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DECISION RECORD

For the

Twin Falls District (TFD) Programmatic Emergency Stabilization and Rehabilitation Plan (PESRP) Environmental Assessment (EA)

NEPA No. DOI-BLM-ID-T000-2011-0001-EA

I. Decision

My decision is to implement the Proposed Action described in the 2013 TFD PESRP EA (EA, pp. 13 - 42). I have reviewed the PESRP EA and project record. I conclude that the Proposed Action was analyzed in sufficient detail; thereby, informing my decision.

Emergency Stabilization and Rehabilitation (ESR) activities described in the Proposed Action will stabilize soils, repair or construct physical improvements, and restore healthy ecosystems. The Proposed Action promotes timely and cost-effective implementation of post-fire recovery treatments (EA, pp. 1, 3, and 13). ESR treatments meet the intent of the Federal Land Policy and Management Act of 1976 to protect the quality of resource values (i.e. scientific, historical, scenic, ecological, environmental, air, water, and archeological), preserve certain public lands (e.g. National Landscape Conservation System units) in their natural condition, protect Areas of Critical Environmental Concern, provide habitat for fish and wildlife, food for domestic livestock, and provide recreation opportunities and other human uses.

My decision conforms to the following applicable land use plans (LUP), as amended:

- Magic Management Framework Plan
- Bennett Hills/Timmerman Hills Management Framework Plan
- Sun Valley Management Framework Plan
- Twin Falls Management Framework Plan
- Cassia Resource Management Plan
- Monument Resource Management Plan
- Jarbidge Resource Management Plan
- Craters of the Moon National Monument and Preserve Management Plan
- Fire, Fuels, and Related Vegetation Management Direction Plan Amendment

The Proposed Action is consistent with LUP goals, objectives, and decisions. For example, the Proposed Action conforms to a common LUP objective that reduces accelerated erosion on steep slopes, erodible soils, and in areas with frequent high winds. The Proposed Action is also consistent with LUPs objectives that address protection and enhancement of water quality (reduction of sediment) and special status plant and animal species. The Craters of the Moon National Monument and Preserve Management Plan and the Fire, Fuels, and Related Vegetation Management Direction Plan gives guidance for completing vegetation and ESR treatments. This guidance was used to develop proposed ESR treatments and design features in the PESRP EA.

My decision also complies with:

- Departmental Manual 620 DM 3 Burned Area Emergency Stabilization and Rehabilitation
- BLM Burned Area Emergency Stabilization and Rehabilitation Handbook 1742-1
- South Central Idaho Fire Planning Unit Fire Management Plan
- BLM Vegetation Treatments Using Herbicides Final Programmatic Environmental Impact Statement Record of Decision (2007)
- Shoshone District-wide Weed Treatment Decision Record (1992)
- Burley District Weed Treatment Decision Record (1989)
- Lower Snake River (Boise) District Noxious Weed Control Program Decision Record (2007)
- The Idaho Standards for Rangeland Health and Guidelines for Livestock Grazing Management
- Invasive Species Executive Order 13112
- Boise District Oregon Trail Management Plan
- Fish and Wildlife Service (FWS) Biological Opinion for Existing Land Use Plans in the Boise and Twin Falls Districts Related to Slickspot Peppergrass Conservation
- Conservation Agreement between BLM and FWS for Slickspot Peppergrass

II. Finding of No Significant Impact (FONSI)

I have determined the Proposed Action will not have any significant impact on the quality of the human environment; therefore, an environmental impact statement will not be done. In making this determination, I considered the context of the environmental impacts and the ten intensity factors.

Proposed treatments would be done to stabilize soils, repair or construct physical structures, and restore healthy ecosystems. Post-fire treatments prevent immediate harm to natural and cultural resources and restore areas that cannot recover naturally or would take many years to recover from the effects of a wildfire.

III. Other Alternatives Considered

A No Action Alternative was also analyzed in the PESRP EA. Under the No Action Alternative ESR treatments would not be done following a wildfire (EA, p. 12). I did not select the No Action Alternative since it is inconsistent with current BLM policy. It does not sufficiently stabilize or rehabilitate resources damaged by wildfire where natural recovery is not possible or it would take too long for damaged resources to recover.

Three other alternatives were considered but not fully analyzed in the PESRP EA. A description of these alternatives and the reasons for not fully analyzing are discussed below.

1) An alternative to solely use native plant materials when completing ESR treatments was considered, but not studied in detail. The exclusive use of native seed will not always achieve ESR goals for controlling noxious weeds or stabilizing erosive soils. Depending on supply and demand, native seed may not be available in sufficient amounts (EA, p. 43) when needed. Therefore, successfully implementing this alternative is not expected.

