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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

OREGON NATURAL DESERT ASS’N,

Plaintiff,

v.

KENNY MCDANIEL, Burns District
Manager, BLM, *et al.*,

Defendants.

Case No. CV-09-369-PK

**DECLARATION OF
CRAIG MILLER, M.D.**

I, CRAIG MILLER, state and declare as follows:

1. My name is Craig Miller and I reside in Bend, Oregon. The following matters are personally known to me, and if called as a witness I would and could truthfully testify thereto.

2. I am past president of the Board of Directors of plaintiff Oregon Natural Desert Association (“ONDA”). I also am a charter member of ONDA and serve as a part-time, contract employee of ONDA as a Geographic Information System (“GIS”) Analyst. As part of my work as a GIS Analyst for ONDA, I am also an active participant in ONDA’s wilderness inventory

DECLARATION OF CRAIG MILLER, M.D.

program including on-the-ground documentation. Prior to my work with ONDA, I was an emergency physician for 19 years.

3. I offer this declaration to demonstrate that BLM's Travel Management Plan ("TMP") decision authorizing motorized travel on 555 miles of public land routes on Steens Mountain contains considerable flaws. First, BLM designated as open to motorized use, routes that don't even exist on the ground. Second, BLM inventoried only a fraction of the routes, relying on incomplete information. In its incomplete inventory, BLM took not a single photograph to document current route conditions. BLM then used this incomplete inventory information both inaccurately and inconsistently. Third and integrally related to BLM's incomplete inventory, the agency ignored the comprehensive route inventory surveys and reports that ONDA provided to BLM prior to and during the NEPA process for the TMP. Information from the ONDA surveys, from the administrative record, and from other sources, points in the opposite direction from BLM's conclusions, showing, among other things, that 101 of the 555 miles of routes BLM authorized in the TMP for motorized use are obscure on the landscape having been essentially naturally reclaimed over time by nonuse. Additional routes are severely deteriorated and should also be closed to motorized use.

MATERIALS REVIEWED

4. To complete my analysis, I reviewed the following primary materials, in addition to reviewing the administrative record BLM provided in this case:

- ONDA, *Andrews Resource Area Wilderness Inventory Recommendations* (Sept. 1, 2002 & Nov. 1, 2002) ("ONDA Wilderness Report").
- ONDA, *Steens Mountain Cooperative Management and Protection Area Road Closure Recommendations* (Jan. 22, 2003).
- ONDA, *Steens Transportation Plan Recommendations* (May 17, 2007) ("ONDA Transportation Report").

- BLM, Steens Mountain Travel Management Plan Environmental Assessment 05-027-021 (Apr. 2007).
- BLM, Finding of No Significant Impact and Decision Record for Steens Mountain Travel Management Plan Environmental Assessment 05-027-021 (Nov. 28, 2007).
- Mark Sherbourne, BLM, TMP Field Notes (dated Aug. 11, 2003 to Nov. 10, 2005). AR 10288–97. BLM redacted a large portion of these notes in the copy produced in the administrative record. I attach to this declaration two unredacted versions of the Sherbourne Inventory that BLM has previously produced. The first, “Attachment A” to my declaration, was produced by BLM as part of its administrative record in ONDA’s litigation over the Andrews-Steens Resource Management Plan (*ONDA v. McDaniel*, 06-242-AA/08-35942). The second, “Attachment B,” was produced by BLM during the NEPA process for the TMP.
- 2005 aerial imagery readily available from the image web server at the following site: http://imagery.oregonexplorer.info/ImageX/ecw_wms.dll?

DISCUSSION

I. ONDA’S WILDERNESS AND ROUTE INVENTORY INFORMATION

5. Upon review of BLM’s proposed TMP and the EA, it became obvious that BLM’s route findings and designations were highly flawed because ONDA had very recently completed a comprehensive inventory of routes throughout the Steens Mountain Cooperative Management and Protection Area (“CMPA”). We did this as part of preparing a citizen wilderness proposal (the “ONDA Wilderness Report,” available in two parts at SAR 1737 and SAR 3984) for BLM to consider as it prepared the Andrews-Steens Resource Management Plan (“RMP”). We had provided our wilderness survey report to BLM in 2002, about four and a half years before BLM issued its EA for the TMP in April 2007. We gathered additional photographic documentation in 2005 and 2006 and submitted a comprehensive report in May of 2007 to BLM (the “ONDA Transportation Report,” available at AR 12946 and 13258). Both the

