

**ENVIRONMENTAL ASSESSMENT**  
**Birch Creek Drift Fence**  
**(NV062-EA04-78)**

**I. Introduction/Overview**

The JD Allotment lies approximately 30 miles North of Eureka, Nevada, in Eureka County, within the jurisdictional boundary of the Battle Mountain Field Office of the Bureau of Land Management (BLM).

Purpose and Need

The proposed action is to construct a 700 foot drift fence in Birch Creek located in the Roberts Mountain Wilderness Study Area (WSA). The Birch Creek fence would exclude livestock from the Roberts Mountain Pasture. Elimination of hot season grazing would enhance sensitive riparian and aspen areas and protect Lahontan Cutthroat Trout (LCT) habitat, as mandated in the USFWS terms and conditions identified in the Biological Opinion dated August 11, 2004. Additionally, in order to be exempt from the prohibitions of Section 9 of ESA, the Bureau of Land Management must construct the Birch Creek Drift Fence to implement reasonable and prudent measures. Section 9 of ESA prohibits take (harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect or attempt to engage in any such conduct) of listed species of fish or wildlife without a special exemption. An existing drift fence further upstream in Birch Creek would be removed.

Maintenance for the Birch Creek Drift Fence would be assigned to the affected permittee through a cooperative agreement.

Conformance Statement

This action is in conformance with the Shoshone Eureka Resource Management Plan Record of Decision (approved February 1986), Shoshone-Eureka Rangeland Program Summary (approved October 1988), and the Northeastern Great Basin Resource Advisory Council's Standards and Guidelines.

**II. Alternatives Including the Proposed Action**

Proposed Action

The proposed action is to build approximately 700 feet of new fence in the Roberts Mountain portion of the JD Allotment (see map in Appendix A). Access to the construction site would be through an existing cherry stem road. Project construction is expected to last no more than 2 days. The fence would be a standard BLM four strand fence, which consists of three strands of barbed wire spaced at forty-two (42") inches, thirty (30") inches, and twenty-two (22) inches, from ground level with one barb-less wire located sixteen (16") inches from ground level. Steel "T" post would be solid dark green in color. Spacing would be sixteen feet six inches (16.5 feet) between "T" posts. A wire stay would be placed on the fence wire

midway between steel “T” posts. One gate, three end panels and 2 corners would be constructed of black or dark green 1.5-inch diameter steel pipe. Rock cribs (three to four foot circle of hog wire supported by “T”-post and filled with rock) would be used where solid rock or other circumstances prevent construction of steel pipe panels. The access gate would be installed across an existing cherry stem road to provide access points for hiking, horseback riding, allowing access to any Native American traditional, spiritual or cultural use sites and recreational uses. Access to the construction site would be along the fence route.

An existing cherry stem road would be used to access the fence project. Fence supplies and materials would then be carried to the fence project on foot. All construction would be completed by hand. No motor vehicles would be used within the WSA. Motorized rock drills, chainsaws, and hand tools are the minimal tools necessary to complete this project with little or no ground disturbance or affect on the WSA values. Clearing of vegetation would be limited to plants located directly under the fence line. Trees may be limbed to allow for passage of wire, but no trees would be removed. Total ground disturbance would be less than 0.01 acre. Any ground disturbance that may occur will be contoured by hand and seeded with native species. Construction would be scheduled after the snowmelt, and after soil is dry (approx. June - October) to prevent incidental surface disturbance, damage to vegetation, and disturbance to wildlife species.

Maintenance for the fence would be assigned to the affected permittee through a cooperative agreement.

#### No Action Alternative

The Birch Creek Drift Fence would not be constructed and livestock would continue existing grazing practices in the Roberts Mountain Pasture portion of the JD Allotment. The BLM is required to comply with USFWS terms and conditions identified in the Biological Opinion dated August 11, 2004, which would implement reasonable and prudent measures for protection of Lahontan Cutthroat Trout described above as well as the reporting/monitoring requirements to be exempt from the prohibitions of Section 9 of ESA.

