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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON**

**OREGON NATURAL DESERT ASS’N,**

Case No. 06-242-AA

Plaintiff,

and

**CENTER FOR WATER ADVOCACY,**

Plaintiff-Intervenor,

v.

**NOTICE OF FACTUAL  
DEVELOPMENT**

**DANA R. SHUFORD,** Burns District Manager,

BLM, *et al.*,

Defendants.

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**INTRODUCTION**

Plaintiff Oregon Natural Desert Association (“ONDA”) provides the following notice of a relevant factual development related to the above-captioned action. This matter currently is

under advisement (Dkt # 182) following the court's April 10, 2007 hearing to consider the parties' cross-motions for summary judgment.

ONDA received the attached document ("Attachment A"), Defendant Bureau of Land Management's ("BLM") "Steens Mountain Travel Management Plan Environmental Assessment" ("TMP EA")<sup>1</sup>, the week of April 16, 2007. ONDA has been reviewing that document this week in order to prepare public comments on the EA, which are due May 21, 2007. The TMP EA is relevant to the matter under advisement with this Court—and specifically to Claims Six and Seven.

### **RELEVANCE OF FACTUAL DEVELOPMENT**

#### **I. CLAIM 6: STEENS ACT TRANSPORTATION PLAN PROVISION.**

Under Claim Six, ONDA alleges BLM violated the Steens Act by: (1) failing to complete the comprehensive Transportation Plan required at 16 U.S.C. §§ 460nnn-21(b), 460nnn-22(a); and (2) adopting the Cooperative Management and Protection Area ("CMPA") RMP without this required plan.<sup>2</sup> The Steens Act requires BLM to prepare a comprehensive Transportation Plan for Steens Mountain's Cooperative Management and Protection Area by October 30, 2004. 16 U.S.C. §§ 460nnn-21(b), 460nnn-22(a). In its earlier briefing, ONDA explained that one of the key flaws with Appendix M (the portion of the CMPA RMP that BLM identifies as the statutorily-required Transportation Plan) is that it does not address non-motorized transportation route issues. See Dkt # 19 at 12. The Steens Act provides:

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<sup>1</sup> Because of the length of the EA (77 pages, plus maps and cover sheets), ONDA only attaches relevant excerpts of the document here, pursuant to Local Rule 100. The full TMP EA is available online at: [www.blm.gov/or/districts/burns/plans/burns.php](http://www.blm.gov/or/districts/burns/plans/burns.php) (last modified May 18, 2007).

<sup>2</sup> See Dkt ## 1 (Complaint at ¶¶ 64–67), 19 (Memorandum in Support of Plaintiff's Motion for Partial Summary Judgment), 91 (Reply in Support of Motion for Partial Summary Judgment), 114 (Supplemental Memorandum in Support).

The management plan shall include, as an integral part, a comprehensive transportation plan for the Federal lands included in the Cooperative Management and Protection Area, which shall address the maintenance, improvement, and closure of *roads* and *trails* as well as travel access.

16 U.S.C. § 460nnn-22(a) (emphasis added).

In its Travel Management Plan EA, BLM still refuses to address non-motorized trail designation and use, as is required by the Steens Act. See Attachment A at 7 (“the CMPA RMP specifically says these activities [designation of hiking trails and snowmobile use] will be addressed in a comprehensive recreation plan which is scheduled to start in 2007”). This represents a further fragmentation of the type of “comprehensive” Transportation Plan BLM was to have developed by October 30, 2004, as an “integral” part of the CMPA RMP, under the express terms of the Steens Act.

ONDA also argued that Appendix M fails to satisfy the Steens Act because the Act does not provide for the placeholder approach BLM adopted—calling instead for a “comprehensive” and “integral” plan. 16 U.S.C. §§ 460nnn-21(b), 460nnn-22(a). ONDA argued that most critical aspects of what should have made up the comprehensive Transportation Plan have not been accomplished, including field assessments and need determinations for routes; public review of BLM’s inventories, assessments, and determinations; and management of hiking trails throughout the more than 200,000 acres of the CMPA outside of the Steens Mountain Wilderness. See Reply in Support of Motion For Partial Summ. J. (Dkt # 91), at 6–8. The TMP EA BLM has now issued highlights the lack of this key information and data in the RMP “Transportation Plan.” See, e.g., Attachment A at 8 (referring to BLM’s “updated route inventory”), 16 (“[t]he route inventory called for in the RMP Transportation Plan was conducted during the 2003 through 2006 field seasons”), 20 (explaining that Alternative C is based on

ONDA's route inventory and report).<sup>3</sup> As noted above, the TMP EA still does not address non-motorized use on any of the more than 600 miles of routes the EA deals with. See Attachment A at 16–18 (describing the different types of routes BLM has inventoried or identified).

