



Oregon Natural Desert Association

January 26, 2006

VIA EMAIL

Rhonda Karges
Bureau of Land Management
28910 Hwy 20 West
Hines, OR 97738

Re: South Steens Water Development—scoping comments

Dear Ms. Karges:

Please accept these comments submitted on behalf of the Oregon Natural Desert Association, Oregon Wild, and Western Watersheds Project (hereafter “ONDA”) regarding the South Steens Water Development scoping letter. The scoping letter’s attached map indicates that BLM is considering reservoirs, or other water developments, in 17 separate locations.

ONDA fundamentally opposes this project for two primary reasons. First, construction of up to 17 new reservoirs would have unavoidable impacts on the ecology and wilderness values of the Donner und Blitzen and Blitzen River Wilderness Study Areas, and as such has no place there. Second, this proposal is based on the deeply flawed premise that BLM has a responsibility to maintain levels of “historic” grazing which were in place before grazing was excluded by law from the Donner und Blitzen Wild and Scenic River Corridor (“Corridor”). ONDA implores BLM to drop this proposal and to implement the proposed Corridor fence construction project as a proactive project to protect the livestock-free Corridor, free of harmful and unnecessary water developments for livestock in Wilderness Study Areas.

Background.

The impact of livestock in the Donner und Blitzen Wild and Scenic River Corridor is an issue which ONDA and its members have been concerned about for many years. ONDA’s concerns were echoed in a BLM-commissioned Nature Conservancy study on the Corridor in 1991. The study detailed how “[g]razing has had a broad scale [e]ffect upon the riparian and upland vegetation in the Blitzen River System” and “[t]he South Fork Blitzen River was so heavily grazed that the riparian [area] had been essentially destroyed over a significant part of the segment.” The study concluded that “[o]ur unanimous recommendation is to remove grazing from the entire river corridor and to effectively prevent trespass from nearby allotments.” Despite this recommendation, the BLM’s 1993 Donner und Blitzen National Wild and Scenic River Management Plan failed to exclude cattle grazing from any new part of the Corridor.

ONDA and several other groups challenged this plan in federal court in 1995. The court held that the river plan violated the Wild and Scenic Rivers Act because BLM failed to adequately consider excluding cattle from the Corridor. Ore. Natural Desert Ass'n v. Green, 953 F.Supp. 1133 (D. Or. 1997). The resulting injunction, which remains in effect to this day, bars BLM from “approving any annual grazing plan for, issuing any license for, or otherwise authorizing any domestic livestock grazing on public lands within the Designated River Corridor.” Final Judgment, (1)(A) (May 5, 1997).

In 2000, the Steens Act created the nation’s first Congressionally-designated cow-free wilderness which included the Donner und Blitzen Wild and Scenic River Corridor. Section 113(e) provides that “[t]he Secretary shall be responsible for installing and maintaining any fencing required for resource protection within the designated no livestock grazing area.” The Act also provided “forage replacement” to several ranches including Roaring Springs Ranch, and directed the Secretary to construct fencing and water systems if necessary for livestock use on those enumerated forage replacement areas. Because (1) the Corridor was a cow-free zone three years prior to the Steens Act, and (2) the Corridor was not designated “forage replacement” areas, the provisions providing replacement forage and authorizing new water developments do not apply here.

To implement these mandates, the BLM published an Environmental Assessment for Projects for Implementation of the Steens Act, EA #OR-027-01-27, on April 25, 2001. The BLM’s Decision Record implemented over a dozen fence construction, water development, and fence removal projects in order to “secure the ‘no livestock grazing area’ and achieve the replacement forage objectives contained in the Act.”

The BLM did not build a fence along this particular reach of the river, assuming the rimrock bordering the river would be an effective barrier to trespass cattle. In the intervening years, cattle continued to trespass into the Corridor at this location. ONDA is aware of many instances of public complaints to the BLM regarding cattle trespass in the Corridor, in violation of the injunction, and corresponded with the BLM about the trespass cattle on several occasions.

