

**United States Department of the Interior  
Bureau of Land Management  
Vale District Office  
Malheur Resource Area  
Vale, Oregon**

**NOTICE OF FIELD MANAGER'S FINAL DECISION  
Bendire Complex Fire Emergency Stabilization and Rehabilitation  
Invasive Plant Management Plan  
DOI-BLM-ORWA-V000-2016-0027-EA**

The Bendire Complex wildfire affected rangelands managed by the Bureau of Land Management (BLM) Vale District's Malheur Field Office. This document will provide information regarding the invasive plant management treatments to be implemented as analyzed in the Bendire Complex Fire Emergency Stabilization and Rehabilitation Invasive Plant Management Plan Environmental Assessment (Bendire EA, BLM-ORWA-V000-2016-027-EA) in compliance with the National Environmental Policy Act (NEPA). This Final Decision Record identifies my decision and provides rationale for the decision to be made and will be effective upon issuance.

Management of multiple uses permitted within the Bendire Complex Fire Emergency Stabilization and Rehabilitation (ESR) Project Area, namely livestock grazing, will be addressed through a separate process and in accordance with 43 CFR 4110.3-3.

**Background**

On Monday, August 10, 2015, two small wildfires, Pole Gulch (450 acres) and Bully Creek (45 acres) ignited. On Tuesday, August 11, 2015, the two fires grew together forming one fire and became the Bendire Complex. At the time of containment, the Bendire Complex burnt a total of 49,628 acres. Weather at the time of ignition was hot and dry with temperatures in the area ranging from the mid-80s to 100-degrees Fahrenheit since August 1, 2015 with no measureable precipitation over the month prior.

An Interdisciplinary Team (IDT) from the Vale District BLM prepared the Bendire Complex Fire ESR Plan to submit to the BLM Washington Office (WO) for funding approval. This Plan included all of the proposed emergency stabilization and rehabilitation treatments for the Bendire Fire burned area. The ESR plan was prepared under the guidance of and is consistent with, the Burned Area Emergency Stabilization and Rehabilitation Handbook H-1742-1 and Secretarial Order 3336. Development of treatments identified in the ESR plan focused primarily on human life and safety concerns, soil/water stabilization, habitat for Bureau Sensitive and special status plants and wildlife, critical heritage resources, and weed treatments. Greater sage-grouse was of particular concern for habitat management due the entire burn occurring within a Priority Habitat Management Area (PHMA).

In October of 2015, letters to interested parties on record, Tribes, and elected officials were sent to inform them, as well as through news releases published in local papers, that an ESR decision had been issued for the Bendire Complex Fire ESR Plan (J1A5).

The first Determination of NEPA Adequacy (DNA, DOI-BLM-OR-V000-2016-001-DNA) and Decision Record (Decision) was signed on October 27, 2015, which initiated implementation of the approved ESR Plan. Treatments included: Inventory and treatments of invasive annual grasses and noxious weeds, planting, seeding, erosion control, assessing and stabilizing impacted known cultural resources, and identifying treatment effectiveness monitoring. After partial implementation, the Decision was appealed and subsequently remanded to the BLM by the Interior Board of Land Appeals (IBLA).

Upon remand of the October 27, 2015 Decision, the Vale BLM revised ESR treatments and requested public comment between January 22, 2016, and February 5, 2016. The BLM received one set of comments from Blue Mountain Biodiversity Project (BMBP) that included their concerns related to herbicide use on public lands. BMBP requested that BLM further analyze the effects of any potential herbicide application.

Consequently, BLM withdrew herbicide treatments from the other proposed ESR treatment actions and determined that a DNA was still appropriate for the remainder of the ESR treatments proposed during the January 22 – February 5, 2016 comment period. Due to the emergency nature and time sensitivity needed for implementation of the stabilization efforts associated with fences, erosion control and seeding, BLM issued a second DNA (DOI-BLM-OR-V000-2016-0017-DNA) and Decision Record on February 29, 2016. The second Decision was not appealed and actions are being implemented. Treatments implemented with the second Decision include: placing erosion control devices, seeding and planting, temporary fencing, protecting cultural resources and inventory and monitoring for treatment effectiveness.

