

**U.S. Department of the Interior
Bureau of Land Management
White River Field Office
220 E Market St
Meeker, CO 81641**

DECISION RECORD

84 Mesa Area Fence Extension DOI-BLM-CO-N05-2015-0068-DNA

Decision

It is my decision to implement the Proposed Action as described in DOI-BLM-CO-N05-2018-0068-DNA, authorizing the construction and maintenance of the proposed fence extension of approximately 1,000 feet in length to extend a section of existing fence to include a small drainage along with three other smaller sections of fencing in approximately 100 feet, 85 feet, and 75 feet lengths to prevent wild horses from accessing private lands in the area. The new extension and sections of fencing and the use of fence tagging will aid in retaining wild horses within the Piceance-East Douglas Herd Management Area (PEDHMA). Fence construction would be accomplished by either a volunteer organization, BLM staff, and/or a contracted fence building crew. The WRFO is currently planning to have portions of the fence extension built May 2018 but work may be delayed if needed due to lack of volunteers and/or potential budget constraints. A temporary construction width of 10 feet would be appropriate with a temporary disturbance of approximately 0.30 of an acre. Due to the location of the proposed lines mostly hand equipment would be used to place wooden posts and t-posts, etc. however, where allowed small equipment such as Off Highway Vehicles (four wheelers or utility terrain vehicle) could be used for transportation of materials and/or aid in the removal of old fencing.

Design Features

1. WRFO will coordinate with the private land owner/owner of the fence in order to extend the fence for wild horse and livestock management purposes.
2. No new roads or ways would be constructed in order to build or maintain the new fence section.
3. At this time, the WRFO does not believe any special status plants are located within the project area but this will be confirmed through a plant survey conducted by WRFO prior to construction. If threatened and endangered plant species are found the WRFO would need to consult with Fish and Wildlife Service. If BLM sensitive species are found WRFO will apply additional mitigation to minimize impacts.

4. Any brush removed for fence construction will be lopped (cut into pieces less than 2 feet long) and spread in the disturbed areas to reduce rain splash erosion and potential entrainment of sediment during storm events.
5. All fence construction activities would cease when soils or road surfaces become saturated to a depth of three inches.
6. Monitoring of the project areas will be completed every year for the first three years following construction of the fence line in order to protect public land health standards for soils. Erosion features such as rilling, gullyng, piping and mass wasting on the surface disturbance or adjacent to the fence line would be addressed immediately after observation by formulating a plan to assure successful soil stabilization with Best Management Practices (BMPs) to address erosion problems.
7. Periodic checks of the project area will be conducted in accordance with the WRFO's Integrated Weed Management Plan. If the need arises, WRFO will treat weeds associated with the fence construction until eradicated.
8. Monitoring of the project area will be completed every year for the first three years following construction of the fence line to ensure no new weed establishment has occurred. If new weeds are found, appropriate treatment will be done to eradicate or minimize spread. After the initial three years of monitoring periodic checks of the project areas will be conducted in accordance with the WRFO's Integrated Weed Management plan.
9. The proposed fence would not coincide with mid or late winter occupation of winter ranges by big game (December 1 to April 30).
10. The Project Lead and/or Contractor is responsible for informing all persons who are associated with the project that they will be subject to prosecution for knowingly disturbing archaeological sites or for collecting artifacts.
11. If any archaeological materials are discovered as a result of operations under this authorization, activity in the vicinity of the discovery will cease, and the WRFO Archaeologist will be notified immediately. Work may not resume at that location until approved by the Authorized Official (AO). The Contractor will make every effort to protect the site from further impacts including looting, erosion, or other human or natural damage until BLM determines a treatment approach, and the treatment is completed. Unless previously determined in treatment plans or agreements, BLM will evaluate the cultural resources and, in consultation with the State Historic Preservation Office (SHPO), select the appropriate mitigation option within 48 hours of the discovery. The Contractor, under guidance of the BLM, will implement the mitigation in a timely manner. The process will be fully documented in reports, site forms, maps, drawings, and photographs. The BLM will forward documentation to the SHPO for review and concurrence.
12. Pursuant to 43 CFR 10.4(g), the Project Lead and/or Contractor must notify the AO, by telephone and written confirmation, immediately upon the discovery of human remains,

funerary items, sacred objects, or objects of cultural patrimony. Further, pursuant to 43 CFR 10.4(c) and (d), the Contractor must stop activities in the vicinity of the discovery and protect it for 30 days or until notified to proceed by the AO. Colorado Statute CRS 24-80-1302 must be adhered to upon the identification of suspected human skeletal remains and associated funerary items on Colorado State and private lands. The applicant shall immediately notify the coroner of the county wherein the remains are located as well as the sheriff, police chief, or land managing agency official.

