

**RECORD OF PLAN CONFORMANCE AND
CATEGORICAL EXCLUSION (CX) DOCUMENTATION for
CATEGORICAL EXCLUSIONS NOT ESTABLISHED BY STATUTE
Bureau of Land Management (BLM)**

BLM Office: Lakeview District, Klamath Falls Resource Area

Proposed Action Title: Green Diamond Nuisance Wild Horse Removal

NEPA Project #: DOI-BLM-ORWA-L040-2020-0009-CX

Project Location: Green Diamond Resource Company private lands located within and adjacent to the Pokegama Horse Management Area in southwestern Klamath County, Oregon (see map)

A. Background

The Pokegama Herd Management Area (HMA) encompasses a total of 85,022 acres in Oregon and California, including private, state, and Federal lands. Approximately 20% of the HMA is on BLM-administered lands managed by the Klamath Falls Field Office (see attached map). The appropriate management level (AML) for the Pokegama herd is 30 to 50 horses.

Purpose and Need for the Project:

The purpose of the Proposed Action is to act on the written request (received 24 April 2020) from the Green Diamond Resource Company (GDRC) to remove nuisance wild horses from their private land. GDRC currently owns approximately 79% of the land within the Pokegama HMA. Due to herd expansion, the horses have become an increasing nuisance – impacting riparian areas on GRDC property including Long Prairie, Edge, Fall, Johnson, Sheepy, and Jenny Creeks; consuming grazing forage with an estimated value of \$25,000 annually; and limiting the amount of grazing available to GRDC’s tenants. The horse herd has also expanded outside of the HMA, north of Highway 66, onto GDRC property in the Johnson Prairie area.

Description of Proposed Action:

The BLM proposes to trap and remove wild horses from GRDC private lands within and adjacent to the Pokegama HMA per the landowner’s request. The BLM currently estimates that there are approximately 200 adult horses within the area that will need to be gathered. However, as the HMA is forested and difficult to count, this number may be an underestimate. The BLM would conduct gather activities solely on previously disturbed, private land sites within the HMA. The BLM has designed this action such that it will not reduce the current herd below the low AML of 30 wild horses.

Bait and water traps will be used annually during the late summer/fall period to facilitate this gather. Bait and water site trapping could take from two weeks to more than six months annually depending on the conditions and the amount and nature of the horses to be captured. All capture activities would conform to Instruction Memorandum (IM) No. 2013-059 Wild Horse and Burro Gathers: Comprehensive Animal Welfare Policy (CAWP) which was created to establish policy and procedures to enable safe, efficient, and successful WH&B gather operations while ensuring humane care and treatment of all animals gathered.

Following each capture, wild horses will be shipped via trailer to the Oregon Wild Horse Corrals Facility in Burns, Oregon for eventual adoption, sale, or residency on long-term, off-range

pastures. Any unauthorized domestic horses captured would be impounded in accordance with Title 43 Code of Federal Regulations (CFR) (2005) Subpart 4150 (including 4150.2, 4150.3, and 4150.4 through 4150.4-5). An attempt will be made to identify the ownership of any unauthorized domestic horses that are gathered. In order to assure the Pokegama HMA wild horse population does not fall below the low AML of 30, select horses may be re-released into the HMA following a post-gather aerial survey. These horses would be returned to public land sections of the HMA only. No gathered horses will be returned to private lands within the HMA.

Compliance with law and regulation

The proposal is consistent with The Wild Free-Roaming Horses and Burros Act of 1971 (Public Law 92-195) which directs BLM to remove wild horses and burros from private lands. The Act reads, "If wild free-roaming horses or burros stray from public lands onto privately owned land, the owners of such land may inform the nearest Federal marshal or agent of the Secretary, who shall arrange to have the animals removed". Additionally, 43 CFR 4720.2-1 states "Upon written request from the private landowner to a representative of the Bureau of Land Management, the authorized officer shall remove stray wild horses and burros from private lands as soon as practicable."

B. Land Use Plan Conformance

Land Use Plan Name: Southwestern Oregon Resource Management Plan/Record of Decision

Date Approved/Amended: August 5, 2016

The proposed action is in conformance with the applicable plan because it is specifically provided for in the following decision(s):

Wild Horses - Management Direction (2016 SWO RMP, p. 122)

The BLM will remove horses from private land per private landowner request.

C. Compliance with NEPA

The Proposed Action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with 516 DM 11.9, *D.4, Removal of wild horses or burros from private lands at the request of the landowner*.