### III. Affected Environment

#### Critical Elements and Other Resources Check List

Resources listed in the following table, including the sixteen “critical elements” whose review is mandated by law or regulation, have been reviewed for the proposed action and alternatives. Those marked as not affected would not be impacted by or cause impacts to the proposed action, or are not present in the area of the proposed action. Discussion of expected impacts to affected resources follows the table.

CRITICAL ELEMENTS	Present	Affected	OTHER RESOURCES	Present	Affected
ACECs	No	No	Land Use Authorizations	No	No
Air Quality	Yes	No	Forestry	Yes	Yes
Cultural	Yes	No*	Minerals	Yes	No
Environmental Justice	No	No	Visual Resources	Yes	Yes
Floodplains	No	No	Soils	Yes	Yes
Waste, Hazardous or Solid	No	No	Recreation	Yes	Yes
Invasive, Non-Native Species	Yes	Yes	Range	Yes	Yes
Native American Religious Concerns	Yes	No	Wild Horse and Burros	No	No
Migratory Birds	Yes	No**	Wildlife	Yes	Yes
Prime or Unique Farmlands	No	No	Vegetation	Yes	Yes
Riparian-Wetland Zones	Yes	Yes	Paleontological Resources	Yes	No
Solid Waste	No	No			
Special Status Plant and Animal Species	Yes	Yes			
Water Quality	Yes	Yes			
Wild and Scenic Rivers	No	No			
Wilderness (Study Area)	Yes	Yes			

\*Class III Cultural Inventory was completed prior to project construction. The project as designed would avoid all cultural sites

\*\*Construction would not occur during the migratory bird nesting season.

#### Soil/Range Sites

The Birch Creek Drift Fence lies within a 12-14” precipitation zone and consists of the following soil type: 024XY049 consisting of an overstory of Utah juniper-singleleaf pinyon and an understory of Mountain big sagebrush/bluebunch wheatgrass and Thurber needlegrass. Soils are shallow to moderately deep from mixed sources of volcanic origin. Runoff is medium to rapid depending on slope.

### Proposed Action

The construction of the Birch Creek Drift Fence would disturb approximately 700' X 48" along the fence route during construction. Indirectly, the proposed action would allow re-establishment of natural plant communities by allowing more precise management of the JD Allotment. Natural plant communities in good ecological condition exhibit strong soil/slope stabilizing characteristics necessary to reduce the accelerated erosion currently taking place. A healthy natural plant community would also limit or reduce the conversion to exotic annuals or noxious weeds, both of which exhibit poor stabilizing characteristics. The proposed action may cause some damage to the upland vegetation from crushing trampling and breaking of plants during construction.

The proposed fence would be approximately 700 feet long. This would alleviate drift into the Roberts Mountain pasture. Construction of the Birch Creek drift fence (Map5 – Birch Creek Drift Fence – Appendix A) would allow for the Roberts Mountain pasture to be grazed from May 1<sup>st</sup> – June 30<sup>th</sup> in addition to fall use after October 15<sup>th</sup> and rested from livestock grazing the rest of the year. Soil conditions throughout the Roberts Mountain pasture would be expected to improve as a direct affect of constructing the Birch Creek drift fence. The proposed Birch Creek drift fence would disturb soils minimally during construction. The fence would provide riparian species with rest during the hot season. All construction would be completed by hand and materials delivered would be moved by hand or horseback. Soil disturbance at material delivery/pickup sites would be negligible due to only one site being used on an existing cherry stem road. All equipment, personnel, hay/feed, and horses would be inspected for weed seed and, if necessary, cleaned or replaced before entering the WSA. The impacts would be negligible since the fence would replace an existing nonfunctional fence. Once the project is completed the nonfunctional fence would be removed from the WSA.