ONDA Wilderness Report and the ONDA Transportation Report include maps with geo-referenced photos as well as recommendations for route closures.¹

6. In the Steens Act, Congress had directed BLM to prepare, simultaneously with its land use plan for Steens Mountain, a transportation plan that was to be “integral” to the RMP and “comprehensive” in scope. Thus, our wilderness inventory work was critical for surveying current routes conditions throughout the CMPA. We identified a very large number of routes that were eroded, washed out, difficult or dangerous to travel, causing resource damage, redundant, or simply naturally reclaimed due to nonuse over the years. In the ONDA Transportation Report, we asked that most of these types of routes be either permanently closed or closed to the public but left open on a limited basis for administrative use by BLM and use by those holding certain BLM-issued permits (e.g., to graze livestock on the public lands) requiring motorized travel.

7. ONDA followed the wilderness and route inventory procedures BLM adopted in its 2001 *Wilderness Inventory Study and Procedures* handbook, which describes the required content for citizen wilderness reports.² That handbook is based on BLM’s original 1978 version, which guided the agency’s initial wilderness inventory required by FLPMA back in the 1970s. BLM’s handbooks also set out key definitions. Most importantly here, BLM defines a “road” as a route that has “been improved and maintained by mechanical means to insure relatively regular and continuous use.” A “way,” on the other hand, is a route maintained solely by the passage of vehicles. The BLM handbook includes further detail on what each of these elements of a road is,

¹ Further background on ONDA’s citizen wilderness inventory and the ONDA Wilderness Report appears in the declaration of Bill Marlett, ONDA’s past executive director. AR 295.

² BLM has refused to include its 2001 handbook in the administrative record. Because ONDA based its field surveys on the protocol BLM set out in its handbook, and because it is relevant to my discussion here, I include it here as “Attachment C” to my declaration. BLM does include its 1978 wilderness inventory handbook in the record. SAR 1.

and we applied those elements in our inventory work, using BLM's field inventory forms and methods to collect, analyze and present our data.

8. The ONDA Wilderness Report includes maps identifying the boundaries of each roadless area we identified, annotated road and photo logs with Global Positioning System ("GPS") locations cued to the maps, narratives analyzing each inventory unit's wilderness characteristics, and more than 1,600 GPS-referenced photographs.

II. OBSCURE, HISTORICAL AND ADDED ROUTES

9. The Steens Mountain TMP EA introduced several new terms to describe routes within the CMPA, including "Obscure" and "Historical." I will discuss the implications of these two route classifications below.

10. An "Obscure Route" is defined by BLM simply as "hard to locate on-the-ground." TMP EA at 12. These are routes (constructed or not) that allegedly existed at one time, but have since succumbed to the forces of nature and disuse resulting in a route that has become difficult or impossible to follow. Although BLM in its TMP designated all Obscure Routes open to public travel, the Department of the Interior's Board of Land Appeals determined (*Or. Natural Desert Ass'n*, 176 IBLA 371 (2009)) that doing so would be equivalent to allowing public off-road travel within the CMPA and was therefore not legal. Routes such as these do not meet the definition of either a "road" or a "way," although they might have at some time in the past. BLM identified 36 miles of Obscure Routes in the TMP. Significantly, additional "hard to follow" routes were identified by BLM's route inventory specialist, Mark Sherbourne, during his on-the-ground inventory, but BLM did not designate them as "Obscure". I will discuss this latter aspect in more detail below.

11. “Historical Routes” are defined by BLM as “used historically and are currently hard to locate and/or were not identified during the WSA inventory process.” In other words, these routes again are *obscure*, were not recognized as valid routes in the BLM transportation system, or both. For most of the routes, BLM did not make a distinction as to which of these routes were obscure versus which ones were not included in the transportation system³. BLM provides no documentation in the EA or elsewhere that these routes (if they ever existed) were in fact used historically. If they didn’t exist historically, or if they never existed at all except on the TMP map, many may instead be pioneered routes—that is, routes illegally created on the landscape *after* Congress created the protected CMPA in the Steens Act in 2000. I say “illegally” because in section 112(d) of the Steens Act Congress forbade the creation of any new routes except under a very limited exception that has never been invoked, where the Secretary of the Interior determines that some new road is “necessary for public safety or protection of the environment.”

