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**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.

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

DECLARATION OF CRAIG MILLER

I, CRAIG MILLER, state and declare as follows:

1. My name is Craig Miller and I reside in Bend, Oregon. The following matters are personally known to me, and if called as a witness I would and could truthfully testify thereto.
2. I am past president of the Board of Directors of Plaintiff Oregon Natural Desert Association (“ONDA”). I also am a member of ONDA and serve as a part-time, contract employee of ONDA as a Geographic Information System (“GIS”) Consultant.
3. As part of my work as a GIS Consultant for ONDA, I am also an active participant in ONDA’s wilderness inventory program. I offer the following reasons for appealing BLM's final decision on the Environmental Assessment. My statements are intended to demonstrate, among other things, that the BLM ignored or incorrectly characterized most or all

of ONDA's wilderness inventory information within the project area making the BLM's final decision uninformed and unsupported. If the BLM had provided a careful and honest assessment of ONDA's inventory information, I believe the inevitable conclusion would have been that the area does indeed possess wilderness character, and that the NFMGMA Rangeland Health Project would cause irreparable harm to the wilderness values.

4. The BLM claims that wilderness character does not exist outside designated WSAs on the public lands within and surrounding the project area. The claim is purportedly based on an inventory documenting any changes from previous BLM inventory information from 1978 to 1980, evaluation of ONDA's inventory information, spatial data, existing decision documents, and staff experience. However, there is no indication that BLM's inventory team spent any time in the field to verify or document their conclusions. BLM purports that the three citizen's proposals within the project area is actually divided by roads into 13 separate units. These units and the routes bordering the units are not illustrated in the EA. The Environmental Assessment does not provide any information about how BLM's inventory team analyzed new information provided by ONDA or why their conclusions differed so radically from ONDA's. What is clear, however, is that the BLM failed to apply the appropriate wilderness definition of a road in their analysis.

5. The original BLM definition of a road (as defined by Congress, taken from FLPMA and reiterated in the *Wilderness Inventory Study and Procedures* handbook, p.9), is a route that has "been improved and maintained by mechanical means to insure relatively regular and continuous use." This important phrase implies several conditions that must be met in order to meet the wilderness definition of a road.

6. First, the route must have had mechanical improvement and maintenance, most commonly by a road grader and/or other motor vehicle whose purpose is road construction or maintenance.

7. Second, the route must be mechanically maintained on an ongoing basis. A route that has been mechanically maintained several times a year, once a year, or even once every 2–3 years is no doubt a road. If, on the other hand, maintenance has not occurred for 5, 10, or even 25 years, the route is almost certainly not a road. Unless a route is maintained often enough, it will succumb to the erosive processes of weather, vehicle travel, and livestock trampling, and may eventually become obscured by the growth of vegetation, all of which will inhibit travel.

9. Third, the route must be in good enough condition that “relatively regular and continuous use” is “insured.” The word “relatively” means “to a relative degree or extent” and “relative” means “not absolute or independent.” Merriam-Webster’s Collegiate Dictionary, Tenth Ed. (1998). “Regular” means normal, typical, natural, or standard. Id. “Continuous” means “marked by uninterrupted extension in space, time, or sequence.” Id. “Insure” means “to make certain esp. by taking necessary measures and precautions.” Id. The definition of “insure” is closer to the word “guarantee” than “make possible.” The implication is that impediments to “relatively regular or continuous use” will be repaired. Such impediments to “relatively regular or continuous use” could include vegetation, ruts, erosion, rocks, seasonal or periodic flooding, etc.

10. The assumption is that mechanical maintenance would be performed often enough to insure that these conditions don't preclude “relatively regular or continuous use.” Absent proactive measures by mechanical means to address impediments, a route necessarily fails to meet the definition of a road under FLPMA. In short, that motorized travel on a route is possible

does not mean it is guaranteed. Moreover, even if possible to negotiate the typical impediments on a route does not mean that travel will be "relatively regular and continuous." As a practical matter, an unmaintained route will only be traveled on an "irregular and non-continuous" basis. To meet the definition of a road, a route must not be merely negotiable, but negotiable on a "relatively regular and continuous" basis.

