

**WALLUPA CREEK ROAD RECONSTRUCTION
Decision Record and Response to Comments**

DOI-BLM-OR-V050-2014-065-EA



**Prepared by:
U.S. Department of the Interior
Bureau of Land Management
Baker Resource Area
3285 11th Street
Baker City, Oregon 97814
September 12, 2014**

Decision Record
Wallupa Creek Road Reconstruction
Environmental Assessment No. DOI-BLM-OR-V050-2014-065-EA

High rainfall occurred in northeastern Oregon during the spring of 2014 leading to extensive flooding throughout the region. Flooding along Wallupa and Wildcat Creeks in Wallowa County caused erosion of approximately 1,000 feet (ft) of the Wallupa/Wildcat Creek Road east of the town of Promise, Oregon and made the road impassable. The BLM was faced with the decision to keep their portion of the road closed, or to reconstruct the road to allow through traffic. The Wallupa/Wildcat Road is an important connection between the communities of Wallowa and Troy for residential and commercial (logging and ranching) traffic, as well as providing access to the Grande Ronde River for recreationists. It is a vital artery for firefighting during the summer months and provides access for essential services in this remote part of Wallowa County.

However, there are two species of concern within the project area which are Snake River Basin (SRB) steelhead Distinct Population Segment (DPS) (*Oncorhynchus mykiss*) and SRB spring/summer Chinook salmon Evolutionarily Significant Unit (ESU) (*Oncorhynchus tshawytscha*). Both fish species are listed as “threatened” under the ESA within the Wildcat and Wallupa Creek subwatersheds. Also, the entire area of proposed work is located within the RCHC. Also this region is known to have a high amount of tribal ties. Several tribes have interest in the area.

An environmental assessment was completed to understand the potential impacts of reconstructing the route as well as keeping it closed.

After careful review of the issues and impacts, I am authorizing the implementation of the proposed action for Environmental Assessment, DOI-BLM-V050-2014-065-EA. The proposed action includes the repair and reconstruction of nine sites, totaling approximately 1,000 feet along a three mile section of the Wallupa Creek Road managed by the BLM, which was damaged during spring runoff in 2014. As detailed in the accompanying Findings of No Significant Impacts (FONSI), the proposed Action does not constitute a major Federal action and will not have a significant effect on the human environment, and therefore does not require an Environmental Impact Statement.

According to the National Marine Fisheries Service (NMFS), there are two fish species present that are listed as “threatened” under the Endangered Species Act (ESA) within the project area. These are, Snake River Basin (SRB) steelhead Distinct Population Segment (DPS) (*Oncorhynchus mykiss*) and SRB spring/summer Chinook salmon Evolutionarily Significant Unit (ESU) (*Oncorhynchus tshawytscha*). After consultation with NOAA Fisheries, a Biological Opinion (BO) was issued that stated that the proposed action would not likely jeopardize the continued existence of SRB steelhead, SRB spring/summer Chinook salmon, or destroy or adversely modify their designated critical habitat.

There are three BLM special status wildlife species known to breed on public land, uses public land for part of their life history requirements, or has potential habitat located within the project. Adverse impacts to these species habitat as a result of this project is likely to be detectable, small, and of little consequence to the population of any species habitat.

I believe this route is an important connection between the communities of Wallowa and Troy for residential and commercial (logging and ranching) traffic, as well as providing access to the Grande Ronde River for recreationists. It is a vital artery for firefighting during the summer months and provides access for essential services in this remote part of Wallowa County. Utilizing the design elements described in the EA as well as the terms and conditions from the BO, this project can be implemented with negligible to no negative impacts in the environment.

While this decision is allowing for the reconstruction of portions of the Wallupa / Wildcat Creek route it does not authorize road maintenance /reconstruction for future high water flow events. Past events including the events leading to this analysis have once again demonstrated the need for Wallowa County to obtain a right of way to ensure continued access for the public.

