



Oregon Natural Desert Association

October 9, 2007

VIA EMAIL

Paul Steblein, Project Leader
Sheldon National Wildlife Refuge
PO Box 111
Lakeview, OR 97630

Re: Horse and Burro Management Revised Draft Environmental Assessment

Dear Mr. Steblein,

Please accept these comments submitted on behalf of the Oregon Natural Desert Association and Western Watersheds Project (collectively "ONDA"). ONDA is a non-profit, public interest organization based in Bend, Oregon with offices also in Portland, Oregon, whose mission is to protect, defend, and restore forever the health of Oregon's native deserts. The members and staff of ONDA use and enjoy the public lands of Oregon and northern Nevada, including the Sheldon-Hart Mountain National Wildlife Refuge Complex, for wildlife watching as well as recreational, scientific, spiritual, educational, aesthetic, and other purposes. ONDA has a cooperative agreement with the Refuge, under which it has organized many volunteer trips on Hart Mountain to remove barbed-wire fence no longer needed after the removal of livestock grazing.

Western Watersheds Project ("WWP") is a non-profit membership organization based in Hailey, Idaho, with offices also in Montana, Wyoming, Utah and California. WWP is dedicated to protecting and conserving the public lands and natural resources of watersheds in the American West. WWP, as an organization and on behalf of its 1200-plus members, is concerned with and active in seeking to protect and improve the wildlife, riparian areas, water quality, fisheries, and other natural resources and ecological values of watersheds throughout the West, including the Refuge.

Overall, ONDA supports both Alternatives B-1 and B-2. We are very troubled at the data presented in the EAs indicating that the horse and burro overpopulation is taking a toll on the native wildlife and flora. It was particularly shocking to learn from Figure 5 that there are now more horse AUMs than there were livestock AUMs at livestock grazing's heyday. EA at 36. We were also disappointed to read that the majority of Refuge funds are used towards horse and burro management. EA at 10. We would prefer that much more of the budget be available for restoring imperiled native wildlife species on the Refuge such as sage grouse, pygmy rabbit, and

Lahontan cutthroat trout, so the land can serve as a true refuge for those species facing pressure from grazing and other threats on all surrounding land. The Refuge is an ecological treasure in the Great Basin due in large part to its livestock-free status, and it is extremely important to protect its ecological integrity. For these reasons, ONDA supports Alternative B-1 most strongly.

Consistency with statutes governing the Refuge, the Refuge’s mission, and FWS guidance.

ONDA is concerned that Alternative A and, to a lesser degree, Alternative B-2, do not comport with the Refuge’s mission, the statutes governing the Refuge, and applicable FWS guidance. The Executive Orders establishing the Refuge emphasize the protection of “wild animals” and “natural wildlife resources.” EO 5540 (Jan. 26, 1931), EO 7522 (Dec. 21, 1936).

The National Wildlife Refuge System Administration Act of 1966 provides that uses are only to be permitted whenever the Service “determines that such uses are compatible with the major purposes for which such areas were established.” 16 U.S.C. § 668dd(d)(1)(A). The NWRS Improvement Act of 1997 further requires wildlife to be prioritized. It requires each refuge to be managed to fulfill the mission of the Refuge System and the specific purposes for which it was established. 16 U.S.C. § 668dd(a)(3)(A). It mandates that the Secretary “shall” “provide for the conservation of fish, wildlife, and plants, and their habitats within the System” and “ensure that the biological integrity, diversity, and environmental health of the System and maintained for the benefit of present and future generations of Americans.” *Id.* at (a)(4)(A), (B). Finally, the Secretary is not to permit a new use of a refuge to “expand” or “extend an existing use” of a refuge unless she has determined that “the use is a compatible use.” 16 U.S.C. § 668dd(d)(3)(A)(i).

Finally, FWS policy guidance states that the “System’s focus is on native species and natural communities such as those found under historic conditions,” where historic conditions are those “resulting from natural process that we believe, based on sound professional judgment, were present prior to substantial human related changes to the landscape.” 601 FW 3.

Horses and burros are not native, and both EAs have documented the adverse effect they are having on the native wildlife the Refuge is designed to protect. *E.g.* Revised EA at 17 (“Horse and burro populations on Sheldon Refuge have caused severe damage to water and vegetative resources, especially in riparian zones near springs, playa lakes, and streams . . . This damage is adversely affecting the capacity of the Refuge to support native wildlife species and restore the native ecosystem . . . 44 percent of all streams and 80 percent of the springs on the Refuge are heavily or severely degraded by horses.”) The Revised EA further states that “[t]he impact horses and burros have on habitat and fish, wildlife and plant species threaten the biological integrity, diversity and environmental health of Sheldon Refuge . . . and the Refuge’s contribution to conservation in the Great Basin ecosystem and the National Wildlife Refuge System.” *Id.* at 47. We assume the Refuge has *not* made a determination that horses and burros are “compatible” uses of the Refuge, 16 U.S.C. § 668dd(d)(1)(A), but if this is not correct, please explain any such determination in the decision.

