

## **Decision Record**

### **South Fork Walla Walla Landowner Access Environmental Assessment OR-035-06-03**

This decision record documents my decision to adopt the South Fork Walla Walla Landowner Access Project as presented under the No Action Alternative plus that portion of Alternative 1.A. presented as Implementation of NOAA Fisheries Conservation Recommendation #2. In two separate biological opinions, the U.S. Fish and Wildlife Service (USFWS) and National Oceanic and Atmosphere Administration (NOAA) Fisheries concluded, under section 7 of the Endangered Species Act (ESA), that portions of this project (No Action Alternative) are not likely to jeopardize the continued existence of bull trout and Middle Columbia River steelhead, respectively. The Bureau of Land Management (BLM) will engage in further section 7 consultations for the remaining portions of this decision, Implementation of NOAA Fisheries Conservation Recommendation #2, and any mitigation measures identified and concurred upon by USFWS and NOAA Fisheries will be incorporated into my decision.

The project area has been surveyed for cultural resources. Additional subsurface investigations will be completed for those locations associated with the bridge installation that is part of the implementation of NOAA Fisheries Conservation Recommendation #2. If any archeological site is found during additional investigations of bridge project locations, the site will be avoided or the impacts mitigated. Also further consultation will be completed with the Oregon State Historic Preservation Office (SHPO) and Confederated Tribes of the Umatilla Indian Reservation (CTUIR) concerning cultural resources and traditional values prior to design and construction of these bridges.

#### **Public Comments Review**

BLM has received input from the public and interested parties on this area and issue over the years.

- In 2000, the property owners formed an association and requested year-round access by OHV- Class I vehicles in addition to the six weeks of access with full-size vehicles.
- From 2001-2004, BLM held multiple meetings with the multi-agency Level 1 team, the landowners, USFWS, NOAA-Fisheries and other interested persons to resolve this complex issue.
- In 2004, in response to the Biological Assessment on a possible six-month access by the property owners, CTUIR informed the BLM that they had initiated a program to restock the SFWW River with Chinook salmon. CTUIR explained they had been working on their program for four years and that extending the crossing time period would detrimentally affect their program for replanting the SFWW River.

- The property owners agreed to the shortened full-size vehicle crossing time for 2004 and 2005 reluctantly, until the BLM could do an Environmental Assessment (EA) pursuant to the National Environmental Policy Act (NEPA), to assess the environmental impacts of an increase in full-size vehicle access. The shorter full-size vehicle access was and is of concern to the property owners since the rest of the year they use the trail via permitted travel methods (horses, motorcycles, walking, mountain bikes), which can be difficult, due to weather, and the trail's location and condition (especially during the cooler, wetter months).
- In January 2005, BLM sent to a mailing list of about 183 persons and organizations, a scoping letter to gather possible issues for the EA.

In response to the January 2005 scoping letter, BLM received four comment letters. Issues identified were:

- Altering or removing materials from this section of the stream requires a permit from Oregon Department of State Lands.
- Minimize damage to all anadromous species at crossings by removing the spawning habitat at the crossings.
- Reduce the number of crossings and habitat damage at those crossings where it is not feasible to construct additional road.
- Reduce travel by ATVs (OHVs) whenever and wherever it is possible as those ATV users who violate the law (causing resource damage) give the rest a bad reputation.
- Consider low water bridges built of concrete as crossing method.
- Increased vehicle use will affect non-motorized recreation and degrade the trail experience for other public land users.

After the scoping letter the BLM received the following public input:

- In 2005, the BLM met with CTUIR and the landowners in separate meetings to try and refine the alternatives and to hear other suggestions for the property owners' access.
- In the spring of 2006, the BLM met in Pendleton with the property owners to present possible alternatives for the EA.
- In July 2006, BLM met with CTUIR representatives to further identify concerns and discuss potential alternatives for consideration in the EA.
- In July 2006, BLM worked out route modifications with a representative of the property owners that could be included in one of the alternatives.
- In July 2006, BLM received several letters from individual landowners expressing their opinions about providing reasonable access to their land and their choice of alternatives.

