

**UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
CALIFORNIA DESERT DISTRICT**

DECISION RECORD

For

**TEMPORARY MODIFICATION TO
LIVESTOCK GRAZING USE
IN THE
CALIFORNIA DESERT CONSERVATION AREA**

May 15, 2001

**ENVIRONMENTAL ASSESSMENT NUMBER
CA-610-01-02**

Approved: /s/ _____ Date: 5/15/01

Tim Salt, District Manager

Summary

This Decision Record documents the decision and supporting rationale of the Bureau of Land Management (BLM) to temporarily modify grazing use on certain grazing allotments. The decision is to approve the Proposed Action, based on the analysis of potential social, economic, and environmental impacts detailed in the Temporary Modification to Livestock Grazing Use in the California Desert Conservation Area (CDCA), Environmental Assessment Number CA-610-01-02, April 9, 2001. BLM has determined the impacts from the proposed action are not expected to be significant and an environmental impact statement is not required; therefore, a Finding of No Significant Impact (FONSI) is included with this Decision Record.

BLM's decision provides the highest level of protection to the desert tortoise and desert tortoise habitat of any option analyzed in the EA. The decision will result in a temporary removal of livestock grazing on 11 cattle allotments covering 498,665 acres of both critical and non-critical desert tortoise habitat. It also provides for elimination of grazing on an additional 12 allotments covering 415,131 acres of desert tortoise habitat.

Final Grazing Decisions

A. In accordance with 43 Code of Federal Regulations (CFR) 4160, this decision will be implemented through 16 Final Grazing Decisions. A Final Grazing Decision will be issued to each affected lessee and to other interested public. The Final Grazing Decisions will be effective until either 1) receipt by the BLM of the biological opinion on the effects of the CDCA plan on the Mojave population of the desert tortoise and (a) implementation of any applicable terms and conditions, reasonable and prudent alternatives, and/or reasonable and prudent measures requiring immediate implementation and (b) the signing of the record of decision (ROD) for the Northern and Eastern Colorado Desert (NECO) and Northern and Eastern Mojave Desert (NEMO) bio-regional plan amendments, or 2) January 31, 2002, whichever is later. Requirement 1(b) above concerning completion of the NECO and NEMO plans applies only to those allotments covered by those two plans.

B. A lessee may request grazing non-use for the entire allotment during the time-frame listed above. If non-use is approved, BLM will not approve any subsequent application for grazing use of the allotment from other qualified applicants during the time period.

C. Unless modified by the Final Grazing Decisions as described below for cattle allotments, grazing use may continue under current management, including approved allotment management plans, Biological Opinion, and National Fallback Standards and Guidelines applicable to the allotment.

D. BLM will monitor compliance of this decision at least once every two weeks on those allotments on which cattle are to be excluded in tortoise habitat year round and at least once every week on those allotments on which cattle are to be excluded on a seasonal basis, to determine whether livestock are

present in the excluded areas. Results of this periodic compliance monitoring will be documented.

2. Decisions Affecting Sheep Allotments

Sheep are to be removed from Ford Dry Lake and Rice Valley Allotments.

3. Decisions Affecting Cattle Allotments

A. Cattle are to be removed year round from Pilot Knob, Piute Valley, Chemehuevi, Jean Lake, Crescent Peak, Kessler Springs, Lanfair Valley, and Whitewater Canyon Allotments and the portion of Valley View Allotment containing desert tortoise habitat. A map of the exclusion area is on file with the authorized officer.

B. If cattle are subsequently documented in excluded areas in the allotments listed in part A of this section (second offense), BLM shall reduce the number of animal days per year authorized for that allotment during the period of the temporary modification to grazing use by the number of animal days of cattle documented to be in the excluded area on the occasion of the second violation. In the event livestock are not removed in the manner requested within 48 hours after notification, BLM shall initiate trespass procedures.

C. Cattle are to be removed year round from a portion of Hansen Common, Lacey-Cactus-McCloud, and Tunawee Common Allotments and all of Round Mountain Allotment. Maps of the exclusion areas in these allotments are on file with the authorized officer.

D. Cattle are to be removed from March 1 to June 15 and from September 7 to November 7 within portions of the following allotments containing desert tortoise habitat: Cady Mountain, Cronese Lake, Harper Lake, Horsethief Springs, Lazy Daisy, Ord Mountain, Pahrum Valley, Rattlesnake Canyon, Rudnick Common, Valley Wells, and Walker Pass Allotments. Maps of the exclusion areas in these allotments are on file with the authorized officer.

E. An additional day will be added to the period of exclusion for every day cattle are found inside areas of desert tortoise habitat designated for seasonal exclusion in D above. In the event livestock are not removed in the manner requested within 48 hours after notification, BLM shall initiate trespass procedures.

