



Oregon Natural Desert Association

March 31, 2008

VIA EMAIL

Carolyn Freeborn, Jordan Field Manager
Bureau of Land Management
Vale District Office
100 Oregon Street
Vale, OR 97918
OR_Vale_Mail@blm.gov

Re: Comments on Louse Canyon GMA Addendum to the Revised EA # OR-030-04-013

Dear Ms. Freeborn:

Please accept these comments on behalf of the Oregon Natural Desert Association and Western Watersheds project (collectively referred to as "ONDA"). These comments concern the "Addendum to Revised Environmental Assessment # OR-030-04-013," BLM's supplemental NEPA documentation concerning impacts to wilderness values in the Louse Canyon GMA.

Wilderness Inventory & Evaluation

We applaud the efforts undertaken by BLM to update existing wilderness inventory information. This is the first time that any BLM field office in Oregon has undertaken an inventory of wilderness character that included field verification by BLM staff since the original inventory in the 1970s. For the most part, ONDA and BLM are in agreement about the presence or absence wilderness character on the BLM lands not designated as Wilderness Study Areas ("WSAs").

The exceptions, BLM's Coyote Wells (OR-036-015) and Twin Buttes (OR-036-002) units, revolve around the wilderness definition of a "road" versus a "way." We will not belabor the nuances of the definition here, but rather point out that the courts are still involved in clarifying this issue. In any case, the Coyote Wells and Twin Buttes units are natural throughout, and have significant ecological importance according to BLM's evaluation. We agree with that conclusion.

Although, as you state in the Addendum, "BLM has no legal, regulatory, or procedural mandate to manage for wilderness characteristics outside of existing WSAs," BLM nonetheless is required to manage these public lands according to the principles of multiple use and sustained yield, and to avoid unnecessary or undue degradation of the lands and their resource values.

Moreover, as the LCGMA proposal is driven by findings of violations of rangeland health standards and guidelines, BLM must consider whether these lands are (or remain) chiefly valuable for grazing, and whether the current stocking levels are justified given the current condition of these lands, the existing rangeland infrastructure, and now, the acknowledged presence of outstanding wilderness values in many of the areas throughout the LCGMA. In other words, grazing allocations and stocking rates must now be affirmatively balanced with significant wilderness values recognized for the first time by BLM in 2007.

All the areas identified by ONDA as having wilderness character are predominantly natural and ecologically important, supporting “some of the largest contiguous blocks of intact sagebrush steppe remaining west of the Continental Divide.” Addendum at 5. It is not a stretch to conclude that these lands are chiefly valuable for their ecologically important, predominantly natural, and wilderness-like qualities. It would follow, then, that these are the values that should be given the greatest protection.

Likewise, the areas in dispute (Coyote Wells and Twin Buttes) have equally important habitat and ecological values, even if they do not (as contended by ONDA) have wilderness character. Again, these values are regionally important, and give these areas their chief value. Unfortunately, the proposed alternative will not protect these values. As stated in the Addendum (2.2.4), the proposed action would add 3.75 miles of fence, 1.25 miles of pipeline, and 2 troughs to wilderness character lands. In addition, several miles of new fence would bisect the Twin Butte units, and miles of pipeline would be installed. Alternatives IV, IVa, V, and VI would avoid degradation of the naturalness and ecological integrity of these areas. There is no reduction in cattle numbers, with BLM instead relying on these structural fixes to address rangeland health standards violations. We urge BLM to choose a course of action that would avoid degrading some of the most important values of the area. As explained below, this may involve adjusting the previously proposed action (Alternative III).

Range of Alternatives

The Addendum analyzes the impacts of the existing alternatives on wilderness values BLM has found to be present within the project area. What appears to be missing is any analysis as to whether there are other viable, logical alternatives now that BLM finally has recognized the presence of this critical resource value. BLM’s omission of the wilderness resource in the original and revised EAs was a serious shortcoming. Indeed, it was one of the primary reasons why we administratively protested and appealed BLM’s decision, and ultimately were left with no choice but to file suit in federal court. Only after ONDA filed its lawsuit did BLM finally announce it would conduct “additional analysis” concerning the wilderness resource.

As noted at the outset, we give great credit to BLM’s Jordan Resource Area staff for finally undertaking this vitally important step. However, NEPA is a process intended to be conducted in a comprehensive fashion, not in piecemeal steps each time a new legal flaw is uncovered. While we empathize with the current Jordan Resource Area field manager and the flawed process that she inherited for the LCGMA, we also strongly urge BLM to now fully correct the flaws in that process.