### No Action Alternative

Continuation of existing conditions could result in compacted soils, which reduce infiltration and increased soil erosion. Increased soil compaction could result in decreased production of dominant and/or co-dominant native perennial grass and forb components on the range sites. BLM would not be exempt from mandatory terms and conditions as identified in the Biological Opinion dated August 11, 2004, which would implement reasonable and prudent measures for protection of Lahontan Cutthroat Trout. Furthermore, failure by the Bureau of Land Management to construct the Birch Creek Drift Fence would not provide for the BLM to be exempt from the prohibitions of Section 9 of ESA.

### Vegetation/Forestry

The vegetation within the proposed project area consists of Utah juniper, singleleaf pinyon, Mountain big sagebrush, bluebunch and Thurber's needlegrass. The project areas for the proposed fence lie within a lower elevational area within the Roberts

Mountain Pasture. The fence would be designed in such a way as to minimize the amount of Pinyon and Juniper that may have to be altered along the fence line.

### Proposed Action

The construction of the Birch Creek Drift Fence would disturb approximately 700' X 48" along the fence route during construction. The proposed fence would allow sensitive Lahontan Cutthroat Trout (LCT) habitat to be excluded from livestock grazing. In addition the proposed fence would allow for the elimination of hot season grazing within the Roberts Mountain Pasture, which would protect sensitive aspen and riparian areas. Indirectly, the proposed action would allow re-establishment of natural plant communities by allowing more precise management of the JD Allotment. Natural plant communities in good ecological condition exhibit strong soil/slope stabilizing characteristics necessary to reduce the accelerated erosion currently taking place. A healthy natural plant community would also limit or reduce the conversion to exotic annuals or noxious weeds, both of which exhibit poor stabilizing characteristics. The proposed action may cause some damage to the upland vegetation from crushing trampling and breaking of plants during construction.

The proposed fence would be approximately 700 feet long. This would alleviate drift into the Roberts Mountain pasture. Construction of the Birch Creek drift fence (Map5 – Birch Creek Drift Fence – Appendix A) would allow for the Roberts Mountain pasture to be grazed from May 1<sup>st</sup> – June 30<sup>th</sup> in addition to fall use after October 15<sup>th</sup> and rested from livestock grazing the rest of the year. Soil conditions throughout the Roberts Mountain pasture would be expected to improve as a direct affect of constructing the Birch Creek drift fence. The proposed Birch Creek drift fence would disturb soils minimally during construction. The fence would provide riparian species with rest during the hot season. All construction would be completed by hand and materials delivered would be moved by hand or horseback. Soil disturbance at material delivery/pickup sites would be negligible due to only one site being used on an existing cherry stem road. All equipment, personnel, hay/feed, and horses would be inspected for weed seed and, if necessary, cleaned or replaced before entering the WSA. The impacts would be negligible since the fence would replace an existing nonfunctional fence. Once the project is completed the nonfunctional fence would be removed from the WSA.

### No Action Alternative

Hot season grazing would continue to have adverse affects on vegetative cover and aspen clones. Continuation of existing conditions could result in compacted soils, which reduce infiltration and increased soil erosion. Increased soil compaction could result in decreased production of dominant and/or co-dominant native perennial grass and forb components on the range sites.

In addition terms and conditions identified in the Biological Opinion dated August 11, 2004, which would implement reasonable and prudent measures for protection of

Lahontan Cutthroat Trout would not be implemented. The Bureau of Land Management would not be exempt from the prohibitions of Section 9 of ESA.

### **Wildlife (Including Migratory Birds)**

**Mule deer** use a variety of vegetation types and habitats seasonally within the allotment in their pursuit of forage, thermal cover, and escape cover for seasonal needs.

Vegetation that is important for mule deer includes serviceberry, snowberry, mountain mahogany, sagebrush, aspen, cottonwood, willows, chokecherry, rose sp., pinyon pine, juniper, eriogonum, arrowleaf balsamroot, penstemon, phlox sp., sorrel, hawksbeard, lupine, and numerous forbs. Riparian vegetation along streams, meadow areas, and aspen stands are important fawn-rearing areas.