12. “Historical routes” that are obscure on the landscape suffer a similar problem to “Obscure Routes” in that travel on these routes is, as the IBLA explained, equivalent to prohibited off-road vehicle travel and prohibited creation of new roads. The only difference is that travel on these Historical Routes is restricted to administrative and permit use only. But the Steens Act’s prohibitions on off-road travel and on construction or re-establishment of new routes still apply. The only exception to the off-road travel ban is if “the Secretary determines” that such use is needed for administrative, emergency or other agricultural or ecological

³ The BLM keeps an extensive GIS dataset of all the recognized transportation-related linear features on the lands it manages. The Ground Transportation dataset (referred to as the “GTRN”) was created by the BLM State Office GIS staff in 1999 and is the official repository of information on transportation routes on BLM lands in Oregon.

purposes. Section 112(b)(2). Even then, the non-administrative or emergency exceptions do not apply in Wilderness or WSAs. Section 112(b)(2)(B).

13. I don't see anywhere in the EA where BLM or "the Secretary" made a determination as is described in the Steens Act. Indeed, I cannot provide any data on historic route mileages because BLM did not provide any such information in the GIS dataset (let alone the EA). However, my best estimate in reviewing BLM's CMPA Travel Management Plan Decision Map is that about 15% of these Historical Routes are in Wilderness, 50% are in Wilderness Study Areas ("WSAs") and 35% are on the remaining, non-Wilderness and non-WSA lands.

14. I can also find no determination in the EA that any of BLM's Historical Routes are "necessary for public safety or protection of the environment." And BLM provides no data in the EA or elsewhere to support that these routes ever validly existed prior to Congress's adoption of the Steens Act in 2000.

15. Historical Routes that are *visible* but were not identified during BLM's initial WSA inventory process (which took place in the 1970s) bring their own set of problems. If they were not identified during that 1970s inventory process, they either did not exist at the time or BLM determined that they were too insignificant to designate as a route. If they did not exist in the 1970s, then they are new (unconstructed) pioneered routes (i.e., routes created solely by the passage of vehicles). If they did exist in the 1970s, but were so immaterial as to not be mentioned or mapped by BLM, it is questionable that they now should be resurrected. As noted before, the Steens Act does not allow the creation or re-establishment of new routes. In any case, these routes must be assumed to have been illegally pioneered, absent any data from BLM

documenting otherwise. I see no discussion at all in BLM's EA concerning pioneering of routes not constructed by BLM.

16. In numerous cases, BLM *added new routes* under the TMP decision. These were routes that were *not* in the transportation system at the time of CMPA designation. Many of these routes are hard to locate on-the-ground (i.e. "obscure") but are nevertheless designated as open to motorized travel under the TMP. An unknown number of the added routes were pioneered subsequent to CMPA designation. Some of these routes were added to WSAs or Wilderness. Whether these new routes are obscure, pioneered, or added to wilderness lands, the Steens Act does not allow BLM to now add them into the Steens Mountain transportation system. I will describe these routes in more detail in the following section.

17. The remaining *added* routes were not recognized as valid routes at the time that the CMPA was designated in 2000. If they indeed existed at the time, they were not considered significant enough to include in the transportation system. In any case, these routes must be assumed to have been illegally pioneered unless BLM can document otherwise. Again, the Steens Act prohibits the creation or re-establishment of new motorized travel routes within the CMPA.

18. None of these added routes were photographically documented by ONDA in its Reports because most were obscure and could not be found on the ground, and the others were not considered to be roads prior to the TMP. BLM also failed to document, in the EA or elsewhere, that these routes actually exist, or when they were created.

III. FLAWS WITH BLM'S ROUTE INVENTORY INFORMATION

19. The route inventory information upon which BLM's TMP decision rests contains a number of serious flaws. These include (1) the lack of photographic and other documentation,

(2) the small number of routes inventoried, (3) inaccurate and inconsistent inventory information, and (4) inconsistencies in how the inventory information was used. I will discuss these issues in turn.

Lack of Photographic Documentation

20. Between 2002 and 2007, ONDA photographically documented the condition of a large portion of the routes within the CMPA. ONDA presented this information to BLM as part of its 2002 Wilderness Report (SAR 1737–3981 & 3984–4073), its 2003 Route Inventory Report (SAR 4074-86), and its 2007 updated Transportation Report (AR 12946-13257). Based on the data collected, ONDA’s reports recommend specific route closures to enhance wildlife habitat and wilderness character on Steens Mountain. The reports also dispute or undermine many of BLM’s baseline assumptions for its route network on Steens Mountain.

