



***Bureau of Land Management
Director's Summary Protest Resolution
Report***

**Proposed Southeastern
Oregon Resource
Management Plan
Amendment and Final
Environmental Impact
Statement**

September 12, 2023

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Contents

Acronyms	ii
Introduction	1
Protesting Party Index	2
Lands with Wilderness Characteristics	3
Wilderness Study Areas	5

Acronyms

Term	Definition
ACEC	Area of Critical Environmental Concern
BLM	Bureau of Land Management
CFR	Code of Federal Regulations
FLPMA	Federal Land Policy and Management Act
LWC	lands with wilderness characteristics
NEPA	National Environmental Policy Act
ONDA	Oregon Natural Desert Association
SEORMP	Southeastern Oregon Resource Management Plan
Southeastern Oregon PRMPA/FEIS	Proposed Southeastern Oregon Resource Management Plan Amendment and Final Environmental Impact Statement
U.S.C.	United States Code
WSA	Wilderness Study Area

Introduction

The Bureau of Land Management (BLM) Vale District Office released the Proposed Southeastern Oregon Resource Management Plan Amendment and Final Environmental Impact Statement (Southeastern Oregon PRMPA/FEIS) on June 16, 2023. The BLM received five submissions containing two protest letters during the subsequent 30-day protest period. Four of the submissions were from the same individual, one of which contained a protest letter. The other submissions from this individual contained attachments of articles referenced within their protest letter.

The planning regulation at 43 Code of Federal Regulations (CFR) § 1610.5-2 outlines the requirements for filing a valid protest. The BLM evaluated the protest letters to determine which letters were complete and timely, and which persons have standing to protest. The two protest letters received met these criteria. No letters were dismissed from consideration due to lack of standing. One letter contained a nomination for specific areas to be designated as a Greater Sage-Grouse and sagebrush habitat Area of Critical Environmental Concern (ACEC). The nomination was provided to the appropriate BLM parties who are currently preparing an environmental impact statement to determine whether to amend the land use plans of BLM field offices, national monuments, and national conservation areas containing occupied and unoccupied habitat for the threatened Greater Sage-Grouse as the resource nominated is the direct subject matter of this effort. Because this ACEC nomination had not previously been raised in the Southeastern Oregon RMPA/FEIS planning process, this letter and the other submissions providing articles referenced within this protest letter were dismissed. One of the letters received contained valid protest issues. The BLM documented the response to the valid protest issues in the protest resolution report. The protest decision was recorded in writing along with the reasons for the decision in this protest resolution report.

After careful review of the report, the Assistant Director for Resources and Planning concluded that the BLM Oregon State Director followed the applicable laws, regulations, and policies and considered all relevant resource information and public input. The Assistant Director addressed the protests, issued a Protest Resolution Report, and posted the report on the BLM's website; no changes to the Southeastern Oregon PRMPA/FEIS were necessary. The decision was sent to the protesting parties by certified mail, return receipt requested. Resolution of protests is delegated to the BLM Assistant Director for Resources and Planning whose decision on the protest is the final decision of the U.S. Department of the Interior (43 CFR 1610.5-2(b)) consistent with the BLM Delegation of Authority Manual (MS-1203 Delegation of Authority).

The report is divided into sections each with a topic heading, excerpts from individual protest letters, a summary statement of the issues or concerns raised by the protesting parties, and the BLM's response to the protests.

Protesting Party Index

Letter Number	Protester	Organization	Determination
PP-OR-SEO-EIS-23-01	Katie Fite	Wildlands Defense	Dismissed – Comments Only
PP-OR-SEO-EIS-23-02	Peter Lacy	Oregon Natural Desert Association	Denied
PP-OR-SEO-EIS-23-03	Katie Fite	Wildlands Defense	Dismissed – Comments Only
PP-OR-SEO-EIS-23-04	Katie Fite	Wildlands Defense	Dismissed – Comments Only
PP-OR-SEO-EIS-23-05	Katie Fite	Wildlands Defense	Dismissed – Comments Only

