the BLM in failing to send the CX to the interested public, as well as the failure to prepare an Environmental Impact Statement (EIS).

Response:

The Dyke Hot Temporary Water Haul CX and the associated documents are available on the BLM's National Environmental Policy Act (NEPA) website (eplanning.blm.gov). The preparation of an EIS is not necessary in accordance with the BLM NEPA handbook (H-1790-1). As stated in the handbook, "categorical exclusions are categories of actions that Federal agencies have determined do not have a significant effect on the quality of the human environment (individually or cumulatively) and for which, therefore, neither an EA or EIS is required". Appendix 4, sub-section D of the BLM's NEPA manual H-1790-1 includes a provision specific to the placement of temporary water troughs. Furthermore, the Proposed Decision was sent via certified mail to various interested parties, Wildlands Defense was included in that list and the Proposed Decision was received by Wildlands Defense on February 12, 2020.

Protest Point #2

WD protests the BLM in sacrificing currently less grazed areas to grazing disturbance and destruction.

Response:

The area identified for temporary water hauling is part of an existing grazing allotment that is grazed by livestock. When enough precipitation is present (i.e. snowpack and ephemeral waters) livestock are able to access all lands within the allotment. Thus, temporary watering sites will not introduce livestock to new areas of the allotment.

Protest Point #3 *(There were several protests/comments that were received regarding baseline analysis that were very similar)*

WD protests the lack of detailed baseline info and analysis of springs and other riparian areas within the allotment, and water flows/quality/quantity/ grazing harms/facilities harm, etc. and necessary baseline studies and analysis to determine habitat conditions and stress (including climate stress) on the allotment lands.

Response:

The proposal consists of hauling water to already disturbed locations within an existing grazing allotment. This action is permissible by via Appendix 4, sub-section D of the BLM's NEPA manual H-1790-1 which includes a provision specific to the placement of temporary water troughs., see response #1 (WD). Also refer to response to Protest Point #1 (WWP/CBD). Placement of temporary troughs will not occur within a one-mile proximity of springs and other riparian areas. This temporary water haul will help take any pressures off riparian areas.

Protest point #4

WD protests the very harmful periods of use – including extensive spring and hot season grazing.

Response:

As per the response to Protest Point #1 (WWP/CBD) sites #1, #2, #5, and #6 have been eliminated from the Proposed Decision. Site #3 and #4 are permitted for use anytime between 10/1 and 4/30 for a period of 1 month per site. This is not during the hot season, nor is it extensive.

Protest Point #5 *(There were several protest points or general comments received regarding weed infestation and habitat destruction that were very similar)*

WD protests the failure of BLM to address the serious expanded weed and habitat destruction effects of “improving distribution” into remnant better condition habitats, while failing to consider alternatives to recover degraded habitats by greatly reducing livestock and requiring much more protective use standards.

Response:

See responses #2 and #4 for the protests of WWP/CBD section, and #2 in this section. Essentially the location(s) of proposed water hauling sites were selected in previously disturbed areas, would not result in new disturbance, and are in areas previously grazed.

Protest Point #6

WD protests the failure to provide detailed livestock monitoring data (upland and riparian habitats), actual use by unit, etc., for this permittee.

Response: The permittee will turn out cattle in accordance with the FMUD for the Dyke Hot Allotment. As noted above, one month temporary water hauls have been determined to be “actions that Federal agencies have determined do not have a significant effect on the quality of the human environment (individually or cumulatively) and for which, therefore, neither an EA or EIS is required”.

Protest Point #7 *(There were several protest points or comments received regarding sage-grouse and other sensitive species that were very similar)*

WD protests the failure to consider that: Sage-grouse (an umbrella species) and other sensitive species populations are plummeting and BLM intensified grazing management schemes like even worse grazing impacts from water hauling fail to address the crisis, and fail to develop reasonable alternatives such as large scale reductions in grazing and/or cessation of grazing.

Response:

As per response #1 (WWP/CBD section) BLM has removed four of the proposed water haul sites due to the requirements of the 2015 Record of Decision for the Approved RMP Amendment for Sage-grouse in NE California and Nevada (ARMPA).

Protest Point #8

WD protests the lack of a baseline inventory and analysis to assess the habitat conditions and full array of adverse project impacts on migratory bird species in the project area and surroundings.

Response:

Migratory birds were considered in the CX and recommended mitigation measures included placing bird ladders in temporary troughs, and removal of the temporary troughs when the area or

the troughs were not actively being used. These mitigation measures were applied as stipulations to the project and were included in the Proposed Decision.

