



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Southern Nevada District Office
Las Vegas Field Office
4701 N. Torrey Pines Drive
Las Vegas, Nevada 89130
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NOTICE OF PROPOSED DECISION
ARROW CANYON, ARROW CANYON IN BATTLESHIP WASH,
JEAN LAKE, MESA CLIFF, ROACH LAKE,
AND WHITE BASIN ALLOTMENTS

Desert Conservation Program
c/o Marci Henson
Planning Manager
500 So. Grand Central Parkway / 1st Floor
PO Box 551741
Las Vegas, NV 89155-1741

Dear Ms. Henson:

The Las Vegas Resource Management Plan and Final Environmental Impact Statement (LVRMP/EIS) and Record of Decision (ROD) were approved by the Nevada State Director on October 5, 1998. The ROD approval completed the planning and environmental analysis process for the LVRMP and identifies land use decisions that are to be implemented. This includes the administration of the Arrow Canyon, Arrow Canyon in Battleship Wash, Jean Lake, Mesa Cliff, Roach Lake, and White Basin allotments, for which Clark County purchased the base properties and/or water rights and grazing preference from willing sellers and subsequently relinquished those grazing privileges for the purpose of BLM closing grazing allotments.

This proposed decision pertains to the aforementioned allotments.

Background

In 1991, BLM became a signatory to Clark County's Habitat Conservation Plan (HCP) Implementing Agreement. Under this and subsequent agreements, BLM committed to implement conservation measures, one of which included approving allotment closures based on voluntary relinquishment of grazing privileges, permits or leases. Starting in 1992, Clark County obtained grazing privileges and began relinquishing those rights to the BLM for their closure of associated grazing allotments.

The Las Vegas Resource Management Plan and Final Environmental Impact Statement (LVRMPFEIS) and Record of Decision (ROD) were approved as final by the Nevada State Director on October 5, 1998. Several decisions address the management of the desert tortoise, which was listed by the U.S. Fish and Wildlife Service (Service) in 1990 as a threatened species under the Endangered Species Act.

The BLM consulted with the Service on desert tortoise management actions proposed in the LVRMPFEIS. In the 1998 Biological Assessment prepared for the consultation, the BLM proposed to issue decisions that close approximately 2.2 million acres in 38 allotments to livestock grazing and eliminate livestock grazing in critical tortoise habitat and tortoise Areas of Critical Environmental Concern (ACEC). The federally threatened desert tortoise is present in all seven allotments listed in this proposed decision. The Service expects the BLM to implement actions that BLM proposed in the Biological Assessment. In 1998, the Service issued a Biological Opinion (Opinion), which stated, in part, "In order to be exempt from the prohibitions of Section 9 of the [Endangered Species] Act, the Bureau must comply with the following terms and conditions which implement the reasonable and prudent measures described..." in the Opinion. "These terms and conditions are non-discretionary." The decisions in the LVRMPFEIS include the following.

The LVRMPFEIS ROD decision SS-3 states, "Manage desert tortoise (*Gopherus agassizii*) habitat to achieve the recovery criteria defined in the Tortoise Recovery Plan and ultimately achieve delisting of the desert tortoise." One of the criteria for recovery and delisting includes a stationary or significant upward trend for 25 years (one tortoise generation).

The LVRMPFEIS ROD decision LG-1-g states, "Close all allotments to livestock grazing within the planning unit, with the following exceptions: Hidden Valley, Mount Stirling, Lower Mormon Mesa, Roach Lake, White Basin, Muddy River, Wheeler Wash, Mesa Cliff, Arrow Canyon in Battleship Wash, Flat Top Mesa, Jean Lake, and Arizona administered allotments." These closures were made as part of BLM efforts to assist with the Service's desert tortoise conservation and recovery efforts.

Decision LG-1-i states, "Additional allotment closures could be approved based on voluntary relinquishment of grazing privileges, permits or leases." This decision gives BLM direction under the approved land use plan to close allotments that are voluntarily relinquished in order to meet resource objectives.

In 2001, the terms and conditions stated above are also incorporated into the Clark County Multiple Species Habitat Conservation Plan (MSHCP) and Implementing Agreement to which BLM is a signatory.

Between 1998 and 2005, Clark County purchased the base property/water rights and grazing preferences associated with the Arrow Canyon, Arrow Canyon in Battleship Wash, Azure Ridge (administered by Arizona), Jean Lake, Mesa Cliff, Roach Lake, Mount Stirling and White Basin allotments. Shortly following each acquisition, Clark County voluntarily relinquished the grazing privileges to the BLM with the intent that the BLM approve the closure of each allotment to grazing. The purpose of these purchases, voluntary relinquishments, and BLM's closure of the allotment is to implement the MSHCP, fulfill the Implementing Agreement, and ultimately reduce threats to the federally-threatened desert tortoise. Mount Stirling and Azure Ridge were closed in separate grazing decisions in 1998 and 2002, respectively.

Currently, the desert tortoise has yet to achieve recovery. Desert tortoise populations have remained depressed since the species was listed in 1990.

Proposed Decision

Therefore, based upon LVRMPFEIS ROD decisions SS3, LG-1-g and LG-1-i and that: (1) the desert tortoise populations have not recovered, (2) BLM is a party to the MSHCP and Implementing Agreements which require County acquisition and voluntary relinquishment of grazing privileges to the BLM for grazing allotment closure, (3) Clark County has acquired grazing preferences and base properties/waters in the allotments referenced above, and (4) Clark County voluntarily relinquished these grazing privileges to the BLM, my proposed decision is to close the Arrow Canyon, Arrow Canyon in Battleship Wash, Jean Lake, Mesa Cliff, Roach Lake, and White Basin allotments.

