



# United States Department of the Interior



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In Reply refer To:  
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## NOTICE OF FINAL DECISION

*Grazing Permit Renewal for the Mormon Well Allotment  
Environmental Assessment DOI-BLM-AZ-A010-2017-0039-EA*

### INTRODUCTION

A Notice of Proposed Decision (NOPD) and Finding of No Significant Impact (FONSI) were signed November 21, 2019 for the Grazing Permit Renewal for the Mormon Well Allotment. Western Watersheds Project (WWP) received notification of the NOPD on November 22, 2019. The Bureau of Land Management (BLM) received a timely protest to the NOPD from WWP on December 12, 2019 (postmarked December 9, 2019).

The protest reasons are addressed below in the section titled “Response to Protest Statements of Reasons”. Addressing the protest reasons did not cause substantive changes to the Environmental Assessment (EA) analysis; however, additional narrative (for clarification purposes) was added to the EA and a new FONSI was signed. The specific changes to the EA are noted in the Response to Protest Statements of Reason below.

After considering the protest reasons, this Notice of Final Decision (NOFD) is the final administrative step in the land health evaluation and permit renewal process for the Mormon Well Allotment (AZ04844). The final decision is to issue new ten-year term grazing permits with new terms and conditions for the Mormon Well Allotment, as described in the “Decision” section below.

### BACKGROUND

The Taylor Grazing Act of 1934 and the Federal Land Policy and Management Act of 1976 provide for livestock grazing use of the public lands that have been classified as available for grazing. Grazing use must be consistent with good range management aimed at conservation and protection of the natural and cultural resources.

An assessment of this allotment was conducted in accordance with directions set forth by the Washington Office and Arizona State Office for implementation of the Arizona Standards for Rangeland Health and Guidelines for Grazing Administration. The purpose of the Arizona Standards and Guidelines is to ensure the health of public rangelands. These standards help the Bureau of Land Management (BLM), rangeland users, and interested members of the public achieve a common understanding of acceptable resource conditions and work together to implement that vision. Arizona's Standards for Rangeland Health and Guidelines for Grazing Administration were developed by the BLM State Standards and Guidelines Team and the Arizona Resource Advisory Council (RAC), a state level council appointed by the Secretary of the Interior. The Secretary of the Interior approved the Standards and Guidelines for Arizona in April 1997, and the BLM State Director mandated full implementation of the Standards and Guidelines in all Arizona land use plans.

The permittees, RAC, Interdisciplinary Assessment Team (IAT), Rangeland Resource Team (RRT), and the interested public were invited to an issue scoping meeting for the Mormon Well Allotment on February 26, 2008 and a field visit on November 18, 2008. In February and May 2010, BLM resource staff and staff from the U.S. Fish and Wildlife Service (USFWS) made field visits to allotments within desert tortoise habitat (including this allotment) to assess resource conditions and discuss desired vegetative communities for the Mojave Desert tortoise. The results of these discussions are incorporated into the desired plant community objectives developed for the allotment, as well as in making recommendations on whether resource conditions were meeting the standards for rangeland health. The land health evaluation for the Mormon Well Allotment was completed on July 11, 2011. The IAT also reviewed conditions on the Mormon Well Allotment and recommended that the allotment was meeting Standard #1 and partially meeting Standard #3. All soils objectives were met. Livestock grazing was not identified as the causal factor for not fully meeting applicable standards for rangeland health in this allotment. This allotment contains a riparian area, in the Mormon Well area of Beaver Dam Wash, which includes a large cottonwood gallery, although recent hydrological changes in the area have led to rapid loss of riparian vegetation. The riparian habitat that is present is located on private and state land; the portion of Beaver Dam Wash which occurs on federal land (the very northern end) is dry most of the year and non-riparian due to water withdrawals for the private land. The Arizona Standards and Guidelines provide an exemption to Standard #2 (Riparian/Wetland Sites) for areas with water withdrawals "permitted for construction, mining, or other similar activities" and that therefore do not provide for riparian or wetland habitat. Water from Beaver Dam Wash is withdrawn from the creek via water wells for livestock watering, as a private water source, and for domestic and irrigation uses. Thus, this area is not by definition a wetland/riparian area, so Standard #2 is not applicable on this allotment.

Monitoring data has continued to be collected (see Appendix C and Table 3.2 in the EA) since the original allotment assessment was completed, and the 2011 land health evaluation has been updated. Based on analyses of the updated allotment monitoring data and supporting documentation contained in the evaluation report, resource conditions on the allotment are continuing to make progress toward meeting applicable standards for rangeland health.

Public involvement for the Mormon Well Allotment permit renewal process began with the scoping meetings and field visits described above. The land health evaluation was conducted by an interdisciplinary team of BLM resource specialists, assisted by the RRT appointed by the Arizona RAC. A Draft evaluation was sent out for public review and comment to individuals, groups, and agencies. Comments were incorporated into the final land health evaluation reports.

Comments received in response to the completion of the land health evaluation were also incorporated into the environmental assessment process as scoping comments (see EA Appendix H). The EA reflects the analysis of the proposed grazing permit renewals. A preliminary EA was posted on the BLM ePlanning

web page on April 1, 2019 for review; a notice of public comment period letter was sent to those persons and groups listed on the Arizona Strip interested publics mailing list notifying them of the availability of the preliminary EA for a 30-day review and comment period. All comments received during development of the preliminary EA were considered and incorporated in the final EA (EA Appendix H).

