

# United States Department of the Interior



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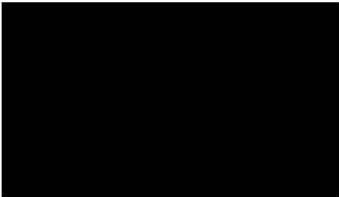


In Reply Refer to:  
4160 (NV010.12)  
Auth No 2702183

DEC 19 2008

## NOTICE OF PROPOSED DECISION

CERTIFIED MAIL NO.7007 2680 0002 2821 4889  
RETURN RECEIPT REQUESTED



Please find enclosed the Finding of No Significant Impacts (FONSI) for the Sand Dunes Allotment permit issuance. The purpose and need for this project is described in the Bloody Run, Sand Dunes, Sand Pass and Scott Springs Allotments Environmental Assessment (EA) No. NV-020-08-EA-11, which is enclosed for your information.

### **BACKGROUND:**

The proposed decision is in conformance with the Bureau of Land Management (BLM) Paradise-Denio Management Framework Plan, MFP III, 1982. This document guides the management of public lands within the Sand Dunes Allotment.

On October 26, 2006, a general scoping letter was sent to interested public for numerous allotments including the Sand Dunes Allotment. One letter was received with general comments relating to all allotments.

On July 30, 2008, the interested public for the Sand Dunes Allotment were notified that the preliminary Environmental Assessment (EA) was available for comment until August 27, 2008. Comments from three parties were received.

After review of specific public comments on the EA, BLM grouped them into five broad categories: (1) Monitoring, (2) National Environmental Policy Act (NEPA)/Planning, (3) Sensitive Species, (4) Water rights and permitting and (5) Outside the Scope of the EA. A summary of the comments in those response categories follows:

**Monitoring** – The majority of comments received on the EA were questions dealing with monitoring.

Available monitoring data were analyzed to determine if the proposed action will allow for attainment of or progress towards meeting the Standards for Rangeland Health. Monitoring criteria and objectives of the proposed action have been brought forward in this proposed decision.

**NEPA/Planning** – Several comments on the EA were made regarding NEPA and the Land Use Plan. One comment stated that the BLM must prepare an Environmental Impact Statement (EIS). Other comments were that the NEPA analysis did not provide a range of alternatives.

The EA for the Bloody Run, Sand Dunes, Sand Pass and Scott Springs Allotments complies with NEPA and associated Council of Environmental Quality regulations (40 CFR 1500-1508). The BLM used a systematic, interdisciplinary approach to evaluate environmental impacts from the proposed action and encourages public participation. In addition, BLM rigorously explored and objectively evaluated reasonable alternatives as required under 40 CFR 1502.14(a). The proposed action and alternatives on BLM administered lands are in conformance with the Paradise-Denio Land Use Plan approved in 1982.

**Sensitive Species** – Some comments were made concerning sensitive species on the allotments.

During the NEPA process, the Winnemucca Field Office requested and received a list of Threatened and Endangered species from the Fish and Wildlife Service. The affected threatened and endangered species as well as BLM sensitive species were addressed and analyzed in the EA.

**Water Rights and Permitting** – A comment was received which provided information about water rights and permitting requirements of new water projects or changes to existing water projects.

No new water projects or changes to existing water projects are included in the proposed action.

**Outside the Scope of the EA** – The majority of the comments were considered outside the scope of the EA. Comments considered outside of the scope dealt with the following issues: Areas of Critical Environmental Concern, Off Road Vehicle (ORV) closures, predator control, West Nile Virus etc.

#### **CHANGES TO THE EA:**

Based on public input and additional staff review, minor modifications have been made to the EA to clarify and explain some points. The following changes were made:

- Corrected error to suspended AUMs
- Updated corporation name of permittee
- Clarified year 3 of Sand Dunes & Sand Pass Allotments proposed grazing system

- Section 2.6 title change from: “Alternative 3, Fencing of Slumbering Hills Use Areas” to “Alternative Considered but Eliminated from Detailed Analysis”
- Corrected No Action sections 4.2.3, 4.2.9 and 4.2.11 to read the same as Proposed Action sections 4.1.3, 4.1.9 and 4.1.11, as was the original intention. This correction had no bearing on the decision to select the proposed action.

None of the changes are substantial enough to warrant additional public review.

