

**NOTICE OF PROPOSED DECISION FOR
TERM GRAZING PERMIT RENEWAL FOR THE
FLAGSTAFF BENCH AND SWAMP LAKE PASTURES OF THE
WARNER LAKES ALLOTMENT (#00523)**

INTRODUCTION AND BACKGROUND

The Bureau of Land Management, Lakeview Resource Area (BLM), has analyzed several alternative proposals related to renewing term grazing permit number 3600242 for the Flagstaff Bench and Swamp Lake Pastures of the Warner Lakes Allotment for a 10-year period. The allotment is about eight air miles north of Plush, Oregon, and encompasses about 3,096 acres of BLM-administered land. One existing grazing permit, #3600242, addresses the authorization of livestock grazing within these pastures. (Other pastures within this allotment are grazed under a separate permit and are not addressed in this decision). Under this grazing permit, the current season of use runs from September 15 through December 31, with 280 Animal Unit Months (AUMs) of active use and 110 AUMs suspended use.

PROPOSED DECISION

Permit Renewal and Livestock Grazing Management

Based on the analysis contained in the EA, it is my proposed decision to renew the term grazing permit #3600242 for a period of 10 years. This permit would authorize livestock grazing use in the Flagstaff Bench and Swamp Lake Pastures of the Warner Lakes Allotment (#00523), as described in Alternative 2 in the revised EA. Table 1 shows the permit dates and active preference for the pastures, which would be authorized under this permit renewal.

Table 1. Permit Dates, and Active Preference for the Flagstaff Bench and Swamp Lake Pastures

	LIVESTOCK		GRAZING PERIOD		TYPE USE	% Public Land	AUMs
	Number	Kind	Begin Date	End Date			
Warner Lakes Allotment (#00523)							
Flagstaff Bench and Swamp Lake Pastures	79	Cattle	9/15	12/31	Active	100	280

Livestock grazing within the pastures would continue with the current number of AUMs and follow the current fall/winter season of use and grazing system described under Alternative 2 of the EA.

Terms and Conditions

The permit will be issued with standard terms and conditions. Other stipulations, as required by state or federal policy, would be included in the permit. Typical items include: payment of fees, submission of actual use reports, administrative access across private land, compliance with rangeland health Standards and Guidelines, and maintenance of range improvements.

Management Flexibility

Knowing uncertainties exist in managing for sustainable ecosystems, this decision includes the flexibility to make changes to authorized grazing within the annual application process for reasons such as, but not limited to:

- Adjust the rotation/timing of grazing based on previous year's monitoring and current year's climatic conditions, within the permitted season of use. An example of this would be; to turn livestock out later in the season on a year with a wet cold spring; or to bring livestock off the allotment early as conditions warrant.
- Drought causing lack of available water in certain areas originally scheduled to be used. An example would be resting a pasture with low water and shifting livestock use to a pasture with adequate water. Conversely in wet years, livestock could be moved to areas near more dependable water sources.

Changes in use periods to balance utilization levels per pasture. An example of this would be to shorten the time period or number of livestock in a pasture that had 65% average utilization and/or increase the time period and number of livestock in another pasture that had 30% average utilization, if the target utilization in both pastures is 60%.

Flexibility in grazing management would be authorized within permit dates and within active permitted AUMs so long as:

- Changes in rotations would continue to meet resource objectives.
- Flexibility is dependent upon the demonstrated stewardship and cooperation of the permittee.
- Rangeland monitoring is a key component of flexibility in grazing management. As monitoring indicates changes in grazing management are needed to meet resource objectives, they are implemented annually working with the permittee.

Monitoring

Monitoring will continue, as specified in the *Lakeview Resource Management Plan/Record of Decision* (RMP/ROD), incorporated herein by reference (BLM 2003b, pages 53-55). Monitoring would take place by BLM staff in coordination with the livestock operator to measure the success in meeting allotment-specific resource objectives. The Pace 180° methodology (BLM 1984) and permanent photo points would be used to measure the relative frequency of occurrence of key forbs, shrubs, and perennial grass species, as well as assess the trend in upland rangeland condition. Upland trend and photo plots (WL-7, and WL-8) were established in the Flagstaff Bench and Swamp Lake Pastures in 2009 and would continue to be used for future monitoring. Observed Apparent Trend would be assessed at each trend plot. Trend data would be collected periodically and analyzed on 10-year intervals.

