



# United States Department of the Interior



## BUREAU OF LAND MANAGEMENT

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August 13, 2013

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LLCAD-05000.37

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### NOTICE OF FIELD MANAGER'S FINAL GRAZING DECISION

Steve Stewart  
Box 284  
Lone Pine, CA 93545

Dear Mr. Stewart:

#### INTRODUCTION

Currently, you hold base property which you are offering to obtain the permit to graze on the Lacey-Cactus-McCloud (LCM) Allotment (05012). Your interest in the LCM Allotment is a result of having acquired the grazing preference from Busch Properties in March of 2010.

As a result of the withdrawal of land in 2000 by the China Lake Naval Air Weapons Station (NAWS) of the Department of Defense (DOD) this allotment has been reconfigured. It is the purpose of this decision to set out the parameters for re-authorizing grazing on the reconfigured LCM Allotment.

The reconfigured LCM Allotment encompasses approximately 162,765 acres of public land and 2,375 acres of private land. The allotment is within the West Mojave planning area (WMP) within the California Desert Conservation Area (CDCA). The allotment is located in Inyo County, California. The LCM Allotment is within the range of one prospectively listed threatened or endangered species. This is the Mohave ground squirrel. The allotment contains all or parts of three wilderness areas. They are; the Coso Range Wilderness (49,296 acres), the Argus Range Wilderness (3,860 acres), and the Darwin Falls Wilderness (698 acres).

#### BACKGROUND

The grazing lease for the LCM Allotment expired at the end of the 1999 grazing year (February 28, 2000). The grazing lease was not renewed because the Navy at China Lake NAWS cancelled grazing on what was their portion of the allotment.

The *Final West Mojave Plan (WMP) and Final Environmental Impact Statement (EIS)* was published in 2005, and the Record of Decision (ROD) was approved in March 2006 by the California State Director and amended the 1980 CDCA Plan.

For scoping purposes under the NEPA, on or about November 20, 2007, the BLM mailed a scoping document containing descriptions of seven (7) grazing allotments of which Lacey-Cactus-McCloud was one. This was sent to you and all interested publics, including appropriate Native American tribes. BLM requested feedback on the issues surrounding each allotment. Based on this request, BLM received numerous comments which were incorporated into the document.

On July 22, 2009, the BLM issued EA CA-650-2008-27 for public review to you and all interested publics. Comments were received and analyzed. The comments centered on the concerns for the grazing management and terms and conditions, the results of Rangeland Health Assessments, desert tortoise sightings, Mohave Ground Squirrel habitat and interactions with cattle, and the effects of grazing related to climate change. These issues were analyzed thoroughly within the EA or in Appendix 6 (Public Comments section) and are appropriately addressed.

In August 2010, the EA was completed and was sent out for protests with a proposed decision. However, the BLM decided that the proposed action and alternatives were unworkable and issued a letter vacating the proposed decision in September of 2010.

In July of 2011, a new edition of the EA was sent out for the 30 day comment period. Four alternatives were analyzed: 1) The proposed action to issue a grazing permit for a period of 10 years under the WMP which would authorize grazing in the Lower Cactus Flat and McCloud Flat area. 2) Alternative B which would allow grazing in both the Lower Cactus and McCloud Flats area and in the Lower Centennial Flat area upon the repair or construction of critical range improvements. 3) The no action/current management alternative in which the allotment would be managed based on applicable grazing decisions, BOs, terms and conditions of the current authorization, and regulations, and 4) The no grazing alternative which would not renew the grazing permit/lease. Comments were received and addressed.

In June of 2013, a revised EA and a Proposed Decision, dated May 22, 2013, was issued for a 15 day protest period. Eighteen protests were received. Below, the BLM has responded to the protest points:

## **PROTESTS AND RESPONSES**

The following protests were submitted by Western Watersheds Project on behalf of itself, Defenders of Wildlife, and the Center for Biological Diversity. Protests were submitted on June 21, 2013. The BLM, Ridgecrest Field Office, responded.

### **1. We Protest the BLM's Failure to Respond to Public Comments:**

In previous comments we indicated our concerns that the BLM was comparing an insufficient range of alternatives, has failed to describe the proposed action, has inadequately analyzed direct, indirect, and cumulative impacts to riparian areas and springs, desert tortoise, Mohave ground squirrel, rare plants, cultural resources, riparian resources, Wilderness or recreation, and has not thoroughly analyzed the effects of the action on invasive species. Yet, despite ample opportunity to do so, the

BLM has not substantially addressed these issues in the EA and has established no basis for a FONSI.

Previous comments also raised the BLM's unlawful attempt to tier to the West Mojave Plan which was invalidated by the Court. *CBD et al. v. BLM et al.*, Case No. C 06-4884 SI. BLM's response on this issue is both inaccurate and inadequate.

**BLM RESPONSE:** The BLM believes that it has established a basis for a FONSI and that the issues raised by the commenter have been adequately addressed in the body of the EA and in the responses to public comments. The list of issues which the commenter is protesting will be addressed in the subsequent responses to individual protests. New information regarding the establishment of the southern boundary of the allotment has effectively nullified the need to address the desert tortoise issue.

## **2. We Protest the BLM's Tiering to the Invalidated West Mojave Plan Amendment and EIS:**

BLM failed to adequately address the lawsuit and Court orders in the EA or Proposed Decision and wrongly states in response to comments that "none of the judge's orders effect the LCM allotment". EA at 149. In fact, both the summary judgment order and the order on remedies address grazing in the West Mojave Plan area. The 2009 Order found that the EIS was invalid in part because of the inadequacy of the NEPA review regarding the impacts of grazing and the Court remanded the West Mojave Plan to BLM to consider a host of factors regarding grazing. *CBD et al. v. BLM et al.*, 2009 U.S. Dist. LEXIS 90016, \*89 n. 33 (alternatives), \*103 (impacts to soils), \*109 (impacts to water resources, UPAs and riparian areas) (N.D. Cal. September 28, 2009). Therefore, tiering the EA for this Proposed Decision to the invalidated West Mojave Plan or its inadequate NEPA review is unlawful.

Further, in January 2011, the Court again addressed grazing in its Remedies Order. Although the Court allowed grazing decisions *that had already been issued* based on the West Mojave Plan amendment to remain in effect, that decision was clearly based on assertions by BLM that each of those new grazing permits were more protective of the environment than the *status quo ante*. *CBD et al. v. BLM et al.*, Case No. C 06-4884 SI (N.D. Cal. January 29, 2011) Order Re: Remedy at 11. In contrast, this new proposed decision for the Lacey-Cactus-McCloud allotment would allow grazing to occur in an area where it has not taken place since 2000 -significantly *increasing* impacts to public lands resources.

The Court also ordered that the grazing decisions that had already been made in reliance on the West Mojave Plan amendment "be reconsidered within six months after the revised FEIS and ROD are adopted by the BLM." Order on Remedies at 11. Thus, even if after January 2011 BLM could arguably claim that it could tier a grazing decision that *reduced* impacts to public lands resources to the invalidated West Mojave Plan amendment so long as it also committed to reconsider that decision after the new ROD was issued in 2014, which we believe it could not, *this* decision which significantly increases grazing impacts from the current status quo is clearly unlawful and contrary to the Court's order.

**BLM RESPONSE:** The protester repeatedly references the "Invalid West Mojave Plan". The fact is that much of the plan was left intact. In relation to grazing, the court's remand order specifically addressed the plaintiff's contention that the Plaintiffs have identified 16 grazing lease renewals that

BLM issued were invalid because they relied on and referenced the West Mojave Plan. The court did not support the plaintiff's contention that the existing decisions were invalid. The remand stated: "The Court finds that a reasonable remedy under these circumstances is to allow the current grazing decisions to remain in effect pending revisions of the FEIS and ROD during remand. Plaintiffs have not shown that the current grazing decisions are causing environmental harm or that they are less protective than the *status quo ante*." The issue of future grazing permit renewals was not addressed, but it is clear that references to the West Mojave Plan did not invalidate decisions. The court also noted that the decisions "were issued after full, site specific NEPA analysis including public participation."

