United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Barstow Field Office
2601 Barstow Road
Barstow, CA 92311
www.ca.blm.gov/barstow

TAKE PRIDE IN AMERICA

In Reply Refer To:
4160(P)
CA-680.36

SEP 3 0 2004

CERTIFIED MAIL NO. 70041160000564822424
RETURN RECEIPT REQUESTED

NOTICE OF FIELD MANAGER'S PROPOSED GRAZING DECISION

Pedro Indacochea
23772 Water St.
Perris, CA 92570

Dear Mr. Indacochea:

INTRODUCTION

The Shadow Mountain Allotment, #8011, currently is an ephemeral allotment with potential forage production to enable the Bureau of Land Management (BLM) to authorize ephemeral forage for the purpose of grazing domestic sheep. Your current lease, #046811, authorizes domestic sheep grazing on portions of the Shadow Mountain Allotment #8011. The allotment encompasses 121,591acres, including private, and BLM (public) lands. The Shadow Mountain Allotment contains 52,257 acres of public land, and 69,334 acres of private land. Within the Shadow Mountain Allotment, there is approximately 35,013 acres of critical habitat for the desert tortoise, and approximately 17,244 acres of non-critical habitat. The Shadow Mountain Allotment is within the West Mojave planning area (currently out for public review).

BACKGROUND

At the end of the 1999 grazing year, the grazing lease for the Shadow Mountain Allotment expired. This grazing lease was renewed under the authority of Public Law 106-113 for a term of ten years. The renewed grazing leases contained the same terms and conditions as the expiring grazing leases. Public Law 106-113 required compliance with all applicable laws and regulations, which include the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). Following the analysis of environmental impacts this grazing leases may be approved, canceled, suspended or modified, in whole or in part, to meet the requirements of such applicable laws and regulations.

The Washington Office Instruction Memorandum (IM) 2003-071 requires that all grazing permits and leases that expired in 1999 and 2000 be "fully processed" by the end of Fiscal Year 2004 (9/30/04). The term "fully processed" permit/lease refers to the completion of an adequate environmental analysis and issuance of a proposed grazing decision in accordance with 43 CFR 4160, and appropriate consultation in accordance with the ESA.

On March 16, 2000, the Center for Biological Diversity, et al. (Center) filed for injunctive relief in U.S. District Court, Northern District of California (Court) against the Bureau of Land Management (BLM) to immediately prohibit all grazing activities that may affect listed species. The Center alleges the BLM was in violation of Section 7 of the Endangered Species Act (ESA) by failing to enter into formal consultation with the U.S. Fish and Wildlife Service (FWS) on the effects of adoption of the California Desert Conservation Area Plan (CDCA Plan), as amended, upon threatened and endangered species. On August 25, 2000, the BLM acknowledged through a court stipulation that activities authorized, permitted, or allowed under CDCA Plan may adversely affect threatened and endangered species, and that the BLM is required to consult with the FWS to insure that adoption and implementation of the CDCA Plan is not likely to jeopardize the continued existence of threatened and endangered species or to result in the destruction or adverse modification of critical habitat of listed species. Instead of litigating the case, the BLM entered into five stipulated agreements. On January 29, 2001, the stipulation respecting sheep grazing became effective. Based on an April 25, 2002 amendment these stipulations are still in affect until the signing of the Record of Decision for the West Mojave Plan Amendment to the CDCA Plan.

The Bureau of Land Management (BLM) is proposing to issue a ten-year term length grazing leases for the Shadow Mountain Allotment (see Map 1) to authorize ephemeral sheep grazing in the jurisdiction of the Barstow Field Office. These allotments are located in rural San Bernardino County, southwest of the City of Barstow.

In September 2004 an environmental assessment (EA) CA-680-04-54 was prepared to comply with IM 2003-071. This EA contains two alternatives for the renewal of these grazing leases.

As required under 43 CFR 4120.2(4)(c): BLM has provided an opportunity for public participation in the preparation of the above referenced EA. Chapters 1 and 2 of the EA have been provided to the interested public and the State of California. Copies of these chapters have also been provided to the U.S. Fish and Wildlife Service. Comments regarding this proposed action have been received from most of the parties contacted.

As required under 43 CFR 4130.2(b): BLM has consulted, cooperated, and coordinated with the interested public and the State of California concerning the renewal of this grazing lease. Comments regarding this proposed grazing lease renewal have been received from most of the parties contacted.

