USDI, Bureau of Land Management
Andrews Resource Area, Burns District

DECISION RECORD

Borax Lake Chub Habitat Protection Fence
Environmental Assessment
OR-08-026-096

BACKGROUND

The Borax Lake Chub Habitat Protection Fence Environmental Assessment (EA) analyzed issues emerging from the construction of a vehicle barrier fence and local interest interpretive signs proposed for installation along Borax Lake Road. The intent of the proposed project is limit vehicle access to the lake shore and associated wetlands and increase public awareness and knowledge of the area increasing the protection to the endangered Borax Lake Chub and associated habitat.

COMPLIANCE

The attached Environmental Assessment (EA): Borax Lake Chub Habitat Protection Fence (OR-08-026-096) is tiered to the Andrews/Steens Proposed Resource Management Plan and Final Environmental Impact Statement (PRMP/FEIS) and relevant information contained therein is incorporated by reference. The Proposed Action has been designed to conform to the following documents, which direct and provide the framework for management of BLM lands within Burns District:

- National Environmental Policy Act (42 U.S.C. 4321-4347)1970
- Endangered Species Act (1973)
- Federal Noxious Weed Act (U.S. Congress, Public Law 93-629) 1974
- Federal Land Policy and Management Act (43 U.S.C. 1701) 1976
- Public Rangelands Improvement Act (43 U.S.C. 1901) 1978
- Recovery Plan for the Borax Lake Chub (USFWS 1987)
- Borax Lake Chub Habitat Management Plan (BLM 1987)
- Burns District Weed Management Plan EA (1998)
- Andrews Management Unit Resource Management Plan/Record of Decision (August 2005)

DECISION

Having considered the Proposed Action and No Action Alternative *(or alternatives)* and associated impacts and based on analysis in EA OR-08-026-096, it is my decision to implement the Proposed Action which authorizes construction of the fence and installation of the signs as proposed. Additionally, a Finding of No Significant Impact

(FONSI) found the Proposed Action analyzed in OR-08-026-096 did not constitute a major Federal action that would adversely impact the quality of the human environment. Therefore, an Environmental Impact Statement was unnecessary and will not be prepared.

The Proposed Action is the removal of 22,000-foot (3.9 miles) of abandoned fence that predates the designation of the ACEC (BLM) and Borax Lake Chub Critical Habitat (USFWS) and the construction of approximately 3,500 feet of post and cable style fence following the east side of Borax Lake Road. The new fence would reutilize posts removed from the abandoned fence and ⅜-diameter cable. The posts are well weathered and blend well with the landscape making them not only an aesthetically suitable material, but would also reduce the cost of materials and transport.

Borax Marsh Road (1.75 miles) would be closed to unpermitted (other than landowner, administrative, or issued permit) vehicle traffic at the intersection of Borax Lake Road and Borax Marsh Road. Permits would be considered for persons with special needs such as handicapped visitors, agencies other than BLM conducting studies as well as approved academic research and studies. Pedestrian access points and a locking vehicle gate would be installed. The proposed fence would not replace the existing fence along the southwest corner of the ACEC boundary; rather the fence would augment protection provided by the existing fence. Work would be accomplished using hand and portable power tools for fence removal and construction. Trucks and trailers would be used to move material for construction. OHVs and trailers would be used to transport materials out of the ACEC during the fence removal phase of the project.

Borax Lake Road near the access point would be widened as necessary to provide parking for visitors although it is not expected the number of visitors at any given time would exceed the roadside parking capabilities the intersection currently provides. Widening would not exceed 12 feet in width beyond the existing roadway. The parking area, being incorporated into the road would not likely require materials to be imported and maintenance would occur along with regular road maintenance or as necessary based on use. Parking spaces would not be marked.

Interpretive signs describing the cultural, ecological, and geological features of the area would be installed in locations to be agreed upon by project collaborators (ODFW, TNC, USFWS, and BLM). Sign height would not exceed 4 feet and the location, in general, would be within feet of, or incorporated into, the proposed fence structure.

Design Features of the Proposed Action

The fences would be constructed to BLM specifications. The basic design would be a post and cable style fence using ⅜-diameter cable and posts (described in the Proposed Action) spaced at approximately 20 feet. Post height would be approximately 3.5 feet. Cable spacing would be 16 inches of separation from the top cable set approximately 6 inches from the top of the posts. Rock cribs would be used at corners and where there is a need for increased structural support to carry the diagonal load of the wire rope.

