



United States Department of the Interior

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In Reply Refer To:
4110/4160 (NV060)

DECISION CARICO LAKE ALLOTMENT

NOTICE OF CLOSURE TO LIVESTOCK GRAZING 2007 ELEPHANT FIRE

Dear Interested Public:

INTRODUCTION

On April 10, 2007, the Elephant fire, which was a human caused, burned 2,188 acres of public land within the Carico Lake Allotment. In order to promote the success of ES&R vegetation treatments and/or natural recovery of perennial vegetation, rest from livestock grazing is required. The Shoshone-Eureka Resource Management Plan Record of Decision dated February 1986 and the Battle Mountain Field Office (BMFO) Normal Fire Year Rehabilitation Plan Finding of No Significant Impact/Decision Record dated March 1994 requires that burned areas be rested from livestock grazing for two growing seasons. A Documentation of Land Use Plan Conformance and National Environmental Policy Act Adequacy (DNA) that will tier off the Normal Year Fire Rehabilitation Plan Environmental Assessment #NV060-EA93-038 has been completed for this action. In addition to closing burned areas to livestock grazing, the need to temporarily suspend active use was considered. To determine the need to temporarily suspend Animal Unit Months (AUMs) of active use, the interdisciplinary team considered the treatment type, the amount of use by livestock that the burn areas have received, and the suitability of the sites for livestock grazing.

BACKGROUND

Use areas have been designated for the Carico Lake Allotment through the 2005 Final Multiple Use Decision for the Carico Lake allotment. The Moss Burn use area was affected by the Elephant fire. The permitted use for the Moss Burn use area is as follows:

Permittee	Livestock Type	Period of Use	Active AUMs
Ellison Ranching Company	Cattle	12/10 – 04/30*	2,499
	Sheep	Must apply on annual basis for fall/spring; use dependent upon cheatgrass production	Not to exceed permitted active use for sheep

*This period of use and active AUMs include additional use areas. This active use is attributed to the Moss Fire use area, Antelope Pasture, Cedars Pasture, Wood Canyon Pasture, Cedars North Pasture, and Cedars South Pasture.

The Elephant fire occurred within elevations ranging from 4,900 to 5,400 feet. Cheatgrass and tumble mustard dominated the site with evidence that Sandberg's bluegrass and bottlebrush squirreltail were scattered within the understory.

A public consultation letter was issued on August 28, 2007 to discuss the BMFO's proposed action to implement ES&R treatments for the Elephant fire. Treatments that were described in the public consultation letter included the following:

Fire Name	Acreage Burned		Drill Seeding Acreage	Aerial Seeding Acreage	Temporary Fence (miles)	Erosion Control Structures
	Public	Private				
Moon Valley	2,188	0	0	2,188	7	0

A decision implementing Emergency Stabilization and Rehabilitation treatments for the Elephant fire was issued on September 14, 2007. Treatments included the seeding of approximately 2,188 acres with forage kochia and the construction of 7 miles of protective fencing.

On August 28, 2007 the BMFO issued a public consultation letter informing the permittee(s) and interested public of the proposed action to temporarily close the treatment area from livestock grazing. The public consultation letter provided a 15-day comment period for the permittee(s), interested public, partners, stake holders, and state and local governments to respond to the proposed livestock closures. Comments were received from Catherine Barcomb of the Commission for the Preservation of Wild Horses and Ellison Ranching Co. and are addressed in Attachment 1. In response to the comments made, the BMFO determined that the native release vegetative objective for this closure in particular was not appropriate.

Therefore, after careful consideration of the comments received it is my decision to implement the management actions identified below for the grazing closure of the Elephant fire:

GRAZING CLOSURE DECISION

This decision is issued pursuant to 43 CFR 4110.3-3(b) and is effective upon issuance in accordance with 43 CFR 4160.3(f). The Bureau of Land Management has made the determination that vegetation, soil, and other resources on the public lands are at immediate risk

of erosion or other damage due to wildfire and the continued grazing use poses an imminent likelihood of significant resource damage.