FINDING OF NO SIGNIFICANT IMPACT (FONSI)

Finding of No Significant Impact: Environmental impacts associated with the proposed action (current management) and alternatives have been assessed. Based upon the analysis provided in

the attached EA, CA-680-04-54 (available at the Barstow Field Office) I conclude that the proposed action of the Current Management Alternative will have no significant impacts on the environment under the criteria in Title 40 of Federal Regulations Subpart 1508 and is not a major federal action. Preparation of an Environmental Impact Statement pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 is not required.

This action is in conformance with existing applicable state implementation plans for the maintenance and improvement of air quality and will not cause or contribute to any new or increased violations of any air quality standards in the area. It does not exceed de minimus levels, is not regionally significant; and is exempt from conformity determination (40 CFR Part 93.153 (iii).

FIELD MANAGER'S PROPOSED DECISION

Based on the analysis conducted in EA CA-680-04-54 and the FONSI, I have concluded that the renewal of the grazing lease for the Shadow Mountain Allotment is appropriate. Therefore, it is my proposed decision to renew the grazing leases (#046811) for the Shadow Mountain Allotment for a term of ten years. The terms and conditions for this authorization shall be in affect for the proposed grazing lease on the Shadow Mountain Allotment and are as follows:

The lessee shall continue to conform with the Settlement Agreement for grazing, effective January 29, 2001, as amended on April 25, 2002. This agreement restricts ephemeral sheep grazing on the Shadow Mountain Allotment to 3,083 acres of critical habitat (see Map 2). This stipulation shall remain in affect until the Record of Decision for the West Mojave Plan Amendment to the CDCA Plan is approved.

The lessee shall comply with the Area Manager's Final Decision dated March 15, 1995. This grazing decision contains terms and conditions from the March 15, 1994 biological opinion concerning sheep grazing in habitat for the desert tortoise. These terms and conditions are as follows:

1) If a lessee or their sheep herder fails to comply with any of the reasonable and prudent measures or terms and conditions of this Full Force and Effect Decision, the BLM shall issue a verbal warning to the lessee. A third verbal warning for non-compliance to the same party shall result in revocation of the grazing authorization to the lessee for that grazing season.

2) The lessee will have the responsibility to ensure compliance with protective measures for the desert tortoise and will be required to ensure that their employees comply with these protective measures.

3) The lessee shall be responsible for educating their employees concerning the occurrence of the desert tortoise in the grazing area and the status of the desert tortoise as a threatened species under the Endangered Species Act (ESA). The use of BLM approved educational materials and program is considered acceptable. The lessee and their employees shall be advised that any handling, harming, or harassing of a desert tortoise in any manner is a

violation of the ESA, and may result in "take" of desert tortoise. Any degradation of desert tortoise habitat is limited to bedding and water sites only. The lessee and their employees shall also be advised of the potential penalties (up to $50,000 fine and one year in prison) for taking (handling/harming) a desert tortoise.

4) Turnout shall not occur until the production of 200 pounds (air-dry-weight) per acre of ephemeral forage is available. The lessee shall be required to remove their sheep from a particular area, or the entire allotment if production falls below 200 pounds per acre.

5) No ephemeral sheep grazing is authorized except as approved annually by application. **ALL HERDERS SHALL HAVE A COPY OF THE CURRENT GRAZING USE AUTHORIZATION ON THEIR POSSESSION AND A COPY POSTED ON THE CAMP TRAILER.**

6) Sheep bands are limited to no more than 1,000 sheep with an approximate equal number of lambs.

7) Sheep shall be grazed is a loose pattern, except when are being watered or in camp.

8) Grazing use is limited to one pass per grazing season at a given location. A pass is identified by physical evidence that sheep use has occurred.

9) No bedding or watering sites can be used for more than one day. New bedding and watering sites must be at least 1/4 mile from the previous site. Whenever possible, bedding and watering sites are to be previously disturbed areas, or adjacent to dirt roads.

10) Designated recreational camping sites shall not be used as bedding and watering sites.

11) No bedding and watering sites are allowed within 1/4 of any paved road. A herder shall be present when sheep are grazing or otherwise moving within 1/4 mile from any paved road. The herder need not be present when sheep are bedding during mid-day or at night.

12) Stopping and parking of vehicles, and vehicular camping along routes of travel shall be limited to within 50 feet of all routes in multiple-use class "L" and "M" as described in the CDCA Plan. Stopping, parking and camping can occur anywhere in Class "I" (i.e. Off-Highway Vehicle Open Area).

13) A camp-site or camp trailer cannot remain in the same location for more than seven (7) days. A new camp location must be at least one (1) mile from any previous camp location. In an effort to control raven predation, trash and garbage must be removed from each camp site if practical on a daily basis; no trash or garbage shall be buried at the camp site.