13. The Project Lead and/or Contractor is responsible for informing all persons who are associated with the project operation that they will be subject to prosecution for disturbing or collecting vertebrate or other scientifically important fossils, collecting large amounts of petrified wood (over 25lbs./day, up to 250lbs./year), or collecting fossils for commercial purposes on public lands.
14. If any paleontological resources are discovered as a result of operations under this authorization, the Project Lead and/or Contractor or any of his agents must stop work immediately at that site, immediately contact the BLM Paleontology Coordinator, and make every effort to protect the site from further impacts, including looting, erosion, or other human or natural damage. Work may not resume at that location until approved by the AO. The BLM or designated paleontologist will evaluate the discovery and take action to protect or remove the resource within 10 working days. Within 10 days, the Project Lead and/or Contractor will be allowed to continue construction through the site, or will be given the choice of either (a) following the Paleontology Coordinator's instructions for stabilizing the fossil resource in place and avoiding further disturbance to the fossil resource, or (b) following the Paleontology Coordinator's instructions for mitigating impacts to the fossil resource prior to continuing construction through the project area.
15. Fence maintenance responsibilities will be designated through a Cooperative Range Improvement Agreement because the new fence section fills a gap where no fence existed and increases the grazing permittee's ability for sole use of a private pasture within their grazing allotment and/or facilitates livestock grazing within the private pasture. Modification to this agreement could be made if a volunteer organization were available and willing to sign maintenance agreements.
16. No gates are proposed at this time along the extended section of fence. The exact placement of the fence will be delineated (marked) prior to construction. Considerations given during marking of the fence line include sagebrush removal and/or small rock outcroppings. At this time, there are no pinyon/juniper trees located in the project area so they will not be removed and/or used as fence construction material.
17. Signs on the fence will be posted identifying the PEDHMA boundary as well as signs requesting gates in the area be closed (i.e., signs with "Keep Gates Closed – Wild Horse Area" (see Appendix A, Figure 5). All identified gates with "Please Close Gate – Wild Horse Area" signage on the HMA boundary will be kept closed. When identified gates are found open by BLM personnel they will be instructed to close them (see Figure 5 for sample sign).

18. The WRFO will conduct the fence construction using non-motorized types of transportation for this construction activity.
19. Woodlands or cliff habitat suitable for raptor nesting would be surveyed by WRFO staff prior to project implementation. Project work within 1,000 feet of raptor nesting activity would be subject to timing limitations that may extend from 1 February through August 15 or until fledging and dispersal of young from the nest, but deferral dates may be modified, where appropriate, based on the raptor species involved, and the intensity, lateral separation, and duration of disruptive activity attributable to project operations.
20. The fence will be designed to accommodate easy passage of wildlife as described in BLM Manual Fencing Handbook 1741-1.
21. Due to the topography the equipment will all be hand equipment used to place wooden posts and t-posts, etc.
22. Due to the proximity to Rio Blanco County Road 24 the fence building crew will put out markers cautioning drivers regarding “work crew” in the area.

Compliance with Laws & Conformance with the Land Use Plan

This decision is in compliance with the Endangered Species Act and the National Historic Preservation Act. It is also in conformance with the 1997 White River Record of Decision/Approved Resource Management Plan.

Environmental Analysis and Finding of No Significant Impact

Construction of a boundary fence for the PEDHMA was analyzed in DOI-BLM-CO-N05-2014-0035-EA and it was found to have no significant impacts, thus an EIS is not required.

Public Involvement

This project will also be posted on the WRFO’s on-line National Environmental Policy Act (NEPA) register. This project and others were identified and discussed at the organizational meeting of the Piceance Mustangs on 2/17/2018 which was attended by the various wild horse interest groups.

Rationale

Analysis of the Proposed Action has concluded that there are no significant negative impacts and that it meets Colorado Standards for Public Land Health. The ability to retain wild horses within the Piceance-East Douglas Herd Management Area (PEDHMA) is a critical component for BLM’s mission of wild horse management. Keeping wild horses from easy access to areas outside of the PEDHMA has been needed and warranted from past years when less was done to achieve this function.

Monitoring and Compliance

On-going compliance inspections and monitoring will be conducted by the BLM White River Field Office staff during and after construction. Specific mitigation developed in this document will be followed. The applicant will be notified of compliance related issues, and depending on the nature of the issue(s), will be provided 30 days to resolve such issues. Depending on who constructs the fence(s) BLM will develop a Cooperative Agreement with either a group (e.g. Piceance Mustangs) and/or a permittee or BLM may decide to retain maintenance responsibilities.

Administrative Remedies

RIGHT OF PROTEST AND/OR APPEAL

Any applicant, permittee, lessee, or other interested public may protest this proposed decision within 15 days following its receipt in accordance with 43 CFR 4160.2. The protest may be submitted in person or in writing to the White River Field Office Manager, Bureau of Land Management, White River Field Office, 220 East Market Street, Meeker, Colorado 81641.

In the event that this proposed decision becomes the final decision without further notice, any applicant, permittee, lessee, or other person whose interest is adversely affected by the final BLM grazing decision may file an appeal for the purpose of a hearing before an administrative law judge in accordance with 43 CFR 4160.3(c), 4160.4, 4.21, and 4.470. The appeal must be filed within 30 days following receipt of the final decision or 30 days after the date the proposed decision becomes final. The appeal should state the reasons, clearly and concisely, why the appellant thinks the final BLM grazing decision is in error. A petition for a stay of the decision pending final determination of the appeal by the administrative law judge may also be submitted during this same 30 day time period. The appeal, or the appeal and petition for stay, must be in writing and delivered in person, via the United States Postal Service mail system, or other common carrier, to the White River Field Office as noted above. 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 St., Suite 151, Lakewood, CO 80215. The BLM does not accept appeals by facsimile or email at this time.

Should you wish to file a petition for a stay in accordance with 43 CFR Section 4.471(c), the appellant 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; and
4. Whether the public interest favors granting the stay.

Within 15 days of filing the appeal, or the appeal and petition for stay, with the BLM officer named above, the appellant must serve copies to any other person named in this decision and on the Office of the Regional Solicitor located at 755 Parfet St., Suite 151, Lakewood, CO 80215, in accordance with 43 CFR 4.470(a) and 4.471(b).

If you have any questions, contact either Melissa Kindall, Range Technician at 878-3842, or myself at 878-3800.

Signature of Authorized Official

Kent E. Walter

Kent E. Walter, Field Manager

03/20/2018

Date