The Existing direction requires BLM to reference compliance to existing land use plans. In the case of the LCM allotment, the existing land use plan is the CDCA Plan as amended. The West Mojave Plan was primarily aimed at addressing listed and sensitive species and presented amendments to the CDCA Plan. As noted in the LCM EA, most grazing provisions relating to the LCM allotment come from the CDCA Plan absent the WEMO amendments. The classification of the allotment as a perennial allotment suitable for grazing, season of use, class of livestock and carrying capacity all come from the CDCA Plan. The WEMO Plan included the following grazing discussions:

- "Regional Public Land Health Standards and Guidelines for Grazing Management
  - Utilization of Key Perennial Species by Livestock
  - Cattle Grazing Outside Tortoise Habitat and the MGS Conservation Area
  - Cattle Grazing Within Tortoise Habitat and the MGS Conservation Area
  - Cattle Grazing Within Desert Wildlife Management Areas
  - Sheep Grazing Within All Allotments
  - Sheep Grazing Within the MGS Conservation Area and the Mojave monkeyflower Conservation Area
  - Sheep Grazing Within DWMA's
  - Voluntary Relinquishment of Cattle and Sheep Allotments" (WEMO Plan page)
- (The highlighted items applied to the LCM allotment proposed decision)

The WMP Plan also contained several **New Management Prescriptions** (at 2.5.3.2) that apply to the LCM allotment. These were the following:

- " (LG-4) The Lacey-Cactus-McCloud allotment boundary would be modified to exclude those portions that occur on China Lake NAWS."
- " (LG-4a) Livestock kind and use designation in the Darwin Allotment would be converted from horse to cattle and the allotment would be incorporated within the Lacey-Cactus-McCloud Allotment." Horse AUMs do not and would not be converted to cattle AUMs in the wilderness portions of the allotment.

None of the WMP provisions that are noted were affected by the court action and all of them are incorporated into the EA and proposed decision.

### **3. We Protest the BLM's Failure to Define the Purpose and Need for the Proposed Decision:**

The CEQ implementation regulations pertaining to NEPA require an explicitly defined purpose and need. 40 CFR § 1502.10 (d). Despite our repeated requests to do so, the BLM still has not provided a meaningful purpose and need for the project. The two sentence Purpose and Need statement in the EA at 7 states,

The purpose of the proposed action is to complete a site-specific evaluation of grazing that provides information to be analyzed by the BLM in conformance with the implementing regulations for the NEPA (40 CFR Part 1500), FLPMA, BLM grazing regulations (43 CFR Part 4100), and Public Law 106-113 section 325 to determine whether to authorize grazing within this allotment and what stipulations are necessary.

The need for the proposed action is to determine whether or not to authorize grazing for this public land grazing allotment in compliance with the prescriptions prescribed in the WMP, dated January, 2005, the Biological Opinion for the California Desert Conservation Area Plan, dated March 31, 2005, and the proposed Regional Rangeland Health Standards.

In the first paragraph, the BLM describes the purpose in terms of implementing a NEPA analysis. But that is the purpose of an EA - it is not the “need” for the project that the EA is analyzing. In the second paragraph the BLM seems to be confusing the decision itself “whether or not to authorize grazing” with the purpose of the project.

The BLM needs to provide a clear statement of the actual purpose and need for why the proposed grazing action is required at this time. Why does the BLM need to make this grazing decision at this time for an allotment that has been rested for thirteen years, for which it has no Allotment Management Plan, and for which the BLM suggests in the EA will be managed differently sometime in the near future?<sup>1</sup>

<sup>1</sup> According to the EA at 53, the BLM is considering extending the grazing authorization at least to the Lower Centennial Flat area and the area south of highway 190.

**BLM RESPONSE:** The purpose and need has been revised to respond to a request to graze the allotment by an individual who now controls the preference to graze on the allotment. The BLM must decide whether or not to issue a permit and under what conditions.

#### **4. We Protest the BLM’s Failure to Consider a Range of Alternatives:**

The proposed action would increase livestock use in parts of the Coso Range Wilderness. The BLM now calculates this to be an increase of about 9%. EA at 50. But despite the controversial nature of any decision to increase grazing in Wilderness, the BLM has failed to consider any reduced grazing alternatives that would avoid this and would better protect other resources such as the Mohave ground squirrel. In fact nowhere in the EA does the BLM actually explain why it needs to authorize 200 cow/calf pairs at all. The proposed action appears arbitrary given there is no permitted livestock grazing within the allotment and the allotment has not been grazed for the past 13 years.

**BLM RESPONSE: :** The EA’s statement about a 9% increase was based upon an earlier assumption that there was a 60%/40% split in use between the two pastures in 1994, with Lower Cactus/McCloud Flat using up to 60% of the total available AUMs for both pastures. BLM now believes the split in use was a 70%/30% split. Under the current Alternative A, the number of AUMs (790) proposed for use in the Lower Cactus/McCloud Flat pasture is consistent with numbers permitted in 1994 (796.6), based on a 70%/30% distribution in use between the two pastures. The EA establishes that grazing use in the remaining LCM allotment at the time of wilderness designation was 1138 AUMs. (EA at page 51, 92 & 130) The issue of increases in wilderness is further addressed in Protest 8 below.

On the issue of alternatives addressed in the EA, BLM looked at the proposed decision (alternative A) (which is below the wilderness assessment of 796 AUMs in-use in the Cactus Flat McCloud Flat area alone in 1994), alternative B which proposed fewer total AUMs (697) split evenly between the Centennial Flat and the Cactus Flat McCloud Flat pastures and a no grazing alternative. BLM believes this gave a range of actions to evaluate and consider.

#### **5. We Protest the BLM's Failure to Take a Hard Look at Permanently Retiring the Allotment:**

The EA wrongly claims, "The cancellation of grazing would have an immediate impact to the permittee. Permanent replacement forage would need to be acquired to replace the forage lost from not grazing the allotment. This would have an economic impact to the ranching operation." EA at 25. But this is untrue. But there has been no grazing since 2000 and the new applicant has never grazed on Lacey-Cactus-McCloud Allotment.

Similarly, the BLM's assessment of impacts to recreation of this alternative ("eliminating the experience of seeing the Wild West," EA at 41) ignores the beneficial aspects of cancelling the grazing permit altogether. Botanists, biologists, photographers, hikers, bikers, and other recreational users likely prefer landscapes free of livestock and their sign. In any event it is unclear why the BLM believes that a grazing allotment with its attendant infrastructure amounts to the Wild West. The BLM assumes that the visual effects of range improvements are not significant impacts on recreational users; the BLM offers no data to support this claim and it certainly detracts from experiencing the wild. Rather, these types of statements reflect an agency bias against the No Grazing alternative, indicating that this alternative was not given fair consideration in the NEPA process.

**BLM RESPONSE:** Lacey-Cactus-McCloud was not designated for voluntary relinquishment in the West Mojave Plan and therefore, a plan amendment would be required for permanent retirement. The allotment did not have a valid existing permit as of December 2011; therefore, it does not qualify as a donation for permanent retirement under the pending Desert Renewable Energy Conservation Plan. The land comprising the LCM Allotment is designated as suitable for grazing by the CDCA Plan of 1980. There was no compelling reason in the analysis done by the BLM to change that designation. A FONSI was issued as an indication that there is not a compelling reason to change the designation of the land away from being suitable for grazing. Furthermore, the BLM's mandate for multiple-use includes grazing. The BLM believes it has provided for adequate protections which are described in the EA and in the responses to comments and responses to protests to mitigate the impacts of grazing. The No Grazing Alternative received fair consideration along with the other alternatives analyzed in the EA.