Invasive annual grasses and noxious weeds and their impacts to Greater Sage-Grouse habitat are of concern within and adjacent to the Bendire Complex Fire ESR Project Area. On March 9, 2016, the Vale BLM released the Bendire EA and unsigned Finding of No Significant Impact (FONSI) for public comment. The public comment period occurred from March 9 – April 8, 2016. The Bendire EA analyzed integrated invasive plant management treatments as proposed in the original 2015 Bendire Complex Fire ESR Plan. The Bendire EA analyzes the impacts of implementing the proposed action, a no action alternative, and two alternatives that were eliminated from detailed analysis.

The BLM received timely comments from the Oregon Department of Fish and Wildlife, Blue Mountain Biodiversity Project and WildLands Defense (WLD). The IDT reviewed these comments and provided responses and are included in Appendix 1 of this Decision Record. The BLM made minor changes to the EA document and those changes are reflected in Appendix E of the Bendire EA.

Additional comments from the public were received, reviewed by the IDT and responses developed. However, these are not listed in the Decision Appendix because they were not site specific to the Bendire Complex Fire ESR Invasive Plant Management Plan EA and Project Area. These comments and responses are filed in the Bendire Complex ESR EA Project Record and are available on request.

With review of the Bendire EA, comments provided by the public, as well as review of land use planning documents (referenced in the “Conformance” section below), I am prepared to make a selection on the action to be taken.

## **FINAL DECISION**

After considering the current conditions of the lands and associated habitats impacted by the Bendire Complex wildfire, comments received during the public comment periods, and input from the Bendire Complex Interdisciplinary Team, it is my decision to select the Proposed Action Alternative as analyzed in the Bendire EA. Standard Operating Procedures (SOPs) and Project Design Features for all action alternatives as well as those specific to the Proposed Action (Bendire EA, pgs. 16 – 18, 22 and Appendix C) will be adhered to as a result of this decision. These actions are found to best address the rehabilitation, restoration and protection of sagebrush landscapes including Greater Sage-Grouse habitat by increasing resistance of habitat to invasion of invasive annual grasses and improving the resilience of sagebrush ecosystems so that future wildfire disturbances have fewer undesirable effects. These actions also allow for: cooperative control of invasive plants so they do not infest or re-infest adjacent unburned or non-BLM administered landscapes, enable recovery of native vegetation within the burn area, and stabilize soils vulnerable to erosion.

I have documented in a corresponding Finding of No Significant Impact (FONSI) statement that the Proposed Action Alternative will not constitute a major Federal action that will adversely impact the quality of the human environment. Therefore, an Environmental Impact Statement (EIS) was unnecessary and will not be prepared.

## **SUMMARY OF ACTIONS TO BE IMPLEMENTED**

### **Project Area Weed Inventory**

The Bendire Complex Fire project area will be inventoried starting with those areas at the highest risk for noxious weed invasion. The majority of this inventory will be in the portion of the burned areas along the major roads and other disturbed areas. This inventory will determine the extent of noxious weed expansions.

Priority areas for invasive weed treatments have been identified for aerial herbicide applications of imazapic (described below). If additional invasive annual grasses areas are discovered, they will be treated with imazapic by the appropriate method (on the ground, if feasible, or aerially), using the appropriate application rates.

### **Invasive Annual Grass Aerial Herbicide (Imazapic) Application**

Between 2016 and 2020, up to 30,000 acres of invasive annual grasses within the project area will be aerially treated to prevent the area from becoming dominated by those species (Bendire EA, Map 4). Cheatgrass is known to be present throughout the burned area, including the proposed priority aerial treatment areas. Intermixed with the cheatgrass in these treatment areas are approximately 15,000 acres of light to moderate medusahead infestations. Small sites of ventenata are scattered within the areas also. Treatments of these targeted species will occur as a pre-emergent application using the approved herbicide, imazapic, at 6oz/acre along with

appropriate adjuvants (Bendire EA, Table C-3 in Appendix C for adjuvants) to achieve the most effective control at the time of application.

