# STEENS MOUNTAIN ADVISORY COUNCIL
# APPROVED MEETING MINUTES
# December 6-7, 2007
# Burns, Oregon

**MEMBERS PRESENT:**

David Bilyeu, Environmental Representative – Statewide, Bend, OR
William Renwick, Environmental Representative, Burns, OR
Stacy Davies, Chair, Grazing Permittee, Frenchglen, OR
Pam Hardy, Vice–Chair, Dispersed Recreation, Bend, OR
Paul Bradley, Mechanized or Consumptive Recreation, Hines, OR
Michael Beagle, Fish & Recreational Fishing, Eagle Point, OR
Fred Otley, Private Landowner, Diamond, O
Richard Angstrom, No Financial Interest, Salem, OR (first day only)

**MEMBERS ABSENT:**

Steve Purchase, State Liaison, Salem, OR
Hoyt Wilson, Grazing Permittee, Princeton, OR
Brenda Sam, Burns Paiute Tribe, Burns, OR

**DESIGNATED FEDERAL OFFICIAL (DFO):**

Dana Shuford, District Manager, Bureau of Land Management (BLM), Hines, OR

**DESIGNATED FEDERAL OFFICIAL ASSISTANTS:**

Rhonda Karges, Environmental Protection Specialist, BLM, Hines, OR
Connie Pettyjohn, Management Program Analyst, BLM, Hines, OR

**FACILITATOR:**

Dale White, Burns, OR

**PRESENTERS**

Rhonda Karges, Environmental Protection Specialist, BLM, Hines, OR
Mark Sherbourne, Natural Resource Specialist, BLM, Hines, OR
Rob Perrin, Outdoor Recreation Planner, BLM, Hines, OR
Laura Dowlan, Wilderness Specialist, BLM, Hines, OR
Jeff Gent, OSU Law Student, Corvallis, OR

**COMMENTING PUBLIC:**

Susan Hammond, Hammond Ranches, Frenchglen, OR
Dick Jenkins, Round Barn Visitor Center and Museum, Diamond, OR

**OTHERS PRESENT:**
Fred McDonald, NRS, BLM, Hines, OR
Kelly Hazen, BLM, Hines, OR
Eric Haakenson, BLM, Hines, OR
Joan Suther, BLM, Hines, OR
Brendan Cain, BLM, Hines, OR
Joe Glascock, BLM, Hines, OR
Phil Kissinger, Burns OR
Paul Davis, Alvord Ranch, Fields, OR
Karen Moon, HC Watershed Council Coordinator, Burns, OR
Bill Marlett, ONDA,
Darren Brumback, BLM, Hines, OR
John O'Connor, BCH,
Dan Haak, PNW DC4W,
Ethan Lindsey, OPB,
Tony Svejcar, EOARC, Burns, OR
Chad Boyd, EOARC, Burns, OR

**WELCOME, INTRODUCTIONS, HOUSEKEEPING, AND AGENDA:**

The meeting was called to order and self introductions made. A quorum was not met. On December 7, Richard Angstrom will be absent and Stacy Davies will need to leave at noon so the group may need to adjust the agenda for setting next year's meeting dates. Rhonda reminded the committee about the planned field trip and lunch in the field.

**CHAIRMAN UPDATE**

Stacy gave the chairman update. He noted that the Donaldson property has had quite a few applications for lot of record dwellings. The Harney County planning director had asked him to bring the information from the newspaper report to the SMAC meeting, which he provided to the committee as a handout. The final decision for the Rock Creek Ranch, Inc. (Gary Miller) land exchange has been appealed by Peter Mehringer, Celestial Horse Ranch. Apparently they are concerned they will loose their public access as a result of the trade. Stacy presented their letter of protest and appeal for the SMAC to review.

**DFO UPDATE**

- Dana – Congress is working on the budget appropriations bill. The Continuing Resolution that BLM is currently operating under expires Dec 14. The OMB has given guidance that the bureau is only permitted to spend in accounts that were previously allowed and at a designated threshold which delays planned projects beyond windows that allow implementation. BLM is restricted with what they can accomplish more so than in the past. Fire Rehab and Fuels programs are examples. However, at this time Burns District is close to meeting their planned targets.

- There are still two vacant SMAC positions; WHB and Special Recreation permit holder. BLM has received several nominations for WHB but none for recreation permit holder. They are currently working on recruiting and will be re-advertising and extending the nomination period

- The BLM Christmas party will be held tonight; therefore, Dana will miss having dinner with the SMAC.

