



Oregon Natural Desert Association

May 30, 2007

VIA EMAIL AND POSTAL MAIL

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Bureau of Land Management  
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**Re: Protest of Basque Hills AMP EA/FONSI**

Dear Ms. Bird:

Pursuant to 43 C.F.R. § 4160.3(a), the Oregon Natural Desert Association (“ONDA”) hereby protests the BLM’s proposed decision for the Basque Hills Allotment Management Plan EA (EA OR-06-026-030). Under § 4160.3(a), an interested public has 15 days after receipt of a proposed decision to protest that decision with the authorized officer. ONDA received the above-referenced Notice of Proposed Decision on May 15, 2007. For the reasons outlined in this protest, as well as those described in ONDA’s April 14, 2007 comment letter on this project, ONDA hereby protests the Proposed Decision and requests the BLM to modify the EA or prepare a more detailed analysis to comply with the requirements of NEPA, FLPMA and all other applicable laws.

ONDA is a non-profit public interest organization dedicated to preserving and protecting the public lands of eastern Oregon. ONDA’s mission is to protect, defend, and restore forever the health of Oregon’s native deserts. The members and staff of ONDA use and enjoy the public lands and natural resources of the Pueblo Mountains and Basque Hills, including the lands within and adjacent to the planning area, for recreational, scientific, spiritual, educational, aesthetic, and other purposes.

As stated in our previous comments, ONDA is pleased to see a new grazing system proposed to emphasize recovery of sagebrush and native grasses. However, the inclusion of the extensive water development in the Basque Hills Wilderness Study Area leaves us with no choice but to protest this Proposed Decision, as such development is clearly inconsistent with BLM’s WSA management mandate. We urge you to remove this water development from the Final Decision.

### **Consistency with FLPMA § 603 and the Wilderness Study Area IMP.**

Under FLPMA’s § 603, BLM is required to manage WSAs “in a manner so as not to impair the suitability of such areas for preservation as wilderness.” 43 U.S.C. § 1782(c). BLM also must take any action required to prevent unnecessary or undue degradation of the lands. *Id.* BLM expanded and developed this mandate in its Interim Management Policy for Lands Under Wilderness Review (“IMP”). The IMP contains several provisions relevant to livestock water developments such as the one proposed here:

- New, temporary livestock developments may only be approved if “they truly enhance wilderness values, and satisfy the nonimpairment criteria.” IMP at D.3.b. (emphasis added).
- New, permanent livestock developments may only be approved if “they truly enhance wilderness values, and the developments are substantially unnoticeable.” *Id.* at D.3.c. (emphasis added).
- Specific guidelines for livestock water developments include that “permanent developments will be allowed for the purpose of enhancing wilderness values. Such water developments must meet the criteria in Sections 2.a and 3.c, above. In most instances, development will be limited to springs where the water trough blends into the surrounding landscape and plant cover is restored.” *Id.* at D.4.d.

Here, the EA proposes constructing (drilling) a well and “associated facilities” within the Basque Hills WSA. EA at 15. The associated facilities include up to one mile of buried pipeline and installation of a trough. *Id.* The well pipe will be 12-26 inches above ground. *Id.* BLM admits the well pipe and the trough “would be observable aboveground year-round.” *Id.* BLM also admits “[t]here would be some loss of vegetation around the trough due to livestock use.” *Id.* Finally, a generator will be brought in on a trailer and operated on-site for six weeks per year (“3 weeks during each spring and fall grazing period”). *Id.* BLM further acknowledges that the drilling of the well “may cause some disturbance to sage-grouse” and that the generator will also disturb sage-grouse—a special status species which is an important component of the wilderness character. *Id.* at 12. BLM claims that the projects are designed as temporary. *Id.* at 16. This project in no way meets the IMP because BLM has failed to establish that the facilities are designed to enhance wilderness values or that they meet the nonimpairment criteria.

