

# United States Department of the Interior



## BUREAU OF LAND MANAGEMENT

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**In Reply Refer To:**  
4160 (NV062)

**AUG - 9 2007**

Dear Interested Public:

### **PROPOSED DECISION JD ALLOTMENT**

#### **INTRODUCTION**

The BLM Battle Mountain Field Office proposes to construct up to one mile of fence along a saddle on the ridge which divides the Birch Creek and Willow Creek drainages located within the Roberts Mountain Pasture portion of the JD grazing allotment. This project site lies adjacent to the eastern boundary of the Roberts Mountain Wilderness Study Area (WSA). Existing roads will be used to access the project site, construction will be by hand, and fencing materials will be transported along the fence route on foot. This fence is intended to eliminate the non-permissible drifting of fall-grazing cattle from the Willow Creek drainage into the Birch Creek drainage where they can damage Lahontan Cutthroat Trout (LCT) habitat. The proposed drift fence will also contribute to the protection and enhancement of sensitive riparian and aspen areas located within the Birch Creek drainage by eliminating the possibility of hot season grazing in this area.

The proposed fence would be constructed during summer or fall of 2007. Previously (2004), an Environmental Assessment (EA NV062-EA04-78) was completed for a similar fence at the mouth of Birch Creek, for the same purpose of protecting LCT. Since that EA adequately addressed the impacts of such a project, it was determined that an EA would not be required for construction of the proposed fence, which is designed to augment the protection afforded to LCT. Instead, a Documentation of Land Use Plan Conformance and NEPA Adequacy (DNA) # NV062-DNA07-076 was completed for the project. Environmental analysis for the proposed project is available upon request at the BLM Battle Mountain Field Office.

#### **PROPOSED DECISION**

It is my proposed decision to authorize the construction of the Birch-Willow Drift Fence in accordance with 43 CFR 4120.3-1 (f).

**RECEIVED**

**AUG 15 2007**

DEPARTMENT OF ADMINISTRATION  
OFFICE OF THE DIRECTOR  
BUDGET AND PLANNING DIVISION

## **RATIONALE**

Birch Creek serves as habitat for a native population of threatened Lahontan Cutthroat Trout (LCT). The BLM is required to comply with United States Fish and Wildlife Service (USFWS) terms and conditions identified in the Biological Opinion for the Livestock Grazing System for the JD Allotment, Eureka County Nevada (August, 2004), as well as the reporting/monitoring requirements allowing exemption from the prohibitions of Section 9 of the Endangered Species Act of 1973. In order for the BLM to comply with these requirements yet allow the permittee seasonal grazing access to the Roberts Mountain Pasture use area, the only practicable action is to build the proposed drift fence.

## **AUTHORITY**

The authority for this Proposed Decision is contained in the following Title 43 of the Code of Federal Regulations:

### **Specific Authority-**

43 CFR 4120.3-1 (f) – Proposed range improvement projects shall be reviewed in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4371). The decision document following the environmental analysis shall be considered the proposed decision under subpart 4160 of this part.

43 CFR 4160.1 (a) – Proposed decisions – Proposed decisions shall be served on any affected applicant, permittee or lessee, and any agent and lien holder of record, who is affected by the proposed actions, terms or conditions, or modifications relating to applications, permits and agreements (including range improvement permits) or leases, by certified mail or personal delivery. Copies of proposed decisions shall also be sent to the interested public.

## **PROTEST AND APPEAL PROVISIONS**

### **Protest:**

In accordance with 43 CFR 4160.2, any applicant, permittee, lessee or other interested public may protest the proposed decision under 4160.1 of this title, in person or in writing to the authorized officer (Douglas W. Furtado, Authorized Officer, Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, NV 89820) within 15 days after receipt of such decision. The protest, if filed, must clearly and concisely state the reason(s) why the protestant thinks the proposed decision is in error.

In accordance with 43 CFR 4160.3 (a), in the absence of a protest, the proposed decision will become the final decision of the authorized officer without further notice.

In accordance with 43 CFR 4160.3 (b), should a timely protest be filed with the authorized officer, the authorized officer will reconsider the proposed decision and shall serve the final decision on the protestant and the interested public.

**Appeal:**

In accordance with 43 CFR 4.470, 4160.3 (d), and 4160.4, any person whose interest is adversely affected by a final decision of the authorized officer may appeal the decision for the purpose of a hearing before an administrative law judge. The appeal must be filed within 30 days after the date the proposed decision becomes final or 30 days after receipt of the final decision. In accordance with 43 CFR 4.470, the appeal shall state clearly and concisely the reason(s) why the appellant thinks the final decision of the authorized officer is wrong.

Pursuant to 43 CFR 4.461 and 4160.3 (d), an appellant also may petition for a stay of the final decision pending appeal by filing a petition for stay along with the appeal within 30 days after the date the proposed decision becomes final or 30 days after receipt of the final decision.

