



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Spokane District

1103 N. Fancher

Spokane Valley, WA 99212



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Memorandum

To: Edward W. Shepard, State Director, Oregon/Washington
From: Review Team, Burns District Road Maintenance Review
Subject: Report of Fact-Finding

On August 14, 2009, the OR/WA State Director formed a 5-person Review Team to visit the Burns District. The objective of the review was to establish the facts and assemble a chronology of events leading up to and during the road maintenance activities on specific roads located in the Steens Mountain Cooperative Management and Protection Area (CMPA). The Review Team was comprised of Robert Towne, Spokane District Manager (Team Leader), Don Hoffheins, Supervisory Planning & Environmental Coordinator, Klamath Falls FO, Brooke Brown, Archeologist, Klamath Falls FO, Ken Mahoney, NLCS Program Lead, Arizona State Office, and Cindy Kowalczyk, State Engineer, Idaho State Office. The Review Team spent the week of August 17, 2009, on the Burns District. The team interviewed 15 individuals, conducted a field visit, consulted with GIS staff, and reviewed maps, documents, and other pertinent information in preparing this report. This report responds to the 5 items identified in the State Director's Letter of Delegation. The Review Team also prepared separate documents to aid in the review:

- Steens Mountain Area Management Direction and References
- Steens Mountain Area Background Timeline

1. Overview of Actions

Document and generally describe the extent of BLM maintenance work completed on the approximate 28 miles of primitive road within the Steens Mountain Cooperative Management and Protection Area (CMPA).

Road maintenance in the western part of the CMPA occurred on four roads (See Map 1 – Roads Maintained). All four roads in question, with the exception of a short section of an unnamed primitive road in the center of Section 21, T33S, R32E near the intersection of the Steens Mountain South Loop Road, were defined as “Base Roads” in the CMPA Transportation Plan and shown on Map 13 with “Primitive or Unknown Road Condition”. Based on the Steens Act, the CMPA Resource Management Plan, and the Travel Management Plan, these roads are to be maintained at Maintenance Level 2.

A. Lauserica road

- 1) On about May 19, 2009 the BLM road maintenance crew began work to maintain the Lauserica road. Most of the length of this road is bounded on the west side by the western unit of the Steens Mountain Wilderness and on the east side by a Wilderness Study Area (WSA). It had been maintained within the past 2 to 3 years and brought up to condition for Maintenance Level 2. Note: Due to time constraints, the review team was only able to see the northern-most 4 miles of the 14.2 miles that were maintained. This upper portion was on gently sloping land with little cross slope. Vegetation was low shrub.

- 2) The road in this area appeared to have an average width of disturbance (side cast to side cast) of 20 to 30 feet prior to this year's maintenance. Road work entailed mostly "flatblading" the existing road prism with side cast material being deposited on both the Wilderness side and the WSA side (See Photo 1 – Lauserica Road). Side cast material was kept typically within what appeared to be the previous edges of disturbance (20 to 30 feet width); although in a few areas it appeared that material may have been moved as much as 1 to 2 feet outside those limits (either towards the Wilderness or the WSA designation depending on cross slope). We were told that lower down on the Lauserica Road it was necessary to do cat work (using a bulldozer typically to move rocks and trees), although due to time constraints, the team did not see these areas.
- 3) The work was finished the week of June 1, 2009.