#### **6. We Protest the BLM's Segmentation of Analysis of this Application for a Grazing Permit from the Needed Development of an Allotment Management Plan:**

The BLM grazing regulations allow an allotment management plan to "be revised or terminated by the authorized officer after consultation, cooperation, and coordination with the affected permittees or lessees, landowners involved, the resource advisory council, any State having lands or responsible for managing resources within the area to be covered by the plan, and the interested public." 43 CFR § 4120.2. Here, the BLM summarily states that "The existing Allotment Management Plan would terminate." EA at 11. But the BLM fails to present a new Allotment Management Plan for review by the interested public and the EA fails to consider any alternatives to the BLM's termination.

Despite being required to involve the interested public in Allotment Management Plan revision and terminations, the BLM has resolved to terminate the Plan forthwith. But that plan is surely needed here because the BLM has adopted a piecemeal approach to grazing on the Lacey-Cactus-McCloud. Although the Proposed Decision is to allow grazing on Lower Cactus/McCloud/western Upper Cactus Flats area, BLM is still entertaining allowing grazing on the Lower Centennial Flat area. EA at 53. The BLM seems to be trying to get its foot in the door here with an incremental grazing action in clear violation of the NEPA.

**BLM RESPONSE:** The *Livestock Management and Grazing prescriptions (Other terms and conditions)* (EA at 11) states that “The existing Allotment Management Plan (AMPs) would terminate and be replaced with terms and conditions in the permit.” Allotment Management Plans may be developed, however other activity plans, in this case the EA, may also serve as a functional equivalent if the appropriate conditions are described (43 CFR § 4120.2). The old LCM Allotment Management Plan is no longer valid as the grazing regime as authorized in the Proposed Decision is substantially different from the historical use as described in the old AMP. The EA satisfies all of the necessary criteria to qualify as an AMP functional equivalent as per 43 CFR § 4120.2(a), as well as incorporates public input through the NEPA process.

The Proposed Decision does not authorize grazing on the Lower Centennial Flat, and if that option were to be considered in the future, the BLM would then alter the grazing permit through a subsequent NEPA process. Additionally, this protest does not address grazing as authorized in the Proposed Decision.

## **7. We Protest the BLM’s Failure to Adequately Describe the Proposed Range Developments:**

We protest the BLM’s failure to adequately describe the proposed range improvements and their effects. Under the BLM grazing regulations a "Range improvement" means an authorized physical modification or treatment which is designed to improve production of forage; change vegetation composition; control patterns of use; **provide water**; stabilize soil and water conditions; restore, protect and improve the condition of rangeland ecosystems to benefit livestock, wild horses and burros, and fish and wildlife. The term includes, but is not limited to, structures, treatment projects, and use of mechanical devices or modifications achieved through mechanical means. 43 CFR § 4100.0-5. The regulations specify that, “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.*)” 43 CFR § 4120.3f.

Under Alternative B, the BLM is proposing to establish at least two new water haul sites which clearly meet the definition in 43 CFR § 4100.0-5. In the Mohave ground squirrel section (EA at 43) the EA states that these will create 2 acres of disturbance. The BLM provides no basis for this acreage. Brooks *et al.*, 20062 found significant effects within a 200 meter radius of watering sites on the now retired Pilot Knob Allotment, also within the Ridgecrest Resource Area. A 200 meter radius calculates to a 31 acre area with significant impacts. This is for each new development. The EA is thus seriously underestimating the area impacted by the proposed developments by at least 60 acres.

Further, the BLM is considering additional developments for the proposed action that are never analyzed at all. For example, the EA at 53 states, “An additional water haul site will be developed outside of wilderness when the stock pond fills-in, if not before.”

<sup>2</sup> Brooks, M. L., Matchett, J. R. and Berry K. H. 2006. Effects of livestock watering sites on alien and native plants in the Mojave Desert, USA. *Journal of Arid Environments*, 67: 125-147.

**BLM RESPONSE:** The protest is concerned about water haul sites that are discussed with regard to Alternative B. The EA at Page 17 states, “Separate EAs will analyze the impacts from the construction, maintenance and use of these improvements which are determined necessary for the management of livestock on the L-C-M Allotment with this alternative.” The future installation of water haul sites and the sites themselves will require subsequent NEPA review.

## **8. We Protest BLM’s Failure to Take a Hard Look at Impacts to Wilderness:**

The Coso Range Wilderness was designated in 1994. Prior to Congressional designation, the area was managed as a BLM WSA (Area 131). The proposed action would increase livestock use in the Coso Range Wilderness over levels occurring when Congress designated the Wilderness. Although it appears to lack pre-1994 grazing data for the area (EA at 124) the BLM now calculates this to be an increase of about 9% over pre-designation levels. EA at 50. The BLM claims that this additional use will not have an adverse impact on wilderness values. EA at 50-51. The BLM justifies this claim of no adverse effects by stating (1) the wilderness comprises only about 1/3 (34%) of the area to be grazed; two-thirds of the area lies outside of wilderness and is available to absorb most of the impacts of more intensive use; (2) with the exception of the Lower Cactus Flat Reservoir (5357), all watering sites where cattle would be expected to concentrate are located outside of wilderness and more than a mile from the wilderness boundary; and (3) cattle would be grazing in the area for only 4 months each year and only during the winter months of the year. The last point would be a significant improvement over what was occurring in 1994, when cattle were permitted to graze up to 7 months each year and throughout the spring time. The proposed change in the grazing regime would avoid direct impacts to plants and soils during the critical spring growing season. *Ibid*.

The BLM’s justifications are without foundation. First, the proposed grazing period is December 2 - March 31. This means that cows will not only be turned out during the winter rainy season when they are less dependent on developed water sources, but also that the increase in cattle numbers will be occurring during the crucial plant germination and growth periods, and many of the annuals will flower well before March 31 (e.g. see Jennings, 2001<sup>3</sup>). Second, the increase in cattle numbers will also be occurring when the soil is wet and most susceptible to compression, erosion and disturbance. Third, one of the three waters, Lower Cactus Flat Reservoir, is within the Wilderness. There is no rational basis for BLM’s presumption that somehow cattle will avoid the wilderness or that the non-wilderness areas will absorb most of the impacts of more intensive use.

The proposed placement of a new waterhaul site immediately adjacent to the Wilderness in alternative B will increase impacts on the Coso Range Wilderness and is completely unjustified in the EA.

The governing land use plan, the CDCA Plan, requires the Field Office to consider valid nonconforming resource uses and activities in the management of wilderness so as to have the least possible adverse effect and/or wherever possible a positive effect. CDCA Plan at 50, emphasis added. Increasing livestock use in the Coso Range Wilderness does not meet the *have the least possible adverse effect* criterion. Thus, the proposed action does not conform to the governing land plan.

<sup>3</sup> Jennings, W.B. 2001. Comparative flowering phenology of plants in the western Mojave Desert. *Madrono*, 48: 162-171.

**BLM RESPONSE:** The permit to graze during the period spanning wilderness designation did not assign numbers of cows or AUMs on a pasture-by-pasture basis. As a result, BLM can only make reasonable estimates of what the permitted use numbers were in the two remaining pastures of the reconfigured allotment. With refinements in the spectral analysis, BLM has actually lowered estimates of total AUMs remaining from 1254 AUMs to 1138 AUMs. (See response to comments on Page 130.)

The EA's statement about a 9% increase was based upon an earlier assumption that there was a 60%/40% split in use between the two pastures in 1994, with Lower Cactus/McCloud Flat using up to 60% of the total available AUMs for both pastures. BLM now believes the split in use was a 70%/30% split. Under the current Alternative A, the number of AUMs (790) proposed for use in the Lower Cactus/McCloud Flat pasture is consistent with numbers permitted in 1994 (796.6), based on a 70%/30% distribution in use between the two pastures.

Under Alternative A, cattle would be permitted to graze in just one of the two remaining use areas. They would be in the area that was most consistently and intensively grazed in 1994: the Lower Cactus/McCloud Flat pasture. Most of the use would be concentrated outside of wilderness due to the severity and steepness of the terrain. This pasture is almost wholly dependent upon water haul sites located at some distance from the wilderness boundary. Water can be easily turned on and off at these sites to move cattle and better distribute use.