- Construction would occur in the late summer or early fall to minimize impacts of working on moist soils and to avoid adverse effects on nesting birds.
- If evidence is found of anything possibly of cultural importance, construction would be stopped until the District Archaeologist inspects the site and authorizes work to resume.
- No blading, grading, or scalping of the fenceline would be allowed.
- Prior to final inspection, all construction trash and excess debris would be removed from the public lands and disposed of at a site approved by the BLM Authorized Officer.
- If any new populations of noxious weeds are found during the site-specific clearances for the project, they will be treated using the best available methods prior to instigating the project in conformance with the Burns District Weed Program Management EA/Decision Record OR-020-98-05.
- The risk of noxious weed introduction would be minimized by ensuring all equipment (including all machinery, 4-wheelers, and pickup trucks) used for fence construction is cleaned prior to entry to the site, minimizing disturbance activities, and completing follow-up monitoring, for at least 3 years, to ensure no new noxious weed establishment.
- Parking area (road widening) would be constructed to the same standard as existing road.
- Signs would be designed and constructed to Department of the Interior standards and would set at a height of 3 to 4 feet above the ground such that they would not be a dominant visual feature.
- All work would be conducted by BLM staff or contractors.

COMMENTS RECEIVED

A copy of the original EA and unsigned FONSI were mailed to 5 individuals. In addition, a notice was posted in the *Burns Times-Herald* newspaper on 16 March 2010. The Burns District BLM received comments from 4 individuals.

Comments Received:
The north end of the lake is seasonally accessible by road. It is possible that a vehicle could reach the proposed fence behind the locked gate and not be able to exit.
BLM Concurs. Appropriate warning signs will be installed in access points from the north of the area. Additionally, where practical, north gates would be locked.

Could brochures be published including a map of the area for distribution at local businesses?
It is not the intent of BLM or The Nature Conservancy to increase visitation to the area and advertising the presence of the lake is not desirable. However, the lake and attributes could be incorporated into brochures whose scope involves the entire region.

It appears that the size of the Critical Habitat would be reduced.
Under the Proposed Action, the existing Critical Habitat boundary fence would be retained and the size of the Critical Habitat would not be changed.
The fence proposed for removal is an abandoned fence within the Critical Habitat. Approximately 1,800 posts from this fence would be removed with about 200 posts recycled to construct the proposed fence that would follow Borax Lake Road within the confines of the Critical Habitat.

How will vandalism be minimized to the signs and fence? Will contact numbers be made available to report enforcement needs?
Signs will be set low to the ground at a slight angle. It is believed that setting the signs at an angle will make the surface unsuitable for the placing of targets. Enforcement of the area is not expected to change, but it is hoped that having a better structured presence describing ecological importance will motivate active stewardship among all visitors to the area. BLM agrees with the suggestion for providing contact information and will have it incorporated into the interpretive and habitat entry point signs.

Concerns were raised vehicle vs. foot traffic impacts to nesting birds.
Borax Lake is a large area and the construction of a fence along Borax Lake Road would change access from a predominantly vehicle accessible area to a predominantly pedestrian accessible area. It is believed that in some cases trails will be created where none currently exist. As visitors wander, disturbances will likely occur to nesting birds due to the closer proximity of a visitor on foot who would have historically been in a vehicle. The more intimate interaction between humans and birds may also result in disturbance through observation and the resulting curiosity where a nest may not have been noticed while in a vehicle.

RATIONALE

The Proposed Action was chosen over the No Action Alternative because the Proposed Action was among conditions deemed necessary for the delisting of the Borax Lake Chub as recommended by the Recovery Plan and ongoing studies working toward the delisting of the chub. The specific action and design features were the result of long term discussions between agencies and the landowner.

In addition, I have selected Alternative B (Proposed Action) based on the following Decision Factors:

- Does the Proposed Action balance the need to protect relevant resources with the public's traditional access to Borax Lake's natural and cultural resources?
- Does the Proposed Action meet Americans with Disability Act requirements providing access to visitors of special needs?
- Does the action promote cost effectiveness?

Under the No Action alternative, cost effectiveness and accessibility to the area to anyone wishing to visit the site were accommodated, but were central to the issues threatening the Borax Lake Chub, specifically, vehicle proximity to the lake. Under the Proposed Action, lake side access by vehicle is still possible, but simply regulated thus meeting requirements outlined in the Borax Lake Chub Recovery Plan.

APPEAL PROCEDURES

This decision may be appealed to the Interior Board of Land Appeals (IBLA), Office of the Secretary, in accordance with regulations contained in 43 Code of Federal Regulations (CFR), Part 4 and Form 1842-1. If an appeal is filed, your notice of appeal should be filed with the Andrews Resource Area Field Manager, Burns District Office, 28910 Highway 20 West, Hines, Oregon 97738, within 30 days following receipt of the final decision. The appellant has the burden of showing the decision appealed 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, 805 SW Broadway, Suite 600, Portland, Oregon 97205. 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.

Request for Stay

Should you wish to file a motion for stay pending the outcome of an appeal of this decision, you must show sufficient justification based on the following standards under 43 CFR 4.21:

- The relative harm to the parties if the stay is granted or denied,
- The likelihood of the appellant's success on the merits,
- The likelihood of immediate and irreparable harm if the stay is not granted, and
- Whether or not the public interest favors granting the stay.

*/signature on file/*_____ *May 3, 2010*
Joan M. Suther Date
Andrews/Steens Resource Area Field Manager