For these reasons, we urge you not to select Alternative A, as it would violate the Refuge’s mission, the statutes governing the Refuge, and applicable FWS guidance. The

description of the effects of Alternative A show that aquatic resources, soils, vegetation, wildlife, and biodiversity would not only fail to be protected, but would “continue to deteriorate.” EA at 51–61. We are concerned that unchecked horse populations would severely harm imperiled species such as pygmy rabbit and sage grouse, and the endemic spring invertebrate species.

Selection of Alternative A, with its subsequent deterioration of conditions, would not comport with the mission’s goal of protecting native wildlife resources. It would not comport with the Secretary’s mandate to “provide for the *conservation* of fish, wildlife, and plants, and their habitats within the System” and “ensure that the biological integrity, diversity, and environmental health of the System are *maintained* for the benefit of present and future generations of Americans.” 16 U.S.C. § 668dd(a)(4)(A), (B) (emphasis added). Permitting unchecked numbers horse and burros would effectively be an unlawful extension of an existing use of a refuge, without the required compatibility determination. 16 U.S.C. § 668dd(d)(3)(A)(i). Nor would it comport with agency guidance to focus on native species. 601 FW 3.

We are also concerned that Alternative B-2 may not comply with the Refuge’s mission and guidance, because it would also fail to protect wildlife and related resources from degradation. Although the alternative would maintain the status quo, the EAs show that the status quo is in fact harming native wildlife and related resources. For example, the EA states that the health of streams, springs, and riparian areas would stay in a damaged state, and deteriorated soils and biological crusts would not improve. EA 68–69. The maintenance of current horse and burro numbers would “continue damage” to native plant communities, increasing the chance for noxious weed infestations. *Id.* at 69. Many types of wildlife would decline or have habitat damaged including invertebrates, fish, reptiles and amphibians, migratory birds, sage grouse, small mammals, and large mammals. For these reasons, B-2 may not comport with applicable authority, either.

ONDA is particularly concerned about these effects on sage grouse and pygmy rabbit, both imperiled sagebrush obligates which find a stronghold in the Refuge. An extensive body of science shows that the pygmy rabbit is an imperiled, “extreme” sagebrush-obligate species that responds negatively to the destruction of its habitat. They “typically occur in areas of tall, dense sagebrush cover, and are highly dependent on sagebrush to provide both food and shelter throughout the year.” *Id.* at 29254 (citing Dice 1926, Grinnell et al. 1930; Orr 1940; Green and Flinders 1980a, b; Janson 1946; Wilde 1978; Katzner et al. 1997). A recent court ruling issued less than two weeks ago requires the U.S. Fish and Wildlife Service to reissue a new 90-day Finding regarding whether a pygmy rabbit listing petition provided substantial information to indicate that listing the species may be warranted. Western Watersheds Project v. Norton, CV 06-00127-S-EJL (D. Id. Sept. 26, 2007). The court came to that conclusion after finding that the previous denial of the pygmy rabbit petition was contrary to law because it applied a higher standard of review than permitted. This decision further confirms the imperiled status of pygmy rabbits and makes it all the more important to conserve its habitat in strongholds like the Refuge.

Because “Alternative B-1 would provide the greatest benefit in ameliorating the cumulative ecological impacts that are threatening the sagebrush steppe ecosystem,” we encourage you to select it. EA at 50.

Compliance with NHPA

The EA states that “trampling and erosion from horses has impacted and threatens to continue impacting archaeological sites that are eligible to the National Register of Historic Places,” and that at least four sites have suffered documented horse and burro impacts. EA at 60–61. In light of this, please discuss in the decision whether Alternatives A and B-2 would comply with the National Historic Preservation Act.

Conclusion

Thank you for the opportunity to participate in this process. When completed, please send copies of the EA to both ONDA’s Portland and Bend addresses, listed below, and WWP. If you have any questions regarding these comments, please feel free to contact us at the addresses below.

Sincerely,

s/ Kristin Ruether

Kristin Ruether, Staff Attorney
Oregon Natural Desert Association
917 SW Oak Street, Suite 409
Portland, OR 97205
503-525-0193
kruether@onda.org

Bill Marlett, Executive Director
Oregon Natural Desert Association
16 NW Kansas
Bend, OR 97701
541-330-2638
bmarlett@onda.org

Jon Marvel, Executive Director
Western Watersheds Project
P.O. Box 1612
Boise, Idaho 83701