Formal consultation under Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) was initiated on April 19, 2019. This consultation concerned the possible effects of renewing the grazing permits for the Beaver Dam Slope and Mormon Well Allotments on Mojave Desert tortoise, southwestern willow flycatcher, and yellow-billed cuckoo. The Biological Opinion (USFWS Biological Opinion 02EAAZ00-2019-F-0543), issued on August 29, 2019, states that the action, as proposed, is not likely to jeopardize the continued existence of the Mojave desert tortoise, and is not likely to destroy or adversely modify designated critical habitat for Mojave desert tortoise. See EA Appendix J for this Biological Opinion. Applicable desert tortoise conservation measures from 2007 RMP Biological Opinion for the Arizona Strip BLM Resource Management Plan (22410-2007- F-0463) were incorporated into the current Biological Opinion. The USFWS concurred with the BLM's determination that the proposed action "may affect, but is not likely to adversely affect" the Virgin chub and its critical habitat, the woundfin and its critical habitat, the Virgin spinedace, the southwestern willow flycatcher and its critical habitat, and the yellow-billed cuckoo and its proposed critical habitat.

The EA (DOI-BLM-AZ-A010-2017-0039-EA) analyzes the potential effects of the proposed grazing permit renewals in accordance with the National Environmental Policy Act (NEPA) and other relevant federal and state laws and regulations.

The Bureau of Land Management (BLM) received a timely protest to the Notice of Proposed Decision for the Grazing Permit Renewals for Beaver Dam Slope and Mormon Well Allotments Environmental Assessment (DOI-BLM-AZ-A010- 2017-0039-EA) on December 12, 2019 (postmarked December 9, 2019). The BLM has carefully considered each protest statement of reasons as to why the proposed decision was in error and has responded to each reason below.

#### **RESPONSE TO PROTEST STATEMENTS OF REASONS CONCERNING THE MORMON WELL ALLOTMENT:**

***Protest Reason A01: The BLM states that the 2011 land health evaluation of the Mormon Well allotment found Standard #1 was met and that Standard #3 was partially met. Notice of Proposed Decision (NOPD) at 2. WWP notes that this analysis is problematic because the evaluation is outdated.***

#### **Response to A01:**

An assessment of the Mormon Well Allotment was conducted in accordance with directions set forth in the Washington Office and Arizona State Office for implementation of the Arizona Standards for Rangeland Health and Guidelines for Grazing Administration. The purpose of the Arizona Standards and Guidelines is to ensure the health of public rangelands. These standards help the Bureau of Land Management (BLM), rangeland users, and interested members of the public achieve a common understanding of acceptable resource conditions and work together to implement that vision. Arizona's Standards for Rangeland Health and Guidelines for Grazing Administration were developed by the BLM State Standards and Guidelines Team and the Arizona Resource Advisory Council (RAC), a state level council appointed by the Secretary of the Interior. The Secretary of the Interior approved the Standards and Guidelines for Arizona in April 1997, and the BLM Arizona State Director mandated full implementation of the Standards and Guidelines in all Arizona land use plans.

The permittees, the RAC, Interdisciplinary Assessment Team (IAT), Rangeland Resources Team (RRT),

and the interested public were invited to an issue scoping meeting for the allotment on February 26, 2008, followed by a field visit on November 18, 2008. At the conclusion of the field visit, the group that attended the allotment tour provided their opinions on the status of rangeland health in the Mormon Well Allotment. In February and May 2010, BLM resource staff and staff from the U.S. Fish and Wildlife Service (USFWS) made field visits to allotments within desert tortoise habitat (including this allotment) to assess resource conditions and discuss desired vegetative communities for the Mojave Desert tortoise. The results of these discussions are incorporated into the desired plant community (DPC) objectives developed for this allotment, as well as in making recommendations on whether resource conditions were meeting the standards for rangeland health. The land health evaluation for the allotment was completed on July 11, 2011. The rangeland health evaluation of the Mormon Well Allotment showed all key areas were meeting Standard #1 (Upland Sites); all soils objectives were met. Key Areas #1 and #2 were meeting Standard #3 (Desired Resource Conditions). Key Area #3 was partially meeting Standard #3 because of the low composition of perennial grasses and forbs. The site potential for a high composition of perennial grass is low at this key area and may not be attainable. The IAT determined that livestock grazing was not the causal factor for partially meeting DPC (Standard #3) objectives and that current livestock grazing would not be a factor in the areas achieving DPC objectives. No significant impacts to soils or vegetation were noted during the field visits in connection with the evaluation.

Monitoring data (pace-frequency, composition, and utilization) has continued to be collected since the original allotment assessment was completed, and the 2011 land health evaluation has been updated. The updated evaluation reports include the updated trend, utilization, ecological condition, and desired plant community objectives determinations tables based on the most recent monitoring data for each key area (see EA Appendix C). In summary, the ecological condition for Key Areas #1 and #2 is late seral, one with an upward trend and the other has a static trend. Key Area #3 is PNC with an upward trend. Overall the allotment is in good condition. Based on analyses of the updated allotment monitoring data and supporting documentation, the determination made in the 2011 evaluation report (that Standard #1 is being met, and Standard #3 is being partially met due to the low composition of perennial grasses and forbs, with livestock grazing not the causal factor for partially meeting the standard) is still accurate.