Subsequent to the preparation of the EA, a Legal Notice setting forth the availability of the EA for public comments was published in August 2006. During the 30-day public comment period, seven comment letters were received.

These comments were summarized along with BLM's responses into a table and were added to the EA as Appendix 7.

After receiving these written comments the BLM had the following discussions to further clarify concerns:

- The BLM met with CTUIR's Board of Trustees on October 19 to discuss their concerns with the project.
- The BLM met with CTUIR's cultural staff in January 2007 to discuss their concerns with possible cultural impacts from the project.

Due to new information received from written and verbal comments and new monitoring data collected by the BLM after the EA was released for public comment, the EA was revised. Some of the new monitoring information shows Chinook salmon redds have increased from previous years and they are utilizing more road crossings (over the river) than in previous years (USDI BLM 2006 Annual Monitoring Report for the Baker Resource Area, Vale District). Under NOAA Fisheries EFH Conservation Recommendation #3b, no vehicles should cross the river within 300 feet up stream of Chinook salmon redds. The new monitoring data collected by BLM shows several Chinook salmon redds are present within 300 feet down stream of the crossings the landowners would utilize under Alternative 1A and 1B.

## **Decision**

My decision to select the No Action alternative plus that portion of Alternative 1A, which implements NOAA Fisheries Conservation Recommendation #2 by building two small bridges over two pools located in the roadway, is based upon the interdisciplinary analysis contained in the Environmental Assessment OR-035006-03, a copy of which is attached, as well as the supporting record, field review, public comments received, consultation with the regulatory agencies (NOAA Fisheries, USFWS), the landowners, and consultation with the Oregon State Historic Preservation Office and with CTUIR.

All mitigating measures, stipulations, design features, and monitoring described in the EA relative to the decision are incorporated into project implementation plans. Among these are:

- Any access by full-size vehicle is assumed to be by 4x4 high clearance vehicles equivalent to, but no larger than, a 1 ton pickup truck. The primitive existing road is wide enough for single full-size vehicle passage. Future use of the primitive old road (2 tracks) would be monitored to assure that it does not widen as a consequence of casual use.
- No maintenance of the road is allowed except for the manual moving of rocks and debris. Any trees that are blocking the road/trail may be bucked out (cut and moved aside) of the way but remain on site.
- None of the alternatives allow mechanical improvements of the access crossings in the river after large weather events that either make more difficult or prevent

wet crossings by full-size vehicles. If such a weather event happens, and hand work will not suffice, the full-size vehicular access crossing the rivers will no longer be allowed. BLM may evaluate the options and prepare an ESA Biological Assessment for ESA consultation for any future maintenance or action to facilitate future vehicle crossing. Any new type of maintenance or action that could potentially affect cultural resources would require further consultation under Section 106 of the National Historic Preservation Act.

- Chinook, steelhead, and bull trout redds are monitored for emergence and dispersal of fry and presence of spawning adults prior to BLM granting written authorization each year to the landowners. If steelhead have not emerged and developed sufficiently to avoid vehicles by July 1, this date will be moved back to meet this criteria. If spring Chinook salmon start to spawn prior to August 15, permission for vehicle access will be terminated for the remainder of that year.
- The landowners comply with a list of actions in the Spill Prevention Plan for the South Fork Walla Walla River prepared in June 2005 by the BLM, (See Appendix 1).
- Compliance monitoring with use restrictions will occur annually for the first five years and periodically thereafter or in accordance with monitoring schedules identified in Biological Assessments/Opinions.
- Native species will be used for any replanting or reseeded that occurs as part of an action.
- Since the 1992 RMP Plan Amendment (ACEC plan), identifies the area as potential goshawk habitat, prior to any construction activities, the surrounding area will be surveyed during the nesting period for goshawk nesting. If nests are found, construction activities in the approximately 400 acres buffer area around the nest will not be carried out between April 1 – June 30, depending on the proximity to the nest.
- Any ground disturbing management actions will be surveyed for archaeological sites, which would be avoided, stabilized or otherwise mitigated.
- BLM will annually monitor the vehicle route and recreation trail on the SFWW BLM lands for evidence of archaeological sites. For 2007-2009, BLM will arrange annual monitoring surveys for site locations and a monitoring report will be prepared annually and submitted to CTUIR and Oregon State Historic Preservation Office (SHPO) for review and recommendations on actions needed to protect cultural resources. BLM will consult with CTUIR and SHPO on results and updates for monitoring schedule thereafter. As per Section 106 of the National Historic Preservation Act, if any resource impacts are identified, BLM will consult with SHPO and CTUIR on ways to avoid, protect, stabilize or otherwise mitigate effects.
- If monitoring shows that riparian conditions are jeopardized or deteriorating, riparian enclosure fences may be installed to deter unauthorized uses.
- In consultation with CTUIR, BLM will ensure continued access to the BLM lands for the exercise of CTUIR treaty rights.
- Prior to developing the proposed bridge project, BLM would arrange for subsurface investigations at the project location and, in consultation with Oregon SHPO and CTUIR, would develop measures to avoid or mitigate effects to

