

**UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
CHALLIS FIELD OFFICE  
Decision Record  
For the  
Mill Creek Reconnect Project Environmental Assessment  
DOI- BLM-ID-I030-2013-0006-EA**

The Bureau of Land Management (BLM) - Challis Field Office (CFO) received a request from Trout Unlimited, a non-profit organization focused on the restoration and conservation of native salmonids and their habitats, to reconnect Mill Creek to Big Creek. In partnership with Trout Unlimited, the private land holder and right of way (ROW) applicant is Big Creek Ranch, LLC. A third party contractor, Aspect Consulting, LLC, was hired by the proponent to facilitate project permitting and EA development in coordination with the CFO. Mill Creek is a tributary to Big Creek in the upper Pahsimeroi River Watershed. The Pahsimeroi Valley lies in Central Idaho and includes both Lemhi and Custer counties. Mill Creek has been historically disconnected by irrigation practices and does not directly convey water to Big Creek or allow for upstream and downstream fish migration. Mill and Big creek have also been designated as critical habitat for Snake River Chinook salmon and Columbia Basin bull trout under the Endangered Species Act (ESA). The proposed project would restore stream flow and fish habitat connection between Mill Creek and Big Creek, and contribute to the potential future restoration of flow and fisheries connectivity of Big Creek to the Pahsimeroi River.

The project proposal was also reviewed and ranked by the Technical Team for the Upper Salmon Basin Watershed Program (USBWP) on April 3, 2013. The Technical Team consists of representatives from the Idaho Office of Species Conservation, Idaho Department of Fish and Game, Shoshone-Bannock Tribes, Natural Resources Conservation Service, Lemhi Soil and Water Conservation District, BLM, Salmon-Challis National Forest, National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (USFWS), The Nature Conservancy, Trout Unlimited, Idaho Department of Water Resources, Idaho Department of Environmental Quality, Custer County Soil and Water Conservation Service, and the U.S. Bureau of Reclamation. The priority ranking was 88 (“high”) based on beneficial impacts to habitat limiting factors for instream flow and physical barriers.

The Bureau of Land Management (BLM) Challis Field Office (CFO) conducted internal scoping initially during three project proposal pre-planning meetings, held between January and March of 2013. On August 16, 2013, the project was uploaded to the BLM E-Planning site. A public scoping letter was prepared by the CFO and was initially placed on the E-planning site on September 26, 2013. The scoping letter was updated and mailed to interested publics on October 18, 2013. Written feedback in support of the project proposal was received from the Idaho Department of Fish and Game (IDFG) on November 15, 2013 and Idaho Conservation League (ICL) on November 18, 2013. Additionally, ICL provided specific comments regarding:

enhancement of existing Mill Creek stream channels; designed channel reconstruction, transplaniting native hydric vegetation; installation of a buried pipeline; installation of an additiona length of buried pipeline; construction of a temporary fence; constriction of fence-line posts to allow for seasonal take-down livestock fence. These comments were primarily supportive or inteneded to suggest project design features or best management practices (BMPs) related to sediment retention measures, fish habitat considerations, fence markers for sage grouse, pre-project pygmy rabbit surveys, and invasive vegetation management during and after project implementation. The BMPs, design features, and stipulations described as part of the Proposed Action (EA Chapter 2, pages 12-25) and effects analyses (EA, pages 26-80) address these comments.

Following scoping, the BLM completed the Mill Creek Reconnect Project EA (DOI-BLM-ID-I030-2013-0006-EA) which analyzed and disclosed environmental impacts of implementing two management alternatives on the BLM administered lands in the project area, including portions of Mill and Big Creeks and portions of the Mill Creek and County Line Allotments. The EA included management alternatives to address resource issues identified during internal and external scoping. This document incorporates by reference the Mill Creek Reconnect Projct EA. The alternatives fully analyzed in the EA were developed by the BLM in coordination or consultation with the project proponent, local landowners, conservation groups, state agencies and other federal agencies. Additional information is available in the EA, which is available at the Challis Field Office or on the Internet at: <https://www.blm.gov/epl-front-office/eplanning/projectSummary.do?methodName=renderDefaultProjectSummary&projectId=37018>.

