

FINDING OF NO SIGNIFICANT IMPACT  
AND  
DECISION RECORD  
FOR  
ANKLE CREEK INHOLDER ACCESS  
ENVIRONMENTAL ASSESSMENT  
OR-027-02-011

INTRODUCTION:

On October 30, 2000, the Steens Mountain Cooperative Management and Protection Act (Steens Act) of 2000 (Public Law 106-399) was signed into law, designating certain public land within the Burns District, Bureau of Land Management (BLM) as wilderness. The wilderness designation closed a number of dirt roads to public uses and required the BLM to make a determination of reasonable access to the private inholdings. While the Steens Act protects valid existing rights and does not terminate certain rights-of way, no easements or rights-of-way are in existence to provide access to the parcels at issue in this decision.

Access to non-Federally owned land is subject to the provisions of the Steens Act (Section 112 (e) (1)), the Wilderness Act, the Federal Land Policy and Management Act, and Federal regulations. The Steens Act states in Section 112(e) that "[t]he Secretary shall provide reasonable access to nonfederally owned lands or interests in land within the boundaries of the Cooperative Management and Protection Area and the wilderness area to provide the owner of the land or interest the reasonable use thereof." Reasonable access is determined for each inholding and can be motorized or nonmotorized depending on each particular circumstance.

Land Use Permits issued under Code of Federal Regulations (43 CFR) 2920 or Cooperative Management Agreements (CMA) entered into under the Steens Act will be used to augment implementation of the terms and conditions of this access decision.

The BLM, Burns District, has analyzed various alternatives to provide reasonable access to four private inholdings within the Steens Mountain Wilderness Area. Of the four inholdings being analyzed, two are owned by Central Oregon Land, LLC (George Stroemple), and the other two by Annette Fisherman, daughter of Florence Ellis. The Fisherman properties, referred to in the Environmental Assessment (EA) as Ellis, are currently under a 5-year lease to John and Cindy Witzel, Steens Mountain Packers, Inc. (SMP), which expires March 30, 2006. The purchase of the properties by Mr. Stroemple and the lease to SMP postdate wilderness designation.

The issues of physical impacts, protection of wilderness character, and perceived social impacts to other wilderness visitors, especially to natural quiet and solitude, have been raised in connection with motor vehicle use within the Steens Mountain Wilderness Area. On the other hand, the perceived infringement on private property rights and property values are issues raised by landowners and private property rights advocates.

The current land use plan for the Burns District predates the wilderness designation, however, this action is in conformance with the Andrews Land Use Plan (1982), as amended, which currently guides the management of public land within the Andrews Resource Area. This action is also consistent with the Proposed Resource Management Plan (RMP) and Final Environmental Impact Statement (EIS) for the Cooperative Management and Protection Area and the Andrews Management Unit.

#### SUMMARY OF PROPOSAL:

Four alternatives were analyzed in the EA. The decision to be made focuses on providing reasonable access to the four inholdings. Alternative B of the EA analyzes accessing the properties without the use of motor vehicles. Alternatives A, C, and D include the use of motor vehicles and vary from each other in the number of trips and which routes or portions of routes would be used for access. Alternative C also represents the basic criteria recommended by the Steens Mountain Advisory Council (SMAC). Maps of Alternatives A, C, and D were included with the EA.

#### FINDING OF NO SIGNIFICANT IMPACT:

Based on the analysis of potential environmental impacts detailed in the EA, I have determined that approval of Alternative C, when coupled with the mitigation measures and monitoring criteria analyzed in the EA and detailed in the attached Decision Record, will not have a significant impact on the human environment, therefore, preparation of an EIS is not required. Alternative C is consistent with the Steens Act, Wilderness Act, and 43 CFR 6305.

Wilderness characteristics and ecological processes in the Steens Mountain Wilderness Area will not be permanently harmed by implementation of the selected actions. There will be no irreversible or irretrievable commitments of, or damage to, natural resources caused by the selected actions. Only a small portion of the wilderness is potentially impacted by this action. Any impacts created by the presented actions on public land can be reclaimed or reversed if the private parcels are ever acquired by the BLM, such that motorized access would no longer be necessary.