Aerial imazapic treatments will be done by commercially contracted aircraft. The type of aircraft used for specific portions of the work will depend on topography and availability of landing and reloading locations. For safety reasons, where aerial application of herbicides is to be done by contract, the contractor will determine which type of aerial application is most appropriate for the site conditions.

Where aerial applications are determined to be the most appropriate treatment for the control of invasive annual grasses, the BLMs use will be in conformance with label instructions and the 2010 Vegetation Treatments Using Herbicides on BLM Lands in Oregon Record of Decision. All design elements, mitigations, and SOPs (Bendire EA, Appendix A) described in the ROD will be used.

### **Noxious Weed Herbicide Treatments - Ground Based Herbicide Application**

Approximately 35 acres of noxious weeds are known to exist within the Bendire Complex Fire ESR Project Area (Bendire EA, Map 4). The BLM estimates that an additional 35-65 acres of these species are also likely to be present. Treatment of these infestations will occur on small sites (ranging from single plant to generally less than 0.5 acres) either by manual (such as grubbing, pulling, etc.) methods or with the most effective herbicides. (Bendire EA, Tables 2.2 and 2.3 for Herbicide Info and Treatments). Continued monitoring will be conducted over the five year project period to locate additional populations. These will be treated appropriately (manual or herbicide treatments) under the District's Early Detection and Rapid Response (EDRR) emphasis.

### **Monitoring and Retreatment**

Monitoring is necessary to determine treatment effectiveness as well as for identifying the need for re-treatment. This decision to implement these treatments is expected to increase resistance of sagebrush landscapes including Greater Sage-Grouse habitat to invasion by noxious weeds and invasive annual grasses, as well as improve resilience of sagebrush ecosystems to future wildfire disturbances. Effectiveness monitoring will be conducted for at least five years to ensure treatments are meeting objectives. Objectives identified for treatment success are designed to "meet the life history requirements of sagebrush-dependent wildlife" (SEORMP Upland Vegetation Objective 2, p.40): and to "Control the introduction and proliferation of noxious weed species to reduce the extent and density of established weed species to within acceptable limits." (SEORMP Upland Vegetation Objective 3, p. 41). Specific Bendire EA objectives set for weed treatments are:

1. Foliar cover of invasive annual grasses is an average of less than or equal to 10%.
2. A decline in noxious weeds and invasive annual grasses as determined through a qualitative assessment of the population size and spread of noxious weeds within the project area.

In addition to the objectives identified above, a qualitative assessment of the presence and absence as well as fitness and vigor of native and seeded species will occur. The assessment will include a comparison of treated sites to adjacent unburned and non-treated sites (i.e. control).

Retreatment of noxious weeds will occur when monitoring activities indicate a remaining presence of these weeds and a need for manual and/or herbicide action. Retreatments of broadleaf noxious weeds are expected to become progressively smaller in subsequent years. Invasive annual grasses in this area will potentially be re-treated over the next five years under the ESR program, if an IDT's assessment finds an area or areas are not meeting the above objectives. Further treatment may be necessary to create a vegetative community that is more resistant to invasive annual grasses and resilient to future disturbance.

I have determined that the vegetation, soil and other resources on the public lands are at immediate risk; specifically, loss of priority Greater Sage-Grouse (PHMA) habitat, erosion and other damage due to invasive plant encroachment and the effects of the Bendire Complex Fire.

Therefore, my decision is issued under 43 Code of Federal Regulations (CFR) § 4190.1(a), which states:

Notwithstanding the provisions of 43 CFR 4.21(a)(1), when BLM determines that vegetation, soil, or other resources on the public lands are at substantial risk of wildfire due to drought, fuels buildup, or other reasons, or at immediate risk of erosion or other damage due to wildfire, BLM may make a rangeland wildfire management decision effective immediately or on a date established in the decision.

### **RATIONALE**

The Bendire Complex wildfire caused mortality of desirable perennial plants which created new habitats which are susceptible to noxious weeds and invasion of invasive annual grasses.

