

1-31-92

IN REPLY REFER TO.



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

CALIENTE RESOURCE AREA

P.O. Box 237

Caliente, Nevada 89008

In Reply
Refer To:
8300
Olson, Kevin
Grazing Case File
(NV-055)

JAN 31 1992

NO CC
TO Commissioner

CERTIFIED MAIL # P 760 504 476
RETURN RECEIPT REQUESTED

FULL FORCE AND EFFECT DECISION
HENRIE COMPLEX ALLOTMENT

Kevin Olson
P.O. Box 97
Panaca, NV 89042

Dear Mr. Olson:

On August 4, 1989 the U.S. Fish and Wildlife Service (USFWS) listed the Desert Tortoise within its range in the Mojave Desert as endangered under an emergency ruling in the Federal Register Notice, Vol. 54, No. 149 in compliance with the Endangered Species Act of 1973 as amended and 50 CFR 424.20.

On October 13, 1989 the USFWS published a proposed rule in the Federal Register Vol. 54, No. 197, to list the Desert Tortoise as an endangered species within its range in the Mojave Desert.

On April 2, 1990 the USFWS published Rules and Regulations in Federal Register Vol. 55, No. 63 listing the Mojave population of the Desert Tortoise to be a threatened species pursuant to the Endangered Species Act of 1973 as amended.

In accordance with Section 7 (a) titled Federal Agency Actions and Consultations of the Endangered Species Act of 1973 as amended and 50 CFR Sub Part B, 402.14 titled Formal Consultations "Each Federal Agency shall review its actions at the earliest possible time to determine whether any action may affect listed species or critical habitat. If such a determination is made, formal consultation is required..." The BLM has determined that livestock grazing on public lands within desert tortoise habitat is an action that requires formal consultation.

I have met with the Las Vegas District Grazing Advisory Board first on October 17, 1989 and later on a number of occasions during the development of the Las Vegas District's Biological Evaluation for Managing Livestock Grazing in Desert Tortoise Habitat. I requested and received recommendations from permittees that were considered along with monitoring data in the biological evaluation prior to initiating formal Section 7 consultation with the U. S. Fish and Wildlife Service. The Bureau of Land Management, Las Vegas District's Biological Evaluation was submitted to the USFWS on January 23, 1991.

A copy of the Biological Evaluation was mailed on February 12, 1991 with a letter to all affected interests. The letter stated in part that "You are entitled to an opportunity to submit information to the USFWS for consideration during the consultation (50 CFR Section 402.14 (d) (Vol. 51, No. 106, June 3, 1986)."

The *Biological Opinion for the Proposed Livestock Grazing Program Within Desert Tortoise Habitat in Southern Nevada* (File No.: 1-5-91-F-36), herein referred to as the Opinion, was issued on August 14, 1991, by the USFWS. The Opinion stated that "The proposed licensing of livestock within Desert Tortoise habitat in southern Nevada is not likely to jeopardize the continued existence of the Desert Tortoise." The Opinion also stated "In order to be exempt from the prohibitions of Section 9 of the Act, the Bureau must ensure that all allottees/leasees comply with various terms and conditions which implement the reasonable and prudent measures described . . ." in the Opinion.

On October 22, 1991, a copy of the Opinion was sent to all affected permittees by the Caliente Resource Area.

The Bureau of Land Management, Caliente Resource Area staff specialists met with you on December 4, 1991 and discussed alternative management options for livestock grazing on the Henrie and Morrison-Wengert allotments consistent with the Opinion. As a result of that meeting and the consideration of alternatives, this decision reflects those agreed upon management actions which are to be implemented in accordance with the Opinion of August 14, 1991. Those portions of the allotment which are not categorized as Prescription 1 or 2 areas within the Opinion and can not be managed or grazed separately from the prescription areas are included in this decision.