The EA was submitted for public comment for a period of 25 days. The BLM received comments from Wallowa County which were all in support of the project. Consultation was also done with the tribes who have interest in the area and NMFS Fisheries. After considering all of the information before me, the federal actions I choose to authorize are as follows:

- Authorize the reconstruction of nine sites impacting approximately 1,000 feet of the Wallupa Creek Road along the BLM managed section. Surface disturbance as identified in Alternative B will be authorized during the in stream work window or during the variance time period if granted by the State.
- Only the staging areas listed in Alternative B are authorized. Implementation will comply with erosional control standards, work area isolation and fish salvage as identified in Alternative B and National Marine Fisheries Biological Opinion, which are as follows:
 - An erosion and sediment control plan will be prepared and implemented prior to beginning construction. Erosion control measures will include (but are not limited to) installing straw filters on the staging area and material source site drainages to control potential erosion from material stockpiles and disturbed areas, and limiting the work area, staging, and material source site disturbance areas to the minimum necessary.
 - The project manager and project engineer will meet onsite with the selected contractor and any other interested parties (ODFW, BLM, NMFS, etc.), prior to moving equipment onsite or beginning any work at each individual site, to ensure that all parties understand the locations of sensitive biological sites and the measures that shall be taken to protect them.
 - Areas for non-workshift storage of equipment and vehicles, other than track-mounted vehicles, will be located at least 150 feet away from the regulated work area, or as far as possible given the confined nature of the project location.
 - Prior to operating within 150 feet of the regulated work area, equipment cleaning, maintenance, and refueling will be completed. Fuels and other potentially hazardous materials will be placed 150 feet or more from the regulated work area, or as far as possible.

- In the vehicle staging areas, all equipment will be inspected and cleaned. All equipment will be checked for fluid leaks, and any leaks found will be fixed. External oil, grease, dirt, and caked mud will be removed from equipment. Untreated wash and rinse water will not be discharged into the regulated work area. Temporary impoundments to catch water from equipment cleansing will be located at least 150 feet from the regulated work area (or as far as possible given the confined nature of the project area) and in locations so as not to contribute untreated wash and rinse water to any flowing stream.
- Biodegradable lubricants will be used in equipment operating within 150 feet of the regulated work area.
- The Oregon Department of Fish and Wildlife (ODFW) in-water work period for the action area is July 1st to September 15th. All work below the Ordinary High Water Mark (OHWM) will take place within this preferred window, or approved timeframes as dictated by a variance, if issued.
- The engineer and/or project manager will be notified by the contractor at least 5 working days prior to completion of isolation barrier construction. An ODFW or other qualified biologist will be given access to work isolation barriers before work begins to remove fish trapped within the enclosure in accordance with NMFS, United States Fish and Wildlife Service (USFWS), and ODFW fish salvage guidelines.
- If dewatering of the isolated work area is employed, it will take place slowly, over the course of approximately 12 hours, to allow fish to voluntarily leave the work area and, therefore, minimize the number of fish impacted by salvage activities.
- For track-mounted equipment and other equipment whose limited mobility makes it impractical to move it for refueling, precautions to minimize the risk of fuel reaching the regulated work area will be taken. Spill prevention measures will be implemented and fuel containment systems will be designed to completely contain a potential spill (e.g., using a 10-inch deep pit lined with reinforced plastic sheeting and absorbent skimmer booms around bulk fuel tanks). Other pollution control devices and measures (such as diapering, parking on absorbent material, etc.) adequate to provide containment of hazardous material will also be used as necessary for equipment with limited mobility. Refueling operations will be completed in a way that will minimize the amount of fuel remaining in vehicles stored during non-work times.
- Hazardous material containment booms and spill containment booms will be maintained on site to facilitate the cleanup of hazardous material spills. Hazardous material containment booms will be installed in instances where there is a potential for release of petroleum or other toxicants.

- Contaminated or sediment-laden water, or water contained within an isolation barrier, will not be discharged directly into any waters of the state until it has been satisfactorily treated (e.g., by bioswale, filter, settlement pond, pumping to a vegetated upland location, bio-bag, or dirt-bag).
 - Water pump intakes (in the work isolation area) will be screened according to NMFS fish screening criteria for anadromous salmonids (2011).
 - Equipment will be inspected for noxious weeds prior to entry in to the project area.
- Authorize the installation of a temporary culvert and precast concrete blocks and sandbags to divert water away from the work area on site 19.
 - The only heavy equipment use authorized is as described in Alternative B.
 - Monitoring of stream temperature will continue to occur for at least two year after implementation to ensure that proper conditions for the listed fish species remains intact, if not additional measures will be taken.
 - The BLM will continue to work with Wallowa County to pursue the issuance of a ROW.

The legal and policy rationale for my decision is as follows:

The BLM has complied with the National Environmental Policy Act (NEPA) and the Council of Environmental Quality (CEQ) regulations. This decision is in conformance with management actions identified in the Baker Resource Management Plan (1989).

