United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Prineville District Office
3050 N.E. 3rd Street
Prineville, Oregon 97754

IN REPLY REFER TO:

1610 (ORP040)

OCT 12 2011

Peter M. Lacy ("Mac"), Senior Attorney
Oregon Natural Desert Association
917 SW Oak Street, Suite 408
Portland, OR 97205

Dear Mr. Lacy:

Thank you for your letter dated November 30, 2010 expressing your concern regarding BLM's evaluation of wilderness characteristics issues in the Draft John Day Basin Resource Management Plan (JDBRMP) and Environmental Impact Statement (EIS) (collectively JDBRMP/EIS). My response to your original letter was postponed to allow the Department of Interior and Congress to conclude discussions surrounding wilderness character that may have impacted my response. My staff has worked diligently to complete an updated wilderness characteristics inventory consistent with current BLM policy and direction.

In your letter, you state: "As you know, through its written comments and through meetings with you and your staff, ONDA has emphasized that recognition and preservation of wilderness within the land use planning area is a highest priority issue for us." I acknowledge and appreciate that the Oregon Natural Desert Association (ONDA) has been very involved in the public comment process. The Prineville BLM staff has also worked very hard to review all information submitted by ONDA and others to ensure that wilderness characteristics information is thorough, accurate, and available to the public to ensure wilderness values are adequately considered in the JDBRMP.

Your letter also notes that: "We are very concerned with BLM's approach to this point, which has been to release information concerning BLM's internal, non-public treatment of the ONDA wilderness report in dribs and drabs over the course of the past two years, and to not include this information in the NEPA documentation for the JDBRMP." You state that "BLM's decision not to do so has left the public with no opportunity to provide meaningful comment on BLM's treatment of wilderness issues."

I am sorry to hear that you feel we have not met your expectations regarding our use of the 13 citizen wilderness proposals submitted by ONDA, herein referred to as ONDA's wilderness report. Wilderness characteristics inventory files have been available for public review at the District office throughout the planning process as they've been completed. The Draft JDBRMP/EIS disclosed BLM's wilderness characteristics findings and disclosed that ONDA's wilderness report was considered. The results of these evaluations were made public in that they formed the basis for the areas identified as possessing wilderness characteristics, depicted on Map 7 on pages 82 and 83 of the Draft JDBRMP/EIS.

A detailed analysis of ONDA's wilderness report was completed and a response containing specific points of agreement and disagreement was prepared and submitted to ONDA in a letter dated July 20, 2010. In addition, my staff met with Aaron Kilgore on August 24, 2010, to further explain our rationale for those areas of disagreement.

ONDA's wilderness report is part of the administrative record for the JDBRMP and is available to the public upon request. A summary of the opposing views will be included in the Proposed JDBRMP and Final EIS (collectively Proposed RMP/FEIS). BLM's July 20, 2010, letter has also been placed on the John Day Basin Resource Management Plan web page:
http://www.blm.gov/or/districts/prineville/plans/johndayrmp/jdbsupportdocs.php

All substantive public comments received during the official comment period have been analyzed and responses will be provided in the Proposed RMP/FEIS. Based on input from public comments, our cooperating agencies, and the John Day Snake Resource Advisory Council (RAC), we have made additional clarifications, corrections, and modifications to the proposed actions and analysis consistent with the requirements of the National Environmental Policy Act (NEPA).

Your letter also states: "Because the public has not yet had an opportunity to review and comment upon BLM's wilderness evaluation work, we further ask that BLM provide an additional public comment period, based on—or with the purpose of then preparing—a revised or supplemental EIS, and prior to issuance of a Record of Decision, so that the public might review and BLM might consider our comments before making a decision on the JDBRMP. We believe a failure to do so will leave BLM in violation of the law, including, but not limited to, NEPA and FLPMA."

BLM reviewed the information provided in your letter dated November 30, 2010, and determined that this information does not indicate a significant change in actions, circumstances, or information relative to the environmental conditions present when BLM updated its wilderness inventory. As such, your information represents a disagreement with BLM's findings rather than new information warranting reevaluation of our inventory analysis and conclusions or issuing a supplemental NEPA document pursuant to 40 CFR 1509.2(c)(1)(ii).