Therefore, based on the opportunities for you to provide comments on this matter, the Opinion dated August 14, 1991, consultation with affected interests, and recommendations from my staff, my Final Decision is to modify your existing Federal Grazing Permit dated September 23, 1989 by eliminating all reference to the Henrie allotment and the Morrison-Wengert allotment. Additionally, it is my Final Decision to combine the Henrie and Morrison-Wengert allotments into one allotment to be known hereafter, as the Henrie Complex allotment and issue a new 10 year Federal Grazing Permit for the Henrie Complex allotment with the Terms and Conditions listed below effective 03/01/92 and expires 02/28/2002. Active Preference for the Henrie Complex allotment totals 3185 AUM's; the sum of Morrison-Wengert allotment Active Preference (2210 AUM's) and Henrie allotment Active Preference (975 AUM's). No changes are being made to the existing Federal Grazing Permit, in this decision, as it relates to the Cottonwood allotment. This Final Decision is to be placed in Full Force and Effect commencing March 1, 1992 in order to be in compliance with Section 7 (a) (2) and (b) (4) of the Endangered Species Act of 1973 as amended.

Your ten year Federal Grazing Permit for the Henrie Complex allotment will be modified as follows:

FROM:

EXISTING FEDERAL GRAZING PERMIT

03/01/85 - 02/28/95

ALLOTMENT NAME	LIVESTOCK NUMBER	LIVESTOCK KIND	SEASON OF USE		PERCENT FEDERAL LAND
			BEGIN DATE	END DATE	
HENRIE	204	CATTLE	03/01	04/30	80
	204	CATTLE	11/01	02/28	80
MORRISON-WENGERT	205	CATTLE	03/01	02/28	90
COTTONWOOD	108	CATTLE	05/01	10/31	100

Active Preference for the Henrie allotment is 975 AUM's.
 Active Preference for the Morrison-Wengert allotment is 2210 AUM's.
 Active Preference for the Cottonwood allotment is 648 AUM's.

TERMS AND CONDITIONS:

Fees are due upon issuance of billings. When billings are issued prior to the grazing season, payment will be made prior to starting grazing use. Application for changes in grazing use must be in written form and be received at the Bureau of Land Management office no later than 15 days prior to the desired date of change. Applications for changes in grazing use filed after the billing notice for the affected grazing use has been issued, and which require the issuance of a replacement billing or supplemental billing notice shall be subject to a ten (10) dollar service charge.

Preference statements will be issued on a yearly basis showing all grazing use as active. If you desire to take all or partial non-use for the grazing year, you must indicate this in writing on your preference statement, along with your reasons for doing so. Any grazing use authorized in excess of your active grazing preference is non-renewable.

TO:

NEW FEDERAL GRAZING PERMIT
 03/01/92 - 02/28/2002

ALLOTMENT NAME	NUMBER OF LIVESTOCK	KIND OF LIVESTOCK	SEASON OF USE		PERCENT FEDERAL LAND
			BEGIN DATE	END DATE	
HENRIE COMPLEX	313	CATTLE	03/01	02/28	85

Active Preference for the Henrie Complex allotment is 3185 AUM's.

**SPECIFIC TERMS AND CONDITIONS
 FOR THE NEW FEDERAL GRAZING PERMIT**

Henrie Complex Allotment

1. Grazing will be permitted in accordance with grazing Prescriptions 1 and 2 identified in the Opinion as amended.
2. Grazing prescription areas within your allotment are delineated on Attachment 1, titled Henrie Complex Allotment Map.
3. Livestock grazing use shall be authorized in the Henrie Complex allotment 06/15 through 02/28 in Prescription 1 and 03/01 through 02/28 in the Prescription 2 area and Non-Prescription area as identified in the following table and Attachment I.

SPECIFIC USE AREAS AND
IDENTIFIED PERIODS OF USE

PRESCRIPTION AREAS ^{1/}	SEASON OF USE	
	BEGIN DATE	END DATE
Prescription 1 ^{2/}	06/15	02/28
Prescription 2 ^{2/}	03/01	02/28
Non-Prescription	03/01	02/28

^{1/} Refer to Attachment I.