## **Decision**

It is my decision is to: 1) authorize Trout Unlimited to implement the Mill Creek channel reconnection and construction on BLM manged lands, including channel excavation, habitat structure placement, riparian vegetation restoration / revegetation, and temporary fence installation to protect riparian revegetation efforts from wildlife and livestock, as described in the EA (EA, pages 12-21); and 2) issue a ROW to Big Creek Ranches, LLC (IDI-37624) for operation and maintenance of an existing irrigation ditch and two buried irrigation pipelines, occupying a total of 1,952 long by 25 feet wide, encumbering approximately 1.12 acres of BLM managed land (EA pages 22-25).

The proposed action for which Trout Unlimited is authorized to implement incorporates all activities, design features and BMPs described in the EA, under the headings “Mill Creek Channel Reconnection and Construction” (EA, pages 13-16) and “Mill Creek Channel Construction Timing” (EA, pages 16-18).

The ROW grant (IDI-37624) will be issued with the attached stipulations (Exhibit A), and as outlined in the EA under the heading “Big Creek 3 Ditch Right of Way” (EA, pages 22-24). The

grant will be authorized for a term of 30 years. The ROW grant will be issued under the authority of Public Law 94-579 (Federal Land Policy and Management Act) and the regulations found at 43 CFR 2800. Rental fees for the ROW will be required in accordance with 43 CFR 2806, for IDI-37642.

This decision, however, does not authorize construction of the Big Creek Let-Down Fence, proposed by Big Creek Ranches, LLC, and described in the EA under the heading “Big Creek Let-Down Fence” (EA, pages 18-21).

### **Rationale for Decision**

The potential for impacts from the proposed action were evaluated for 12 affected resources (EA, Table 3 and Pages 27 - 80). Insignificant adverse impacts were identified from ground / vegetation disturbance related to stream channel construction, pipeline installation, ROW maintenance, fence construction and riparian revegetation efforts including plantings, cutting, and wetland sod transplant. However, impacts would be limited spatially (project area) and temporally (6 weeks of implementation and 5 years anticipated to establish riparian revegetation). The potential for impacts, both short and long term, are further limited by design features, BMPs and stipulations included as part of the proposed action.

The proposed action for which Trout Unlimited is authorized to implement incorporates all activities, design features and BMPs described in the EA, under the headings “Mill Creek Channel Reconnection and Construction” (EA, pages 13-16) and “Mill Creek Channel Construction Timing” (EA, pages 16-18). The proposed ROW would also include design features, BMPs and Stipulations (Exhibit A). The cumulative impacts of the proposed action were also considered relative to the impacts associated with past, present, and reasonably foreseeable future actions in the Pahsimeroi River Watershed (EA, pages 81-90). For the affected resources considered in the EA, only insignificant incremental impacts were identified. This includes beneficial impacts to water quality, riparian resources, Endangered Species Act (ESA) listed fish and designated critical fish habitat for Chinook salmon and bull trout.

The proposed temporary riparian protection fence is needed to meet the purpose of the action, because it will be essential to ensuring riparian revegetation success within approximately 5 years. As stated in the EA (EA, page 4) “the purpose of the Proposed Action is to reconnect Mill Creek to Big Creek by providing a restored stream conveyance to allow hydraulic connectivity, fish passage, and reestablishment of an adjacent continuous riparian area”. The temporary riparian protection fence will ensure survival and establishment of riparian vegetation plantings, cuttings and wetland sod transplants in the presence of grazing by wildlife, primarily mule deer and elk, and potentially livestock. The fence would be fitted with fence markers to increase visibility to wildlife and reduce potential for collisions. The proponent would be responsible for installation, maintenance and removal once vegetation and bank stability objectives are met in approximately 5 years following implementation. This information was disclosed in the EA (EA

pages 91-93), within Table 18 (Monitoring and Maintenance Responsibility for Mill Creek Reconnect Project) and Table 19 (Revegetation Success and Channel Stability Criteria for Mill Creek Project).