The following documentation describes whether or not any of the extraordinary circumstances described in 516 DM 2, Appendix 2 apply to the project:

| CX Extraordinary Circumstances Documentation | | |
|--|------------|-----------|
| Will the proposed categorical exclusion action: | YES | NO |
| 2.1 Have significant impacts on public health or safety. | | X |
| Rationale: Due to the remote location of the proposed horse gathering on private land, there is no potential for significant impacts to public health and safety. | | |
| 2.2 Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds; and other ecologically significant or critical areas. | | X |

| | | |
|--|--|---|
| <p>Rationale: There are no Special Designation Areas located at the trapping sites because gather activities will be limited to private lands. The BLM will survey trapping locations on private lands for historic or cultural resources prior to gathering and will implement avoidance measures if any are found. Portions of the Upper Klamath River and Upper Klamath River Addition Areas of Critical Environmental Concern (ACECs) are located within the Pokegama HMA. The southern border of the HMA is adjacent to the Upper Klamath River Wild and Scenic River (WSR) Corridor. However, the proposed gathers would be conducted on private lands which are outside the ACECs and WSR Corridor.</p> <p>Migratory birds would not be impacted by this action because no vegetation will be removed during temporary placement of traps to gather horses. None of the other above-mentioned areas are present in the Pokegama HMA so they would not be impacted.</p> | | |
| 2.3 Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)]. | | X |
| <p>Rationale: There is no scientific controversy related to the effects of removing horses from private lands at the landowner's request.</p> | | |
| 2.4 Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks. | | X |
| <p>Rationale: There would be no highly uncertain or potentially significant effects because the gathers would occur on non-Federal land and be authorized by the private landowner, be limited in size and duration, would follow established BLM policies, and cultural and botanical clearance would be conducted with any sites avoided. The environmental effects of setting up temporary traps on previously disturbed, privately owned areas would be negligible. No unique or unknown environmental risks are anticipated.</p> | | |
| 2.5 Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects. | | X |
| <p>Rationale: The proposed action is in response to a private landowner's request to remove nuisance wild horses. The placement of temporary traps on private land is not precedent setting and is consistent with BLM policy regarding removal of wild horses from private lands at the landowner's request. This action would not prompt future actions or represent a decision in principle about future actions with potentially significant effects.</p> | | |
| 2.6 Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects. | | X |
| <p>Rationale: The impacts of the proposed horse gather on private lands would not contribute to cumulatively significant effects now or in the near future as there are no direct relationships to other actions of potential environmental effect.</p> | | |
| 2.7 Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by either the bureau or office. | | X |
| <p>Rationale: The proposed horse gathering on private lands would not have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places (NHPA) because historic properties would be avoided. This project is an undertaking as defined under Section 106 of the NHPA. The Area of Potential Effects (APE) is defined as the trap locations and temporary holding facilities. Identification consisted of a record search for the whole HMA and a BLM Class III survey will be conducted on the APE, prior to the start of horse gathering.</p> | | |
| 2.8 Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species. | | X |
| <p>Rationale: The Pokegama HMA boundary overlaps with northern spotted owl (NSO) Designated Critical Habitat on BLM lands. However, the proposed horse gather would have no effect to NSOs or NSO Critical Habitat because there is no potential to impact NSOs directly (disturbance or physical harm) or indirectly through habitat modification. Therefore, would be "No Effect" to NSO and no need to perform surveys for NSO.</p> <p>The Gray Wolf is known to occasionally present within the Pokegama HMA, but there are no known or suspected dens, and no critical habitat within the HMA. The proposed action does not have potential to impact the Gray Wolf directly (disturbance or physical harm) or indirectly through habitat modification. Therefore, there would be "No Effect" to Gray Wolf and no need to perform surveys for Gray Wolf.</p> <p>There are no other listed or proposed wildlife species or designated critical habitat under the endangered species act (as amended 1973) within the Pokegama HMA.</p> <p>The potential effects on special status botanical species would be negligible because all trapping would be conducted on private lands. In addition, undisturbed areas identified as trap sites would be inventoried for botanical resources prior to being used. If special status botanical species are found, those locations would not be utilized unless trapping activities they could be modified to avoid affects to those botanical resources. Therefore, there would be no significant impacts to special status botanical species.</p> | | |
| 2.9 Violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment. | | X |

| | | |
|---|--|---|
| Rationale: This project conforms to the direction given for the management of public lands in the 2016 SWO ROD/RMP, and, as such, complies with applicable laws, rules, and regulations. Therefore, this project would not violate Federal, State, local, or Tribal laws. | | |
| 2.10 Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898). | | X |
| Rationale: The proposed wild horse gather on private lands would not have a disproportionately high or adverse effect on low income or minority populations because such populations do not live within or adjacent to the project area. | | |
| 2.11 Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007). | | X |
| Rationale: The proposed action would not limit access to, and ceremonial use of, Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites because horse gathering activities will take place on private lands. In addition, the action is proposed across a broad landscape that contains numerous routes of access and horse gathering is temporary in nature. The BLM will survey horse trapping and temporary holding facilities locations prior to gathering and will implement avoidance measures if any sacred sites are found. | | |
| 2.12 Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112). | | X |
| Rationale: Trap sites would be located only on private lands, and in previously disturbed areas whenever possible. The BLM will avoid using areas infested with noxious weeds to minimize weed spread from this action. Post-gather, trap locations will be monitored for noxious weeds. If found, the BLM would work with the private landowner to treat noxious weeds using the most appropriate methods to avoid spread onto BLM lands. | | |

