



United States Department of the Interior



BUREAU OF LAND MANAGEMENT
Egan Field Office
HC33 Box 33500 (702 N. Industrial Way)
Ely, Nevada 89301-9408
http://www.blm.gov/nv/st/en/fo/ely_field_office.html

In Reply Refer To:
9210 (NVL0100)

DECISION

Overland Pass Habitat Improvement Project : Decision Record
: :
: DOI-BLM-NV-L010-2011-0036-EA

Environmental effects of the Proposed Action for the Overland Pass Habitat Improvement Project (Project) have been analyzed in Environmental Assessment (EA), DOI-BLM-NV-L010-2011-0036-EA (enclosed). I have reviewed the EA and have made a Finding of No Significant Impact (enclosed) for the Overland Pass Habitat Improvement Project. Based on that review and the record as a whole, I approve the Proposed Action in its entirety as described in Section 2.3 of the EA. This decision applies only to lands in the Project Area that are administered by the Bureau of Land Management (BLM), Egan Field Office. Portions of the Project area that are managed by the United States Forest Service (USFS) will be subject to their decision procedures.

The Proposed Action approved by this decision includes various vegetation treatments to be conducted over 70-80 percent of ten vegetation treatment units (five of which occur on BLM administered land), restoration of Cracker Johnson Spring #2, and tree thinning within sagebrush communities exhibiting Phase I woodland development throughout the entire project area. The treatment methods will be employed in designated areas to achieve overall project objectives and the treatment unit specific objectives as outlined in the EA.

The Proposed Action has been designed to improve wildlife habitat, reduce fuel loads, and meet the objectives of the BLM's Ely District Resource Management Plan. Specifically, treatments are anticipated to improve habitat within the Project Area for mule deer (*Odocoileus hemionus*), pronghorn antelope (*Antilocapra americana*), and greater sage-grouse (*Centrocercus urophasianus*). Additionally, this Project is intended to improve vegetation diversity and community resistance and resilience, as well as reduce fuel loads and thus also reduce the risk of catastrophic wildfire.

COMPLIANCE WITH MAJOR LAWS AND REGULATIONS

Clean Air Act of 1970, as amended

This decision is in compliance with the Clean Air Act of 1970, as amended. All required permits will be secured to ensure compliance with federal and state laws. Pollutant emissions will be within state and federal standards. Burn authorizations are issued and administered by the Nevada Division of Environmental Protection, Bureau of Air Quality Planning.

Clean Water Act of 1977, as amended

The Clean Water Act is a federal statute that requires states and tribes to restore and maintain the chemical, physical, and biological integrity of the nation's waters (33 United States Code 1251 et seq.). The Project does not involve the filling, alteration, or modification of any waterway or pollution of any navigable waters. This decision includes implementing Project design features to ensure management activities maintain or improve watershed conditions (see EA Section 2.3.3.11 Hydrology on pg. 40 and Appendix F), which will improve water quality.

Endangered Species Act of 1973, as amended

The Endangered Species Act (ESA) requires that federal activities do not jeopardize the continued existence of any species federally listed or proposed as threatened or endangered, or result in adverse modification to such species' designated critical habitat.

The greater sage-grouse is present in the Project Area and is a candidate species for listing under the ESA. In March 2010, the United States Fish and Wildlife Service (USFWS) determined that the species was warranted, but precluded, for listing range-wide. The USFWS is scheduled to make the determination of whether the species should be proposed for listing under the ESA, or if the species should be removed from the candidate list and receive no further consideration. The Project design features and Proposed Action are consistent with latest scientific information for protecting or improving sage-grouse habitat, and protecting sage-grouse populations, including BLM's Greater Sage-Grouse Interim Management Policies and Procedures issued in 2011.

Environmental Justice (Executive Order (EO) 12898)

Federal agencies are directed to identify and address, as appropriate, any disproportionately high and adverse human health or environmental effects on minority populations and low income populations. The decision will not result in unequal impacts on minority populations and low income populations and complies with EO 12898.

