

**UNITED STATES
DEPARTMENT OF INTERIOR
BUREAU OF LAND MANAGEMENT
VALE DISTRICT OFFICE**

DECISION RECORD

Little Whitehorse Creek Crossing Road Repair
Environmental Assessment DOI-BLM-OR-V060-2015-037

BACKGROUND

The Whitehorse-Fifteenmile Road is the main route from the north used to access the Oregon Canyon and Trout Creek Mountains. The road crosses Little Whitehorse Creek, which is habitat for Lahontan cutthroat trout, federally designated as a threatened species under the Endangered Species Act. Beavers have built dams on Little Whitehorse Creek upstream and downstream of the road crossing, causing water flow to disperse and pool which has saturated the soils on either side of the crossing. The crossing is no longer passable and vehicles that have attempted to negotiate the crossing have created ruts and disturbed riparian vegetation. Disturbance of the riparian area has caused increased sediment load to the creek which is harmful to salmonid fish habitat.

Alternative routes to this area can add several hours to a trip. This is inconvenient and can be a safety hazard for people travelling in the area. The purpose of the Proposed Action as analyzed in the Environmental Assessment (EA) is to reestablish access across Little Whitehorse Creek on a stable road bed that will facilitate stream flow, fish passage, and expansion of the riparian area. The need to reestablish this access is not only to provide for recreational opportunity but for BLM administration of grazing permits, cultural resource protection, WSA monitoring, fish surveys, and possible fire suppression activities.

On August 31, members of the public were notified via mail and newspaper notice that the EA was available for public comment and if any person wanted to provide comments, they were to be submitted to the Vale District on or before September 14, 2015. No comments were received.

COMPLIANCE

The Little Whitehorse Creek Crossing Road Repair EA is tiered to the Southeast Oregon Resource Management Plan and Record of Decision (SEORMP 2002). The Proposed Action is in conformance with this plan and is also in compliance with the following documents:

- Endangered Species Act (ESA) of 1973 (16 U.S.C. §1531 et seq.)
- National Environmental Policy Act of 1969 (42 U.S.C. §4321 et seq.)
- Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. §1701 et seq.)
- Clean Water Act of 1972 (33 U.S.C. §1251 et seq), as clarified by the Clean Water Rule produced in 2015
- National Historic Preservation Act of 1966, as amended (16 U.S.C. §470 et seq.)

Consultation and Coordination

On July 1, 2013, the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) issued a Biological Opinion in response to the Aquatic Restoration Biological Assessment II. The new opinion, the Aquatic Restoration Biological Opinion II (ARBOII), sets up requirements for certain covered activities, which allow agencies to expedite consultation about threatened and endangered species. This consultation is required under the ESA. The process established under the ARBO II was used for consultation with the USFWS on this project. Consultation with the NMFS is not required because no species under their authority are present at the project site. Pre-project notification with USFWS was completed on August 6, 2015.

DECISION

I have found that the need to re-establish access at the degraded Little Whitehorse Creek crossing is necessary to protect the stream and to provide for public safety. Having considered two alternatives and associated impacts based on analysis in DOI-BLM-OR-V060-037-EA, it is my decision to implement the Proposed Action, including all design elements and best management practices attached to the EA. The SEORMP Best Management Practices (Appendix O) will also be in effect for the duration of the Project.

The roadbed will be excavated and a French mattress-style road base will be constructed. This involves laying geotextile fabric in the excavated road bed, placing large foundation rock on the fabric, and then wrapping the fabric around the rock. A layer of surface aggregate will be placed on top of the mattress. The creek bed will be reinforced with rock to prevent future erosion of the crossing from vehicular traffic. For a more detailed description of the Proposed Action, see EA DOI-BLM-OR-V060-037.

I have found and documented in a corresponding Finding of No Significant Impact (FONSI) statement that the Proposed Action will not constitute a major Federal action that will adversely impact the quality of the human environment. Therefore, an Environmental Impact Statement (EIS) was unnecessary and will not be prepared.

DECISION RATIONALE

The decision to approve the Proposed Action is based on the analysis documented in the EA combined with the rationale developed within the Finding of No Significant Impact .

The Proposed Action best meets the purpose and need of the project to reestablish vehicular access across Little Whitehorse Creek for safety, recreation, grazing, and administrative purposes. It will reduce sedimentation into the creek and facilitate stream flow, fish passage, and expansion of the riparian area. This will enhance water quality and fish habitat, including habitat for the Lahontan cutthroat trout, a threatened species under the ESA. Degradation to the crossing and the riparian area will not continue from travelers attempting to navigate the creek instead of finding alternate routes.

AUTHORITY

The Federal Land Policy and Management Act of 1976 (FLPMA), Title II, Section 202 and Title III, Section 302 are described below:

FLPMA, Title II, Sec 202 [43 United State Code (U.S.C.) 1712] (a): states that the Secretary shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands. Land use plans shall be developed for the public lands regardless of whether such lands previously have been classified, withdrawn, set aside, or otherwise designated for one or more uses.

FLPMA, Title III, Sec 303 [43 USC 1732] (a): states that the Secretary shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 202 of this Act when they are available, except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.

The Southeast Oregon Resource Management Plan and Record of Decision (SEORMP 2002), Appendix O, Best Management Practices for Road Maintenance (15) states: Minimize the number of unimproved stream crossings. When a culvert or bridge is not feasible, locate drive-through (low water crossings) on stable rock portions of the drainage channel. Harden crossings with the addition of rock and gravel if necessary. Use angular rock if available.

RIGHT OF APPEAL

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the 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)) **Office of the Solicitor, US Department of the Interior, Pacific Northwest Region, 805 SW Broadway, Suite 600, Portland, Oregon 97205**, 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.

For any questions concerning this project, please contact the Project Lead, Monica Ketcham at the Vale District Office at (541) 473-3144.



Thomas Patrick "Pat" Ryan
Field Manager
Malheur Resource Area

9/30/2015
Date