We do not anticipate extensive cattle use at the stock pond since water is available there for only part of the year. In any case, the decision not to allow vehicle maintenance of the pond, will allow us to finally close and rehab a significant vehicle trespass route.

The protest makes an issue of the amount of impacts that the proposed grazing season would have. They state: "This means that cows will not only be turned out during the winter rainy season when they are less dependent on developed water sources, but also that the increase in cattle numbers will be occurring during the crucial plant germination and growth periods, and many of the annuals will flower well before March 31 (e.g. see Jennings, 2001 )." This issue was addressed in the response to comments in appendix 6 of the EA which states that cattle may be less tied to water developments in the winter time. As a consequence, they may be more likely to disperse throughout the range, including the wilderness portions of the range. This would not, significantly increase numbers of cattle inside wilderness. Cattle would likely forage farther outside of wilderness. At least half of the wilderness portion of the proposed Alternative A grazing area consists of steep uplands with slopes ranging from 30% to 50 % which further restricts or discourages grazing from much of the wilderness. At the time of wilderness designation (the ten-year grazing period spanning 1994), cattle were grazing in the area in winter time, as well as in spring time so winter grazing is not a change. The response to comments further addressed the question of reduced impacts to vegetation due to the revised grazing season. The response reads: "There are numerous studies documenting that annual wildflowers will start flowering in March in some areas. The literature also agrees that the flowering period is delayed at sites of higher elevation or farther north. One accepted rule of thumb is that the flowering is delayed approximately two weeks per 1000 feet of elevation gain. Much of the proposed grazing area is 3000 to 5000 feet higher than the Indian Wells Valley where annual wildflowers start flowering in late March. This would project flowering on L-C-M Allotment to occur in May and June." (EA appendix 6 page 133) In addition, the LCM allotment is a perennial allotment where the annual wildflowers are a minor part of the vegetation and forage base.

There would be no grazing in the Lower Centennial Flat pasture or in the area south of highway 190, i.e., in more than 70% of the wilderness. Three of the six range developments associated with this pasture would be removed, including all developments at Upper Centennial Spring. Use and repair of existing facilities at Lower Centennial Spring would be deferred. In other words, the only two riparian areas with surface water in the Coso Wilderness would not be impacted by grazing at all. Opportunities for primitive and unconfined recreation which rely on good water, attractive campsites, availability of wildlife, and unmarred scenery would be spared and would continue to improve. Cultural values associated with these springs would not be put at risk by cattle trampling activities. There would be no administrative impediments to permanently and irrevocably closing the active vehicle trespass route into Upper Centennial Spring.

The CDCA Plan directs BLM to manage wilderness in a manner to have the least possible adverse effect and the most beneficial effect on wilderness values whenever possible. The Wilderness Act provides for grazing, a non-conforming but authorized use, where it was occurring at the time of designation (Section 4(d)(4)(2) of the Wilderness Act of 1964). It is important to note that fundamental baselines for wilderness character revolve around what was happening in wilderness at the time of designation in 1994. The allotment, including the wilderness portion, has not been grazed since 2000. However, the allotment was grazed on a continual (perennial) basis in the years spanning wilderness designation. The resumption of grazing in an area that has not been grazed in over ten years will have impacts to wilderness character. However, the current proposed action improves on the grazing strategy and it is an improvement for wilderness over what was occurring in 1994.

The issue of the development of a haul water site in alternative B is a moot point as the proposed decision that is being protested does not include this action from alternative B.

#### **9. We Protest BLM's Failure to Take a Hard Look at Impacts to Desert Tortoise:**

According to the WMP Record of Decision, the allotment includes 1,800 acres of desert tortoise habitat. WMP ROD at 11. This is reiterated in the EA at 4. Yet, on page 45 the EA categorically states, "The L-C-M allotment is entirely outside of the desert tortoise range as designated in WMP. BLM has no records of desert tortoises within the allotment. (Please see 2011 Western Watersheds Project comment (#15) and BLM response from 2011-13 for updated information.)"

The cited BLM response at EA page 139 is:

RESPONSE 15: The LCM allotment contains about 1800 acres of desert tortoise habitat, according to the WMP. The EA is incorrect in saying that the allotment is entirely outside of the tortoise's range. The northern portion of the desert tortoise's range could become more important to the survival of the species since climate change puts the lower elevations and southern portions of the desert tortoise's range at risk of increased frequency of drought. Droughts greatly reduce the availability of annual forage. The tortoise would be more likely to persist in cooler, moister areas as the climate continues to warm. Therefore, more than 1800 acres of the LCM allotment could become tortoise range as climate change progresses. Cattle could crush tortoise burrows. Young tortoises could be crushed either inside of the burrow or outside of it since cattle will be grazing from December through March which is during both the hibernation period and the emergence period of

tortoises. Cattle do not eat annuals that the desert tortoise relies on for forage, but they do crush annual vegetation. In drought years, when very little annual forage is able to germinate, tortoises have a hard time finding enough to eat. If cattle stocking rates are too high or cattle congregate too densely, they could trample and crush the sparsely occurring annual plants and reduce the amount of forage available to the tortoise. Cattle can reduce the shrub cover if the herd is not distributed sparsely across the allotment and if cattle are not removed when thresholds of forage use are reached. That is why timely monitoring and utilization studies are essential to proper management.

It should be noted that no tortoise locations that lie within the allotment have been reported to the California Natural Diversity Data Base. However, the BLM will be enforcing the tortoise stipulations applicable to grazing which are found in the Fish & Wildlife Service's B.O. (1-8-03-F-58) & WMP (Vol 1A, pp 2-124 – 2-128). Please see the Proposed Action at page 13 & critical element, "Threatened and Endangered Wildlife Species," page 47.

From the response, it appears that BLM now admits that its grazing decision may affect the listed desert tortoise. It is unclear why the BLM has not corrected the EA to include impacts to desert tortoise. It has been sitting on this analysis for nearly two years.

Because the grazing decision may impact desert tortoise, the BLM needs to complete a site-specific analysis of those impacts. In this case, the BLM has not even identified where the desert tortoise habitat is on the allotment, has failed to provide any maps showing tortoise habitat or potential habitat, has failed to perform any site-specific surveys, and has simply failed to take a hard look at the direct, indirect, and cumulative effects. A "hard look" requires site-specific information and substantiation of any generalized comments. For example, the BLM's pronouncement that "Cattle do not eat annuals that the desert tortoise relies on for forage" is simply untrue. We suggest the BLM consult the WMP Appendix J at 37 as a starting point for some background information on dietary overlap and competition between cattle and desert tortoises, and consult Appendix J at 27-39 as a starting point for background information on the many other impacts of livestock grazing on desert tortoise. This is particularly important because the proposed action will concentrate cattle on the allotment's southwest side which is the area most likely to support desert tortoise given the three CNDDDB occurrences just to the west of the allotment boundary.

**BLM RESPONSE:** According to the 2002 Tortoise Range Map in WMP (Map 3-10), the LCM allotment is entirely outside of the desert tortoise range. However, the WEMO ROD states that there are 1800 acres of non-critical desert tortoise habitat in the LCM allotment. That figure is based on an old map from the California Desert Plan that was incorrect and was corrected with a rangeland agreement signed by the grazing operators and District Manager in Aug 24, 1981. WEMO is incorrect in stating that 1800 acres of tortoise habitat are in the LCM allotment. Those 1800 acres are actually part of the Tunawee allotment. The tortoise occurs on the gently sloped bajadas to the southwest of the LCM allotment. The LCM allotment's southwest boundary ends at the topographic break between the relatively steep, rocky slopes and the gentler slopes to the southwest. Tortoises are less likely to occur on these steeper, rocky slopes with unsuitable substrate for burrowing. In addition, the cattle do not use this southwest portion of the allotment either since it is steep and rocky and does not produce much forage and no water. Therefore, the use areas of the cattle and tortoises are unlikely to overlap in the southwest part of the allotment. Both cattle and tortoises forage on annual plant species, especially in early spring. However, this fact is irrelevant to the LCM allotment because no desert tortoise habitat occurs within this allotment since the boundary was changed in 1981.