Therefore, it is my final decision to implement the following actions:

- I. Close the Elephant fire burn area within the Moss Burn use area in the Carico Lake Allotment to livestock grazing for a minimum of two growing seasons or until the vegetation objectives specified below are attained. See Attachment 2 for maps of closed area. The closure will be in affect on April 1, 2008.

BLM will conduct frequent compliance inspections of the burned areas. If these inspections reveal that grazing use is occurring in the closed areas, further actions will be taken such as closing the entire pasture or use area.

RATIONALE:

This decision is being issued in full force and effect, in accordance with 4110.3-3(b), in order to provide an opportunity for the burn area to recover, to allow for successful establishment of seeding treatments and to limit the likelihood of significant damage to natural resources. Rest from livestock grazing is required in order to successfully reestablish perennial vegetation, restore plant vigor and seed production, minimize active soil erosion and minimize the post fire occurrence of cheatgrass and noxious weed establishment. The establishment of vegetation criteria accompanied by annual monitoring will allow for perennial vegetation to have an opportunity to recover from the affects of the burn prior to the re-introduction of livestock grazing. The growing season for key perennial grasses in the burned area begins in April and ends in August. The native release criterion has been removed due to location of the affected area. The burn occurred within an historic burn that was dominated by cheatgrass. Therefore, native release is not expected to occur at this site.

Through the 2005 FMUD, appropriate stocking levels were determined for the use areas listed in the table included in the background section of this document. The 2005 Carico Lake Evaluation and Rangeland Health Assessment determined that a minimal perennial grass component existed within the area burned in the Elephant fire. Due to the dominance of cheatgrass within the burn area and since grazing preference and permitted active AUMs are not based upon annuals such as cheatgrass, no reduction in active use is recommended. In order to maximize the potential for success of the aerial seeding treatment, livestock use will be authorized until March 31, 2008 to aid in the control of cheatgrass.

Vegetation Objectives/Criterion for Reintroduction of Livestock

1. Aerial Seeding

Achieve a minimum of two plants per square meter along the 100' transect for the lower elevation range sites (R024XY002NV, R024XY005NV) and four plants per square meter along the 100' transect on upper elevation range site (R024XY023NV).

Achieve a minimum of 75% of the vegetative cover (basal and canopy) for perennial species relative to the site potential as indicated by the appropriate ecological site description.

If the vegetation objectives specified above are not met by the end of the second growing season of the closure, the burned area will be evaluated for the potential to meet the criteria. Some of the factors to be considered in this evaluation will be: the relationship between the native release of pre-existing plants and seeded species as it pertains to site stability, the amount of total precipitation, amount of growing season precipitation, how close to meeting the establishment criteria is at the end of the first and second growing seasons, what benefits, if any, an additional growing season of rest might provide.

Monitoring will be conducted annually following the growing season. Permanent monitoring sites will be established this year. Permittees and the interested public will be notified when monitoring studies will be conducted and invited to participate.

DECISION AUTHORITY: The authority for this decision is contained in Title 43 of the Code of Federal Regulations (CFR) including, but not limited to the following:

§4110.3-3(b): “When the authorized officer determines that the soil, vegetation, or other resources on the public lands require immediate protection because of conditions such as drought, fire, flood, insect infestation, or when continued grazing use poses an imminent likelihood of significant resource damage, after consultation with, or a reasonable attempt to consult with, affected permittees or lessees, the interested public, and the State having lands or responsible for managing resources within the area, the authorized officer shall close allotments or portions of allotments to grazing by any kind of livestock or modify authorized grazing use...”

§4160.3(f): Notwithstanding the provisions of §4.21(a) of this title pertaining to the period during which a final decision will not be in effect, the authorized officer may provide that the final decision shall be effective upon issuance or on a date established in the decision and shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals when the authorized officer has made a determination in accordance with §4110.3-3(b), or § 4190.1(a). Nothing in this section shall affect the authority of the Director of the Office of Hearings and Appeals or the Interior Board of Land Appeals to place decision in full force and effect as provided in §4.21(a)(1) of this title.