14) All sheep carcasses shall be removed from the grazing area immediately upon discovery and disposed in a manner that eliminates scavenging by common ravens and other predators

of the desert tortoise. Disposal of sheep carcasses shall comply with all laws and regulations of San Bernardino County.

The terms and conditions of your grazing lease may be modified if additional information indicates that revision is necessary to conform with 43 CFR 4180.2(f)(1)(2)(see Attachment 1).

The lessee is required to submit a certified Actual Use Report due 15 days after the end of authorized grazing use.

If your payment is not received within 15 days of the due date you will be charged a late fee assessment of $25 or 10% of the grazing bill, which ever is greatest no to exceed $250. Failure to make payment within 30 days of the due date may result in trespass action.

The kind of livestock shall remain sheep. The permitted use for the Shadow Mountain Allotment shall remain ephemeral and determined when grazing use is concluded. The season of use for the Shadow Mountain Allotment shall remain March 1 through June 1

RATIONALE

Based on analysis from Environmental Assessment CA-680-04-54, the current grazing use on the Shadow Mountain Allotment are required to remain under the grazing stipulations contained in the Settlement Agreement (2001) by court order until the Record of Decision for the West Mojave Plan Amendment to the CDCA Plan is approved. Future modifications to grazing use on the Shadow Mountain Allotment would occur at that time.

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): "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 or weather conditions or lack of plant growth."

RIGHT OF PROTESTAND/OR APPEAL

If you wish to protest this decision in accordance with 43 CFR 4160.2, you are allowed fifteen (15) days from the receipt of this notice to file a protest with the Barstow Field Manager at the above BLM Office, 2601 Barstow Road., Barstow, California 92311.

In the absence of a protest within the time allowed in accordance with 43 CFR 4160.3(a), the above proposed decision shall constitute my final decision. Should this notice become my final decision, you may 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). Your notice of appeal must be filed with the Barstow Field Office Manager within thirty (30) days of the receipt of this decision at the above BLM Office, 2601 Barstow Road, Barstow, CA 92311. 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:

Expect 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.