- Rhonda has been selected for another position as the District Planning and Environmental Coordinator so this will be her last SMAC meeting. Dana read a letter from Karla Bird (BLM) to Rhonda expressing appreciation for her extensive service to the SMAC over the last 7 years.

- Rhonda reminded the group that she will continue attending the meetings to provide presentations on the Water EA.

**FIELD MANAGER REPORT**

Karla Bird presented the FY07 Annual Manager's Report which highlighted a wide variety of projects, collaborative efforts with partners, monitoring and data collection, weed issues and treatments, condition of recreation facilities, roads and trails, environmental education and resource interpretation, science activities and studies, volunteer activities, and business practices within the CMPA. The Report has been submitted to the national office.

Other notable items of interest:

- Karla has visited the Donaldson property with a realtor to look for roads and access.
- BLM will continue to offer land exchanges to acquire private lands within the CMPA. BLM usually gives up low elevation land which concerns ODFW in relation to habitat types that are being traded. BLM will be working with ODFW prior to private land exchange negotiations this winter. Land Tenure Zones: Zone 1 – keep, most are in CMPA; Zone 2 - Andrews/3 Rivers area, trade only for higher value lands; Zone 3 - available for trade or disposal, not in CMPA.
- The County would prefer BLM to do land trades for tax base purposes.
- Rock Creek does not intend to vary their current use of the land they are acquiring.
- BLM has been acquiring land in Steens for decades. Always with willing sellers.
- Karla provided a handout of project accomplishments during FY07:
    - Healthy Lands Initiative – Partnership and large size contributed to success and extra funding for the Five Creeks Project. Public Map – Tara absent, discussion will be scheduled for next meeting.
    - Wilderness trail maintenance completed at: Little Blitzen, Big Indian, Nye Trail, 5 miles total
    - Fence removal – Trout Unlimited (w/SMAC member Mike Beagle) and ONDA assisted,
    - NEPA and Planning – Snowmobile trail decision has not been made, TMP reissued 11/28; appeal ends January 7, 2008.
    - Stonehouse Allotment – When Karla visited the area with various specialists, less than 2% had been browsed. Then visited again with Sierra Club over Labor Day weekend and 75% of willows had been

browsed by elk. 2008 calls for complete rest of the pasture. Any management changes would require NEPA process.

- See Handouts for a complete listing of all the FY07 projects.

The report generated several questions from the group which were addressed by Karla.
- She noted that the TMP will be incorporated into the Recreation Management Plan. The process for someone to request a change in the road access would require updated or new information since the previous decision. BLM would consider the reason for the request and a public process would be required. The time line would depend on BLM workload, however she noted that if an individual came through SMAC the process could be expedited by a SMAC recommendation.
- The EOARC is extensively involved with the strip seeding project at Mann Lake Ranch.
- Erosion is a big concern at Desert Meadows. Stacy suggested conducting wildlife use monitoring during mid-July to mid-September to better understand the impacts.

**UPDATE ON COMPREHENSIVE RECREATION PLAN**

Rob Perrin provided a brief update. BLM is currently in the scoping process. The latest scoping letter is included in the meeting packets. It is also posted on the BLM website and will be sent out to the mailing list. This winter BLM will be talking with interested individuals and groups.

**REVIEW WILDERNESS/WILD & SCENIC RIVERS PLAN AND TMP (Trails)**

Mark Sherbourne provided a brief review regarding non-motorized trails. He noted that the Steens Act calls for a travel, wilderness, and recreation plan. The recreation plan includes non-motorized and horse trails. The transportation plan focused on motorized routes for public use and private uses for grazing permittees.
BLM will be doing an extensive inventory of trails for the Comprehensive Recreation Plan (CRP). Other BLM staff noted that they will be getting guidance from the USFS regarding classification and management. During the planning they will be considering the objective of the trail which varies by individual trail, area, and location within wilderness or CMPA. The CRP will model the TMP and will need to provide a system to identify trails as well as add or subtract trails. A trail is a facility and BLM will need a mechanism to develop a management level/standard as there is not currently an evaluation system in place. Not all trails are in the wilderness and so there is a need to comprehensively look at sections in and out of wilderness areas.