#### **DECISION:**

Based upon the NEPA analysis, EA comments, consultation with the permittee and other interested public, and recommendations from my staff, my Proposed Decision is to select the Proposed Action Alternative in its entirety. This decision is in accordance with 43 CFR subpart 4160 and consistent with the FONSI. This decision is as follows:

#### **GRAZING PERMIT:**

A ten year grazing permit, reflecting these modifications to the terms and conditions of the current permit, will be offered upon completion of the decision making process. Existing permit(s) will become null and void when the new permit becomes effective.

#### **SHORT TERM MONITORING CRITERIA AND LONG TERM OBJECTIVES ARE AS FOLLOWS:**

##### **Short Term Monitoring Criteria:**

1. **Cheatgrass Reduction Area within the Sand Dunes Allotment:** Maintain or increase current density of key species Sandberg’s bluegrass (*Poa secunda*).
2. **All areas of the Sand Dunes Allotment (except the Cheatgrass Reduction Area):** The utilization objective for key plant species bluebunch wheatgrass (*Pseudoroegneria spicata* [PSSP6]), Thurber needlegrass (*Achnatherum thurberianum* [ACTH7]), bottlebrush squirreltail (*Elymus Elymoides* [ELEL5]), Indian ricegrass (*Achnatherum hymenoides* [ACHY]), basin wildrye (*Leymus cinereus* [LECI4]) and crested wheatgrass (*Agropyron cristatum* [AGCR]) would be 50% or less for any one key species. Occasional use up to 60% would be acceptable as 41% to 60% use is considered as moderate grazing. Repeated utilization of more than 50% on any one key species would be considered as not meeting the criteria. (Repeated use would be two consecutive grazing seasons.) Fifty percent utilization is described as: half of the available forage (by weight) on key species appears to have been utilized. Fifteen to 25% of current seedstalks would remain intact.

##### **Long Term Objectives**

1. a. Manage, maintain and improve public rangeland conditions on the Sand Dunes Allotment to provide forage on a sustained yield basis for livestock, with initial stocking levels of 3867 AUMs.

- b. Manage for the increase of Sandberg's bluegrass in the Cheatgrass Reduction Area to a density of 10 plants per meter.
- c. Improve native plant diversity and density by a reduction in burned acreage and the eventual reduction of annual grassland.

2. Manage, maintain and improve public rangeland conditions on the Sand Dunes Allotment to provide forage on a sustained yield basis for big game (mule deer and pronghorn antelope), with initial forage demands for mule deer of 90 AUMs.
3. Sagebrush Habitat-Sagebrush Obligates - Maintain and improve sagebrush plant communities on stable soils with structurally diverse shrub component in various age classes (within a stand or among stands across the landscape) with vigorous, diverse, self-sustaining understory of native grasses and forbs based on ecological site potential.

**LIVESTOCK MANAGEMENT WILL BE AS FOLLOWS:**

<b>Permittee</b>	<b>Permitted Use</b>	<b>Suspended</b>	<b>Active Preference</b>
Mike McNinch	184	0	184

<b>Livestock Number</b>	<b>Dates</b>	<b>% Public Land</b>	<b>AUMs</b>
22	03/01 to 07/31	100	111
22	11/20 to 02/28	100	73

**Sand Dunes Grazing System**

Well or Use Area Name**	Year	Livestock #s	Season of Use
Fatboy Well	every	4	10/01-04/15
Atlasta Well	every	4	10/01-04/15
Barrett Well/Spring	1	4	10/01-04/15
	1	22	04/16-04/30
	<b>1</b>	<b>22</b>	<b>05/01-05/15</b>
	2	4	10/01-04/15
	2	22	04/16-04/30
	3	4	10/01-04/15
	3	22	04/16-04/30
	<b>3</b>	<b>22</b>	<b>05/01-05/15</b>
Abel Flat Well	1*	5	10/01-04/15
	2	5	10/01-04/30
Kelley Well	1*	5	10/01-04/30
	2	5	10/01-04/15
Silverstate Well	1*	11	05/16-06/30
	1*	5	07/01-08/31
	2	6	07/01-08/31
Harney County Well	1*	5	07/01-08/31
	2	11	05/16-06/30
	2	6	07/01-08/31
Slumbering Hills North	1*	6	07/01-08/31
	2	11	05/16-06/30
	2	5	07/01-08/31
Slumbering Hills South	1*	11	05/16-06/30
	1*	6	07/01-08/31
	2	5	07/01-08/31
*Will be repeated as year 3 in this use area.			
**See Map 3 of EA (NV-020-08-EA-11) for location of Sand Dunes Allotment use areas.			
<b>Bolded numbers indicate cheatgrass reduction treatment.</b>			