2) An alternative prohibiting the construction of temporary fences was considered and eliminated from detail study. The PESRP provides a suite of tools (including temporary fences) for use in ESR treatments. ESR treatments are selected based on local site conditions and characteristics. Therefore, the decision to construct a temporary fence is best made when site-specific ESR plans are developed. Eliminating temporary fences would limit post-fire options to manage livestock grazing.

3) An alternative to continue using existing Normal Fire Rehabilitation Plans was considered. This alternative was eliminated from detailed study since it is very similar to the Proposed Action Alternative in the PESRP EA; therefore, it would have substantively similar effects as the Proposed Action.

IV. Public Involvement

A scoping letter (March, 2007) sent to interested publics, state and local governments, and other federal agencies asked for input in developing a PESRP. Three environmental groups, one grazing association, one private citizen, Idaho Department of Agriculture, and the Owyhee County Commissioners replied. On August 24, 2011 the PESRP EA was made available for public comment. One environmental group, a private citizen, and the Idaho Department of Fish and Game (IDFG) responded. A summary of comments relevant to the Proposed Action and alternatives is shown below.

Comment: One commenter stated an environmental impact statement must be done.

Response: Two factors determining the type of National Environmental Policy Act (NEPA) document to use for an environmental analysis are: 1) issues identified through internal and public scoping and 2) whether significant impacts are identified in the analysis

(CEQ 40 Most Asked Questions, Environmental Assessments, p. 25, 36a.). No issues were identified through scoping that would result in preparing an environmental impact statement. Further, a FONSI has been prepared considering the 10 factors used to determine significance. As a result, I have determined a finding of no significance. Therefore, an environmental impact statement is not needed.

Comment: Many comments suggested a longer rest period (>2 growing seasons) from livestock grazing was needed to allow seeded species to establish. One comment suggested a shorter period of time. Some recommended criteria which could be effectively monitored and used to decide when livestock grazing could resume on burned areas. Others addressed the need for quantitative data for determining when livestock grazing could resume and if seeding efforts had failed. One commenter was concerned with the spatial extent of a closure and post-grazing management.

Response: Current BLM policy (BLM Handbook H-1742-1) is to exclude livestock from grazing burned areas until monitoring results show ESR objectives as met. Objectives specific to a burned area are documented in ESR plans. The PESRP discusses parameters that can be used to define ESR objectives (EA, pp. 40 – 42) for natural recovery, seeding establishment, and grazing resumption. If a treatment fails, other factors would be considered (EA, p. 125). The spatial and temporal extent of a livestock closure depends on the area burned and resource issues.

Livestock closures implemented through the PESRP EA are directed at areas burned by wildfire. However, adjacent unburned areas may also be included in the closure. For example, deciding to close an entire pasture in lieu of building temporary fences. However, closing adjacent unburned pastures or allotments or modifying grazing management practices outside of the burned area will be addressed by the appropriate field office manager after consulting with his or her staff.

ESR objectives address the sustainability and health of soils and vegetation. The PESRP describes broad objectives and monitoring techniques for use in developing site-specific objectives and monitoring strategies in ESR plans. Both quantitative and qualitative data collection are encouraged for measuring ESR objectives used in determining when livestock grazing can resume in a burned area.

Long-term livestock management of a burned area would meet LUP objectives, rangeland health standards, and/or activity plan objectives. Adjustments in permitted use will be addressed by the appropriate field office manager in consultation with his or her staff.

Comment: One comment discouraged the use of ESR funds to construct post-fire livestock facilities such as temporary fences, and recommended using existing fences to restrict livestock from burned or treated lands. A commenter suggested if temporary fences are built they should be electric fences and dates should be identified for removing them. Another comment speculated that BLM's reason for fencing is to make large amounts of fencing available as "surplus" for ranchers' later benefit.

Response: BLM policy (BLM Handbook H-1742-1) allows ESR funds to be used to implement temporary livestock closures when needed to protect recovering vegetation or new seedings from impacts by wildlife, livestock, or humans, and the health and safety of people. The closure would occur during the recovery period for burned vegetation or the establishment period for new seedings. Types of facilities that may be constructed include fences, cattleguards, and gates. Existing fences would be used in areas where they meet the need and purpose of a protection fence.