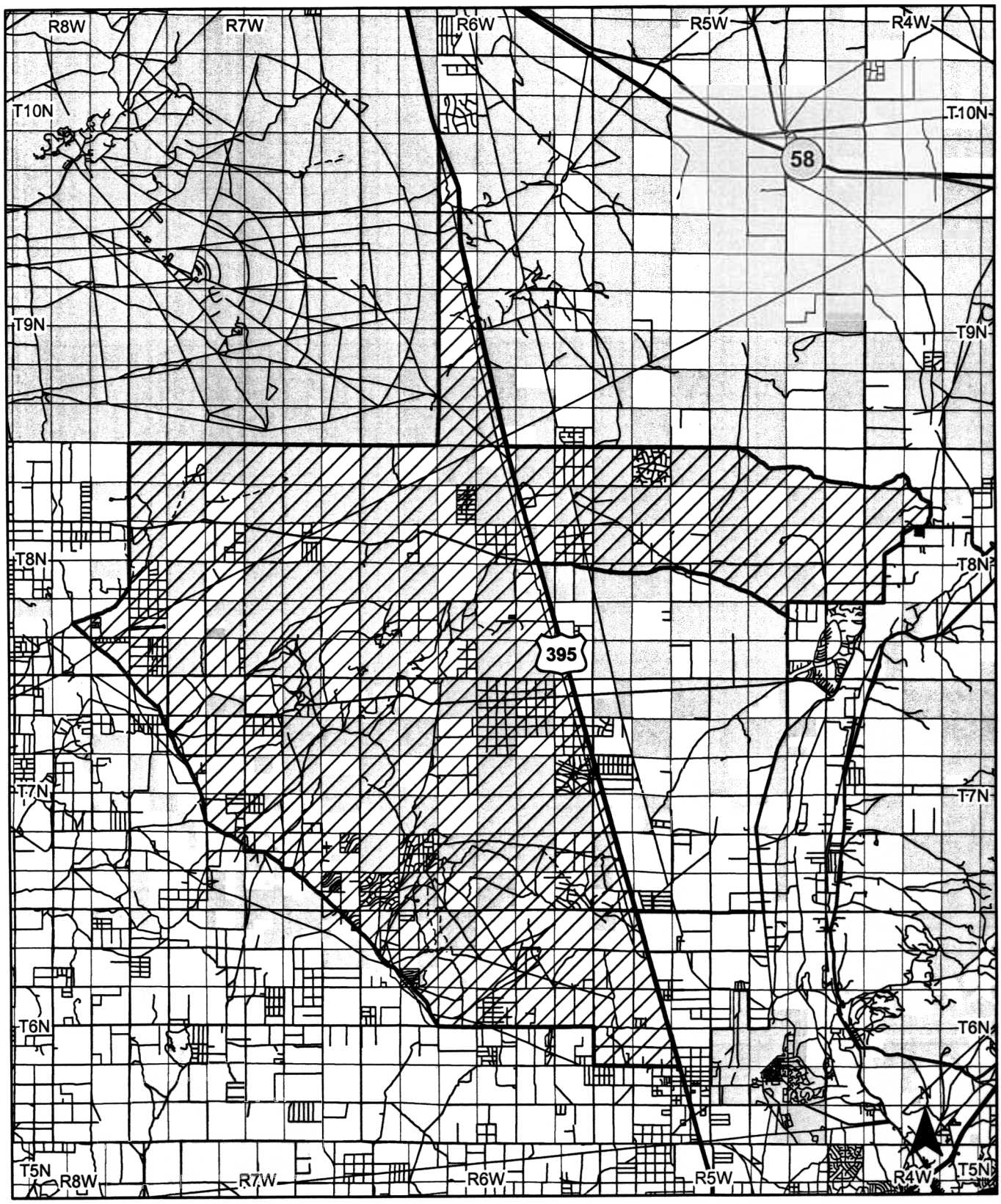
Sincerely,

Roxie C. Trost

Roxie C. Trost
Field Manager

Attachment 1
Maps 1 & 2
cc:
District Manager, California Desert
Interested Public of Record
California Dept. of Fish and Game