My decision is issued under 43 Code of Federal Regulations (CFR) 46.150, which states that the proposed actions taken in response to an emergency are not likely to have significant environmental impacts the Responsible Official shall document that determination in an environmental assessment and a finding of no significant impact.

No unresolved conflicts involving alternative uses have been identified to drive the creation of another alternative. Therefore, no alternative (other than the “No Action Alternative”) was analyzed in detail in this Environmental Assessment. The decision that was analyzed was to open the route or not.

The actions analyzed in the Wallupa Creek Road Reconstruction Environmental Assessment-DOI-BLM-V050-2014-65-EA, which this document incorporates by reference in its entirety, were found to have no significant impact to the human environment.

This decision is effective immediately due to the immediate need to allow for safe public travel to private property, allow for emergency access of vehicles and reduce the sedimentation in designated critical and occupied habitat.

Appeal Rights

This decision may be appealed to the Interior Board of Lands Appeals, Office of Hearings and Appeals, in accordance with 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)) 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.



9/12/2014

Lori D. Wood
Baker Resource Area Field Manager
Vale District BLM

Date

Response to Comments
Wallupa Creek Road Reconstruction
Environmental Assessment No. DOI-BLM-OR-V050-2014-065-EA

Wallowa County

Comment 1: *The Action Alternative was professionally designed by Anderson Perry Engineering with the assistance from the BLM and assures both the permanent fixing of the road while at the same time protecting listed fish species. The plan includes fish salvage and sediment movement protection. Additionally consideration has been given to archeological and cultural resources in the area.*

Response: Supportive comment no response required.

Comment 2: *The action alternative will allow Wallowa County to repair the road, open it to commerce and the general public, reduce the likelihood of future damage in that area, and protect the other resources in the area.*

Response: Supportive comment no response required.

Nez Perce Tribe

Comment 1: *The EA fails to evaluate the project's impact on the Tribe's treaty-reserved rights.*

Response: The BLM agrees with this comment and included a treaty-reserved rights section in the EA.

Comment 2: *The EA does not take a hard look at the project's impacts on the Tribe's cultural resource interest, including sacred sites and traditional properties.*

Response: During project implementation the BLM will work with the Nez Perce Tribe to insure sacred sites and traditional properties are protected. In addition the BLM will consult and solicit input from the Tribe for the future Right of Way.

Comment 3: *The EA does not take a hard look at the project's impact to bighorn sheep, a culturally significant species to the Tribe.*

Response: BLM contacted ODFW (8.12.14) and asked about the bighorn herds around the Wallupa Creek drainage. According to Oregon's Bighorn Sheep and Rocky Mountain Goat Management Plan (2003) the closest residential herd is found by the Lostine Wildlife Area six miles south of the town of Lostine, Oregon in the Wallowa Mountain. The Lostine Wildlife Area is approximately 25 miles away from the project area. The BLM operates in accordance of IM 98-140 which uses a nine-mile buffer to determine habitat risks (especially between wild and domestic sheep and goats). This project is well outside of the specified buffer of nine miles.

The BLM wildlife biologist believes transient activity from individual rams that are traveling on the ridge lines between Wallowa Mountains to the Washington border may occur. However, the Wallupa Creek road project is located in the valley bottom which is not considered suitable habitat for bighorn sheep. In addition, the BLM believes that the presence of the Wallupa/Wildcat Creek Road and associated noise from repair and travel would have no impact on transient activity since most bighorn sheep herds in Oregon are impacted by roads yet numbers in these populations are stable to increasing. Specifically, Burnt River, Lookout, Rogersburg, Leslie, McClellan, Aldrich and I-84 herds all have high to moderate traffic volume runs within the herd area.

Comment 4: *The EA does not provide a reasonable range of alternatives. The Nez Perce Tribe requests another alternative to be considered that takes into account natural channel design, and addresses riparian vegetation, large wood debris and access to floodplain.*

Response: During the BLM field site visit with Anderson Perry and Wallowa County the BLM brought up the topic of moving the road away from the stream channel. Anderson Perry, Wallowa County and BLM staff determined that there are two locations where road realignment is possible totaling approximately 1000 feet. However Brent Moore, Engineer for Anderson Perry, and Lon Andrade, Wallowa County Interim Road Department Superintendent, stated that past debris flows in these two areas would cause increased yearly road maintenance and sedimentation into the stream if realignment occurred. Therefore, the BLM did consider but eliminated an alternative that realigned the road away from the river channel.