^{2/} Prescription 1, Tortoise Habitat Categories I, II, and Intensive III.

^{3/} Prescription 2, Tortoise Habitat Category III non-intensive.

4. All vehicle use in desert tortoise habitat within the Henrie Complex allotment shall be restricted to existing roads and trails.
5. Trash and garbage shall be removed from each camp site that is associated with livestock grazing operations (branding, sheep herding, roundup, etc.) and disposed of off site in a designated facility. No trash or garbage shall be buried at camp sites.
6. Use of hay or grains as a feeding supplemental shall be prohibited in desert tortoise habitat to avoid the introduction of non-native plant species. Mineral, protein and salt blocks are authorized subject to 43 CFR section 4130.6-2(c).
7. The allotment shall include at a minimum the following key species for monitoring purposes where appropriate based upon density and availability: galleta grass (*Hilaria jamesii*) and (*H. rigida*), bush muhly (*Muhlenbergia porteri*), sand dropseed (*Sporobolus cryptandrus*), Indian ricegrass (*Oryzopsis hymenoides*), black grama (*Bouteloua eriopoda*), desert needlegrass (*Stipa speciosa*), range ratany (*Krameria parvifolia*), ephedra (*Ephedra spp.*), white burrobrush (*Hymenoclea salsola*) and winterfat (*Eurotia lanata*).
8. The following table identifies key areas, species and the maximum allowable use levels for specified periods of livestock grazing use, which shall be used at a minimum for monitoring purposes within Prescription 1 and 2 areas in the Henrie Complex allotment. As additional key species and or key areas are determined necessary for monitoring purposes, maximum allowable use levels will be established based upon the conditions as set forth in the Opinion for Prescription 1 and/or 2 areas.

EXISTING KEY AREAS, SPECIES AND ALLOWABLE USE LEVELS

KEY AREA & LEGAL DESCRIPTION	KEY SPECIES	PRESCRIPTION 2	
		10/15 TO 02/28	03/01 TO 10/14
1 T.10S., R.66E., Sec.6 (M-W)	Big galleta grass Nevada ephedra	≤50% ≤45%	≤40% ≤40%

9. The following table identifies the maximum allowable use levels for specified periods of livestock grazing use, which shall be used at a minimum for monitoring purposes within Prescription 1 and/or 2 areas.

ALLOTMENT NAME	PRESCRIPTION	ALLOWABLE USE LEVELS AND USE PERIODS PER GRAZING PRESCRIPTION		
HENRIE COMPLEX	PRESCRIPTION 1	06/15 - 10/14	10/15 - 02/28	03/01 - 06/14
		All Perennial Species - ≤40%	Key Perennial Grasses - ≤50% Key Perennial Shrubs and Forbs - ≤40%	No livestock use will be allowed during this period.
	PRESCRIPTION 2	06/15 - 10/14	10/15 - 02/28	03/01 - 06/14
		All Perennial Species - ≤40%	Key perennial grasses - ≤ 50% Key perennial shrubs & forbs - ≤ 45%	All Perennial Species - ≤40%

10. When the allowable use levels are reached for the Prescription 1 and/or 2 areas, the livestock must be removed from the allotment unless other management alternatives are authorized by the Caliente Resource Area Manager that are consistent with the Opinion and this decision.
11. Adequate livestock control must be provided by existing range improvements within the Henrie Complex allotment to prevent livestock from continually migrating into the Prescription 1 area during the period 03/01 through 06/14. If livestock continually migrate into the Prescription 1 area, the entire allotment will be required to be managed under Prescription 1 until range improvements become available to stop such action.
12. By March 1, 1993 all cattle (six months of age or older at turn out) will be required to be ear tagged by you with BLM issued ear tags. Additionally, you are required to submit a list of ear tag numbered cattle turned out/authorized on the Henrie Complex allotment. The list must be submitted to the Caliente Resource Area office within seven (7) days of turn out. At the end of the authorized grazing period, any ear tag numbers not accounted for, shall be reported to the Caliente Resource Area office within 15 days.