Floodplain Management (EO 11988)

This executive order requires Federal agencies to provide leadership and to take action to (1) minimize adverse impacts associated with occupancy and modification of floodplains and reduce risks of flood loss; (2) minimize impacts of floods on human safety, health, and welfare; and (3) restore and preserve the natural and beneficial values served by flood plains. This decision complies with EO 11988 by maintaining floodplain integrity.

Protection of Wetlands (EO 11990)

This executive order requires Federal agencies to take action to minimize destruction, loss, or degradation of wetlands and to preserve and enhance the natural and beneficial values of wetlands. This decision complies with EO 11990 by protecting wetlands through Project best management practices.

Migratory Bird Treaty Act and EO 13186

This decision complies with the Migratory Bird Treaty Act and EO 13186, because no take of migratory birds, nests, eggs, or nestlings is proposed. The proposed action and associated project design features (pg. 34) meet the agency obligations as defined under the April 12, 2010 Memorandum of Understanding between the BLM and USFWS, designed to complement EO 13186.

National Historic Preservation Act of 1966

This decision complies with the National Historic Preservation Act of 1966. A programmatic agreement between the USFS, BLM and Nevada State Historic Preservation Office (SHPO) has been put in place that will guide compliance during project implementation. This agreement includes methods of consultation between the Forest Service, BLM, the SHPO, and area tribes to avoid and limit effects to historic properties. Design features from the programmatic agreement are included in the Proposed Action. The programmatic agreement is included as Appendix C of the EA.

Archeological Resources Protection Act of 1979

This act is for the protection of archaeological resources and sites which are on public lands. The proposed action will not conflict with this law. The programmatic agreement described above will ensure protection of cultural resources as required by law.

Native American Graves and Repatriation Act of 1990

The Proposed Action will not conflict with this law. Provisions are included in the Project design features and programmatic agreement (described above) that will provide for protection of Native American burial sites and Native American human remains, funerary objects, sacred objects, and items of cultural patrimony on Federal and tribal lands that may be discovered during project activities.

RATIONALE

1. The decision comprehensively addresses the need for action described in the enclosed EA. The Proposed Action is in conformance with the BLM Ely District Record of Decision and Approved Resource Management Plan (RMP) dated August 2008. Section 1.3, *Relationship to Planning* as described in the EA documents the conformance review.
2. The Proposed Action is consistent with all other federal, state, local and tribal policies and plans to the maximum extent possible.
3. The Proposed Action responds to the need to meet the standards for sage-grouse habitats as identified in the BLM Ely District Approved RMP, and is in accordance with BLM's Greater Sage-Grouse Interim Management Policies and Procedures issued in 2011. Sage-grouse preliminary priority habitat and preliminary general habitat will be improved in important lekking and nesting habitat as identified cooperatively with Nevada Department of Wildlife, BLM and the U.S. Forest Service.
4. The project design features, as adopted, minimize potential adverse environmental impacts, and address comments and concerns raised both by the public and interdisciplinary team members during the development and analysis of the Project. In developing the Project design features and analyzing the environmental consequences of the Proposed Action, potential impacts to air quality, human health and safety, Native American religious concerns, soils and water, vegetation, wildlife, recreation, wilderness, inventoried roadless areas, sensitive plants and animals, noxious/invasive weeds, rangeland resources and livestock grazing, National Historic Trails, climate change, visual resources, wild horses, and cultural resources were considered (Chapters 2, 3 and 4).

5. The Proposed Action allows for harvesting and use of wood in a sustainable manner that could provide economic benefits to the nearby local communities.
6. The Proposed Action reduces the risk of high intensity and high severity wildfires by improving vegetation diversity including resistance and resilience to unplanned disturbances. The Proposed Action will respond to current vegetation departure from reference (natural) conditions in the area. Implementation of the Proposed Action will move the area toward Fire Regime Condition Class 1.
7. The Proposed action will improve habitat for wildlife by improving vegetation diversity.
8. The Proposed Action will improve riparian conditions and Cracker Johnson Spring #2 by improving the biological and hydrological condition of the area.

PUBLIC INVOLVEMENT

In accordance with the National Environmental Policy Act (NEPA), public comments were solicited during a 30-day scoping period from February 17 through March 15, 2012. A scoping letter was sent on February 16, 2012, to a list of approximately 138 potentially interested individuals, agencies, and organizations. A Press Release was sent to several local media outlets on February 17, 2012.