Surveys and Consultation

Surveys and/or consultation may be needed for special status plants and animals, for cultural resources, and other resources as necessary (appropriate fields are Initialed and Dated by responsible resource specialist):


| Surveys | Are Completed | Will Be Completed | Are Not Needed |
|------------------------------------|---------------|-------------------|----------------|
| Special Status Animals | | | MDB 4/15/2020 |
| Special Status Plants | | | KAJ 7/17/2020 |
| Cultural Resources | | SAB 5/19/2020 | |
| Consultation | Is Completed | Will Be Completed | Is Not Needed |
| Special Status Animal Consultation | | | MDB 4/15/2020 |
| Botanical Consultation | | | KAJ 7/17/2020 |
| Cultural Consultation | | | SAB 5/19/2020 |

Contact Person

For additional information concerning this CX review, contact: James Price, Wild Horse & Burro Specialist, Lakeview District; phone: 541-947-2177. You may also contact the Klamath Falls Field Office at 541-883-6916.

Categorical Exclusion Determination

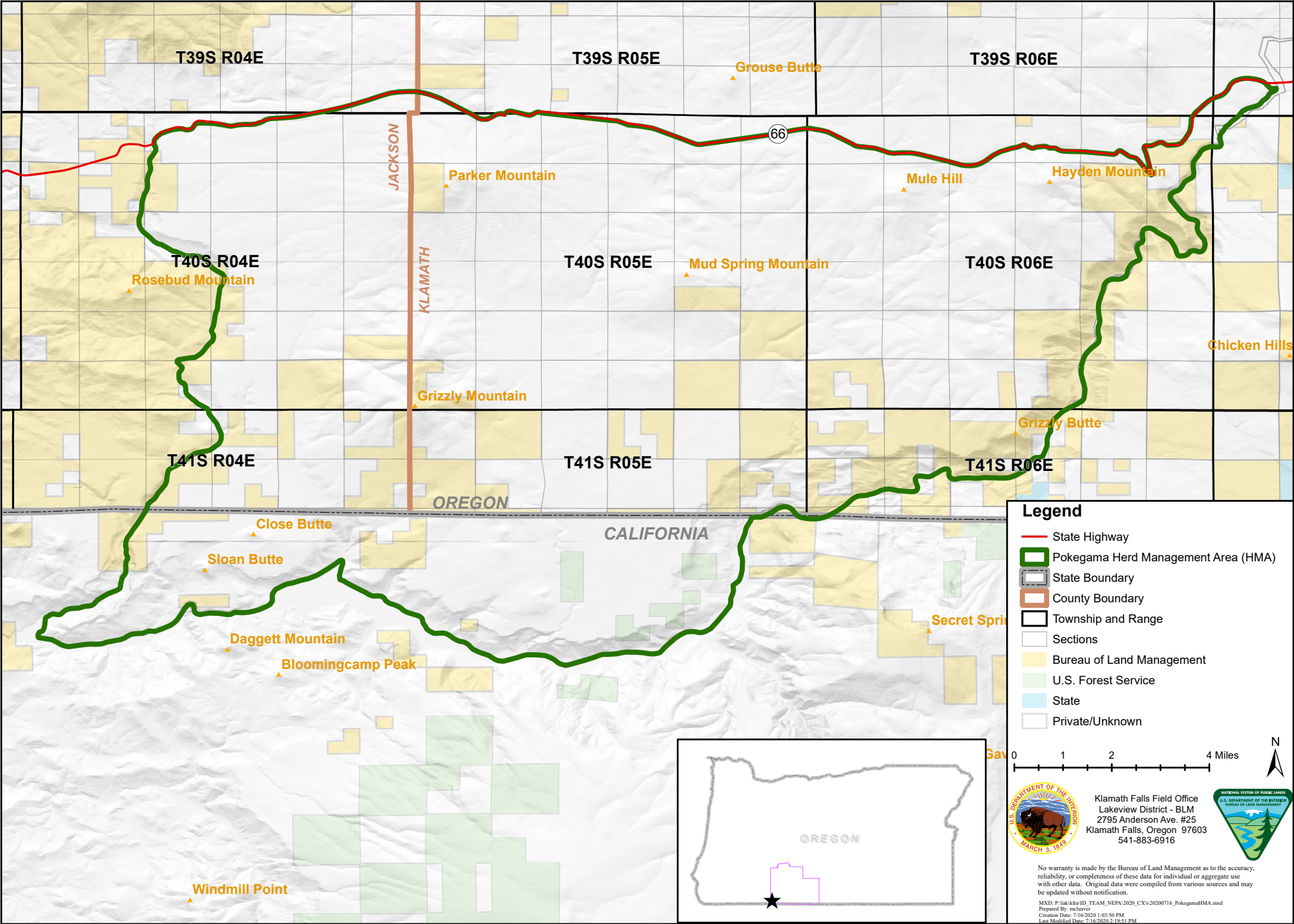
I have determined that the proposed action is categorically excluded from further documentation under NEPA and that none of the extraordinary circumstances apply.