Utilization and use supervision information will also be collected periodically by BLM staff. The Key Forage Plant Method would typically be used to measure utilization in the pasture. Target utilization levels for key forage plant species are shown in Table 3.

Table 3. Key Species and Target Utilization Levels by Pasture

Pasture	Acres	Key	Utilization Target
Flagstaff Bench	1,922	saltgrass, bottlebrush squirreltail	60%
Swamp Lake	1,174	crested wheatgrass, bottlebrush squirreltail	60%

During each monitoring visit, staff would also note noxious weed establishment and overall rangeland condition. Adjustments to timing of grazing and pasture use sequence may be implemented to ensure/promote achievement of rangeland health standards or meet other resource objectives, based on this data.

Trailing Use

Trailing use would occur to and from the Flagstaff Bench and Swamp Lake Pastures. Cattle would be trailed from south of Plush to the pastures, then from the pastures back home. Trailing would take approximately two days, and would occur along County Road 3-12. Trailing would not occur on neighboring allotments.

New Range Improvements

A cooperative agreement between the permittee and BLM would be completed to address each partner's responsibilities for labor, construction, maintenance, and/or supplies for the proposed new improvement.

During the EA review period, BLM identified a need to make minor modifications to the design of the proposed range improvement project to mitigate potential impacts to one cultural site. These modifications include moving the northwest corner of the existing Swamp Lake Pasture fence slightly to the southeast to exclude the site from the pasture, and extending the existing pipeline and moving the existing trough farther southeast. A small waterhole would be constructed in close proximity to the relocated trough in the Swamp Lake Pasture (see attached EA Map 4B). This waterhole would be used as an overflow pond that would collect and store additional livestock water. This would provide water for livestock use even when the solar well is not running (e.g., overcast, storming, etc.).

Maintenance of Range Improvements

This decision also authorizes the maintenance of new and existing water troughs, wells, pipelines, waterholes, and fences by the permittee, as needed during the 10-year life of the permit. Waterhole maintenance could include the cleaning (within the original area of disturbance) of the waterhole to ensure continued function. Trough maintenance could include fixing and/or replacing leaking troughs, or fixing and/or replacing fittings, etc. Pipeline maintenance could include replacing and/or repairing broken, damaged, or leaking sections of pipe, and replacing fittings, etc. Such maintenance actions would be limited to the zone of existing ground disturbance.

RATIONALE/AUTHORITY

Authorities Related to Grazing Use

Grazing permits are subject to issuance or renewal in accordance with the provisions of the Taylor Grazing Act (1934), Federal Land Policy and Management Act (1976), Public Rangelands Improvement Act (1978), and applicable grazing regulations at 43 Code of Federal Regulations (CFR) Part 4100.

The primary authority for this decision is contained in the BLM grazing regulations, which outline in pertinent parts: 43 CFR 4110.1 Mandatory qualifications, 4110.2-1 Base Property, 4110.2-2 Specifying permitted use, 4130.2 Grazing permits or leases, 4130.3(1) through 4130.3(2) Mandatory and Other terms and conditions, 4160.1 Proposed Decisions, and 4180.2 Standards and guidelines for grazing administration.

In order for an applicant to lawfully graze livestock on public land, the party must obtain a valid grazing permit or lease. The grazing regulations, 43 CFR 4130.2(a), state “grazing permits or leases shall be issued to qualified applicants to authorize use on the public lands and other lands under the administration of the Bureau of Land Management that are designated as available for livestock grazing through land use plans.” The permit renewal applicant (current permittee) controls the base property associated with the grazing preference on the 2 pastures and has been determined to be qualified applicant. A performance review of the permittees’ past use was completed and BLM found the record of performance, pursuant to 43 CFR 4110.1(b), to be in compliance.

Grazing permits shall be issued for a term of ten years unless there is some reason which requires a term of less than 10 years under the grazing regulations (43 CFR 4130.2(d)). In addition, grazing permits need to be issued with appropriate terms and conditions designed to “achieve management and resource condition objectives for the public lands... and to ensure conformance with part 4180”... (43 CFR Part 4130.3).

National Environmental Policy Act

Prior to issuing this proposed decision, an ID Team prepared an environmental assessment (EA) and Finding of No Significant Impact (FONSI) in conformance with the National Environmental Policy Act of 1969. The EA analyzed the impacts of four alternatives including: (1) No Action (continue current grazing), (2) Project Development, (3) 50% Reduction in Active Use, and (4) No Grazing (not renewing the 10-year permit) (see Chapter 2 of EA). As determined in the FONSI, the selected alternative (2) will not have any significant effects on the human environment.