21. The photographs were geographically referenced and mapped, and represent the entirety of hard documentation of route condition available. This last point is important: BLM never took a single photograph documenting actual route conditions throughout the TMP planning area. We asked BLM for any photos the agency might have taken, both informally and through the Freedom of Information Act. BLM responded that it took none. The administrative record in this case confirms that, as BLM has produced not a single photograph documenting route conditions or the existence of disputed or purported routes. As a result, photography did not figure in BLM’s inventory, and the agency refused to incorporate ONDA’s photos into its TMP decision process.

22. In addition to on-the-ground photographs, aerial photographs would have been invaluable to BLM’s environmental analysis. Aerial imagery has been available on demand over the past decade. Although a poor tool in determining route condition, it can be a *valuable* tool in

determining whether a route is clearly defined or not. BLM could have used aerial imagery to assist in prioritizing routes to inventory, and could also have determined that certain routes were obscure prior to field verification. BLM failed to do this.

23. I will give a series of examples of how obscure routes can be determined on sagebrush landscapes using aerial photos.⁴ I have grouped the aerial photos I discuss in these examples together in my “Attachment D” to this declaration. The optimal scale for this determination is 1/5,000 for the half-meter resolution used in my examples. In Attachment D, the aerial photo at page 1 shows several routes for comparison. The most prominent route is the Steens Mountain Loop Road, here a frequently maintained gravel road. Towards the southeast is an infrequently maintained road, but nonetheless clearly visible on the landscape (see photo “Lauserica_ht59”). To the west is BLM map (SAR 5146) ref #35, a route that BLM designated as an “obscure” route. This route is narrow, poorly defined, and similar to cow trails and fence lines as illustrated in the aerial photo.

24. Now, compare this to photos Aerial 3, Aerial 25, Aerial 33, Aerial 33n, Aerial 38_39__46, Aerial 47, and Aerial 49_50 in Attachment D. These photos all show routes that BLM designated “Obscure” in the TMP. In these cases, the photos show routes that range from traceable to barely discernible, at least in places. In general, these routes tend to be poorly defined, portions are sometimes not visible, and they are often indistinguishable from fence lines or cow trails⁵ (see photos Aerial 15 and Aerial 105e). In the extreme situation where the route is

⁴ Aerial imagery is a standard tool used in GIS analysis. The orthoimagery used in these examples are from a web map service (Image Web Server on imagery.oregonexplorer.info). The imagery was reconstructed from half-meter resolution aerial photographs obtained in 2005.

⁵ A “cow trail” is created by livestock treading along a singular track to the extent that vegetation is trampled and displaced, forming a trail. For example, BLM inventory ref # 33, designated “Obscure” begins as a cow trail on the north end as illustrated in ONDA photo FT-36

invisible over its entire length, the route no longer exists (see for example photo Aerial 15 none). The bottom photo shows a complex of “obscure” routes that BLM added to the TMP. The arrow is a reference point to a junction. The top photo shows the exact same photo with the arrow reference point. There is no evidence of a route at the indicated location.

Inadequate Number of Routes Inventoried

25. Over a period of nearly 2½ years, BLM’s Natural Resource Specialist, Mark Sherbourne, and others conducted field inventory work on approximately 108 miles (19%) of the 555 miles of public land routes designated open by the TMP. Approximately 32 additional miles were evaluated in the office or in discussions with local owners or county officials (as indicated in the “Field Date” column of the Sherbourne Inventory). BLM designated the remaining 400+ miles as open to motorized use in the absence of any data or supporting information.

26. There is no indication that BLM evaluated any routes outside the Sherbourne Inventory. Routes that were studied or discussed in the office are duly noted in the Sherbourne Inventory (under the “Field Date” column). In the absence of any documentation, it must be assumed that the remaining 400+ miles of routes were designated “open” without further consideration. BLM did not reproduce or summarize the Sherbourne Inventory information in the EA. Nor does the EA explain how BLM arrived at its route condition conclusions for the 400+ miles of routes it decided not to study or verify in the field.

27. In fact, BLM could have chosen to use geo-referenced photographs and route descriptions provided by ONDA for many of these 400+ miles. BLM also could have used aerial imagery to help inform its decisions, but chose instead to use *no* information at all. As a result, at least 101 miles of public land routes designated “open” in the TMP are in fact obscure.

(rte_br4_phot_ft36) and Aerial 33cowtrail.