APPEAL PROVISIONS

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

Pursuant to 43 CFR 4.471 and 4160.4, an appellant also may petition for a stay of the final decision pending appeal by filing a petition for stay along with the appeal within 30 days after receipt of the final decision.

The appeal and any petition for stay must be filed at the office of the authorized officer, Douglas W. Furtado, Assistant Field Manager for Renewable Resources at 50 Bastian Road Battle Mountain, NV 89820. Within 15 days of filing the appeal and any petition for stay, the appellant also must serve a copy of the appeal and any petition for stay on any person named in the decision and listed at the end of the decision, and on the Office of the Solicitor, Regional Solicitor, Pacific Southwest Region, U.S. Department of the Interior, 2800 Cottage Way, Room E-1712, Sacramento, California 95825-1890.

Pursuant to 43 CFR 4.471(c), a petition for stay, if filed, must show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied;
- (2) The likelihood of the appellant's success on the merits;
- (3) The likelihood of immediate and irreparable harm if the stay is not granted; and,
- (4) Whether the public interest favors granting the stay.

43 CFR 4.471(d) provides that the appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.

Any person named in the decision from which an appeal is taken (other than the appellant) who wishes to file a response to the petition for a stay may file with the Hearings Division 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)).

At the conclusion of any document that a party must serve, the party or its representative must sign a written statement certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service (43 CFR 4.422(c)(2)).

Sincerely,

DOUGLAS W. FURTADO
Assistant Field Manager
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cc: Interested Public

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Comments from Ellison Ranching Co. received on September 18, 2007:

Comment: We request issuance of two decisions: one regarding the proposed restoration activities and subsequent grazing decision. We request the decision for the proposed restoration activities be issued immediately to allow fence construction to begin and the kochia to be purchased. We request the grazing decision be issued not later than December 1, 2007 to allow adequate planning time for the 2008 grazing season.

Response: Due to additional workload caused by the 2007 fire season the Battle Mountain Field Office (BMFO) was not able to issue a grazing closure for the Elephant Fire by December 1, 2007. On August 28, 2007 the BMFO did issue the consultation letter addressing the Elephant Fire Emergency Stabilization Treatment and Grazing Closure which indicated the proposed closure and the effects to your livestock operation. On September 14, 2007 the BMFO issued a full force in effect treatment decision for the Elephant Fire which implemented construction of 7 miles of protective fence and aerial seeding of 2,188 public land acres with forage kochia.

Comment: As the grazing permittee, we request that proposed monitoring locations be identified in conjunction with Ellison Ranching Company. Considerations should include that the site is currently dominated by cheatgrass and the proposed restoration seed can have very low germination rates.

Response: The BMFO will contact Ellison Ranching Co. before monitoring the Elephant Fire Emergency Stabilization Treatment. Range sites and the current condition of the site were considered in determining the species to be planted within the burn area and the application rate in which the seed would be applied.

Comment: Have ecological site descriptions been developed for all range sites included in the burned area? If so, please provide copies of these descriptions to us.

Response: Yes; copies of the Major Land Resource Area (MLRA) will be sent separate from this decision.

Comment: We believe the aerial seeding objective to achieve a minimum of 75% of the vegetative cover for perennial species is too high for the site, particularly given the potential difficulties of establishing forage kochia and the existing dominance of cheatgrass. A more reasonable objective would be 40% to 50% cover.

Response: According to MLRA site descriptions a minimum vegetative ground cover (basal and canopy) for perennial species in a NV024XY002 (loamy 5-8" p.z.) site is 10 to 15 percent, for a NV024XY005 (loamy 8-10" p.z.) is 20 to 40 percent and for NV024XY023 (North Slope 14"+ p.z.) is 30 to 60 percent. The BMFO will maintain a minimum of 75% of the vegetative cover (basal and canopy) as it corresponds to the appropriate rangesite for perennial species as a vegetative objective. If the vegetation objectives specified by the BMFO are not met by the end of the second growing season of the closure, the burned area will be evaluated for the potential to meet the criteria.