The appeal and any petition for stay must be filed at the office of the authorized officer (Douglas W. Furtado, Authorized Officer, Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, NV 89820), within 15 days of filing the appeal and any petition for stay, the appellant also must serve a copy of the appeal and any petition for stay on any person named in the decision and listed at the end of the decision, and on the Office of the Solicitor, Regional Solicitor, Pacific Southwest Region, U.S. Department of the Interior, 2800 Cottage Way, Room E-1712, Sacramento, California 95825-1890. Pursuant to 43 CFR 4.471 (c), a petition for stay, if filed, must 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.

43 CFR 4.471 (d) provides the appellant requesting a stay bears the burden of proof to demonstrate that a stay should be granted.

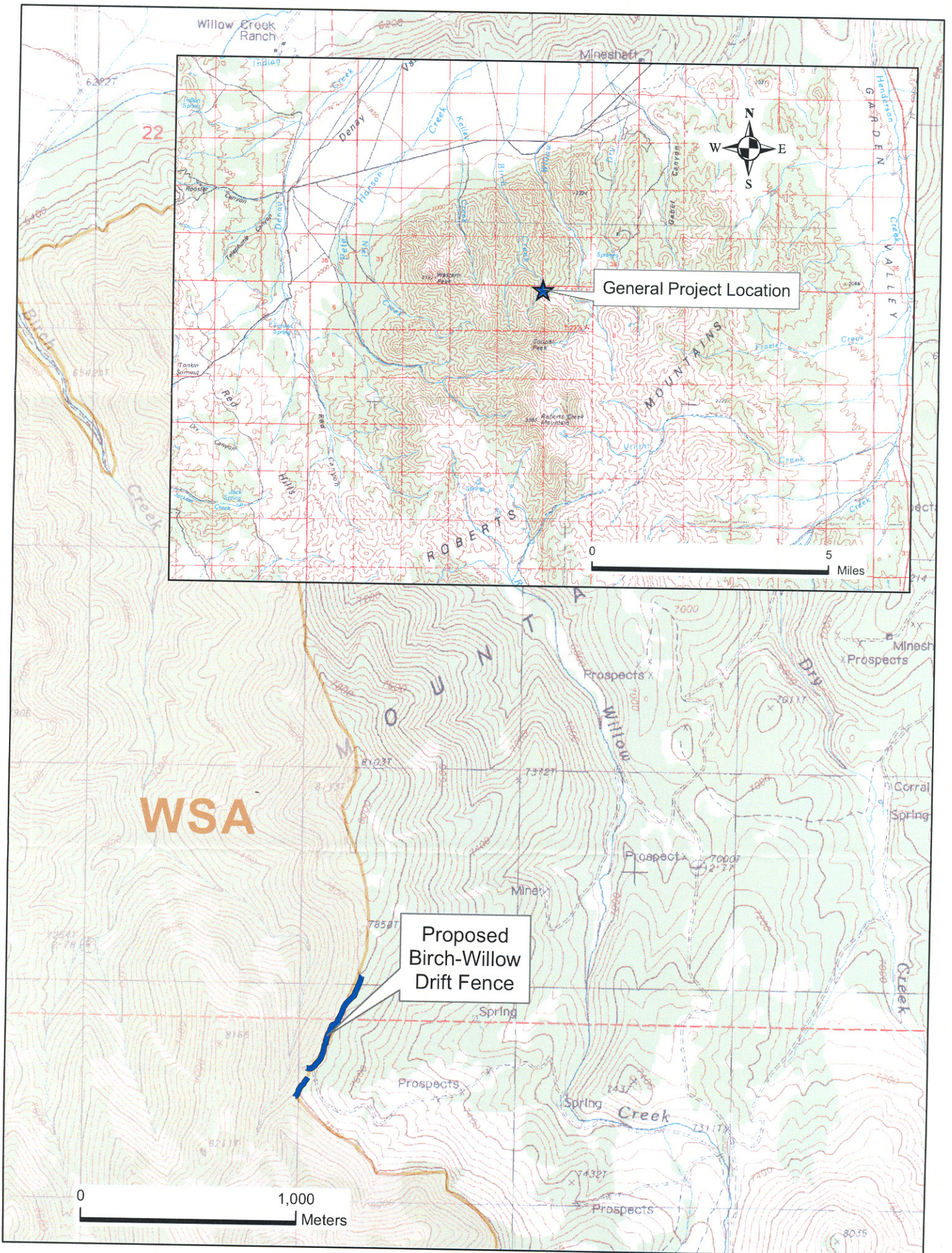
Any person named in the decision from which an appeal is taken (other than the appellant) who wishes to file a response to the petition for a stay may file with the Hearings Division in Salt Lake City, Utah, a motion to intervene in the appeal, together with the response, within 10 days after receiving the petition. Within 15 days after filing the motion to intervene and response, the person must serve copies on the appellant, the Office of the Solicitor, and any other person named in the decision (43 CFR 4.472 (b)).

At the conclusion of any document that a party must serve, the party or its' representative must sign a written statement certifying that service has been or will be made in accordance with the applicable rules and specifying the date and manner of such service (43 CFR 4.422(c) (2)).

Sincerely,



Doug Furtado  
Assistant Field Manager  
Renewable Resources



cc: Birch Creek Drift Fence – Proposed Decision

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