

Decision Record

Fly Canyon Exclosure Environmental Assessment

DOI-BLM-NV-W030-2015-0013-EA

Introduction

The project area is located in Fly Canyon, which is approximately 48 miles north-northeast of Gerlach, and approximately 1 mile south of Soldier Meadows Area of Critical Environmental Concern (ACEC) in Humboldt County, Nevada. The proposed project is also located within the High Rock Lake Wilderness (HRLW), designated with the passage of the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area Act in 2000, and amended 2001. The project area contains habitat for the desert dace, a federally threatened fish species as listed in 1985 by the U.S. Fish and Wildlife Service (FWS) under provisions of the Endangered Species Act. At the time of listing, critical habitat was also listed, that encompasses 50 feet on each side of designated thermal springs and their outflow streams in the area of Soldier Meadows.

In 2004, the Soldier Meadows Area of Critical Environmental Concern (ACEC) was designated based on the presence of the Desert Dace and other sensitive species (BRRMP 2-18). In 2010, the Nevada Department of Wildlife (NDOW) discovered a separate population of Desert Dace in a geothermal spring in Fly Canyon, located in the HRLW. This population was unknown at the time the Critical Habitat was designated by the FWS.

Although the location of the spring is outside of a wild horse and burro Herd Management Area (HMA) or Herd Area (HA), evidence of heavy wild horse use is noted at this location. The population of Desert Dace in Fly Canyon was seen at immediate risk of harm from wild horse and burro use of the spring. NDOW submitted a letter telling the BLM it was an emergency situation on February 25, 2015. On February 27, 2015, the FWS wrote the BLM also stating the situation constituted an emergency.

On March 24, 2015 the WD BLM granted authorization for NDOW to construct an exclosure. In conformance with BLM Manual 6340, the BLM completed a Minimum Requirements Decision Guide (MRDG) worksheet (EA Appendix B). It was determined the proposed action was a necessary action for administration of the wilderness area in order to protect the population of the threatened species. Through the MRDG process, it was determined the proposed methodology of implementation met the minimum necessary to meet the objectives of the proposed action.

On March 26, 2015 NDOW constructed a pipe-rail exclosure approximately 75' x 150' around the spring in Fly Canyon. This project was the response to the emergency conditions of the desert dace habitat in Fly Canyon and is designed to protect the desert dace in Fly Canyon from being extirpated (locally extinct).

DECISION

It is my decision to authorize the Fly Canyon Exclosure as described in the proposed action of the attached EA number, DOI-BLM-NV-W030-2015-0013-EA. A Finding of No Significant Impact (FONSI) has been prepared and accompanies this Decision. The FONSI demonstrates that an environmental impact statement (EIS) pursuant to Section 102(C) of the National Environmental Policy Act is not required.

RATIONALE

- This decision is in conformance with the 2004 Black Rock Desert-High Rock Canyon Emigrant Trails RMP. The RMP at Management Objective FW-7 allows for protective fencing of riparian areas (2-34) and Management Objective SSS-2 states “Actions and stipulations necessary to protect special status species and their habitat will be made in authorizations and actions that occur during RMP implementation” (2-35).
- 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.
- This decision is consistent with other federal agency, state, and local plans to the maximum extent consistent with federal law and Federal Land Policy and Management Act (FLPMA) provisions.
- The action will not adversely impact any threatened or endangered species or significant scientific, cultural or historical resources
- The Findings of No Significant Impact, dated July 17, 2015 for the Fly Canyon Exclosure EA support this decision.
- Based on the President's National Energy Policy and Executive Order 13212, the Proposed Action will not generate any adverse energy impacts or limit energy production and distribution. Therefore, no "Statement of Adverse: Energy Impact" is required per WO IM No 2002-053 and NV IM 2002-049.
- This decision considers the coordination and consultation described in the sections below.

Native American Consultation

On February 21, 2015, the BLM consulted with Summit Lake Tribe regarding the Fly Canyon Exclosure project, including details of the Proposed Action, the location of the project in wilderness, and the use of a helicopter to deliver the materials to the project site. The Summit Lake Tribe voiced no opposition to the project and thought it was exciting that a new population of dace was discovered. The Proposed Action would not affect any NRHP eligible prehistoric cultural sites. Based on consultation and lack of NRHP eligible prehistoric sites, no Native American religious concerns are expected.

Cooperating Agencies

Nevada Department of Wildlife (NDOW) and the United States Fish and Wildlife Service (FWS) were consulted and participated in the Fly Canyon Exclosure Project and was used for the preparation of the EA.

Intergovernmental Partnerships

Under FLPMA, the BLM's coordination responsibilities include maximizing consistencies with the plans and policies of other government entities. Coordination in the development of the project occurred with the NDOW and the State Historic Preservation Office (SHPO).