F. BLM will not authorize grazing that exceeds the number of animal days per year per allotment that is equal to the average number that was reported by BLM for the 1997, 1998, and 1999 billing years. These numbers of animal days per year are as follows: Cronese Lake Allotment - 13,383; Harper Lake Allotment - 17,033; Lazy Daisy Allotment - 39,541; Ord Mountain Allotment - 62,842; and Valley Wells Allotment - 51,433.

G. In the Rattlesnake Canyon Allotment, an area of Rattlesnake Canyon will be fenced by June 30, 2001, to exclude cattle use and trailing, and cattle use will be reduced commensurate with the forage loss from the excluded area. Construction of the east boundary fence of the Rattlesnake Canyon Allotment began January 17, 2001, by BLM fire crews and will be completed as soon as practical but is not expected to be completed later than December 31, 2001. Approximately 0.5 miles of fence adjacent to Kelso Creek in the Rudnick Common Allotment has been completed. Approximately 0.5 miles of fence adjacent to existing fenced riparian enclosure in Afton Canyon in the Cady Mountain Allotment will be constructed by January 1, 2002. Several springs will be fenced in the Ord Mountain Allotment to restrict cattle access. Maps of the fence locations in these allotments are on file with the authorized officer.

Background

In 1990, the Mojave population of the desert tortoise was listed as a threatened species under the Endangered Species Act (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.

Although BLM has received biological opinions on selected activities, including grazing, consultation on the overall CDCA Plan is necessary to address the cumulative effects of all the activities authorized by the CDCA Plan. Consultation on an overall plan is complex and the completion date uncertain. Absent consultation on the entire plan, the impacts of individual activities such as grazing, when added together with the impacts of other activities in the desert, are not known. The BLM entered into negotiations with plaintiffs regarding interim actions to be taken to provide protection for endangered and threatened species pending completion of consultation on the plan. Agreement on these interim actions avoided litigation of plaintiffs' request for injunctive relief and the threat of an injunction prohibiting all activities authorized under the plan. These interim agreements allowed BLM to continue appropriate levels of activity throughout the planning area during the lengthy consultation process while providing protection to the desert tortoise and other listed species in the short term. By taking interim actions as allowed under 43 CFR Part 4100, BLM contributes to the conservation of the endangered and threatened species in accordance with 7 (a)(1) of the ESA. BLM also avoids making any

irreversible or ir retrievable commitment of resources which would foreclose any reasonable and prudent alternatives which might be required as a result of the consultation on the CDCA Plan in accordance with 7(d) for the ESA. On January 29, 2001, the stipulation respecting livestock grazing became effective.

The BLM issued proposed decisions and Environmental Assessment (EA) which were available for a 15 day protest and public comment period.

Alternatives Considered

No Action (current management) - The No Action alternative would continue current grazing management on 25 of the 42 affected allotments. No areas would be excluded from existing grazing in those allotments. Other provisions for grazing management would continue consistent with existing plans and priorities.

Alternative 1 - This alternative would impose closures on 35 of the 42 allotments in desert tortoise habitat. Those allotments contain most of the critical desert tortoise habitat within the 42 allotments. The remaining 7 allotments, including one allotment with a small amount of desert tortoise critical habitat, would continue as under the No Action Alternative.

Rationale

BLM engaged in settlement discussions and ultimately agreed to stipulated provisions contained in the Stipulations and Orders (see Background section) because of its acknowledged lack of consultation on the overall California Desert Conservation Plan as required by the ESA. Although BLM has consulted with the FWS on the effects of grazing on desert tortoise, it has not consulted on the effects of all uses of the desert on listed species. Section 7(a)(2) of the ESA requires that each federal agency consult with the FWS to “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 critical habitat (16 U.S.C. 1536(a)(2)). In addition, subsection (a)(1) of section 7 requires that agencies utilize their authorities to further the purposes of the ESA (16 U.S.C. 1536(a)(1)).

Use of BLM-administered lands in the desert is wide and varied, and may have an impact on any number of threatened and endangered species. In order to comply with the ESA, as well as to preclude the potential for a desert wide injunction against these various uses of desert land, BLM chose to address the underlying litigation through the settlement agreements. These agreements provide that BLM take action to insure that all of the uses in the desert authorized by the BLM do not jeopardize, nor adversely modify any designated threatened or endangered species habitat. This decision will be effective until either receipt by the BLM of the biological opinion on the effects of the CDCA plan on the Mojave population of the desert tortoise and implementation of any applicable terms and conditions,

reasonable and prudent alternatives, and/or reasonable and prudent measures requiring immediate implementation and the signing of the record of decision (ROD) for the Northern and Eastern Colorado Desert (NECO) and Northern and Eastern Mojave Desert (NEMO) bio-regional plan amendments, or January 31, 2002, whichever shall be later. Because the BLM had not, at the time, initiated nor concluded consultation on the overall species effects, it has utilized its independent authorities under, for example, the Taylor Grazing Act, as amended, and implementing regulations, to provide additional protection to listed species until consultation is complete and the BO implemented. These grazing decisions are a result of BLM's understanding of its requirements under the ESA.