Rather than try to fit the existing proposed alternative into a significantly changed baseline of environmental conditions, BLM should amend its proposal accordingly. This means that BLM should eliminate construction of miles of barbed-wire fences and pipelines, and associated watering troughs, within areas found to possess outstanding wilderness values. The Addendum acknowledges that “adverse effects from grazing may affect degree of naturalness and supplemental values of wildlife habitat” and that grazing projects “may affect degree of naturalness, opportunities for solitude and/or primitive and unconfined recreation, and supplemental values.” Addendum at 5. With this assumption in mind, it makes sense to consider an alternative—for these specific areas newly determined by BLM to possess wilderness values—that would accomplish decreased grazing *without* requiring rangeland projects that admittedly degrade one or more wilderness characteristics. The failed, dilapidated or abandoned Vale Project rangeland structures were the source of an overstocking in this area that persists today. We would like to see BLM address this issue head-on, particularly in light of the outstanding wilderness values and relatively intact sage-steppe habitat present here.

Grazing Allocation and Stocking Levels

Now that BLM has acknowledged the presence of additional outstanding wilderness values for the first time, the agency must consider appropriate grazing allocations and stocking levels in the Louse Canyon GMA, and in particular these newly recognized wilderness quality public lands. In addition to a need to adjust grazing to address significant rangeland health standards violations, the issue is doubly important now in order to account for grazing’s impacts on wilderness values in the area.

Likewise, BLM should discuss whether the grazing proposed under each alternative within existing WSAs is consistent with FLPMA § 603, in terms of consisting of the same numbers, kind and class authorized during the 1976 grazing season. We still have not been able to find that information in any NEPA documentation throughout the LCGMA planning process. If that information exists somewhere in the LCGMA NEPA documents, please point it out to us. If it does not, please include it in a revised NEPA document or in your final decision.

Impacts to Sage Grouse and Pygmy Rabbit

Since BLM elected to revisit its NEPA analysis and perform additional inventory work, there have been significant developments with respect to two highly imperiled species that rely upon the half million acres of sagebrush steppe habitat present in the Louse Canyon GMA. In 2006, Western Watershed Project challenged the U.S. Fish & Wildlife Service’s (“FWS”) 2004 decision not to list the sage grouse in federal court, claiming the decision not to list the species was flawed and unfairly influenced by political agendas. In December 2007, a federal district court in Idaho ruled in favor of the plaintiffs, finding the Service’s decision was illegal. Now, FWS is under court order to complete a status review that will determine if sage grouse warrant protection under the Endangered Species Act.

There have been similar legal developments for pygmy rabbits. In September 2007, Western Watersheds Project, Oregon Natural Desert Association and others prevailed in litigation challenging FWS’s 90-day finding that listing of pygmy rabbits was not warranted. In

January 2008, FWS announced that it had determined the petition presents substantial scientific information indicating that listing the pygmy rabbit may be warranted. As with the sage grouse, FWS will now undertake a 12-month status review to determine if listing is warranted.

Sage grouse and pygmy rabbit occur throughout the LCGMA planning area. They rely on the remaining intact, unfragmented sagebrush habitat present in the area. The Louse Canyon area contains one of the highest concentrations of lek sites in all of southeast Oregon. As BLM acknowledges, literally millions of acres of Wyoming big sagebrush habitat types have burned over the last few decades, making it critical to conserve remaining habitat—particularly large, relatively unfragmented areas such as those present in the LCGMA. Millions of other acres of this habitat, including within the LCGMA, have been adversely impacted by the combined effects of overgrazing and an extensive rangeland infrastructure constructed on the landscape to sustain levels of grazing that the lands could not otherwise sustain.

Given these very recent developments, as well as BLM's determination that an additional 82,000 acres of wilderness quality lands exist here that have never previously been recognized (and that wildlife habitat for sagebrush-dependent species is a supplemental wilderness value in these areas), BLM should undertake further analysis to ensure its actions here do not contribute toward driving sage grouse and pygmy rabbit to extinction. Constructions of fences and new or renovated water developments will accelerate these species' decline toward extinction by, among other things, fragmenting their habitat, degrading water quality, negatively impacting water quantity, and providing new water sources for West Nile virus-carrying mosquitoes. Maintaining the same levels of grazing on these lands despite any subtle shifts in pasture rotations or timing also will accelerate these species' decline. BLM has not adjusted grazing levels in these areas for at least two decades or more, meaning now is the time to seriously consider doing so.