SMAC members provided their comments and suggestions for consideration:
The TMP decision recognized all 10 trails. It also highlighted adding Dry Creek Trail to the trail system. Trailheads need to be adequately marked. Page Springs may need to be designated as a hiking trail rather than a horse trail. Stream crossing is an issue and wilderness style bridges could be installed for public safety. Unconfined recreation is important and trails should be designated, marked, and accessible. Also need to consider how to access trails from the parking areas to the main trail. Weed issues should also be dealt with.
Is there a structure of categorizing trails that would be similar to the road classifications of Level 1-5? Some felt that trails should be classified in relation to difficulty and length of sections. The

level of development will affect or generate use. The District currently has a brochure regarding trail difficulty, elevation, etc.
It is important to use a similar process as that used in the transportation plan and allow a method to receive input and make modifications on an ongoing basis. SMAC members would like BLM to use the adaptive method of management which allows all sides to participate and receive immediate response. Need to allow for easy changes due to the unexpected, such as a change in type of use, etc. Some felt there was a danger of too much signing and felt signs should be very limited. Maps could be used to provide important information about the trail rather than on-the-ground signs. Highly visited areas close to the roads receive more damage and may require more intensive management. Does BLM have a list of trails that have been damaged and are in need or restorative work?
BLM needs to provide for resource protection and still allow as much use as possible, which may require controls to limit use or disperse use. They should be careful to not allow over-development in order to reduce desecration. The early stages of scoping could include development of small initial documents to guide discussion which could then be broadened to include all possible options.
There was concern expressed about the possibility that the appeal of the TMP would affect the completion of the CRP due to lengthy litigation.

The BLM wilderness and recreation staff members are aware of the need for alignment and restoration work on trails. The scoping process enables BLM to know where people have specific concerns. BLM is focused on protection of wilderness values and wants to economize on facilities and maintain resource protection. BLM will continue to manage the status quo and continue to plan while waiting for the result of the appeal. Information received in the scoping process is helpful in many ways and can be used regardless of the length of the appeal.

Laura Dolan expressed her appreciation of SMAC member's knowledge and interest in the mountain. Stacy encouraged Rob and Laura to use the SMAC in the development of the CRP.

It is anticipated that the BLM website will allow a forum to receive public input and post information.

**SOUTH STEENS WATER DEVELOPMENT UPDATE**

Rhonda Karges presented a handout regarding alternatives for range improvements.
BLM has looked at various range improvements in relation to cost of construction, maintenance requirements, amount of surface disturbance, types of rehab, etc. Project design features need to include weed mitigation measures and the need develop specific to WSA requirements and restrictions. They are looking at feasibility of pumping water from the river and checking into design features and feasibility in relation to practicality and cost. Several alternatives are being considered and the various possibilities are still being updated based on field checks.
The cost estimates are based on BLM's past experience on other projects. A concern regarding potential state water rights issues was brought up and Stacy told the group that water right filing requirements begin at 9.62 acre feet or 10 foot dam height. Construction of a reservoir smaller than this allows an expedited review process and doesn't require a water permit.

Staff specialists have started the analysis part of this project. A BLM ID team meeting will review any issues of concern they receive from SMAC as a result of the field tour.
Further discussion among the members provided the following suggestions:

- Water gaps that provide access to streams should still be considered.
- At Burnt Car Spring, should fence off the spring and concrete box to reduce the possibility of animals falling into the box and dieing.
- Would like examples of the types of designs that could be utilized at the various springs.
- There is a possibility that some of the old springs could run again as a result of the juniper treatment projects.

**UPDATE ON DISTRICT MAP (Steens Mountain/Malheur Wetlands)**

The Chairman recommended that SMAC provide input so BLM could move forward with the project. Rhonda informed the group that the previously proposed titles recommended by SMAC did not meet State Office policy. The SO recommended a new name that would meet their standards:
Steens Mtn. - Harney Basin
BLM

**SMAC RECOMMENDATION: MAP NAME**

SMAC agreed to recommend that "Harney Basin" be dropped from the name.
Other title options discussed included:
Trout Creek, Pueblo, Steens Mtn. Area
Steens Country
Steens - High Desert Country (Dana recommendation)

**SMAC agreed to recommend the name of: Steens - High Desert Country**

Dana will take the name forward to the SO

The group also discussed text suggestions for the map.
For the Trails is was suggested to include a text description of some of the trails and quality of the trail head on the map, level of difficulty, level of maintenance, a note that conditions could change and that conditions on the map are as of a specific date.
Example of terms to use: obscure route, moderate slope, extremely brushy, etc. list length of the condition.
Other suggestions were: 1) describe the trail itself rather than rate it at a level such as easy, moderate, difficult; 2) use a single statement that this is a primitive area; 3) some trails (1%-2%) should be noted as family friendly and can be used by kids and handicapped or older visitors 4) if the trail is shown on the map there should also be additional information about the trail.