**TERMS AND CONDITIONS ARE AS FOLLOWS:**

**Required Terms and Conditions**

The terms and conditions of the permit will be modified if additional information indicates that revision is necessary to conform to 43 CFR 4180 as supplemented by the Sierra Front - 9/8/2006 Northwestern Great Basin Resource Advisory Council Standards for Rangeland Health and Guidelines for Grazing Management.

The authorized officer reserves the authority to make modifications to the annual grazing authorization that are consistent with the Standards for Rangeland Health, and allotment specific objectives, and are NEPA compliant.

With the exception of salt or mineral blocks, supplemental feeding is not authorized on public lands unless prior approval is requested and given by the authorized officer.

Salt and/or mineral blocks shall not be placed within one quarter (1/4) mile of water sources, springs, streams, meadows, riparian habitats, or aspen stands.

The permittee is required to install bird ladders in water toughs; BLM would provide the bird ladders.

The permittee is required to perform normal maintenance on the range improvements as per their signed Cooperative Agreements/Section 4 Permits prior to turning out in a pasture or use area scheduled for livestock use.

The permittee's certified actual use report, by pasture/use area, is due 15 days after the end of the authorized grazing period.

Pursuant to 43 CFR 10.4(g), the holder of this authorization must notify the authorized officer, by telephone, with written confirmation, immediately upon the discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony (as defined at 43 CFR 10.2). Further, pursuant to 43 CFR 10.4(c) and (d), you must stop activities in the immediate vicinity of the discovery and protect it from your activities for thirty (30) days or until notified to proceed by the authorized officer.

No livestock grazing is authorized in any enclosure, unless the authorized officer authorizes a grazing prescription to meet specific resource objectives.

Livestock will be trailed in a timely manner between use areas with a minimal amount of drift.

Dates may be modified up to two weeks on either side of the permit dates provided the authorized annual AUMs are not exceeded.

#### **Temporary Non-Renewable (TNR) Use:**

When it is determined that additional forage is temporarily available for livestock, the authorized officer may authorize use on a nonrenewable basis. Temporary nonrenewable use, if granted, will be based on monitoring and the estimated forage production for the year. TNR would be limited to 18 AUMs, which is 10% of the active preference. The permittee will be required to meet the short term monitoring criteria and must meet or make progress towards the SRH and long term objectives.

#### **RATIONALE:**

The proposed grazing system is very similar to the system currently in place. The only change would be an approximate two-week extension of use in an area which is referred to as the "Cheatgrass Reduction Area" and a two-week reduction of use in the area to which the livestock would then move. Most areas in this allotment will receive rest during the critical growth period every other year. The Cheatgrass Reduction Area would receive rest one in three years. Over

time, the additional grazing pressure to cheatgrass within the Cheatgrass Reduction Area should favor the success of and increased density of Sandberg's bluegrass while reducing cheatgrass.

Sand Dunes Allotment has limited riparian areas (springs). These springs are scattered throughout the Slumbering Hills. The proposed grazing system provides as much deferred use as practicable. It is expected that this grazing system will continue to improve habitat conditions and rangeland health throughout the vast majority of this allotment.

As a result, I have determined that the approved objectives and management system are in conformance with the Standards and Guidelines for Rangeland Health developed by the Sierra Front - Northwestern Great Basin Resource Advisory Council, approved by the Secretary of the Interior on February 12, 1997.

Section 102 (7) of the Federal Land Policy and Management Act of 1976 states: ".....and that management be on the basis of multiple use and sustained yield unless otherwise specified by law;" The preamble to The Taylor Grazing Act of June 28, 1934 states: "An Act to stop injury to the public grazing lands by preventing over-grazing and soil deterioration, to provide for their orderly use, improvement, and development, to stabilize the livestock industry dependent upon the public range, and for other purposes." The current land use plan identifies grazing as one of the multiple uses of the public lands within this allotment. This plan meets all of these requirements and balances the use and sustained yield of the resources present within the allotment.