- cultural resources if found. BLM would also arrange for an assessment study of potential effects and mitigation measures for tribal traditional cultural properties on BLM lands.
- Trail markers will be placed and maintained showing location, and signs showing permitted use and routes along the trail.
  - BLM will endeavor to work with the adjacent landowner Forest Capital Partners (formerly Boise Cascade) to place signs notifying the public of the areas closed to motorized OHV use on BLM lands. The signs will be maintained at a gated logging road along Elbow Creek, which appears to be used for unauthorized Class I OHV (quad) access to public lands. Additional physical barriers (e.g., fence, boulders, rolling dip) may be placed on BLM land on Elbow Creek to deter unauthorized motor vehicle use.
  - Pursue ATV grants or other funding sources to fund a seasonal river ranger to patrol and provide education and information.
  - Work with Forest Service to maintain trail per stipulations of the trail right-of-way.
  - Per the 1992 RMP Plan Amendment, “limit OHV traffic beyond the gate/barricade during severe winters, as determined necessary in cooperation with ODFW (between December 15 and March 15) to relieve stress on wintering elk.” This includes full-size vehicles and Class III OHV as determined by the State of Oregon.

### **Alternatives Considered**

To address concerns raised in public and agency scoping, while fulfilling BLM’s stated purpose and need for the project, BLM explored a number of alternatives. Four alternatives were considered and eliminated from detailed analysis:

- Road construction outside of the narrow river drainage- This alternative would meet BLM’s Purpose and Need, however, due to the logistics of building on private land (not owned by those parties needing access for this project), the difficult terrain and expected expense this alternative would incur, it was eliminated from further consideration.
- Upgrade the existing trail managed by the Forest Service from its existing width to Class I OHV width and opening it for public use- While the construction of this trail would have the same impacts as two of the analyzed alternatives, the authorization of public use would create unacceptable management issues and therefore it was eliminated from further consideration.
- Construct low water concrete crossings over all wet crossings used by the landowners-This alternative was eliminated from further consideration since it would permanently eliminate those areas from potential spawning habitat for listed as well as non-listed species and thus would not meet the Purpose and Need.
- No access through the ACEC by motorized vehicles- This alternative would have the least impact to fish and their habitat, however it would not meet the Purpose and Need of providing reasonable access to the landowners.

Five alternatives were analyzed in detail and are discussed in depth in chapter 2 of the EA:

