



Oregon Natural Desert Association

VIA FAX and U.S. MAIL

January 21, 2005

Tom Dabbs, Field Office Manager
Malheur Resource Area
Vale District BLM
100 Oregon Street
Vale, OR 97918

Re: Comments on Proposed NEPA Document for North Fork Malheur River GMA

Dear Mr. Dabbs:

Please accept the following comments made on behalf of the Oregon Natural Desert Association (ONDA) regarding the BLM's proposal to prepare a NEPA document to analyze management actions related to Federal Rangeland Health regulations determinations for allotments within the North Fork Malheur River GMA. ONDA is pleased to see that this area is finally nearing the point at which meaningful changes to grazing management may be made. Based on the number of allotments and pastures failing to meet standards due to current grazing practices, it is clear that change is needed. Please consider the following comments as you begin this NEPA process.

I. Scope of NEPA Document

The BLM's December 10, 2004 letter does not specify whether the BLM intends to prepare an EA or an EIS. ONDA believes the BLM should prepare an EIS for this project. The BLM must prepare an EIS for all major federal actions that "may significantly affect the quality of the human environment." 42 U.S.C. § 4332(2)(C). An agency may first prepare an EA to determine whether the action may have a significant environmental effect, thus requiring an EIS. 40 C.F.R. §§ 1501.4, 1508.9. The factors used to determine significance are "context" and "intensity" and include consideration of the uniqueness of the geographic area, public controversy, and the uncertainty of the project's possible effects. 40 C.F.R. § 1508.27. Because the proposed project covers nineteen grazing allotments, over 90,000 acres, 16 stream miles (including the North Fork Malheur River, which is designated as suitable for inclusion in the national wild and scenic rivers system), could take many years to fully implement, may include significant vegetative (and habitat) manipulation and treatment, and involves several special management areas, this project is a textbook example of a project that requires an EIS.

II. Potential Effects to Sage Grouse Populations and Habitat

Please insure that the EIS fully considers effects to sage grouse populations and habitat within the GMA. This discussion should include an assessment of whether the area has the necessary protective cover, food and other habitat attributes for the many special status and important wildlife species present, including sage grouse and other sage-dependent species. The EIS also should discuss the degree of existing habitat fragmentation present in the planning area, the new fragmentation that would be caused by any newly proposed projects, or any expanded fragmentation that would be caused by reconstruction of long-defunct rangeland projects that would be re-built. To protect the sage grouse in the GMA, the Malheur Resource Area and beyond, the BLM's strategy should include the significant reduction or elimination of major causes of disturbance, such as livestock grazing. See David Dobkin, Management and Conservation of Sage Grouse, Denominative Species for the Ecological Health of Shrubsteppe Ecosystems, USDI, Bureau of Land Management (1995).

The BLM also should discuss how the alternatives will comply with the agency's Greater Sage-Grouse and Sagebrush-Steppe Ecosystems Management Guidelines (hereinafter "Guidelines"). For example, the Guidelines state that "[t]iming and location of livestock turnout and trailing should not contribute to livestock concentrations on leks during the sage-grouse breeding season." Guidelines at 11. Breeding season begins mid-March, and many of the turnout dates listed in the allotment determinations fall very near this time. Related to this, please insure that the EIS provides maps overlaying the locations of known sage grouse leks and habitat against proposed grazing rotations, pipelines, watering troughs and other existing and proposed range developments. The EIS also should provide maps that overlap important information on special status species habitats and populations, topographic features, areas of exotic species or weed infestations, and areas of currently depleted vegetation.

III. Suitability of Livestock Grazing at Continued Levels

Because the BLM declined to conduct an analysis of the suitability of continued grazing throughout the areas within this GMA during the course of its Southeast Oregon RMP ("SEORMP") planning process, the agency should conduct that analysis during this process. That the suitability analysis should occur at this point is even more important given the fact that the BLM also routinely declines to engage in such analyses during its decision-making points related to issuance of annual operating plans and development of allotment management plans. In fact, many of the allotments in this GMA have no AMPs implemented.

This is amplified by the fact that the BLM has argued in the context of the SEORMP (1) that grazing decisions should be made on a more site-specific basis, and (2) that the "adaptive management" process will allow the agency to make necessary management changes as issues are identified over the life of the Plan. See SEORMP FEIS, Vol. 3 at 76 (SEORMP "does not identify site-specific livestock management actions that would be implemented with the signing of [the ROD]" and "[t]hroughout the life of the plan, the adaptive management process . . . would be implemented within GMA's [sic] and may result in site-specific reductions or increases in levels of authorized livestock use") (emphasis added); SEORMP at 111-13 (describing role of adaptive management in SEORMP implementation). If the BLM continues to decline to prepare

AMPs for these allotments, though, the GMA process is the logical and only remaining place to undertake this analysis.

The EIS should clearly present data on the changes in livestock numbers and AUMs that may occur in each pasture under each alternative. This is necessary to understand the impacts on the pastures and surrounding lands and fish and wildlife populations. The document should show how use and impacts to native pastures, ACECs, WSAs, potential wild and scenic rivers, and critical seasonal or year-long ranges for native species will change or be altered and shifted.