Comment: We request reconsideration of the native release objective. If active preference AUM's will not be impacted by the fire closure, there is no reasonable way to expect perennial herbaceous species to appear in the closed area. Unless cheatgrass-dominated reference sites are near the burned area, comparing perennial species production between burned and unburned sites has little value.

Response: We have removed the native release objective from the Elephant Fire Grazing Closure. Since native release is expected to be minimal, the BMFO will base success of the Elephant Fire Emergency Stabilization Treatment on seeded species.

Comments Received from Ellison Ranching Co. September 26, 2007:

Comment: We request that an emergency gather occur immediately to remove all horses in the South Shoshone HMA. This emergency gather is necessary to protect the land and allow the allotment the necessary time to recover from the fires.

Response: The BMFO has received fire rehabilitation funding to remove horses off the South Shoshone Herd Management Area (HMA). The wildhorse gather will take place January 9, 2008. The goal of the BMFO is to remove 319 horses in order to achieve the Appropriate Management Level (AML) for this HMA. The low end of AML for the South Shoshone HMA is approximately 60 head of horses.

Comments received from Commission for the Preservation of Wild Horses:

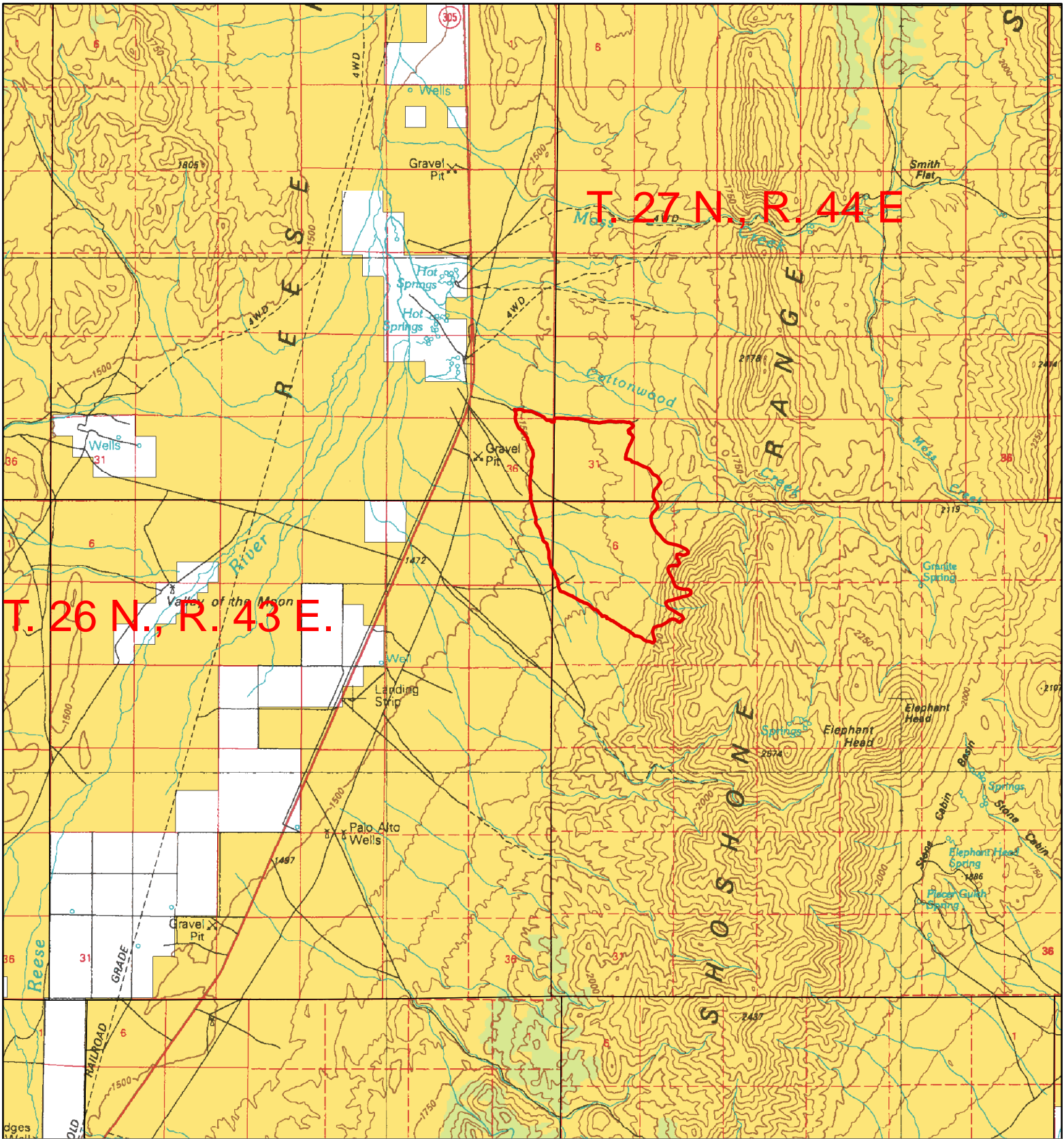
Comment: Concerns for the remaining available forage adequate to support wild horses, and that fences erected could negatively impact the horses or potentially cause death.