Electric fences are an option, but are not normally used due to the intense maintenance needed to keep them functional on rangelands. Fences are removed once ESR objectives have been met and a decision has been made to allow excluded activities (e.g. livestock grazing, recreation) to resume. Recovered fence materials have been used for future fencing projects which have been analyzed in a NEPA document and a decision made to implement the project. Materials are also used to complete routine maintenance of existing fences. An exception to removing a protective fence is when a seeding or recovered area requires separate management to maintain the ESR investment. A NEPA analysis and decision record would be completed prior to keeping a protective fence in place for long-term management purposes.

Comment: A comment suggested using "wildlife friendly" fence designs when constructing post-fire fences. Another comment encourages BLM to use guidelines identified in BLM Information Memorandum No. 2010-022, Managing Structures for the Safety of Sage-grouse, Sharp-tailed grouse, and Lesser Prairie-chicken.

Recommendation: Fence construction and repair after a wildfire would conform to BLM Manual Handbook H-1741-1 and recent BLM policies regarding sage-grouse and fence construction. The handbook does not restrict BLM from designing fences to allow for wildlife movement. Therefore, wire height and spacing can be adjusted to meet site-specific needs of wildlife while still meeting the purpose for the fence. The Information Memorandum specifically addresses the need to carefully evaluate the risk for sage-grouse collision and to site fences in a manner consistent with conservation measures in the Conservation Plan for the Greater Sage-Grouse in Idaho (IDFG, 2006). Design features are included in the PERSP EA which addresses the risk of sage-grouse colliding with fences (EA, p. 34).

Comment: A comment suggested constructing permanent exclosures for every square mile treated in an ESR plan.

Response: Exclosures are a useful tool for documenting long-term success of ESR treatments. Exclosures can be constructed with ESR funds depending on size of the treated areas, resource values, and funding availability.

Comment: Several comments recommend using native plants when seeding burned areas. One comment specifically recommended seeding smaller-stature native plants. A couple of comments suggested crested wheatgrass not be used in seed mixes and one comment

suggested removing crested wheatgrass from burned areas. Another specifically stated that forage kochia should not be used under any circumstances.

Response: Both ESR policy and the Proposed Action direct the use of plant materials appropriate to site conditions and native materials, whenever possible. Using native plants in ESR seed mixtures is preferred to non-native plants. However, a mixture of native and non-native species may be used if desired natives are not available, and if the use of non-natives is consistent with LUP (BLM Handbook H-1742-1). Other considerations prior to using non-native plants in a seed mix are: 1) the natural biological diversity of the treatment area will not be diminished; 2) exotic and naturalized species can be confined within the proposed management area; 3) analysis of ecological site inventory information indicates that a site will not support reestablishment of a species that historically was part of the natural environment; and/or 4) resource management objectives cannot be met with native species (BLM Manual 1745).

Small-statured native plants have recently been included in seed mixtures. Their inclusion provides both structural and species diversity in a seed mix. Examples of these plants include Sandberg bluegrass (*Poa secunda*), bottlebrush squirreltail (*Elymus elymoides*), and western yarrow (*Achillea millefolium*).

Removing good condition seedings would not meet ESR program stabilization goals. However, burned areas with seedings in poor condition would likely be treated to stabilize soils, control invasive plants and noxious weeds, and diversify vegetation to meet resource objectives and rangeland health.

The Proposed Action does not preclude adding forage kochia to an ESR seed mix; however, most seed mixes do not include forage kochia (EA Appendix 1, p. 175). It can be used to stabilize a site and/or control invasive plants or noxious weeds. Design features in the PESRP EA would either eliminate or minimize potential effects from seeding highly-competitive non-natives in sensitive plant habitats (EA, pp. 26, 28, and 29).

Comment: A commenter expressed that not considering an alternative to only use native seed in seed mixtures was a “stretch” and that such an alternative could have said to use native seed to the limits of its availability.

Response: An alternative to plant only native seed was considered; however, it was not studied in detail. The exclusive use of native seed will not always achieve ESR goals. Depending on supply and demand, native seed is not always available in sufficient amounts (EA, p. 43). The Proposed Action emphasizes the use of native plant species. A mixture of native and non-native species may be used if native seed is unavailable in sufficient amounts, and if the use of non-natives is consistent with approved LUPs (BLM Handbook H-1742-1).

Comment: A comment was made that sagebrush must be seeded on all burned lands. Another comment did not support planting sagebrush in seeded areas.

Response: Natural recovery by native plant species is preferable to planting or seeding (BLM Handbook H-1742). Although sagebrush is a component of most seed mixes, both native and non-native, there may be times that it is not appropriate to plant sagebrush (e.g. fire intensity was low and sufficient sagebrush plants or pockets of plants were left in the burned area to naturally reproduce, not all range sites support sagebrush). Considerations of feasibility and likelihood of success as well as economic realities must be considered at the site-specific analysis level.

