

Decision Record

Mesa Mule Deer Winter Habitat Improvement Project WY-100-EA10-303

Introduction

The Mesa Mule Deer Winter Habitat Improvement Project, WY-100_EA10-303, is a wildlife habitat improvement project. The project area is located in Sublette County approximately 5.5 miles south-southwest of Pinedale, WY. The legal location of the project is T33 R109 S 30 and 31 and R110 S 25 and 36. This Environmental Assessment (EA) was prepared by the Bureau of Land Management (BLM) Pinedale Field Office (PFO), Pinedale Wyoming.

The September, 2008 Record of Decision (ROD) for the Pinedale Anticline Oil and Gas Exploration and Development Project sets the stage for an increased development scenario on an area of approximately 198,037 acres. The drilling of 4399 wells from 600 well pads has been identified as a potential in the ROD; at a minimum it provides for an increase in development over what has occurred to date. A portion of this area known as the Mesa has been well documented relative to its importance for wintering mule deer from the Sublette Mule Deer Herd. The area known as the Mesa sits on the northern end of the anticline, and has been documented to winter from 3000-5000 mule deer. Recent studies have identified both direct and indirect losses of mule deer winter habitat, including 1520 acres of direct habitat loss, from the construction of well pads and access roads. Indirect losses appear to be even greater and are attributable to the associated winter disturbance from drilling and other development activities. In the 2007 study, data collected from the Mesa indicated that mule deer numbers declined during the first 4 years (2001-2004) of gas development and increased the following 3 years (2005-2007) for an overall decline of 30%. Because of these associated declines and an even greater level of future development, there is a need to determine if on-site mitigation might be a potential for helping to alleviate the habitat losses. This project is designed to enhance available winter forage by increasing production, palatability and preference and potentially pave the way for future treatments on a larger scale.

The purpose of this project is to improve wintering mule deer habitat through vegetation treatment while maintaining Greater sage-grouse habitat.

Compliance

The Environmental Assessment (EA) is in conformance with the Pinedale Resource Management Plan (RMP) signed November 2008. This EA fulfills the National Environmental Policy Act (NEPA) of 1969 requirement for site-specific analysis. The Proposed Action is in accordance with 43 Code of Federal Regulations (CFR) 1610.5-3(a); Federal Land Policy and Management Act (FLPMA) of 1976, as amended; Taylor

Grazing Act of 1934; Endangered Species Act (ESA) of 1983, as amended; The Clean Air Act as amended; Clean Water Act of 1977; National Historic Preservation Act (NHPA), as amended; Migratory Bird Treaty Act (MBTA) of 1918, as amended; and the Wyoming Standards for Healthy Rangelands and Guidelines for Livestock Grazing, August 12, 1997.

All pertinent statutory requirements applicable to this proposal were considered. These include consultation with the U.S. Fish and Wildlife Service (USFWS) regarding threatened and endangered species and consultation with the Wyoming State Historic Preservation Officer on cultural and historic resources.

Selected Alternative

Alternative 4 of EA#WY-100-EA10-303 is selected.

I have determined that the impacts of the Proposed Action with environmental protection measures presented and detailed in the EA, minimize environmental harm.

Finding of No Significant Impact

Based on the analysis of potential environmental impacts detailed in the attached EA (EA-100-EA10-303) and in accordance with NEPA and the Pinedale RMP Record of Decision (November 2008), I have determined that the impacts of the Proposed Action with environmental protection measures presented and detailed in the EA and this Decision Record are not significant per the definition of significance in 40 CFR 1508.27. Therefore, a Finding of No Significant Impact was determined for EA-100-EA10-303 and preparation of an environmental impact statement is not required.

Public Involvement

The BLM decision-making process is conducted in accordance with the requirements of the Council on Environmental Quality (CEQ) regulations implementing NEPA, and the United States Department of Interior (USDI) and BLM policies and procedures implementing NEPA. NEPA and the associated regulatory and policy framework require federal agencies to involve the interested public in their decision-making.

On August 14, 2009, a scoping package was mailed to 41 individuals and organizations. The scoping package described the proposed action. Six (6) responses were received and analyzed (Appendix A). Three issues were identified through the scoping process: risk of fertilizer burn, forb response, and Greater sage-grouse.

This EA has been developed in consultation and coordination with state and local agency personnel, other affected parties, and interested members of the public-at-large.

