

Draft Decision Notice and Finding of No Significant Impact
Overland Pass Habitat Improvement Project
U.S. Forest Service
Mountain City, Ruby Mountains and Jarbidge Ranger District
White Pine and Elko Counties, Nevada

Introduction

In September 2014, an Environmental Assessment (EA; DOI-BLM-NV-L010-2011-0036-EA) for the Overland Pass Habitat Improvement Project (Project) was prepared in compliance with the National Environmental Policy Act (NEPA) and other relevant federal laws and regulations. The EA disclosed the direct, indirect, and cumulative environmental effects that would result from implementing the Proposed Action and No Action Alternative. Other alternative actions were considered and discussed in the EA. The EA was released to the public for a 30-day comment period in November 2014. Comments received were considered and incorporated as applicable into the final EA, dated April 2015.

The Project Area encompasses approximately 45,220 acres. The Project occurs on lands managed by the Bureau of Land Management's (BLM) Egan Field Office and United States Forest Service's (USFS) Humboldt-Toiyabe National Forest, Mountain City, Ruby Mountains and Jarbidge Ranger District. Approximately 25,265 acres occur on National Forest System (NFS) land and 18,378 acres occur on BLM managed lands (see Table 2.3-1 in EA). Some small in holdings of private land occur within the Project Area (approximately 1,577 acres), although the proposed Project does not include conducting treatments on these lands unless a cooperative agreement is in place with the land owner and Federal agency.

The Project goals are to improve habitat for various wildlife species, reduce fuel loading, and improve vegetation diversity and community resilience. Most treatments would focus on improving sagebrush (*Artemisia* sp.) communities by removing overstory trees and improving understory grasses and forbs. The BLM and USFS propose to focus vegetation treatments over approximately 18,570 acres and ten treatment units over the next ten (10) years. Approximately 70-80 percent (13,000 to 14,850 acres) of the treatment units would receive treatment. Various treatment methods (mechanical, prescribed fire, chemical, etc.) would be used to shift vegetation communities closer toward reference conditions and Fire Regime Condition Class 1, including restoration of Cracker Johnson Spring #2. Areas outside the treatment units (approximately 7,900 acres), but within the Project Area may receive a hand-thinning treatment (described in Section 2.3.1 of the EA) to reduce singleleaf pinyon (*Pinus monophylla*) and Utah juniper (*Juniperus osteosperma*) trees in sagebrush communities exhibiting Phase I woodland development. Treatments would focus on creating a diverse vegetation community that is resilient to future disturbances and improving habitat for wildlife species.

This is a cooperative project between the BLM Ely District, Egan Field Office and the USFS Humboldt-Toiyabe National Forest, Mountain City, Ruby Mountains and Jarbidge Ranger District. The Nevada Department of Wildlife (NDOW) is also a cooperating agency for this Project.

The EA is available at the Mountain City, Ruby Mountains and Jarbidge Ranger District Office, 2035 Last Chance Road, Elko, Nevada, 89801, (775) 738-5171, and is also available on the Humboldt-Toiyabe National Forest website at:

http://www.fs.fed.us/nepa/nepa_project_exp.php?project=36593

Project Location

The Project is located approximately 57 miles south of Elko, Nevada, in the southern portion of the Ruby Mountains, and is within White Pine and Elko Counties. Figure 1 below shows the Project location.

The Project is located within all or parts of the following sections:

Township (T) 24 North (N), Range (R) 56 East (E), Section 1;
T24N, R57E, Sections 1-6;
T25N, R56E, Section 2-5, 9-11, 13-16, 21-28, 34-36;
T25N, R57E, Sections 3-4, 9-11, and 13-36;
T26N, R56E, Sections 20-22, 27-29, and 32-34; and
T26N, R57E, Sections 15-16, 21-22, 27, 28, 33, and 34 (Mount Diablo Base and Meridian).

Need for the Proposal

Vegetation communities in the Project Area have departed from their historic range of variability and are in need of treatment to maintain ecosystem resistance and resilience and restore these communities to their natural vegetative state. Within the Project Area, ten (10) treatment units have been identified. Areas targeted for treatment are mainly big sagebrush communities where singleleaf pinyon and Utah juniper have become established. Biophysical setting (BpS) and succession class mapping indicates that approximately 13,000 acres of the sagebrush dominated communities in the Project Area are in an unnatural succession class, which is a community that has uncharacteristic native vegetation cover, structure or composition (e.g., pinyon-juniper established within shrub communities). Additionally, Fire Regime Condition Class analysis indicates that approximately 50 percent of the Project Area is classified as having a substantially altered fire regime.