First, it is not at all clear that the facilities are temporary, which the IMP defines as a use “that does not create surface disturbance or involve permanent placement of facilities [which] can easily and immediately be terminated upon wilderness designation.” IMP at B.2.a. Further, when the facility is terminated, “the wilderness values must not have been degraded so far as to significantly constrain the Congress’s prerogative regarding the area’s suitability for preservation as wilderness.” *Id.* at B.2.b. Here, the drilling, construction, and laying of a one mile fence will obviously cause surface disturbance. BLM does not explain how a drilled well can be “easily and immediately” removed upon wilderness designation. Nor does it explain how the trampling and denuded vegetation that inevitably accompany artificial water sources will not constrain Congress’s prerogative to designate the area as wilderness.

Second, BLM fails to analyze whether the localized grazing increase that the trough will cause will itself violate the nonimpairment mandate. When BLM proposes increasing grazing in an area, which it is doing for the areas surrounding the trough here, the IMP states that BLM must quantify the area's wilderness values and consider the potential for impacts to the resources, as compared the values at the time the area was designated as a WSA or the current condition (whichever is better). IMP at D.2.a.1. BLM fails to show that the impacts from increased grazing will not degrade this baseline level of impacts.

Finally, BLM's statements that the projects will have no, or negligible effects, upon the various components of the WSA's wilderness qualities are similarly unavailing and unsupported. BLM concedes that installing the well "would result in a very limited and localized reduction in naturalness," but claims that "overall naturalness would be enhanced in the WSAs from the change in grazing system." EA at 15. The EA concedes that solitude will be disrupted through the installation of the well and the noise from the generator, but responds that it will be temporary and short-term, would occur only when livestock are being grazed, would be muffled by the trailer, and that "visitor encounters would be limited to minutes as they pass by." *Id.* at 16. The EA predicts that there will be no impacts to primitive and unconfined recreation and special features. *Id.* Several of these statements are unsupported and illogical. The statement that visitor encounters will be limited to minutes as they pass by is particularly arbitrary. Obviously, almost all site-specific intrusions on wilderness character will be most intense as a visitor passes by. The same could be said for an oil well. The fact that a visitor could pass it by in "minutes" has no relevance. Further, the presence of unnatural facilities and pipeline installation scars on the landscape will seriously impact naturalness for the surrounding area and BLM presents no evidence otherwise. So too will these facilities and scars affect primitive and unconfined recreation by creating these permanent imprints of man. BLM's rationale further inappropriately ties together the well and associated facilities with the proposed reduction in livestock grazing days, in an attempt to mitigate the irrefutable degradation that the developments will cause, while failing to provide any persuasive reason as to why the two must be linked. In sum, the analysis inadequately addresses the question of whether the well and associated facilities will alter wilderness character of the Basque Hills WSA.

### **Range of Alternatives**

The EA improperly considers only the Proposed Action and a No Action alternative. EA at 3. NEPA requires that federal agencies provide a detailed evaluation of alternatives to the proposed action in every NEPA document. 42 U.S.C. § 4332; 40 C.F.R. § 1502.14(a). This discussion of alternatives is essential to NEPA's statutory scheme and underlying purpose. *See, e.g., Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1228 (9th Cir. 1988), cited in *Alaska Wilderness Recreation & Tourism Ass'n v. Morrison*, 67 F.3d 723, 729 (9th Cir. 1995). Indeed, NEPA's implementing regulations recognize that the consideration of alternatives is "the heart of the environmental impact statement." 40 C.F.R. § 1502.14.

In this instance, the BLM should have analyzed other reasonable alternatives such as reducing the level of authorized AUMs, implementing more rest, and a no-grazing alternative. Species like sage grouse (the breeding, nesting and early brood-rearing seasons) and the several

species of migratory birds are common to this allotment. The BLM does not explain why other alternatives such as reduction in AUMs or suspension of grazing during these critical periods would not have been even more reasonable means by which to accomplish the stated objective—establishing and maintaining an upward trend in Wyoming big sagebrush/bluebunch wheatgrass range sites over the next 10 years. This is particularly important since the RMP identifies Special Status Species such as sage grouse as a resource concern in the Basque Hills Allotment summary. Andrews-Steens RMP, App. I at I-43.