***Protest Reason A02:*** *The BLM states that “livestock grazing was not identified as a causal factor for not fully meeting applicable standards for rangeland health” in Mormon Well allotment. Id. The BLM apparently did not evaluate Standard #2 because, while there are riparian areas on the allotment, “hydrological changes in the area have led to rapid loss of riparian vegetation” and “the portion of Beaver Dam Wash which occurs on federal land (the very northern end) is dry most of the year and non-riparian due to water withdrawals for the private land.” Id. This water is withdrawn for livestock watering. Id. Yet, the BLM states that this area is exempt from Standard #2 because the Standards and Guidelines provide an exemption to meeting this standard for areas with water withdrawals permitted for construction, mining, or other similar activities. Id. However, this exemption does not apply to water withdrawn for livestock use.*

***Response to A02:*** Contrary to this protest reason, the exemption in the Arizona Standards for Rangeland Health for Standard #2 does apply in this case. Per the Arizona Standards and Guidelines, an exemption to Standard #2 (Riparian/Wetland Sites) is provided for areas with water withdrawals “permitted for construction, mining, or other similar activities” and that therefore do not provide for riparian or wetland habitat. An exemption for Standard #2 is also provided for “Dirt tanks, wells, and other water facilities constructed or placed at a location for the purpose of providing water for livestock and/or wildlife and which have not been determined through local planning efforts to provide for riparian or wetland habitat”. All areas that would qualify as riparian habitat under the RMP definition and in accordance with the Arizona Standards for Rangeland Health are located on state and private lands. The Beaver Dam Wash/Virgin River confluence, which is the only riparian area on federal lands in proximity to Mormon Well (see RMP Map 3.2), is approximately 2.5 miles south of the allotment boundary. Water from Beaver Dam Wash is

withdrawn from the creek via water wells for livestock watering, as a private water source, and for domestic and irrigation uses. Thus, this area is not by definition a wetland/riparian area, so Standard #2 is not applicable on this allotment. Additional clarifying language has been added to Section 3.2.2 of the EA on this subject.

***Protest Reason A03:*** *The BLM erred by failing to evaluate Standard #2 [for the Mormon Well Allotment]. BLM has made an illogical conclusion that no riparian areas exist on the allotment because they have been destroyed by water withdrawals made for livestock, and therefore Standard #2 does not need to be evaluated and therefore livestock are not harming the allotment. The exemption cited by BLM does not apply and therefore BLM should have evaluated riparian areas and whether livestock grazing was impairing proper functioning condition.*

**Response to A03:** See response to Protest Reason A02.

***Protest Reason B01:*** *The Biological Opinion is Based on Flawed Information Provided by BLM. The BLM told the U.S. Fish and Wildlife Service (USFWS) that “[t]here is no proposed increase or decrease in the amount of livestock placed on either of these allotments.” 2019 USFWS Biological Opinion (BiOp) at 3. WWP notes that this is not actually (physically) correct. As we stated in our prior comments the past history of non-use of these allotments (for five of the past ten years), or as the BLM prefers (and with which WWP disagrees) “actual use” of sometimes as little as eleven percent, does indicate that the proposed AUM authorization will result in an actual increase in use.*

**Response to B01:** As stated in the response to comments on the preliminary EA, it is incorrect to state that the past history of non-use of these allotments “indicates that the proposed AUM authorization will result in an actual increase in use.” The proposed new grazing permit would authorize the same situation as is currently occurring. The argument provided by WWP is flawed because the existing grazing permits allow full use of active AUMs (total authorized AUMs would stay the same, with actual use depending on vegetative condition on the allotments, as is currently the case). USFWS was provided this information (actual use over the past 10 years and proposed active AUMs for the new grazing permits) in the Biological Assessment.

***Protest Reason C01:*** *The BLM is precluded from a Finding of No Significant Impact (FONSI) for this project because: the vast area of land impacted by this decision – more than 48,000 acres – is entirely within the Beaver Dam Slope critical habitat unit for the Mohave Desert tortoise (see 2019 Biological Opinion of the U.S. Fish and Wildlife Service for this project); the 2017 rangewide monitoring data for the tortoise was just 1.3 tortoises per square kilometer, which is the lowest across its range and a significant decrease from 2016 (Id.); the impacts to the Mojave Desert tortoise are significant and require the more thorough environmental evaluation found in an Environmental Impact Statement (EIS); the population of Mojave Desert tortoise is likely declining; past wildfires have put the habitat for the tortoise at risk (see BLM statement in the EA at 146, response to comment EA 34); the allotments have cryptogamic soils that are damaged by livestock use, compromising habitat for the Mohave Desert tortoise and subjecting the soils to erosion in violation of the Resource Management Plan for the project area (see EA at 147, response to comment EA 37. Furthermore, there are other threatened and endangered species and their critical habitat found on these allotments including the southwestern willow flycatcher, the yellow-billed cuckoo, the Virgin chub, and the endangered woundfin.*

**Response to C01:** The effects of livestock grazing on public lands in the arid west are not unknown or uncertain. Effects that involve unique or unknown risks are not expected as the effects of livestock grazing on the Arizona Strip Field Office, including the Mojave Desert (and elsewhere in the western U.S.) are well known and well documented. The proposed action is therefore not unique or unusual and no highly

uncertain risks to the human environment were identified during analysis of the proposed grazing permit renewals.