This decision is in conformance with the Paradise –Denio Management Framework Plan, and is consistent with federal, state and local laws, regulations, and plans to the maximum extent consistent with federal law.

### **Short Term Monitoring Criteria and Long Term Objectives**

The short-term monitoring criteria are intended to be used to indicate whether grazing management is expected to result in progress towards long-term objectives. It is appropriate to use short-term monitoring criteria:

- In conjunction with long-term objectives and/or the Standards for Rangeland Health in evaluating the results grazing management over time,
- To make annual changes in grazing management as needed to facilitate progress towards meeting long-term objectives and/or the Standards for Rangeland Health, and/or,
- As triggers to remove livestock or leave in a use area longer during the grazing season.

The 50% vegetation utilization objective was maintained since the grazing system provides rest from livestock grazing during the critical growing periods. This grazing system will result in meeting SRH.

The rationale for the objectives include balancing multiple use management with the resources in compliance with the existing laws, regulations, policies and land use plans.

## **Livestock Management**

The selected grazing management system meets the needs of the permittee for a sustainable livestock operation without unduly or unnecessarily impacting other resources and uses. The system provides the maximum amount of flexibility that I am convinced will protect other resources on the allotment. The terms and conditions are either required by regulation, policy or were identified in the EA as necessary to protect resource values.

## **Terms and Conditions**

Supplemental feeding without authorization is prohibited by 43 CFR 4140.1(a)(3), however, salt and mineral blocks, that are required for livestock survival, are not considered as supplemental feeding and are authorized as a term and condition in accordance with 4130.3-2(c).

Salt and/or mineral blocks are a tool used to distribute livestock throughout the allotment. These blocks will also leach into the soil creating an environment that is not conducive to growing vegetation. Therefore, they must be placed at least 1/4 mile away from water sources, springs, streams, meadows, riparian habitats, or aspen stands.

The operator must maintain bird ladders in all water troughs on public land in order to comply with the Migratory Bird Act. BLM will supply these ladders in an effort to minimize the impact of this requirement on the permittee.

Repair and maintenance of range improvement projects, especially water developments, is crucial to the success of this grazing system. The operator is expected to perform this maintenance where they have an approved cooperative agreement or range improvement project authorization.

Reporting of actual use is critical in analyzing monitoring data and making decisions to adjust livestock numbers or season of use.

The requirement to stop work and call the BLM immediately if human remains, funerary objects, sacred objects, or objects of cultural patrimony are discovered is in compliance with 43 CFR 10.4(g) and is included here so the permittee will be aware of that requirement.

Exclosures were constructed on allotments to keep livestock out of areas with resource concerns; therefore, no livestock grazing is authorized in any exclosure. If it is determined at a later date, that a livestock grazing prescription may be needed to meet a specific resource objective, livestock grazing may be authorized after appropriate NEPA has been completed.

Timely movement of livestock and minimal drift is necessary in order to achieve resource management criteria and objectives.

A two-week flexibility on either side of the permit dates will allow for better resource management based on range readiness factors such as state of plant growth, soil moisture and condition of meadows and weather conditions, such as cold temperatures or snow accumulation. Implementation of this flexibility must be coordinated and authorized annually by the BLM in advance.



## **Temporary Non-Renewable Use**

Temporary nonrenewable (TNR) grazing permits or leases may be issued on an annual basis to qualified applicants when forage is temporarily available, provided this use is consistent with multiple use objectives and does not interfere with existing livestock operations on public lands. (43 CFR 4110.3-1 and 4130.6-2) Approval of TNR use will be based on available forage and the requirements to continue to: 1) meet the short term monitoring criteria and 2) meet or be making progress in meeting SRH and long term objectives. Under these requirements no undue impacts were identified in the EA. This decision will give the BLM the needed flexibility to approve the use of these AUMs without conducting additional NEPA.

## **FUTURE MONITORING AND GRAZING ADJUSTMENTS:**

The Humboldt River Field Office will continue to monitor the Bloody Run Allotment. The monitoring data will continue to be collected in the future to provide the necessary information for subsequent evaluations. These evaluations are necessary to determine if the SRH as expressed by the allotment specific objectives are being achieved under the new grazing management strategy. In addition, these subsequent evaluations will determine if adjustments are required to meet the established allotment specific objectives and standards.