BLM approves the Proposed Action as identified in this decision record to ensure protection of the desert tortoise and critical and non-critical desert tortoise habitat, until BLM implements the requirements identified in the applicable Biological Opinion, which will be issued by FWS. BLM's decision will also ensure additional protection of BLM California sensitive wildlife species including the Mojave ground squirrel, Bendire's thrasher, Le Conte's thrasher, spotted bats, Townsend's big-eared bats, pallid bats, yellow-blotched salamanders, and yellow-eared pocket mouse; 29 special status plant species; as well as a variety of other common plant and animal species; and soils. Additionally, the decision will help prevent further spread of invasive, non-native species which reduce the availability of native forbs for the desert tortoise and other wildlife species and increase the occurrence of wildfire.

The BLM's decision is a temporary modification to current livestock grazing administration pending completion of a Biological Opinion on the affects of the CDCA Plan and implementation of any applicable requirements.

The BLM's decision will provide the highest level of protection for the desert tortoise and its habitat of any option analyzed in the EA. The cumulative impact of reducing sheep and cattle grazing on 42 allotments will result in a slight improvement in the existing resource conditions for the tortoise and other listed and sensitive species until the Biological Opinion is prepared and BLM can review and implement its requirements. The restrictions imposed on grazing as described in the grazing decisions will partially offset adverse impacts that occur from off-highway vehicle (OHV) use, mining and other activity in the desert.

BLM recognizes that the affected allotments provide a source of income and employment to the ranching community and contribute goods and services to the area.

The lessees may be able to move their livestock to other areas of the allotments during the seasonal closure with a minimum disruption to existing operations. The lessees may also utilize other options including placing livestock on private pastures, if available, or removing all of their livestock from the allotments and later replacing the livestock after the time period of the exclusion ends.

Conformance with the California Desert Conservation Plan

The decision is subject to the CDCA Plan, 1980 (1999). The decision has been determined to be in conformance with this plan as required by regulation (43 CFR § 1610.5-3(a)). The decision will occur in areas identified for livestock grazing as indicated in the Livestock Grazing Element in the CDCA Plan, 1980 (1999), pages 56 to 68. The decision is consistent with the land use decisions, goals, and objectives of the CDCA Plan.

Cumulative Impacts to Desert Tortoise Reduced

The cumulative impact of reducing sheep and cattle grazing will result in a slight improvement in the habitat conditions for the tortoise and other listed species as discussed in the EA until the Biological Opinion is prepared and BLM can review and implement its requirements. The restrictions imposed on grazing as described in the grazing decisions will partially offset adverse impacts to those listed species that occur from grazing, off-highway vehicle (OHV) use, mining, and other activities in the affected allotments and more generally in the CDCA. BLM has consulted on those activities at a program level and is implementing terms and conditions from existing Biological Opinions which ensure that any adverse impacts are minimized.

Most of the cumulative improvement to natural systems will occur in desert tortoise habitat in 15 cattle allotments: Cady Mountain, Cronese Lake, Harper Lake, Hansen Common, Horsethief Springs, Kessler Springs, Lazy Daisy, Ord Mountain, Pahrump Valley, Rattlesnake Canyon, Rudnick Common, and Tunawee Common, Valley Wells, Valley View, and Walker Pass; and 2 sheep allotments: Rice Valley and Ford Dry Lake. Cumulative soil and vegetation impacts, trampling of burrows, direct mortality, and injury to smaller animals such as juvenile tortoises, lizards, snakes and various insects would be slightly reduced by this decision as a result of removing livestock. In addition, vigor and cover of plant species, especially cattle forage species, would increase. There would be a slight improvement in soil structure, reduction of impacts to cryptogamic crusts, and a reduction in the spread of exotic plants.

Based on projected decreases of approximately \$6,000 in grazing fees, the cumulative impacts to affected counties are expected to be minor. In addition, an estimated \$321, 500 maximum gross revenue lost to individual ranching operations is not considered regionally significant and, thus, will not have a substantial cumulative effect.

Valid Existing Rights Not Affected

In some allotments, State, private, and other federal ownerships can comprise a significant share. The decisions will not directly affect these ownerships, but could indirectly impact grazing use of these lands. Typically, these lands are scattered throughout the allotment and they are not fenced so cattle can easily access both Public Lands and other lands. Unless fencing is constructed along the perimeter of these lands, removal of livestock from Public Lands would necessitate removal of livestock from other lands.