Richard noted the need to recognize that there will be several different audiences using the trails and that is the reason the need to provide some type of description, so they can plan their trip and experience of the mountain. It is best to provide some trail information for safety reasons.

**SMAC RECOMMENDATION: MAP TEXT**

**This is not a formal recommendation as there was not a quorum.**
**SMAC recommends that trail description information be included on the map such as; moderate/steep grade, brushy, trail head location, condition as of a specific date.**
**SMAC recommends map text includes information about the SMAC and about the Steens Act and encourage people to contact SMAC reps if they would like more information or input. SMAC recommendation is to emphasize text about the visible features/activities rather than history/dates.**

Other text suggestions include:

- reference to migratory birds and migratory bird festival
- emphasize information about the visible features and activities such as WJMA and wilderness
- limit some of the text that Tara currently has listed
- ecological descriptions could be combined as one
- provide websites other than the one of the map
- provide a means of interaction on the website
- Quaking aspen – emphasize snow pack as well as 20" precipitation zone in text.
- would like to see a discussion board for the USFWS

**PUBLIC COMMENTS**

Susan Hammond, Hammond Ranches Inc – Disappointed at the only route that was denied in the TMP. It was public access that was a historic route.
Cooperative Management and grazing permits were discussed earlier with BLM. Had an in-depth discussion of maintenance and time frames that had to be upheld to not jeopardize permits.
BLM should put more prioritization on economic uses and get permit renewals done timely.

Dick Jenkins, Rancher, Round Barn Visitor Center – Visitor Center has been open for four years and has done historical tours for 7 years. The tours have resulted in two issues he would like to share with SMAC and BLM.
Recommendation for visitor information is to keep it basic, precise, accurate, and uncomplicated and include as much as possible.
Should want people to come and enjoy the area. People deserve the right to come and enjoy the mountain. He has observed that long time residents want visitors while newer residents want to limit visitors. There are 4-5 miles of the Loop road that needs to be maintained. Should gravel the entire road and it should all should be in as good of condition as the south and north ends.

At the Kiger and East Rim Overlooks he recommends providing a wheelchair friendly surface trail to each overlook which could eliminate accidents and lawsuits.
Mr. Jenkins shared the public's appreciation and positive comments regarding the cleanliness of the restrooms at the recreation sites.

**RESPONSE TO PUBLIC COMMENTS**

Fred Otley also expressed concern about safety and recommended fencing at the overlooks. He also agreed with the need to fix the Loop road along the entire route.

Bill Renwick shared that his dad is a 3rd generation person who is wheelchair bound and cannot enjoy the overlooks. He agrees that highly traveled sights should provide for handicap access.

David Bilyeu asked BLM what is the reason for not maintaining the section of the loop road. Fred McDonald responded and noted that BLM has struggled financially to maintain the road. They received 1.8. million dollars and did some gravel work that included; new cattle guards and culverts, South Steens campground, improvements at other camp grounds and interpretive signing. BLM did get some money later to do the five mile section; however, the project was shut down internally. They currently struggle financially just to maintain the graveled portions. Erosion has caused loss of the dirt material over the years and made the Rooster Comb section worse. BLM would like to finish graveling the road. The cost of road construction in the isolated area is very high.

It was agreed to hold five meetings in FY2008. The days will be Thursday and Friday and the dates for the meetings were set as follows.

| 2008 | Location |
|---|---|
| 1/31 – 2/1 | Burns |
| 3/13-14 | Burns |
| 5/1-2 | Bend |
| 9/11-12 | FG |
| 12/4-5 | Burns |

**SOUTH STEENS WATER DEVELOPMENT TOUR**

Bill Andersen led the group on a tour to Big Bird Well and storage tank to provide the group an opportunity to inspect a well and pipeline development.

Bill Andersen provided a power point presentation to the group to show examples of other range improvement projects utilizing a well and pipeline that have been completed on the district.

A discussion was held upon return from the field tour as members shared their observations and comments. Key points noted for the water development project are listed below.