Decision

Based on my review of the EA and project record, I have decided to implement the Forest Service portion of the Proposed Action, as described in its entirety in the EA. The Proposed Action has been designed to improve wildlife habitat, reduce fuel loads, and meet the objectives of the U.S. Forest Service's Humboldt National Forest Land and Resource Management Plan (LRMP). 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.

Based on a review of the EA and project record, I find that the Proposed Action has no significant impacts requiring the preparation of an Environmental Impact Statement prior to the issuance of my decision to implement. See Finding of No Significant Impact listed below.

Decision Rationale

I have selected the Proposed Action based on the following rationale:

- The decision comprehensively addresses the need for action. The Proposed Action responds to the need to meet the standards for sage-grouse habitats as identified in the Humboldt National Forest LRMP, as amended, and is in accordance with the sage-grouse interim guidance issued in 2012. Sage-grouse preliminary priority habitat and preliminary general habitat would be improved in important lekking and nesting habitat as identified jointly with NDOW and BLM
- The project design features, as adopted, minimize any 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).
- The Project allows for harvesting and use of wood in a sustainable manner that could provide economic benefits to the nearby local communities.
- The Project reduces the risk of high intensity and high severity wildfires.
- The Project would not have any long-term impacts to the Pearl Peak Inventoried Roadless Area. According to the EA, less than five percent of the Pearl Peak Roadless Area would be affected by the treatments (page 59).

Other Alternatives Considered

No Action Alternative

Under the No Action Alternative, vegetation treatments would not occur and the vegetation communities would continue to decline in health and quality. The existing conditions include areas where pinyon and juniper have created a departure from the historic range of variability for vegetation types. The current departure from the historic range of vegetation type variability results in areas where trees (i.e., pinyon and juniper) are the dominant vegetation and shrubs are no longer the dominate understory, which impacts mule deer and greater sage-grouse habitats, and increases the potential for catastrophic fires. Approximately 13,000 to 14,900 acres of the Project Area are in need of vegetation treatments to improve mule deer and greater sage-grouse habitat and prevent catastrophic fires. The No Action Alternative would result in continued establishment of pinyon and juniper, and the continued decline of herbaceous vegetation in the understory of the trees. Also, pinyon and juniper trees would continue to encroach sagebrush dominated communities and increase in density where already established, reducing the quality of habitat for greater sage-grouse and other wildlife species as well as the vegetation community

resistance and resilience. Hazardous fuels would remain in the Project Area, increasing the risk of catastrophic wildfire.

Cracker Johnson Spring No. 2 would not be restored; however, current resource management would be maintained in the area.

Elimination of Treatment Methods

Public scoping brought forward some suggestions for elimination of treatment methods, but elimination of all treatments would be similar to the No Action Alternative, which is analyzed in this EA. Elimination of particular treatment methods, such as prescribed fire, would not meet the purpose and need of the Project; therefore, this alternative was not carried forward for detailed analysis.

Hand Thinning Only

A hand thinning only treatment was considered but eliminated from further analysis because it would not meet the purpose and need of the Project. Some of the treatment areas are lacking a desirable perennial understory and would require seeding for a successful response. These areas may also need seedbed preparation to improve success, which is provided by the mechanical treatment methods. The multitude of the treatment methods in the Proposed Action allow for the best method(s) to be used to create desirable outcomes and improve greater sage-grouse and mule deer habitat.

Public Involvement

In accordance with the 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 Humboldt-Toiyabe National Forest Schedule of Proposed Actions (SOPA) 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 environmental analysis process, the BLM and USFS have been coordinating with local tribal governments regarding this Project in accordance with the National Historic Preservation Act (NHPA), the NEPA, the American Indian Religious Freedom Act, the Native American Graves Protection and Repatriation Act, and Executive Order (EO) 13007. Tribal coordination has been ongoing throughout the analysis process and will continue through implementation.

Findings Required by Other Laws and Regulations

National Forest Management Act

This decision is consistent with the standards, guidelines, and management direction included in the Humboldt National Forest LRMP (as amended) and the National Forest Management Act of 1976.