There are many sources of water on the allotments. The BLM does not have any jurisdiction over water development or use on private, State or other federal lands. Except for wells, the State determines water appropriations for natural source water on BLM-administered Public Lands. Some lessees have established water rights for natural sources of water on BLM lands. These water rights will not be directly infringed by this decision. However, if a lessee has water rights for a source of water on public lands found within the area of seasonal or total exclusion, this decision will prevent cattle from accessing these developed sources of water.

Many lessees have built range improvements on BLM-administered Public Lands under special permits to improve grazing management. The permit holders own the physical improvement, and the location and construction of the facility are authorized by the BLM. If such improvements are within the seasonal or total closure areas, use for grazing management purposes would be precluded during seasonal closure until the terms of the decision are complete.

Public Comments and Responses

The BLM received 26 letters commenting on the April 9, 2001 EA (CA-610-01-02) Most of those letters expressed general opposition to the proposed action and supported the No Action Alternative or Alternative 1. Many of the comments questioned or stated opinions about aspects of the administrative process, including application of law, regulation, or BLM policy. Some comments provided clarification or other information specific to an allotment.

The comments addressing specific issues, and the BLM's response, are consolidated and summarized as follows:

A. Comments Requesting Extension of Time and Questioning Rationale for Short Public Review Period

BLM Response: The 15-day comment period was deemed necessary to expedite an agency decision. BLM has determined that no extensions of time are warranted, and the individuals requesting extensions were so advised.

B. Comments Questioning the Extent of Public Notice and Involvement of Permittees, Other Agencies, and Public

BLM Response: BLM issued a general news release inviting public review of the EA. Approximately 70 copies of the EA were distributed. Permittees and interested public were mailed copies of the proposed grazing decisions.

C. EA Lacks Scientific Information to Warrant Removal of Livestock

BLM Response: BLM has compiled an extensive record of scientific data relevant to the issue of livestock impacts on the desert tortoise and desert tortoise habitat. These data were used in the EA and are cited on pages 74-76.

D. What are the long term goals for this area? Have these goals been made available to the affected permittees?

BLM Response: The decision is an interim action that is necessary to address the existing resource conditions. However, long term goals for this area are to be determined through subsequent BLM land use planning.

E. The analysis of the EA is incomplete due to errors.

1. The East Boundary Fence would not exclude cattle from the Bighorn Mountain Wilderness, and as proposed, would exclude 900 acres from the Rattlesnake Canyon Allotment. The Parish's Daisy could be easily protected by fencing 2 acres. There is no need for a portion of the East Boundary Fence since grazing use for all lands are governed under San Bernardino County grazing ordinance.

BLM Response: The proposed alignment of the East Boundary Fence attempts to balance elimination of cattle grazing beyond the boundary of the allotment and the ease of construction and maintenance of the fence against the loss of area from the allotment. A population of threatened Parish's daisy was found along the proposed fence route and the route was modified to avoid impacts to the daisy. Under the current scenario, cattle can move beyond the unfenced boundary into the Bighorn Wilderness.

2. The impacts analysis is suspect because desert tortoise densities were high in the Desert Tortoise Natural Area (DTNA) when sheep grazed the area frequently and tortoise density has steadily declined since their removal.

BLM Response: The decline in tortoise population in the DTNA is unrelated to removal of sheep grazing. Desert tortoise populations have declined in the DTNA because of disease and raven predation.

3. The EA did not analyze the impact of raven and other natural predators on the tortoise population.

BLM Response: The scope of this EA was directed toward impacts of livestock-grazing related changes on the desert tortoise and other resources. Therefore, the EA did not address predation on tortoises from ravens and other predators.

4. Cattle grazing is a valuable management tool in the reduction of biomass for fire suppression as well as helping to renew vegetative growth on numerous species of plants.

BLM Response: Before the introduction and spread of invasive alien plant species, especially Mediterranean grass (*Schismus arabicus* and *S. barbatus*) and red brome (*Bromus madritensis* ssp. *rubens*), wildfires were uncommon in the Mojave and Colorado Deserts. These alien plant species are believed to have increased the frequency and extent of wildfires in these two deserts (Brooks 1998, 2000a, 2000b). While livestock grazing may reduce the biomass of these two species, it is unclear whether this reduction would be sufficient to noticeably reduce the threat of fire, at least at moderate levels of grazing. Additionally, livestock grazing, through consumption of desirable native species and soil alteration, may promote the further establishment of these invasive alien species.

It is uncertain whether the Mojave and Colorado Desert plant species benefit from grazing. These species did not coevolve with large ungulates and Belsky et al.(1993) have questioned the entire notion of overcompensation of growth by plants in response to grazing pressure.

5. Assumption made that since both cattle and tortoises feed on grasses that continuing to graze cattle would potentially take away food that the tortoises would eat.

BLM Response: Avery (1998) has demonstrated direct competition during years of low precipitation between cattle and desert tortoises for the same annual forage plants in studies at Ivanpah Valley. These annual forage plants are largely forbs, not grasses.

