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**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF OREGON**

**OREGON NATURAL DESERT ASS’N**

Plaintiff,

v.

**JOAN SUTHER**, Field Manager,  
Andrews Resource Area, BLM, **KENNY**  
**MCDANIEL**, Burns District Manager,  
BLM, and **BUREAU OF LAND**  
**MANAGEMENT**,

Defendants.

Case No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

**(Environmental Matter)**

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**NATURE OF ACTION**

1. This case seeks injunctive relief and judicial reversal of the Bureau of Land Management’s (“BLM”) decisions to construct new motorized vehicle routes and gather feral horses within a congressionally protected area on Steens Mountain in southeast Oregon’s high desert.

2. Beginning during or around the week of July 20, 2009, BLM undertook extensive road construction and other environmentally destructive activities on several vehicle routes within the Steens Mountain Cooperative Management and Protection Area (“CMPA”). The routes lie within or adjacent to the Blitzen River Wilderness Study Area (“WSA”) and a citizen-proposed Blitzen River WSA Addition. Prior to BLM’s actions complained of herein, these routes were primitive, two-track routes through sagebrush, grassland and scattered juniper woodlands in this largely wild landscape. These are routes that in many places are eroded, washed out, difficult to travel, overgrown and in some cases virtually nonexistent. BLM’s actions include improving, widening and constructing routes using a large blade attached to a backhoe; relocating portions of routes and thereby constructing new motorized vehicle routes where none existed before; ripping live, old-growth Western juniper trees out of the ground; and moving boulders taller than cars to the sides of the constructed roads.

3. BLM took these actions without undertaking any study of the environmental impacts of its project, inconsistently with the underlying land use plan and travel management plan, and in blatant disregard of statutory provisions expressly prohibiting off-road vehicle use and creation of new motorized vehicle routes within the CMPA and prohibiting impairment of wilderness values in WSAs. BLM’s actions have destroyed roadless sagebrush steppe habitat and wilderness values in this remarkable, nationally significant and protected landscape. If BLM is allowed to continue with these or similar activities, or to use these newly constructed routes, irreparable harm to roadless habitat will continue.

4. BLM’s decisions violate the Steens Mountain Cooperative Management and Protection Act of 2000 (“Steens Act”), 16 U.S.C. § 460nnn *et seq.*, the Federal Land Policy and Management Act of 1976 (“FLPMA”), 43 U.S.C. §§ 1701–84, the Wilderness Act of 1964, 16

U.S.C. §§ 1131 *et seq.*, and the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321–61.

5. The road construction violates the Steens Act because it allows prohibited off-road vehicle use and creation of new motorized vehicle routes within the Steens Mountain CMPA, and because it fails to satisfy the Act’s express mandate that the agency conserve and protect “long-term ecological integrity” within the CMPA. 16 U.S.C. §§ 460nnn-12(a), -22(b), -22(d)(1).

6. The road construction violates FLPMA because it allows off-road motorized use on naturally reclaimed routes within a Wilderness Study Area. This violates BLM’s obligation to manage WSAs so as not to impair their suitability for future wilderness preservation. 43 U.S.C. § 1782(c). It also violates the requirement that BLM manage the public lands in accordance with land use plans developed under 43 U.S.C. §1712. *Id.* § 1732(a). The governing land use plan for Steens Mountain requires BLM to prepare NEPA analysis for all but “routine” route maintenance actions. For actions conducted in WSAs, the plan requires NEPA at all times. The land use plan and underlying transportation and travel management plans provide that grading on these routes will be performed only “as necessary to correct drainage problems.” The land use plan also requires BLM to manage sagebrush habitat for the benefit of Greater sage grouse, a species under consideration for listing as threatened or endangered under the Endangered Species Act..

7. BLM’s road construction violates the Wilderness Act because BLM has conducted road maintenance and construction activities within the Steens Mountain Wilderness Area. Construction or reestablishment of closed routes is contrary to BLM’s legal obligation to preserve the wilderness character of the Area. 16 U.S.C. § 1133(b).