Clean Air Act of 1970, as amended

This decision is in compliance with the Clean Air Act, 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 is consistent with latest scientific information for protecting or improving sage-grouse habitat, and protecting sage-grouse populations.

Environmental Justice (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 E O 12898.

Floodplain Management (EO 11988)

This executive order requires the Forest Service 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 the Forest Service 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 January 16, 2001 Memorandum of Understanding between the Forest Service 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 Humboldt-Toiyabe National Forest, the BLM and the 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 limit or avoid effects to historic properties. Design features from the programmatic agreement are included in the Project design features associated with 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 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.

Finding of No Significant Impact

The deciding official is responsible for evaluating the effects of the project relative to the definition of significance established by the CEQ Regulations (40 Code of Federal Regulations (CFR) 1508.27). Based on this evaluation it has been determined that the Proposed Action will not have a significant effect on the quality of the human environment. As a result, no Environmental Impact Statement will be prepared. The rationale for this finding is as follows, organized by sub-section of the CEQ definition of significance cited above.

Context

For the Proposed Action and No Action Alternative, the context of the environmental effects is based on the environmental analysis documented in the EA prepared for this project.

The Proposed Action is a site-specific action that by itself does not have international, national, region-wide or state-wide importance. Although there are no significant effects of the Proposed Action, most direct effects are limited to the Project Area, which includes portions of the Ruby Mountains, South Ruby Valley, Overland Pass, and Huntington and Ruby Valleys. Also not significant, cumulative effects occur over large areas, depending on resource, but are focused between US Highway 50 and Interstate 80 and between the Diamond Mountains and US Highway 93 in White Pine and Elko Counties, Nevada.

Intensity

Intensity is a measure of the severity, extent, or quantity of impacts, and is based on information from the effects analysis of the EA and the references in the project record. The impacts of this project have been appropriately and thoroughly considered with an analysis that is responsive to concerns and issues raised by the public. The agencies have taken a hard look at the environmental effects using relevant scientific information and knowledge of site-specific conditions gained from field visits. The Finding of No Significant Impact is based on the context of the project and intensity of effects using the ten factors identified in 40 CFR 1508.27(b).

1. Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

The finding of no significant impact is not biased by the beneficial effects of the action. The beneficial effects of habitat improvement for greater sage-grouse, mule deer, and other wildlife, concurrent with the benefit of fuels reduction, have not been used to balance adverse effects of the treatments. Potential adverse effects were considered when developing Project design features which were incorporated into the Proposed Action. Project design features are specifically included to minimize or eliminate potential adverse effects from the proposed treatments. Effects determinations were made independently from the beneficial effects of the proposed treatment, but considered the Project design features. A discussion of potential effects is included in Chapters 3 and 4 of the EA and in the resource specialist reports (available in the project record).

2. The degree to which the proposed action affects public health or safety.

No significant impacts on public health and safety were identified in the analysis. Implementation of this project will reduce threats to public health and safety from high severity wildfire by reducing the intensity of wildfires and their resistance to control by fire suppression efforts. Smoke and air quality effects from pile burning cannot be completely

eliminated; however, burn plans addressing public safety and air quality will be completed in cooperation with air quality agencies prior to prescribed burning. Application of herbicide will follow all safety requirements listed on the approved labels as well as all agency, Federal, and State laws. Signs will be posted in the Project Area notifying the public of the Project with a description of the goals and actions. Any areas treated with herbicides will be adequately posted to notify the public of the activity and of safe re-entry dates, if a public notification requirement is specified on the label of the herbicide.

3. Unique characteristics of the geographic area such as the proximity to historical or cultural resources, parklands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

Portions of the Pony Express Trail and the Hastings Cutoff of the California Trail occur within the Project Area, and the Fort Ruby historic site is adjacent to the Project boundary. Treatment design features incorporated into the Proposed Action will protect the integrity of these historic resources. Implementation of the programmatic agreement (Appendix C of the EA) will ensure protection of all cultural and historical resources eligible for listing with the National Register of Historic Places. The Project will not adversely affect parklands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas, as these resources are not present within the project area.

4. The degree to which the effects on the quality of the human environment are likely to be highly controversial.

The effects on the quality of the human environment are not likely to be highly controversial. The environmental analysis process has documented the expected environmental effects of the Proposed Action in Chapters 3 and 4 of the EA and resource specialist reports (available in the project record). The Proposed Action and associated Project design features address the various issues raised by those who commented on the project. The proposed treatments are consistent with the best available science and current direction for improving wildlife habitat through pinyon-juniper removal. While some members of the public are opposed to pinyon-juniper removal for habitat improvement, this action is not highly controversial within the scientific context of the NEPA.