IV. Impacts to Soils

Even under moderate stocking rates, grazing substantially contributes to deterioration of soil stability in deserts. This leads to increased soil erosion. Soil erosion is further exacerbated by increased surface runoff triggered by loss of vegetation cover and litter, both of which have been shown by numerous studies to be reduced by livestock grazing. The EIS should engage in a thorough analysis of soils and the effects of the proposed grazing on the soils within the planning area.

V. Impacts to Biological Soil Crusts

The BLM's allotment determinations did not discuss biological soil crusts. The EIS should include a discussion of whether and where crusts exist within the project area. That discussion should include recent research on the role of biological soil crusts with respect to preventing the invasion and spread of noxious weeds. This is critical because it appears every one of the nineteen allotments at issue has some level of weed infestation. Crusts are critical to restoring vegetative communities and preventing the spread of invasive and noxious weeds. Recent research has shown exotic species richness to be strongly negatively correlated with crust cover, and that crusts often present a "physical barrier to invasive species establishment and growth." See Thomas J. Stohlgren *et al.*, Patterns of Plant Invasions: A Case Example in Native Species Hotspots and Rare Habitats, 3 *Biol. Invasions* 37–50 (2001). Crusts also add available resources to a site by fixing tremendous amounts of Nitrogen, increasing surrounding soil N by as much as 200%. *Id.* at 47–48.

Note too that it will be important to consider the effects of the proposed season of use on crusts within the project area. Early season grazing, as is currently authorized throughout the area, is detrimental to biological crusts. Appropriate land management to protect biological crusts may include controlled winter grazing, which can reduce impacts of trampling disturbances on crusts because they are either soft and wet (and thus pliable), are frozen (and thus relatively resistant to disturbance) or are covered by snow (and thus protected from disturbance). Spring and summer grazing is more damaging because crusts are brittle and disintegrate when trampled. However, if grazing during the appropriate time for minimizing damage to biological crusts still will cause negative environmental impacts to other resources, that implies that in these high desert ecosystems there is no time of year that grazing (at least at currently authorized levels) is truly sustainable—which is what the scientific literature has long suggested concerning the ability of intermountain West's deserts, grasslands, shrublands, and woodlands to support livestock grazing. See R.N. Mack & J.N. Thompson, Evolution in steppe with few large, hooved mammals, 119 *American Naturalist* 757 (1982); R. N. Mack, Temperate

grasslands vulnerable to plant invasions: characteristics and consequences, pp. 155–79 in J.A. Drake et al., eds. *Biological Invasions: A Global Perspective*, John Wiley & Sons, Chinchester, United Kingdom (1989); D.G. Milchunas & W. K. Lauenroth, Quantitative effects of grazing on vegetation and soils over a global range of environments. 63 *Ecol. Monographs* 327 (1993).

VI. Defunct Rangeland Projects

The EIS should assess and consider the cumulative impacts of the proposal with respect to existing, operative, or defunct rangeland projects, as well as the impacts of any reconstruction projects. As the allotment determinations suggest, there are a great many Vale Project-era “rangeland improvements” in the Malheur Resource Area and the planning area that are long defunct, may have never worked to begin with, and are dilapidated to a condition where entirely new facilities would need to be built. The BLM should acknowledge that rangeland projects in these areas simply cannot be relied on to function or be maintained such that they can support high stocking rates. See also Kindschy et al., Bureau of Land Mgmt., “A Legacy of Land Treatments: Final Report of the 2002 BLM Legacy Program” (Dec. 2002); Harold F. Heady, Ed., “The Vale Rangeland Rehabilitation Program: An Evaluation,” PNW-RB-157 (June 1988).

VII. Water Quality and Quantity

The EIS should assess the impacts of large amounts of livestock waste deposited on the land, with nutrients, coliform bacteria and other disease organisms washing into downstream waters—including potential wild and scenic rivers and the Beulah Reservoir. This assessment should include the lack of vegetation to slow down water and nutrient runoff into these stream systems. In addition, the EIS should assess the impacts of proposed utilization levels, stocking rates, seasons of use and livestock projects on water quantity. In short, the EIS should take an integrated, watershed approach in analyzing the significant values present in the GMA that are impacted by livestock. Given the widespread ecological problems the BLM has documented across this landscape, any new grazing plan must be accompanied by a much more protective level of utilization, trampling standards and other mandatory, measurable use standards. This should include mandatory, quantifiable standards for riparian area use, such as stubble heights, bank damage/stability standards, riparian browse standards, width-to-depth ratios, and the use of these standards to trigger livestock removal from pastures or riparian areas.