**Chukar partridge (*Alectoris chukar*)** were introduced to Nevada in the 1940s and are now a widely distributed and important wildlife species. Optimum habitat consists of steep rugged canyons, with numerous talus slopes, and rocky outcrops. Chukars are omnivorous feeders, eating a variety of leafy green food, weed seeds, fruits, berries, insects, and beetles.

Neo-tropical migrant birds are bird species that migrate from the temperate portions of the continent to winter in the tropics of North and South America. Neo-tropical migrants are most commonly associated with habitats having a strong vertical component of woody shrubs and trees.

#### **Proposed Action**

The fence would eliminate hot season grazing within the Roberts Mountain Pasture use area allowing for improved wildlife habitat.

**Mule deer** are affected by livestock grazing during the hot and dormant seasons from mid June through March. Hot season grazing tends to be concentrated in riparian areas where green forage remains when upland grasses cure and dry, decreasing forage quality and palatability to livestock. Riparian grazing removes both herbaceous and woody vegetation that provides cover and forage for mule deer year round. Dormant season grazing by cattle includes substantial amounts of browse of shrubs. Mule deer depend on shrubs as a source of protein and cover for the summer, fall and winter months.

No Action Alternative

Under the No Action Alternative, the fence would not be constructed and wildlife would be allowed to exist under the current conditions within the Roberts Mountain Pasture within the JD Allotment.

**Threatened and Endangered Species**

The BLM is required by the Endangered Species Act of 1973, as amended, to ensure that no action on the public lands jeopardizes a threatened, endangered, or proposed species. The threatened bald eagle (*Haliaeetus leucocephalus*), which winters at low density throughout northern Nevada, is the only federally listed or proposed species that occur in the JD Allotment.

**Special Status Species**

In addition to federally listed species, BLM also protects by policy (BLM 1988, 1998), other special status plants and animals. The list includes certain species designated by the state of Nevada, as well as species designated as “sensitive” by the Nevada BLM State Director. Special status species known or believed to occur either in the proposed project area or within the JD Allotment include:

The State of Nevada adopted the **Lahontan cutthroat trout (*Oncorhynchus clarki henshawi*)** as its official state fish in 1981. The Lahontan cutthroat trout is a remnant of the last Ice Age. The Lahontan cutthroat trout can be found in fourteen of the seventeen counties in Nevada. The Lahontan cutthroat trout occupies habitats ranging from mountain streams and alpine lakes to seasonal lowland streams and alkaline lakes. Today, the Lahontan cutthroat trout is the only native trout of the Great Basin.

Threatened Lahontan cutthroat trout (LCT) inhabit Birch Creek in the Roberts Mountains. Birch Creek lies entirely within the JD Allotment. LCT in Birch Creek are genetically pure, i.e. are not hybridized with other trout species (personal communication, John Elliot, NDOW fisheries biologist).

A population survey was completed for Birch Creek in 1998, the following was found:

Stream	Population Survey Year	Occupied Miles	Potential Miles	Estimated Population Size
Birch Creek	1998	1.5	2	100-500

The phylogenetic analysis indicates the Birch Creek LCT population is genetically pure, but is most similar to western LCT (East Carson River subbasin) (Peacock 2003) and is found between 6,700 ft and 7,200 ft.

Scientific Name

Common Name

**Mammals**

<i>Euderma maculatum</i>	spotted bat
<i>Myotis ciliolabrum</i>	small-footed myotis
<i>Myotis evotis</i>	long-eared myotis
<i>Myotis volans</i>	long-legged myotis
<i>Plecotus townsendii pallescens</i>	pale Townsend's big-eared bat
<i>Plecotus townsendii townsendii</i>	Pacific Townsend's big-eared bat

**Birds**

<i>Aquila chrysaetos</i>	golden eagle
<i>Accipiter gentilis</i>	northern goshawk
<i>Buteo regalis</i>	ferruginous hawk
<i>Centrocercus urophasianus</i>	greater sage grouse
<i>Speotyto cunicularia</i>	burrowing owl

Lower elevations of the JD Allotment provide nesting and hunting habitat for the **Western burrowing owl** (*Speotyto cunicularia hypugea*), this is a relatively common species. Preferred nesting habitat for burrowing owls are areas previously dominated by dense stands of big sagebrush that have burned and converted to low grass species, with a few remaining sagebrush trunks for perches. Nesting normally takes place in abandoned badger burrows. Prey consists of rodents and insects, primarily beetles, during the breeding season. This species is relatively common, throughout the area.