8. BLM's decisions violate NEPA because BLM failed to study the environmental impacts of its actions. On information and belief, BLM did not prepare an environmental impact statement ("EIS"), environmental assessment ("EA"), finding of no significant impact ("FONSI") or categorical exclusion ("CE") for the road construction. On information and belief, BLM did not prepare an EIS, EA, FONSI or CE for its proposed horse gather, to which at least some of the road construction is a connected action and of which the road construction is a direct, indirect and cumulative effect. BLM therefore has failed to take the requisite "hard look" at the environmental impacts of its decisions, including studying the direct, indirect and cumulative impacts of its actions, and alternatives that might be less environmentally destructive.

9. If BLM is allowed to implement or further implement its horse gathering and road construction decisions, permanently converting miles of previously primitive routes to fully constructed and widened roads, it will severely fragment wildlife habitat and irreparably harm wilderness and other public resource values on Steens Mountain. This will impair the long-term ecological integrity of Steens Mountain. This includes the threat of weed invasions along the newly improved or constructed routes and fragmentation of significant roadless, sagebrush steppe and high elevation wildlife habitat. Accordingly, plaintiff seeks relief from this Court to set aside and remand BLM's decision, prepare a lawful environmental analysis pursuant to NEPA, and preserve the status quo during the interim period, protect the ecological integrity of Steens Mountain, by ordering BLM to immediately cease all road-building activity and use of the routes.

### **JURISDICTION AND VENUE**

10. Jurisdiction is proper in this Court under 28 U.S.C. § 1331 because this action arises under the laws of the United States, including the Steens Act, 16 U.S.C. § 460nnn *et seq.*,

FLPMA, 43 U.S.C. §§ 1701–1784, NEPA, 42 U.S.C. §§ 4321–61, the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the Equal Access to Justice Act, 28 U.S.C. § 2412 *et seq.* An actual, justiciable controversy exists between the parties, and the requested relief is therefore proper under 28 U.S.C. §§ 2201–2202 and 5 U.S.C. § 701–06.

11. Venue is proper in this Court under 28 U.S.C. § 1391 because all or a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district, defendants reside in this district, and the public lands and resources and agency records in question are located in this district.

12. The federal government has waived sovereign immunity in this action pursuant to 5 U.S.C. § 702.

### **PARTIES**

13. Plaintiff OREGON NATURAL DESERT ASSOCIATION (“ONDA”) is an Oregon non-profit public interest organization of more than 1,200 members. It has offices in Portland and Bend, Oregon. ONDA’s mission is to protect, defend, and restore forever, the health of Oregon’s native deserts. ONDA actively participates in BLM and Department of the Interior proceedings and decisions concerning the management of public lands in eastern Oregon. ONDA brings this action on its own behalf and on behalf of its members and staff, many of whom regularly enjoy and will continue to enjoy the public lands that are the subject of the final agency decision challenged in this action, for educational, recreational, spiritual, and scientific activities. ONDA has been active in monitoring both ecological conditions and wilderness values on Steens Mountain and throughout the BLM’s Burns District.

14. ONDA and its members use and enjoy the waters, public lands, and natural resources on and surrounding Steens Mountain, including within the CMPA, for recreational, scientific, spiritual, educational, aesthetic, and other purposes. ONDA and its members enjoy fishing, hiking, camping, hunting, bird watching, study, contemplation, photography and other activities in and around the waters and public lands on Steens Mountain. ONDA and its members also participate in information gathering and dissemination, education and public outreach, commenting upon proposed agency actions, and other activities relating to BLM's management and administration of these public lands.

15. BLM's failure or refusal to comply with federal laws and regulations directly affects ONDA and its members' interests. The interests of ONDA and its members have been and will continue to be injured and harmed by BLM's actions and/or inactions as complained of herein. Unless the relief prayed for herein is granted, ONDA and its members will continue to suffer on-going and irreparable harm and injury to their interests.

16. Defendant JOAN SUTHER is sued solely in her official capacity as Field Manager for the Andrews Resource Area of the Burns District of the Bureau of Land Management. The Field Manager is the BLM official responsible for authorizing the complained of actions and activities within the Steens Mountain CMPA, and has principal authority for the actions and inactions alleged herein.

17. Defendant KENNY MCDANIEL is sued solely in his official capacity as District Manager for the Burns District of the Bureau of Land Management, in which the Andrews Resource Area is located. The District Manager is the one of the BLM officials responsible for authorizing and overseeing management actions and activities within the Steens Mountain CMPA and has principal authority for the actions and inactions alleged herein.