5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

The analysis indicates the effects are not uncertain, and do not involve unique or unknown risk (Chapters 3 and 4 of the EA; resource specialist reports located in the project record). Design features of the proposed action have been developed to address known risks and limit uncertainties. The USFS and BLM have considerable experience with the types of activities to be implemented. The effects described in the EA are based on the judgment of experienced resource management professionals using the best available information including monitoring information from similar past projects.

6. The degree to which the action may establish precedent for future actions with significant effects or represents a decision in principle about a future consideration.

The action is not likely to establish a precedent for future actions with significant effects. While monitoring results may be used to design future actions, such actions will be evaluated

through the NEPA process and will stand on their own as to environmental effects and project feasibility.

- 7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.**

Cumulative impacts of this action are discussed in Chapter 4 of the EA (pgs. 112-137) and within the effects analysis for specific resource areas (as presented in the resource specialist reports available in the project file). No cumulative significant impacts were identified in the EA.

- 8. The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.**

The Proposed Action will have no adverse effect on districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places. The Proposed Action will also not cause a loss or destruction of significant scientific, cultural, or historical resources. A programmatic agreement between the USFS, BLM and the Nevada State Historic Preservation Office (SHPO) includes methods of consultation between the USFS, BLM, the SHPO, and area Tribes to limit or avoid effects to historic properties (Section 2.3.3.5 Cultural Resources on pg. 38 and Appendix C of EA). Design features from the programmatic agreement are included in the Project design features associated with the Proposed Action.

Native American consultation is ongoing with future efforts directed toward unit-specific implementation. Consultation has occurred with all tribes within the surrounding area as described in the EA (page 52).

- 9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.**

The greater sage-grouse is a candidate species for listing as threatened or endangered under the Endangered Species Act (ESA). The Proposed Action is targeted at improving habitat for the greater sage-grouse, so effects will be mostly beneficial. As described in the EA, Project design features (Section 2.3.3) were incorporated into the Proposed Action to minimize any potential effects associated with disturbance and treatments will occur outside of the sage-grouse breeding season. According to the EA and associated specialist reports, no listed threatened or endangered plant or animal species have been located within the Project Area; therefore, there will be no adverse impacts to any species listed under the ESA.

- 10. Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.**

The action is in full compliance with all Federal, State, and local law requirements imposed for environmental protection. Best Management Practices to protect water quality are included in the Project design features of the Proposed Action (Section 2.3.3.11 Hydrology

pgs. 40-41, Appendix F, and Hydrology-Soils Specialist Report available in the project record). There will be no significant impacts to air quality (pages 47-48) and a smoke variance permit, issued by the Nevada Division of Environmental Protection, would be required for all prescribed burning. The proposed action is consistent to the maximum extent possible with Federal, State and local policies and plans.

Pre-Decisional Opportunity to Object

This proposed Forest Service decision is subject to objection pursuant to 36 CFR 218, Subparts A and B. Objections will only be accepted from those who submitted project-specific written comments during scoping or other designated comment periods for this project. Issues raised in objections must be based on previously submitted comments unless based on new information arising after the designated comment period(s).

Written objections, including any attachments, must be filed (regular mail, fax, email, hand-delivery, or express delivery) with the Reviewing Officer at: Objection Reviewing Officer, Intermountain Region USFS, 324 25th Street, Ogden, Utah 84401; or fax to 801-625-5277; or by email to: objections-intermtn-regional-office@fs.fed.us within 45 days following the publication date of the project's legal notice in the Elko Daily free Press, newspaper of record. The date of this legal notice is the exclusive means for calculating the time to file an objection. Those wishing to object should not rely upon dates or timeframes provided by any other source.

The office business hours for those submitting hand-delivered objections are 8:00 a.m. to 4:30 p.m. Monday through Friday, excluding Federal holidays. Electronic objections must be submitted in a format such as an email message, pdf, plain text (.txt), rich text format (.rtf), or Microsoft Word (.doc or .docx). Please add "Overland Pass" in the Subject line. It is the responsibility of Objectors to ensure their objection is received in a timely manner (§ 218.9).