#### **10. We Protest BLM's Failure to Take a Hard Look at Impacts to Mohave Ground Squirrel:**

The EA now admits that the Lacey-Cactus-McCloud Allotment lies almost entirely within the BLM's Mohave Ground Squirrel Conservation Area. It also states that ground disturbance and habitat destruction is restricted to 1% of the Mohave Ground Squirrel Conservation Area. EA at 45. However, the EA fails to quantify the actual ground disturbance from the proposed action. Further, the EA also fails to mention what the cumulative ground disturbance within the Mohave Ground Squirrel Conservation Area is to date so there is no context in which to evaluate the project's contribution to the 1%.

Although it is a CESA-listed, BLM sensitive species, the EA provides no current survey data for Mohave ground squirrel and no trend data for the allotment's population. The Cactus-McCloud Flat grazing area lies in the center of the important Coso Range-Olancho core area, the most northerly of the four identified Mohave ground squirrel core areas (Leitner, 2008<sup>4</sup>). These four core areas continue to support relatively abundant Mohave ground squirrel populations and thus their protection is of key importance in conserving the species. Although we raised this issue in our comments, the EA fails to even mention the core areas or their significance.

Instead of surveying the allotment's Mohave ground squirrel populations, the BLM instead proposes to simply rely on utilization as a means of mitigating the potential adverse impacts of the proposed grazing on the Mohave ground squirrel. But the BLM provides no data showing that this will protect the Mohave ground squirrel from the many other threats posed by grazing including from habitat degradation due to soil compaction, destruction or degradation of cryptobiotic soil crusts, decreased water infiltration, increased erosion, trampling of plants, and overcropping, collapse of burrows, and facilitation of predation of the Mohave ground squirrel by providing nesting, roosting, and perching habitat for common ravens and birds of prey. FR 76 62214 et seq.

The Proposed Action allows cattle on the allotment during the critical hibernation emergence time for Mohave ground squirrels in early February into March and sets up competition for resources between the Mohave ground squirrel and cattle that remain unanalyzed in the EA.

Because the EA failed to take the requisite hard look at impacts to the Mohave ground squirrel, we protest the proposed decision.

*4 Leitner, P. 2008. Current Status of the Mohave Ground Squirrel. Transactions of the Western Section of the Wildlife Society. 44: 11-29.*

**BLM RESPONSE:** The BLM is mitigating impacts to the Mohave ground squirrel and other wildlife by monitoring forage utilization. In late November before cattle are turned out, the BLM will monitor leader growth from the prior spring season. If the BLM determines that leader growth on key perennial species is adequate to supply sufficient forage for wildlife and cattle, cattle will be turned out in December. Then at the end of January after 2 months of grazing, BLM will monitor to determine whether the utilization threshold has been reached. The BLM uses the utilization threshold of 40% use of key perennial species (WMP pg 2-124; Table 2-17). If this threshold is exceeded, cattle will be removed from the allotment. If the utilization threshold has not been met by the end of January, the BLM will monitor again at the end of February before allowing cattle to remain on the allotment until the end March.

## **11. We Protest the BLM's Failure to Take a Hard Look at Impacts to Rare Plants and Unusual Plant Assemblages:**

The proposed boundary for Alternative B includes the entire Olancha Greasewood Unusual Plant Assemblage (UPA IA3). The CDCA Plan mandates that identified Unusual Plant Assemblages be considered when the BLM conducts site specific analyses to ensure that impacts are minimized, CDCA Plan at 16. Despite our requests to do so, the BLM still does not include an analysis of impacts to this UPA in the EA. It simply dismisses our concerns in its response to comments stating, "The Olancha Greasewood Unusual Plant Assemblage (UPA) occurs completely outside the proposed alternative A grazing area and only in the trailing portion of alternative B. There would not be any expected grazing use in that UPA. Even if cattle did get into the area, greasewood is not considered palatable for cattle and in the UPA, it is located on hummocks which would preclude cattle trampling the plants." But even the USDA recognizes that cattle do eat greasewood.<sup>5</sup>

Despite requests to do so, the BLM has completely ignored impacts to Booth's evening-primrose, *Eremothera (Camissonia) boothii* ssp. *boothii*. In the response to comments section, the BLM simply contradicts itself by first admitting then denying that the plant occurs on the allotment, "Camissonia boothii ssp. boothii was recorded in 1931 west of the southern portion of the allotment. Neither of these 2 species have been recorded as occurring on the allotment." EA at 152. But CNDDDB occurrence 16 is clearly within the proposed Alternative A grazing area.

The BLM has still not identified how it will actually protect the populations of Ripley's cymopterus. The EA now claims that, "The north and east of Haiwee Reservoir have been identified and can be avoided by cattle trailing or crossing on their way to and from Lower Cactus Flat (see map, Appendix 1)." EA at 44. But the map clearly shows at least one occurrence of Ripley's cymopterus (labeled CY RI 2) in the grazing area at Lower Cactus Flat. And worse, the Proposed Grazing Decision includes no mandatory terms and conditions relating to Ripley's cymopterus at all. (5) <http://www.ars.usda.gov/Services/docs.htm?docid=9898>

**BLM RESPONSE:** The proposed action (Alternative A) does not include the Olancha Greasewood Unusual Plant Assemblage, which lies to the northwest of the allotment. *Eremothera (Camissonia) boothii* ssp. *boothii* is Rank 2.3 in the CNPS Inventory of Rare and Endangered Plants (rare, threatened, or endangered in CA; common elsewhere). It is not a BLM special status plant species unless it is California Rare Plant Rank 1B (plants rare, threatened, or endangered in California and elsewhere).

The cattle will be trailing through the area east of the Ripley's Cymopterus occurrence (CY RI 2) that is shown on the map. The cattle will stay well to the east of the N-S route near where CY RI 2 is located and will avoid any plants growing in that area.

## **12. We Protest the BLM's Failure to Take a Hard Look at Impacts to Riparian Resources:**

The EA fails to analyze impacts to riparian/wetland areas from water diversions at Lower Centennial and Black Springs in its analysis of Alternative B. These two springs would supply water to storage tanks and troughs located on Centennial Flat. Absent such an impact analysis, the BLM cannot demonstrate the proposed action would conform to its regulations establishing Standards for Rangeland Health or its Guidelines for livestock grazing. 43 CFR 4180.

It is also unclear if the springs are currently meeting Proper Functioning Condition objectives and the EA suggests that this key benchmark evaluation has not been performed. The EA at 100 states “Grazing activities at an existing range improvement that conflict with achieving proper functioning conditions (PFC) and resource objectives for wetland systems (lentic, lotic, springs, adits, and seeps) will be modified so PFC and resource objectives can be met, and incompatible projects will be modified to bring them into compliance.” No actual evaluation of the current Proper Functioning Condition is referenced in the EA.

**BLM RESPONSE:** There would be no impacts to either Lower Centennial or Black Springs, as the Proposed Action (EA at 10, Proposed Decision at 2) *neither authorizes grazing on the Lower Centennial Flat portion of the allotment nor authorizes the construction of the two range improvements at the springs as identified in the protest.* The BLM is required to take action towards the improvement of rangeland health when habitat is found to not meet health standards 43 CFR § 4180.2(c). The BLM has proposed not grazing the Lower Centennial Flat area of the LCM in order to let Lower Centennial and Black Springs continue to recover to their natural state.

The rangeland health standard stated above that “Grazing activities at an existing range improvement . . .” is part of the *Proposed* Regional Rangeland Health Standard & Guidelines for the BLM California Desert District, which have not yet been approved by the Secretary of the Interior (BLM CASO Rangeland Health Standards: [http://www.blm.gov/ca/st/en/prog/grazing/sg\\_8\\_99.html](http://www.blm.gov/ca/st/en/prog/grazing/sg_8_99.html)). That standard is not included in the BLM Rangelands Health Fallback Standards and Guidelines 43 CFR § 4180.2(f).