Lands with Wilderness Characteristics

Oregon Natural Desert Association

Peter Lacy

Issue Excerpt Text: Given the importance of wilderness to maintaining biodiversity, providing habitat for imperiled species, mitigating the effects of climate change, and supporting sustainable economies, ONDA urges the Bureau to reassess several additional wilderness characteristics units that may have been overlooked in earlier analyses, including several units that may warrant protection because of their potential significance for landscape and biological connectivity as well as wildlife conservation. Completing the Bureau’s proposed network of protected units with those described below will serve important conservation policies by promoting ecological connectivity and wildlife corridors and protecting intact landscapes. The SEORMP amendment provides an exceptional opportunity to conserve “intact landscapes” that “have high conservation value, provide critical ecosystem functions, and support ecosystem resilience.” 88 Fed. Reg. at 19,598. In the 2023 FEIS, the Bureau cites ONDA’s 2004 wilderness report, but there is no reference to the 2019 report. See FEIS Appendix J (References) at J-20; see also FEIS at 3-13 (describing that “Vale District completed its inventory update of lands with wilderness characteristics in 2012 and completed a subsequent reassessment of the inventory between 2015 and 2017”-but not mentioning the 2019 ONDA report provided to the agency during the NEPA process).). Accordingly, here is a list of highlighted LWCs that would benefit from additional Bureau review.

Oregon Natural Desert Association

Peter Lacy

Issue Excerpt Text: The Bureau indicates that some or all wilderness characteristics will be lost in non-protected LWCs over life of the plan. FEIS at 3-33, 3-35 (stating that non-protected wilderness units “will lose some or all of their wilderness characteristics” over the life of the plan amendment). This is because the proposed plan amendment would prioritize other resources and explicitly demote wilderness values to less than a co-equal multiple-use resource value. Id. (“In the wilderness characteristics units that are not protected, the BLM will prioritize management of other multiple uses.”) (emphasis added). That is inconsistent with the letter and intent of the Federal Land Policy and Management Act (“FLPMA”), as well as the Bureau’s current handbook guidance and proposed public lands rule.

Summary:

The BLM should reassess several areas for wilderness characteristics that may have been overlooked in earlier analyses. The proposed RMPA is inconsistent with the Federal Land Policy and Management Act (FLPMA) and *BLM Manual 6310 – Conducting Wilderness Characteristics Inventory on BLM Lands* because management of wilderness values on some lands that include wilderness characteristics will not be managed as co-equal to other multiple uses in the proposed amendment.

Response:

The BLM’s authority for managing lands to protect or enhance wilderness characteristics is derived directly from Section 202 of FLPMA, which authorizes the Secretary of the Interior to manage public lands for multiple use and sustained yield.

FLPMA makes it clear that the term “multiple use” means that not every use is appropriate for every acre of public land, and that the Secretary can “make the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use...” (FLPMA, Section 103(c)). Furthermore, FLPMA includes a policy

goal that public lands be managed in a manner “that, where appropriate, will preserve and protect certain public lands in their natural condition” (FLPMA, Section 102(a)). FLPMA authorizes the Secretary of the Interior to use land use planning as a mechanism for allocating resource use, including wilderness character management, amongst the various resources in a way that provides for current and future generations.

Additionally, Section 201(a) of FLPMA requires that the BLM “prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values” and that “this inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values.” Section 202(c)(4) of FLPMA requires that “in the development and revision of land use plans, the Secretary shall...rely, to the extent it is available, on the inventory of the public lands, their resources, and other values.” The BLM’s wilderness characteristics inventory process does not require that the BLM must conduct a completely new inventory and disregard the inventory information that it already has for a particular area when preparing a land use plan (BLM Manual Section 6310.06.B).

Although the inventory process may occur in concurrence with a land use planning effort, it is a distinct and separate process. Public involvement requirements under Section 202 of FLPMA do not apply to the BLM’s inventory process, which is performed under Section 201 of FLPMA. The BLM is not required to coordinate with State or local governments, or seek comment from the public, during its inventory process.