Noxious weed infestations provide unstable and poor quality habitat for sagebrush steppe obligate plant and wildlife species. Invasive annual grasses and weedy annual forbs germinate with fall rain or in early spring and readily out-compete fire stressed desirable perennial species for water and nutrients. Application of treatments described in the Proposed Action Alternative of the Bendire EA will therefore decrease the risk of target species such as medusahead, ventenata and cheatgrass expanding within the Bendire Complex Fire ESR Project Area prior to recovery of native and seeded vegetation.

The Bendire EA analyzes a number of treatments, and combination of treatments, consistent with Integrated Plant Management guidance (BLM Handbook 1740-2, Bendire EA, pg. 11) and allows for the most effective measures to treat target noxious weeds and invasive annual grasses within the project area. Implementation of the Proposed Action Alternative includes a range of herbicides which will allow for the selection of the herbicide that will best accomplish the control objectives while minimizing site-specific adverse effects.

Implementation of the actions identified in this decision will: protect soils in the burned area, including preventing potential loss of soil due to wind and water erosion; reduce potential invasion and establishment of noxious weeds and invasive annual grass species; prevent degradation of priority Greater Sage-Grouse habitat and increase its rate of recovery.

Greater Sage-Grouse is a high priority for protection within the BLM in Oregon and across the western United States.

Control of noxious weeds is consistent with the management plans for the resources and will help protect the ecological integrity, biodiversity, and site productivity of this shrub-steppe plant community. Working cooperatively with local weed management groups and private landowners will achieve better weed management.

A dominant threat identified in the Oregon Greater Sage-Grouse Approved Resource Management Plan Amendment (ARMPA) for Oregon (2015, p. 1-29) is decreasing fire return interval resulting from abundance of invasive annual grasses. The control of invasive annual species under the Proposed Action Alternative is expected to break up fuel continuity, lengthen fire return intervals, and increase the reproduction and vigor of existing native perennial plants, contributing to the long-term ecological stability of the plant communities in this area. Due to the rough, uneven and broken terrain within the Bendire Complex Fire ESR Project area, aerial application is the only option whereby an even 6-ounce per acre rate of application of imazapic can be attained. Ground based broadcast equipment cannot access much of the area and in the limited spots where it could, a consistent output at the 6-ounce rate could not be assured, causing unacceptably high rates and impacts to non-target species or lower than desired rates causing poor to no control on target species in other areas.

Concern exists for the immediate risk of erosion and damage to wildlife habitat, specifically the conversion of priority sage-grouse habitat to invasive annual grasses if they are not treated as soon as practicable. Selection and implementation of the Proposed Action Alternative will allow for the use of more selective herbicides that are effective at controlling noxious weeds and invasive annual grasses, while limiting collateral damage to native and desirable non-native plants. Lower levels of certain herbicides are expected to be applied since more effective herbicides will be available under the Proposed Action Alternative. Non-target desirable plants may be harmed, but risk would generally be limited to vulnerable (depending on selected herbicide) plants in the immediate treatment area, and have no effect on overall abundance or diversity of wildlife habitat. Application of the proposed herbicides using SOPs and Design Features will not only improve the success of other ESR treatments (e.g. shrub planting and aerial seeding), they will help protect native plants that survived the fire. These native plants provide a valuable seed source adapted to the local environment, which further enhances the ability of the native plant community to recover (Leger, 2008) and provide a more diverse habitat for wildlife species. Implementation of this alternative will result in maintenance or improvement and a more rapid recovery of more acres of wildlife habitat compared to the No Action Alternative (page 47 of Bendire EA).

Review of site conditions prior to being impacted by the 2015 Bendire Complex Fire and 2012 Bonita and Iron wildfires indicates that invasive annual grass cover was 10% or less; After these wildfires, the estimated cover increased to over 30% (Bendire EA, pg. 88). It has been observed that cover of native perennial grasses and forbs of approximately 20% prior to disturbance is needed in order to prevent significant increases in cheatgrass and other exotic annuals (Chambers et. al, 2014) for sites similar to those in the project area. Without implementation of the Proposed Action Alternative, the percent of annual grasses is expected to increase as they outcompete and gain dominance over the native perennial vegetation. Reducing cover of

targeted annual invasive species to 10% is expected to allow existing desirable perennial grasses to compete with annual species and provide an opportunities for these communities to become resistant and resilient to future disturbance that may present itself (e.g. fire, drought, etc.)