Inconsistencies in How the Inventory Information Was Used

28. BLM's Sherbourne Inventory information is inaccurate and inconsistent. ONDA now has obtained three versions, the most recent a highly redacted document produced by BLM as part of the record in this case describing 160 routes and route segments. BLM produced a previous intact version (Attachment A) during ONDA's litigation over the Andrews-Steens RMP (*ONDA v. McDaniel*, 06-242-AA/08-35942) describing 140 routes and route segments. The third version provided to ONDA by BLM during the TMP planning process is an earlier intact document providing information on 54 routes ("Attachment B").

29. For the sake of simplicity, I have prepared a spreadsheet ("Attachment E") that compares the unredacted comments side-by-side to the redacted comments. No unredacted comparisons were provided by BLM for inventory routes numbered above 140. The purple-lettered words indicate *alterations* from the earlier versions. The blue lettering indicates words that were redacted in the FOIA document (routes numbered higher than 140 lack comparisons because their descriptions are only found in the redacted version). None of this information is in the EA itself.

30. The problems brought to light by this set of inventory documents are numerous, and reveal some disturbing patterns. First, the fact that BLM made alterations (see Attachment E) to its inventory descriptions over time does not instill confidence. Furthermore, 35 of the inventoried routes are no longer included or referenced in the GIS database.⁶ BLM was not able

⁶ BLM provided ONDA a GIS layer named "tranplan_oww_For_ONDA" in response to a request under the Freedom of Information Act ("FOIA"). This GIS layer purportedly contains "the Cooperative Management and Protection Area Travel Plan Map with Reference Numbers." This is the map at SAR 5146. "Reference Numbers" refers to the numbers assigned to the 163 routes inventoried by BLM. The following reference numbers are missing in the GIS layer: 1, 2, 5, 6, 11, 12, 14, 16, 17, 18, 21, 22, 31, 36, 51, 54, 59, 69, 78, 88, 89, 91, 97, 104, 106, 110, 113, 123, 126, 132, 139, 140, and 160.

to provide an explanation of why the reference numbers are missing. In a few cases these inventoried routes have been deleted from the transportation system, but in the majority of cases they continue to be open routes under the TMP.⁷ BLM has been unwilling or unable to provide, (and ONDA has been unable to determine) the whereabouts or current status of the following routes: map ref #110, 111, 113, 123, 125, 126, 132, 139, 140, and 160. *See* SAR 5146 (showing route locations on BLM's route inventory map). Again, this information is not in the EA nor anywhere that I have seen in the administrative record.

31. Neither is the BLM inventory especially accurate. For example, the comment "VACANT" or "Vacant" is given for several routes in the redacted version of the Sherbourne Inventory.⁸ BLM apparently used the term "vacant" to refer to routes that are no longer recognized as routes and are not mapped. BLM's District Manager recently explained to me that BLM now has no official definition for this term. Of these, at least five routes (ref # 5, 6, 21, 31, and 104 on the BLM Inventory) are not closed as the description indicates, but rather are designated as *open* to motorized use under the TMP. Other "vacant" routes whose status is not possible for ONDA to determine because of the missing data noted in the preceding paragraph includes #91, 97, 110, 111, 113, 126, and 132.

32. The type of information BLM redacted in its latest version of the inventory is telling. By and large, comments that BLM attempted to shield from scrutiny were actions recommended by BLM's route inventory specialist. For example, he recommended closure or

⁷ Among the missing referenced routes that are open under the TMP are map ref# 1, 5, 6, 16, 21, 31, 54, 59, 69, 88, 89, 91, 97, 104, 106, and 140. These routes thus do *not* appear on BLM's route inventory map at SAR 5146.

⁸ See map ref #2, 5, 6, 11, 12, 14, 21, 22, 31, 51, 78, 88, 104, 110, 111, and 113.

permit use only (“SPUR”) for several routes, but BLM instead designated them open under the TMP (BLM Inventory ref #1, 34, 52, 56, 57, 67, 89, 106). One of these routes (BLM Inventory map ref #106) was an obscure, impassable route blocked by cut juniper trees and the redacted recommendation was “Remove from system.” *See* Attachment F at 1–2 (photograph and map).⁹ Rather than following the recommendation, however, it was “reopened” in 2006 and designated open under the TMP. However, the highest proportion of redacted comments recommended *adding* new routes to the CMPA.