It should be noted that while the two allotments addressed in the EA and the FONSI/NOFD are entirely within the Beaver Dam Slope critical habitat unit (CHU) for the Mojave desert tortoise, the total action area (both allotments) accounts for just 16 percent of the critical habitat containing primary biological features (PBFs) of desert tortoise critical habitat available to tortoises in the CHU, and approximately one-half percent of the modeled tortoise habitat containing PBFs range wide. While wildfires burned approximately 11 percent of the critical habitat in the Northeast Mojave Recovery Unit, no large wildfires have occurred on either the Beaver Dam Slope or Mormon Well Allotment during the period of 1980-2017; of the 20 recorded fires, most were less than an acre in size. Vegetation in the allotments has not been affected by these wildfires. In addition, the updated land health evaluations determined that Standard #1 (Upland Sites) is being met on both allotments. Standard #3 (Desired Resource Conditions) is being partially met on both allotments – livestock grazing was not determined to be the causal factor for partially meeting desired plant community (Standard #3) objectives and that current livestock grazing would not be a factor in the areas achieving these objectives. It is unclear why the estimated density of desert tortoises in the Beaver Dam Slope CHU declined in 2017. We do not believe it is due to livestock grazing since both allotments are in good ecological condition. As described in Appendix B of the EA, ecological conditions on the Beaver Dam Slope Allotment range from mid seral, late seral and potential natural community (PNC), which is a very stable condition. Two key areas are rated as PNC with a static trend showing that they are in a stable state at the upper end of their potential plant composition according to the applicable ecological site guide; one key area is late seral with an upward trend; and one key area is mid-seral with an upward trend. As described in Appendix C of the EA, ecological conditions on the Mormon Well Allotment range from late seral to PNC. One of the key areas is late seral with an upward trend, one is late seral with a static trend, and one is PNC with and upward trend. The plant communities present on both allotments are in accordance with the Natural Resources Conservation Service ecological site guides. The current functional groups of plants provide habitat for desert tortoise and other wildlife species – management is in place (including utilization levels and season of use) that will help ensure the native Mojave Desert plant species are maintained in the plant community, which will ensure perennial forage and provide cover for desert tortoise and other wildlife.

Formal consultation under Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) was initiated on April 19, 2019. This consultation concerned the possible effects of renewing the grazing permits for the Beaver Dam Slope and Mormon Well Allotments on Mojave Desert tortoise, southwestern willow flycatcher, and yellow-billed cuckoo. The Biological Opinion (USFWS Biological Opinion 02EAAZ00-2019-F-0543), issued on August 29, 2019, states that the action, as proposed, is not likely to jeopardize the continued existence of the Mojave desert tortoise, and is not likely to destroy or adversely modify designated critical habitat for Mojave desert tortoise. See EA Appendix J for this Biological Opinion. Applicable desert tortoise conservation measures from 2007 RMP Biological Opinion for the Arizona Strip BLM Resource Management Plan (22410-2007- F-0463) were incorporated into the current Biological Opinion. This project specific Biological Opinion states: “After reviewing the current status of the Mojave desert tortoise and its designated critical habitat, the environmental baseline for the action area, the effects of the proposed Beaver Dam Slope and Mormon Well Allotments Permit Renewals, and the cumulative effects, it is our biological opinion that the action, as proposed, is not likely to jeopardize the continued existence of the Mojave desert tortoise and is not likely to destroy or adversely modify designated critical habitat for Mojave desert tortoise.”

The Biological Opinion issued by USFWS concurred with the BLM’s determinations that the project “may affect, but is not likely to adversely affect” the endangered southwestern willow flycatcher and its critical habitat, the threatened yellow billed-cuckoo and its proposed critical habitat, the endangered Virgin chub and its critical habitat, and the endangered woundfin and its critical habitat. Effects to the Virgin spinedace,

which has a conservation agreement and strategy to help manage and reduce threats to the species, were determined to be similar to effects to the Virgin chub and woundfin.

For all of the above described reasons, I have determined that the proposed grazing permit renewals are not a major Federal action and will not significantly affect the quality of the human environment, individually or cumulatively with other actions in the area. No effects identified in the EA meet the definition of significant in context or intensity as described in 40 CFR 1508.27. Therefore, issuance of a Finding of No Significant Impact (FONSI) is appropriate (see attached FONSI).

***Protest Reason C02: The 2019 USFWS BiOp accurately describes livestock grazing activities as having degraded habitat throughout the range of the Mohave Desert tortoise. Id. at 7. This same BiOp identifies wildlife as having negative impacts on the tortoise. Id. Additionally, the grazing permittee has identified wildlife as a significant concern for these allotments. See EA at 146-147, Response to Comments from the Grazing Permittee. Wildfire and livestock grazing both promote the spread of invasive species, which is detrimental to the tortoise. This is an additional rationale for preparing an EIS and precludes the use of a FONSI.***

***Response to C02:*** We disagree that wildlife has negative impacts on desert tortoise. If protester means “wildfire” instead, we agree that wildfire can adversely affect desert tortoise habitat. However, these allotments have not been greatly affected by fires over the past 40 years, and plant communities in both allotments are in good ecological condition – see response to Protest Reason C01.