The completion of the EA was delayed for the Project, so in accordance with the NEPA, public comments were solicited for a second time during a 30-day scoping period from April 22 to May 20, 2013. A scoping letter was sent on April 22, 2013 to a list of approximately 138 potentially interested individuals, agencies, and organizations.

The USFS published a Notice of Opportunity to Comment (NOC) in the Elko Daily Free Press on September 26, 2013, and mailed the NOC to the list of 138 potentially interested individuals, agencies, and organizations. The NOC allowed for an additional 30-day scoping period, ending on October 28, 2013.

The Project has also been listed on the USFS's Humboldt-Toiyabe National Forest Schedule of Proposed Actions since January 2012.

Comments received during the scoping period were incorporated into development of the EA. Resources issues were analyzed based on comments brought forward during the scoping period.

A preliminary EA was released to the public on November 3, 2014 for a comment period that ended December 4, 2014. The preliminary EA was mailed to individuals and organizations who have requested to be included in projects of this nature, including those who commented during the scoping period. The preliminary EA was also posted on the BLM Ely District Website. A legal notice was also published on November 5, 2014 in the Elko Daily Free Press describing the project and the opportunity to comment. Comments were received from one party during the Preliminary EA comment period. A summary of the comments and the manner they were addressed are included in Appendix H of the Final EA.

TRIBAL CONSULTATION

As part of the EA process, the BLM and USFS have been coordinating with local tribal governments regarding this Project in accordance with the National Historic Preservation Act, the NEPA, the American Indian Religious Freedom Act, the Native American Graves Protection and Repatriation Act, and EO 13007. Tribal coordination has been ongoing throughout the analysis process and will continue through implementation.

APPEALS

Appeal procedures for this decision are outlined in Title 43 of the Code of Federal Regulations (CFR), Part 4.

In accordance with Title 43 CFR 4.410, any party to a case who is adversely affected by the decision of an officer of the Bureau of Land Management shall have a right to appeal to the Interior Board of Land Appeals (Board). In accordance with Title 43 CFR 4.411, a person who wishes to appeal the decision must file a notice that he wishes to appeal in the office of the authorized officer who made the decision. In accordance with Title 43 CFR 4.413, within 15 days of filing the notice of appeal and any petition for stay, the appellant also must serve a copy of the appeal and any petition for stay on any person named in the decision and on the Office of the Solicitor in the manner prescribed in Title 43 CFR 4.401(c). The office to file the notice of appeal and a copy of the notice to appeal:

Jill A. Moore
Bureau of Land Management
Egan Field Office
HC 33 Box 33500
Ely, NV 89301

and a copy to:
U.S Office of the Regional Solicitor,
Department of the Interior
Pacific Southwest Region
2800 Cottage Way, Room E-1712
Sacramento, CA 95825-1890

A person served with the decision being appealed must transmit the notice of appeal in time for it to be received in the office where it is required to be filed within 30 days after the date of service. In accordance with Title 43 CFR 4.411 (b), the notice of appeal may include a statement of reasons for the appeal, a statement of standing if required by Title 43 CFR 4.412 (b), and any arguments the appellant wishes to make. In accordance with Title 43 CFR 4.412 (a), if the notice of appeal did not include a statement of reasons for the appeal or the appellant wishes to file additional statements of reasons, the appellant shall file such statements with the Board within 30 days after the appeal was filed. The address to file such statements to the Board is:

Interior Board of Land Appeals
Office of Hearings and Appeals
801 North Quincy Street
Arlington, VA 22203

If statement of reasons for appealing were filed with the "Notice of Appeal", no additional statement is necessary.

Pursuant to Title 43 CFR 4.21 (b), an appellant also may petition for a stay of the final decision pending appeal by filing a petition for stay along with the notice of appeal.

At the conclusion of any document that a party must serve, the party or its representative must sign a written statement certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service [Title 43 CFR 4.422(c)(2)].

APPROVAL

/s/ Stephanie Trujillo, Acting
Jill A. Moore
Field Manager
Egan Field Office

April 8, 2015
Date

Enclosures