18. Defendant UNITED STATES BUREAU OF LAND MANAGEMENT (“BLM”) is an agency or instrumentality of the United States, and is charged with managing the public lands and resources of the Burns District, Andrews Resource Area, in accordance and compliance with federal laws and regulations.

### **STATEMENT OF FACTS**

19. Steens Mountain, situated deep in southeast Oregon’s high desert, is a spectacular area with a rich diversity of geological wonders, wildlife habitat, recreation opportunities, and wilderness values.

20. The fault-block mountains and broad valleys that make up this area were formed 18 million years ago when the earth’s crust began stretching east to west. This fault movement, which continues to this day, was followed by large volcanic flows of basalt and intense climate changes. These factors have worked together to create this 9,700 foot elevation, 60 mile-long mountain rising from a broad swath of sagebrush steppe in the northern Great Basin. Its east-facing, mile-high escarpment overlooks the ancient Alvord Valley below. Less than a million years ago alpine glaciers formed broad glacial valleys on top of the mountain and carved dramatic gorges up to 2,000 feet deep.

21. Wet meadows, alpine shrub communities, and grasslands dot the region, while much of the area is sagebrush steppe, interspersed with juniper woodlands, aspen groves, and relic fir stands. Wildflowers come alive in the spring, painting entire hillsides in shades of purple, yellow and red. Vitrally important riparian areas, wetlands and desert streams breathe life into the area and provide habitat for hundreds of fish and wildlife species

22. Fish have been documented in 201 miles of desert streams within the CMPA, including within the 105 miles of federally-designated Wild and Scenic Rivers in the Donner und

Blitzen, Wildhorse Creek, Little Wildhorse Creek and Kiger Creek systems. Most of these fish species are native to Steens Mountain. These include the Lahontan cutthroat trout, a species listed as threatened under the Endangered Species Act, and Great Basin redband trout and Malheur mottled sculpin, designated as BLM special status species. Columbia spotted frog, a federal candidate species for listing under the Endangered Species Act, also inhabits several streams on the mountain.

23. A wide range of game and non-game animals inhabit Steens Mountain. These include large and small mammals such as wolverine, bighorn sheep, pronghorn antelope, mule deer, elk, badger, cougar, coyote, marmot, Preble's shrew, and eight species of special status species bats. The fossilized remains of sabertooth cats, mastodons, and giant camels attest to the faunal diversity in the past.

24. More than 70 species of resident and migratory birds inhabit the area. These include special status species such as Northern goshawk and Swainson's hawk; sagebrush canopy-nesting species such as Brewer's sparrow, sage thrasher and sage sparrow; and woodland species such as flycatchers, dark-eyed junco, bushtit, and chipping sparrow.

25. Among the multitudes of bird species on Steens Mountain is an important population of sage grouse. Sage grouse are under review by the U.S. Fish & Wildlife Service for listing as threatened or endangered under the Endangered Species Act. Once numbering more than a million birds across 16 western states and 3 Canadian provinces, sage grouse numbers have declined severely over the last 50 years. Sage grouse are sagebrush obligates, meaning that they depend on sagebrush all year to provide roosting, cover and food.

26. Oregon sage grouse populations and sagebrush habitats comprise nearly 20% of the range wide distribution of the species. As such, management actions in Oregon have

implications on a range wide scale for the species. Population fluctuations and decline in Oregon during the past century are similar to those documented throughout the species' range. Because Oregon contains some of the largest expanses of relatively intact sagebrush habitat in North America, conservation and protection of sage grouse in Oregon is extraordinarily important to the species' survival and recovery range wide.

27. There are 15 known sage grouse leks (breeding sites) or lek complexes within the CMPA. These generally are located in areas of low sagebrush. There likely are other, historic leks yet to be discovered on Steens Mountain. The entire CMPA is yearlong sage grouse habitat except for steep slopes in the gorges and along the east face of Steens Mountain. Nesting habitat extends from lower elevations up to about 6,500 feet on the west side of the mountain. Brood rearing, which occurs from May through October, occurs all along the elevational gradient with most sage-grouse found at higher elevations of sagebrush, above 6,500 feet, until late fall to early winter as snow moves them into lower country.

28. With its historic habitat in rapid decline, this sage grouse population on Steens Mountain is regionally significant.