Public Involvement

The BLM initiated public scoping on February 25, 2015, with a release of a Dear Interested Public letter (DIPL) for the Fly Canyon Exclosure project. The BLM requested comments be submitted within 15 days of letter notification (March 12, 2015). The reader should refer to Section 1.4 regarding internal and external scoping.

The BLM sent out a Notice of Proposed Action (NOPA) to the Black Rock High Rock NCA's wilderness mailing list. The BLM requested comments be submitted within 30 days of letter notification (April 5, 2015). The reader should refer to Section 1.4 regarding internal and external scoping.

Comments were received from the DIPL and NOPA process. Some of the comments were from NDOW, FWS, Desert Trail Association, and Friends of Nevada Wilderness which supported the project to protect desert dace. Other comments from the public were listed in "Table 1-1 Scoping, Public Involvement, and Issues" of the Fly Canyon Exclosure EA. These comments were addressed in the appropriate sections, as identified in Table 1-1.

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 Gene Seidlitz, District Manager, Winnemucca District, 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 serial number or other identification 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.

No extension of time will be granted for filing a notice of 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.

Pursuant to 43 CFR 4.471(c), a petition for stay, if filed, 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.

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.

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/ Gene Seidlitz
Gene Seidlitz
District Manager
Winnemucca District

7/17/2015
Date

Enclosure: Form 1842-1

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,
AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. NOTICE OF APPEAL	A person served with the decision being appealed must transmit the notice of appeal in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a notice of appeal in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).	
2. WHERE TO FILE NOTICE OF APPEAL	US Dept of the Interior Bureau of Land Management 5100 E Winnemucca Blvd Winnemucca NV 89445	And US Dept of the Interior Office of Hearings & Appeals Interior Board of Land Appeals 801 N Quincy St MS 300-QC Arlington VA 22203
WITH COPY TO SOLICITOR	US Dept of the Interior Office of the Solicitor Pacific Southwest Region 2800 Cottage Way Rm E-2753 Sacramento CA 95825-1890	
3. STATEMENT OF REASONS	Within 30 days after filing the Notice of Appeal, File a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the Notice of Appeal, no additional statement is necessary (43 CFR 4.412 and 4.413).	
WITH COPY TO	US Dept of the Interior Office of the Solicitor Pacific Southwest Region 2800 Cottage Way Rm E-2753 Sacramento CA 95825-1890	And US Dept of the Interior Bureau of Land Management 5100 E Winnemucca Blvd Winnemucca NV 89445
4. ADVERSE PARTIES	Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the Notice of Appeal, (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413). If the decision concerns the use and disposition of public lands, including land selections under the Alaska Native Claims Settlement Act, as amended, service will be made upon the Associated Solicitor, Division of Land and Water Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240. If the decision concerns the use and disposition of mineral resources, service will be made upon the Associated Solicitor, Division of Mineral Resources, Office of the Solicitor, U.S. Department of the Interior, Washington, D.C. 20240.	
5. PROOF OF SERVICE	Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)).	
6. REQUEST FOR STAY	Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a <i>Notice of Appeal</i> (43 CFR 4.21). 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 Interior Board of Land Appeals, the petition for a stay must accompany your notice of appeal (43 CFR 4.21 or 43 CFR 2804.1). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the <i>Notice of Appeal</i> 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 (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 other provided by law or other pertinent regulations, 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.	

Unless these procedures are followed your appeal will be subject to dismissal (43 CFR 4.402). Be certain that all communications are identified by serial number of the case being appealed.

NOTE: A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, subpart b for general rules relating to procedures and practice involving appeals.

43 CFR SUBPART 1821--GENERAL INFORMATION

Sec. 1821.10 Where are BLM offices located? (a) In addition to the Headquarters Office in Washington, D.C. and seven national level support and service centers, BLM operates 12 State Offices each having several subsidiary offices called Field Offices. The addresses of the State Offices can be found in the most recent edition of 43 CFR 1821.10. The State Office geographical areas of jurisdiction are as follows:

STATE OFFICES AND AREAS OF JURISDICTION:

Alaska State Office ----- Alaska
Arizona State Office ----- Arizona
California State Office ----- California
Colorado State Office ----- Colorado
Eastern States Office ----- Arkansas, Iowa, Louisiana, Minnesota, Missouri
and, all States east of the Mississippi River
Idaho State Office ----- Idaho
Montana State Office ----- Montana, North Dakota and South Dakota
Nevada State Office ----- Nevada
New Mexico State Office ---- New Mexico, Kansas, Oklahoma and Texas
Oregon State Office ----- Oregon and Washington
Utah State Office ----- Utah
Wyoming State Office ----- Wyoming and Nebraska

(b) A list of the names, addresses, and geographical areas of jurisdiction of all Field Offices of the Bureau of Land Management can be obtained at the above addresses or any office of the Bureau of Land Management, including the Washington Office, Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.