Rationale

The desert tortoise populations have not achieved recovery. Population trends indicate the species will remain federally listed for the foreseeable future. These allotment closures satisfy the terms and conditions of the Service's Biological Opinion for implementation of the LVRPMFEIS. All six allotments provide habitat for the desert tortoise. In particular, the Arrow Canyon allotment contains critical habitat. Recent studies suggest the Jean Lake and Roach Lake allotments near Ivanpah Valley are especially important for desert tortoise population connectivity. The Ivanpah corridor represents a priority area for conservation for desert tortoise genetic connectivity. Studies suggest a genetic relationship between the desert tortoise population in the Ivanpah Critical Habitat Unit (CHU) south of the allotments, and the El Dorado portion of the Piute-El Dorado CHU to the east of the allotments. Preserving connectivity between tortoise conservation areas will help maintain genetic variability through long-term gene flow between populations. Closure of the Arrow Canyon, Arrow Canyon in Battleship Wash, Jean Lake, Mesa Cliff, Roach Lake, and White Basin allotments supports BLM's, Clark County's, and the Service's desert tortoise recovery and conservation efforts. Closing these allotments is consistent with LVRMPFEIS special status wildlife management action SS3 as well as range management actions LG-1-g and LG-1-i.

The County has acquired and relinquished the grazing preference for these allotments to the BLM for its closure of the allotments. BLM is a signatory to Clark County MSHCP Implementing Agreement. Closure of these allotments is consistent with the BLM commitments in the MSHCP and its desert tortoise conservation efforts.

Authority

The authority of this decision is contained in Title 43 of the Code of Federal Regulation, which states in pertinent parts:

1610.5-2 (b): "The decision of the Director shall be the final decision of the Department of the Interior."

1610.5-3 (a): "All future resource management authorizations and actions, as well as budget or other action proposals to higher levels in the Bureau of Land Management and Department, and subsequent more detailed or specific planning shall conform to the approved plan."

1610.5-3 (b): "After a plan is approved or amended, and if otherwise authorized by law, regulation, contract, permit, cooperative agreement or other instrument of occupancy and use, the District and Area Manager shall take appropriate measures, subject to valid existing rights, to make operations and activities under existing permits, contract, cooperative agreements or other instruments for occupancy and use conform to the approved plan or amendment with a reasonable period of time. Any person adversely affected by a specific action being proposed to implement some portion of a resource management plan or amendment any appeal such action pursuant to 43 CFR 4.400 at the time the action is proposed for implementation."

43 CFR 4110.4-(a)1: "Grazing permits or leases may be cancelled or modified as appropriate to reflect the changed area of use."

43 CFR 4110.4-2(a)(2) states, in part, "Permitted use may be cancelled in whole or in part."

43 CFR 4100.0-8 Land use plans. States the authorized officer shall manage livestock grazing on public lands under the principle of multiple use and sustained yield, and in accordance with applicable land use plans. Land use plans shall establish allowable resource uses (either singly or in combination), related levels of production or use to be maintained, areas of use, and resource condition goals and objectives to be obtained. The plans also set forth program constraints and general management practices needed to achieve management objectives. Livestock grazing activities and management actions approved by the authorized officer shall be in conformance with the land use plan as defined at 43 CFR 1601.0- 5(b).

Provision for Protest and Appeal

Any applicant, permittee, lessee or other interested public may protest a proposed decision under Sec. 43 CFR 4160.1 and 4160.2, in person or in writing to Robert Ross Field Manager, Bureau of Land Management, 4701 North Torrey Pines Drive, Las Vegas, Nevada 89130 within 30 days after receipt of such decision. The protest, if filed, should clearly and concisely state the reason(s) as to why the proposed decision is in error.

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

In accordance with 43 CFR 4160.3 (b) upon a timely filing of a protest, after a review of protests received and other information pertinent to the case, the authorized officer shall issue a final decision.

Any applicant, permittee, lessee or other person whose interest is adversely affected by the final decision may file an appeal in accordance with 43 CFR 4.470 and 43 CFR 4160.3 and 4160 .4. The appeal must be filed within 30 days following receipt of the final decision, or within 30 days after the date the proposed decision becomes final.

Appeals may not be filed via electronic means such as electronic mail or facsimiles.

The appeal may be accompanied by a petition for a stay of the decision in accordance with 43 CFR 4.471 and 4.479, pending final determination on appeal. The appeal and petition for a stay must be filed in the office of the authorized officer, as noted above. The person/party must also serve a copy of the appeal on any person named [43 CFR 4.421(h)] in the decision (see cc list following the signature line) and the Office of the Solicitor, 755 Parfet Street Suite 151, Lakewood, CO. 80215.

The appeal shall state the reasons, clearly and concisely, why the appellant thinks the final decision is in error and otherwise complies with the provisions of 43 CFR 4.470.

Should you wish to file a petition for a stay, see 43 CFR 4.471 (a) and (b). In accordance with 43 CFR 4.471(c), a petition for a stay 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.

As noted above, the petition for stay must be filed in the office of the authorized officer and serviced in accordance with 43 CFR 4.473. 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 a motion to intervene in the appeal, together with the response, within 10 days after receiving the petition. Within 15 days after filing the motion to intervene and response, the person must serve copies on the appellant, the Office of the Solicitor and any other person named in the decision (43 CFR 4.472(b)).

If you have any questions, please contact Fred Edwards at the above address or telephone (702) 515-5022.

Sincerely,



Gayle Marrs-Smith
Assistant Field Manager Renewable Resources
Las Vegas Field Office