Protest Point #9

WD protests the failure to take an honest hard look at how this project and the grazing scheme and lack of adequate protective measurable standards are expanding irreversible cheatgrass infestation into vital wildland areas.

Response:

The proposed project is analyzing a temporary water haul, it is not an allotment permit renewal analysis. However, there are existing protective and measurable standards for this allotment which are outlined in the 1995 Final Multiple Use Decision for the Dyke Hot Allotment. Measurable standards include short term objectives for utilization of key upland and wetland plant species, long term objectives include maintaining and improving the public rangelands conditions to provide forage for livestock, big game species, and sage-grouse that utilize the allotment. Other long-term objectives include improving and maintaining wildlife habitat and improvement of species specific (i.e.: Aspen/Mahogany) habitats.

Protest Point #10

WD protests the failure to take a hard look at how the project harms sensitive species habitats and population viability.

Response:

See responses #1 (WWP/CBD section), #7 and #8 this section. Removal of several sites as per response #1 (WWP/CBD section) puts the remaining sites outside of any known sensitive species habitat. Migratory bird stipulations were applied in the Proposed Decision.

FINAL DECISION

It is my decision to approve the CX for placement of temporary water troughs in two specific locations on the Dyke Hot Allotment. The troughs will be placed within the Allotment in order to assist in the distribution of livestock, particularly in areas where livestock normally do not graze due to lack of water.

Of the original six sites only two sites will be authorized for temporary water hauling utilizing a temporary trough. Sites #1, #2, #5 and #6 have been eliminated from the original proposed decision. Site #3 and #4 are approved for water hauling purposes with a temporary trough in this decision. Sites #3 and #4 are permitted for use from 10/1 to 4/30 for a period of no more than 30 days per site. This decision allows for the yearly use of temporary water troughs and hauling, not to exceed 30 days per site per year, for a period of five years.

RATIONALE

This decision is in conformance with the appropriate land use plans as identified in the Conformance section of CX Worksheet DOI-BLM-NV-W030-2020-0002-CX.

The proposed decision has been modified and only two of the original six water haul sites will be permitted in this decision to allow for better distribution and use by permitted livestock across the allotment by providing sources of water in alternative locations.

Proposed water haul sites are in previously disturbed areas (generally the edges and shoulders of roads or turn out areas) which can be accessed using existing roads. Due to this, there would be no new disturbance associated with the proposed project. The proposed action does not disturb cultural resources; riparian habitat, or PPH or PGH of the Greater Sage-grouse (GRSG). A species list was requested from the U.S. Fish and Wildlife Service, and no known Threatened or Endangered Species are present within vicinity of the proposed water haul sites, nor are there any special status species habitats located in proximity to the remaining two water haul sites.

AUTHORITY

The authority for this decision is contained in Title 43 of the Code of Federal Regulations (CFR) 4120.3-3 and 4160.3 including, but not limited to the following:

4120.3-1 (a) and (f) Conditions for 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.

(f) Proposed range improvement projects shall be reviewed in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4371 *et seq.*).

4120.3-3 (a) (b) Range Improvement Permits.

(a) Any permittee or lessee may apply for a range improvement permit to install, use, maintain, and/or modify removable range improvements that are needed to achieve management objectives for the allotment in which the permit or lease is held. The permittee or lessee shall agree to provide full funding for construction, installation, modification, or maintenance. Such range improvement permits are issued at the discretion of the authorized officer.

(b) The permittee or lessee may hold title to authorized removable range improvements used as livestock handling facilities such as corrals, creep feeders, and loading chutes, and to temporary structural improvements such as troughs for hauled water.

4160.3 (b) and (c) Final Decisions.

(b) Upon the timely filing of a protest, the authorized officer shall reconsider her/his proposed decision in light of the protestant's statement of reasons for protest and in light of other information pertinent to the case. At the conclusion to her/his review of the protest, the authorized officer shall serve his/her final decision on the protestant or his/her agent, or both, and the interested public.

(c) A period of 30 days following receipt of the final decision, or 30 days after the date of the proposed decision becomes final as provided in paragraph (a) of this section, is provided for filing and appeal and petition for stay of the decision pending final determination on appeal.

APPEAL PROVISIONS

In accordance with 43 C. F. R. 4.470, 4160.3(c), and 4160.4, any person whose interest is adversely affected by a final decision of the authorized officer may appeal the decision for the purpose of a hearing before an administrative law judge. The appeal must be filed within 30 days after the date the proposed decision becomes final or 30 days after receipt of the final decision. In accordance with 43 C. F. R. 4.470, the appeal shall state clearly and concisely the reason(s) why the appellant thinks the final decision of the authorized officer is wrong.