BLM finally decided to construct the fence in 2006. It amended the Decision Record on February 3, 2006 to state that 2.5 miles of new fence would be built. The rationale given was that:

In the past 2 years cattle have been crossing the South Fork Donner und Blitzen River from the South Steens Allotment. The cattle are using existing trails and drainages on the west side of the river and crossing into the No Livestock Grazing area. The cattle continue into Big Indian, Little Indian, and Mud Creeks and the Riddle Brothers Ranch meadows.

BLM did not send ONDA notice of the Amended Decision.

The Roaring Springs Ranch appealed the Amended Decision. The BLM and Roaring Springs Ranch entered into an “Agreed Motion to Stay Decision and to Stay Proceedings” dated

March 15, 2006. The Agreement provides that, “[i]n order to facilitate continued negotiations,” the BLM will stay the Amended Decision for one year and the parties will stay briefing for one year. BLM did not notify ONDA of the appeal or stay.

BLM and Roaring Springs Ranch then drafted a Cooperative Range Improvement Agreement. Again, the public did not receive notice of the Agreement. In it, the BLM agrees to write an EA “to develop waterholes/ reservoirs within the South Fork Donner und Blitzen and the Blitzen River WSAs to provide water for livestock, wildlife and wild horses. *When* alternative water is developed, BLM will construct 2.5 miles of fence between Bradeen Crossing and Tabor Cabin.” (emphasis added).

Lack of Transparency; Predetermined Outcome.

The secrecy in which the Cooperative Range Improvement Agreement was made is troubling. To the best of ONDA’s knowledge, the Agreement was executed with Roaring Springs Ranch with no public notice, comment, or public participation whatsoever. Despite this, BLM agreed to a predetermined outcome for this EA in the Agreement, which states that “[w]hen alternative water is developed,” BLM will construct the overdue fence. It is inappropriate and unlawful for BLM to make such an important land use management decision—to build up to 17 artificial water developments in a very popular recreation area, required to be managed for wilderness qualities—without public input.

Misconstrual of the Steens Act.

The unambiguous purpose of the Cooperative Management and Protection Area is “to conserve, protect, and manage the long-term ecological integrity of Steens Mountain for future and present generations.” 16 U.S.C. § 460nnn-12. The scoping letter implies that construction of new reservoirs, and associated maintenance of “historic” levels of grazing prior to the exclusion of grazing in the Corridor, is somehow mandated by the Steens Act. See Letter at 1 (characterizing proposal as an EA “to analyze effects to grazing, wild horses, and WSA management . . . from implementing Section 113(e)(2) and Section 202(d)(2) of the [Steens Act]”). But Section 113(e)(2) provides for cancellation of grazing permits within the “no livestock grazing area”; prohibition of grazing use in that area; and installation and maintenance of fencing to protect that area. 16 U.S.C. § 460nnn-23(e)(2). It states absolutely nothing about maintaining historic levels of grazing prior to passage of the Act, or building water developments to do so. And Section 202(d)(2) provides that BLM shall permanently retire all grazing permits within the Wilderness Area, and that livestock shall be excluded. Id. § 460nnn-62(d)(2). Again, there is absolutely no mention of maintaining grazing levels or water development.

In fact, the Act did provide for “mitigation” for loss of forage incurred by ranchers due to creation of the no livestock grazing area in Section 113(e)(3). That section, titled “Forage replacement,” provides three forage reallocation areas for Roaring Springs Ranch: Miners Field Pasture, Schouver Seeding, and Bone Creek Pasture. Id. § 460nnn(e)(3)(C). That forage reallocation served as Roaring Springs Ranch’s mitigation for its loss of forage in the no livestock grazing area. Another form of mitigation was that the Roaring Springs Ranch was permitted to continue to use a water gap in the Taber Cabin area of the Corridor for livestock

watering after the parcel was exchanged to the federal government. See id. § 460nnn-101. While this might have been prohibited by the ONDA v. Green injunction, in the spirit of compromise and in an attempt to settle the issue of livestock access to the Corridor, ONDA and BLM successfully requested in 2002 that the injunction be modified to allow for livestock use of the water gap. Finally, RSR’s compensation also included a \$2,889,000 payment in one of the Steens Act’s land exchanges, in which it also received approximately seven times as much land as it transferred to the federal government. Id. § 460-nnn-101(a)-(d). The Steens Act provided mitigation to Roaring Springs Ranch—it did not direct BLM to provide any more.