Public Comments and EA Modifications

Potentially interested public, agencies, tribes, and the permittee were provided a 30-day review period on the EA and FONSI. During the comment period, the BLM received two comment letters; one from the Burns Paiute Tribe and one from Oregon Wild. BLM prepared individual response letters to both parties addressing their comments. The comment letters and responses are part of the administrative record for the proposal and are available for review upon request. BLM also made a few minor changes and clarifications to the EA in response to both internal and public comments. These modifications did not result in any substantive changes in the impact analysis. A copy of the revised EA can be viewed at <http://www.blm.gov/or/districts/lakeview/plans/index.php>. Hard copies of the updated EA are also available from the BLM Lakeview District Office upon request.

Decision Factors

Decision factors are a set of criteria used by the decision maker to choose the alternative that best meet the purpose and need for the proposal. These included:

- a) How well does the decision conform to laws, regulations, and policies related to grazing use and protecting other resource values?
- b) How well does the decision conform to the resource management and applicable activity plans including the *Lakeview Resource Management Plan/Record of Decision*, *Warner Lakes Allotment Management Plan (AMP)*, and *Warner Wetlands Area of Critical Environmental Concern (ACEC) Management Plan*?
- c) How well does the decision promote maintenance of rangeland health standards?
- d) How well does the decision conform with those Oregon Department of Fish and Wildlife (ODFW) 2005 sage-grouse guidelines that were incorporated into the Lakeview RMP/ROD through plan maintenance?
- e) How well does the decision conform with IM 2012-043 regarding interim sage-grouse management?

A discussion addressing these decision factors as they relate to implementation of the proposed decision (Alternative 2 from the EA) follows. Conformance with the National Environmental Policy Act and 43 CFR Part 4100 Regulations are discussed above.

Conformance with the Federal Land Policy and Management Act and the Lakeview RMP/ROD

The Federal Land Policy and Management Act requires that all management decisions be consistent with the approved land use plan (43 CFR 1610.5-3). Based on the analysis contain in the EA, I have determined that renewing the term grazing permit and constructing the range improvement project as described above, conforms with applicable management goals and direction.

The *Lakeview Resource Management Plan/Record of Decision* (BLM 2003b, as maintained) and the Warner Lakes Plan Amendment for Wetlands and Associated Uplands Environmental Assessment and Decision Record (BLM 1990b) are the primary governing land use plans for the area. The following represents goals and management direction related to livestock grazing use and ACEC management:

Lakeview RMP/ROD (BLM 2003b, as maintained)

The proposed decision would promote the primary **Livestock Grazing Management Goal**, which is to provide for a sustainable level of livestock grazing consistent with other resource objectives and public land-use allocations (Page 52). The Warner Lakes Allotment is currently open or allotted to livestock grazing use, has forage allocated for both livestock and wildlife use, and has a grazing system identified (see Table 5, page 48, as maintained; Appendix E1, as maintained; Map G-3).

The proposed decision would also conform to the **Livestock Grazing Management Direction** within the plan which states:

...licensed grazing levels (Appendix E1) will be maintained until analysis or evaluation of monitoring data or rangeland health assessments identify a need for adjustments to meet objectives. Applicable activity plans (including existing allotment management plans, agreements, decisions and/or terms and conditions of grazing use authorizations) will be developed, revised where necessary, and implemented to ensure that resource

objectives are met. The full permitted use level for each allotment has been and continues to be analyzed through individual allotment assessments, such as rangeland health and livestock grazing guidelines... (Page 52).

Rangeland improvement projects will be implemented to meet resource objectives (Page 53).

Maintenance of existing and newly constructed facilities or projects will occur over time... Such activities could include, but are not limited to, routine maintenance of existing...water control structures..., wells, pipelines, waterholes, fences,... and other similar facilities/projects (Page 100).

The plan also carried forward much of the management direction from the *Warner Lakes Plan Amendment for Wetlands and Associated Uplands Environmental Assessment and Decision Record* (BLM 1990b) described below with few changes.

The plan also states:

“Most of the core wetland area (potholes and acquired lands) will remain closed to grazing. The remainder of the ACEC will be grazed in accordance with an approved allotment management plan (BLM 1990f)” (BLM 2003b; pages 63-64).