Response: The Elephant Fire burned 2,188 acres in the spring of 2007, near the far western edge of the South Shoshone HMA. Inadvertently, the HMA boundary was not included on map enclosed with the public consultation letter concerning the proposed rehabilitation projects. In order to protect the seeded areas from use by livestock or wild horses, the area would be fenced. The fenced area would include approximately 250 acres of the HMA. No waters would be included within the fenced area that would draw wild horse interest. Additionally, the remainder of the 133,000-acre HMA would remain available to wild horses. Currently, a gather is tentatively scheduled for winter 2008 which would bring the existing population to the low AML of 60 wild horses. Specific location of the fenced area, design of the fenced area and gather to reduce the density of the population would ensure that conflicts with rehabilitation do not occur. It is not expected that wild horses will be injured or killed as a result of the rehabilitation fence.

Comment: Comment period should start when the document is received, rather than when the document is mailed.

Response: The public consultation letter sent to the interested public was sent out to give the interested public an opportunity to know what the BMFO is considering in our ES plan. The public consultation letter was not a proposed decision, final decision, or NEPA document. There are no regulatory requirements for defining the length of the comment period for this correspondence. However, the regulations do require that consultation occurs, as the following describes:

- 43 CFR 4120.5-1 “The authorized officer shall, to the extent appropriate, cooperate with Federal, State, Indian tribal and local governmental entities, institutions, organizations, and individuals to achieve the objectives of this part... “
- 43 CFR 4110.3-3 (b) “When continued grazing use poses an imminent likelihood of significant resource damage, after consultation with, or reasonable attempt to consult with, affected permittees or lessees, the interested public, and the State having lands or responsible for managing resources within the area, the authorized officer shall close allotments or portions of allotments to grazing by any kind of livestock or modify authorized grazing use notwithstanding the provisions of paragraph (a) of this section.”
- 43 CFR 4190.1 (a) “ When BLM determines that vegetation, soil, or other resources on the public lands are at substantial risk of wildfire due to drought, fuels buildup, or other reasons, or at immediate damage due to wildfire, BLM may make a rangeland wildfire management decision effective immediately or on a date established in the decision.”