Thus, the implication that the Steens Act somehow demands this proposed action is simply not correct. ONDA fails to understand how this project conserves, protects, or manages for the “long-term ecological integrity” of Steens Mountain.

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

The EA should explain how the new reservoirs and fencing equate to management “in a manner so as not to impair the suitability of such areas for preservation as wilderness,” pursuant to FLPMA § 603. 43 U.S.C. § 1782(c). Further, it should explain how each new reservoir will enhance wilderness values as required by the Interim Management Policy for Lands Under Wilderness Review (“IMP”), after analyzing how each new reservoir will impact the parameters and all wilderness values as listed in the IMP at D.2.a. IMP at D.3.c., D.4.d. Please address how vehicles will access the sites for construction, and what type of access for maintenance will be required.

The scoping letter indicates that the construction of the reservoirs would cause changes in the “grazing system,” since the current grazing system “does not always occur as planned due to lack of reliable water.” Letter at 5. The IMP likewise requires the BLM to determine how any new grazing systems will impact will impact the parameters and all wilderness values as listed in the IMP at D.2.a. IMP at D.2.c.

Consistency with FLPMA’s Multiple Use and Undue Degradation Provisions.

FLPMA establishes BLM’s duty to affirmatively balance the wilderness resource against other valid “multiple uses” of the public lands, ensuring its selected course of action will not cause “unnecessary or undue degradation” of the lands. 43 U.S.C. §§ 1732(a), 1732(b). The EA should explain explain any basis for its multiple use balancing and why the project does not cause unnecessary or undue degradation. See also IMP at D.2.b. (stating that even grandfathered uses must comply with unnecessary and undue degradation provision).

Consistency with Steens RMP.

The EA should explain how the proposal is consistent with all relevant standards, guidelines, and best management practices in the Steens CMPA RMP, pursuant to 43 U.S.C. § 1732(a).

Consistency with Steens Act.

The EA should explain how the construction of new livestock reservoirs in the affected WSAs would achieve the purpose of the Steens Act, “to conserve, protect, and manage the long-term ecological integrity of Steens Mountain for future and present generations.” 16 U.S.C. § 460nnn-12. This includes, but is not limited to, discussing impacts to biological soil crusts, soils, vegetation, wildlife and wildlife habitat, and water quality and quantity, as discussed below.

The EA should explain how the construction of the reservoirs would meet the Steens Act provision prohibiting construction of new facilities unless the structure is (1) minimal in nature, (2) consistent with the purposes of this Act, and (3) “is necessary (A) for enhancing botanical, fish, wildlife, or watershed conditions; (b) for public information, health, or safety; (C) for the management of livestock; or (D) for the management of recreation, but not for the promotion of recreation.” *Id.* at § 460nnn-23(f).

The scoping letter states that alternatives considered may include “water gaps” and “continued limited use of the Donner und Blitzen WSR.” Letter at 4. Would these water gaps and continued-use areas be within the no livestock grazing area? If so, these alternatives appear to directly conflict with the mandate of keeping the “no livestock grazing area” free of livestock. 16 U.S.C. § 460nnn-23(e)(2). BLM should not consider an illegal alternative that would undermine the establishment of the no livestock grazing area. Furthermore, these alternatives would violate the terms of the *ONDA v. Green* injunction prohibiting BLM from “otherwise authorizing any domestic livestock grazing on public lands within the Designated River Corridor.” Final Judgment, (1)(A) (May 5, 1997).

Consistency with Wild and Scenic Rivers Act.