A failure to do so likely runs afoul of NEPA, FLPMA and the ESA. Under NEPA, BLM must take a "hard look" at the impacts of the proposed action on the human environment. Now that sage grouse and pygmy rabbit are candidate species being considered for listing under the Endangered Species Act, and because BLM has now recognized the presence of outstanding wilderness values on these lands, including important sagebrush habitat for the species, we believe BLM's obligation to examine the environmental impacts of the LCGMA projects on these species and their habitat, is heightened. NEPA mandates that the agency evaluate the impacts of the project taking into account new information.

FLPMA requires BLM to manage the public lands for multiple use and sustained yield, ensuring its actions do not cause any unnecessary or undue degradation of the lands or their resource values, and ensuring against "permanent impairment" of the environment. Part of FLPMA's multiple use mandate includes conservation of food and habitat for fish and wildlife, and BLM must maintain the viability of the sage grouse's and pygmy rabbit's sagebrush habitat in the LCGMA.

Finally, the Endangered Species Act imposes obligations on agencies to consider the impacts of their actions on listed or candidate species. The goal of the ESA is to ensure the survival and recovery of listed species, and includes conservation of the habitat that is critical to those species' survival and recovery. BLM's Special Status Species Management manual

(Manual 6840) provides that, for candidate species such as sage grouse and pygmy rabbit, BLM “shall ensure that actions authorized, funded, or carried out by the BLM do not contribute to the need for the species to become listed.” Manual at .06C.

To that end, the manual requires BLM to coordinate with FWS to determine the distribution, population dynamics, current threats, abundance and habitat needs for candidate species present in a project area.¹ BLM also must manage the habitat to conserve the species by, among other things, developing site-specific management plans and conservation strategies that incorporate specific habitat and population management objectives, ensuring BLM activities (such as authorization of livestock grazing) are consistent with those objectives, and monitoring populations and habitats of candidate species. BLM also must request technical assistance from FWS on any planned action (such as the LCGMA decisions) that may contribute to the need to list a candidate species as threatened or endangered. See Manual at .06C.

In short, as we have observed before, the LCGMA projects, as proposed, will harm the sage grouse and pygmy rabbit by accelerating those species’ decline toward extinction. Given these species’ new status as candidate species, and BLM’s new wilderness findings, it is important that BLM take more proactive steps to conserve these species and their habitat, and to ensure any actions taken within the LCGMA do not contribute to the need for these species to be listed.

Impacts of Pipelines and Spring Developments

Throughout our involvement with the LCGMA projects, we have commented that BLM must consider the impacts of the water development projects on water quality and quantity. The Southeast Oregon Resource Management Plan (“SEORMP”) requires that riparian and wetland areas be managed to provide for attainment of Proper Functioning Condition (“PFC”), Riparian Management Objectives (“RMOs”), and Desired Range of Future Condition (“DRFC”). Areas not in PFC must be managed to attain an upward trend in the composition and structure of key riparian and wetland vegetation and desired physical characteristics of the stream channel. Uses and activities within riparian and wetland areas are allowed only if there is measurable progress toward attainment of state water quality standards, PFC, and RMOs. The SEORMP provides RMO criteria for pool frequency, temperature, large woody debris, bank stability, lower bank angle, width/depth ratio, and riparian vegetation.

The LCGMA final decisions do not provide for such compliance. Instead, they provide only for PFC monitoring and for a single quantifiable standard for woody riparian vegetation monitoring. Thus, inconsistent with the SEORMP, the LCGMA decisions do not require compliance with, or even monitoring of, at least six of the seven measurable, quantifiable standards for key attributes of healthy, functioning riparian areas, which the BLM set forth in the land use plan. As we have noted before, this is critical because the scope of the riparian and wetland area violations throughout the LCGMA is staggering: close to 50% of the streams are

¹ We note that BLM’s Special Status Species Management manual provides that the protection provided by the policy for candidate species “shall be used as the minimum level of protection for BLM sensitive species.” Manual at .06E.

not meeting the BLM's riparian watershed function standard, and 90% of the meadow/wetland complexes are not functioning due to livestock trampling, overgrazing, or dewatering by developments.