B. Burnt Car Road

- 1) On June 19, 2009 Field Office personnel flagged locations along the approximate 7.5 miles of Burnt Car Road where road realignment was proposed.
- 2) On June 23, 2009 a Cooperative Range Improvement Agreement with Roaring Spring Ranch to provide personnel and equipment was signed in preparation for the work. Work began on June 29, 2009.
- 3) From looking at segments of intersecting roads and the Burnt Car Road that did not receive any road maintenance work, it appears that the width of past disturbance (outer edges of wheel tracks) ranged from 12 to 15 feet prior to maintenance work.
- 4) The first 2 ½ miles is relatively open with low shrub vegetation on slopes ranging approximately from 5 to 20 percent with Public Domain (PD) land on the south side and WSA on the north side.
- 5) Work on the west end of the Burnt Car Road was at the intersection with the Steens Mountain South Loop Road on an apparent primitive road that had been user-created (center of Section 21, T33S, R32E). This primitive road was approximately 1/8 mile long and was on PD land (outside of the WSA). It was described that the reason this was selected rather than the actual Burnt Car road was that it was shorter and better defined on the ground. (See Map 5 – GPS Road Realignment, with site labeled as "Section 21 Realignment").
- 6) Road work entailed widening to provide a crowned running surface and drainage on one or both sides. Side cast material was deposited on both the PD side and the WSA side. The width of this section after maintenance ranged from about 20 to 25 feet wide.
- 7) The next 2 ½ miles to the intersection with the Tombstone-Burnt Car Road is on rolling terrain with sparse to dense juniper and low shrub vegetation on slopes ranging approximately from 5 to 10 percent with Public Domain (PD) land on the south side and WSA on the north side. (Note: the WSA boundary was described to the Team as the edge of the Burnt Car road. However, the boundary in the District GIS seems to undulate back and forth across the Burnt Car road- see example on Map 3. Our review and comments assumed that the edge of the road was the boundary.) Road work entailed widening to provide a crowned running surface and drainage on one or both sides. Trees with branches that could reach the eventual disturbance area (cut slope to outer edge of side cast) were pushed over with the cats. Much of this area had very high percentages of rocks in the soil profile that required moving large amounts of rocks to the side.
- 8) This portion of the road crossed a tributary drainage to Kueny Canyon in Section 14. To construct a proper right-angled crossing and prevent future capturing of creek water and having it run down the road surface, the road was realigned slightly. This realigned section was within the PD land. (See Map 3 – Sec. 14 Realignment and Photo 2 Section 14 Realignment Old, and Photo 3 Section 14 Realignment New).
- 9) Flatter areas often had poor drainage and the road had to be realigned. In Sections 13 and 18 about 3000 feet of the road was realigned as far as 250 feet upslope. This realigned section was within PD lands. (See Map 4 – Sec. 13-18 Realignment and Photo 4 Section 13-18 Realignment Old).
- 10) Trees, rocks and other side cast material were deposited on both the PD side and the WSA side. The width of this section after maintenance ranged from about 20 to 30 feet wide.

- 11) The next 2 ½ miles from the intersection with the Tombstone-Burnt Car Road to the Wilderness Boundary is on rolling to steep terrain with slopes ranging approximately from 5 to 35 percent. There is a WSA designation on both sides of the road with sparse to dense juniper and low shrub vegetation. Much of this area had very high percentages of rocks and boulders in the soil profile. Road work entailed widening to provide a crowned running surface and drainage on one or both sides. Trees with branches that could reach the eventual disturbance area (cut slope to outer edge of side cast) were pushed over with the cats. Trees, rocks and other soil side cast material were deposited in the WSA on both sides. The width of this section after maintenance ranged from about 25 to 35 feet wide. (Photo 5 Burnt Car Road WSA Both Sides).
- 12) The next approximately 530 feet of the road is inside the Steens Mountain Wilderness boundary and ends at location known as Burnt Car. This short section is relatively open with low shrub vegetation on slopes ranging approximately from 0 to 5 percent. Road work entailed widening to provide a crowned running surface and drainage on both sides. Side cast material was deposited on both sides. The width of this section after maintenance ranged from about 20 to 25 feet wide. (See Map 2 – Maintained Wilderness).
- 13) The entry into the Wilderness was on July 7 and was accidental. Apparently the equipment operators were shown a map depicting where the Wilderness Boundary was, but the Review Team did not know what scale of map was used. To the Team’s knowledge nobody took any of the equipment operators down to the boundary location. According to at least one of the operators, he thought the boundary was at the canyon rim (of the Donner und Blitzen River). The boundary was apparently not posted or flagged before road work, but has subsequently been posted (See Photo 6 Two Track in Wilderness, and Photo 7 Wilderness-Road Maintained)
- 14) Work was completed on Burnt Car Road on July 13, 2009.

C. Tombstone-Burnt Car Road and Tombstone Canyon Road

- 1) The Tombstone-Burnt Car Road is a 2 mile long connector between Tombstone Canyon Road and Burnt Car Road, and the Tombstone Canyon Road is a little over 4 ½ miles long. Work began on these roads on July 14, 2009.
- 2) Both roads are mostly on flat to rolling terrain with slopes ranging approximately from 5 to 10 percent. It is estimated that the pre-maintenance width of the roads was about 12 to 15 feet. There is sparse to dense juniper along about 30 percent of the route and low shrub vegetation along about 70 percent. PD land is on the west side and WSA on the east side. Road work entailed widening to provide a crowned running surface and drainage on one or both sides. Trees with branches that could reach the eventual disturbance area (cut slope to outer edge of side cast) were pushed over with the cats (See Photo 8 Tombstone Clearing-Widening). Some of this area had very high percentages of rocks in the soil profile that required moving large amounts of rocks to the side. Trees, rocks, and other side cast material were deposited on both the PD side and the WSA side. The width of this section after maintenance ranges from about 20 to 30 feet wide.
- 3) Work on these two sections was completed on July 21, 2009.