- ✓ Do it right the first time
- ✓ Need to disperse water sources to reduce impact
- ✓ Type of development will depend on each site
- ✓ Should be unobtrusive
- ✓ Let BLM determine which method is best at each location
- ✓ No tanks/pipes above ground
- ✓ Develop water close to roads
- ✓ Low visual and audio impact
- ✓ Construct low maintenance projects, so fewer trips needed
- ✓ Provide good quality water, environmentally sound
- ✓ Provide a matrix of values for each site
- ✓ No tanks/pipes above ground
- ✓ No to noise, yes to solar
- ✓ Rehabilitation/recovery plan important
- ✓ Pay special attention to WSA values
- ✓ Long-term planning essential
- ✓ Consider potable water
- ✓ Off-line spigot
- ✓ Use natural materials
- ✓ Few reservoirs
- ✓ Have a diversity (combination) of improvements
- ✓ Make the EA defensible
- ✓ Maximize dispersal of animals
- ✓ Minimize noise and visibility
- ✓ Noise disturbance vs. visual disturbance
- ✓ Outside funding sources may be available, OWEB, SWCD
- ✓ Solar panels make good targets for rifles
- ✓ Muffle generators with natural surroundings
- ✓ How much time do generators need to be on
- ✓ Use natural drainages
- ✓ Use bottomless tanks and natural materials
- ✓ Accept short term impacts
- ✓ Concerned with WSA Interim Management Plan
- ✓ Prefer wells/tanks/pipelines because of water quality
- ✓ Could install well heads below ground
- ✓ New, quieter generators are available
- ✓ Seasonal, dispersed water
- ✓ Accept short-term impacts
- ✓ Design it for the country
- ✓ Put water gaps back in (Burnt Car and No. of Tombstone Canyon)
- ✓ Springs could come back following juniper treatments
- ✓

Other suggestions offered by the group:

- ✓ There is support for any of the elements and is a matter of working with BLM to develop the best alternative.
- ✓ The key is to maximize dispersion. BLM could get back with some potential selected sites to present to SMAC.
- ✓ Asked BLM to have a proposed action and/or draft EA by the February meeting to the group could develop a SMAC alternative or proposed action. BLM agreed to do an analysis to present to SMAC.
- ✓ Show the various scenarios that are presented on a map.
- ✓ Remember the challenge presented at the August meeting, which is to ensure the proposal will make it through a court challenge.
- ✓ Suggested the need to include ODFW first and get their input before SMAC can establish a viewpoint. Recommends that BLM work through the analysis before they bring SMAC a map of the project.

BLM staff comments and responses to SMAC:

- ✓ BLM staff has had conversations with ODFW and will work with them when he does his analysis of the alternatives to determine the impacts to wildlife.
- ✓ The ID Team includes BLM wildlife staff that will interact with ODFW on this project as they do with all projects. They will be instrumental in evaluating whether the objectives are met through the NEPA process.
- ✓ Is this project able to meet the wilderness objectives and enhance wilderness values? Dana would like the members to answer that question. If it does, how can it be articulated?

Dana Shuford introduced Jeff Gent who is a law student at U of O, a former physicist, a design engineer with Hewlett Packard, and enjoys mountaineering. Mr. Gent has done some research and will speak to the group about law regulation policy. His research and information sharing is intended to help the group gain a better understanding of the Steens Act in relation to other policies and guidance under which it must be implemented.

Mr. Gent told the group that the intent is for him to act as a filter to work through and present issues around wilderness study areas, wilderness values, wilderness act, regulations, BLM policy, courts, IBLA views, and decisions. He will provide a CD to the SMAC members with information that is available regarding what can be done and what can't be done.

He will need to further research information regarding impairing wilderness values temporarily (as was talked about today).

He provided a handout with information regarding: survey of wilderness act, actions outside wilderness that impact inside wilderness (sound), water development, grazing, definitions of wilderness characteristics, when BLM policy may not be binding, WSA, non impairment and degradation standards, grandfathered uses, water developments inside WSA for wildlife, NEPA and how courts analyze adequacies or inadequacies, and other procedural legal stuff,

SMAC members asked Jeff to further research: Steens Act conflicting with Wilderness Act and which one takes precedence. The Steens Act encourages creative solutions which may conflict with the Wilderness Act. There is concern that the SMAC's creative solutions may not fit within the wilderness act. It was noted that the script from the ONDA suit will focus on this.

There was also interest in analysis of windmill impacts on wilderness and how the different Acts look at the outside impacts (visual). He asked how the law looks at private property impacts (visual and sound) on surrounding wilderness.

## December 7, 2007

**INTRODUCTIONS**

The meeting was called to order and self introductions made.

**APPROVAL OF MARCH MINUTES**

The group in attendance could not provide a quorum, however agreed to allow Dana and Stacy to make a decision regarding approval of the minutes. The Chairman and Designated Official approved the minutes.