The BLM considered the protection of lands with wilderness characteristics in the Southeastern Oregon RMPA/FEIS and relied on a current inventory of the resources of the public lands when preparing the RMPA/FEIS. The BLM’s wilderness characteristics inventory process was described in Chapter 1 of the Southeastern Oregon RMPA/FEIS (pp. 1-6 through 1-7). Additionally, the BLM published all inventory results to the following public website: <https://www.blm.gov/programs/planning-and-nepa/plans-in-development/oregon-washington/vale-wci>. The BLM completed a comprehensive inventory update of wilderness characteristics of all public lands within the planning area, outside of Wilderness Study Areas (WSA) between 2006 and 2012. The BLM also completed a comprehensive review of these inventories in 2015 to determine the level of compliance with inventory policy and management direction in the BLM Vale and Lakeview Districts. The BLM subsequently used the findings of this review to reassess every inventory unit that met the size criteria as defined in the Wilderness Act of 1964 and performed additional field reconnaissance to confirm information when needed. The reassessment resulted in changes to the BLM’s original findings in four of 116 units, and these four units were included in the analysis in the Southeastern Oregon Draft and Final EIS (Southeastern Oregon RMPA/FEIS pp. 1-6 through 1-7). For the purposes of the RMPA/FEIS, the BLM’s inventory process was completed prior to the 2019 Oregon Natural Desert Association’s submission, and receipt of the Oregon Natural Desert Association document does not necessitate that the BLM reassess that inventory.

Section 6.B.1, Documentation and Minimum Standards for Review of New Information, in *BLM Manual 6310 – Conducting Wilderness Characteristics Inventory on BLM Lands* provides criteria by which the BLM should assess new information regarding wilderness characteristics. The BLM used these criteria to assess information received from the public about wilderness characteristics and considered all information that met these criteria either in its inventory or in its later review of its inventory findings. The BLM critically reviewed an additional 27 units and the associated information provided and confirmed the BLM’s current determinations for all 27 of these units (Southeastern Oregon RMPA/FEIS p. P-192).

The BLM identified areas where the BLM will manage to protect lands with wilderness characteristics and the extent to which the RMPA alternatives would affect lands with wilderness

characteristics in Sections 2.2 and 3.7.1 as well as Appendix B of the Southeastern Oregon RMPA/FEIS (pps 2-3 through 2-7 and 3-30 through 3-47).

The BLM considered the protection of lands with wilderness characteristics in the Southeastern Oregon RMPA/FEIS and the Southeastern Oregon RMPA/FEIS identifies areas where the BLM will manage to protect lands with wilderness characteristics. Therefore, the BLM properly exercised its authority to protect lands with wilderness characteristics. Accordingly, this protest is denied.

Wilderness Study Areas

Oregon Natural Desert Association

Peter Lacy

Issue Excerpt Text: The Bureau states, correctly, that if Congress were to “release” a WSA in legislation, that area would no longer be managed for non-impairment under Manual 6330. FEIS at 3-292. The Bureau should make clear, though, that (unless otherwise specified by Congress) a legislative “release” only releases a WSA from study pursuant to section 603 of FLPMA. 43 U.S.C. § 1782(c). Simply put, areas released from study under section 603 must be managed going forward in accordance with the applicable land use plans adopted under section 202 of FLPMA. Id. § 1712. Even in “released” areas, FLPMA’s requirements to maintain accurate and up-to-date inventory information and to protect against “unnecessary or undue degradation” and “permanent impairment” of lands and resources-including any wilderness characteristics that exist on the lands-remain in effect. Id. §§ 1702(c), 1711(a), 1712(c), 1732(b). To correct this oversight, the plan amendment should state explicitly that the Bureau, pursuant to its continuing authority and obligations under FLPMA, will timely assess any released areas to determine whether they still contain wilderness values and, if so, how to manage those values. 43 U.S.C. § 1711(a) (continuing inventory requirement); see also *Or. Nat. Desert Ass’n v. BLM*, 625 F.3d 1092, 1122 (9th Cir. 2010) (describing Bureau’s authority and obligations under FLPMA and NEPA to manage lands to preserve wilderness values and to address “to what extent, wilderness values are now present in the planning area outside of existing WSAs and, if so, how the [land use plan] should treat land with such values”); *Or. Nat. Desert Ass’n v. Rasmussen*, 451 F. Supp. 2d 1202, 1213 (D. Or. 2006) (applying same principle to site-specific projects and activities).