### **13. We Protest the BLM’s Failure to Take a Hard Look at Invasive Species:**

Sahara mustard, *Brassica tournefortii*, is visible along Highway 395 and CalWeed identifies it as spreading in the allotment vicinity<sup>6</sup>. Cattle are highly effective vectors for transport of seeds of invasive species, transporting seeds in mud on their hooves, trapped in their coats, or passed in their feces (Belsky and Gelbard, 2000; Bartuszevige and Endress, 2008). They also break soil crusts and create convenient pockets for invasive plants to become established in.

The EA dismisses these concerns and claims, “The movement and introduction of new species as a result of livestock grazing in the L-C-M Allotment has a low probability due to the low numbers of cattle using the area.” EA at 39. It provides no data to support this odd assertion given that it may take only one or two seeds to establish an infestation. Nor does the BLM address the very real threat posed to wilderness, where in the absence of vehicles, cattle are the most prominent vectors for introducing invasive plant species into the Wilderness.

The EA states that absent grazing, “Grazing would cease to be a factor in non-native, invasive species management, but the non-native, invasive species would continue to occur in the area.” EA at 39. The EA simply ignores any evidence of the long term benefits of ending grazing in the resource area, such as the studies conducted on BLM managed lands at the Desert Tortoise Natural Area showing that the weed density is lower in this formerly grazed habitat compared to outside the area.

The EA completely ignores the potential for the proposed grazing project to subsidize predatory species such as ravens.

6 <http://calweedmapper.calflora.org/maps/?species=197>

7 Belsky, A. J. and Gelbard, J. L. 2000. Livestock Grazing and Weed Invasions in the Arid West. Oregon Natural Desert Association, Bend, OR. 31pp. Available at: [http://www.publiclandsranching.org/htmlres/PDF/BelskyGelbard\\_2000\\_Grazing\\_Weed\\_Invasions.pdf](http://www.publiclandsranching.org/htmlres/PDF/BelskyGelbard_2000_Grazing_Weed_Invasions.pdf)

8 Bartuszevige, A. M. and Endress, B. A. 2008. Do ungulates facilitate native and exotic plant spread? Seed dispersal by cattle, elk and deer in northeastern Oregon. *Journal of Arid Environments*, 72: 904-913.

**BLM RESPONSE:** CalWeedMapper identifies Sahara mustard as being in high abundance *but not spreading* in the vicinity of the LCM allotment. Additionally, while Sahara mustard is present along roadsides and disturbed areas in the region, the Ridgecrest Field Office has no record of any major Sahara mustard or any other invasive species infestation within the Cactus Flat-McCloud Flat portion of the LCM allotment (Integrated Weed Management Plan and Environmental Assessment for the BLM Ridgecrest Field Office – NEPA Document: DOI-BLM-CA-D050-2011-0034-EA).

There would be less potential for the spread of invasive species due to grazing with the reduced number of authorized cattle and AUMs in the Proposed Decision. The Proposed Decision authorizes only 200 Cow/calf pairs totaling to 790 AUMs of use, as compared to the estimated carrying capacity of 2350 AUMs (EA at 5, 91) of the Cactus Flat-McCloud Flat portion of the allotment. BLM adjusted the available AUMs in accordance with the Wilderness Regulations for Grazing (EA at 92), thereby reducing the potential overall impact and spread of invasive species into wilderness. Additionally, “as it is not possible to regulate the wilderness use separately, the BLM has chosen to limit the preference available for grazing in the entire reconfigured allotment” (EA at 92).

The comment that “Grazing would cease to be a factor in non-native, invasive species management, but the non-native, invasive species would continue to occur in the area” would be true of eliminating grazing on the allotment. However, *this protest addresses the analysis in the EA, not the Proposed Action*, as the Proposed Action authorizes grazing on the Cactus Flat-McCloud Flat portion of the allotment.

Grazing is not known to subsidize predatory species such as ravens, and those species would not even have the opportunity to benefit from increased access to water as there are no new authorized watering site range improvements in the Proposed Action.

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#### **14. We Protest the BLM’s Failure to Take a Hard Look at Effects to Cultural Resources:**

Only 1% of the allotment's public lands have been surveyed for cultural resources. EA at 33. Although the EA mentions construction of two (possibly three) new water sites, the EA does not include these developments in its analysis of impacts on cultural resources. EA at 33-34. The BLM has been planning this project since 2006 and has had more than adequate time to survey the proposed watering sites. Punting the surveys to a later time does not allow for an adequate review of any new sites that may need to be chosen should cultural resources be discovered at the proposed sites.

**A. Comment:** Only 1% of the allotment's public lands have been surveyed for cultural resources.

**BLM RESPONSE:** This statistic was developed by the BLM by adding the intensive survey coverage acres of all BLM cultural survey work within the boundary of the allotment regardless of which project or program was involved.

**B. Comment:** The EA mentions construction of two, possibly three, new water sites, and the EA does not include these developments in its analysis of impacts on cultural resources.

**BLM RESPONSE:** The BLM and the State Historic Preservation Officer (SHPO), in joint consultation with the ACHP, signed a Protocol Agreement in 2004, which was renewed in 2007 and 2012, that established just such an alternative procedure. This alternative procedure is the BLM-SHPO Protocol Agreement. A Supplemental Procedures for Livestock Grazing Permit/Lease Renewals, as an amendment to the Protocol Agreement, was also signed in 2004.

This Grazing Permit Renewal supplement would allow for the renewal of an existing grazing permit prior to completing all NHPA compliance needs as long as Protocol direction, the BLM 8100 Series Manual guidelines, and seven procedures outlined in the Supplement are followed. This amendment applies only to the reissuance of grazing permit authorizations and existing range improvements. All new proposed undertakings for range improvements will follow the established procedures within the Protocol Agreement or under the 36 CFR 800 regulations.

Any proposed range improvement facility or project associated with the renewal of this Grazing Allotment will be reviewed separately under the stipulations either the Protocol Agreement or the regulations 36 CFR 800. Thus, given that these proposed water sites, regardless of quantity, are just proposals, and might not actually be implemented, they are not analyzed in the impact upon cultural resources text section because any effects to historic properties that might be identified if these proposed range improvements were to be implemented, will be addressed separately under the provisions of either the Protocol Agreement or the 36 CFR 800 regulations.

**C. Comment:** BLM has been planning this project [sic] since 2006 and has had more than adequate time to survey the proposed watering sites.

**BLM RESPONSE:** These watering sites remain "proposed" and have not been approved or authorized. At such time the proposed watering sites would become a federal action, then Section 106 compliance activities, such as field identification surveys, will be undertaken.

**D. Comment:** Punting the surveys to a later time does not allow for an adequate review of any new site that may need to be chosen should cultural resources be discovered at the proposed sites.

**BLM RESPONSE:** The Protocol Agreement and the 36 CFR 800 regulations establish procedures for the identification, assessment of eligibility to the NRHP for any identified cultural resource, and for an assessment of effects by the undertaking upon those resources determined to be eligible for the NRHP. If it is determined that cultural resources eligible for the NRHP will be adversely effected by the undertaking, then additional consultation procedures will be followed as required by either the Protocol Agreement or the 36 CFR regulations.

Even if cultural resources should be found at the proposed location of these watering sites, if, following the procedures contained in either the Protocol Agreement or the regulations 36 CFR 800, these cultural resources should be determined as not being eligible for the NRHP, then the range improvements could be installed at the proposed locations without any further considerations by the BLM.

If cultural resources should be found at the proposed locations of these watering sites, and it should be determined that they are eligible for the NRHP, then the BLM can either continue the Section 106 process and procedures, including the development of a Memorandum of Agreement with the SHPO and ACHP, or the proposed watering facilities could be relocated to another location. The selection of a new proposed location would require compliance with the NHPA Section 106 procedures under either the Protocol Agreement or 36 CFR 800 regulations, and the process would repeat itself.

