

Peter M. Lacy (“Mac”) (OSB # 01322)

Kristin F. Ruether (OSB # 05368)

Oregon Natural Desert Association

917 SW Oak Street, Suite 408

Portland, OR 97205

(503) 525-0193

lacy@onda.org

kruether@onda.org

Attorneys for Appellants

**UNITED STATES DEPARTMENT OF THE INTERIOR
INTERIOR BOARD OF LAND APPEALS**

**OREGON NATURAL DESERT ASS’N and
WESTERN WATERSHEDS PROJECT**

Appellants,

v.

BUREAU OF LAND MANAGEMENT,

Respondent.

Supplemental Statement of Reasons,
Decision for North Fork Malheur
Geographic Management Area
Rangeland Health Project (EA #
OR-030-006-007)

Pursuant to 43 C.F.R. § 4.412(a), Appellant Oregon Natural Desert Association and Western Watersheds Project (collectively “ONDA”) respectfully submits this Supplemental Statement of Reasons in support of its Appeal of the North Fork Malheur Geographic Management Area Rangeland Health Project. This Supplemental Statement addresses BLM’s failure to comply with a requirements of the Southeastern Oregon Resource Management Plan.

The governing Southeastern Oregon Resource Management Plan (“SEORMP”) contains guidance for management of Forest and Woodlands. SEORMP Record of Decision at 41–43. “Objective 2” for Forest and Woodlands is to “Restore productivity and biodiversity in western juniper and quaking aspen woodland areas.” *Id.* at 42. To implement this objective, the SEORMP mandates that:

A maximum of 124,500 acres of western juniper will be treated during the life of the plan, using prescribed fire and/or mechanical treatment. Acres burned in wildfire situations will be included as part of acres treated.

Id. at 43.

The EA for the North Fork Malheur GMA project fails to address this limit or how much land on the Vale District has already been subjected to prescribed fire, mechanical treatment, or

wildfire since the adoption of the SEORMP Record of Decision in September 2002. See EA at 96–97 (discussion of whether the project alternatives would meet the SEORMP Forest and Woodlands objectives, not mentioning the juniper treatment acreage limit).

ONDA has reason to believe that the limit may be exceeded by this project. The EA is conflicted on the number of acres of juniper to be treated. The figure obtained by summing all acres proposed for juniper treatment listed in the Decision Record’s individual project descriptions is up to 84,321 acres. EA at 6–8. Elsewhere, the EA claims that treatment would not exceed 20,000 to 50,000 acres. EA at 23. In either case, this project will “use up” either 68% (if the Decision Record’s 84,321 acres is correct) or 40% (if the EA’s 50,000 acre figure is correct) of the entire Vale District’s permissible juniper treatment area. Importantly, the SEORMP juniper treatment limit applies to *all* GMAs, for the twenty-year life of the SEORMP. The 123,667-acre NFMGMA project area comprises only about 2.5% of the 4.6-million acre Vale District governed by the SEORMP. See EA at 14; SEORMP ROD at 4.

There have been scores of wildfires on the Vale District since the SEORMP was adopted in 2002. Just this year alone, the Vale District issued rehabilitation decisions for the following fires: Irish Spring wildfire (14,494 acres of public land); Juniper Reservoir wildfire (24,680 acres of public land); Old Maid wildfire (7,197 acres of public and private land); and Saddle Butte wildfire (6,180 acres of public and private land). Therefore, it is exceedingly likely that over 70,000 acres of land on the Vale District, outside of this project area, has already been subjected to wildfire or juniper treatment. In that case, this project’s additional 50,000 to 84,321 acres of proposed treatment will cause the Vale District to exceed the maximum amount of land permitted to be treated pursuant to the SEORMP.

FLPMA requires the BLM to “manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed.” 43 U.S.C. § 1732(a); see also 43 C.F.R. § 4100.0-8 (requiring BLM to manage grazing activities and management actions on public lands in accordance with applicable land use plans). This project is not in accordance with the consistency mandate because it will exceed the maximum amount of acres of junipers permitted to be treated pursuant to the RMP. See Ore. Natural Resources Council Fund v. Brong, 492 F.3d 1120, 1128 (9th Cir. 2007) (holding that BLM project components “are inconsistent with the Plan and, consequently, violate FLPMA.”)

Moreover, BLM’s failure to disclose or analyze the issue violates NEPA’s “hard look” requirement. BLM failed to take a hard look at the impacts of the project’s widespread juniper treatments, vis-à-vis the SEORMP acreage limitation. Exceeding the SEORMP’s acreage limitation indicates a significant environmental issue. Failure to discuss the project in light of the limitation goes against NEPA’s dual purposes to ensure that BLM “consider[s] every significant aspect of the environmental impact of a proposed action” and to “inform the public that it has indeed considered environmental concerns in its decisionmaking process.” Earth Island Inst. v. U.S. Forest Serv., 442 F.3d 1147, 1153–54 (9th Cir. 2006) (citing Kern v. U.S. Bureau of Land Mgmt., 284 F.3d 1062, 1066 (9th Cir. 2002)).

CONCLUSION

For the reasons set forth in the Notice of Appeal, as well as this Supplemental Statement of Reasons, ONDA respectfully requests the IBLA to issue an order granting ONDA's Appeal.

Respectfully,

s/ Kristin F. Ruether

Kristin F. Ruether (OSB # 05368)
Oregon Natural Desert Association
Of Attorney for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served true and accurate copies of Oregon Natural Desert Association and Western Watersheds Project's foregoing Supplemental Statement of Reasons, on the parties herein, this 20th day of November, 2007, to:

Interior Board of Land Appeals
Office of Hearings and Appeals
801 North Quincy St.
Arlington, VA 22203-1905

[VIA FAX AND EXPRESS MAIL]

Pat Ryan, Field Manager
Malheur Resource Area
Bureau of Land Management
100 Oregon St.
Vale, OR 97918

[VIA FAX]

Office of the Regional Solicitor
Pacific Northwest Region
U.S. Department of the Interior
500 NE Multnomah Street, Suite 607
Portland, OR 97232

[VIA FAX]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

DATED this 20th day of November, 2007.



Kristin F. Ruether (OSB # 05368)
Oregon Natural Desert Association

Of Attorneys for Appellants