Oregon Natural Desert Association

Peter Lacy

Issue Excerpt Text: Second, and related, ONDA is concerned with the statement that “[i]f a WSA was released, it would no longer support any size exception for contiguous wilderness characteristics units under 5,000 acres.” FEIS at 3-292; see also FEIS at 2-7 (“If a protected [WCU or parcel] is contiguous to a WSA that is congressionally released from wilderness designation, and that unit (or parcel) depends on being contiguous with the WSA to meet the criteria of possessing wilderness characteristics, the unit (or parcel) would no longer be prioritized for protection.”) (emphasis added). This potentially undermines wilderness preservation for more than half the protected LWC areas and acres in the PRMPA. See FEIS at 3-298 (“The PRMPA would protect 46 parcels that are contiguous to WSAs, totaling 208,154 acres within 24 protected [WCUs].”). That would be an astounding loss of wilderness protection, were it to come to pass. But it is also, again, an inaccurate statement of the law.

256 and 3-257 that state that “the remaining 43 wilderness characteristics units . . . would be managed for other multiple uses” to read that these unprotected units “would be managed for multiple use,” without the word “other” that suggests the exclusion of wilderness character as a multiple use.

To correct this potential problem, the Bureau should clarify that, in the event of any legislative WSA release, the agency will timely exercise its existing authority and obligations under FLPMA to update its resource (wilderness) inventory of the released area(s) and determine whether the areas, including

the contiguous LWC areas, still possesses statutorily defined wilderness character. If so, the LWC will continue to be prioritized for protection of wilderness characteristics as provided in the amended SEORMP. This is important because, as the Bureau explains, “[t]hat the contiguous lands possess wilderness characteristics is [] an indication that management has led to there being no boundary (e.g., a road) separating the contiguous unit from the WSA.” FEIS at 3-298. In turn, these large roadless areas including the contiguous LWCs increase and enhance not just opportunities for solitude and primitive and unconfined recreation but also “ecological integrity” and “intact” habitat areas on the landscape.

Summary:

The BLM should confirm that existing WSAs that are later legislatively released from WSA status must continue to be inventoried for wilderness character and managed in accordance with land use plans developed under Section 202 of FLPMA.

Response:

FLPMA directs the BLM to maintain an inventory of its lands of all resources and their values, including lands possessing wilderness characteristics, as defined in the Wilderness Act of 1964. Section 201(a) of FLPMA requires that the BLM “prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values” and that “this inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values.” As such, the BLM would continue to maintain an inventory of its lands for all resources and their values, including wilderness.

As described in the Southeastern Oregon RMPA/FEIS (p. 3-30), one of the criteria that must be present for an area to possess wilderness characteristics is size: the area must be a roadless area with over 5,000 acres of continuous BLM lands, or smaller areas of sufficient size to make practicable the preservation of an unimpaired condition. Smaller areas include areas adjacent to other Federal lands formally determined to have wilderness characteristics and protected by the administering agency.

As stated in Southeastern Oregon RMPA/FEIS Section 3.7.19 (p. 3-292), all existing WSAs are being managed to maintain their suitability for wilderness designation by Congress. There currently are no congressionally designated wilderness areas within the planning area. Until Congress makes a decision to designate a WSA as wilderness or ends consideration by releasing the WSA from consideration for wilderness designation, the BLM manages these lands so as not to impair their suitability for wilderness designation. This is known as the non-impairment standard (Southeastern Oregon RMPA/FEIS p. 3-292).

If Congress were to release a WSA from further consideration as wilderness, these lands would no longer be managed according to *BLM Manual 6330 – Management of Wilderness Study Areas* and adjoining parcels less than 5,000 acres would no longer meet the criteria of possessing wilderness characteristics. The 49 parcels that meet the wilderness inventory size criteria by relying on adjoining WSAs are identified in Table 3-44 (Southeastern Oregon RMPA/FEIS pp. 3-294 through 3-297). If Congress were to release a WSA from consideration for wilderness designation, any adjoining parcel under 5,000 acres would be subject to any congressionally defined provisions or land use plan allocations underlying the released WSA, as stated in the Southeastern Oregon RMPA/FEIS (p. 2-7).

As required by FLPMA, the BLM relied on its current inventory of public lands in developing the Southeastern Oregon RMPA/FEIS and will continue to maintain a current inventory of all its lands and their resources and other values for future land use planning efforts. Accordingly, this protest is denied.