2. Purpose and Objectives

Document the purpose and objectives for the road work, and identify who developed and approved the proposal, carried out the activities and was responsible for providing oversight.

- A. The purpose of the project was to improve road conditions on existing roads that would allow access by larger vehicles to support a proposed Horse Gather (predominant response), three units of juniper cutting totaling about 3,894 acres, use of the roads as fire breaks/safety zones during subsequent burning of the juniper treatment units, to bring equipment and materials in for the Burnt Car Spring Improvement (the spring improvement was the predominant reason for maintenance on the easternmost 2.5 miles of Burnt Car Road), and to support recreation use.

- B. The project was a Field Office level proposal directed by the Andrews Field Office Manager.
- C. The project was proposed by Field Office staff and submitted directly to the maintenance crew with only limited Field Office or District level resource specialist knowledge or involvement.
- D. The Burnt Car and Tombstone Roads project was completed by two BLM Personnel with a bulldozer, a grader and a roller, and two Roaring Spring Ranch personnel with a bulldozer and a grader (under a Cooperative Range Improvement Agreement). The four operators worked as a crew from about June 30 to July 21, 2009. Maintenance work on Lauserica Road was performed by BLM operators only.
- E. Oversight was provided by a Field Office Range Management Specialist.
- F. Funding for BLM work was through annual appropriated road maintenance funds and other supporting activity funds that came later in the fiscal year. The Roaring Spring Ranch financed the cost of their personnel and equipment.

3. Decision Process

Document the decision process used, including what environmental clearances, reviews or analysis were conducted (e.g. FLPMA, NEPA, ESA, NHPA, etc.) and which staff provided input.

- A. A site specific National Environmental Policy Act (NEPA) analysis for the road maintenance was not completed. Field Office personnel involved believed sufficient analysis had been completed and sufficient direction existed so that additional NEPA analysis was not necessary. The general response to questions about what decisions were being implemented (to perform the maintenance) included prior decisions made in the Andrews/Steens Resource Management Plan (RMP), the North Steens Ecosystem Restoration Project Record of Decision (North Steens ROD), and Decision Record/Final Decision for Steens Mountain Travel Management Plan Environmental Assessment OR-05-027-021 (TMP DR).
- B. The related projects with the need for the road improvement (horse gather, juniper cutting and burning and spring improvement) have been analyzed in various documents with the exception of the horse gather. An environmental assessment for the South Steens Horse Gather is proposed for later this year.
- C. No public notification was made because the Field Office personnel involved assumed that public involvement had been completed during the previous above-mentioned processes.
- D. It appears that little communication specifically about the road maintenance project design and implementation occurred with key resource specialists.
- E. The Team found no evidence that inventories, clearances or reviews were performed specifically for the road maintenance work.
- F. This project became a high priority because of the large number of projects in the area that needed improved access this year.

4. Technical Process

Document design standards and stipulations developed and how such standards were communicated to those that carried out the project.

- A. No road design plans or specific stipulations were developed for the project. Road design plans are technically not a requirement for standard road maintenance. Note that the CMPA RMP specified 35 BMPs were for road design and maintenance (Appendix B) and 35 BMPs for travel management (Appendix M). The Team did not evaluate whether each of these best management practices were implemented, as this was beyond the scope of the assignment.
- B. Communication of the desired outcomes of road maintenance (long term road function) occurred.
 - 1) The Field Manager and Range Management Specialist met on site with BLM equipment operators only on the Lauserica Road and the Field Manager stated that what she saw on that road met her expectations for planned road maintenance for the other roads (Burnt Car and Tombstone Roads).
 - 2) The Field Manager and Range Management Specialist met on site on the Burnt Car Road to discuss the amount work needed (tree and rock removal) and to agree where road realignment would occur.