## **AUTHORITY:**

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

§4100.0-8 “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.”

§4120.3-1(a) “Range improvements shall be installed, used, maintained, and/or modified on the public lands, or removed from these lands, in a manner consistent with multiple-use management.”

§4130.2(a) “Grazing permits or leases shall be issued to qualified applicants to authorize use on the public lands and other lands under the administration of the Bureau of Land Management that are designated as available for livestock grazing through land use plans. Permits or leases shall specify the types and levels of use authorized, including livestock grazing, suspended use, and conservation use. These grazing permits or leases shall also specify terms and conditions pursuant to §§ 4130.3, 4130.3-1, and 4130.3-2.”

§4130.2(b) “The authorized officer shall consult, cooperate and coordinate with affected permittees or lessees, the State having lands or responsible for managing resources within the area, and the interested public prior to the issuance or renewal of grazing permits and leases.”

§4130.2(c) “Grazing permits or leases convey no right, title, or interest held by the United States in any lands or resources.”

§4130.3 "Livestock grazing permits and leases shall contain terms and conditions determined by the authorized officer to be appropriate to achieve the management and resource condition objectives for the public lands and other lands administered by the Bureau of Land Management, and to ensure conformance with the provisions of subpart 4180 of this part."

§4130.3-1(a) "The authorized officer shall specify the kind and number of livestock, the period(s) of use, the allotment(s) to be used, and the amount of use, in animal unit months, for every grazing permit or lease. The authorized livestock grazing use shall not exceed the livestock carrying capacity of the allotment."

§4180.1(a) "Watersheds are in, or are making significant progress toward, properly functioning physical condition, including their upland, riparian-wetland, and aquatic components; soil and plant conditions support infiltration, soil moisture storage, and the release of water that are in balance with climate and landform and maintain or improve water quality, water quantity, and timing and duration of flow."

§4180.1(b) "Ecological processes, including the hydrologic cycle, nutrient cycle, and energy flow, are maintained, or there is significant progress towards their attainment, in order to support healthy biotic populations and communities."

§4180.1(c) "Water quality complies with State water quality standards and achieves, or is making significant progress towards achieving, established BLM management objectives such as meeting wildlife needs."

§4180.1(d) " Habitats are, or are making significant progress toward being, restored or maintained for Federal threatened and endangered species, Federal Proposed, Category 1 and 2 Federal candidate and other special status species."

**PROTEST:**

In accordance with 43 CFR 4160.2, any applicant, permittee, lessee or other interested public may protest the proposed decision under 4160.1 of this title in person or in writing to the authorized officer, Robert J. Edwards, Manager, Humboldt River Field Office, Bureau of Land Management, 5100 East Winnemucca Boulevard, Winnemucca, NV 89445, within 15 days after receipt of such decision. The protest, if filed, must clearly and concisely state the reason(s) why the protestant thinks the proposed decision is in error.

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

In accordance with 43 CFR 4160.3 (b), Upon the timely filing of a protest, the authorized officer shall reconsider her/his proposed decision in light of the protestant's statement of reasons for protest and in light of other information pertinent to the case. At the conclusion to her/his review of the protest, the authorized officer shall serve her/his final decision on the protestant or her/his agent, or both, and the interested public.

## **APPEAL:**

In accordance with 43 CFR 4.470, 4160.3(c), 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 the date the proposed decision becomes final or 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 4160.3(c), an appellant 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 the date the proposed decision becomes final or 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 Robert J. Edwards, Manager, Humboldt River Field Office, Bureau of Land Management, 5100 East Winnemucca Boulevard, Winnemucca, NV 89445. 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:

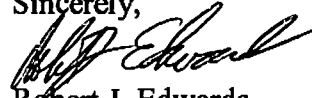
- (1) The relative harm to the parties if the stay is granted or denied;
- (2) The likelihood of the appellant's success on the merits;
- (3) The likelihood of immediate and irreparable harm if the stay is not granted; and,
- (4) Whether the public interest favors granting the stay.

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 stay may file with the Hearings Division in Salt Lake City, Utah, 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 to the petition, 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,



Robert J. Edwards  
Manager  
Humboldt River Field Office

Enclosure  
cc: See attached list