The proposed decision is also consistent with the following allotment specific management direction contained in Appendix E1 (BLM 2003b, page A-94, as maintained):

Rangeland management - *Improve livestock management and distribution through improved management practices, installation of livestock management facilities (such as fences and water sources), and/or other actions as opportunities arise.*

Use management practices and/or better animal distribution; develop range improvements when appropriate; adjust permitted use as needed

Wildlife/wildlife habitat - *Follow the greater sage-grouse Livestock Grazing guidelines (pages 75-76 of ODFW 2005) where appropriate.*

Special management areas - *Maintain fences and grazing exclosures to protect ACEC values around Warner Wetlands.*

Manage area in accordance with ACEC management and associated activity plans (see next section).

Warner Lakes Plan Amendment for Wetlands and Associated Uplands Environmental Assessment and Decision Record (BLM 1990b)

This plan amendment designated the Warner Wetlands as an ACEC which encompasses the entire Warner Lakes Allotment (see EA Map 2). This document also provided some very broad management guidance for the ACEC, but reserved the development of specific management direction for subsequent ACEC management and related resource activity plans.

Conformance with Other Plans and Policies

The final decision must also conform to the following plans or policies, which direct and

provide a framework for management of BLM lands/resources within Lakeview Resource Area:

Conformance with Rangeland Health Standards and Guidelines (43 CFR 4180)

A Rangeland Health Assessment was conducted in 2004 for the Warner Lakes Allotment, and was updated in 2013 for the Flagstaff Bench and Swamp Lake Pastures (BLM 2004b, 2013). The results of these assessments were considered during the analysis contained in the EA. The pastures met all five standards and are expected to continue to meet all applicable standards under implementation of the proposed decision (Alternative 2).

Warner Wetlands Area of Critical Environmental Concern (ACEC) Management Plan (BLM 1990c, 1990d, and 1990e)

These documents provide specific management direction, goals, and objectives for the Warner Wetlands ACEC, and incorporates direction from six separate resource activity plans including the *Warner Wetlands Allotment Management Plan (AMP)*. The ACEC was separated into five separate geographic management zones, each having its own management goals and objective, but generally conforming to the overall ACEC goal of: “emphasize the preservation and protection of unique wildlife, ecological, cultural and geological values identified within the ACEC,” and primary objective: “preserve ACEC values in the designated area”.

The Flagstaff Bench and Swamp Lake Pastures fall within what is identified in the ACEC management plan as the “Flagstaff Bench grazed area.” The goal specific to this management area is to “provide for increased livestock forage production, while improving the composition, vigor, and density of the present range site plant communities.” The specific objectives for this management area are:

Warner Wetlands Allotment Management Plan (AMP), Warner Lakes Allotment #523 (BLM 1990f)

The overall management goal of the grazed portion of the Warner Lakes Allotment is “to provide for increased livestock forage production, while improving the composition, vigor, and density of the present range site plant communities.” The long-term objectives of the AMP are to manage, maintain, or improve the rangeland conditions of the public lands within the allotment. Specific objectives are:

- 1. Implement a grazing system which should provide for establishing an upward or improving trend in range site productivity by meeting the plant growth requirements, using the ESI method, on the entire grazed portion of the allotment.*
- 2. Make available, for livestock grazing, 922 AUMs in the grazed portion of the allotment annually until rangeland improvements are developed and monitoring indicates additional forage is available to meet the full preference demand of 1224 AUMs. Allocate additional forage to livestock under the provision and procedures of 43 CFR 4100.*

The Flagstaff Bench and Swamp Lake Pastures would continue to be grazed during the fall and

winter dormant season allowing plants to complete their life cycles each year. The Flagstaff Bench would be used first, followed by the Swamp Lake Pasture. Trend data analysis indicates a stable trend in both pastures. The pastures are currently meeting all rangeland health standards, and are expected to continue to meet rangeland health standards under the proposed decision. An increase of forage has not been allocated within these pastures, because the seedings proposed in the AMP were not implemented. Continuing the existing active AUMs (280) in these 2 pastures is consistent with these goals/objectives.

Conformance with the Greater Sage-Grouse Conservation Assessment and Strategy for Oregon (ODFW 2005) and Greater Sage-Grouse Interim Management Policies and Procedures (IM 2012-043)

Since the habitat analysis contained in the EA determined that the two pastures do not contain suitable sage-grouse habitat and the nearest occupied lek is located about 3.2 miles away (revised EA page 28), the guidance contained in these 2 documents is not applicable to the proposed decision.

Rationale

Generally, implementation of Alternatives 1 and 2 would conform with all applicable laws, regulations, and land use plan and activity plan direction.