## **II. CLAIM 7: ADOPTION OF RMP WITHOUT TRANSPORTATION PLAN.**

Under Claim Seven, ONDA alleges BLM's Record of Decision adopting the CMPA RMP is unlawful because: (1) it is based on an incomplete, incorrect, and inadequate inventory of roads and ways; and (2) it contains no analysis of information before the agency concerning impacts to wilderness and other values.<sup>4</sup> ONDA alleges this violates the Steens Act as well as FLPMA and NEPA.

ONDA argues that by failing to complete its inventory of routes within the CMPA, AR 27838, and by failing to analyze ONDA's road closure report and wilderness inventory information as part of its analysis, AR 22638–39 (no mention of ONDA recommendations or information in transportation/roads section of FEIS) & 27977–79 (same in RMP), BLM “designated” for motorized use all but 6 miles of routes within the CMPA. See ONDA MSJ Br. (Dkt #112), at 42–43. Under the Steens Act, the default position is that all non-inventoried routes should be closed (with the exception of administrative and permittee use, per 16 U.S.C. § 460nnn-22(b)(2)) unless and until specifically “designated” as open based upon subsequent adequate analysis in the management plan and Transportation Plan. Id. § 460nnn-22(b)(1)(B). The TMP EA represents the first time BLM has reviewed ONDA's route closure report and

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<sup>3</sup> See also TMP EA at pp. 18–74 (discussing the affected environment and potential impacts from the alternatives) (available online, see n.1).

<sup>4</sup> See Dkt ## 1 (Complaint at ¶¶ 68–73), 112 (Memorandum in Support of Motion for Summary Judgment), 155 (Reply/Response Brief on Cross-Motions for Summary Judgment).

recommendations. See Attachment A at 20 (indicating that Alternative C “is primarily based on input from ONDA”).

This shows that BLM’s Record of Decision adopting the CMPA RMP was based on incomplete, incorrect, and inadequate inventory information, thus undermining the decisions made in the RMP. Without such information, the RMP decision did not provide for meeting the single, Congressionally-expressed purpose of the CMPA: “to conserve, protect, and manage the long-term ecological integrity of Steens Mountain for future and present generations.” 16 U.S.C. § 460nnn-12(a).

In addition, the TMP EA does not analyze potential impacts to wilderness resource values outside of existing Wilderness and Wilderness Study Areas—in other words, areas identified during ONDA’s citizen wilderness inventory to possess defined wilderness characteristics. The TMP EA instead defers to the RMP’s closed-door, internal determination that nearly all of ONDA’s inventory units do not contain wilderness characteristics. See Attachment A at 15–16. Again, the TMP EA shows that BLM’s earlier Record of Decision for the CMPA RMP, and subsequent, implementation-level decisions, fail to take a “hard look” at impacts to wilderness resource values and to properly balance wilderness values against other valid multiple uses of the public lands within Steens Mountain’s Cooperative Management and Protection Area.

### **CONCLUSION**

Because the same flaws identified by ONDA at the time this action was initiated persist today—both via BLM’s failure to prepare the statutorily-mandated Transportation Plan by October 30, 2004, and via the agency’s continuation or exacerbation of specific legal errors in its subsequent Travel Management Plan EA—the declaratory and injunctive relief ONDA requested

in its Motion for Partial Summary Judgment and Motion for Summary Judgment, on Claims Six and Seven, remains important to fair and just resolution of those claims.

DATED this 18th day of May, 2007

Respectfully Submitted,

s/ Peter M. Lacy

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Oregon Natural Desert Association

Of Attorneys for Plaintiff