### **15. We Protest the Inadequate Look at Climate Change:**

The livestock sector contributes a larger share of carbon emissions than does transport (Steinfeld *et al.*, 2006<sup>9</sup>). The EA includes a calculation of greenhouse gas production for the proposed action based on prorating state wide estimates of AUM consumption by cattle. EA at 29. It concludes that the 790 AUMs of cattle use in any one season under the Proposed Action would account for 0.00002% of the cattle greenhouse gas emissions in California. But the EA makes no attempt to calculate the loss of carbon sequestration due to trampling of soil crusts etc, nor does it estimate how the much the project contributes to climate change in the action area itself.

The EA also fails to analyze how livestock grazing in the face of climate change will impact the habitats and the ability of species to shift their ranges and colonize new areas. This is especially relevant for the Mohave ground squirrel and desert tortoise, both of which are expected to occupy habitats farther north and higher in elevation as temperatures gradually and dry (Archer and Predick, 200810) over the next several decades.

Studies in the California deserts have identified that the average elevation of the dominant plant species rose by approximately 65 meters over the last 30 years (Kelly and Goulden, 200711). Conditions have certainly changed since the allotment's carrying capacity was estimated in the 1970s.

California will likely experience higher temperatures in all seasons; longer dry periods; heavy precipitation events; more frequent droughts; and increased wildfire risk. These changes will affect the landscape of project area and the species that inhabit it as well as the amount and availability of forage. Landscapes that are less fragmented provide greater opportunity for species to shift ranges without being blocked (Opdam and Wascher, 2004). Fragmentation of the landscape through vegetation removal or grazing infrastructure such as fencing exacerbates the challenges that species are already dealing with in trying to adapt to a changing climatic regime. Removing or reducing livestock would make these public lands less susceptible to the effects of climate change (Beschta *et al.*, 2012).

9 Steinfeld, H., Gerber, P., Wassenaar, T., Castel, V., Rosales, M., de Haan, C. 2006. Livestock's long shadow Environmental issues and options. 390 pp. Food and Agriculture Organization of the United Nations. Online at: <ftp://ftp.fao.org/docrep/fao/010/a0701e/a0701e00.pdf>

**BLM RESPONSE:** The Steinfeld *et al.*, 2006 study made a number of assumptions which accounted for much of their GHG emissions and which do not apply to the proposed decision. Their emissions included the conversion of forests to permanent pasture, pumping irrigation water, the manufacture and application of fertilizers and anaerobic decomposition of manure. None of these apply to open range grazing as proposed. The climate change process is a global issue. The protester's idea that the EA should look at the proposed grazing's contribution to changes in the climate on the LCM Allotment ignores the knowledge that climate change is not a local hot spot type issue. Further, there is no way to project the changes to the local climate as a result of the proposed

grazing use. However, given the very small portion of the global GHG emissions the proposed grazing emits, the contribution to global climate change is not going to be significant. There are many conflicting studies on vegetation changes that are happening. There are many projections that include season long higher temperatures, more draughts, wildfire and heavier precipitation events. The EA notes that the local climate is not showing these changes. There is no evidence that there has been any vegetation change as a result of climate change on the allotment. As of the current time there is no way to project what changes may occur in the next ten years on the LCM Allotment.

The proposed grazing use would consume less than half of the estimated carrying capacity that the CDCA Plan established. In addition the proposed grazing use includes short term monitoring that would balance the grazing use against changes in forage availability yearly.

#### **16. We Protest the BLM's Reliance on Stale Rangeland Health Assessments:**

According to the latest version of the EA, the Rangeland Health Assessment was conducted in 2005. EA at 8. But by then, livestock had been off the allotment for five years. It is unclear why the BLM believes that using data gathered in a period of non-use can support its proposed decision. In the response to comments section, the EA indicates that Rangeland Health is assessed to determine long term trends. But other than presenting a table demonstrating that allotment failed to standards, the BLM does not report any trends. Nor does the EA even identify which part of the proposed grazing area was sampled in the assessment.

Absent the information from a current Rangeland Health Assessment, the BLM cannot demonstrate the proposed action would conform to its regulations establishing Standards for Rangeland Health. 43 CFR 4180.

**BLM RESPONSE:** This concern was addressed in the Rationale section for the Proposed Decision, which states that “The Lacey-Cactus-McCloud Allotment does not meet the Rangeland Health Assessment standards for riparian areas, stream morphology, and native species. However, as stated in EA-CA 650-2008-27 the reasons for failing the RHA are not related to cattle grazing. Furthermore, the sites which failed to meet standards are all on the Centennial Flat side of the allotment and will not be grazed under Alternative A (the proposed action).“ Additionally, “The Proposed Action Alternative provides for the implementation of the regional rangeland health standards, once approved by the Secretary of the Interior.” (Proposed Decision at 4)

#### **17. We Protest the EA's Inadequate Consideration of Cumulative Effects:**

The BLM is amending the CDCA Plan in response to court rulings striking down components of the BLM's 2006 West Mojave RMP. In her order Judge Illston clearly states, “On remand, the BLM will consider a host of factors, including grazing issues, in its alternatives analysis.” *CBD et al. v. BLM et al.*, 2009 U.S. Dist. LEXIS 90016, \*89 n. 33 (alternatives); *see also id.* at \*103 (impacts to soils), \*109 (impacts to water resources, UPAs and riparian areas) (N.D. Cal. September 28, 2009). In that same order, she cites specific deficiencies relating to grazing impacts that the BLM needs to address such as impacts to soils “Of course, the BLM need not provide a detailed description on a route-by-route basis; however, the FEIS should contain some discussion of the particular impacts on soils of the proposed Plan, both with regard to the designated OHV route network, and livestock

grazing” (*id.* at 103) and elsewhere in her Order to other issues including Unusual plant assemblages, riparian and water resources. Because of this, the BLM cannot tier off the West Mojave Plan EIS for its cumulative effects analysis but must analyze the cumulative effects of the grazing decision in this NEPA analysis. The EA does not provide sufficient information and analysis in the cumulative impact section to satisfy NEPA’s requirements.

**BLM Response:** The judge’s order did not invalidate the entire content of the WMP. Much of the court discussion revolved around the route designation process. It did not invalidate most of the extensive affected environment section of the EIS nor much of the cumulative impacts analysis. The reference to and use of the extensive information in the EIS does not invalidate the BLM’s proposed decision on the LCM allotment. The EA has an independent analysis of the impacts of the proposed grazing on soils and a cumulative impact analysis. The proposed grazing decision does not include any UPA, riparian or water resources issues.

**18. We protest the BLM’s Failure to Prepare an Environmental Impact Statement for this Grazing Project:**

The Lacey-Cactus McCloud Allotment has not been grazed for thirteen years since the boundaries of the allotment were drastically altered in 2000. EA at 4. The fact that BLM is proposing to increase grazing in the Coso Range Wilderness is enough on its own to merit an EIS. Despite the controversial nature of such a proposal, the BLM is terminating the current Allotment Management Plan without proposing any replacement, and without even disclosing let alone and describing its future grazing plans for the allotment area. The BLM has failed to incorporate terms and conditions to protect rare species and their habitat. It has failed to take a hard look at sensitive species and resources in the EA. It has ignored public comment. Because of court intervention it has no RMP EIS that it can tier to. For all these reasons, the BLM clearly needs to prepare a full EIS for the project.

**BLM RESPONSE:** Based on the previous analysis in the West Mojave Plan and the subsequent court decision regarding that plan, none of the actions proposed in the decision were of such context and intensity as to find a significant impact to resources. The underlying planning decisions are required to clarify the standing of the allottee and for the BLM to provide the rationale for the grazing decisions. The project may indeed be controversial; however, the BLM handbook leaves the discretion of the level of NEPA for any particular action to the Authorized Officer.

**FIELD MANAGER’S FINAL DECISION**

Based on the analysis conducted in EA CA-650-2008-27 and the attached FONSI, I have concluded that the renewal of the grazing permit for the LCM Allotment is appropriate. I have also determined the Proposed Action alternative is the best strategy to meet BLM’s mission for protecting and conserving the natural and physical resources and improving resource management to assure responsible use and sustain a dynamic economy.