Beneficial impacts were identified for 6 affected resources, including: Threatened/Endangered and Sensitive fish, Fisheries, Tribal Treaty Rights, Visual Resources, Water Quality, Groundwater, and wildlife. Predominately, beneficial impacts of the proposed action were identified as a result of several project components, including: Increased extent of riparian area, improved riparian vegetation diversity and vigor, instream flow conservation, improved water quality (flow and temperature), enhanced stream channel function, constructed stream channel to restore habitat connectivity, and improved access and function of ESA designated critical fish habitat in Mill and Big creeks. While reconnection of Mill Creek to Big Creek will influence habitat access and habitat quality in the project area, it does not represent an impact that would achieve connection of Chinook salmon and steelhead occupied habitats in the lower Pahsimeroi River watershed to the Big Creek subwatershed, including Mill Creek. It does however, represent an important incremental contribution to the overall restoration effort within the Pahsimeroi River Watershed. In combination with other reasonably foreseeable stream flow conservation and habitat connectivity restoration efforts, it will contribute to naturalization of the Big Creek flow regime and the potential for ESA listed fish population expansion.

Consultation with NMFS and USFWS was also conducted in accordance with Section 7 of the Endangered Species Act. Utilizing ESA streamling procedures, the Salmon-Challis Level 1 Team reviewed a draft BA in May 2013 and a revised draft BA provided on June 30, 2014. Following these reviews, preliminary agreement with effects determinations for ESA listed fish, critical habitat and essential fish habitat was reached. The NMFS Level 1 representative indicated that once comments identified in a July 3, 2014 email were addressed, that the BA could be submitted for informal ESA consultation. The USFWS Level 1 representative indicated that once comments identified in a July 14, 2014 email were addressed, that the BA could be submitted for informal ESA consultation. These comments were fully addressed and the BA and request for concurrence were submitted to conclude ESA Section 7 consultation (informal), on August 4, 2014. Based on the preliminary agreement with BLM effects determinations, and conformance with Section 7 of the ESA, the CFO fully anticipates receipt of the letters of concurrence from NMFS and USFWS.

It was also determined that the proposed action is in conformance with the 1999 Challis Resource Management Plan (RMP). Specifically, the RMP goals and objectives identified in the EA were determined to conformant with the proposed action (EA, pages 10-11).

### **Protest and Appeals Information:**

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary in accordance with the regulations contained in 43 CFR, Part 4 and Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days

from receipt of this decision. The Appellant has the burden of showing that the decision appealed is in error.

If you wish to file a petition (request) pursuant to regulation 43 CFR 2801.10 or 43 CFR 2881.10 for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, 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 standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

#### Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied.
2. The likelihood of the appellant's success on the merits.
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

If you have any questions, feel free to contact Ryan J Beatty, CFO Fisheries Biologist (208) 879-6249 or myself at (208) 879-6206.

/s/ Todd Kuck, Field Manager  
August 15, 2014

**EXHIBIT A**  
**Construction and Operations**  
**STIPULATIONS**  
**IDI-37624**

The following project design features, BMPs, or conditions are included here as ROW stipulations. These would be adhered throughout project implementation and for the duration of operation and maintenance of the authorized ROW.

