

## Decision Record

### Jonesboro Diversion Dam Replacement Project Environmental Assessment No. DOI-BLM-OR-V040-2013-007

As Field Manager of the Jordan/Malheur Resource Areas, my decision is to provide the opportunity for the Burns Paiute Tribe (BPT) to demolish an existing diversion dam, construct and maintain a new diversion dam by authorizing the Right-of-Way (ROW) as proposed by the BPT and analyzed as the Proposed Action of Environmental Assessment (DOI-BLM-V040-2013-007-EA). As detailed in the accompanying Finding of No Significant Impact (FONSI), the Proposed Action will not have a significant effect on the human environment. The EA was submitted for public comment for a period of 18 days. Comments were received and the comment responses are addressed as Appendix C in the EA, however no significant changes to the document were made. After considering all of the information before me, the federal actions I have chosen to authorize are as follows:

- Grant the ROW to the BPT for the demolition of an existing diversion dam; construction and maintenance of a new diversion dam for irrigation purposes. Surface disturbance as identified in the EA Proposed Action (Section 2.1) will consist of deconstruction and excavation for the new structure using a track hoe. Rubber-tired equipment may enter the river channel for delivery of construction material and removal of excavated materials.
- The duration of the ROW will be for thirty years. After this timeframe a renewal request should be submitted by BPT in order to continue ROW access.
- This project will be completed incorporating design features in the proposed action of the EA and stipulations identified in Best Management Practices in Appendix O of the Southeast Oregon Resource Management Plan (SEORMP, 2002) and will remain in effect for the duration of the ROW.

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

***FLPMA Rights-of-Way and NEPA*** - Under the Federal Land Policy and Management Act (FLPMA, Title V) and its implementing regulations, BLM is authorized to grant, issue, or renew rights-of-way over public land so long as the action does not violate existing ROWs, laws, or regulations, and protects the public interests. The BLM is also required to comply with the National Environmental Policy Act (NEPA) and the Council of Environmental Quality (CEQ) regulations.

The decision is in conformance with management actions identified in the Southeastern Oregon Resource Management Plan and would meet management objectives for resource values and uses identified in that land use plan for Jordan/Malheur Resource Areas.

No unresolved conflicts involving alternative uses have been identified to drive the creation of an alternative which would allow evaluation and development of the proposed replacement of the Jonesboro Diversion Dam. Therefore, no alternatives (other than the required "No Action Alternative") were analyzed in detail in this Environmental Assessment.

### **Appeal Rights:**

This decision may be appealed to the Interior Board of Land Appeals, Office of Hearings and Appeals, 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 Regional Solicitor, Pacific Northwest, 805 SW Broadway, Suite 600, Portland, OR, 97205, (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.

If you have any questions, please contact the project lead, Trisha Skerjanec, Realty Specialist, at 541-473-3144.



Thomas Patrick “Pat” Ryan  
Field Manager  
Jordan/Malheur Resource Area

12/15/14  
Date