6. Assumption made that invasive non-native species would decrease with the elimination of livestock grazing, and that such a “trend” can be ascertained by “observation of grazing intensity of the key species.” Such an alleged “trend” cannot be established without proper monitoring over time. The BLM has presented no factual, monitoring, or other evidence to show that the condition on any of these allotments requires a grazing adjustment to further increase tortoise populations or decrease the population of invasive, non-native species.

BLM Response: In studies in the Western Mojave Desert, there is evidence that annual invasive species of Mediterranean grass (*Schismus arabicus* and *Schismus barbatus*), red brome (*Bromus madritensis* ssp. *rubens* and filaree (*Erodium cicutarium*) increase in response to disturbance, including that related to livestock grazing (Brooks 1999a and 1999b; Brooks 2000a and 2000b). Biomasses of these species were generally highest in washlets, under creosote bushes, and unprotected areas. Mediterranean grass is particularly abundant where grazing and other human disturbance activities have reduced cover and disturbed the soil (Brooks 2000b). It is expected that seasonal or total exclusion of cattle from public lands within allotments would decrease site disturbance, resulting in increases in native annual and perennials and a concomitant decrease in the biomass of invasive species.

The statement in the EA inadvertently left out the word “apparent” before “trend.” “Apparent trend” is

defined by the Society for Range Management as:

An interpretation of trend based on a single observation. Apparent trend is described in the same terms as measured trend except that when no trend is apparent it shall be described as “none.” Note: Some agencies utilize the following definition: “An assessment, using professional judgment, based on a one-time observation. It includes consideration of such factors as plant vigor, abundance of seedlings and young plants, accumulation or lack of plant residues on the soil surface, soil surface characteristics, i.e., crusting, gravel pavement, pedicled [sic] plants, and sheet or rill erosion.” [Source: Jacoby, 1989.]

The EA, however, makes it clear that not much change is expected during the relatively short time frame during which this decision will be in effect. We cannot find any reference in the EA to detecting trends in invasive species by observing grazing intensity of key species. The EA does state the following: “Observation of grazing intensity of the key species can provide an indication of the trend in range condition, which is the state of vegetative cover and soils in relation to a standard or predicted condition for a particular ecological site.” This should read, “apparent trend”. The EA also states that the trend for upland sites would not be expected to change within the time frame of this decision.

F. Concerns about wildlife biology or management.

1. US Fish and Wildlife Service’s biological opinions have determined that cattle grazing has no significant impact on tortoise habitat. They have issued determinations of non-jeopardy in all cases.

BLM Response: The biological opinions issued by FWS addressed the effects of BLM’s interim management of livestock grazing (interim until approval of the three bioregional plans that will amend the California Desert Conservation Area Plan). Those opinions held that cattle grazing as managed on this interim basis would not jeopardize the desert tortoise.

2. Livestock grazing represents one of the biggest threats to desert tortoise survival and recovery. Livestock cause direct mortality and injury by trampling tortoises and their eggs and crushing tortoise burrows; compete with tortoises for forage; damage vegetation used by tortoise for food and cover; and in short, fundamentally alter the desert ecosystem on which the tortoise and many other species depend.

BLM Response: While we agree that livestock grazing affects the desert tortoise and its habitat, we disagree with the magnitude of the threat described in this comment. Sheep grazing has a greater impact on tortoise habitat than cattle grazing; for this reason, sheep grazing has been excluded from tortoise critical habitat for many years. The measures implemented by this decision should reduce the effects of cattle grazing on the desert tortoise.

3. Why did the DTNA have very high densities of tortoises when sheep were grazed fairly frequently and once they were removed the tortoise population began a steady decline?

BLM Response: BLM is not aware of any scientific evidence that removal of sheep from the DTNA has caused a decline in tortoise populations. Most authorities on the matter believe that desert tortoises have declined in the DTNA and adjacent areas because of disease and raven predation.

4. Despite continued year-round grazing desert tortoise population numbers are either stable or increasing.

BLM Response: Based on current information, some populations appear to be stable and the remaining are declining, some precipitously.

G. General and specific questions regarding grazing management and ranching operations.

1. Implementation of the proposed action would reduce or eliminate ranching operations and would constitute a taking of private property.

BLM Response: BLM is required by its grazing regulations to manage grazing in a manner that meets resource condition objectives and conforms to standards and guidelines of rangeland health. The regulations also make it clear that “Grazing permits or leases convey no right, title, or interest held by the United States in any lands or resources.” (43 CFR 4130.2(c)). Thus, any modification of these permits or leases by BLM does not constitute a taking of private property.

2. The EA advocates the elimination of grazing in “noncritical habitat areas.” There is no regulatory or factual reason to limit grazing use in non critical habitat areas. These areas do not legally exist.”