**ACTION ITEMS REVIEW**

- Action item: Matrix form for conservation easements will be left on the open list.
- December 2005 Implementation Plan – BLM has completed WO requirements for initial steps and is waiting for WO follow-up.
- March 6 – Research by Bill Renwick is ongoing.
- Dana Shuford reported back that BLM is unable to implement the web based data base with monitoring photos due to a lack of resources.
- The May 2007 Scoping Document is on today's agenda.
- No new items were noted.

**Thoughts from Big Bird Well Tour**

Handouts of solar panels were discussed briefly. BLM will provide more information about the horse power of the pumps used.

**LAWS AND POLICIES**

Jeff Gent led the discussion and began by looking at the recent ONDA lawsuit that was filed. The suit was a challenge to the RMP and wilderness characteristics. He shared further explanation of the various aspects of the suit and is implications. He noted, however, that he did not have a complete analysis of the two sides and their arguments or validity of the conclusion. A few of the highlights and main points of Jeff's presentation were:

- APA court can only act to compel agency action if it was unlawfully withheld or delayed.

- Was the action arbitrary or capricious? Sustained only where the plaintiff fails to take a discrete action.

- Reviewing court must determine if the decision was based on:

Factors that congress did not intend.
Failure to consider an important action.
Failure to offer an explanation of the decision.

- Judge first determines the rules that apply in the particular situation. He will defer to a technical agency to help answer these questions.
- NEPA review issues; only role of the court is to insure that agency has adequately consider and disclosed environmental impact of the actions and make sure procedures are followed.
- Analysis of some of the claims:

1. Claims around wilderness areas and failure to take required actions.

a) ONDA says BLM violated NEPA and failed to take a "hard look" at the impacts, and that they made arbitrary rather than scientific conclusions and/or decisions.

b) ONDA says BLM violated FLPMA and failed to maintain a current wilderness inventory of resources. Environmental impacts must be measured.

c) EIS is inadequate.

d) FLPMA requirements were violated re inventory of lands.

e) WSA management requirements, BLM must rely on inventory.

f) Judge said BLM doesn't need to do a new inventory every time it does a new RMP, just have reasonable base line. Court defers to agency discretion as to what is a reasonable time frame for doing a new sampling.

2. Claims that BLM failed to adequately consider environmental impact and that they relied on inaccurate and outdated inventory.

**MEMBER COMMENTS and DISCUSSION**

Members asked questions about BLM's wilderness inventory procedure. Karla Bird provided an explanation of ONDA's inventory versus BLM inventory that is used. The judge's determination was that the inventory was done internally and did not need to consider ONDA inventory data.

Karla responded to the question, "How does BLM maintain an updated inventory?" She said they redo it every 10 years or will redo it as needed based on findings from outside groups. Visual resources were added recently and so any new decision will now include that also. It is an ongoing and ever changing process.

Jeff Gent referred to the **BLM wilderness handbook**. He noted that it is outdated, but it's the best BLM has for now. It is on hold. It is a BLM policy document and so is not legally binding. It does provide definitions related to wilderness. Jeff read the definition and listed some of the stated characteristics and values which he also provided in a handout. He pointed out that there is a need for some basis to say there is now more or less wilderness characteristic and/or value. Need a process to quantify the warm and fuzzy. Courts have said it's up to BLM discretion. Multiple attributes need to be quantified as a group and the reduction in one is the degradation of all.

Mr. Gent pointed out that in their lawsuit; ONDA says BLM failed to include analysis of ONDA's proposals. The Handbook says BLM must allow the public direct involvement. The

court saw evidence that BLM did consider ONDA's input and it was entered into the decision making process. Other claims state that BLM did not analyze all issues regarding roads and the impact of leaving roads open. The court ruled that BLM could rely on their expertise and was under no obligation to agree with ONDA. NEPA only prohibits uniformed, not unwise decisions. He will provide a Collection of executive orders. They may not be binding but will provide a sample of techniques. General broad based documents don't need to include site specific analysis. They can be done later in a site specific document. ONDA says adoption of the RMP was arbitrary and capricious. The court disagreed and gave reasons which are listed in the brown handout. The court gave BLM wide discretion, for example the Wilderness Act states there will be no permanent roads.

The chairman noted that SMAC must give BLM advice on South Steens Water EA that will help guide it through the legal process successfully. SMAC will need to balance the laws, regulations, etc.