33. Let me now highlight some of the most egregious problems that BLM’s incomplete field inventory brings to light. Perhaps paramount are the numerous *obscure* routes that were not designated on the map as such, and therefore are open contrary to the IBLA ruling under the TMP. There are nine miles of routes *not* currently designated as “Obscure” that the Sherbourne Inventory itself described as “nonexistent,” “faint route”, “turns entirely to cow trail,” “route no longer visible,” “obscure,” and so forth. Yet BLM designated these as open to motorized use in the TMP (Map Ref #1, 34, 56, 57, 58, 63, 66, 69, and 147). One stark example is the route ref #34. BLM’s description is, “Route faint to start and turns entirely to cow trail after one mile. Keep route to reservoir but close/delete this way.” Though BLM’s data document that this entire route is “obscure,” BLM nevertheless designated it as open (rather than Obscure) under the TMP. There is no material difference between this open route and other routes that BLM designated “Obscure.” Designation of this “obscure” route as open to motorized use is paramount to allowing off road travel for the same reason it is for an “Obscure” route. BLM included none of this important inventory information in the EA in which the agency purported

⁹ Attachment F consists of photographs and maps drawn from the ONDA Wilderness Report and ONDA Transportation Report.

to study the environmental impacts of designating routes such as this as open to motorized use on Steens Mountain.

34. Using ONDA's photo documentation and aerial imagery, I found at least 40 additional routes or route segments in the Sherbourne Inventory, totaling 39 miles, to be obscure, despite BLM inventory findings that indicate otherwise.¹⁰ See Attachment F at 3 (a map I prepared to show this information). All these routes are obscure or nonexistent and yet are designated as open to motorized use under the TMP. Again, allowing travel on these hard-to-follow or nonexistent routes is equivalent to allowing off-road travel. Again, this is information that does not appear in the EA, but that would have greatly aided the public in reviewing BLM's work—and would have been critical for BLM to have performed a fully informed environmental analysis in its NEPA document.

35. Another serious problem brought to light by the Sherbourne Inventory is the lack of rigor BLM used in determining to *add* new routes to the CMPA. BLM added and opened for motorized use 65 of the routes documented in the Sherbourne Inventory, totaling 47 miles. These are routes that BLM had never previously recognized as existing in the CMPA.¹¹ As noted previously, the Steens Act forbids the creation of new routes within the CMPA. At least 40 of

¹⁰ These inventoried routes include map ref #21, 29A, 52, 54, 67, 71, 72, 73, 74, 75, 79, 86, 87, 94, 96, 97, 98, 99, 101, 102, 103, 106, 114, 115, 116, 117, 118, 119, 120, 121, 122, 124, 127, 128, 136, 137, 148, 150, 997 and 998 (from BLM's Inventory). I have provided corresponding aerial photographs and, where available, geo-referenced digital inventory photos in Attachment D. See Attachment D at 12–51.

¹¹ Routes include BLM Inventory ref #5, 6, 7A, 8, 10, 13, 16, 19, 26A, 26B, 27, 29A, 31, 32, 52, 54, 57, 63, 66, 67, 68, 71, 72, 73, 74, 75, 79, 83, 84, 85, 86, 87, 92, 93, 94, 96, 98, 99, 101, 102, 103, 112, 114, 116, 117, 118, 119, 120, 121, 122, 124, 127, 128, 129, 130, 136, 137, 138, 147, 150, 151, 156, 997, 998, and 999.

these routes, covering a distance of 33 miles, are obscure or nonexistent.¹² See Attachment F at 4 (map titled “BLM Inventory Added Routes”) and the corresponding aerial photographs. In some cases lines were simply drawn on the map without any regard to what was on the ground. See AR 308 (¶ 6) & AR 618 (an e-mail conversation attached to my IBLA declaration documenting this); Attachment F at 5–8 (map examples using aerial photographs and comparing BLM route # 118, 121, 127 and 998).

36. I will describe three (of many) examples to make my point. BLM’s inventory finding for route #57 is as follows: “Obscure road on ‘non-designated’ public land.” Although the Sherbourne Inventory documents the route as being “obscure,” i.e. a route that for practical purposes does not exist, in the TMP BLM designates this as an open route. Aerial photography confirms that no route exists in this location. See Attachment D at 52. In this case, BLM’s inventory data provided an accurate description of the supposed route’s “obscurity,” but the information was ignored when the agency made its final decision.

37. Another example is route #136. BLM’s inventory states, “Add as common use route” with no accompanying description. In the field date column is the word “photo.” An aerial photo reveals that no evident route exists anywhere in the vicinity of the line on the map. See Attachment D at 53. The BLM inventory (let alone the EA) gives no description of the route and is entirely uninformative. In this case there is *no* information, but BLM added the nonexistent route to the TMP anyway.