Continued monitoring during the first five years after the fire will be implemented to determine whether objectives are being met.

## COMPLIANCE

The Proposed Action Alternative, as analyzed in the Bendire EA and selected through this decision is consistent with the Southeastern Oregon Resource Management Plan/Final Environmental Impact Statement and Record of Decision, Sept. 2002, and the Oregon Greater Sage-Grouse ARMPA and Record of Decision (September 2015). The treatments have been designed to conform to the following documents which direct and provide the framework for management of BLM lands within Vale District:

- The National Environmental Policy Act (42 U.S.C. 4320-4347), 1970
- The Oregon Greater Sage-Grouse Approved Resource Management Plan Amendment and Record of Decision (September, 2015).
- Secretarial Order 3336, Rangeland Fire Prevention, Management, and Restoration (January 2015)
- Draft (1998), Final (2001), and Record of Decision (2002) Environmental Impact Statement prepared for the Southeastern Oregon Resource Management Plan
- Federal Land Policy and Management Act (43 U.S.C. 1901), 1978
- 2007 Vegetation Treatments Using Herbicides on BLM Lands in 17 Western States ROD
- 2010 Vegetation Treatments Using Herbicides on BLM Lands in Oregon ROD
- Greater Sage-Grouse and Sagebrush-steppe Ecosystems Management Guidelines (BLM-2000)
- National Historic Preservation Act (16 U.S.C. 470)
- Programmatic Agreement Among USDI BLM, the Advisory Council on Historic Preservation and the Oregon State Historic Preservation Officer Regarding the Identification, Evaluation, and Treatment of Historic Properties Managed by the BLM, Oregon State Office, Throughout the State of Oregon
- Executive Order 12372, Intergovernmental Review of Federal Programs
- Executive Order 13112, Invasive Species
- Executive Order 11990, Protection of Wetlands
- Executive Order 11988, Floodplain Management
- BLM National Sage-grouse Habitat Conservation Strategy (2004) Decision
- Greater Sage-Grouse Conservation Assessment and Strategy for Oregon: A plan to Maintain and Enhance Populations and Habitat; ODF&W 4/22/2011
- SEORMP Settlement Agreement (Case 05-35931, June 10, 2010) between Vale District BLM and Oregon Natural Desert Association (ONDA) resulting from Ninth Circuit Court of Appeals decision (*ONDA v. BLM*, 625 F.3d 1092 (9th Cir. 2010).
- Native American Graves Protection and Repatriation Act (NAGPRA)
- American Indian Religious Freedom Act (AIRFA)

- BLM Manual Section 8120: “Tribal Consultation under Cultural Resource Authorities
- 2015 Oregon Greater Sage-Grouse Approved Resource Management Plan Amendment (ARMPA)
- Burned Area Emergency Stabilization and Rehabilitation Handbook (H-1742-1)
- Wilderness Manual 6330
- National Technical Team Report, 2012
- USFW Listing - Federal Register notice dated October 2, 2015, the US Fish and Wildlife Service determined that the listing of the greater sage-grouse is not warranted at this time" (80 FR 191, p 59858-59942). "
- Area of Critical Environmental Concern Manual 1613
- Supplemental Program Guidance for Land Resources Manual 1623
- Clean Water Act (33 U.S.C. 1251 - 1376; Chapter 758; P.L. 845, June 30, 1948; 62 Stat. 1155)
- Clean Air Act, 42 U.S.C. 7470, et seq., as amended
- National Historic Preservation Act (16 U.S.C. 470)
- State, local, and Tribal laws, regulations, and land use plans
- 1997 Standards for Rangeland Health and Guidelines for Livestock Management for Public Lands Administered by the BLM in the States of Oregon and Washington (August, 1997)
- Northwest Area Noxious Weed Control Program EIS, 1985
- Northwest Area Noxious Weed Control Program Record of Decision. 1986
- Supplement to the Northwest Area Noxious Weed Control Program Final Environmental Impact Statement, 1987
- Public Rangelands Improvement Act (43 U.S.C. 1901), 1978
- Taylor Grazing Act (43 U.S.C. 315), 1934