- No Action- Continue to allow the annual written exemption to the road closure for July 1-August 15 each year for the private landowners upstream of the BLM land. This exemption is granted year to year based on acceptable monitoring results.
- Alternative 1A, Preferred Alternative- This alternative would allow an annual written exemption to the road closure for July 1-December 31 each year for the private landowners upstream of BLM land. There would be some wet crossing modifications to help alleviate the potential to affect spring Chinook spawning. This exemption is granted year to year based on acceptable monitoring results. The BLM will also build two small bridges over two identified pools within the roadway to alleviate potential impacts to steelhead and salmon which may utilize these pools.
- Alternative 1B- This alternative would allow an annual written exemption to the road closure for July 1-December 31 each year for the private landowners upstream of BLM land. There would be no wet crossing modifications but in wet crossings suitable for spawning, material will be placed in the streambed from August 15 until September 15 each year to help deter spring Chinook spawning. This exemption is granted year to year based on acceptable monitoring results.
- Alternative 2A- Reconstruct the existing trail to accommodate Class I OHVs (quads) through the BLM land to the private land boundary. Install two Class I size bridges near existing wet crossings #1 and #2 and connect them with a new trail on the south side of the river (this “new” trail is the existing road the landowners use for full size vehicle access between wet crossing #1 and #2). Eliminate the existing trail between these two crossings on the north side of the river. Restrict the use of Class I (quad) vehicles to land owners only and allow the public to use this trail as they do now (Class III motorcycles, foot, and horseback). Eliminate all full size vehicle access by the landowners.
- Alternative 2B- Reconstruct, entirely on the north side of the river, the existing trail to accommodate Class I OHVs (quads) through the BLM land to the private land boundary. No Class I bridges will be constructed. Restrict the use of Class I (quad) vehicles to land owners only and allow the public to use this trail as they do now (Class III motorcycles, foot, and horseback). Eliminate all full size vehicle access by the landowners.

### **Decision Rationale**

After reviewing the EA developed for this project and the comments received on impacts, the BLM has selected the No Action alternative plus that portion of Alternative 1A which implements NOAA Fisheries Conservation Recommendation #2 by building two small bridges over two pools located in the roadway.

The BLM has a policy of allowing reasonable access to the private property. The BLM Manual Section 2800 (Rights-of-Way) at .06D states that: “It is the policy of the BLM to

allow owners of non-Federal lands surrounded by public land managed under FLPMA a degree of access across public land which will provide for the reasonable use and enjoyment of the non-Federal land. Such access must conform to rules and regulations governing the administration of the public land; keep in mind, however, that the access necessary for the reasonable use and enjoyment of the non-Federal land can not be denied.” My decision is not to grant a right-of-way (and no full-size vehicle right-of-way application has been filed), but to continue to grant the landowners limited casual use on an annual basis. However, it is our goal to follow the right-of-way policy as closely as possible-so long as it is consistent with applicable statutes, rules, regulations, and the 1992 amendment to the Baker Resource Management Plan (RMP).

The landowners have historically had access using full size vehicles on a combination of bridges, old logging road, and where necessary fording the river. In 1992, the BLM designated this area as an ACEC in a land use plan amendment to the Baker RMP, and soon after removed three structurally failing bridges. In 1994, per the RMP, the BLM limited motorized vehicle traffic to the river trail system and also limited vehicle weight to 1,500 GVW or less. Though the bridge removal required three more river crossings, the land owners were still allowed to access their property via annual permission from the BLM. It wasn't until the listing of the bull trout in 1998 and Middle Columbia steelhead in 1999 that the BLM started to restrict the timing of the landowners' access to July 1 through August 15, as one of the Term and Conditions of Biological Opinions from both NOAA Fisheries and USFWS under the ESA. The BLM believed that this six week window for full size vehicle access, plus utilizing the public access trail (motorcycles, hiking, and horseback) the entire year, was the best degree of access across public land we could provide and still conform to the rules and regulations (in this case, the ESA) governing the administration of public lands.

The BLM told the landowners that they would attempt to find a solution to gain them more full size vehicle access to better enjoy their property.

In 2004, the BLM felt they had collected enough data through our and others' monitoring to facilitate a longer access window into the fall (through December 31st each year). The USFWS in 2004 and NOAA Fisheries in 2005 concluded, under section 7 of the Endangered Species Act (ESA), that the longer full-size vehicle access window was not likely to jeopardize the continued existence of bull trout and Middle Columbia River steelhead.

In 2004, in response to the Biological Assessment for the longer access window (July 1-December 31), CTUIR informed the BLM that this proposed extension may affect their program to restock the SFWW River with spring Chinook Salmon. The salmon spawn in late summer/early fall and thus driving through the river after their spawning may be detrimental to redds.