As stated previously, our wilderness characteristics inventory and analysis of ONDA's wilderness report continue to be available to the public at the District Office, and hard copies of the inventory files have been provided to ONDA. Additionally these inventories and BLM's analysis of ONDA's wilderness report have been posted to our planning web site. Consistent with NEPA, we have also expanded the amount of disclosure of these elements in the Proposed RMP/FEIS and will make them available to the public and subject to a 30-day protest period. The FEIS analyzes several additional lands with wilderness characteristics resulting from analysis of ONDA's and other DEIS comments. Based on these facts I do not believe there has been a significant change in the circumstances, information available, or inadequacies in our NEPA documentation that would warrant releasing a Supplement to the Draft JDBRMP/EIS.

The attached table summarizes the differences of opinion you have identified and clarifies the BLM's position. As I stated, these differences were recognized and discussed in both our July 20, 2010, written response and in the meeting on August 24, 2010. I believe the record shows that we have taken a hard look at all information provided, have made the information available to the public, followed the appropriate administrative procedures, and provided our rationale for determinations.

I appreciate ONDA's extensive fieldwork and data submission and your active participation in the JDBRMP planning process. If you have questions about our inventory update or findings please contact Monte Kuk at 541-416-6712.

Sincerely,

for Stephen R Rohr

Deborah Henderson-Norton
District Manager

cc:

Brent Fenty, Executive Director - Oregon Natural Desert Association
Aaron Kilgore, John Day Coordinator - Oregon Natural Desert Association

Attachments:
Summary table of differences of interpretation or opinion identified in your letter and BLM's position.
Addendum to the July 20, 2010 letter BLM submitted to ONDA in response to their wilderness report.

		ONDA's Contention	BLM's Position
Determination of Road Status	Maintenance Issues	Case law has established that a route that is not maintained mechanically to insure relatively regular and continuous use—even if it was mechanically constructed or maintained at some time in the past—does not meet the wilderness definition of a road. BLM asserts that it would maintain the route mechanically if "necessary in order to accomplish a resource objective or fire suppression activities." BLM cannot determine that a route is a "road" for wilderness purposes based on speculation about what the agency might allow a private landowner to maintain in the future. Maintenance as needed for emergency or administrative use or for private access is not equivalent to maintenance that will "insure relatively regular and continuous use."	House of Representatives Committee Report 94-1163 provided the following definitions: "Improved and maintained" – Actions taken physically by people to keep the road open to vehicle traffic. "Maintained" does not necessarily mean annual maintenance. Roads need not be "maintained" on a regular basis but rather "maintained" when road conditions warrant actions to keep it in a usable condition. In *Sierra Club*, 62 IBLA 367, 369-70 (1982), the Interior Board of Land Appeals (IBLA) explained: "Likewise, a route, or a segment of a route which was mechanically improved to permit the passage of vehicles, but which to date has not needed any further mechanical improvement or maintenance to facilitate the regular and continuous passage of vehicles, is also a road." The routes in question have been identified by the BLM as constructed. Objectives for travel management planning specify that existing routes will be used over constructing new routes. The BLM also determined that future vegetation management will be necessary and the use of these constructed roads remains the preferred access method. Until such time as more detailed vegetation management plans and travel management plans are written, the BLM intends to maintain these routes as necessary to meet these objectives. While the purpose of the use of a route is not a deciding factor to consider in determining whether a route is a way or a road, the purpose of the use of a route does provide context to the factors that the Organic Act Directive says such a determination is to be based on, particularly the question of whether maintenance of the route insures relatively regular and continuous use and whether maintenance, that may so far have been unnecessary to ensure the use, would occur when the need arises (as per *Sierra Club*, 62 IBLA 367, 369 (1982)). Examples provided (emergency and administrative) were given to provide context to the type and temporal nature of the expected maintenance needed to ensure relatively regular and continuous use. BLM does not weigh whether such use is of a commercial or noncommercial nature when providing context for these determinations.
		ONDA assert that route 3058 is rocky, eroded, and difficult to navigate in many sections. Routes that contain user-created bypass tracks cannot stand up to the claim that the route is mechanically maintained,	ONDA appears to be tying this assertion to the standard of maintenance. However, the ease or difficulty of navigation is not a route analysis factor that must be considered. Where "spot maintenance" has occurred, it can provide evidence of intent to maintain the remainder of the through-route and, as such, is evidence of maintenance of the entire through-route. While seasonal moisture on the route in question has made it