In addition, the BLM is subject to the requirements of the Clean Water Act (CWA), 33 U.S.C. §§ 1271–1387. Section 303 of the CWA addresses water quality via water quality standards, which specify the appropriate uses of water bodies and set standards to protect those uses. Implementation of water quality standards requires states to place those waters not meeting water quality standards on the 303(d) list. 33 U.S.C. § 1313(d)(1)(A)–(B). States must then calculate total maximum daily loads (TMDLs) for those waters not meeting water quality standards. *Id.* § 1313(d)(1)(C); 40 C.F.R. § 130.7. The BLM must insure that its adaptive management approach to listed water bodies without approved TMDLs does not lead to continuous violations of the CWA.

The primary cause of water quality degradation on the public lands, including those within the GMA, is pollution from nonpoint sources. As you know, the evidence linking

livestock grazing to riparian degradation and water quality problems is overwhelming and conclusive. Grazing degrades water quality by causing bacterial contamination, decreasing oxygen levels, stimulating algal blooms, and causing increased water temperatures as a result of trampled stream banks and denuded riparian vegetation. See, e.g., A.J. Belsky *et al.*, “Survey of Livestock Influences on Stream and Riparian Ecosystems in the Western United States,” 54 *J. Soil & Water Cons.* 419 (1999). Please recognize that authorizing AUMs and allowing for issuance of grazing permits for grazing allotments adjacent to water quality limited streams, limited solely by adaptive management techniques, may violate the CWA’s requirement that federal agencies must adhere to state water quality standards to the same extent as nongovernmental entities. 33 U.S.C. § 1323(a) (referring to federal agencies “engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants”). The requirements of Section 313 are mandatory in nature. The BLM must actually satisfy water quality standards and must actually insure that it does not engage in any activity (including issuance of federal grazing permits) that may result in runoff of pollutants into water quality limited streams.

VIII. Wilderness Values

As you are aware, ONDA submitted to the BLM on February 6, 2004 a Wilderness Inventory Report and Recommendations (“Report”) for the Vale District. ONDA inventoried over 2.2 million acres of public land in the Vale District and has recommended 42 new wilderness study areas or additions, or wilderness ACECs, totaling more than 1.3 million acres. The inventory was conducted pursuant to the BLM’s *Wilderness Inventory and Study Procedures* handbook, H-6310-1. See also www.onda.org/projects/owyhee/FullReport.pdf (copy of full 400-plus page report and recommendations to BLM, complete with maps, detailed narratives, and road logs, per BLM Wilderness Inventory Handbook). Two of the inventoried areas, the Beaver Dam Creek Addition and the Lake Ridge Proposed WSA, lie within the GMA planning area. Report at 13–21, 150–161. Please consider this new information during this planning process, including considering whether these areas with documented wilderness characteristics and values warrant further protection, as ONDA has recommended.

IX. Monitoring

Please insure that the EIS comprehensively addresses the important issue of monitoring. This includes a discussion of how land managers currently are monitoring the effects of grazing in the GMA and inventorying for baseline data, as well as details on what type of monitoring will be done, when it will be done, how the information obtained will be used, and so forth. If the BLM intends to implement “adaptive management” in the GMA, as it stated in the SEORMP, the agency must perform ongoing monitoring and assessment of its proposed and implemented activities on the public lands. Importantly, photo monitoring and filling out qualitative PFC sheets is not the type of rigorous, objective and quantitative monitoring that will provide useful data upon which to base future decisions.

Monitoring is critical because on the ground, the public lands throughout the GMA are very often in severely degraded condition. The BLM’s “key areas” and the sites where utilization is measured are very rarely located in such areas. Instead, they are at sites distant from livestock

concentrations and do not represent conditions over the vast areas of these allotments where fences, water sources and other impacts have resulted in soil depletion and degradation of vegetation, recreational values and special status species habitats. Please address the frequent problem in which the areas most frequented by livestock within the planning area produce much less forage than the reference communities. In order to provide reasonable and well-informed stocking rates, the EIS should provide maps of current conditions across the allotments and pastures at issue, current forage production data, and calculations of the areas thus impacted.

X. Previous Grazing Management Changes

Many of the rangeland health determinations indicate that the determinations had been made previously and that grazing management changes would be made prior to the start of the 2004 grazing season. Please provide in the EIS a full description of those changes, on a pasture-by-pasture basis, as well as any post-2004 grazing season information or analyses assessing the effectiveness of those changes. That information will help inform the degree to which further changes will be required in those areas for the 2005 grazing season. It will also help inform the scope and type of changes that will be required before the 2005 season on allotments and pastures for which determinations of failed standards and guidelines were only made after the start of the 2004 grazing season—that is, the areas for which grazing changes prior to 2005 turnout are required pursuant to 43 C.F.R. Part 4180.

XI. Conclusion

Thank you for the opportunity to participate in this planning process and for your careful consideration of these comments. If you have any questions or wish to discuss these comments further, please feel free to contact me at the address below or Bill Marlett at 541-330-2638 (bmarlett@onda.org).

Sincerely,

s/ Peter M. Lacy

Peter M. Lacy (Mac), Staff Attorney
Oregon Natural Desert Association
917 SW Oak Street, Suite 408
Portland, OR 97205
503-525-0193
lacy@onda.org

Cc: Bill Marlett, Executive Director
Oregon Natural Desert Association