BLM Response: The EA does not propose to permanently eliminate grazing in non-critical desert tortoise habitat in this decision. The BLM does indeed have the authority for limiting grazing in these areas. 43 CFR 4130.3-2 states in part:

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. These may include but are not limited to:

(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 of 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.
[Emphasis added.]

Desert tortoise non-critical habitat equates to areas of desert tortoise Category III habitat which was instituted under Amendment 19 of the 1989/1990 amendments to the California Desert Conservation Area Plan (approved in June 1993).

3. Livestock removal from these allotments would take many weeks to complete. The EA fails to recognize the detrimental impact to livestock. Removal of cattle within 48 hours of notification, in most cases, would make it physically impossible to comply.

BLM Response: The periods of seasonal exclusion are set and increased planning and early, gradual movement of livestock out of exclusion areas should reduce any potential impacts to the livestock and the range. This time requirement would be stipulated for those cattle that have been removed from the area of the exclusion or removal of cattle that drift into the exclusion area after the exclusion period is in effect.

4. The economic impact of implementation of this EA on the County and local area will be significant. Although the EA “suggests” that finding alternative private pasture would be the most cost effective for the permittees, in fact there is very little private pasture available. Thus, the permittees impacted by the EA will simply be forced out of business.

BLM Response: The EA estimates that a loss of county revenue of \$6,012 will result. This is approximately 11 percent of the grazing receipts collected and returned to Kern, Inyo, and San Bernardino Counties in 2000.

5. The county of San Bernardino County was not consulted about the Proposed Action in the EA.

BLM Response: San Bernardino County was mailed an EA on or around April 9, 2001. Comments on the EA were received from two San Bernardino County officials.

6. The statement about trend can be ascertained by “observation of grazing intensity of the key species” is incorrect.

BLM Response: The statement in the EA inadvertently left out the word “apparent” before “trend.” “Apparent trend” is defined by the Society for Range Management as:

An interpretation of trend based on a single observation. Apparent trend is described in the same terms as measured trend except that when no trend is apparent it shall be described as “none.” Note: Some agencies utilize the following definition: “An assessment, using professional

judgment, based on a one-time observation. It includes consideration of such factors as plant vigor, abundance of seedlings and young plants, accumulation or lack of plant residues on the soil surface, soil surface characteristics, i.e., crusting, gravel pavement, pedicled [sic] plants, and sheet or rill erosion.” [Source: Jacoby 1989.]

7. Ranchers are willing to maintain improvements so that water is available to livestock and wildlife. The EA fails to recognize the harm to wildlife resulting from this decision if water is removed.

BLM Response: In most situations, maintenance of range improvements owned by BLM has been assigned to the lessees and is a term and condition of the grazing leases. Maintenance responsibility can be assigned to other cooperators or the BLM may retain maintenance responsibility. We agree that wildlife benefit from lessee maintenance of range improvements.

8. While the EA has addressed some of the economic impacts of removing cattle and placing them in feedlots, many important items are missing and incorrect, and the EA has misstated the actual cost and impact of removing cattle from each ranch.

BLM Response: Each lessee has private financial and operations cost information that was not available to the BLM for inclusion in the social and economic analysis.

9. Absent is the cost of corral rent, corral cleaning, manure removal, and labor to feed and care for cattle while confined.

BLM Response: The labor to maintain cattle is expected to be commensurate with current labor needs unless the allotment is a substantial distance from the corral then additional costs must be added.

10. Transportation cost was calculated on just one move when it actually requires four moves to accommodate two closures.

BLM Response: The EA analyzed a one-time cost to transport cattle. Each time cattle are transported the range of costs displayed in the EA would apply. Due to the complexities of each operation an overall estimate of costs could not be supplied.

11. The cost of labor to gather and relocate cattle is twice missing.

BLM Response: Assuming there is a need to gather and relocate cattle more than once, costs in the EA should be multiplied by the number of movements necessary. Some operations could easily assimilate changes in area of use while other operations would have to halt current grazing schemes and redirect efforts elsewhere.

12. The loss of grazing fees would be higher than stated because all cattle would be moved off the ranch, and there would be a loss of temporary non-renewable perennial use.

BLM Response: We do not anticipate lessees having to remove all cattle from the allotments affected; therefore, we believe the impact on grazing fees would be as described in the EA.

Temporary non-renewable perennial grazing use has been authorized at minimal levels in the CDCA. The loss of temporary non-renewable grazing use would be difficult to analyze because it has rarely been authorized in the past.

13. The economic impact on the operator due to the loss of temporary non-renewable use is not stated.

BLM Response: Temporary non-renewable perennial grazing use has been authorized at minimal levels in the CDCA. The loss of temporary non-renewable grazing use would be difficult to analyze because it has rarely been authorized in the past.

14. This decision causes cattle to be moved four times. Moving cattle on commercial trucks to a feedlot increases the chance of disease that will negatively affect the herd.