Therefore, it is my decision to reissue a grazing permit for the LCM Allotment as described under the Proposed Action alternative, in the EA, CA-650-2008-27, for a term of ten (10) years.

Grazing in the Cactus Flat-McCloud Flat area would be contingent upon: (1) a gap fence at the small rock outcrop just to the south of the gate between the BLM and the Navy on Upper Cactus Flat; (2) the extension of the Navy boundary-security fence to the north up a hill for less than a quarter of a

mile; and (3) a gap fence in the large rock outcrop beyond the southern extension of the Navy security fence and north of the fence coming up from the pumice mine. These fences were presented in the Proposed Action and analyzed in Chapter 3 and it is my proposed decision that they be built.

The following mandatory terms and conditions for this authorization (43 CFR 4130.3-1(a)(b)(c)) shall be in effect for the proposed grazing permit on the LCM Allotment:

Table 3 Typical Grazing Schedule			
Use Period	Number of livestock	Class of Livestock	Animal Unit Months
December 2nd – March 31st	200	Cow/calf	790

Livestock Grazing will be in compliance with 43 CFR 4180 and the Fall Back Standards and Guidelines.

Other terms and conditions:

- a. The existing Allotment Management Plan would terminate.
- b. Livestock grazing would follow a one pasture grazing strategy. Cattle would graze from December 2 through March each year. (See Table 3 above).
- c. All mineral supplements would be placed at least ¼ mile from all water sources.
- d. All structural improvements would be maintained in proper functioning condition.
- e. The rangeland monitoring of this allotment would continue to occur as described under the affected environment.
- f. The Regional Standards & Guidelines from the recent approval of the WMP amendment would be incorporated into this grazing permit and management practices once they are approved by the Secretary of Interior, without further notice. Until that time, the National Fallback Standards would remain in effect. Rangeland health assessments would be conducted and a Determination made , prior to the renewal of the next grazing permit. See Appendix 4 for regional and fallback standards and guidelines.
- g... livestock utilization levels of key perennial species in the Mojave Desert range type would not exceed 40 percent on ranges that are grazed during the dormant season and are meeting standards. Rangelands that are grazed during the active growing season and are not meeting standards shall not exceed 25 percent utilization of key forage species except as described in allotment management plans, decisions, or other management documents with a specific grazing strategy with prescribed levels of perennial forage consumption. ...Where utilization thresholds for key forage species are less than the 40 percent specified for the Mojave Desert range type the lower threshold shall be used to trigger cattle removal (Utilization thresholds or “Proper Use Factors” found in Appendix XIII, Vol F, Final EIS and Proposed Plan, CDCA Plan, 1980).

## RATIONALE

Based on analysis from EA CA-650-2008-27, and FONSI, the grazing use under the Proposed Action alternative, on the LCM Allotment is consistent with multiple use management and sustained yield principles and with the grazing prescriptions identified in the West Mojave Plan (WMP). The Lacey-Cactus-McCloud Allotment does not meet the Rangeland Health Assessment standards for riparian areas, stream morphology, and native species. However, as stated in EA-CA 650-2008-27 the reasons for failing the RHA are not related to cattle grazing. Furthermore, the sites which failed to meet standards are all on the Centennial Flat side of the allotment and will not be grazed under Alternative A (the proposed action).

The Proposed Action Alternative provides for the implementation of the regional rangeland health standards, once approved by the Secretary of the Interior.

Comments received from interested parties identified primary issues. These are the management of grazing in wilderness, the effects of grazing related to climate change, and conserving habitat for Mohave Ground Squirrel. The EA and the responses to comments section addressed these issues and analyzed them for potential impacts. Through review of this analysis a Finding of No Significant Impact was determined. Recognizing the BLM's mission is to provide for economic uses of public lands while conserving the natural and physical resources, the Proposed Action grazing alternative will continue to balance the conservation of resources and the commercial use of public lands.

The Proposed Action grazing alternative implements conservation measures prescribed in the WMP for the conservation of resources. The measures prescribed will maintain the conservation of both riparian and terrestrial habitat for the benefit of wildlife and commercial grazing use within the allotment. There is no evidence that implementing additional conservation measures would have measurable beneficial results to the existing health of this allotment.

## AUTHORITY

The authority for this decision includes but is not limited to:

43 CFR 4120.2(4)(c): "The authorized officer shall provide opportunity for public participation in the planning and environmental analysis of proposed plans affecting the administration of grazing and shall give public notice concerning the availability of environmental documents prepared as a part of the development of such plans. The decision document following the environmental analysis shall be considered the proposed decision for the purposes of subpart 4160 of this part."

43 CFR 4130.2(a): "Grazing permits and leases shall be issued to qualified applicants to authorize use on public land and other lands under the administration of the Bureau of Land Management that are designated as available for livestock grazing through land use plans. Permits and leases shall specify the type and levels of use authorized, including livestock grazing, and suspended use. These grazing permits and leases shall also specify terms and conditions pursuant to 4130.3, 4130.3-1, and 4130.3-2."

43 CFR 4130.2(b): “The authorized officer shall consult, cooperate, and coordinate with affected permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public prior to the issuance or renewal of grazing permits and leases.

43 CFR 4130.2(d)(3): “The term of grazing permits or leases authorizing livestock grazing on the public lands and other lands under the administration of the Bureau of Land Management shall be 10 years.”

43 CFR 4130.3-1(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 grazing carrying capacity of the allotment.”

43 CFR 4130.3-1(b): “All permits and leases shall be made subject to cancellation, suspension, or modification for any violation of these regulations or any of the terms and conditions of the permit or lease.”

43 CFR 4130.3-1(c): “Permits and leases shall incorporate terms and conditions that ensure conformance with subpart 4180 of this part.”

43 CFR 4130.3-2: “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.”

43 CFR 4130.3-2(f): “Provision for livestock grazing temporarily to be delayed, discontinued or modified to allow for the reproduction, establishment, or restoration of vigor of plants, provide for the improvement of riparian areas to achieve proper functioning condition or for the protection of other rangeland resources and values consistent with objectives and applicable land use plans, or to prevent compaction of wet soils, such as where delay of spring turnout is required because of weather conditions or lack of plant growth.”

Administrative Procedures Act (APA) (Title 5 USC Chapter 5 558 (c)).

16 U.S.C. 1536(a)(1): “...All other Federal Agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this chapter by carrying out programs for the conservation of endangered and threatened species listed pursuant to section 1533 of this title.”

16 U.S.C. 1536(a)(2): “Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency ... is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined ... to be critical.... In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.”

## RIGHT OF PROTEST AND/OR APPEAL

If you, or other individuals, believe you are adversely affected by this final decision, you may file an appeal this grazing decision for the purpose of a hearing before an administrative law judge in accordance with the regulations contained in Title 43 CFR 4.21, 4.470 and subpart 4160.3(f). You may also petition for a stay of the decision in accordance with 43CFR 4.21, pending final determination on appeal. The appeal and petition for stay must be filed at the BLM Ridgecrest Field Office, 300 South Richmond Road, Ridgecrest, CA 93555 within 30 days following receipt of the final decision.

The appeal should specify clearly and concisely why you think this decision is in error. All reasons for error not stated in the appeal shall be considered waived and may not be presented at the hearing. Any failure to meet the thirty (30) day appeal deadline will bar you from challenging this decision. If you wish to petition for a stay of this decision during the time that your appeal is being reviewed, the petition for stay must be filed within thirty (30) days of receipt of this decision to the above BLM office. If you request a stay, you have the burden of proof to demonstrate why a stay should be granted.

### Standards for Obtaining a Stay:

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall 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 in the merits;
- (3) the likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) whether the public interest favors the granting the stay.



Carl B. Symons, Field Manager



Date

Cc: District Manager, California Desert  
Interested Public of Record