Access authorizations to non-Federal land surrounded by wilderness are specifically permitted under Section 112 of the Steens Act and Section 5 (a) of the Wilderness Act.

## RATIONALE FOR FINDING OF NO SIGNIFICANT IMPACT:

The activities described in Alternative C, combined with the identified mitigation measures and monitoring actions will not cause unnecessary and undue degradation of public land. Resources present and, therefore, analyzed in the EA include noxious weeds; Special Status fauna; water quality; wetlands/riparian zones; Wild and Scenic Rivers; wilderness; recreation; socioeconomics; soils; migratory birds; wildlife; vegetation; and visual resources. Impacts to these resources are considered nonsignificant (based on the definition in 40 CFR 1508.27) for the following reasons:

### Water Quality:

Water quality impacts would be minor due to the limited number of crossings. Vegetation may be precluded from reestablishment at the crossings, however, the number and width of existing crossings is limited and, therefore, would not result in a measurable effect to water temperature. Sediment stirred up by vehicle crossings would only remain suspended for short distances.

### Wetlands/Riparian Zones:

There will be no significant effects due to the limited association of the Ankle Creek Route with riparian areas.

### Wild and Scenic Rivers:

The Geologic, Fisheries, and Cultural (Historic) Outstandingly Remarkable Values would not be affected by this decision. Recreation values would be impacted when visitors are in close proximity to vehicle use within the corridors. These interactions would be few and short term. There are also abundant opportunities for visitors to hike, fish, and hunt portions of the river corridor where motorized use of this route does not occur.

Impacts to Scenic and Vegetation river values from motorized use of the Ankle Creek Route would be insignificant. Vegetation reestablishment in the route would be restrained, therefore, the existing route would retain primitive road-like features. However, since vehicular use by the public is no longer allowed, traffic is expected to be less than historical levels and, therefore, the route is expected to become less visually evident than at the time of designation. Motorized activity will be noticeable to visitors hiking or in close proximity to the route but the anticipated vehicular use will be infrequent and short lived.

Wildlife present within the river corridors and close to the Ankle Creek Route may be disturbed by sights and sounds of vehicles but this impact would be short term. Some animals may prefer to relocate away from the route and there is abundant habitat available in which to do so.

### Wilderness:

This decision would allow motorized use of 17 miles of the Ankle Creek Route. Wilderness values of naturalness and opportunities for solitude and primitive and unconfined recreation would be impaired or diminished along and in proximity to the authorized route by the sights, sounds, and other evidence of motorized vehicles within the wilderness. Still, given the need to provide reasonable access, the expected level of use would allow visitors ample opportunity to visit this portion of the wilderness area without encountering motor vehicles. Since vehicular use by the public is no longer allowed, the remaining level of use is expected to be less than what was occurring prior to wilderness designation. Maintenance, whether by motorized/mechanized means or by hand tools, would be minimal in scope and would not improve the route to a condition more highly developed than at the time of designation, unless the improvement was necessary to protect wilderness resources. Every effort will be made to inform visitors of the likelihood of encountering vehicles and there are many other areas visitors can go which are absent of vehicles. Federal regulations require BLM to balance the needs of the private property owners while minimizing impacts to wilderness values and this decision does so.

### Noxious Weeds:

The potential for spread of noxious weeds is always present, but the route will be monitored and treated, if needed. These measures will prevent new infestations of noxious weeds. Monitoring indicates that past use of the Ankle Creek Route has not caused noxious weed establishment.

### Migratory Birds:

The effects of this decision on migratory birds would be the probable flushing of birds from the nest within approximately 10 feet either side of the Ankle Creek Route. This area would probably not be accessible until May 15 each year and possibly later, therefore, a portion of the nesting would be finished prior to vehicles accessing the area. The infrequent use of the route is not expected to cause nest abandonment.

### Special Status Fauna:

Impacts to Malheur mottled sculpin and redband trout due to water quality or physical disturbance will be localized and limited. While there is a potential for site-specific crushing of spawning areas where the vehicles cross the creeks, this potential is small since most spawning beds are located in the deeper pools. This potential impact is also considered insignificant with regard to the fish populations as a whole.