The EA prepared for the proposed project analyzed several alternatives which would provide additional access to the landowners while trying to alleviate potential impacts to fisheries and their habitat. Alternative 1 (includes 1A, the preferred alternative and 1B)

extended the window for full size vehicle access from July 1 until December 31 and offered mitigations to avoid potential impacts to spring Chinook salmon. These alternatives were developed utilizing spring Chinook salmon redd data from previous years. Monitoring data from 2006 revealed that crossing the river after spring Chinook salmon spawning and staying within the parameters of NOAA Fisheries EFH Conservation Recommendation #3b, "Minimize number of crossings and place essential crossings downstream from, or more than 300 feet upstream from, known or suspected spawning areas, where vehicle use will not damage sensitive soils, slopes or vegetation," would be very difficult. In 2006, four out of the ten crossings had one or more redds within 300 feet downstream of the crossing.

All of the alternatives which allow some amount of landowner access by full size vehicle crossings of the river (Alts 1A, 1B, and No Action), require monitoring for fish presence prior to annual authorization. For instance, steelhead must be large enough to escape vehicles prior to July 1 and spring Chinook salmon redds must be avoided or not within 300 feet downstream of the crossing in order to allow access after August 15. While it is possible there may be future years where the spring Chinook salmon redds occupy the area similar to years prior to 2006, based on available monitoring data BLM believes it is more likely most years will be similar to 2006 in which the criteria are not met and full size vehicle access after August 15 would not be authorized. The BLM no longer considers Alternative 1A or Alternative 1B to be viable alternatives because they would most likely have a negative impact to fisheries (namely, Chinook salmon) which is one of the relevant and important values listed and managed for in the 1992 RMP Plan Amendment. This alternative would also be inconsistent with NOAA Fisheries EFH Conservation Recommendation #3b.

Alternative 2 (includes Alt 2A and Alt. 2B) eliminates all full size vehicle access by the landowners and reconstructs the trail to accommodate Class I OHVs (quads) but only the landowners will be allowed to use them. These two alternatives would greatly reduce impacts to fish and their habitat. While these two alternatives allow the landowners better year-round access than they have now (quads are likely to be more versatile during periods of inclement weather), it would be more difficult to re-supply their cabins each year without the use of full size vehicles. The cost of engineering and reconstructing this trail plus the associated cost of maintenance and administration of the trail (the Forest Service has indicated they would most likely relinquish their trail right-of-way if the trails are reconstructed as in this alternative and the BLM would have to manage it) would be cost prohibitive. Also, Alternative 2A and 2B would require additional ESA consultation since construction would take place within the riparian areas which would possibly have impacts to bull trout, steelhead, and their habitat. The selection of Alternative 2A would require a Plan Amendment since the 1992 Amendment to the Baker RMP only provides for access on the north side of the river. Access to the south side of the river could possibly have impacts to the ACEC's relevant and important values of fisheries, wildlife, riparian, and scenic since the public currently has no easy access to this side of the river. For these reasons, the BLM does not consider Alternative 2A or Alternative 2B feasible.

The analysis completed during preparation of the EA found that the impacts of the selected alternative (No Action and portion of Alt. 1A) would be minimal and acceptable for listed species, spring Chinook salmon, water quality, wildlife, cultural resources, Native American treaty rights and traditional uses, recreation, and scenic values. Mitigation measures associated with the Decision would be effective in eliminating or minimizing most impacts.

The BLM concludes the selection of the No Action and that portion of Alternative 1A which constructs the two bridges over the pools, best meets the Purpose and Need. It gives the landowners the best degree of access across public land the BLM can allow based on the rules and regulations (in this case the Magnuson-Stevens Fishery Conservation and Management Act as well as the 1992 RMP Plan Amendment) governing the administration of public lands. It also implements NOAA Fisheries Conservation Recommendation #2 which benefits Middle Columbia River steelhead which is listed under the ESA.