29. The threats to sage grouse habitat across the West are numerous. They include the proliferation of the non-native annual grass cheatgrass, which is spreading rapidly and replacing sagebrush; periods of drought and the effects of global climate change, which may exacerbate the expansion of cheatgrass and the loss of sagebrush habitat; domestic livestock grazing, which can lead to the establishment and spread of weeds, depleted soils and vegetation and other impacts to sagebrush habitats; altered and unnatural fire regimes, which are caused by, among factors, grazing, climate change and altered vegetative ecosystems; encroachment of juniper trees on sagebrush habitats, which has been caused mainly by the impacts of livestock grazing,

fire suppression and climatic influences over the last century or more; high road densities, which fragment sagebrush habitats; various types of energy development and utility corridors; and land use issues such as urban development, agriculture, and water development.

30. Nearly all of these threats are present in sage grouse habitat in Oregon to one extent or another. On Steens Mountain, the main threats to sage grouse include high road density, weeds, juniper encroachment, grazing, altered fire regimes and the impacts associated with global climate change. Proposed industrial-scale wind energy facilities on the mountain also threaten sage grouse and other animals.

31. Steens Mountain contains remarkable wilderness values. The Steens Mountain Wilderness Area, designated by Congress in 2000, covers about 170,000 acres, all of which lies within the CMPA. All or portions of seven Wilderness Study Areas (“WSAs”) lie within the CMPA. These are the Bridge Creek, Blitzen River, High Steens, Home Creek, Lower Stonehouse, South Fork Donner und Blitzen River, and Stonehouse WSAs. Collectively, they encompass more than 120,000 acres.

32. The Blitzen River WSA is 31,737 acres of rolling, sloping, high desert plateau. Its eastern border abuts the Donner und Blitzen Wild and Scenic River corridor and Steens Mountain Wilderness Area. The study area ranges from mountain mahogany and riparian vegetation in the canyons to big and low sagebrush in the foothills. Scattered patches of juniper grow throughout the WSA.

33. The area includes 11 additional roadless areas, covering more than 81,000 acres of public land. These areas were found to contain wilderness values, as defined by the Wilderness Act of 1964, in a 2002 citizen inventory conducted by ONDA. The areas ONDA identified in its survey are the Alvord Desert, Ancient Lake, Big Basin, Blitzen River South,

Coffin Butte, Grassy Ridge, Keg Springs, Krumbo Creek, Mud Creek, Quail Creek and Riddle Creek roadless areas.

34. Steens Mountain features world-class, non-motorized recreational opportunities that draw recreationists nationwide into economically depressed Harney County. Many unique trails like the Wildhorse Lake Loop and the Little Blitzen Gorge trail offer unmatched opportunities to engage in healthy, non-motorized, quiet recreation with little investment in infrastructure or maintenance.

35. Steens Mountain is one of the crown jewels of the public lands managed by BLM in the West. BLM has included Steens Mountain in its National Landscape Conservation System, which was established to “conserve, protect and restore these nationally significant landscapes that have outstanding cultural, ecological, and scientific values.”

36. In 2000, Congress passed the Steens Act. The Act created the 496,000 acre Cooperative Management and Protection Area in order “to conserve, protect, and manage the long-term ecological integrity of Steens Mountain for future and present generations.” 16 U.S.C. § 460nnn-12(a).

37. The Steens Act also created the 170,000 acre Steens Mountain Wilderness, which includes a 98,000 acre No Livestock Grazing Area; added 29 miles to the federal Wild and Scenic River System; withdrew 1.1 million acres from mining and geothermal development; established a Wildlands Juniper Management Area for experimentation, education, interpretation and demonstration of juniper management and restoration of native vegetation on the Steens; and designated the nation’s first Redband Trout Reserve.

38. Section 112 of the Steens Act places substantial prohibitions on the use of motorized and mechanized vehicles on federal lands within the CMPA. 16 U.S.C. § 460nnn-22.

It prohibits their use off-road and limits their use to designated existing roads and trails, with certain exceptions. Construction of new roads for motorized or mechanized vehicles is prohibited unless the Secretary of the Interior determines that the road or trail is necessary for public safety or protection of the environment.