The **pygmy rabbit** (*Brachylagus idahoensis*) is the smallest North American rabbit and sagebrush obligate. The rabbit uses tall, dense stands of big sagebrush, primarily basin big sagebrush, with deep, friable soils typically loamy in texture. The pygmy rabbit mates in early spring and summer. Its primary food is sagebrush, which makes up to 98% of its winter diet. No inventories for pygmy rabbits have been completed within the allotment, but the allotment contains minimal mountain big sagebrush within the project area. The construction of the fence is expected to indirectly improve mountain big sagebrush throughout the Roberts Mountain Pasture resulting in improved pygmy rabbit habitat. Potential sites include the edges of floodplains in the upper portions of watersheds and degraded floodplains at lower elevation where channel down-cutting has allowed for the invasion of basin big sagebrush into sites that were formerly occupied by wet and semi-wet meadows.

The **Ferruginous hawk** (*Buteo regalis*) is a nesting-summer resident of the JD Allotment. An active nest was previously recorded. Juniper trees are the preferred nesting sites of the Ferruginous hawk. Nests are normally constructed in lone juniper trees, which overlook large open areas on alluvial fans. Prey consists primarily of ground squirrels in the spring and early summer and jackrabbits in late summer and fall.

The **golden eagle** (*Auila chrysaetos*) is Nevada's largest resident bird of prey, sometimes weighing over twelve pounds and having a wingspan that may exceed seven feet. This bird is highly adaptable, has worldwide distribution and is a

common yearlong resident of the JD Allotment. Golden eagles feed primarily on small mammals – jackrabbits, cottontails and ground squirrels – though they are capable of taking larger prey.

**Sage grouse (*Centrocercus urophasianus*)** inhabit most of the JD Allotment during one season or another, though populations are believed to have declined there, as they have over most of the West in recent decades. Several known sage grouse strutting grounds, called leks, are located on the Allotment.

### Proposed Action

The proposed fence would protect and enhance LCT habitat, aspen stands and riparian areas. The fence would implement reasonable and prudent measures as identified by the USFWS in the Biological Opinion dated August 11, 2004.

The proposed fence would be built to Bureau of Land Management specifications designed to minimize wildlife impacts. The use of solid green posts would be used in the construction of the pasture fence. Impacts to wildlife would be minimal, but may include increased predation by raptors on small mammals due to increased availability of perching sites.

The proposed fence would not be constructed during migratory bird nesting season. The proposed fence would be placed off of the ridgelines or crest and would be placed in areas with sparse vegetation dominated primarily by Mountain big sagebrush.

The proposed action would improve degraded habitat conditions for all indigenous wildlife species. Once the fence is constructed, forage and cover species should recover rapidly, with adequate precipitation. The proposed fences are more than 6 miles from any known sage grouse leks, but to further reduce the risk of collision mortality, the fence would use the standard 16.5 foot post spacing with a stay placed equal distance between the posts.

### No Action Alternative

Under the No Action Alternative, the fence would not be constructed and wildlife would be allowed to exist under the current conditions within the JD Allotment. In addition BLM would not be exempt from the prohibitions of Section 9 of ESA. The Bureau of Land Management must comply with USFWS terms and conditions implementing the reasonable and prudent measures for protection of Lahontan Cutthroat Trout. The terms and conditions identified in the Biological Opinion dated August 11, 2004 are non-discretionary.

## **Water Quality & Quantity/Riparian & Wetland Zones**

### **Proposed Action**

The Birch Creek Drift Fence lies within the vicinity of Birch Creek. See map in Appendix A, for the location of the fence. The proposed action is to build a drift fence to exclude livestock from the Roberts Mountain Pasture. The fence would eliminate livestock grazing in the hot season to enhance sensitive riparian and aspen areas in addition to protecting LCT habitat. Furthermore the proposed action would aid in better distribution within the JD Allotment and decrease the degradation of riparian vegetation in upland springs, seeps, and creeks as well as aspen and Lahontan Cutthroat trout habitat.