The BLM acknowledges that invasive non-native annual grasses (red brome, cheatgrass and Mediterranean grass) and annual mustards are present in some areas on both allotments; these species can be very invasive and can expand their distribution after wildfires. Because they are annual plants, their abundance and distribution fluctuate based on the amount and timing of precipitation. As described in Table 3.3 of the EA, proper range practices can help prevent the spread of undesirable plant species, and grazing exclusion does not make vegetation more resistant to invasion by exotic annuals. Reasons for this may include: 1) grazing may result in a more diverse age classification of plants due to seed dispersal and seed implementation by grazing herbivores, and 2) grazing removes senescent plant material, and if not extreme, helps open up the plant basal area to increase photosynthesis and rainfall harvesting. Moderate grazing has been found to be superior to both grazing exclusion and high impact grazing in maintaining plant diversity and in reducing exotic plant recruitment in a semiarid Arizona grassland. It is also important to note that removal of grazing by domestic livestock does not automatically lead to disappearance of cheatgrass. Proper grazing use which maintains stable plant communities (as is the case in the these allotments – the majority of the public lands within the allotments are in late seral or PNC, which are a very stable condition) should minimize or have no effect on the spread of invasive non-native species. The BLM has therefore determined that the renewal of the grazing permits and continued livestock grazing are not anticipated to increase the rate at which invasive species are spread throughout the area.

***Protest Reason C03: WWP notes with grave concern that the objectives for browse species and perennial forbs have not been met for the Mormon Well allotment. EA at 93-96.***

***Response to C03:*** Monitoring data shows that on the Mormon Well Allotment (see EA Appendix C - Mormon Well Land Health Evaluation Report Update), DPC objectives for browse species were not met at any of the key areas (EA Tables C.12 -C.14). DPC objective for browse species on Key Area #1 was not met but was only 4% below the objective. This site was dominated by *Ambrosia dumosa* at 22%, but also had *Ephedra nevadensis* 4% and *Krameria parvifolia* 5%. The objective for other native shrubs and trees was met with 13%. The Ecological Site Description for this key area is Coarse Sandy Loam (Limy) 6 – inch p.z. (R030XB205AZ) (Sandy Loam Upland 6 – 10-inch p.z. Limy Subsurface, Gravelly). This Historic Climax Plant Community for this site is dominated by desert shrub community with creosote bush

(*Larrea tridentata*) and white bursage (*Ambrosia dumosa*) dominate with minor amounts of big galleta (*Hilaria rigida*) grass in small upland drainages. In this case perennial grasses exceeds the objective. The objective for perennial forbs was met at Key Area #1. This key area is in Late Seral ecological condition (EA Table C.9). The plant communities at the key areas on the Mormon Well Allotment are late seral or PNC, with either static or upward trend, meaning these communities are becoming more stable with less diversity. In EA Appendix C additional discussion has been added for Tables C.12 – C.14 to clarify the DPC section.

At Key Area #2 browse species composition was below the DPC objective (Table C.13). Browse species were dominated by white bursage (*Ambrosia dumosa*) at 22% and ratany (*Krameria parvifolia*) at 3% for a total of 25% browse species which is below the objective. The other native shrubs and trees objective met (exceeds) with creosote bush (*Larrea tridentata*) at 55%. Together both browse and other shrubs make up 80% of the plant community composition, the other 20% was made of perennial grass. The Ecological Site Description for Key Area #2 and 3 is Limy Upland Deep, 6 - 9-inch p.z. (R030XB215AZ) or (Sandy Loam Upland 6 – 9” p.z. Limy). These are shrub dominated communities. This site may be a more well drained site that favors creosote bush over white bursage. The perennial forb objective was not met but as stated above, as the site becomes more shrub dominated over time without disturbance, forbs make up a smaller composition. Forbs may fluctuate in abundance according to the winter and spring moisture so will be present some years and not present other years. This site is in Late Seral ecological condition (EA Table C.10).

At Key Area #3 browse species composition was below the DPC objectives (Table C.14). Browse species were dominated by white bursage (*Ambrosia dumosa*) 20%. The other native shrubs and trees objective was met (exceeds) with creosote bush (*Larrea tridentata*) at 80%. Together shrubs (both browse and other shrubs) account for 100% of the composition of the key area. The objective for forbs was not met. The Ecological Site Description for Key Area #3 is Limy Upland Deep, 6 - 9-inch p.z. (R030XB215AZ) or (Sandy Loam Upland 6 – 9” p.z. Limy). As stated previously the site is dominated by creosote bush and white bursage and was at PNC at the last reading. As state earlier as the composition of shrubs (all kinds) increases the forbs decrease. This site has reached a very stable PNC plant community, without disturbance it is not likely to change.

***Protest Reason D01:*** *The BLM has failed to respond to substantive comments that are specific to this project. WWP asked the BLM to identify the number of tortoises that were reported as “take” on these allotments. The BLM refused to answer our specific question and instead states that “[d]ocumented incidents of take are reported to the USFWS. The BLM does not have an estimate of take that may have occurred in this specific area, but we are not aware of any that have occurred due to project authorizations. This current project was consulted on with the USFWS...” EA at 136-137, response to comment EA11.*

***Response to D01:*** The BLM did, in its response to this EA comment, “identify the number of tortoises that were reported as ‘take’ on these allotments”. We are not aware of any “take” (defined in the Endangered Species Act as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect [threatened or endangered species], or to attempt to engage in any such conduct”) as no such information has been obtained by the BLM, or reported to the BLM. As shown in Table G.1 (Appendix G) of the EA, dead tortoises have been observed in both allotments during annual line-distance sampling monitoring conducted by USFWS: one in 2002 (Beaver Dam Slope Allotment); one in 2004 (Beaver Dam Slope Allotment); one in 2005 (Beaver Dam Slope Allotment); and one in 2013 (Mormon Well Allotment). The cause of death was not identified, and these were not reported as “take.”