Pursuant to 43 C. F. R. 4.471 and 4160.3(c), an appellant also may petition for a stay of the final decision pending appeal by filing a petition for stay along with the appeal within 30 days after the date the proposed decision becomes final or 30 days after receipt of the final decision.

The appeal and any petition for stay must be filed at the office of the authorized officer, Mark E. Hall, Field Manager, Bureau of Land Management, Black Rock Field Office, 5100 E. Winnemucca Blvd., Winnemucca, NV 89445. Appeal and petition for stay may not be submitted electronically or by email. 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 C. F. R. 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 C. F. R. 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 C. F. R. 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 C. F. R. 4.422(c)(2)).

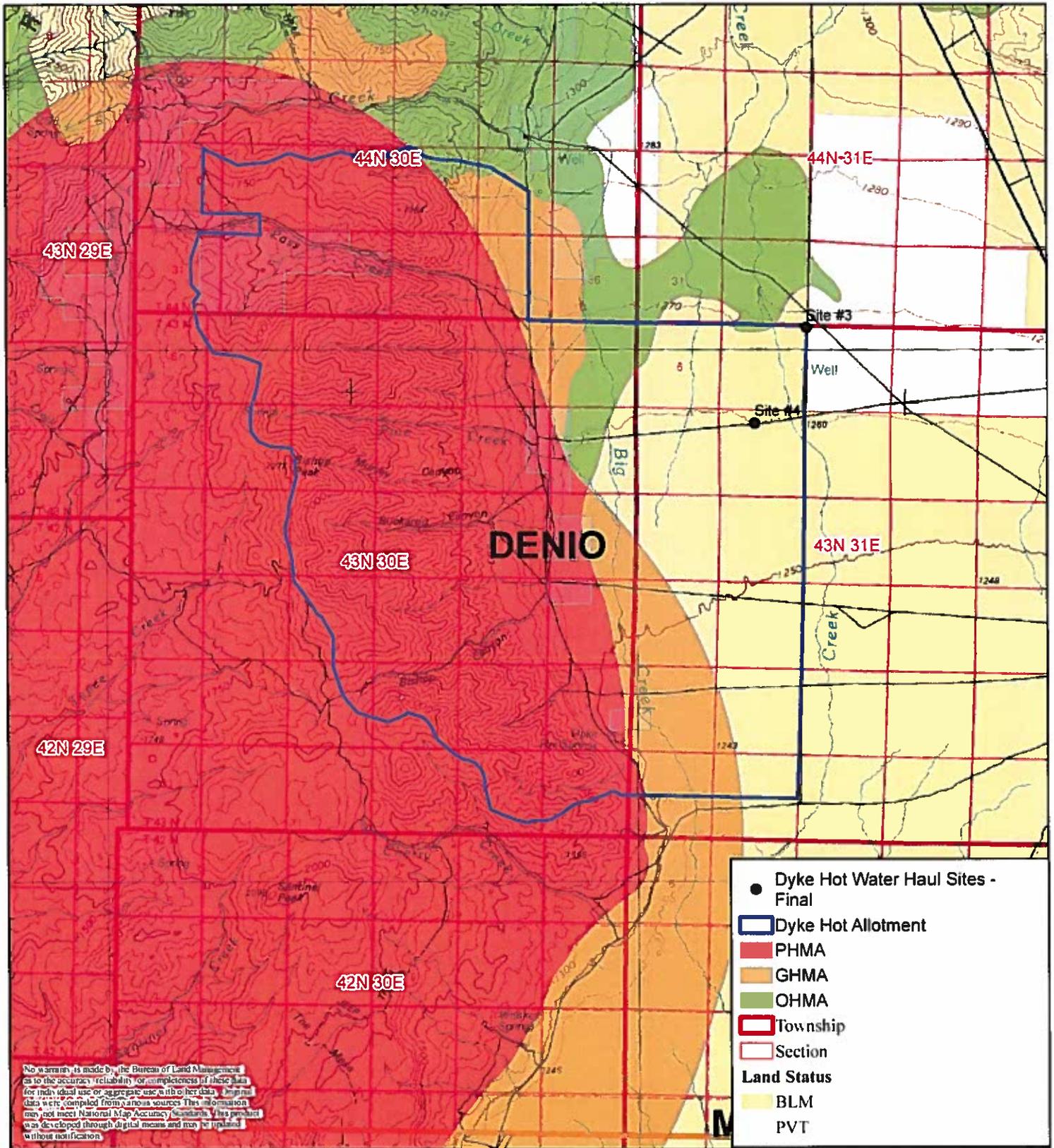
Sincerely,



Mark E. Hall, PhD
Field Manager
Black Rock Field Office

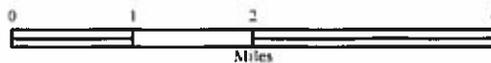
Enclosures
cc-Interested Public List

Dyke Hot Water Haul Sites - Final Locations - 2015 GRSG Habitat



Winnemucca District
 Bureau of Land Management
 5100 E. Winnemucca Blvd
 Winnemucca, NV. 89445