Alternatives 3 and 4 were considered within the EA analysis to provide a broader range of alternatives and comply with grazing management permit renewal guidance (BLM 2000). However, implementation of these 2 alternatives would only be appropriate if an analysis or evaluation of monitoring data or rangeland health assessment(s) identified a need for adjustments (e.g. reduction or removal) to meet management objectives. In this instance, neither a 50% reduction in grazing use, or complete removal of grazing use for a ten year period would be consistent with the management goals and direction contained in the land use plan, ACEC management plan, or AMP, primarily because livestock grazing is not causing any violations of rangeland health standards or adversely affecting the relevant and important ACEC values. Neither the RHA nor other monitoring data have indicated any resource conflict or problem in the pastures that would require or justify a reduction or complete removal of livestock. Therefore, BLM has no rational basis for adopting either of these 2 alternatives as the proposed decision.

Alternative 2 was selected over Alternative 1 because the new range improvement also provide an additional water storage site in the Swamp Lake Pasture (see attached EA Map 4b). It would provide reliable livestock water on cloudy days when the solar pump cannot operate. It would also increase the efficiency of the existing solar water system and would be a benefit to the permittee's livestock operation. The location of the new range improvement was adjusted slightly to avoid or otherwise mitigate impacts to cultural resources.

RIGHT OF PROTEST AND/OR APPEAL

Any applicant, permittee, lessee or other affected interest may protest this proposed decision

under Section 43 CFR 4160.1 and 4160.2, either in person or by writing to me at the following address:

Bureau of Land Management
Lakeview District Office
1301 South G Street
Lakeview, OR 97630

within 15 days after receipt of the decision. A written protest that is electronically transmitted (e.g., email, facsimile, or social media) will not be accepted. A written protest must be on paper. The protest should clearly and concisely state the reason(s) as to why the proposed decision is in error. Any protest received will be carefully considered and then a final decision will be issued. In the absence of a protest, the proposed decision will become my final decision without further notice.

Any applicant, permittee, lessee, or other person whose interest is adversely affected by the final grazing decision may appeal the decision to an administrative law judge in accordance with 43 CFR 4.470 and 43 CFR 4160.3 and 4160.4. The appeal must be in writing and filed in my office, at the address above, within 30 days following receipt of the final decision, or within 30 days after the date the proposed decision becomes final. A notice of appeal that is electronically transmitted (e.g., email, facsimile, or social media) will not be accepted. A notice of appeal must be on paper.

The appellant must serve a copy of the appeal, by certified mail, to the:

Office of the Solicitor
U.S. Department of the Interior
805 SW Broadway, Suite 600
Portland, OR 97205

The appellant must also serve a copy of the appeal on any person named in the decision or listed in the “copies sent to” section at the end of this decision.

The appeal must state the reasons, clearly and concisely, why you believe the final decision is in error, and comply with all other provisions of 43 CFR 4.470.

An appellant may also petition for a stay of the final decision by filing a petition for stay together with the appeal in accordance with the provisions of 43 CFR 4.471. Should you wish to file a petition for a stay, you must file within the appeal period. In accordance with 43 CFR 4.471, a petition for a stay must 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.

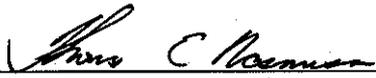
You bear the burden of proof in demonstrating that the decision is in error and that a stay should

be granted.

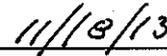
The petition for stay must be filed in my office, at the address above, and be served in accordance with the requirements of 43 CFR 4.473. A petition for stay that is electronically transmitted (e.g., email, facsimile, or social media) will not be accepted. A petition for stay must be on paper.

Any person named in the decision that receives a copy of a petition for stay and/or an appeal should refer to 43 CFR 4.472(b) for the procedures to follow should you wish to respond.

If you should have any questions regarding this decision, please contact me at 541-947-2177.