BLM Response: Cattle are stressed during times of transport and they should receive extra care to reduce the chance of illness.

15. Desert cows calve all year long, but the majority of the calves are born in February, March, and April when the cows are in thin flesh from the winter and calve easily. The proposed decision would have these thin, very pregnant cows along with some newborn calves gathered and loaded on trailers, hauled to shipping corral, loaded again onto trucks and unloaded at a feedlot. As part of a livestock management plan, this would be a very poor strategy.

BLM Response: A management strategy should be developed to limit stress on calving cows.

16. Gathering and moving cattle on and off the range twice per year means pickup trucks and trailers hauling horses and cattle from remote corrals into the shipping corral and then reversing this procedure to relocate the cattle. These activities will result in more erosion from increased dirt road use, and increased dust that will hurt the habitat.

BLM Response: To prevent impacts to the tortoise during crucial times needed for foraging to meet nutritional needs and reproduction requirements, this action is considered necessary by the BLM.

The cumulative impacts of soil and vegetation disturbance, trampling of burrows, direct mortality, and

injury to smaller animals such as juvenile tortoises, lizards, snakes and various insects would be reduced by this decision. As a result of removing livestock from allotments, vigor and cover of plant species, especially cattle forage species, would increase. There would be a slight improvement in soil structure, reduction of impacts to cryptogamic crusts, and a reduction in the spread of exotic plants.

17. Hauling cattle and feeding them hay produced on irrigated farms causes an unnecessary dependence on fossil fuels, pumped water, etc., creating concerns about pollution and taxing our environment.

BLM Response: Hauling cattle would be necessary under any of the alternatives including No Action, since, eventually, livestock must be hauled to market. BLM's decision does not require a lessee to provide cattle with hay produced on irrigated farms. Such an action is outside the scope of the analysis for this decision.

18. The EA failed to mention the benefits of grazing grasses. It is well documented around the world that grazing annual and perennial grasses enhances them, whether the grasses are grazed by livestock, wildlife, or a lawnmower. Grazing annuals causes them to tiller regrow, producing more forage and remaining green and succulent longer. Not grazing them causes them to ripen and dry up sooner, depriving all grazers, including desert tortoises, this prolonged grazing season.

BLM Response: It is uncertain that Mojave and Colorado Desert plant species benefit from grazing. These species did not coevolve with large ungulates and (Belsky et al. (1993) have questioned the entire notion of overcompensation of growth by plants in response to grazing pressure.

It is expected that seasonal or total exclusion of cattle from public lands within allotments would decrease site disturbance, resulting in increases in native annual and perennials and a concomitant decrease in the biomass of invasive species. The EA, however, makes it clear that not much change is expected during the relatively short time frame during which this decision will be in effect.

19. The elimination of grazing annual grasses during the spring closure will result in a fire hazard lasting through the summer. The combination of a fire source and ungrazed annuals all summer long on a hill near Baker, California, is a sure bet for unnatural wildfires that will have a negative effect on the effort to preserve the tortoises, other animals and their habitats.

BLM Response: Before the introduction and spread of invasive alien plant species, especially Mediterranean grass (*Schismus arabicus* and *S. barbatus*) and red brome (*Bromus madritensis* ssp. *rubens*), wildfires were uncommon in the Mojave and Colorado Deserts. These alien plant species are believed to have increased the frequency and extent of wildfires in these two deserts (Brooks 1998, 2000a, 2000b). While livestock grazing may reduce the biomass of these two species, it is unclear

whether this reduction would be sufficient to noticeably reduce the threat of fire, at least at moderate levels of grazing. Additionally, livestock grazing, through consumption of desirable native species and soil alteration, may promote the further establishment of these invasive alien species.

20. The EA states, “Although trampling of tortoises and burrows is alleged in many papers, little direct evidence is cited.”

BLM Response: In addition to the above cited example, trampling of tortoises has been observed at other locations, including by cattle at the Littlefield study plot (pasture 2 of the Beaver Dam allotment) in Arizona in 1991; by cattle in Ivanpah Valley in California in 1993; and by sheep at the Kramer study plot in the western Mojave Desert (California) in 1981. The above observations involved the trampling of active burrows that collapsed on tortoises that were resting near the burrow exit. The above incidents were all observed in conjunction with tortoise studies at relatively small study sites. This suggests that other cases of direct take (i.e., actual killing or injuring of tortoises by trampling) would be documented if there were a systematic program underway to monitor such incidents wherever grazing is permitted in tortoise habitat.

As defined in the Endangered Species Act and its implementing regulations (50 CFR 17), the term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Harm in the context of this definition means an act which actually kills or injures fish or wildlife. Such an act may include significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including, breeding, spawning, rearing, migrating, feeding or sheltering.