38. My final example is BLM’s route #118. BLM’s inventory states, “Existing moderately used route to private land. Add as a common use route.” Again, no such route exists

¹² Routes include map ref #29A, 52, 54, 57, 63, 66, 67, 71, 72, 74, 75, 79, 86, 94, 96, 98, 99, 101, 102, 103, 114, 116, 117, 118, 119, 120, 121, 122, 124, 127, 128, 129, 136, 137, 147, 150, 997, and 998.

on the ground. The route is mapped as a straight line. On the aerial photo, *see* Attachment D at 38 (aerial photo) & Attachment F at 5 (aerial photo comparison), one can see a faint cow trail leading to a reservoir in the lower right-hand corner. However, there is not even the slightest trace of a route in the vicinity of the line drawn on the map. In this case the description is in error.

39. These are not isolated, rare examples, but rather reflect a consistent pattern of how BLM gathered and used (or ignored) its inventory information. These examples highlight how BLM's inventory is itself inaccurate and furthermore how BLM at times ignored the information provided by its own field specialist—not to mention information it already had in hand via the ONDA reports, as well as other important information readily available in the form of aerial photography. In sum, BLM inventoried only a fraction of the routes within the CMPA, the inventory did not accurately document actual route condition, and BLM often ignored the information provided by the inventory in their decision-making process. Importantly, none of these data, or even summaries or analyses of the data appear in the EA itself, which made it impossible for the public to evaluate BLM's environmental analysis in any meaningful way.

IV. BLM IGNORED ONDA'S INVENTORY INFORMATION

40. In May 2007, during the TMP NEPA process, ONDA provided to BLM approximately 750 geo-referenced photographs documenting approximately 300 miles of public lands routes within the CMPA. *See* Attachment F at 9 (map titled "ONDA Route Inventory Photo Points"); AR 12946–13290 (the ONDA Transportation Report). In our Transportation Report, we provided to BLM mapped route locations, route descriptions, supporting photos, and management recommendations. This body of information represents by far the most thorough and extensive photographic documentation in existence for routes within the CMPA.

41. As part of the report, ONDA recommended that 137 miles of routes be closed to motorized travel and an additional 176 miles be available for administrative/special permit use only (but closed to general public recreational use). Most of the routes that ONDA recommended for closures are hard to follow (i.e. “obscure”) and on land with wilderness character. Closure of these routes would enhance wilderness values, protect large unfragmented blocks of wildlife habitat, and help prevent the establishment and spread of invasive weeds.

42. Although BLM nominally used ONDA’s road closure recommendations for one of the alternatives in the EA (Alternative C), there is no indication that BLM used or studied any of ONDA’s photographic documentation or inventory data in making its final decision.

43. For example, ONDA photographed route 8244-0-KA (which BLM did not inventory) and documented that this route no longer exists. *See* Attachment F at 10–11 (a photo-map and aerial photograph of this route). This route is not visible, and therefore meets the BLM definition of “obscure.” If BLM had studied the photo documentation in the ONDA Transportation Report, it would have become clear that the route was obscure, and should either be closed or, if BLM wanted to designate it as open to motorized use, then inventoried to verify its condition. Instead, BLM ignored the documentation, and in so doing designated the route *open* under the TMP. This reclaimed route, which is in a Wilderness Study Area within the protected Steens Mountain CMPA, is now open under BLM’s TMP. The official TMP map shows a route that no longer exists as open, virtually ensuring off-road travel by anyone attempting to follow it.

44. Another example is BLM route 8244-0-G0, listed on BLM’s inventory as ref #43. BLM’s inventory states, “Route provides a loop through the south Steens area but is hard to locate and is overgrown in some areas.” The ONDA Transportation Report provided photos

taken where the route is supposed to be. *See* Attachment F at 12–13 (showing maps and photographs for routes HT95 and HT96). The ONDA photos confirm BLM’s inventory describing the route as “hard to locate,” showing what appears to be no more than a faint cow trail ending in a dry streambed. *See* Attachment F at 12–13 & 14 (aerial photograph of this route). A large portion of this nonexistent route, which again is in a Wilderness Study Area, continues to be open under BLM’s TMP and again ensures off-road travel by anyone trying to drive it. ONDA’s Report provided photos with similar findings for numerous other routes throughout the CMPA.¹³

45. Not only should BLM have used the information at its disposal (including the ONDA reports) to determine what routes were obscure, it should also have used the information to determine what routes were in such a poor condition that they too, should be closed. Instead, BLM arbitrarily kept nearly every route in the CMPA open (whether obscure, degraded or even nonexistent), and even opened nearly 50 miles of new routes (either obscure or pioneered). BLM’s decision to designate so many routes open without regard to their current physical condition on the landscape is inexplicable given the information that was before the agency and combined with the limitations Congress imposed in the Steens Act.