Special Status animal species inhabiting the affected area include Greater sage-grouse, California bighorn sheep, sage sparrow, northern goshawk, desert horned lizard, northern sagebrush lizard, spotted bat, Townsend's big-eared bat, and Preble's shrew. There are no significant impacts to any of these species resulting from the short-term displacement that may occur. There is also ample suitable habitat away from the Ankle Creek Route for displaced animals to relocate to should they chose to do so.

### Recreation:

Most recreation visitors to wilderness areas expect to experience solitude, naturalness, and primitive and unconfined recreation. Mitigating measures including signing and maps, will identify the Ankle Creek Route as a Service/Permit Use Route and explain that periodic motorized use is allowed to access private land. BLM will also work with the landowners and lessees in trying to provide a system of notifying visitors when motorized use is actually occurring. These combined measures should minimize unwanted encounters between motor vehicles and wilderness visitors.

### Visual Resources:

Impacts to visual resources from motorized use of the Ankle Creek Route would be insignificant. The route would retain primitive road-like features, however, elimination of public vehicular use should result in most portions of the route becoming less visually evident than at the time of designation. Motorized activity will be noticeable to visitors hiking and in close proximity to the route but vehicular encounters will be infrequent and short lived.

### Vegetation:

Vegetation along the established route would be crushed by the motorized vehicles and vegetation would be inhibited where tires regularly track along the route. Since public motorized access has been removed, vegetation cover would be maintained at or above levels that existed at the time of wilderness designation.

### Wildlife:

Wildlife close to the Ankle Creek Route would be disturbed by the motorized activity. Disturbance would be temporary for most species; however, some animals may relocate to areas away from the motorized activity. Habitat is plentiful in the area, therefore, relocation would not cause harm to wildlife. Mortality or injury is not expected to occur to any wildlife species due to motorized use except those associated with hunting activities.

### Soils:

Soil erosion is evident along some of the steeper slopes along the Ankle Creek Route, however, soil stability should improve beyond predesignation levels due to the expected reduction of motorized use and the resultant increase of vegetation along the route. Spot repairs of the route will be conducted as needed to maintain the route at a reasonable standard and to protect wilderness characteristics. The route will not be maintained to a condition more improved than that which existed at the time of wilderness designation.

Social and Economic Values:

Private real estate transactions may consider the fact that the private land is surrounded by wilderness and that access is regulated on public land. Transactions may also factor in the benefits of being surrounded by land being managed as wilderness. This decision is not expected to reduce access from the existing and historic modes and routes that were used prior to wilderness designation, or reduce spring, summer, and fall access below levels desired by the landowners and lessee. To date, post designation land sales in the wilderness area have not resulted in a decrease in property values.

Some tourists are drawn to wilderness areas. Return trips or word of mouth recommendations are dependant on the visitor's experience. Economic benefits derived from wilderness are relative to the degree management can provide the solitude and naturalness that is expected from visitors. To date, post designation visitation to Steens Mountain as a whole has remained relatively constant.

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Andrews Resource Area Field Manager

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Date

## DECISION AND RATIONALE:

As a result of the environmental analysis presented in the EA, and consideration of public comments, it is my decision to authorize reasonable motorized use of the Ankle Creek Route, to be used for accessing the private inholdings, as identified under Alternative C of the EA. This decision also provides direct access to the southern Stroemple parcel from the Ankle Creek Route. Motorized access for landowners, lessees, guests or agents may occur to the extent that the route does not improve to a condition more highly developed than that which existed at the time Congress designated the area as wilderness. If monitoring indicates that motorized use is causing the route to become more obvious, use would be reduced in order to return the route to the desired condition. Access to the Ankle Creek Route would be from the southern segment of the Steens Mountain Loop Road and would be authorized during the period of time, generally May 15 to November 15, when damage to the Steens Mountain Loop Road and Ankle Creek Route would not occur. Snowmobile use and use of Berrington Trail will be analyzed in a separate EA once additional information is received from the landowners and lessee.