### **No Action Alternative**

Riparian habitat, aspen, and water quality/quantity would continue to be negatively impacted. Livestock would be allowed in the uplands of the Roberts Mountain Pasture during the critical growing season/hot season, which would continue degradation to springs and aspen stands.

## **Cultural Resources**

### **Proposed Action**

As designed, the proposed project would not impact cultural or paleontological resources. A cultural resource inventory was completed prior to implementation of the proposed project to identify potential cultural resources. One site was found at the mouth of Birch Creek outside of the project area and was identified as avoidance. If further avoidance is necessary the proposed actions would be modified or discontinued or other mitigation measures would be taken in order to prevent adverse effects to cultural resources.

### No Action Alternative

Adverse impacts may occur from trampling and erosion from livestock, horse, and wildlife. If a cultural site is discovered and determined to be eligible or remains unevaluated, additional mitigation may be required.

### **Invasive, Non-native Species**

A complete noxious weed inventory for the proposed area has not been completed. Musk Thistle, Scotch Thistle, and Hoary cress occur within the surrounding area.

### Proposed Action

The proposed action has the potential to create conditions favorable for the proliferation of undesirable plant species along the course of the fence. If any non-native invasive plants were seen to be proliferating as a result of this action, the BLM would apply a BLM approved pesticide where infestations occur. Riparian degradation as a result of hot season livestock grazing would be eliminated, which would reduce overall disturbance and spread of noxious weeds.

### No Action Alternative

Continuation of existing conditions could result in riparian degradation which may result in noxious weed infestations within the Roberts Mountain Pasture of the JD Allotment. The fence would not be constructed; however, the BLM would continue to inventory weeds throughout the area.

### **Native American Religious Concerns**

Various tribes and bands of the Western Shoshone have stated that federal projects and land actions can have widespread affects to their culture and religion as they consider the landscape as sacred and as a provider. The proposed project area lies within the traditional territory of the Western Shoshone.

### Proposed Action

Although the possibility of disturbing Native American gravesites within the project area is extremely low, inadvertent discovery procedures must be noted. The Native American Graves Protection and Repatriation Act, section (3)(d)(1), states that the discovering individual must notify the land manager in writing of such a discovery. If the discovery occurs in connection with an authorized use, the activity, which caused the discovery, is to cease and the materials are to be protected until the land manager can respond to the situation. However, considering the characteristics, description, and location of the project site, it has been determined that this activity would not adversely affect any Native American religious site or religious practice or ceremony and thus Native American consultation has been deemed unnecessary.

This has been concluded for several reasons, the limited size of the projects and the limited overall ground disturbance. A gate would be constructed along the new fence line, thus allowing access to known and unknown cultural/traditional use sites in the area.

### **Visual Resource Management**

The proposed Birch Creek Drift Fence is within a Visual Resource Management Class II. BLM Instruction Memorandum No. 2000-096, recognizing that case-by-case exceptions for valid existing rights and grandfather uses that all WSAs should be classified as Class I and managed according to VRM Class 1 management objectives until such time as the Congress decides to designate that area as wilderness or release it for other uses. The objective of this class is to preserve the existing character of the landscape. This class provides for natural ecological changes; however, it does not preclude very limited management activity. The level of change to the characteristic landscape should be very low and must not attract attention.

#### **Proposed Action**

The proposed action would be in conformance with visual resources Class I objectives as identified in BLM Instruction Memorandum No. 2000-096. The proposed fence would not attract the attention of the casual observer. Any changes would include basic elements of form, line, color and texture found in the predominant natural features of the characteristics landscape.

#### **No Action Alternative**

Visual resources would not change from current condition, if the proposed project is not implemented.