39. The Steens Act directed BLM to prepare “a comprehensive plan for the long-range protection and management of the Federal lands included in the [CMPA].” 16 U.S.C. § 460nnn-21(b). The plan was to describe the appropriate uses and management of the CMPA, and was to be completed by October 30, 2004.

40. The Steens Act requires the plan to “include, as an integral part, a comprehensive transportation plan for the Federal lands included in the [CMPA], which shall address the maintenance, improvement, and closure of roads and trails as well as travel access.” 16 U.S.C. § 460nnn-22(a).

41. To comply with the Steens Act, BLM began preparing two counterpart land use plans, called “resource management plans” or “RMPs.” The two RMPs, the Andrews Management Unit (or “AMU”) RMP and the CMPA RMP, are collectively referred to as the Andrews-Steens RMP.

42. The Andrews-Steens RMP describes that BLM manages feral horses under the 1984 South Steens Wild Horse Herd Management Area Plan, which was incorporated into the Andrews-Steens RMP. The RMP, the South Steens Wild Horse Herd Management Area Plan and their related environmental analyses indicate that site specific details of gathering, including trap locations, must be analyzed separately as site-specific actions under NEPA.

43. In 2002, using BLM’s newly issued wilderness inventory protocol as set forth in the agency’s 2001 *Wilderness Inventory and Study Procedures* handbook (H-6310-1), ONDA

conducted a survey of wilderness values within BLM's Andrews Resource Area on and surrounding Steens Mountain.

44. Of about 750,000 acres of public land inventoried, ONDA identified about 500,000 acres that possess the statutorily defined characteristics of wilderness—that is, public lands which consist of 5,000 or more roadless acres, are primarily affected by the forces of nature, and provide outstanding opportunities for solitude and primitive recreation. These are in 24 separate roadless areas throughout BLM's Andrews Resource Area.

45. ONDA compiled its wilderness inventory survey data and recommendations in a report titled, *Andrews Resource Area Resource Management Plan Wilderness Inventory Recommendations*. ONDA submitted this report to BLM in two parts on September 1 and November 1, 2002. Since then, ONDA has provided BLM with updated inventory information for several of its inventory units.

46. Eleven of these newly-identified roadless areas, covering more than 81,000 acres, lie within the CMPA.

47. In ONDA's report, the identified roadless areas are referred to as "Proposed WSAs" or "Proposed WSA Additions." As it has done in other BLM districts in Oregon, ONDA asked BLM to study wilderness values, including ONDA's survey findings, as the agency prepared its land use plan for the CMPA. Because the key component of ONDA's wilderness survey concerns the presence or absence of "roads" on the landscape, ONDA also asked BLM to consider ONDA's wilderness data as the agency simultaneously prepared the comprehensive transportation plan required by the Steens Act for the CMPA.

48. In January 2003, during the land use planning process, ONDA prepared and submitted to BLM a separate route inventory report. Relying in large part on the survey data

from ONDA's wilderness inventory report, this report focused on specific route recommendations to aid BLM's preparation of the transportation plan required by the Steens Act. ONDA's report documented a series of routes that are redundant or overgrown, rocky, rutted, impassable, and sometimes virtually nonexistent on the ground. ONDA recommended that BLM close these routes to motorized use.

49. In 2003, as part of the CMPA RMP process, BLM determined that all or parts of 31 separate roadless areas, which encompass more than 400,000 acres of public land, lie within the CMPA. These 31 areas are smaller portions, or subunits, of the roadless areas identified by ONDA in its 2002 wilderness report.

50. The draft CMPA RMP contained a transportation plan ("TP"), included as Appendix M to the RMP. It provided general guidance regarding the maintenance, improvement, use and accessibility of roads and trails in the CMPA. The TP identified the need to conduct further specific, on-the-ground inventories. It stated that BLM would subsequently prepare a Travel Management Plan ("TMP") that would "implement" the TP and further define the motor vehicle route network within the CMPA. The CMPA RMP stated that further inventories and other work required to "complete the comprehensive requirements [of the Steens Act]" would be completed by December 31, 2005.

51. Pursuant to the Department of the Interior's regulations, ONDA administratively protested BLM's RMP decision. In June 2005, BLM denied ONDA's protest and issued a Record of Decision adopting the AMU RMP and the CMPA RMP.