I have selected Alternative C over the other alternatives because it provides reasonable access to the four private inholdings consistent with law and Federal regulations, while minimizing biological and social impacts to the wilderness. The Ankle Creek Route will likely become less evident under the expected level of allowable use. Impacts to wildlife, fisheries, and other natural resources will be less than predesignation levels and insignificant overall. Encounters with motor vehicles by wilderness visitors have been mitigated to the extent practicable while still allowing a reasonable degree of motorized use by the private landowners. Economic impacts from the discretionary elements of this decision will also be insignificant.

Based on the specific facts at issue in this decision, Alternative C strikes the best balance in providing reasonable access to inholdings while causing the least impact on wilderness character. As well as providing reasonable access as required by the Steens Act, Alternative C is consistent with the Steens Act because it was developed through consultation with the SMAC. The SMAC was created by Congress and is comprised of individuals who represent a broad array of perspectives. The SMAC spent considerable time and effort, with the assistance of a facilitator hired by BLM, in addressing the contentious issue of motorized access to inholdings and ultimately provided recommendations which form the basis for Alternative C. One of the concepts which the SMAC developed and which is implemented in Alternative C is the reliance on desired wilderness conditions to govern motorized trips rather than a predesignated numerical limit on trips. As detailed in the EA and this Decision Record, Alternative C will protect physical conditions in the wilderness since, among other reasons, it is tied to not allowing the Ankle Creek Route to become more developed or more obvious than prior to wilderness designation. Concerning wilderness visitor interaction, Alternative C provides for monitoring visitor reaction and adapting as necessary. Alternative C provides motorized access over the Ankle Creek Route which was regularly used to access these private land parcels at the time of wilderness designation.

Thus, Alternative C works with the choices that landowners made regarding access to the property prior to wilderness designation. In this manner, Alternative C is consistent with BLM's regulations concerning wilderness inholding access. See 65 Fed. Reg. 78358, 78369 (December 14, 2000). While Alternative A is protective of wilderness, it would require inholders to gain access over other private property to have motorized access all the way to their inholdings. In this sense, Alternative C is more conducive to inholder access and is responsive to the inholders' concerns. While setting a fixed limit on trips is a viable approach, BLM is attempting to address inholder objections to having trips limited by instead adopting Alternative C. Alternative B would also be protective of wilderness and would eliminate any motorized intrusion on vegetation or wilderness experience. While this is desirable from a wilderness perspective, BLM has determined it appropriate under BLM regulations to provide for seasonal vehicle access since this mode of access was in use at the time of wilderness designation. This is also a mode of access which is deemed important by the inholders. As noted in this decision, the inholders also have unlimited nonmotorized/nonmechanized access. In the case of the Fisherman property, the existing lessees provide commercial horseback tours throughout the Steens Area, so the lessees are particularly adept at using horses for travel.

Direct access to both Stroemple inholdings may occur from the northern segment of the Ankle Creek Route which extends to the southeast corner of the private land in Section 1, T. 35 S., R. 32<sup>3</sup>/<sub>4</sub> E. Motorized access is allowed to the southern parcel along an existing primitive route and through an existing gate in the fenceline marking the property boundary. The access route between the Ankle Creek Route and the private parcel is about 100 feet in length and is located in close proximity to the southeast corner of the parcel in Section 1.

Access to the Ellis (Fisherman) inholdings may occur from the full extent of the Ankle Creek Route in order to provide direct access to both inholdings. The Ankle Creek Route is shown on Inholding Map 1 which is attached to the EA.

Any access after the date of this decision must be consistent with the terms of this decision or subsequent decisions. The terms of this decision will also be incorporated into a 43 CFR 2920 authorization by September 1, 2004, unless a CMA is negotiated by that time. The CMA will also need to include the terms of this decision. The authorization, whether through the 2920 process or through a CMA, will be subject to all applicable provisions of the regulations in 43 CFR 2920, which are made a part hereof.

This decision represents a balanced approach utilizing the basic elements of the SMAC recommendation in reconciling the needs of the property owners while minimizing impacts to the Steens Mountain Wilderness Area. Wilderness values are safeguarded by limiting both physical and social impacts to acceptable levels. This decision may be modified as needed to mitigate unanticipated adverse impacts to wilderness resource values. This level of use of the Ankle Creek Route may also be transferred to future owners or lessees upon BLM approval.