***Protest Reason D02:*** *WWP reviewed the BiOp carefully for information on past take and finds it absent. The only statement regarding take in the BiOp indicates that the BLM shall monitor for take and report*



*this information. The question remains – what level of take has occurred in the past? What level of take is expected in the future? If the BLM is (and has in the past been) required to report take, why did the BLM refuse to provide this information to WWP in response to our prior comments?*

**Response to D02:** See response to Protest Reason D01. Any information on take that the BLM obtains will be reported to USFWS, as required.

***Protest Reason E01:*** *The BLM has failed to address trespass livestock. The BLM states that addressing the issue of trespass livestock is beyond the scope of this analysis. EA at 142, response to comment EA21. WWP strongly disagrees. Trespass livestock is a cumulative effect that must be addressed. Additionally, the BLM apparently acknowledged trespass livestock in the Virgin River as part of the communications with the USFWS while the BiOp was being developed. 2019 USFWS BiOp at 3. WWP is confused as to why trespass livestock was not included in the analysis more generally, yet included in the information used to develop the BiOp (and which the public did not have the opportunity to review prior to the NOPD). BLM has made an arbitrary and capricious decision to consider the impacts of trespass livestock for only one specific issue or species, while ignoring the devastating impacts of trespass livestock across the entirety of both allotments.*

**Response to E01:** Any illegal or unauthorized activities are outside the scope of this permit renewal EA; trespass livestock would be dealt with through a separate administrative process. Section 3.4.1 of the EA does state that “The permitted season of use for the Mormon Well Allotment is 10/16 – 3/15; if livestock are observed on public land outside of the permitted season of use, the permittees are contacted. It is the permittees’ responsibility to keep livestock off of the public land from 3/16 – 10/15 to avoid being in trespass.” Section 4.2.3.1 acknowledges that “trespass cattle intermittently occur in BLM areas not available to livestock grazing,” but permittee(s) are contacted and livestock are promptly removed. As stated in the Biological Opinion, while there is no fencing on Arizona State and private lands to ensure that livestock using the Mormon Well Allotment do not access BLM-managed lands during the tortoise active season, minimal livestock may occasionally occur on BLM-managed lands during the tortoise active season due to the use of water and salt to keep them concentrated on Arizona State-managed and private lands after they are removed from BLM lands (i.e., watering and using salt on the Arizona State-managed lands and on private lands result in minimal unauthorized use of BLM-managed lands). Cattle are then removed from the State and private land by early June and do not return to the allotment until October 16.

We are unsure what WWP is referring to in the assertion that there are “devastating impacts of trespass livestock across the entirety of both allotments.” Trespass has not been reported on the Beaver Dam Slope Allotment, and as described above, if it does occasionally occur on Mormon Well Allotment, the permittee(s) are contacted and livestock are promptly removed. In addition, plant communities in the allotments are in good ecological condition and the current functional groups of plants provide habitat elements (both forage and cover) for desert tortoise and other wildlife species – see response to Protest Reason C01.

***Protest Reason E02:*** *The entire premise for the U.S. Fish and Wildlife Service conclusion that livestock grazing will not jeopardize the continued existence of the Mohave Desert tortoise is that livestock grazing will not occur outside the tortoise’s active season of March 15-October 15th. Unfortunately, the failure of BLM to acknowledge and disclose the level of trespass livestock on the allotment and whether livestock are trespassing on the allotment during the tortoise active season renders the analysis deeply flawed.*

**Response to E02:** Contrary to the statement made in this protest reason, USFWS was made aware of the occasional occurrence of livestock on the Mormon Well Allotment during the tortoise active season (see Biological Opinion pp. 4, 11, 13, 14). However, the likelihood of this occurring is minimal due to the use

of water and salt to keep them concentrated on Arizona State-managed and private lands during this period, and if it does occasionally occur, the permittee(s) are contacted and livestock are promptly removed.

## FINDING OF NO SIGNIFICANT IMPACT

After consideration of the environmental effects described in the EA and supporting documentation, I have determined that the action is not a major Federal action and will not significantly affect the quality of the human environment, individually or cumulatively with other actions in the area. No effects identified in the EA meet the definition of significant in context or intensity as described in 40 CFR §1508.27. Therefore, the preparation of an environmental impact statement is not required as per Section 102 (2) of NEPA. This finding and conclusion is based on the consideration of the Council on Environmental Quality’s criteria for significance (40 CFR §1508.27), both with regard to the context and the intensity of impacts described in the EA and as described in the attached Finding of No Significant Impact.

## FINAL DECISION

After considering the analysis contained within the above referenced EA, it is my final decision to cancel the existing term grazing permits for Mormon Well Allotment and issue new ten-year term permits with new terms and conditions for the allotments. Alternative A (Proposed Action) is selected as the approved action, as outlined below.

### *Grazing Permits*

The existing term grazing permits for the Mormon Well Allotment will be canceled and new term grazing permits will be issued for a period of ten-years. There will be no changes in number or kind of livestock, or season of use, for this allotment; there will be no change in the number of Animal Unit Months (AUMs)<sup>1</sup>. The new grazing permits will include the mandatory terms and conditions shown below in Table 1, by authorization.