52. In February 2006, ONDA filed suit in the U.S. District Court for the District of Oregon, alleging, among other claims, that BLM had violated the Steens Act by adopting the

CMPA RMP without include, as an integral part of the RMP, a comprehensive transportation plan as required by the Act. *Ore. Natural Desert Ass'n v. Shuford*, No. 06-242-AA.

53. While the lawsuit was pending, BLM announced it had begun work on the TMP, issuing a NEPA scoping notice in January 2007. BLM received more than 9,000 public comments in response to the notice, including comments from ONDA. The comments were overwhelmingly in support of reducing use of motorized vehicles on Steens Mountain.

54. In its comments, ONDA identified several concerns with the TMP and the EA prepared to support it. Chief among these were BLM's failure to plan comprehensively for both motorized and non-motorized travel as Congress had directed in the Steens Act; the negative environmental impacts of permanently opening hundreds of miles of vehicle routes on Steens Mountain that had been virtually reclaimed by natural processes over the years; and negative ecological effects to a dwindling sage grouse population of memorializing a vast labyrinth of motorized routes on the mountain. ONDA observed that the rapidly increasing popularity of motorized recreation, and the indiscriminate use of off-road vehicles, is one of the most serious threats to Steens Mountain. Roads and off-road vehicles are the primary vectors that threaten to foster the invasion of exotic weeds in roadless areas on Steens Mountain that provide refuge to native plant and animal species.

55. In April 2007, BLM issued an environmental assessment ("EA") and unsigned Finding of No Significant Impact ("FONSI") for the TMP, allowing a 30-day comment period ending on May 21, 2007.

56. In the EA, BLM groups motorized routes into various categories defined by the nature and extent of existing use. BLM created a variety of route categories, including Base

Routes, Obscure Routes, Historical Routes, Private Landowner Access Routes, Permit Routes, All-Terrain Vehicle (“ATV”) Routes and Special Use Permit Routes.

57. Obscure Routes are, by BLM’s definition, “hard to locate or were not found on-the-ground[.]” Such routes show little or no physical trace on the ground. By reason of time and disuse, they have fallen into obscurity, having essentially been reclaimed by natural processes.

58. ATV Routes are similar. BLM explains that due to landslides and natural erosion, these routes “are no longer safe for full-sized vehicles.”

59. Historical Routes also are similar. BLM states in the EA that these routes “are currently hard to locate and/or were not identified” during a wilderness inventory process it undertook in the late-1970s. Under BLM’s nomenclature, Historical Routes are a type of Service Use Permit Route.

60. Many of the Base Routes are likewise “obscure” or difficult or impossible to identify on the ground.

61. BLM’s Proposed Action involved leaving 555 of 556 miles of Base Routes open to motorized vehicle use. This included most of the 36 miles of Obscure Routes BLM had identified. Of the Base Routes, BLM considers 445 miles to be primitive roads, with the remaining miles consisting of the Steens Loop Road (55.7 miles), a main road, and 54 miles of secondary roads.

62. The TMP and accompanying EA focus on motorized travel routes in the CMPA. In the EA BLM states that, as was the case for the TP, it had not yet conducted a full inventory of non-motorized routes. BLM states that decisions regarding non-motorized routes’ formal designation and management may occur as part of a subsequent comprehensive recreation plan

(“CRP”). For non-motorized routes, the TMP simply provides that existing such routes will remain available for continued use.

63. The TMP does not address motorized or mechanized use by snowmobiles, mountain bikes or helicopters. It defers these issues to the CRP.

64. ONDA provided detailed written comments on the EA. Aside from incorporating its 2002 wilderness survey and its 2003 route closure recommendations into its comments, ONDA in 2007 submitted a new, 242-page route inventory report. The ONDA report provides geo-referenced photographs along with GIS mapping and analysis, documenting more than 100 separate routes which ONDA surveyed and found to be overgrown, rocky, rutted, impassable, and sometimes virtually nonexistent on the ground. Many of the routes documented in ONDA’s report essentially have been naturally reclaimed over time by nonuse. Still other routes are documented as being redundant, duplicative or otherwise unnecessary on the landscape.

65. ONDA recommended that BLM close these types of routes to public motorized use in the TMP. In some instances ONDA recommended that certain routes be closed to the public but left open for agency administrative use or for use by private individuals holding federally-issued permits to graze livestock in portions of the CMPA. ONDA recommended that still other routes be designated for non-motorized travel only.