Thomas E. Rasmussen
Lakeview Resource Area, Field Manager

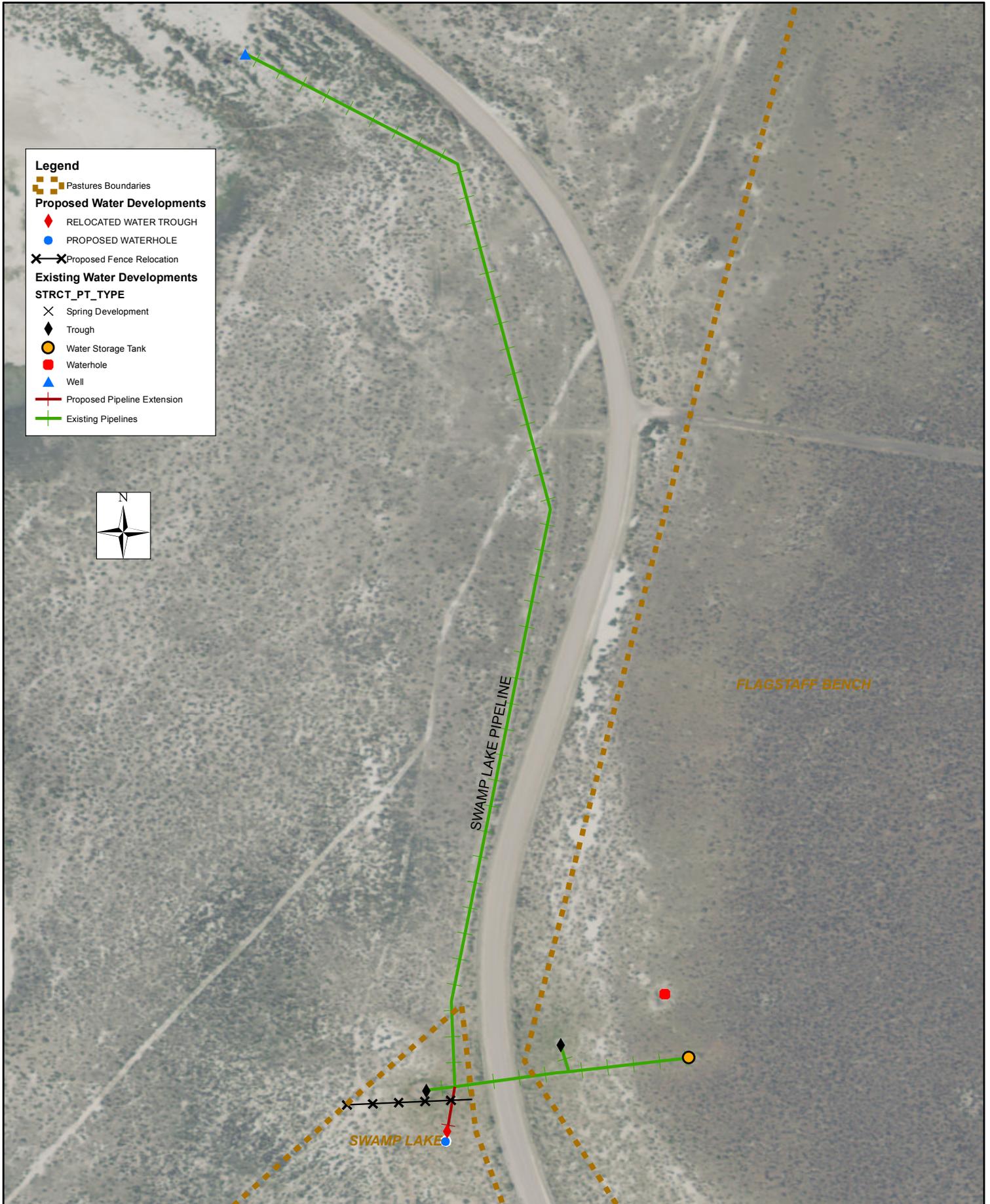


Date

Copies sent to:

Ms. Stephanie O'Brien
Burns Paiute Tribe
Cultural and Heritage Department
100 Pasigo Street
Burns, OR 97720

Mr. Doug Heiken
Oregon Wild
P.O. Box 11648
Eugene, OR 97440



Legend

- - - Pastures Boundaries
- Proposed Water Developments**
- ◆ RELOCATED WATER TROUGH
- PROPOSED WATERHOLE
- ✕ Proposed Fence Relocation
- Existing Water Developments**
- STRCT_PT_TYPE**
- ✕ Spring Development
- ◆ Trough
- Water Storage Tank
- Waterhole
- ▲ Well
- Proposed Pipeline Extension
- Existing Pipelines



Map 4B. Proposed Range Improvements



No warranty is made by the Bureau of Land Management as to the accuracy, reliability, or completeness of these data for individual or aggregate use with other data. Original data were compiled from various sources. This information may not meet National Map Accuracy Standards. This product was developed through digital means and may be updated without notification.