### **Recreation**

Recreational activity in and around the project area consists of off road vehicle activity, hunting, and the occasional horseback rider.

#### **Proposed Action**

The proposed action could restrict the use of certain areas by recreationalists without having to open and close gates. One access gate would be installed along the fenceline to access the existing cherry stem road.

#### **No Action Alternative**

Under the No Action alternative, recreational activities would not be affected and would continue to exist under the current conditions within the JD Allotment.

## Wilderness

### Proposed Action

The proposed drift fence lies within the Roberts Mountain Wilderness Study Area.

The 700 ft drift fence would eliminate hot season grazing in the Roberts Mountain Pasture. The fence would be built within the WSA to take advantage of topography to minimize the length and overall impacts of the fence. It is expected that the construction of the fence will enhance and promote LCT habitat, riparian and aspen areas throughout the Roberts Mountain Pasture. Additionally, in order to be exempt from the prohibitions of Section 9 of ESA, the Bureau of Land Management must construct the Birch Creek Drift Fence to implement reasonable and prudent measures as identified in USFWS Biological Opinion dated August 11, 2004. Furthermore, the construction of the fence would eliminate hot season grazing within the Roberts Mountain Pasture, which is expected to improve Wilderness values within the WSA.

BLM Instruction Memorandum No. 2000-096 recognizes that case-by-case exceptions would be managed according to VRM Class 1 management objectives until such time as the Congress decides to designate that areas as wilderness or release it for other uses. The objective of this class is to preserve the existing character of the landscape. This class provides for natural ecological changes; however, it does not preclude very limited management activity. The level of change to the characteristic landscape should be very low and must not attract attention. The proposed action meets the non-impairment criteria for temporary use since the proposed fence could be removed upon wilderness designation. Construction activities would not violate the no surface disturbance requirement since the proposed action would not necessitate reclamation. Surface disturbance is defined in the IMP as any new disruption of the soil or vegetation requiring reclamation (i.e. recontouring, replacement of topsoil, and/or restoration of the native plant community) within a WSA. The surface disturbance would be limited to approximately 700 ft \* 48 inches along the fence. Minor cutting of brush or tree limbs would be expected. This may be constituted as disturbance; therefore, the fence would be designed to take advantage of pinyon/juniper cover with minimal cutting of brush or tree limbs to obscure it from view to the greatest extent possible to the casual observer.

The fence would be a standard BLM four strand standard fence, which consists of three strands of barbed wire spaced at forty-two (42") inches, thirty (30") inches, and twenty-two (22") inches, from ground level with one barb-less wire located sixteen (16") inches from ground level. Steel "T" post would be solid dark green in color. Spacing would be sixteen feet six inches (16.5 feet) between "T" posts. A wire stay would be placed on the fence wire midway between steel "T" posts. One gate, three end panels and 2 corners would be constructed of black or dark green 1.5-inch diameter steel pipe. Rock cribs (three to four foot circle of hog wire supported by "T"-post and filled with rock) would be used where solid rock or other circumstances prevent construction of steel pipe panels. The fence would be built using solid green "T" posts, and steel pipe corners to blend in with the predominant features and

characteristics of the landscape at the project site. Maintenance of the fence once constructed would be accomplished by hand.

In addition to the non-impairment criteria, there are five permitted exemptions to the non-impairment criteria. The proposed action qualifies as an exception under number four which states “Uses and facilities that clearly protect or enhance the land’s wilderness values or that are the minimum necessary for public health and safety in the use and enjoyment of wilderness values.” Wilderness is defined in Section 2 (c) of the Wilderness Act of 1964, “A wilderness, . . . , is hereby recognized as an area where the earth and its **community of life** are untrammelled by man, where man himself is a visitor who does not remain” (emphasis added). The proposed action is designed to protect and enhance the “community of life”, which includes native vegetation, wildlife, and interrelated ecological systems. “The BLM Handbook (Organic Act Directive No. 78-61, dated 9/19/78) further defined wilderness values as: roadlessness, naturalness, solitude, primitive and unconfined recreation, size and supplemental values.” The IMP states (pg. 10) that, “Actions that clearly benefit a WSA’s wilderness values through activities that restore, protect, or maintain these values are allowable. During the Wilderness Inventory, the BLM described in detail the state or condition of each wilderness value or characteristic. If the proposed action would result in a positive or beneficial change in the state or condition of the wilderness value(s) as described, assessed, or calculated on the date of the approval of the intensive inventory, then the wilderness value would be enhanced by the proposed action.”