Authorizing Official: 
(Signature)

Date: 8/26/2020

Name: Kevin B. Heatley
Title: Field Manager, Klamath Falls Resource Area

Pokegama Herd Management Area (HMA)



Legend

- State Highway
- Pokegama Herd Management Area (HMA)
- State Boundary
- County Boundary
- Township and Range
- Sections
- Bureau of Land Management
- U.S. Forest Service
- State
- Private/Unknown



Klamath Falls Field Office
Lakeview District - BLM
2795 Anderson Ave. #25
Klamath Falls, Oregon 97603
541-883-6916



No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of these data for individual or aggregate use with other data. Original data were compiled from various sources and may be updated without notification.

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Last Modified Date: 7/16/2020 2:10:51 PM

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Klamath Falls Resource Area

**DECISION RECORD
FOR THE
GREEN DIAMOND NUISANCE WILD HORSE REMOVAL
CATEGORICAL EXCLUSION
#DOI-BLM-ORWA-L040-2020-0009-CX**

Decision

It is my decision to implement the Proposed Action as described in the categorical exclusion document titled *Green Diamond Nuisance Wild Horse Removal*, #DOI-BLM-ORWA-L040-2020-0009-CX. Pursuant to Title 43 of the CFR at 4770.3(c), the removal of wild horses from non-Federal land is approved for implementation upon the date of my signature below.

Rationale

My decision is consistent with 43 CFR 4720.2, which states that “*upon written request from a private landowner, the authorized officer shall remove stray wild horses and burros from private lands as soon as practicable.*” I have determined that the proposed action is in conformance with the Southwestern Oregon Resource Management Plan, is categorically excluded from further documentation under NEPA, and that none of the extraordinary circumstances apply.

Administrative Remedies

Within 30 days of receipt of this decision, you have the right to appeal to the Interior Board of Land Appeals, Office of the Secretary, in accordance with regulations at 43 CFR § 4.4. An appeal should be in writing and specify the reasons, clearly and concisely, as to why you think the decision is in error. A notice of appeal and/or request for stay electronically transmitted (e.g., email, facsimile, or social media) will not be accepted. A notice of appeal and/or request for stay must be on paper. If an appeal is taken, your notice of appeal must be filed in the Klamath Falls Field Office at 2795 Anderson Avenue, Bldg. 25, Klamath Falls, Oregon, 97603. The appellant has the burden of showing that the decision is in error.

A copy of the appeal, statement of reasons, and all other supporting documents should also be sent to the Regional Solicitor, Pacific Northwest Region, U.S. Department of the Interior, 601 SW 2nd Ave. Suite 1950, Portland, OR 97204. If the notice of appeal did not include a statement of reasons for the appeal, it must be sent to the Interior Board of Land Appeals, Office of Hearings and Appeals, 801 North Quincy Street, Arlington, Virginia 22203. It is suggested appeals be sent certified mail, return receipt requested.

The appellant may wish to file a petition for a stay (suspension) of this decision during the time that the appeal is being reviewed by the Board pursuant to Part 4, Subpart B, Section 4.21 of Title 43, CFR. 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 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)

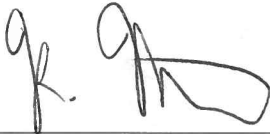
at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

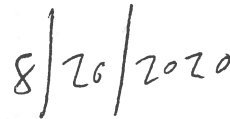
Except as otherwise provided by law or other pertinent regulation, a petition for a stay of decision pending appeal shall show sufficient justification based on the following standards (43 CFR 4.21(b)).

- (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.

As stated above, appeals and petitions for stay of a decision of the authorized officer must be filed within 30 days of receipt of the decision in accordance with 43 CFR part 4.



Kevin B. Heatley, Field Manager
Klamath Falls Resource Area
Lakeview District, Bureau of Land Management



Date