Decision and Rationale

Alternative 4 has been selected as it meets the purpose and need for the project as identified in the EA and is consistent with objectives and potential impacts analyzed in the EA and the RMP. Alternatives 2 and 3 meet the purpose and need identified in the EA but would not be consistent with objectives and potential impacts analyzed in the RMP. The no action alternative is rejected because it does not meet the purpose and need for the action identified in the EA.

It is my decision to authorize the implementation of Alternative 4 as analyzed in the EA. Implementation of Alternative 4 is conditioned by the design features found on pages 12 and 13 of the EA.

Monitoring

Monitoring of the project area along the established WGFD transects (within treatments and a control) will occur for at least five years after treatment. Annual shrub growth and herbaceous production will be measured. Monitoring will occur in the fall of the year.

Protest or 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 the enclosed Form 1842-1 (1999). If an appeal is taken, the notice of appeal must be filed in this office (at the address below) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision is in error.

Form 1842-1

**INFORMATION ON TAKING APPEALS TO THE BOARD OF LAND APPEALS
FOLLOWS:**

DO NOT APPEAL UNLESS

1. This decision is adverse to you.

AND

2. You believe it is incorrect.

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED:

1. NOTICE OF APPEAL Within 30 days of the receipt of this decision, file a Notice of appeal in the office which issued this decision (see 43 CFR 4.411 and 4.413). You may state your reasons for appealing, if you desire.

2. WHERE TO FILE
NOTICE OF APPEAL Field Manager, Pinedale Field Office
PO Box 768
Pinedale, Wyoming 82941

ALSO SEND COPY
TO SOLICITOR Office of the Regional Solicitor
Rocky Mountain Region
755 Parfet Street, Suite 151
Lakewood, Colorado 80215

3. STATEMENT OF
REASONS Within 30 days after filing the Notice of Appeal, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 North Quincy Street, Suite 300 Arlington, Virginia 22203 (see 43 CFR 4.412 and 4.413). If you fully stated your reasons for appealing when filing the Notice of Appeal, no additional statement is necessary.

ALSO SEND COPY
TO SOLICITOR Office of the Regional Solicitor
Rocky Mountain Region
755 Parfet Street, Suite 151
Lakewood, Colorado 80215

4. ADVERSE PARTIES Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the Notice of Appeal, (b) the Statement of Reasons, and (c) any other documents filed (see 43 CFR 4.413). Service will be made upon the Associate Solicitor, Division of Energy and Resources, Washington D.C. 20240, instead of the Field or Regional Solicitor when appeals are taken from decisions of the Director (WO-100).
5. PROOF OF SERVICE Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail “Return Receipt Card” signed by the adverse party (see 43 CFR 3.301(c)(2)).

UNLESS THESE PROCEDURES ARE FOLLOWED, YOUR APPEAL WILL BE SUBJECT TO DISMISSAL (SEE 43 CFR 4.402). BE CERTAIN THAT ALL COMMUNICATIONS ARE IDENTIFIED BY SERIAL NUMBER OF THE CASE BEING APPEALED (WYW-172152/WYW-172153, WYW-172154, WYW-175423, WYW-176892, WYW-176893).

SUBPART 1821.2—OFFICE HOURS; TIME, AND PLACE FOR FILING

Sec. 1821.2-1(a) Office Hours of State Office

State Offices and the Washington Office of the Bureau of Land Management are open to the public for the filing of documents and inspection of records during the hours specified in this paragraph on Monday through Friday of each week, with the exception of those days where the office may be closed because of a national holiday or Presidential or other administrative order. The hours during which the State Offices and the Washington Office are open to the public for inspection of records are from 10 a.m. to 4 p.m., standard time or daylight saving time, whichever is in effect at the city in which each office is located.

Sec. 1821.2-2(d) Any document required or permitted to be filed under the regulations of this chapter, which is received in the State Office or the Washington Office, either in the mail or by personal delivery when the office is not open to the public shall be deemed to be filed as of the day and hour the office opens to the public.

Sec. 1821.2-2(e) Any document required by law, regulation, or decision to be filed within a stated period, the last day of which falls on a day the State Office or the Washington Office is officially closed, shall be deemed to be timely filed if it is received in the appropriate office on the next day the office is open to the public.

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 the public interest favors granting the stay.



Brian W. Davis
Field Manager
Pinedale Field Office

6/22/10

Date