Due to the fence being temporary in nature and would not cause a significant surface disturbance it would not constrain Congress’ ability to designate the areas as Wilderness in the future. It is expected that the extremely small scale of the fence in addition to being located near the boundary of the WSA there would be an improvement on opportunities for solitude, opportunities for primitive and unconfined types of recreation or naturalness of special features. This improvement would be enhanced by the expected change in the riparian areas to a more natural condition. Furthermore, it is expected that the construction of the fence in addition to removing a non functional drift fence will improve overall naturalness within the WSA. Since the proposed drift fence will be in a more functional location, downstream and closer to the edge of the WSA, it will improve the overall wilderness quality by more effectively allowing the riparian areas of Birch Creek to return to a more natural condition.

#### No Action Alternative

Grazing within the Roberts Mountain Wilderness Study Areas would continue in the hot season. Protection of Lahontan Cutthroat Trout habitat, sensitive riparian and aspen areas would be limited due to cattle naturally congregating in these areas in the hot season.

#### **Range Resources**

The JD Allotment lies approximately 18 miles west of Eureka, Nevada in Eureka County, within the jurisdictional boundary of the Battle Mountain Field Office of the

Bureau of Land Management (BLM). The allotment consists of approximately 85,843 acres of public land. Elevations range from 4,800 feet in the valley floor to 8,500 feet within the allotment. There is currently one livestock grazing permit within the allotment.

#### Proposed Action

The proposed action would allow for the elimination of hot season grazing within sensitive LCT habitat located in the Roberts Mountain Pasture. The USFWS Biological Opinion dated August 11, 2004 identified reasonable and prudent measure including the construction of the Birch Creek Drift Fence to aid and promote healthy LCT habitat. In order for BLM to be exempt from the prohibitions of Section 9 ESA, BLM must comply with the USFWS terms and conditions as set forth in the Biological Opinion.

#### No Action Alternative

Continuation of existing livestock management including hot season grazing in the Roberts Mountain Pasture would continue to occur. Protection of LCT habitat, riparian and aspen areas would not occur due to hot season grazing continuing to occur within the pasture. BLM would not be exempt from the prohibitions of Section 9 ESA.

### **IV. Cumulative Impacts**

Activities occurring in the past have been limited. In addition to livestock grazing, recreationists have utilized the area for hunting. However, these activities have not had significant impacts on the habitat within the Roberts Mountain Wilderness Study Area (WSA) portion of the JD Allotment.

Present and reasonably foreseeable activities would continue to be livestock grazing and recreation. By meeting allotment specific objectives, Standards for Rangeland Health, and constructing range improvement projects, vegetation diversity and ground cover would continue to be stable or improve gradually. These actions would enhance or protect surface vegetation, reduce runoff and water erosion of exposed soil and increase percolation of water into the ground.

## V. Consultation, Coordination, Cooperation

- Cultural Resources Katherine Russell, Battle Mountain Field Office (BMFO)
- Visual Resources/Recreation/Wilderness Robert Perrin, BMFO
- Rangeland Resources/Vegetation/Invasive Weeds/Soils Dan Fletcher, BMFO
- Support Services Jill McConville, BMFO
- Wildlife Duane Crimmins, BMFO
- Threatened & Endangered Species Mike Stamm, BMFO
- Native American Religious Concerns Gerald Dixon, BMFO
- Environmental Coordinator Pam Jarnecke, BMFO
- Permittee Ken Buckingham
- NDOW Mike Podborny  
John Elliot
- USFWS Nevada Fish and Wildlife Office (Reno, Nevada)