



# United States Department of the Interior



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October 6, 2014

IN REPLY REFER TO:  
1790/4100 (ORL040)

## **NOTICE OF PROPOSED DECISION FOR THE NORCROSS PASTURE BOUNDARY FENCE**

### **BACKGROUND**

The BLM's Horsefly Allotment is managed for livestock grazing using a multiple pasture rotation system. There are two livestock operations that utilize this allotment. Due to livestock disease issues during 2002, the two operations' livestock were kept separated in different pastures while on the allotment. This system was continued to keep the herds separated. The Norcross pasture, the largest pasture in the allotment, is used by both operations as the last pasture in the yearly rotation schedule. Previously, geographic features were fairly effective at keeping the herds separated in distinct areas of the pasture but in recent years, the herds have been mixing. There is a continued need to keep the herds separate to avoid disease transmission.

### **PROPOSED DECISION**

My proposed decision is to implement the proposed action as described in the Norcross Pasture Boundary Fence Environmental Assessment (EA) #DOI-BLM-OR-L040-2013-02-EA. The proposed action consists of constructing a 4-strand wire fence, approximately 0.8 mile in length, along the pasture boundary on BLM land within the Klamath Falls Resource Area (KFRA). The BLM will issue a "notice to proceed" prior to the beginning of construction. Following construction, the permittee will be responsible for fence maintenance in accordance with Title 43 of the Code of Federal Regulations (CFR) 4120.3-1(b).

### **DECISION RATIONALE**

The fence would keep the two livestock operations separate during the use period (2-3 weeks in June) in order to avoid disease transmission. This would also decrease the local congregating effects and result in a beneficial effect to the pasture. The effects of grazing on Long Branch Creek on private land, and the edge of Gerber Reservoir, would be especially reduced.

This project was included in the consultation with U.S. Fish and Wildlife Service (USFWS) on the Shortnose Sucker (*Chasmistes brevirostris*) and associated Designated Critical Habitat. The final Biological Opinion was issued by the USFWS on September 25, 2014. The proposed fence installation will have a beneficial effect on the ESA-listed endangered Shortnose Sucker and associated Designated Critical Habitat adjacent to the Norcross Pasture. There are no aquatic or terrestrial threatened or endangered listed, proposed, candidate species or designated critical habitat under the Endangered Species Act (as amended USDI Fish and Wildlife Service (FWS) 1973) that occur within the project area, or that would be adversely affected from project activities.

A Finding of No Significant Impact (FONSI) has been completed for the EA and no significant impacts were identified. There would be no impacts beyond those anticipated in the KFRA RMP/EIS. Refer to the accompanying Finding of No Significant Impact (FONSI).

### **AUTHORITY**

The authority for this decision is contained in Title 43 of the Code of Federal Regulations (CFR), which states in pertinent parts: 4120.3-1(a) "Range improvements shall be installed, used, maintained, and/or modified on the public lands, or removed from these lands, in a manner consistent with multiple-use management." In addition, 4120.3-1 (f) " Proposed range improvement projects shall be reviewed in accordance with the requirements of the National Environmental Policy Act of 1969 (42U.S.C. 4371 et seq.). The decision document following the environmental analysis shall be considered the proposed decision under 4160 of this part."

### **RIGHT TO PROTEST/APPEAL**

Any applicant, permittee, lessee, or other interested publics may protest the proposed decision under 43 CFR 4160.1 and 4160.2, in person or in writing to the Klamath Falls Field Manager, Bureau of Land Management, 2795 Anderson Avenue, Klamath Falls, OR 97603-7891, within 15 days after receipt of such decision. The protest should clearly and concisely state the reason(s) as to why the proposed decision is in error.

In accordance with 43 CFR 4160.3(a), in the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice unless otherwise provided in the proposed decision.

In accordance with 43 CFR 4160.3(b) upon a timely filing of a protest, after review of protests received and other information pertinent to the case, the authorized officer shall issue a final decision.

Any applicant, permittee, lessee or other person whose interest is adversely affected by the final decision may file an appeal in accordance with 43 CFR 4.470 and 43 CFR 4160.3 and 4160.4. The appeal must be filed within 30 days following receipt of the final decision, or within 30 days after the date the proposed decision becomes final. The appeal may be accompanied by a petition for a stay of the decision in accordance with 43 CFR 4.471 and 4.479, pending final determination on appeal. The appeal and petition for a stay must be filed in the office of the authorized officer, Klamath Falls Field Manager, Bureau of Land Management, 2795 Anderson

Avenue, Klamath Falls, OR 97603-7891. The person/party must also serve a copy of the appeal on any person named [43 CFR 4.421(h)] in the decision and the Office of the Solicitor, 755 Parfet Street Suite 151, Lakewood, CO 80215.

The appeal shall state the reasons, clearly and concisely, why the appellant thinks the final decision is in error and otherwise complies with the provisions of 43 CFR 4.470.

Should you wish to file a petition for a stay, see 43 CFR 4.471(a) and (b). In accordance with 43 CFR 4.471(c), a petition for a stay must show sufficient justification based on the following standards:

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

The petition for stay must be filed in the office of the authorized officer and serviced in accordance with 43 CFR 4.473. Any person named in the decision from which an appeal is taken (other than the appellant) who wishes to file a response to the petition for a stay may file with the Hearings division a motion to intervene in the appeal, together with the response, within 10 days after receiving the petition. Within 15 days after filing the motion to intervene and response, the person must serve copies on the appellant, the Office of the solicitor and any other person named in the decision [43 CFR 4.472(b)].

/s/ Richard White  
Richard White, Field Manager  
Klamath Falls Resource Area  
Lakeview District, Bureau of Land Management

10/6/2014  
Date