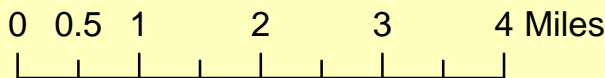
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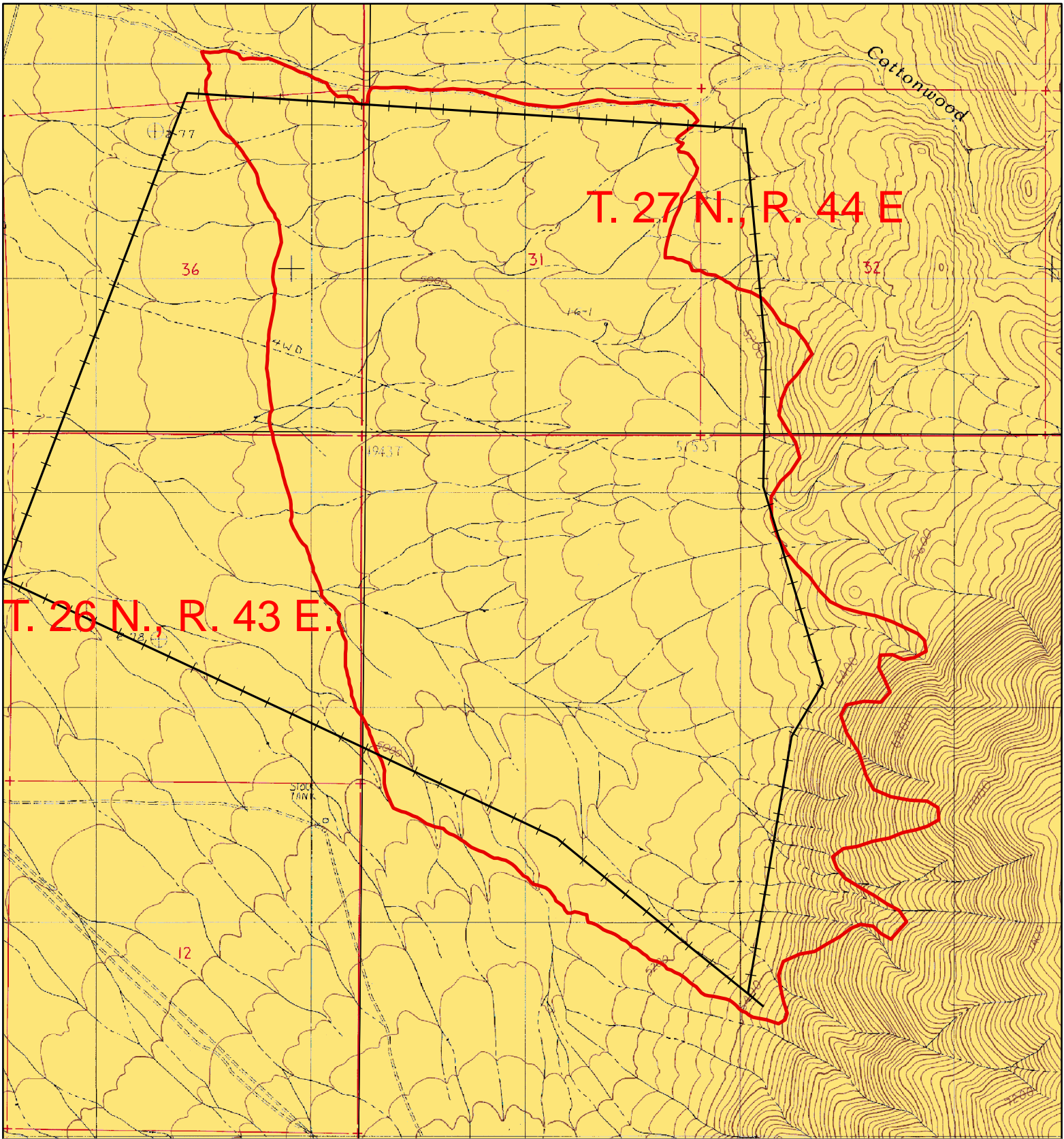
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Data is published in the
 North American Datum 1983
 (NAD83) UTM, Zone 11, Meters
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Legend
Elephant Fire Closure Overview

-  Elephant
-  Public (Administered by BLM)
-  Private


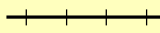

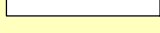




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Legend

Elephant Fire Closure Overview

-  Elephant
-  Closed Elephant Fire Burn Area
-  Public (Administered by BLM)
-  Private

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