Under this decision, there are other criteria that still need to be met annually to allow implementation of full size vehicle access each year. For instance, if steelhead have not emerged and developed sufficiently to avoid vehicles by July 1, this date will be moved back to meet this criteria. If spring Chinook salmon start to spawn prior to August 15, permission for vehicle access will be terminated for the remainder of that year. If weather events such as flooding prevents vehicle access through the approved route and the route cannot be cleared by hand then vehicle access will be denied. It is possible that future natural events could alter the river channel enough to completely shut off vehicle access across the river and thus the land owners' utilization of the Forest Service managed trail would be the best degree of landowner access across public land the BLM can provide.

This action is consistent with the Baker Resource Area Resource Management Plan (1989) Record of Decision and the South Fork Walla Walla River Area Plan Amendment (1992).

### **Finding of No Significant Impact**

While any land management activity invariably and by definition entails environmental effects, I have determined, based upon the analysis of environmental impacts contained in the referenced EA (OR-035-06-03), that the potential impacts raised by the proposed action (which is to implement the July 1-August 15 exemption for landowner vehicle access subject to monitoring results, and to build bridges over two pools) will not be significant and that, therefore, preparation of an environmental impact statement is not required.

In relation to context, I find that the project's affected region is localized and the effects of implementation are relevant to people recreating and living in the area. There would be no societal or regional impacts and no impacts on potentially affected interests.

I have evaluated the effects of my decision (which is to implement the July 1-August 15 exemption for landowner full size vehicle access, subject to monitoring results, and to build bridges over two pools), together with the proposed mitigating measures, against the tests of significance found at 40 CFR 1508.27. I have determined that:

1. The decision would cause no significant impacts, either beneficial or adverse; all impact would be minimal; most would be of short duration.
2. The decision would have no effect on public health or safety.
3. The decision would not affect unique characteristics of the geographic area.
4. The decision would have no highly controversial effects. The landowners will consider this decision highly controversial, however they have raised no controversy over environmental impacts, just over their amount of access. See 40 CFR 1508.27(b)(4). The BLM believes this six-week window for full size vehicle access plus utilizing the public access trail (motorcycles, hiking, and horseback) the entire year is the best degree of access across public land while conforming to the rules and regulations governing the administration of public lands.
5. The decision would have no uncertain effects and would not involve unique or unknown risks. In CTUIR's letter of Sept. 6, 2006, they stated that there would be uncertain effects since redds change every year. The decision to allow only six week full size vehicle access each year with a stipulation that vehicle access will be terminated if redds appear within 300 feet down stream of any crossing has mitigated this potential effect.
6. The decision is a routine and common project and does not establish a precedent for future actions.
7. The decision is not related to any other action being considered by BLM.
8. With implementation of mitigations, the decision would have no adverse effect to any property listed on or potentially eligible for listing on the National Register of Historic Places.
9. The decision would not significantly adversely affect an endangered or threatened species, or any habitat critical to an endangered or threatened species. The USFWS and NOAA Fisheries concluded, under section 7 of the Endangered Species Act (ESA), that allowing the landowners to drive up the SFWW River is not likely to jeopardize the continued existence of bull trout and Middle Columbia River steelhead. However, with the non-discretionary terms and conditions already in place for the No Action Alternative and any additional non-discretionary terms and conditions placed upon the BLM by USFWS and NOAA Fisheries as a result of new consultations on building bridges over two pools, the BLM considers that any adverse affect would not be significant.
10. The decision does not violate any law or requirement imposed for the protection of the environment.

## Appeal Rights

This decision may be appealed to the Interior Board of Lands Appeals, Office of the Secretary, in accordance with the regulations contained in 43CFR, Part 4 and Form 1842-1. If an appeal is taken, a notice of appeal must be filed in this office (BLM, 3285 11<sup>th</sup> Street, Baker City, Oregon, 97814) within 30 days from that notice of this decision is published in the Eastern Oregonian. 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 4.21 (58FR 4939, January 18, 1993), for a stay (suspension) of 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.

Except as otherwise provided by law or other pertinent regulation, a petition for a stay 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.

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Date