The EA should explain how the water developments would impact the Wild and Scenic Donner und Blitzen River and its values. Will the proposal serve to protect and enhance those values? For example, would the developments alter the river’s water quantity by impounding tributary flow and altering natural flow patterns? The map indicates that several of the proposed reservoirs are within a mile of the river. How would the developments alter the water quality of the river by drawing livestock, and their associated trampling and fecal impacts, closer to the river? Finally, would the developments increase the likelihood of livestock trespass into the Corridor by drawing livestock closer to the river?

Impacts of Reservoirs on Crusts, Soils, and Plant Life.

Livestock watering holes create large areas of heavily-trampled ground devoid of vegetation. The EA should discuss the impacts of livestock grazing on biological soil crusts, and the anticipated impacts on biological soil crusts present in the project area. Also, please include a detailed discussion of the impacts of livestock grazing on soils, and BLM’s solutions to address these impacts. This should include a candid discussion stemming from the basic premise that livestock grazing can remove vegetative cover, compact soil, and alter nutrient cycling; these effects in turn can decrease infiltration and water.

The EA should explain how the creation of new heavily-trampled areas would affect native plants both directly and cumulatively. Please specifically address the impacts to plants that specialize in riparian habitat.

Impacts of Reservoirs on Wildlife.

The EA should explain how the creation of artificial water sources, alteration of natural stream flows, and the creation of new heavily-trampled areas will affect wildlife including sage grouse, other native birds, pronghorn, and riparian species such as amphibians, both directly and cumulatively. How will the increased levels of grazing that these reservoirs would facilitate affect these species? How will the reservoirs themselves affect these species? How will the creation of new areas devoid of vegetation affect these species? How will the alteration of the natural water flow and any dewatering of springs and streams affect these species? Please especially address amphibians in this regard. To what specifications will the reservoirs be built to mitigate wildlife drownings, inability of young pronghorn to reach into troughs, and other impacts?

Impacts of Reservoirs on Noxious Weed Infestations.

The EA should explain how the creation of new heavily-trampled areas would affect the control and spread of noxious weed infestations, including Scotch thistle, in the project area. Will construction and the cattle congregation lead to increased risk of infestation? How will any increased risk be eliminated?

Impacts of Reservoirs on Riparian Areas and Water Quality and Quantity.

The scoping letter states the reservoirs will be constructed “at existing springs” or “within the confines of streambeds.” Letter at 4. How will the hydrology of the springs and streams change with construction of the developments? Will the developments utilize pipelines and/or pumps to drain the natural springs, streamflow, or groundwater? Will this cause other areas to become dewatered? How will the alteration of the natural water flow affect riparian vegetation and water quality and quantity, both directly and cumulatively? How will the trampling and fecal pats associated with increased cattle congregation affect riparian vegetation and water quality and quantity, both directly and cumulatively?

Grazing Impacts.

The scoping letter attempts to characterize this proposal as a means by which to provide “historic” levels of livestock grazing present before livestock were excluded by law from accessing the Wild and Scenic River Corridor. Letter at 4. However, since livestock are now indeed excluded by law from the Corridor, the grazing level will be a *de facto* increase in livestock numbers and impacts. The EA must analyze the effects this overall grazing increase will have on the resources discussed above throughout the entire affected pastures, including biological soil crusts, soils, vegetation, wildlife, and noxious weeds. How would the reservoirs affect the grazing rotation system?

Impacts of Reservoirs on Visual Resources and Recreation.

The EA should analyze the effects of the new reservoirs on visual resources and recreation experiences in the two affected WSAs. Specifically, how will public lands users' recreational experience be affected by the visual impacts of the reservoirs? How will public comments received by recreationists over the years be considered in this process?

Conclusion

Thank you for your consideration of these comments. If the EA is completed, please send copies to both ONDA's Portland and Bend addresses, listed below, as well as Oregon Wild and Western Watersheds Project. If you have any questions regarding these comments, please feel free to contact us at the addresses below.

Sincerely,

s/ Kristin F. Ruether

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