Objections must include the following content as required by 36 CFR 218.8(d): 1) name, address and telephone; 2) signature or other verification of authorship; 3) identification of a single lead objector when applicable; 4) project name, Responsible Official name and title, and name of affected National Forest(s) and/or Ranger District(s); 5) reasons for, and suggested remedies to resolve, your objections; and, 6) description of the connection between your objections and your prior comments. Documents should be incorporated by reference only as provided for at 36 CFR 218.8(b).

Information received including names and addresses of those who comment, will be considered part of the public record for this project and will be available for public inspection and will be released if requested under the Freedom of Information Act.

Contact Information

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(775) 738-5171
tdphelps@fs.fed.us

Signature

KATHRYN W. FUELL

District Ranger
Mountain City, Ruby Mountains & Jarbidge Ranger Districts

Date

Figure 1. Project Location

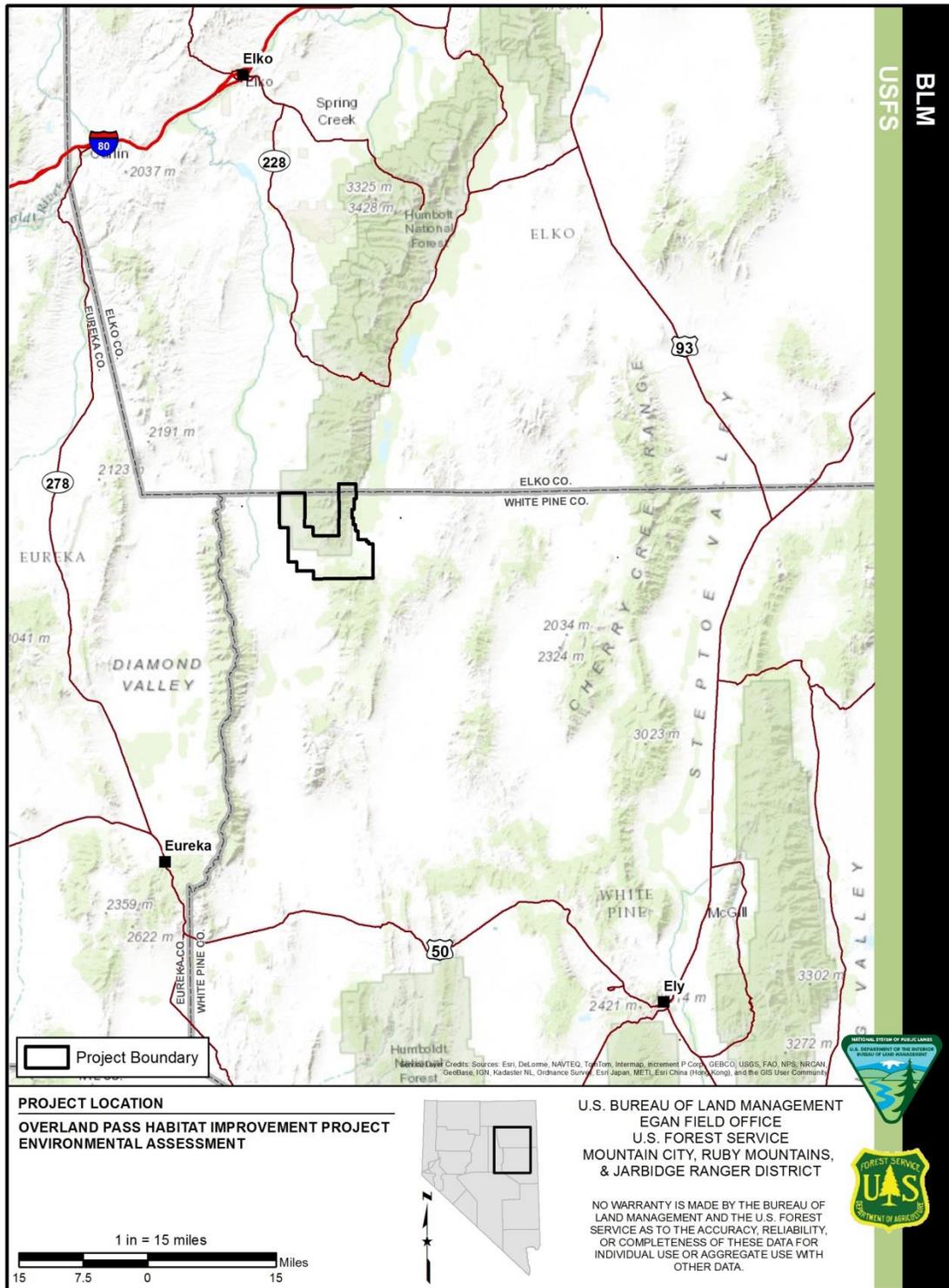
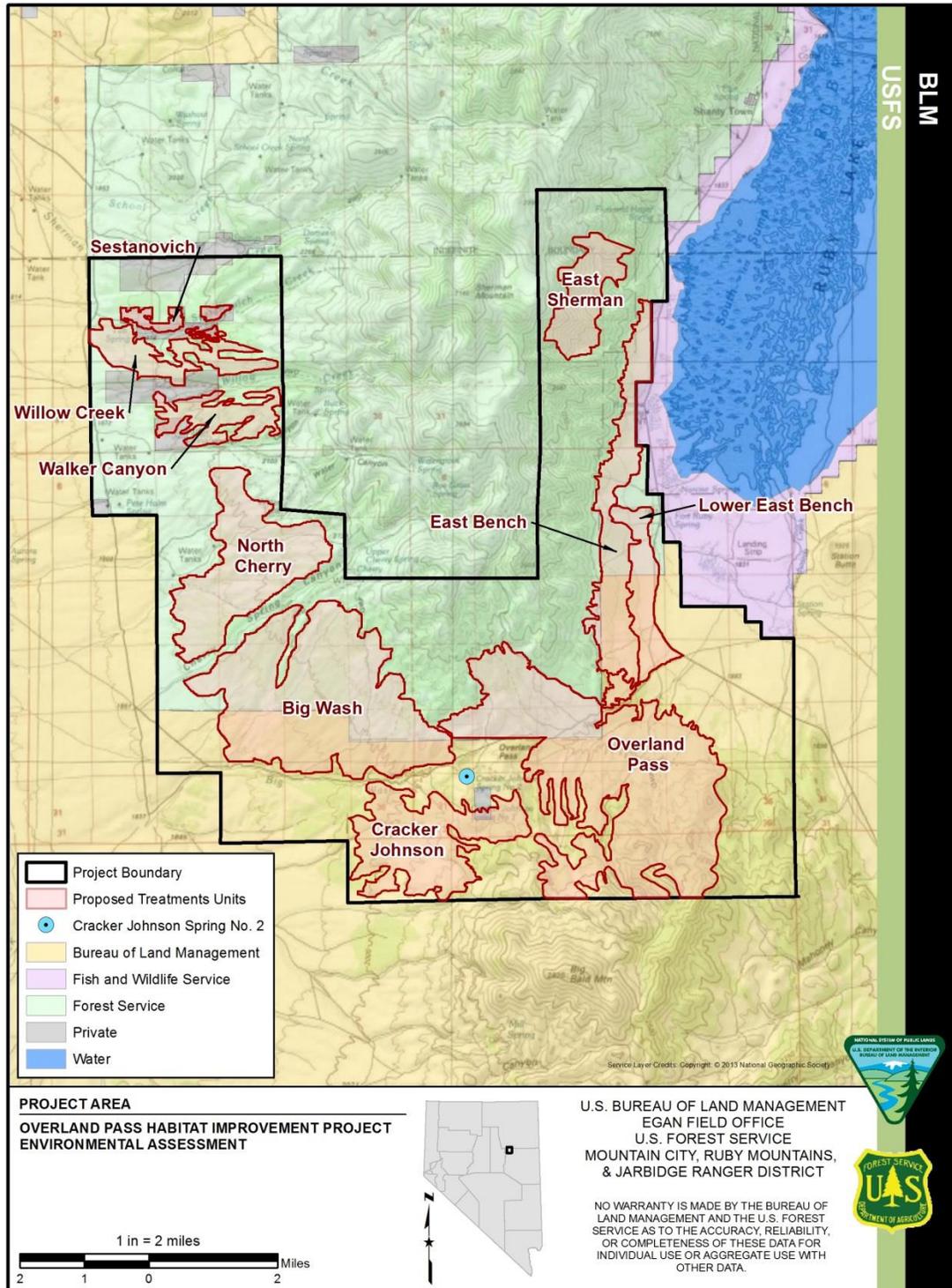


Figure 2. Treatment Units



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