The rationale provided for the Finding of No Significant Impact supports this decision. Implementation of Alternative C, coupled with the mitigating measures detailed below, has led to my decision that all practicable means to avoid or minimize environmental harm and avoid unnecessary and undue degradation to public lands has been adopted. This decision is consistent with the Steens Act in combination with the Wilderness Act. It also meets the requirements of the wilderness regulations (43 CFR Part 6300), in providing reasonable access while causing the least impact on wilderness character. The Ankle Creek Route will be monitored intensely to assure that its condition does not improve and shall remain available to the public for nonmechanized and nonmotorized uses.

#### Mitigation Measures/Monitoring:

Approval of this proposal is subject to the following monitoring and mitigation measures. A CMA or 2920 authorization will be developed and may include additional mitigating measures.

#### Mitigation Measures:

1. Identify motorized routes within the wilderness on public recreation maps so visitors can recreate away from the routes if desired.
2. Provide information at major entry points to inform hikers of potential or occurring motor vehicle activity.

#### Monitoring:

The following monitoring will be conducted:

1. BLM will use photographs to monitor the character of the route to assure that widening and deepening of the existing tread marks does not occur and so the route does not otherwise become more highly developed than authorized. Vegetation and soil disturbance outside the existing tread width is not authorized. If the route changes to a condition that is more highly developed than what existed in October 2000, the BLM will make adjustments to vehicle access to restore the route to its previous condition. Maintenance necessary to maintain the landowner's reasonable access or to protect or enhance wilderness resources may be conducted by the BLM or authorized by the BLM consistent with applicable regulations. Maintenance may require disturbance beyond the current tread width in order to prevent degradation of the route, e.g., ditching water off the route to reduce soil erosion and channeling.

2. BLM will make personal contacts and distribute visitor satisfaction forms to wilderness visitors and will maintain a visitor contact box near the Ankle Creek Route access point at the Indian Creek gate. BLM will consider the information, including any degree of dissatisfaction that can be attributed to encounters with vehicles, and take necessary action to lessen the degree of dissatisfaction. Some reported dissatisfaction may merely be from the prudent and proper use of vehicles along the route. Adjustments to lessen the problems with vehicle encounters will be considered when excessive operation of the vehicles causes impacts to wilderness resources.
3. BLM will be present during road maintenance activities and decide whether or not to approve any use of mechanized equipment through the Minimum Requirements Decision Guide process.
4. Landowners and/or lessees will submit post annual use reports, by December 31 each year, showing dates of access, modes of access, number of vehicles and persons, public contacts, etc.
5. Electronic counters may be placed at strategic locations to aid in determining the degree of use along the Ankle Creek Route.

All resource values have been evaluated for cumulative impacts. It has been determined that cumulative impacts would be negligible for all resources. There would be short-term impacts to scenic qualities when vehicles are noticeable and to wildlife in terms of temporary displacement from indirect contact with vehicles. When combined with other general use of the Ankle Creek Route by the public, impacts to all resource values are still insignificant and opportunities for experiencing solitude, naturalness, and primitive and unconfined recreation remain plentiful. Physical impacts to the route specifically caused by motor vehicles will remain evident and will appear unnatural but will allow for a balance of reasonable property access while minimizing impacts to wilderness. This decision only applies to the Stroemple and Fisherman inholdings. Access needs to other inholdings will be evaluated on their own merits and handled separately. Consistency with specific sections of the Steens Act and Wilderness Act are referenced in the EA.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and Form 1842-1. If an appeal is filed, your notice of appeal must be filed in the Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738 by July 28, 2004. The appellant has the burden of showing that the decision appealed is in error.

If you wish to file a petition, pursuant to regulation 43 CFR 4.21, for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for stay must accompany your notice of appeal. A petition for stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied.
2. The likelihood of the appellant's success on the merits.
3. The likelihood of immediate and irreparable harm if the stay is not granted.
4. Whether or not the public interest favors granting the stay.

*/signature on file/* \_\_\_\_\_

Karla Bird  
Andrews Resource Area Field Manager

June 24, 2004

Date