11. The wilderness definition of a road is simply a route that is kept in a condition that guarantees frequent travel. I submit several photos from one of ONDA's proposed WSAs (Lake Ridge) located in the project area to illustrate my point. Photo PA-20 is an example of a route that clearly fits the definition of a road. This route has little in way of erosion, rocks, vegetation, or other impediments. It shows signs of sufficient maintenance to ensure relatively regular and continuous use. This route is part of the east boundary of the Lake Ridge proposal.

12. In contrast, Photos QC-10, 11, and 12 are examples of a route that BLM has not maintained to insure either continuous or regular use. QC-10 shows a route that has been bladed in the past, but has deteriorated from the erosive forces of nature. The route is rocky, eroded, and difficult to navigate. Photo QC-11 shows the same route a little further along where it crosses a cattle guard. Past the cattle guard, there is no sign of maintenance, and the route is overgrown and is not used continuously or regularly. Finally, QC-12 shows the same route just a little further. It is washed out and nearly impassable. This route was one of the boundaries of a subunit in BLM's original 1978-80 inventory, a route that now does not meet the wilderness definition of a road and should therefore no longer be used to divide the larger roadless area.

13. Nonetheless, BLM has claimed that routes such as these are "roads", thereby carving the area into 13 units (the same as in the original inventory). They have provided no documentation to refute ONDA's photographic evidence, but instead suggest that their

knowledge and experience trumps the evidence. In this way, BLM has circumvented their responsibility to consider the wilderness character over the entire area included in ONDA's proposed WSAs.

14. **Naturalness:** In the Wilderness Act there is a fair amount of leeway about how many unnatural features are acceptable, but the most important question is whether the man-made features collectively dominate the landscape, and whether they cause the area to appear unnatural throughout. If a portion of the area appears predominantly unnatural, boundaries may be adjusted to exclude that portion from the proposal. See AR 0693–94 (defining “naturalness” factor).

15. In their EA BLM has not addressed the evidence provided by ONDA that the proposed WSAs appear natural throughout, and the works of man are not substantially noticeable. Neither is there evidence that BLM considered the naturalness over the area as a whole in their "updated inventory."

16. **Opportunities for Solitude or Primitive and Unconfined Recreation:** The EA has not addressed ONDA's documentation that the proposed WSAs do indeed possess outstanding opportunities for solitude and primitive recreation.

17. **Harm to Wilderness Values:** The EA claims there are no wilderness characteristics in the areas identified by ONDA as having wilderness character. Therefore the EA does not address the harm that would occur to the wilderness values within the proposed WSAs. Of primary concern is the harm that would occur from mechanical treatment of vegetation, installation of man-made structures such as spring development and fences. Widespread cutting of juniper will leave behind stumps and slash piles, virtually eliminating the possibility of wilderness designation. Although not permanent, the downed trees and persistent stumps will

degrade the apparent naturalness and aesthetic beauty of the area. Considering the ubiquitous nature of the proposed treatments, the consequent degradation of wilderness character in the area is likely to be so severe as to permanently forgo the possibility of wilderness protection in the future. New spring developments will permanently alter any natural structure and appearance that presently exists.

18. **Conclusion:** ONDA is anxious to work with the BLM to arrive at an honest, sensible means of protecting our most valuable resources. These resources include habitat values that support important wildlife (including Western Sage Grouse, pygmy rabbit, Sage Sparrow, Brewer's Sparrow, Burrowing Owl), scenic values, and primitive recreational opportunities. Our opposing conclusions are not simply a matter of opinion, but a fundamental disparity about what Congress intended under the Wilderness Act.

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

DATED this 17th day of October 17, 2007.

s/ Craig Miller

Craig Miller