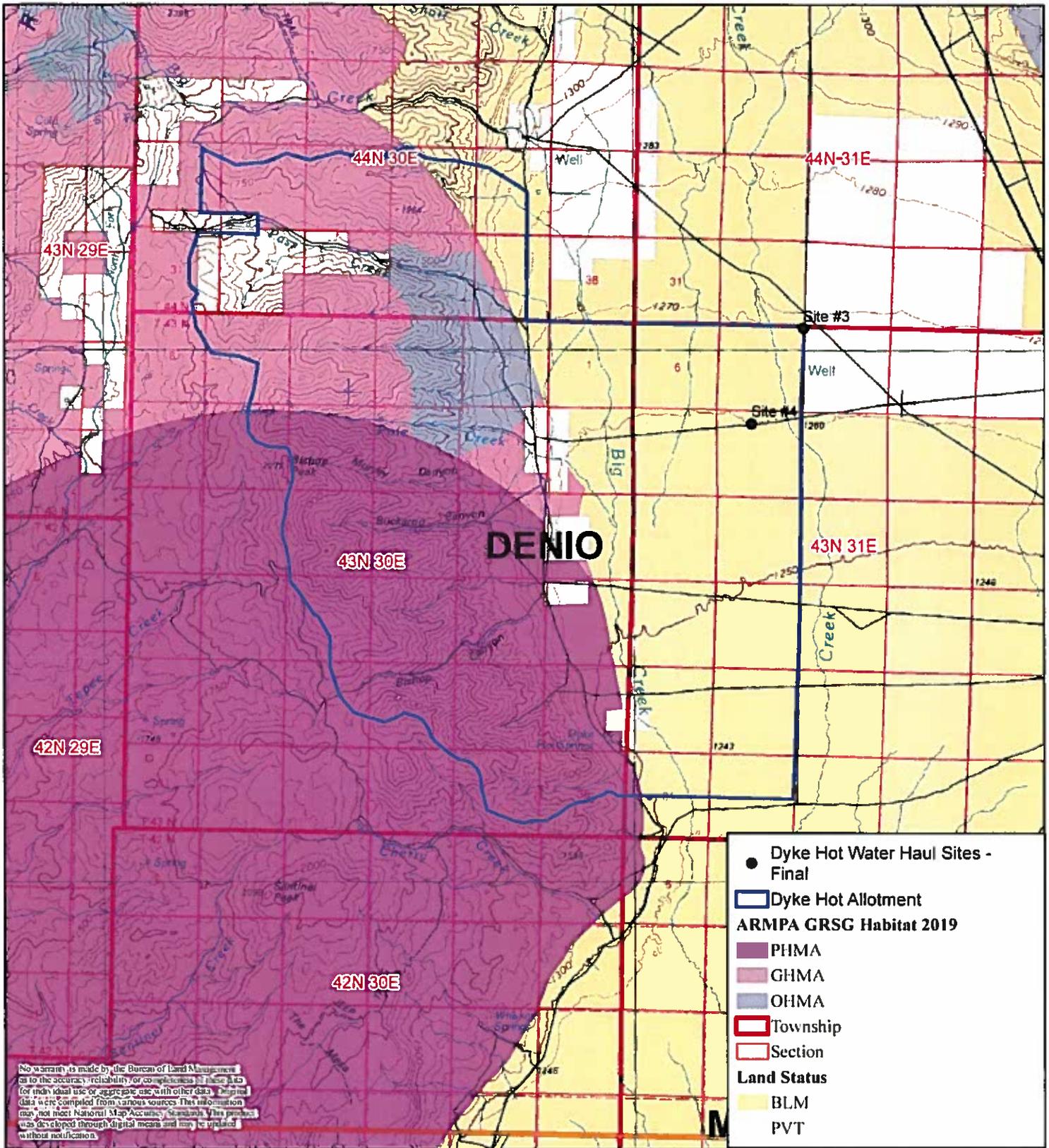
Dyke Hot Allotment
 Dyke Hot, Howard Hot Spring
 USGS 24k Quadrangles
 Prepared by: B. McMillan