- a. Since your operation is of a year round nature and it would be difficult to ear tag all cattle prior to the March 1, 1992 date, I have extended the date to ear tag all your cattle to March 1, 1993. In order to assure adequate cattle control is provided to prevent cattle from continually migrating into the Prescription 1 area, all cattle found in the Prescription 1 area during the period 03/01/92 through 06/14/92 shall be ear tagged by you with a BLM ear tag. Terms and Conditions number 15 and 16 will then be followed.
13. You are required to remove and return to the Caliente Resource Area office all BLM issued ear tags of cattle shipped/sold. This must be done prior to being issued replacement tags.
 14. Replacement tags for brush loss, unfound death loss, or other unexplained losses will be issued on a case by case basis at the determination of the Caliente Resource Area Manager.
 15. Any livestock found in the Prescription 1 area during the period of 03/01 through 06/14 shall be relocated to the Prescription 2 and/or Non-Prescription area within 72 hours. The ear tag numbers of any cattle found in the Prescription 1 area during the period 03/01 through 06/14 shall be recorded and submitted in writing to the Caliente Resource Area office within five (5) days of being observed.
 16. Any livestock found in the Prescription 1 area during the period of 03/01 through 06/14 and which were previously recorded and relocated to the Prescription 2 and/or Non-Prescription area shall be removed from the Henrie Complex allotment within 72 hours of being observed.
 17. Applications for changes in grazing use must be in written form and be received by the Caliente Resource Area office no later than 15 days prior to the desired date of change.
 18. Applications for changes in grazing use filed after a billing notice has been issued, and which require the issuance of a replacement bill or supplemental bill shall be subject to a ten (10) dollar service charge.
 19. Grazing Applications will be issued on a yearly basis showing all grazing use as active by Prescription 1, 2 and/or Non-Prescription areas. If you desire to take all or partial non-use for the grazing year, you must indicate this in writing on your Grazing Application, along with your reason(s).
 20. A statement of Actual Grazing Use made on the Henrie Complex allotment by grazing Prescription area, 1, 2 and/or Non-Prescription areas must be received in the Caliente Resource Area office no later than 15 days after the last day of authorized grazing use. In the case of year round grazing, this Actual Grazing Use statement must be received in the Caliente Resource Area office no later than March 15th of each year.

I am requesting that you help the Caliente Resource Area manage more effectively by reporting any activities you observe that do not appear to be proper in the desert tortoise habitat. These observations should be reported as soon as possible to the Area Manager of the Caliente Resource Area. Examples of information to be reported includes but are not

limited to sick, dead or hurt tortoises, tortoise shells, destruction of tortoise dens, observations of others willfully driving across the open range without regard to existing roads or jeep trails, harassment of or harming of desert tortoises.

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

4100.0-3: "The authorized officer shall manage livestock grazing on public lands under the principle of multiple use and sustained yield, and in accordance with applicable land use plans. Land use plans shall establish allowable resource uses (either singly or in combination), related levels of production or use to be maintained, areas of use, and resource condition goals and objectives to be obtained. The plans also set forth program constraints and general management practices needed to achieve management objectives. Livestock grazing activities and management actions approved by the authorized officer shall be in conformance with the land use plan as defined at 43 CFR 1601.0-5(b)."

4110.3: "The authorized officer shall periodically review the grazing preference specified in a grazing permit or grazing lease and may make changes in the grazing preference status. These changes shall be supported by monitoring, as evidenced by rangeland studies conducted over time, unless the change is either specified in an applicable land use plan or necessary to manage, maintain or improve rangeland productivity."

4130.2 (c): "Grazing permits authorizing livestock grazing on the public lands and other lands under administration of the Bureau of Land Management shall be issued for a term of 10 years, ".

4130.6: "Livestock grazing permits and leases shall contain terms and conditions necessary to achieve the management objectives for the public lands and other lands under Bureau of Land Management administration."

4130.6-1 (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 carrying capacity as determined through monitoring and adjusted as necessary under CFR 4110.3, 4110.3-1 and 4110.3-2."

