

## Decision Record

### **Soldier Meadows ACEC Habitat Restoration Determination of NEPA Adequacy**

DOI-BLM-NV-W030-2015-0003-DNA

#### **Introduction**

The project area is located in the Soldier Meadows Area of Critical Environmental Concern (ACEC) in western Humboldt County, Nevada. The ACEC currently encompasses a complex of hot springs at Soldier Meadows that contains rare taxa of a number of species including the federally threatened desert dace. The desert dace (*Eremichthys acros*) is a small native fish federally listed as Threatened by the U.S. Fish and Wildlife Service (FWS) in 1985. Over the past twenty years BLM, FWS and other agencies have cooperated in the design, funding, and implementation of management actions to aid in the recovery of the species. At present time, one of the few remaining threats to the species are the impacts of livestock and wild horse and burro grazing on or near the occupied habitat of the desert dace. This action is to complete the fencing of the entire ACEC that was authorized in 2004, and to date has been partially completed, add signage to the entrance of the ACEC, and remove the interior fencing within the ACEC.

#### **Compliance/Conformance**

I have reviewed the Soldier Meadows ACEC Habitat Restoration Project and Determination of National Environmental Policy Act Adequacy (DNA) and have determined that the proposed action is in conformance with the 2004 Black Rock Desert High Rock Canyon Emigrant Trails Resource Management Plan (RMP) and complies with the Endangered Species Act, Federal Land Management Policy Act, National Historic Preservation Act and other laws with bearing on the proposed project.

The RMP at SSS-2: Actions and stipulations necessary to protect special status species and their habitats will be made in authorizations and actions that occur during RMP implementation.

Black Rock RMP 2.2.7 Special Designations: Objective - To employ special management actions to retain the important values associated with specially designated areas such as ACEC's (Areas of Critical Environmental Concern) containing important natural or cultural resources, systems or processes.

The Recovery Plan for the Rare Species of Soldier Meadows (1997) states the following:

*"Desert dace will be considered for delisting when 1) historical habitat in the one dewatered stream channel on public land is restored so that it supports desert dace; 2) the population in each of the eight historically occupied spring systems is stable or increasing in size and comprising two or more age-classes for 3 years, 3) reproduction and recruitment are documented from each historically occupied spring system with suitable water temperatures for 3 years; and 4) habitat modification, nonnative fishes, and parasites no longer threaten the long-term survival of the species."*

The proposed action would not adversely impact any threatened or endangered species or significant scientific resources. Neither would the proposed action result in any impact to an archaeological site determined to be eligible for inclusion on the National Register of Historic Places.

## **Consultation and Coordination**

### **Coordination**

In addition to the previous coordination on the Desert Dace Protective Fence Environmental Assessment (NV-020-03-24), numerous site visits and conference calls took place regarding the Soldier Meadows ACEC Habitat Restoration project. Agencies and persons consulted and/or present on these tours include USFWS, NDOW, and USGS.

### **Native American Consultation**

The Summit Lake Paiute Tribe was consulted on the Soldier Meadows ACEC Habitat Restoration DNA regarding the proposed project and stated their interest in the environmental health of the project and the importance of the protection of the desert dace. The tribe supports efforts to preserve the desert dace. The Soldier Meadows ACEC Habitat Restoration Project was presented to the tribal council of the Summit Lake Paiute Tribe throughout 2014 at monthly consultation meetings.

## **DECISION**

On the basis of the information contained in the Soldier Meadows ACEC Habitat Restoration DNA, DOI-BLM-NV-W030-2015-0003-DNA, it is my determination that implementation of the proposed action will not have environmental impacts beyond those already addressed in the Desert Dace Protective Fence Environmental Assessment (NV-020-03-24) and the Soldier Meadows Recreation Management Plan Environmental Assessment (NV-020-04-26).

Based on the aforementioned factors, and the following rationale for making this decision effective immediately, it is my decision to implement the project, as described in the DNA, including the following mitigation:

- Fence posts will be entirely green.
- Gates will be placed near fence corners to facilitate the removal of wild horses and burros or livestock if they inadvertently get into the fenced area.
- Reflectors will be placed on the fence in areas where major livestock/wild horse and burro trails currently intersect the fence line.
- The fence would consist of four strands of wire, steel posts, steel pipe panels and would be built to antelope specifications (16", 22", 28", and 40", top three wires barded, bottom wire smooth). The design should allow for reasonable passage through the fence by antelope and mule deer.

## **Rationale**

The following constitutes the rationale for making this decision effective upon issuance:

- The proposed action has the potential to further move the desert dace towards de-listing as it addresses the concern listed in The Recovery Plan for the Rare Species of Soldier Meadows (1997) which is to reduce the habitat modification, and to provide stable or increasing habitat.
- Involvement and support for the project continues both from internal and external sources including governmental agencies, tribal (Summit Lake Paiute Tribe), the Desert Dace Recovery Team, and the adjoining land owner (Soldier Meadows Ranch).

## **Authority**

The authority for this decision is contained in the Federal Land Policy Management Act (FLPMA) of 1976 (43 U.S.C. 1701 *et seq.*) and the Endangered Species Act (ESA) of 1973 (16 U.S.C. 1531 *et seq.*).

Section 102. [43 U.S.C. 1701] (a)(8) "The Congress declares that it is the policy of the United States that the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use."

Section 7 of the ESA states "(a) *FEDERAL AGENCY ACTIONS AND CONSULTATIONS.*-(1) *The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal*

*agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act."*

## **APPEAL PROVISIONS**

A person who wishes to appeal to the Interior Board of Land Appeals must do so under 43 CFR 4.411 and must file in the office of the officer who made the decision (not the board), in writing to William Mack, Jr., Field Manager, Black Rock Field Office, 5100 East Winnemucca Boulevard, Winnemucca, Nevada 89445. A person served with the decision being appealed must transmit the notice of appeal in time to be filed in the office where it is required to be filed within thirty (30) days after the date of service.

The notice of appeal must give the identification (DOI-BLM-NV-W030-2015-0003-DNA) of the case and may include a statement of reasons for the appeal, a statement of standing if required by §4.412 (b), and any arguments the appellant wishes to make. Form 1842-1 (enclosed) provides additional information regarding filing an appeal.

If a notice of appeal is filed after the grace period provided in §4.401(a), the notice of appeal will not be considered and the case will be closed by the officer from whose decision the appeal is taken. If the appeal is filed during the grace period provided in §4.401 (a) and the delay in filing is not waived, as provided in that section, the notice of appeal will not be considered and the appeal will be dismissed by the Board.

The appellant shall serve a copy of the notice of appeal and any statements of reason, written arguments, or briefs under §4.413 on each adverse party named in the decision from which the appeal is taken and on the Office of the Solicitor, Pacific Southwest Regional Solicitor, U.S. Department of the Interior, 2800 Cottage Way, Room E-2753, Sacramento, California 95825-1890. Service must be accompanied by personally serving a copy to the party or by sending the document by registered or certified mail, return receipt requested, to the address of record in the bureau, no later than 15 days after filing the document.

In addition, within thirty (30) days of receipt of this decision you have the right to file a petition for a stay together with your appeal in accordance with the regulations at 43 CFR 4.21. The petition must be served upon the same parties specified above.

43 CFR 4.471 (d) provides that the appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted. A petition for stay, must 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.

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 (43 CFR 4.422(c)(2)).

/s/ William Mack  
William Mack, Jr.  
Field Manager  
Black Rock Field Office

11/6/2014  
Date