BREAK

Jeff Gent:
Reviewed the handout: Rules of Law and Policy Governing Management of Steens Mtn. WSAs.
Generally, the Steens Act says to manage under the Wilderness Act.
Jeff's recommendations are:
1. Use Steens Act first.
2. Then refer to wilderness act.
3. Review relevant statements:

There aren't many within Steens Act itself that are specific. The portion of the CMPA within WSA must be managed like a wilderness (Wilderness Act).

Points back to FLPMA and WSAs.

Sec 111 B - See Steens Act (get a copy from website)

Steens law will not override other acts, but incorporates them.

Steens Act includes a lot of general policy statements. It provides guidance.

Further comments received during presentation by Jeff Gent.

- ✓ Some wilderness qualities are subjective and are not necessarily measurable.
- ✓ NEPA documents include a combination of natural resources and social values.
- ✓ Wilderness is not a resource but rather a use of resources like recreation, etc. Can a subjective social value be analyzed the same way as a resource value?
- ✓ Wilderness is a social value.
- ✓ A common issue is the problem of analyzing wilderness values (subjective vs. objective). Measure subjective by using objective factors. It isn't all relative, as there is a common sense of what term "wilderness."
- ✓ Values used to determine wilderness designation are: size, naturalness, outstanding values, solitude, or primitive/unconfined recreation.
- ✓ Does Steens Act expand FLPMA and Wilderness Act?
- ✓ The Blitzen Wild and Scenic River Act eliminated actions that may be available through other options.

- ✓ CMPA shall be managed pursuant to other laws. Steens Act does not supersede other laws, even though there is room for discretion.
- ✓ Water justification should focus on wildlife species and not on cattle and horses.
- ✓ FLPMA law is fairly general in its requirements and has been stepped down into BLM IMP (Interim Management Plan) policy which is specific.
- ✓ Must get concurrence from the creator of the policy (state, WO director, etc) to deviate from it. Getting waivers if very rare. When deviate from BLM policy must note that it is allowed under a specific act.
- ✓ This water project has benefit to the SMAC for a variety of reasons including the opportunity for interpreting laws and their relationships which will be beneficial for dealing with later issues that might come before the group.
- ✓ Sustained use implies that there will be no change in use of the land even with grazing.
- ✓ Does the WSA grandfather in the existing grazing quantities? Reference was made to the Steens Act paragraph that states: "promotes grazing and other uses that are sustainable."
- ✓ Overgrazing is not sustainable and there is a duty to reduce grazing. The manner and degree of grazing must not cause undue degradation of land as compared to 1976. (This was all a part of the Steens Act document).

Pam - Asked Jeff to provide information to the group with any other examples of cases that may deal with water developments within WSAs, and she asked BLM for information regarding the amount of use that could be expected without water development.

Jeff - Breaking ground is a major challenge within a WSA. If it's temporary it may be considerable, but it must not be apparent to the casual observer. Visual metal pipe and hum of generator could be a problem. Piping water across a WSA could create water rights that could be asserted later. Need to look at how strongly the Steens Act incorporates other statues and whether it creates strong exceptions.

Pam - Steen act is entirely within FLPMA and WA which would require different decisions and standards than parts of the Steens Act land that is outside of WSA.

It was noted that potential contest of the project may come from the statement that Roaring Springs had been made whole with the settlement from the Steens land exchange. There was a question whether the exchange and compensation included compensation for the Blitzen Wild Scenic River detrimental effect on the land owner.

**PUBLIC COMMENTS**

None

**MEMBER COMMENTS AND DISCUSSION CONTINUED**

- ✓ Need to determine which law applies or whether it is the Steens Act. SMAC should make a recommendation and let the court make the legal determinations.

- ✓ Concerned about section 12 that says BLM should maintain grazing, because it is appealable based on an ONDA appeal of SEO.
- ✓ Must review philosophy on how the project benefits wilderness characteristics and plan the project to document range health for wildlife.
- ✓ The primary justification must show that it enhances wilderness values. Steens Act doesn't give authorization to go outside FLPMA and what you can do outside WSAs.
- ✓ Wilderness enhancement is a key element. Anything proposed in the EA that doesn't meet the criteria of a WSA will not succeed. The justification of sustaining livestock grazing would not hold up in court.
- ✓ Wild horses and their needs weren't considered in the Steens Act.
- ✓ Focus on range health – native wildlife habitat (sage grouse, deer, etc.)
- ✓ Lay groundwork/framework.
- ✓ SMAC should take up the challenge. It's a project that everyone has a vested interest in and SMAC will need to work as a team to carry out the objectives.