**Table 1. Mandatory Terms and Conditions – Mormon Well Allotment**

Mormon Well Allotment							
Authorization Number	Livestock			Active AUMs	Suspended AUMs	Public Land (acres)	% Public Land
	No.	Kind	Season of Use				
0201071	92	Cattle	10/16 – 3/15	361	113	12,892	79%
0201086	15	Cattle	10/16 – 3/15	59	19		
<b>Total</b>				<b>420</b>	<b>132</b>	<b>12,892</b>	

### Other Terms and Conditions

In addition to the current “Mandatory Terms and Conditions” and standard language on the last page on the grazing permit, the following terms and conditions would be added to the “Other Terms and Conditions” section of the new grazing permits.

<sup>1</sup> An AUM, or Animal Unit Month, is a unit of measurement indicating how much forage is eaten by a cow/calf pair in one month.

- Use of nutritional livestock supplements is allowed, including protein, minerals and salt. However, any supplements used must be dispersed a minimum of ¼ mile from any known water sources, riparian areas, populations of special status plant species, cultural or any other sensitive sites.
- Allowable use of key forage species on this allotment is no more than 45% of the current year’s growth removed through grazing.
- Season of use for the Mormon Well Allotment will be from October 15 through March 15.
- The permittee will use the advanced billing system.

*Mormon Well Allotment Grazing System*

The allotment consists of one pasture, which is grazed with a combination of private and State lands within the allotment. The permittee with authorization 0201071 also holds the State grazing lease for State lands within the Mormon Well Allotment including Beaver Dam Wash. The permittee also owns private land within the allotment. Cattle graze the BLM portion of the allotment from October 16 to March 15 (see Figure 1 below) and are then moved to the State and private lands through the rest of the spring. Cattle are removed from the State and private land by early June. Public land within the allotment is rested from March 16 – October 15 every year in order to comply with seasonal restrictions for grazing in desert tortoise habitat.

**Figure 1. Mormon Well Allotment Yearly Grazing Schedule.**

Oct	Nov	Dec	Jan	Feb	Mar
15					15

	<b>Grazed</b>
	<b>Rested</b>

In addition, the allotment will be managed to achieve the Desired Plant Community Objectives listed in Section 2.2.3 of the EA.

Grazing Management within Areas of Critical Environmental Concern (ACEC)

*Beaver Dam Slope ACEC*

The Beaver Dam Slope ACEC is managed for the protection of the threatened desert tortoise and Mojave Desert Ecological Zone. The Mormon Well Allotment is within this ACEC (Figure A.2 in the EA). All of the public land in the Mormon Well Allotment is designated critical habitat for desert tortoise (Figure A.3 in the EA). In accordance with RMP decision MA-GM-07, allowable use of key forage species in the allotment is no more than 45% of the current years’ growth removed through grazing. Move dates (i.e. removal of livestock from a pasture or the allotment) may be adjusted if monitoring indicates maximum utilization has been reached, or due to unusual climatic conditions, fire, flood, or other acts of nature. If maximum utilization is reached on key species or areas in the allotment before a scheduled move date, the use of salt, herding, or other management options may be used to distribute livestock away from an area where maximum utilization has been reached, or livestock may be removed from the pasture/allotment (after consultation with the permittees), as deemed necessary by the BLM. Additionally, the season of use will continue to be October 15 through March 15, in accordance with RMP decisions MA-GM-10 and MA-AC-14(DT).

## Adaptive Management

This decision includes adaptive management, which provides a menu of management options that may be needed to adjust management decisions and actions to meet desired conditions as determined through monitoring. BLM resource specialists will periodically monitor the allotment over the 10-year term of the grazing permit to ensure that the fundamentals or conditions of rangeland health are being met, in accordance with 43 CFR §4180. If monitoring indicates that desired conditions are not being achieved and current livestock grazing practices are causing non-attainment of resource objectives, livestock grazing management of the allotment will be modified in cooperation with the permittee(s). Adaptive management allows the BLM to adjust the timing, intensity, frequency and duration of grazing; the grazing management system; and livestock numbers temporarily or on a more long-term basis, as deemed necessary. An example of a situation that could call for adaptive management adjustments is drought conditions. If the permittee disagrees with the BLM's assessment of the resource conditions or the necessary modifications, the BLM may nevertheless issue a Full Force and Effect Grazing Decision to protect resources.

## **RATIONALE FOR DECISION**

This decision has been made after considering impacts to resources, such as vegetation, wildlife, special status species, cultural resources, and soils, while providing opportunities for livestock grazing that continues to make progress toward meeting management objectives, including the Arizona Standards for Rangeland Health and Guidelines for Livestock Grazing Management and the Arizona Strip Field Office RMP. Alternative A (Proposed Action) was chosen in its entirety. The NEPA analysis, documented in the EA, indicates that the action is in conformance with the RMP. Impacts from the action are either minimal or mitigated through design features incorporated into the action; the action is not likely to jeopardize the continued existence of the Mojave Desert tortoise and is not likely to destroy or adversely modify designated critical habitat for Mojave desert tortoise.

The EA constitutes the BLM's compliance with the requirements of NEPA, and procedural requirements as provided in the Council on Environmental Quality regulations. The EA went through an interdisciplinary review process. As documented in the EA analysis of the allotment's updated monitoring data and supporting documentation in the land health evaluation report, resource conditions on the allotment are making progress toward meeting all applicable standards for rangeland health. Based upon the above information and analysis, I have determined that implementing the proposed action will allow the allotment to continue making progress toward meeting all applicable standards for rangeland health.