Comment: A few comments addressed the need to reseed if initial attempts to establish perennial vegetation fail.

Response: ESR funds can be used to retreat a failed ESR treatment. The BLM Handbook H-1742 states "Emergency stabilization funding may be used for up to three years to repair or replace structures or treatment … where failure to do so would imperil watershed functionality or result in serious loss of downstream values…." It also says "When a seeding or planting is determined to be a failure through documented monitoring, funding from the Burned Area Rehabilitation account may be requested to retreat the area." If available, other program funds (Healthy Lands, Fuels) could also be used to retreat an area.

Comment: One comment referred to the appeal of the Jarbidge Field Office Long Butte ESR decision. (This decision was upheld.) Several points were made by the appellant in the Long Butte ESR appeal; however, the comment provided for the PESRP EA did not identify which points applied to the PESRP EA. Therefore, BLM staff identified issues in the appeal they believed to be pertinent to the PESRP EA. Issues not previously addressed in the comments and responses above include the following excerpts from the Long Butte ESR Plan Appeal.

a) Failure to learn from past fire and ESR outcomes and failure to use best available science to address ecological problems.

Response: ESR treatments in the Proposed Action were developed using monitoring data, professional experience, and current literature (including Restoring Western Ranges and Wildlands, General Technical Report RMRS-GRT-136, Rocky Mountain Research Station, USDA Forest Service, 2004). Potential impacts from ESR treatments are analyzed in the PESRP EA (EA, pp. 78 – 149). Both the ESR Handbook and the Proposed Action direct staff to consider local history, ecological condition, and management objectives when determining site-specific ESR actions.

b) Failure to address the needs of special status species, including sage-grouse, slickspot peppergrass, and pygmy rabbit in treatment design and application.

Response: The Proposed Action includes design features for special status species. These features either reduce or eliminate potential impacts from ESR treatments (EA, pp. 25 – 36 and Appendix 2). Potential impacts from proposed ESR actions are disclosed in the PESRP EA. This impact analysis has been included in the PESRP EA biological assessment.

Design features comply with current consultations and conservation agreements with the U.S. Fish and Wildlife Service. Incorporating design features into applicable ESR plans is the basis for Section 7 consultation on the PESRP EA and individual projects.

c) Several comments in the appeal addressed the issues of climate change and desertification relative to seeding establishment and grazing resumption.

Response: Secretarial Order 3289 (September 14, 2009) acknowledges the potential impacts from climate change. It directs BLM to analyze potential climate change impacts when completing long range planning exercises, setting priorities for scientific research and investigations, developing multi-year management plans, and making key decisions regarding potential use of resources. Since climate change is long term and global in scale, quantifying any change on a local level is hard. The PESRP EA indirectly addresses climate change by directing BLM staff to consider local conditions when planning ESR projects.

d) Several comments in the appeal addressed herbicides and claimed that BLM does not adequately address non-target vegetation or special status species.

Response: Herbicide use and associated restrictions are addressed on page 10, 14, and 15 of the PESRP EA. Design features contained in the Proposed Action specifically address herbicide use as it relates to sensitive resources.

V. Appeals

My decision may be appealed to the Interior Board of Land Appeals (IBLA), Office of the Secretary, as provided in 43 Code of Federal Regulations (CFR) Part 4. Notice of appeals must be filed within 30 days of this decision with the Idaho BLM State Director, at 1387 South Vinnell Way, Boise, Idaho 83709. If a statement of reasons for the appeal is not included with the notice, it must be filed with the IBLA, Office of Hearings and Appeals, U. S. Department of the Interior, 801 North Quincy St., Suite 300, Arlington, VA 22203 within 30 days after the notice of appeal is filed with the Idaho BLM State Director.

The appellant shall serve a copy of the notice of appeal and any statement of reasons, written arguments, or briefs on each adverse party named in the decision, not later than 15 days after filing such document (see 43 CFR 4.413(a)). Failure to serve within the time required will subject the appeal to summary dismissal (see 43 CFR 4.413(b)).

Notwithstanding the provisions of 43 CFR 4.21(a)(1), filing a notice of appeal under 43 CFR Part 4 does not automatically suspend the effect of the decision. If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the IBLA, the petition for a stay must accompany your notice of appeal.

A petition for a stay is required to 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.

In the event a request for stay or an appeal is filed, the person/party requesting the stay or filing the appeal must serve a copy of the appeal on the Office of the Field Solicitor, 960 Broadway Ave., Suite 400, Boise, ID 83706.

Timothy M. Murphy
Acting Idaho BLM State Director

October 31, 2013
Date

cc:

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