Shadow Mountains Grazing Allotment Map 1



Highways

Other Grazing Allotments

Shadow Mountains

Land Ownership

Private

US Bureau of Land Management

Military

State Lands

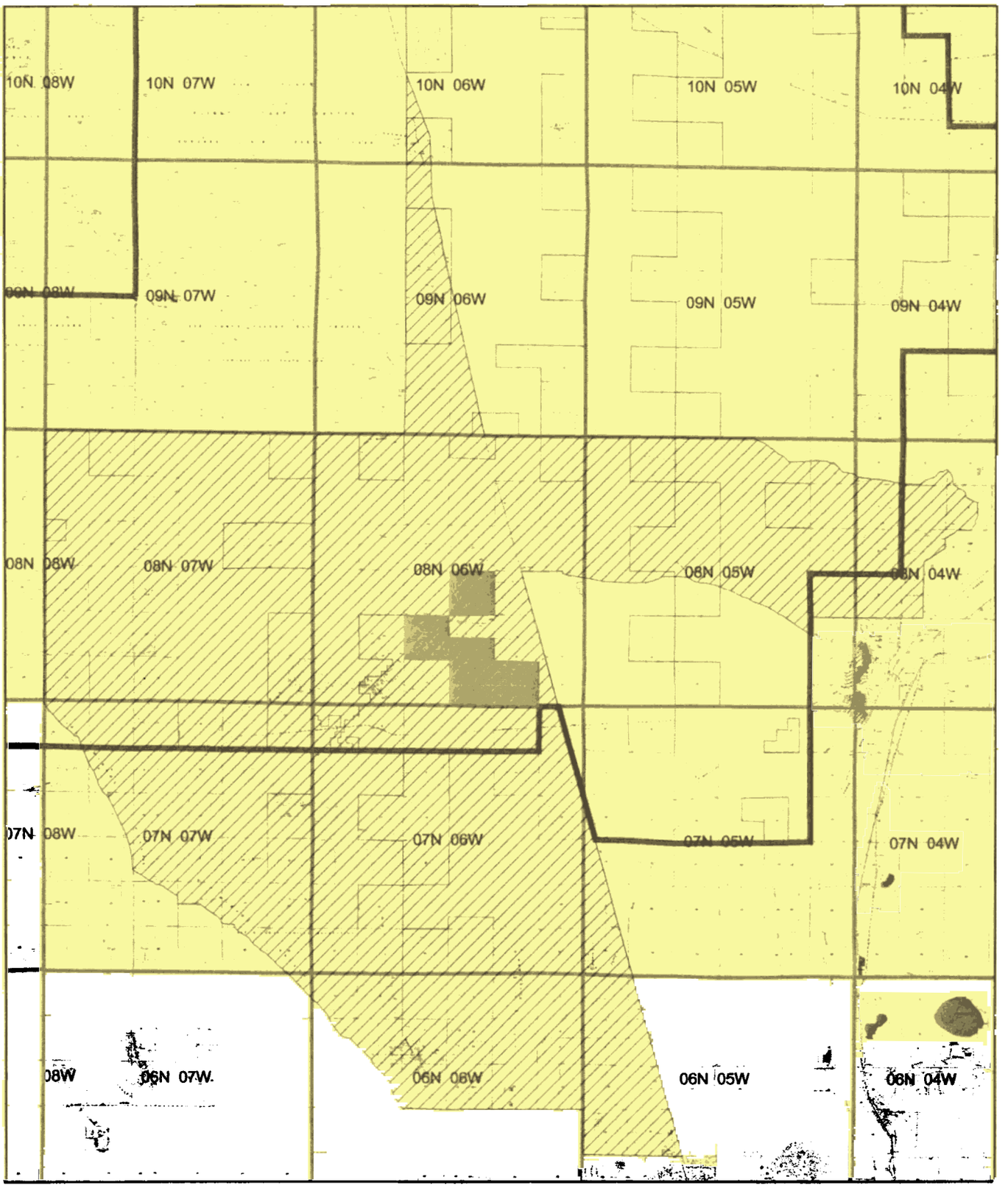
0 1 2 3 4 5 6

Miles

US Department of the Interior
BUREAU OF LAND MANAGEMENT
Barstow Field Office
Barstow, California
(760) 252-6000
www.ca.blm.gov/barstow
Date Prepared: 9/30/2004
Project: Shadow Mountains

Shadow Mountain Grazing Allotment

Map 2



Allowable Grazing Use Area
USFWS Desert Tortoise Critical Habitat Unit
Shadow Mountains
Bureau of Land Management
Military
State
Unclassified

0 3 6 12 Miles

N W E S

Map Projection ..... UTM NAD1983
Scale.....1:200,000
S.Jackson.....09/29/04

ATTACHMENT 1

National Fallback Standards for grazing allotments. Fallback standards were developed to implement 43 CFR, Subpart 4180 grazing regulations. The fallback standards for rangeland health are:

1. Upland soils exhibit infiltration and permeability rates that are appropriate to soil type, climate, and landform.
2. Riparian-wetland areas are in proper functioning condition.
3. Stream-channel morphology (including but not limited to gradient, width/depth ratio, channel roughness, and sinuosity) and functions are appropriate for the climate and landform.
4. Healthy, productive and diverse populations of native species exist and are maintained.

National Fallback Guidelines for grazing management. Fallback guidelines were developed in conjunction with standards to implement 43 CFR Subpart 4180. Guidelines identify 15 grazing management practices to achieve the fallback standards.

1. Management practices maintain or promote adequate amounts of ground cover to support infiltration, maintain soil moisture, and stabilize soils.
2. Management practices maintain or promote soil conditions that support permeability rates that are appropriate to climate and soils.
3. Management practices maintain or promote sufficient residual vegetation to maintain, improve, or restore riparian-wetland functions of energy dissipation, sediment capture, groundwater recharge and stream bank stability.
4. Management practices maintain or promote stream channel morphology (e.g., gradient, width/depth ratio, channel roughness and sinuosity) and functions that are appropriate to climate and landform.
5. Management practices maintain or promote the appropriate kinds and amounts of soil organisms, plants and animals to support the hydrologic cycle, nutrient cycle, and energy flow.
6. Management practices maintain or promote the physical and biological conditions necessary to sustain native populations and communities.
7. Desired species are being allowed to complete seed dissemination in one out of every three years (Management actions will promote the opportunity for seedling establishment when climatic conditions and space allow).
8. Conservation of federally threatened or endangered and other special status species are promoted by restoration and maintenance of their habitats.
9. Native species are emphasized in the support of ecological function.
10. Non-native plant species are used only in those situations in which native species are not readily available in sufficient quantities or are incapable of maintaining or achieving properly functioning conditions and biological health.

11. Periods of rest from disturbance or livestock use during times of critical plant growth or regrowth are provided when needed to achieve healthy, properly functioning conditions (The timing and duration of use periods shall be determined by the authorized officer).
12. Continuous, season-long livestock use is allowed to occur only when it has been demonstrated to be consistent with achieving healthy, properly functioning ecosystems.
13. Facilities are located away from riparian-wetland areas wherever they conflict with achieving or maintaining riparian-wetland function.
14. Development of springs and seeps or other projects affecting water and associated resources shall be designed to protect the ecological functions and processes of those sites.
15. Grazing on designated ephemeral (annual and perennial) rangeland is allowed to occur only if reliable estimates of production have been made, the BLM has established an identified level of annual growth or residue to remain on site at the end of the grazing season, and adverse effects on perennial species are avoided.