Moreover, no NEPA documentation that we are aware of provides information or analysis concerning actual flow rates of the spring and other water developments at issue. Thus, there is no way of knowing how much water is available, how much was available prior to development, and how much is available (and used) post-development.

Again, uses and activities within these areas are only allowed if the BLM can demonstrate "measurable progress" toward meeting state water quality standards, RMOs, and PFC. Without requiring any quantitative monitoring, and without setting more than a single quantitative standard for livestock grazing in riparian areas, the BLM will have no idea whether its selected grazing system is achieving "measurable progress."

Now that BLM has completed its wilderness analysis, we ask that it reconsider this issue prior to making any new final decisions. Water quality and quantity is directly related to the naturalness of these areas, including insofar as it is a critical component in keeping areas of untrammelled sagebrush sea viable as habitat for sage grouse, pygmy rabbit and other sagebrush obligate species.

Range Structures Database Concerns

Related to this, we have continuing concerns over BLM's range structures database. The Vale District has a long history of keeping track of the range structures that were crucial to a doubling of the forage productivity from the early 1960s baseline, via the Vale Project. Since then, this asset database has been very helpful in understanding management changes as well as range structure maintenance, expansion and reconstruction proposals.

For the past several years (if not decades), BLM practice has been to include in NEPA documents data on the project area's range structures, including the following typical criteria: location by allotment number, TRS (down to 40 acres), number (six digits), name, type, condition (1998 and later inspections), photographs, and maintenance needs. However, several recent projects, including the LCGMA projects have significantly pared down the types of information available to the public.

This dilution of the content of range structure records is troubling. In the Louse Canyon area (and throughout the Vale District, for that matter), springs and seeps are of paramount importance to the high desert ecosystem. For that reason, an accurate record of the developments (existing, proposed, and proposed to be renovated) which impound and divert them is critical. Without baseline data or data after a project is brought on-line, and no threshold for flow reductions that will trigger reassessment of the project, it is impossible for BLM to adequately protect spring and seep resources.

Related to our concerns in the preceding section, therefore, we respectfully request that, at a minimum, BLM restore the all criteria used in the past, as well as adding a criterion for

yearly flows. We believe that such data would be readily available, whether from permittees, interested publics, Oregon Department of Fish and Wildlife, or agency retirees.

Land Use Plan Amendment

Based on BLM's conclusion that its Hanson Creek, Black Butte, Deer Flat, Cairn C, and Oregon Butte units have wilderness values, the agency should undertake an amendment to the land use plan. As you are aware, BLM did not analyze impacts to wilderness values outside of existing WSAs, when it prepared the SEORMP. Now that BLM has completed its wilderness evaluation, including analysis of ONDA's 2004 wilderness inventory data, the land use plan should be amended to acknowledge and protect (or at least affirmatively manage for) these wilderness values.

BLM's land use planning regulations provide that an amendment "shall be initiated by the need to consider monitoring and evaluation findings, new data, new or revised policy, a change in circumstances or a proposed action that may result in a change in the scope of resource uses or a change in the terms, conditions and decisions of the approved plan." 43 C.F.R. § 1610.5-5. See also BLM, H-8550-1, *Interim Management Policy and Guidelines for Lands Under Wilderness Review* ("IMP"), at .01 (providing that the policy applies to WSAs identified through the land use planning process under FLPMA § 202).

We expect that BLM's environmental analysis will show that the land use plan will have significant impacts to this resource that previously was not analyzed in the SEORMP EIS. (For example, aside from the impacts of grazing and range structures associated with grazing, BLM should analyze the impacts of its SEORMP motorized vehicle designations on wilderness values.) As a result, BLM should consider the impacts of land use plan-level decisions, as well as LCGMA-level decisions, on the wilderness values present in these areas. Finally, this also supports our position from the outset that BLM must prepare an environmental impact statement for its LCGMA projects and decisions.

Conclusion

Thank you once again for the opportunity to comment on the LCGMA projects and the outstanding public land and resource values present in this remote corner of Oregon. If you have any questions concerning these comments or wish to discuss the matter further, please do not hesitate to contact us.

Sincerely,

s/ Peter M. Lacy

Peter M. Lacy, Senior Attorney
Oregon Natural Desert Association

917 SW Oak Street, Suite 408
Portland, OR 97205

503-525-0193
lacy@onda.org

Cc: Brent Fenty, Executive Director
Oregon Natural Desert Association

Jon Marvel, Executive Director
Western Watersheds Project