The BLM has failed to “[r]igorously explore and objectively evaluate all reasonable alternatives” in order “to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of [the agency’s] actions upon the quality of the human environment.” 40 C.F.R. §§ 1502.14(a), 1500.2(f).

### **Impacts on Sage Grouse and Other Sagebrush-Dependant Species’ Habitat**

The EA contains no adequate analysis on the effects of the proposed action alternative on sage grouse and other sagebrush-dependent wildlife. The EA dismisses ONDA’s map showing that there were several lek sites just outside the allotment’s eastern boundary because they were outside the project area. Decision at 8. The EA should have considered the effects to these leks since they are so close to the action area and because BLM has a duty to consider “cumulative effects” under NEPA. The EA fails to explain how the project would comply with *each* of BLM’s Greater sage-grouse guidelines, with provisions in the RMP regarding sage grouse, and with BLM’s guidelines regarding Special Status Species such as sage grouse. Please do so in the final decision.

BLM answered ONDA’s questions requesting clarification of the effects of sage grouse with a single sentence stating that sage-grouse should benefit. BLM needs to explain why and provide any scientific references used. BLM failed to answer ONDA’s questions about how the levels of grazing will change when the AUMs appear to remain the same: Does this mean there will be double the number of cows on the allotment when it is grazed? If so, how will this increased cow density affect wildlife such as sage grouse?

Finally, the dismissal of pygmy rabbits is inappropriate since the species is known to occur in the general vicinity. Thus, BLM should have addressed potential impacts to this important species as well. These shortcomings violate NEPA’s “hard look” requirement and the requirement to achieve full public disclosure and informed decision making. They also violate FLPMA’s multiple use balancing and unnecessary or undue degradation requirements.

### **Cumulative Impacts**

The EA is again short on cumulative impacts analysis. NEPA requires an analysis of the cumulative effects of the proposed action. 40 C.F.R. §§ 1508.7, 1508.25(a)(2). Cumulative impacts are defined as the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions. *Id.* § 1508.8. The BLM must actually assess the cumulative effects of the proposed action, in particular with respect to wilderness resources, impacts to sage grouse and pygmy rabbit

populations and habitat, migratory birds and weeds. A failure to do so is a failure to comply with NEPA. See, e.g., Klamath-Siskiyou Wildlands v. Bureau of Land Mgmt., 387 F.3d 989, 997 (9th Cir. 2004) (EAs did not sufficiently identify or discuss incremental impacts). An EA “may be deficient if it fails to include a cumulative impact analysis or to tier to an EIS that has conducted such an analysis.” Kern v. U.S. Bureau of Land Mgmt., 284 F.3d 1062, 1071 (9th Cir. 2002).

### **Consistency with Land Use Plan**

Finally, site-specific actions such as this must be consistent with the land use plan. 43 U.S.C. § 1732(a). In this case, that means the Andrews-Steens RMP. If the BLM does not correct the defects described in these comments—including the proposal’s inadequate range of alternatives, the protection of and management for sage grouse and other sage-steppe dependent species’ habitat, wilderness study and management, and cumulative impacts—the agency’s final decision would not be in accordance with the RMP and would therefore violate Section 302(a) of FLPMA. BLM has still not explain how it is indeed consistent.

### **Conclusion**

For the reasons stated above, ONDA hereby protests the Proposed Decision and requests the BLM to modify the EA or prepare a new analysis to comply with the requirements of NEPA, FLPMA and all other applicable laws. If you have any questions regarding this protest, please feel free to contact me at the address below.

Sincerely,

s/ Kristin F. Ruether

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