Date: 4/20/2020



Dyke Hot Water Haul Sites - Final Locations - 2019 GRSG Habitat



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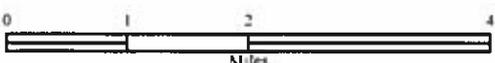


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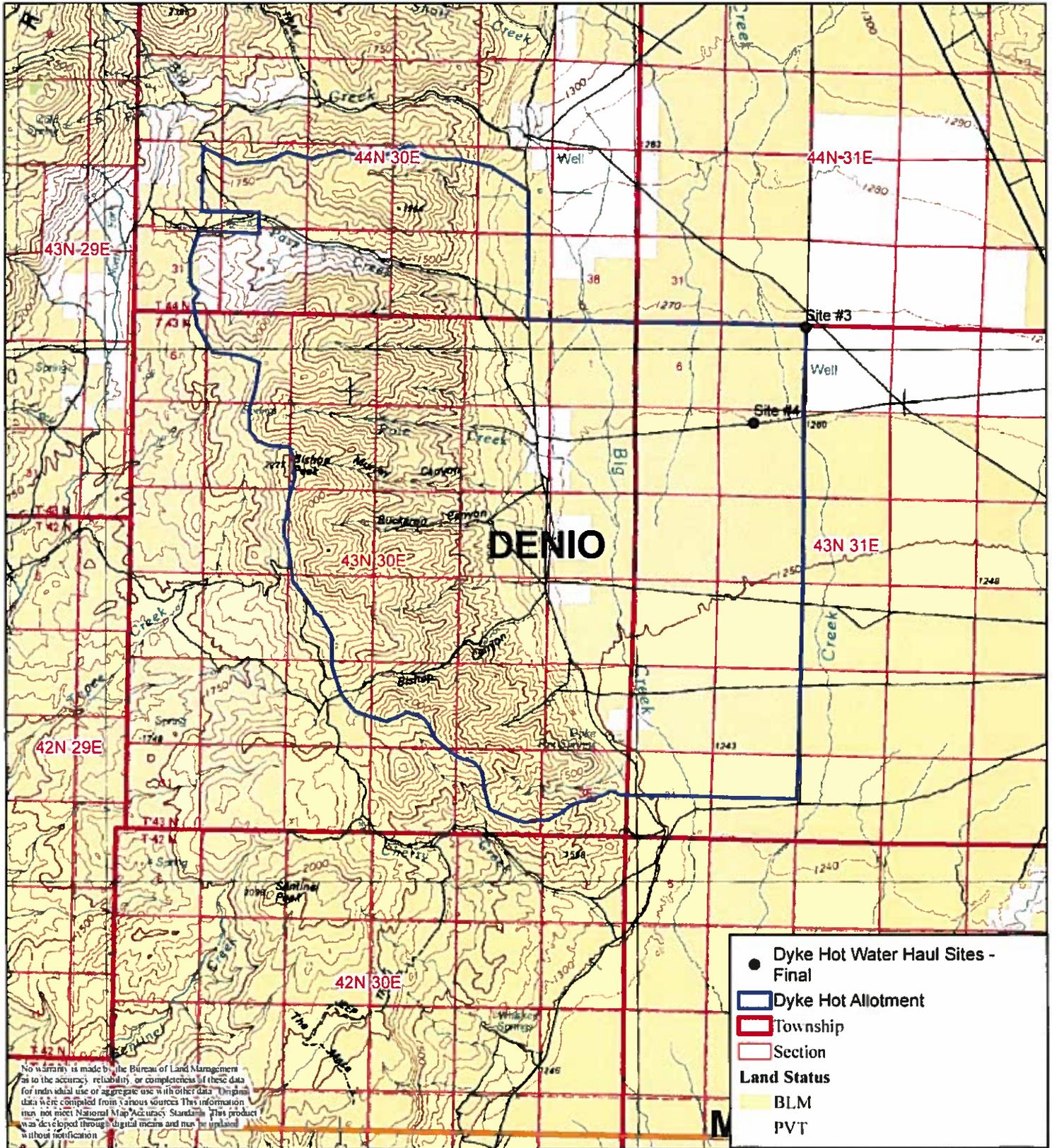


Date: 4/20/2020



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Dyke Hot Water Haul Sites - Final Locations

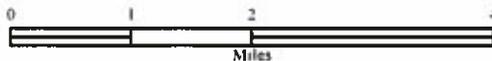


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