## **AUTHORITY**

Authority for the stabilization and rehabilitation wildfire decisions is found under 43 Code of Federal Regulations (CFR) 4190.1 Effect of wildfire management decision (a) Notwithstanding the provisions of 43 CFR 4.21(a)(1), when BLM determines that vegetation, soil or other resources on the public lands are at substantial risk of wildfire due to drought, fuels buildup, or other reasons, or at immediate risk of erosion or other damage due to wildfire, BLM may make a rangeland wildfire management decision effective immediately. Wildfire management includes but is not limited to: (1) Fuel reduction or fuel treatment such as prescribed burns and mechanical, chemical, and biological thinning methods (with or without removal of thinned materials); and, (2) Projects to stabilize and rehabilitate lands affected by wildfire.

Under these regulations, implementation of projects to stabilize and rehabilitate lands such as seeding (aerial and drilling), planting, weed treatments (aerial and ground), erosion control, road maintenance and protection, fence maintenance and reconstruction, and range improvement reconstruction will be effective upon the date of the authorized officer's signature.

This wildfire management decision is issued under 43 CFR 4190.1 and is effective immediately. The BLM has made the determination that vegetation, soil, or other resources on the public lands

are at substantial risk of wildfire due to drought, fuels buildup, or other reasons, or at immediate risk of erosion or other damage due to wildfire. Thus, notwithstanding the provisions of 43 CFR 4.21(a) (1), filing a notice of appeal under 43 CFR Part 4 does not automatically suspend the effect of the decision. Appeal of this decision may be made to the Interior Board of Land Appeals in accordance with 43 CFR 4.410. The Interior Board of Land Appeals must decide an appeal of this decision within 60 days after all pleadings have been filed, and within 180 days after the appeal was filed as contained in 43 CFR 4.416.

## **RIGHT OF APPEAL**

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 filed, your notice must be filed in the **Vale District Office, 100 Oregon Street, Vale, Oregon, 97918** within 30 days of receipt. The appellant has the burden of showing that the decision appealed is in error.

Filing an appeal does not by itself stay the effectiveness of a final BLM decision. If you wish to file a petition for a stay of the effectiveness of this decision, pursuant to 43 CFR 4.21, the petition for stay must accompany your notice of appeal. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

A petition for stay is required to show sufficient justification based on the standards listed below.

### **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.
4. Whether or not the public interest favors granting the stay.

A notice of appeal electronically transmitted (e.g. email, facsimile, or social media) will not be accepted as an appeal. Also, a petition for stay that is electronically transmitted (e.g., email, facsimile, or social media) will not be accepted as a petition for stay. Both of these documents must be received on paper at the office address above.

Persons named in the *Copies sent to*: sections of this decision are considered to be persons "named in the decision from which the appeal is taken." Thus, copies of the notice of appeal and petition for a stay must also be served on these parties, in addition to any party who is named elsewhere in this decision (see 43 CFR 4.413(a) & 43 CFR 4.21(b)(3)) and the appropriate Office of the Solicitor (see 43 CFR 4.413(a), (c)) **Office of the Solicitor, US Department of the Interior, Pacific Northwest Region, 805 SW Broadway, Suite 600, Portland, Oregon 97205**, at the same time the original documents are filed with this office. For privacy reasons, if the decision is posted on the internet, the *Copies sent to*: section will be attached to a notification of internet availability and persons named in that section are also considered to be persons "named in the decision from which the appeal is taken."

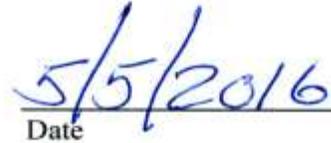
Any person named in the decision, *Copies sent to:* section of the decision, or who received a notification of internet availability that receives a copy of a petition for a stay and/or an appeal and wishes to respond, see 43 CFR 4.21(b) for procedures to follow.

If you have any questions regarding this project, please contact the Project Lead, Don Rotell at the Vale District Office at 541-473-3144.



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Thomas Patrick "Pat" Ryan  
Field Manager  
Malheur Field Office



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Date