- Fuel storage and refueling, if needed, would occur no closer than 300 feet from Mill and Big Creeks. Existing ranch roads and turn-arounds would be used to access the project area. Off-site areas (e.g. private property) would be used as a staging/refueling area for equipment and vehicles. A fuel spill response kit of appropriate size for the equipment would be readily available throughout the construction period.
- Heavy equipment would be washed to remove oil/grease before delivery to the job site.
- All equipment would be inspected before use to remove vegetation and dirt clods that may contain noxious weeds and seeds.
- Machinery would be inspected daily for fuel or lubricant leaks.
- Machinery would be operated from the top of the stream bank on adjacent upland and developed areas to the maximum extent practicable. Equipment would not be driven or operated in flowing water.
- Use of sediment barriers and erosion controls such as fences, weed-free straw matting/bales or fiber wattles as necessary in all work areas sloping toward the water channels to intercept any surface flow that might transport sediment to the stream channel.
- Excavated material would be covered and stockpiled away from the stream channel or flanked with sediment fencing or fiber wattles to minimize opportunity for fine sediment to be transported into the stream.
- Where construction would otherwise destroy existing riparian vegetation, project managers would direct machinery to remove existing willows prior to disturbance, stockpile them until construction is complete and then replant them in disturbed areas to aid site recovery.
- The ROW holder shall obtain prior approval from the BLM-CFO prior to any maintenance which may require dewatering of Mill Creek. Any work area within the wetted channel will be isolated from the active stream whenever ESA-listed fish are reasonably certain to be present, or if the work area is 300 feet or 10 times bankfull channel width (whichever is less) upstream from spawning habitats—unless NMFS and FWS agree in writing (email) that the work can be done with less potential risk to listed fish without isolating and dewatering the work area.
- The holder shall conduct all activities associated with the construction, operation, and termination of the ROW within the authorized limits of the ROW.

- Holder shall remove only the minimum amount of vegetation necessary for the use and maintenance of the existing road.
- ROW shall be maintained in a sanitary condition at all times; waste materials at those sites shall be disposed of promptly at an appropriate waste disposal site. 'Waste' means all discarded matter including, but not limited to, human waste, trash, garbage, refuse, oil drums, petroleum products, ashes, and equipment.
- The holder shall be responsible for weed control on disturbed areas within the limits of the ROW. The holder is responsible for consultation with the authorized officer and/or local authorities for acceptable weed control methods (within limits imposed in the grant stipulations). Control measures must be done in accordance with the Challis Field Office Integrated Weed Management Program. Coordination with the Challis Field Office Weed Specialist shall be completed before applying herbicides.
- The holders of ROW, IDI-37624, agree to indemnify the United States against any liability arising from the release of any hazardous substance or hazardous waste (as these terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq. or the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq.) on the ROW (unless the release or threatened release is wholly unrelated to the ROW holder's activity on the ROW.) This agreement applies without regard to whether a release is caused by the holder, its agent, or unrelated third parties.
- There is reserved to the Authorized Officer, the right to grant additional rights-of-way or permits for compatible use on, over, under, or adjacent to the land involved in this grant.
- The holder shall immediately bring to the attention of the responsible Federal agency official any and all antiquities, or other objects of historic, paleontological, or scientific interest including but not limited to, historic or prehistoric ruins, fossils, or artifacts discovered as a result of operations under this authorization. The holder shall immediately suspend all activities in the area of the object and shall protect and leave such discoveries intact until written approval to proceed is obtained from the Agency Official (36 CFR 800.13(b)). Approval to proceed will be based upon timely evaluation of the object(s). Evaluation shall be by a qualified professional selected by the Agency Official from a Federal agency insofar as feasible (BLM Manual 8140.06H). When not feasible, the holder shall bear the cost of the services of a properly qualified non-Federal professional (BLM Manual Direction 8100.24). Antiquities, historic or prehistoric ruins, paleontological or objects of scientific interest that are outside of the authorization boundaries but directly associated with the impacted resource will also be included in this evaluation.
- The holder of this authorization must immediately notify the responsible Federal agency official by telephone upon the discovery of human remains, funerary items, sacred objects, or objects of cultural patrimony, in accordance with 43 CFR 10.4(g). Further, pursuant to 43 CFR 10.4(b), the holder must also provide the Agency Official with written confirmation of the inadvertent discovery, to be sent via certified letter. The holder must stop all activity in

the area and make a reasonable effort to protect the discovery until notified to proceed by the responsible Federal agency official (43 CFR 10.4(c) and (d)).

- Ninety (90) days prior to termination of the ROW, the holder shall contact the authorized officer to arrange a joint inspection of the ROW. This inspection will be held to agree to an acceptable termination (and rehabilitation) plan. This plan shall include, but is not limited to, removal of facilities, drainage structures, or surface material, recontouring, top soiling, or seeding. The authorized officer must approve the plan in writing prior to the holder's commencement of any termination activities.