Dana thanked Jeff Gent for his research to facilitate the discussion and pointed out that he had laid some good groundwork for what SMAC needs to consider in their efforts to be creative and innovative and think outside the box. The information should help them articulate what they are proposing.

Stacy thanked Jeff for his written documents, research, and CD. He realizes that public land management is difficult. He thinks the committee believes water development is acceptable if they limit the impacts. Conflicting laws will make it difficult to accomplish. He expressed appreciation for the conversation and ideas. The cost of investment and projects and especially attorney fees may be prohibitive to allow completion of the project, which he finds discouraging. He thinks it's worthwhile to meet with the ID team to come up with a final proposal to present to the SMAC. The EA is a good trial case for a lot of other things that will require working on creative solutions.

Jeff Gent told the group that this has been a valuable experience for him as a law student. He appreciates the group's diverse objectives and values and respect between members. Their questions are challenging. He encouraged SMAC members to take the information to their lawyers and feel free to contact him with any further questions.

**SCIENCE STRATEGY**

Bill Renwick introduced Tony Svejcar and Chad Boyd, EOARC scientists involved with ecological studies that have taken place in the area in the past year. The National Landscape Conservation System (NLCS) requires BLM to prepare a science strategy in for the CMPA. All NLCS units are required develop a science plan to show how they use the newest and latest science processes to come up with their management plans. Management decisions must be science based. EORC is doing a lot of projects in the Steens area, for example; juniper management, sage grouse habitat, fire rehab, range restoration to get rid of invasive annual species, medusahead rye, and cheatgrass. He would like group to consider some things under science strategy by the next meeting. He asked BLM to clarify what they need from SMAC.

Karla told the group that many other NLCS units have scientists on staff. Burns District needs BLM staff and SMAC to help flush out how to get good scientific information. They need to define what science information is so that the public understands. She wants the subcommittee to provide dates they are available to meet with BLM. She will try to find documents from other NLCS management units. Joan Suther, Three Rivers Field Manager, commented that she would like to see the subcommittee look at more than the vegetation that is out there and would like a good understanding of other aspects such as archeology, etc.

Karla will plan for a meeting and the science needs by mid January. At this time she has not seen the science structure of other NLCS units but will do some research. She pointed out that scientists are currently coming out to the Steens to do research without BLM knowledge and would like to see coordination with these groups and receive their data and reports to determine their validity. Need to encourage them to contact BLM with their study request and determine if it's a project that could provide valuable information to BLM.
Comments and suggestions from SMAC members include:

- Need to establish protocols.
- Findings need to be Defensible, reproducible, reliable
- Could establish a library of what is known, what is not known, what needs to be known.
- Would like BLM to try to get someone from another unit to talk to the group about their science strategy.
- Supports Institutional repositories, D-Space, to make info available.
- The science committee could come up with memos that reference the existing scientific knowledge related to a specific topic and citations that could be posted on a website.

Tony Svejcar told the group that they need to determine exactly which direction they want to go with this and what their intended end product should be. Some needs of the committee could be determined by unexpected things like listing of the sage grouse or fire versus originally planned research projects.

It was pointed out that science strategy is different than execution. The first step is to develop a blue print (strategy) for how to get there. The actual scientific work comes later. The science subcommittee should focus on developing the strategy.

Tony commented that the strategy could address how to improve the way they make decisions by how they change the interaction of scientists. A continual interaction would be beneficial.

Bill Renwick pointed out that strategy is more of a planning document rather than an implementation document.

Karla will meet with Fred, Bill, Tony, and David Bilyeu for further planning.

*Note: Based on minutes from the previous SMAC meeting, it was agreed that the sub-committee will consist of a variety of people and may include: 1 SMAC, BLM, ODFW, T Svejcar, J Rose, Nature Conservancy representative.*

**AGENDA SETTING** for the January 31, 2008 meeting.
- Desert Meadows – FM report
- South Steens Water Development EA draft
- Science Strategy Progress/Speaker
- Discussion of non-development and conservation easements and/or acquisitions and what SMAC wants to see.
- DFO update – Litigation update, WJMA update
- Map update (Steens High Desert Country) – Have Tara send an email to SMAC with the due date for narratives.
- Recreation Plan Update

Karla provided a Field Manager update: Cadastral survey is being completed to define the boundaries of CMPA for reporting to congress next year.

Next meeting date: January 31, February 1, 2008

Meeting adjourned at 12:30 pm.

Submitted by Connie Pettyjohn

The Steens Mountain Advisory Council approved the minutes as amended on _____