4130.6-2: "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."

4130.6-2 (c): "Authorization to use, and directions for placement of supplemental feed, including salt, for improved livestock and rangeland management on the public lands;"

4130.6-2 (d): "A requirement that permittees or lessees operating under a grazing permit or lease submit within fifteen (15) days after completing their annual grazing use, or as otherwise specified in the permit or lease, the actual use made;"

4130.6-3 "Following careful and considered consultation, cooperation and coordination with the lessees, permittees, and other affected interests, the authorized officer may modify terms and conditions of the permit or lease if monitoring data show that present grazing use is not meeting the land use plan or management objectives."

Additional authority is contained within the pertinent sections of the Endangered Species Act of 1973 as amended and in Title 50 of the Code of Federal Regulations, part 402, which identifies the procedures for complying with the Act.

Section 7 (a) (2) of the Act states in part "Each Federal Agency shall, in consultation with and with the assistance of the Secretary, ensure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species"

Under Section 7 (b) (4) (A) of the Endangered Species Act of 1973 as amended, it states in part that the Secretary will offer the Agency after consultation ". . . reasonable and prudent alternatives which the Secretary believes would not violate . . ." Section 7 (a) (2) of the Act.

Title 50 CFR, Sub Part B Section 402.14 (i) (1) (iii) states that the U.S. Fish and Wildlife Service will provide in the Opinion to the Agency requesting a formal consultation a statement that, " Sets forth the terms and conditions . . . that must be complied with by a Federal Agency or any applicant to implement the measures specified" as reasonable or prudent measures.

In the Opinion, Reasonable and Prudent Measure number 5 states "Measures shall be taken to insure compliance with all conditions required in this Biological Opinion."

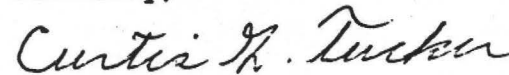
In the terms and conditions of the Opinion for the Proposed Livestock Grazing Program Within Desert Tortoise Habitat in Southern Nevada (File No.: 1-5-91-F-36) it states in part that, "Grazing prescriptions 1 and 2 shall be implemented prior to March 1, 1992, and shall take effect on that date as full force and effect decisions". This decision is placed in Full Force and Effect in order to comply with all provisions of Section 7 of the Act.

In Title 43 CFR 4160.3 (c): states in part: "The authorized officer may place the final decision in full force and effect in an emergency to stop resource deterioration. Full force and effect decisions shall take effect on the date specified, regardless of an appeal".

If you wish to appeal this decision for the purpose of a hearing before a Administrative Law Judge, in accordance with 43 CFR 4160.3 (c), 4160.4, and 4.470, you are allowed thirty (30) days from receipt of this notice within which to file an appeal with the Caliente Resource Area Manager at the following address: Caliente Resource Area, Attn. Area Manager, P. O. Box 237, Caliente, NV 89008.

The appeal shall state the reasons, clearly and concisely, as to why you think this Final Decision is in error.