46. Not only did BLM ignore ONDA’s Transportation and Wilderness Reports, it also ignored public sentiment in making its final decision. During the NEPA process when BLM presented its range of alternatives for public comment, there was an outpouring of response by

¹³ Examples within just the Blitzen River region include the following mapped photos: *rte_8245-0-00_phot_fj10*, *rte_n3a_phot_ft16*, *rte_n3a_phot_ft19*, *rte_n3b_phot_ft20*, *rte_n2_phot_ft21*, *rte_n2_phot_ft22*, *rte_n2_phot_ft23*, *rte_br5_phot_ft30*, *rte_br5_phot_ft32*, *rte_n2_phot_ft33*, *rte_8244-0-K0_phot_ft38*, *rte_8244-0-K0_phot_ft42*, *rte_8244-0-H0_phot_ht8*, *rte_8244-0-HA_phot_ht10*, *rte_br11b_phot_ht22*, *rte_br9_phot_ht23*, *rte_br11b_phot_ht24*, *rte_br2_phot_ht26*, *rte_br11f_phot_ht33*, *rte_br2_phot_ht27*, *rte_e1b_phot_BZS-10*. These are all in the record as part of ONDA’s Transportation Report at AR 12946+.

the public who are invested in how Steens Mountain is managed. In fact, the sheer volume of public input at all stages of the process was unprecedented in the Burns District's history. BLM received nearly 10,000 public comments in response to its EA and proposed travel plan (after having received about 12,000 comments at the scoping stage before it even prepared the EA). Of these, only 4 comments expressly supported BLM's "preferred alternative" that BLM ultimately chose. In stark contrast, the overwhelming majority of comments (more than 99%)¹⁴ were in favor of greater wilderness protection as reflected in the alternative supported by ONDA. This highlights BLM's manifest disregard for public opinion as well as the letter of the law. This also shows that significant numbers of citizens would have been interested in seeing the type of data and analysis that was missing from BLM's EA and that I have attempted to explain in this declaration.

V. OBSCURE ROUTES NOT INVENTORIED BY BLM

47. Aside from the 140 miles of routes in BLM's inventory, there are more than 400 miles of public routes within the CMPA that BLM did not inventory. Using ONDA's photo documentation and aerial photos, (in the same manner as for the inventoried routes already discussed), I found 58 miles of obscure routes that BLM did not inventory. *See* Attachment F at 15 (map titled "All CMPA Obscure Routes"). Of these, 18.3 miles are in Wilderness Study Areas. Another 20.6 miles are in areas that possess wilderness character (as documented by the ONDA Wilderness Report) but are not designated as WSAs. Designating these obscure routes

¹⁴ FOIA documents from BLM showed 39 comments in favor of more motorized travel and 9,016 in favor of greater wilderness protection. BLM appears to have included most of these public comments in the administrative record in the range of AR 851 to AR 9908. *See also* AR 784 (stating that BLM received 9,872 comments on its April 2007 EA).

open as BLM has done under the TMP is paramount to allowing off-road travel and as such ensures the degradation of wilderness values and wildlife habitat.

CONCLUSION

48. BLM exhibited a blatant disregard for the clear evidence before it when it issued its final decision on the TMP. This evidence included geo-referenced photos and route descriptions submitted by ONDA as well as an inventory conducted by BLM. None of this evidence was made available in the EA, precluding the public from participating in the process in a meaningful way. As a result, BLM authorized motorized travel on a great many routes that are highly degraded, and in areas that will negatively impact wildlife, wilderness values, and sensitive habitat. Furthermore BLM designated more than 100 miles of nonexistent, obscure, or pioneered routes as *open* to motorized use, ensuring off-road travel will occur in the CMPA, including within Wilderness Study Areas. BLM *added* 47 miles of new nonexistent, obscure, or pioneered routes within the CMPA. BLM's own inventory was incomplete, inaccurate, and inconsistent. Based on my analysis, and trying to piece together the scant information in the EA combined with further scant information in the record BLM produced, I believe that in making its final decision to designate open 555 miles of routes in the CMPA, BLM single-mindedly disregarded the resources at its disposal as well as the public interest.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED this 20th day of July 2010.

s/ Craig Miller

Craig Miller, M.D.