		or that its condition insures regular and continuous use.	more convenient to align vehicle wheels adjacent to ruts it does not preclude use of the road, is seasonal in nature, encompasses a small portion of the road, and users are choosing to avoid ruts out of convenience, not necessity.
		Routes are not in FAMS and are thus not maintained.	FAMS roads are not the only BLM routes that receive maintenance. BLM crews as well as private citizens out cutting wood or hunting use chainsaws and wenches to keep routes open. Additionally, FAMS is an evolving database that will eventually accurately reflect up-to-date travel and transportation management plans.
	Public Use Road	BLM states that Grant County asserts that it is a "public use road" but provides no documentation.	The information regarding a public use road was corrected and was not used to make a determination.
Naturalness		Determination of Naturalness is wrong in the Wall Creek Unit due to the ability of visitors to have vistas that at a distance appear natural to the average visitor and in the Sand Mountain Unit because the juniper cut is limited in extent relative to the total unit.	BLM specialists note vistas with high density of road cut banks and extensive logging in the Wall Creek unit. The wilderness characteristics inventory file for Sand Mountain indicates that it's the location and prominence within the unit of the juniper cut that resulted in the Naturalness determination not the extent. BLM's subject matter experts reviewed the relevant information and based on their knowledge of the area and expertise in wilderness inventory evaluations have made the finding that the subject areas do not meet the naturalness criterion.*
Outstanding Opportunities for Primitive Recreation		BLM's determination that the North Pole Ridge WSA addition unit B is not capable of providing outstanding opportunities for primitive recreation is wrong due to hikers having views of the river and surrounding areas with limited development.	As stated in the wilderness characteristics inventory file BLM's subject matter experts, in 1980 and again in 2008 determined that the long slender nature of the unit precluded the area from providing outstanding opportunities for solitude or primitive and unconfined recreation. All relevant information was considered and based on their knowledge of the area and expertise in wilderness inventory evaluations; both inventories made the same determination.*
Unit Boundary Identification		ONDA asserts that route B in the Wall Creek Unit should be considered a cherry stem.	Route B was not used as a boundary and thus does not limit the size of the inventory unit. Cherry stemming this route would not result in a different determination for this inventory unit.

* In *Sierra Club*, 53 IBLA 159 (1981), the IBLA held that more than simple disagreement with BLM's subjective conclusions is required to reverse BLM's actions or place a factual matter at issue.

BLM applied guidance from the Draft Handbook H6300-1-Wilderness Inventory Maintenance in BLM Oregon/Washington (July 2007). Guidance updates continue BLM's longstanding criteria for distinguishing a road from a way. The current draft Oregon guidance provides:

> The BLM will continue to base the definition of what constitutes a "road" from FLPMA's legislative history. The language below is from the House of Representatives Committee Report 94-1163, page

17, dated May 15, 1976, on what became the FLPMA. It is the only statement regarding the definition of a road in the law or legislative history.

"The word 'roadless' refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road."

The BLM previously adopted and will continue to use the following sub-definitions of certain words and phrases in the BLM road definition stated above:

a. "Improved and maintained" – Actions taken physically by people to keep the road open to vehicle traffic. "improved" does not necessarily mean formal construction. "Maintained" does not necessarily mean annual maintenance.

b. "Mechanical means" – Use of hand or power machinery or tools.

c. "Relatively regular and continuous use" – Vehicular use that has occurred and will continue to occur on a relatively regular basis. Examples are: access roads for equipment to maintain a stock water tank or other established water sources; access roads to maintained recreation sites or facilities; or access roads to mining claims.

A road that was established or has been maintained solely by the passage of vehicles would not be considered a road, even if it is used on a relatively regular and continuous basis. Vehicle routes constructed by mechanical means but that are no longer being maintained by mechanical methods are not roads. Sole use of hands and feet to move rocks or dirt without the use of tools or machinery does not meet the definition of "mechanical means." Roads need not be "maintained" on a regular basis but rather "maintained" when road conditions warrant actions to keep it in a usable condition. A dead-end (cherry-stem) road can form the boundary of an inventory area and does not by itself disqualify an area from being considered "roadless."

Recent wilderness characteristics inventory guidance contained in BLM IM-2011-154 identifies the same criteria as was used from the Oregon/Washington Draft Handbook H6300-1.