Based upon this information and analysis, I have determined that changes in kind of livestock, number of livestock, and season of use are not necessary for the Mormon Well Allotment to continue making progress toward meeting the Arizona Standards for Rangeland Health and Guidelines for Grazing Administration and other land use plan objectives. Alternatives B and D were not chosen because the new ten-year term grazing permits would be issued with decreased grazing preference (Alternative B) or no active preference (Alternative D) on the allotment. These alternatives would not provide the same livestock grazing opportunities as the proposed action. Although the grazing preference in Alternative B is based upon what the permittees have actually been using, the new permits would not allow any flexibility to increase actual use should conditions result in good forage production in a given year. Alternative D would eliminate all livestock grazing on the allotment for the ten-year term of the new permits.

Alternative C – increase in active preference – was not chosen because impacts on resources (soils, vegetation, wildlife, and desert tortoise and its critical habitat) would be the greatest. Utilization would likely reach the allowable utilization limit of 45% every year. With a higher grazing intensity due to larger numbers of livestock, it is likely that pasture movements would be made more frequently. If the permittees increased livestock numbers to the maximum permitted, it is possible that the allotment would not support

the increased numbers through the entire season of use. This would be a concern especially during drought years. Since there is no recent forage inventory data for this allotment, it is unknown whether there is additional forage available to support these increased numbers on a long-term basis. This alternative would therefore have the greatest impact on vegetation.

## **AUTHORITY**

The authority for this decision is found in a number of statutory and regulatory authorities contained in the Taylor Grazing Act, as amended; the Federal Land Policy and Management Act of 1976, as amended; and throughout Title 43 of the Code of Federal Regulations (CFR), Part 4100 (Grazing Administration-exclusive of Alaska). The following sections of Part 4100 are noted below, although other subparts of Part 4100 are used to authorize grazing activities, with this listing not meant to be exhaustive.

43 CFR §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... 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-S(b)."

43 CFR §4110.3: The authorized officer shall periodically review the permitted use specified in a grazing permit or lease and shall make changes in the permitted use as needed to manage, maintain or improve rangeland productivity, to assist in restoring ecosystems to properly functioning condition, to conform with land use plans or activity plans, or to comply with the provisions of subpart 4180 of this part. These changes must be supported by monitoring, field observations, ecological site inventory or other data acceptable to the authorized officer.

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

43 CFR §4130.3: "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."

43 CFR §4130.3-1(a): "The authorized officer shall specify the kind and number of livestock, the periods(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."

43 CFR §4130.3-1(c): "Permits and leases shall incorporate terms and conditions that ensure conformance with subpart 4180 of this part."

43 CFR §4130.3-2: "The authorized officer may specify in grazing permits or leases other terms and conditions which will assist in achieving management objectives provide for proper range management or assist in the orderly administration of the public rangelands. These may include but are not limited to: ... (f) Provisions for livestock grazing temporarily to be delayed, discontinued or modified to allow for the reproduction, establishment, or restoration of vigor of plants ... for the protection of other rangeland resources and values consistent with objectives of applicable land use plans, ... ."

43 CFR §4160.1(a): Proposed decisions shall be served on any affected applicant, permittee or lessee, and any agent and lien holder of record, who is affected by the proposed actions, terms or conditions, or modifications relating to applications, permits and agreements (including range improvement permits) or leases, by certified mail or personal delivery. Copies of proposed decisions shall also be sent to the interested public.

## **RIGHT OF PROTEST AND/OR APPEAL**

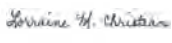
Any applicant, permittee, lessee, or other person whose interest is adversely affected by the final BLM grazing decision may file an appeal for the purpose of a hearing before an administrative law judge in accordance with 43 CFR §4160.3(c), §4160.4, 4.21, and 4.470. The appeal must be filed within 30 days following receipt of the final decision or 30 days after the date the proposed decision becomes final. The appeal should state the reasons, clearly and concisely, why the appellant thinks the final BLM grazing decision is in error. A petition for a stay of the decision pending final determination of the appeal by the administrative law judge may also be submitted during this same 30-day time period. The appeal, or the appeal and petition for stay, must be in writing and delivered in person, via the United States Postal Service mail system, or other common carrier, to the Arizona Strip Field Office as noted above.

Should you wish to file a petition for a stay in accordance with 43 CFR Section 4.471(c), the appellant shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied;
2. The likelihood of the appellant's success 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.

Within 15 days of filing the appeal, or the appeal and petition for stay, with the BLM officer named above, the appellant must serve copies to any other person named in this decision and on the Office of the Regional Solicitor located at: U.S. Courthouse, Suite 404, 401 West Washington Street, SPC-44, Phoenix, Arizona 85003-2151 in accordance with 43 CFR 4.470(a) and 4.471(b).

 Digitally signed by  
LORRAINE CHRISTIAN  
Date: 2020.03.06  
14:49:44 -07'00'

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Lorraine M. Christian, Field Manager  
Arizona Strip Field Office

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Date

List of all persons or groups receiving this NOFD:

Edward L. Bowler  
E. Kip Bowler and Bret D. Bowler  
U.S. Fish and Wildlife Service, Brian Wooldridge  
Western Watersheds Project, Cyndi C. Tuell  
Center for Biological Diversity, Ilene Anderson  
Desert Tortoise Council, Edward L. LaRue Jr.

Enclosures:

Finding of No Significant Impact for Environmental Assessment