Tortoises may be harmed by the trampling of active (but unoccupied) burrows if it increases the risk of mortality because of exposure, increased energetic costs (to dig new burrows), or changes in activity time budgets (reducing the amount of time available for foraging because of the time required to build new burrows). Several studies have documented the destruction of tortoise burrows by trampling or the elimination of shade vegetation by grazing around tortoise burrows. Avery (1997) documented the partial or complete destruction of tortoise burrows at the Ivanpah Valley study site in 1993 and noted that the number of partially or completely destroyed burrows was greater outside (i.e., where grazing persists) than inside the cattle enclosure (where livestock were excluded). He also observed that tortoises located outside the cattle enclosure remained outside of their burrows all night significantly more often than tortoises located inside the enclosure. He concluded: “This is consistent with the occurrence of having more damaged burrows outside the cattle enclosure than inside the enclosure.”

For the above reasons, the commenter’s statement is neither accurate with respect to direct “take” (i.e. killing or injuring) of tortoises by trampling occupied burrows, nor indirect take (i.e. harm) that is likely to result from the trampling of unoccupied tortoise burrows and removal of shade vegetation.

21. It has been documented that cattle and tortoise diets overlap. The EA doesn’t say that

this overlap is a negative impact on either species except maybe in low rainfall years. This is not a low rainfall year.

BLM Response: The decision would avoid cumulative impacts to desert tortoise critical habitat from ongoing grazing activities. The potential for soil and vegetation disturbance, trampling of burrows, direct mortality, and injury to smaller animals such as juvenile tortoises, lizards, snakes and various insects would be reduced.

22. The shade issue that the EA mentions is not a problem in Shadow Valley. Creosote bush is plentiful throughout the DTCH and cattle don't eat creosote bush.

BLM Response: Most of Shadow Valley is within critical habitat for the desert tortoise. To ensure protection of the desert tortoise and critical desert tortoise habitat from adverse impacts of cattle grazing, the limiting of livestock use during certain seasons on the allotment is considered necessary by the BLM. This decision would also ensure additional protection of other BLM California sensitive wildlife species, special status plant species; a variety of other common plant and animal species; and soils. Additionally, the decision will help prevent further spread of invasive, non-native species.

Avery (1998) compared grazed and ungrazed plots in Ivanpah Valley, California, and found that, while creosote bush (*Larrea tridentata*) showed significantly greater canopy areas and volume in the grazed plot, a greater proportion of burro bush (*Ambrosia dumosa*) was dead or dormant in the grazed plot than in the ungrazed plot. Similarly, the perennial grass, big galleta (*Hilaria rigida*) had 50% greater above-ground volumes and estimated biomass in the ungrazed than in the grazed plot.

Literature Cited

- Avery, H. W. 1998. Nutritional ecology of the desert tortoise (*Gopherus agassizii*) in relation to cattle grazing in the Mojave Desert. Ph.D. dissertation, University of California, Los Angeles.
- Belsky, A. J., W. P. Carson, C. L. Jensen, and G. A. Fox. 1993. Overcompensation by plants: herbivore optimization or red herring? *Evolutionary Ecology* 7:109-121.
- Brooks, M.L. 1999a. Alien annual grasses and fire in the Mojave Desert. *Madroño*. 46:13-19.
- Brooks, M.L. 1999b. Habitat invasibility and dominance by alien annual plants in the western Mojave Desert. *Biological Invasions*. 1:325-337.
- Brooks, M.L. 2000a. *Bromus madritensis* ssp. *rubens*. In: Bossard, C.C., J.M. Randall, and M.C. Hoshovsky, *Invasive Plants of California's Wildlands*, pp. 72-76. University of California Press, Berkeley, CA.

Brooks, M.L. 2000b. *Schismus arabicus* and *Schismus barbatus*. In: Bossard, C.C., J.M. Randall, and M.C. Hoshovsky, *Invasive Plants of California's Wildlands*, pp. 287-291. University of California Press, Berkeley, CA.

Bureau of Land Management. 1999. *The California Desert Conservation Area Plan 1980, as amended*. Bureau of Land Management, California Desert District, Riverside, CA.

Jacoby, P.W., ed. 1989. *A glossary of terms used in range management*, 3rd edition. Society for Range Management, Denver, CO.

FINDING OF NO SIGNIFICANT IMPACT

Temporary Modification to
Livestock Grazing Use in the
California Desert Conservation Area
Environmental Assessment Number CA-610-01-02

I have reviewed the environmental assessment (EA), *Temporary Modification to Livestock Grazing Use in the California Desert Conservation Area* and the attached draft Finding of No Significant Impact (FONSI) of April 9, 2001. Based on the analysis in the EA and draft FONSI and review of the public comment, I have determined this action would not significantly affect the quality of the human environment and, therefore, an Environmental Impact Statement is not required.

Approved: /s/ _____ Date: 5/15/01

Tim Salt, District Manager