Sincerely,



Curtis G. Tucker
Area Manager

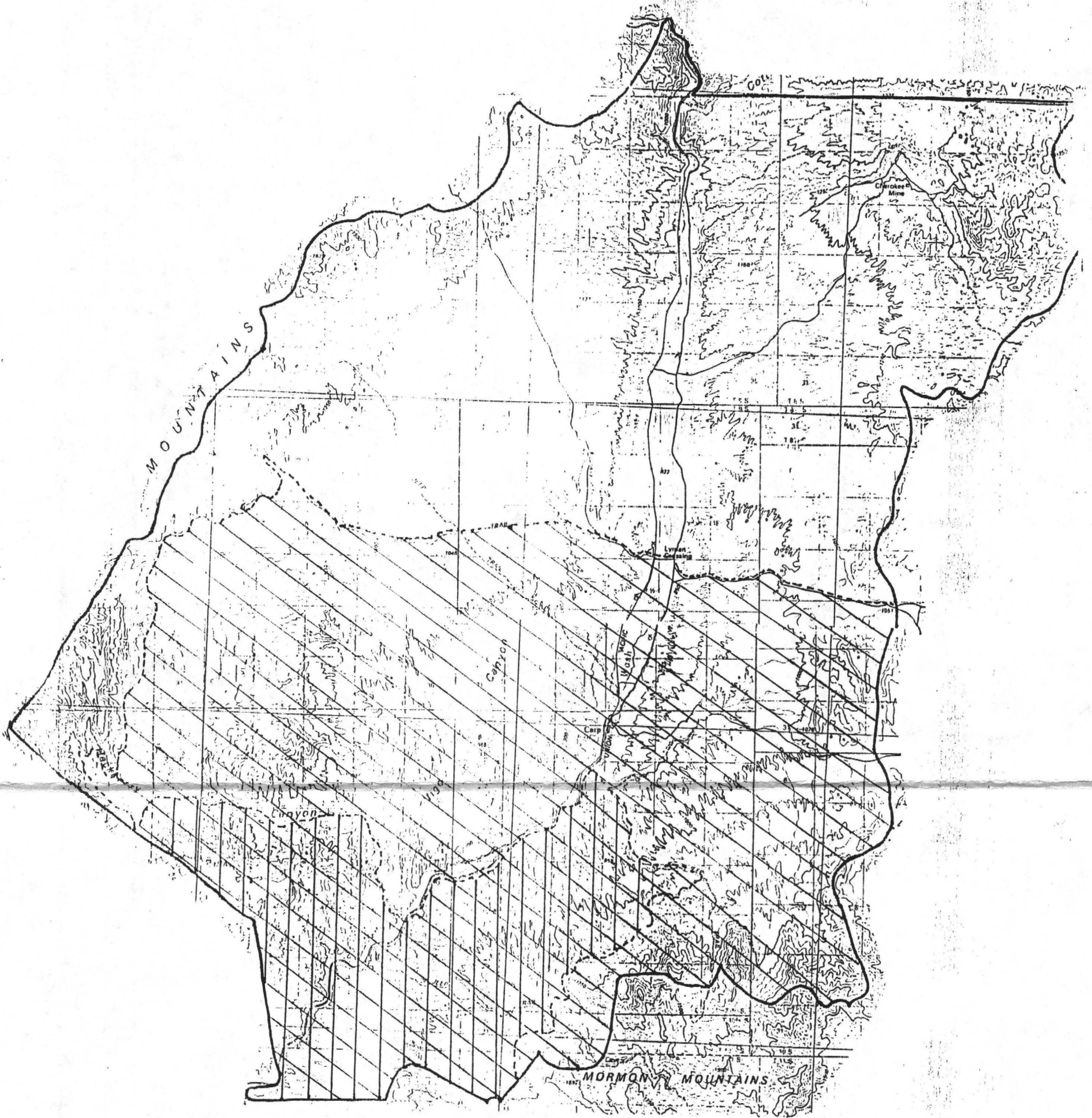
Attachment: Attachment 1, Henrie Complex Allotment Map (1 pp.)

cc:

U.S. Fish and Wildlife Service
Natural Resource Defense Council
Resource Concepts, Inc.
N-5 Board
Sierra Club
Animal Protection Institute of America
Desert Tortoise Council
Nevada Department of Wildlife
Wild Horse Organized Assistance, Inc.
Silver State Pleasure Riders
The Wilderness Society
National Wildhorse Association
Las Vegas District Grazing
Advisory Board

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Certified Mail Number P760504632
Certified Mail Number P760504630
Certified Mail Number P760504631
Certified Mail Number P760504629

ATTACHMENT 1
HENRIE COMPLEX ALLOTMENT



LEGEND

Prescription 1
(Grazing 06/14-03/01)

Prescription 2
(Grazing 03/01-02/28)

Non-Prescription
(Grazing 03/01-02/28)

Prescription
Boundary

Allotment
Boundary