- 3) Known concerns, such as the location of the Wilderness boundary, were communicated via a map to the operators.
- C. The maintenance level for these roads is defined as Level 2 within the Steens Act, the CMPA RMP, and the Travel Management Plan EA/DR.
- 1) There are differences of understanding of the definition of Maintenance Level 2, and what the resulting size and shape of a road maintained at that level should be.
 - 2) Maintenance Level 2 roads may be graded, graveled, rocks removed, ditches cleaned, and culverts or rock crossings installed to prevent accelerated erosion and to provide easier access for firefighting personnel and administration. (Mitigation Measure 34 in the North Steens Ecosystem Restoration Project Record of Decision.)
 - 3) The Civil Engineer on the Review Team explained that in some cases, in order to get the road to a condition where it can be maintained at a Maintenance Level 2, a high degree of work may be necessary; and, once a road has deteriorated from lack of maintenance (deferred or otherwise), recreating even a minimal running surface may involve extensive work.
- D. The Field Office personnel involved only considered this work as maintenance, and thought the work on the sections that some people define as realignment, reconstruction and even new construction, are all part of Level 2 maintenance, and were appropriate and allowed.
- E. The level of work that was necessary on these roads was due to the need to gain access with larger equipment (for trailers for horse gathers, crew trucks for juniper cutting, Wildland Fire Engines for prescribed burning, and to get equipment and materials in for range improvements), the need to access project sites later in the season, for enhanced fire holding capability, and because funds are limited and it was expected that it would be years before the roads could be maintained again.
5. Conformance with existing laws, regulations, policies
Document how the project work is in conformance with existing laws, regulations, policies, planning decisions (RMP, Travel Management Plan, other associated activity or project plans), and other guidance to include existing court actions.
- A. The project appears to be in conformance with some existing laws, regulations, policies, and planning decisions, but not with others.
 - B. Some personnel expressed confusion or lack of understanding of the content of the Steens Act and how the Field Office should manage the CMPA.
 - C. Numerous NEPA documents, plans and laws provide “direction” for managing the CMPA. Some NEPA documents are currently under appeal, litigation or negotiation including:
 - 1) Andrews/Steens Resource Management Plan (RMP/ROD) – Appealed to Ninth Circuit Court
 - 2) North Steens Ecosystem Restoration Project Record of Decision (North Steens ROD) – In District Court (Still in negotiations)
 - 3) Decision Record/Final Decision for Steens Mountain Travel Management Plan Environmental Assessment OR-05-027-021 (TMP EA/DR) – In District Court (some negotiations ongoing)
 - 4) Amended Decision Record for the Projects for Implementation of the Steens Mountain Cooperative Management and Protection Act (Implementation EA/Amended DR) – June 10, 2009 Order for 90 day Stay in actions to implement the project.
 - D. Requirements of Section 106 of the National Historic Preservation Act were not met because the Field Office did not carry out identification efforts, typically including a field cultural resource survey on or adjacent to the sections of road that were widened, or realigned completely. The Burns District Archaeologist said that if he had known about the project ahead of time and the amount of disturbance that would have resulted, he would have performed a class III cultural resource inventory.
 - E. Some requirements of the Wilderness Act and the Steens Act were not met because mechanical equipment was used to reconstruct approximately 530 feet of closed road in the Steens Mountain Wilderness.

- F. Section 603 (Interim Management Policy) of FLPMA was not adequately considered because trees, rocks and bladed side cast material were deposited outside existing disturbance limits into a WSA in numerous places.
- G. The intent of IBLA Order dated June 10, 2009 for Joint Motion to Stay Proceedings may not have been met because road maintenance work, in part to support the Range Improvement Project (to get equipment and materials in to Burnt Car Spring), occurred during the 90 day period.
- H. There were questions raised about conformance with the National Environmental Policy Act, the Council on Environmental Quality Regulations, the BLM NEPA Handbook, the CWMP, the RMP/ROD, and the TMP EA/DR when discussing the work performed. Some thought that road realignment outside the current prism of the existing road is considered “new construction”, and that the amount of work performed is considered greater than what is allowed with Maintenance Level 2. Because of the differences of interpretation, the team did not make a specific conformance determination.

 /s/Robert B. Towne Team Leader

For the Review Team



Photo 1 Lauserica Road



Photo 2 Section 14 Realignment Old



Photo 3 Section 14 Realignment New



Photo 4 Section 13-18 Realignment Old



Photo 5 Burnt Car Road WSA Both Sides



Photo 6 Two Track in Wilderness



Photo 7 Wilderness-Road Maintained



Photo 8 Tombstone Clearing-Widening