66. BLM this time received approximately 9,872 public comments in response to its April 2007 EA. As was the case during the scoping period, the public once again overwhelmingly preferred that BLM select an alternative that would close substantial portions of the routes the agency had identified on Steens Mountain.

67. The public comment period closed on May 21, 2007. Seven business days later on May 31, 2007, after purportedly reviewing the tremendous response from the public, BLM

issued a final decision. BLM adopted the Proposed Action as set forth in the April 2007 EA, permanently designating as open 555 out of 556 miles of the routes it had identified on Steens Mountain.

68. On June 8, 2007, this Court issued its opinion in *ONDA v. Shuford* that BLM's transportation plan was unlawful under the Steens Act. It granted summary judgment in ONDA's favor on its claim that the TP did not satisfy the Steens Act's requirement to prepare a "comprehensive transportation plan" to address "the maintenance, improvement, and closure of roads and trails as well as travel access" within the CMPA. The Court agreed with ONDA that the TP was neither comprehensive nor integral under the ordinary meaning of those terms. The Court did not address the TMP.

69. Several days later, BLM sent a letter to the public "rescinding" its final TMP decision. BLM stated that it would "take into account" the Court's decision and issue a new TMP decision. BLM did not seek further comment from the public.

70. In November 2007, BLM issued a new TMP decision, which is the subject of this lawsuit. In that decision the BLM Field Manager decided once again to adopt the Proposed Action, unchanged. BLM did not issue a new EA. The agency relied on the April 2007 EA, unchanged.

71. Pursuant to the Department of the Interior's regulations, ONDA administratively appealed BLM's TMP decision in January 2008. ONDA filed its appeal with the Department of the Interior's Board of Land Appeals ("IBLA").

72. Pursuant to the appeals regulations, ONDA requested that the IBLA stay the effect of the decision, and thus BLM's approval of the Proposed Action, during the pendency of the appeal. ONDA asserted that a stay was warranted because BLM was in the process of

preparing maps for public distribution delineating the motorized travel routes, as well as devising a visitor information strategy involving route signage, information kiosks, brochures and other tools intended to encourage public motorized use of the 555 miles of open routes on Steens Mountain.

73. By Order dated April 2, 2008, the IBLA issued a preliminary stay barring BLM from implementing its TMP decision as to the Obscure Routes. The Board agreed with ONDA that BLM's designation of these routes violated the Steens Act's prohibitions on off-road motorized travel and creation of new vehicle routes, and FLPMA's requirement that the agency not impair the suitability of Wilderness Study Areas for future preservation by Congress as Wilderness.

74. On February 19, 2009, the IBLA issued a merits decision on ONDA's appeal, affirming in part and reversing in part BLM's TMP decision. *Ore. Natural Desert Ass'n*, 176 IBLA 371 (2009). The Board agreed with ONDA that BLM's decision to open the Obscure Routes within the CMPA violated the Steens Act's prohibitions on off-road travel and new road construction and FLPMA's non-impairment standard for WSAs, and affirmed BLM's decision in all other respects. The Board observed that "there is an inherent incongruity in determining that routes are 'obscure,' or difficult or impossible to identify on the ground, and concluding that opening them to motorized use is consistent with the Steens Act." *Id.* at 385.

75. In April 2009, ONDA filed suit in this Court, challenging BLM's final decision adopting the TMP. *Ore. Natural Desert Ass'n v. McDaniel*, 09-369-PK (D. Or. filed Apr. 13, 2009). In that action, ONDA alleges violations of the Steens Act, FLPMA, NEPA and the Wilderness Act.

76. In January 2009, BLM issued final decision under which it would have “developed” a natural spring deep within the Blitzen River WSA at what is called the “Burnt Car Road” site. The project would involve constructing an enclosure fence of unspecified length around the spring, moving a cement collection tank to the spring site, installing a quarter-mile of pipeline extending from the spring, and installing a trough or building a waterhole at the pipeline terminus. The decision also would allow BLM to build two quarter-mile long “gap fences” nearby along the Wilderness/WSA boundary to keep livestock and horses from accessing the Donner und Blitzen Wild and Scenic River, which is within the No Livestock Grazing Area.

77. BLM issued its final decision by letter dated January 28, 2009. BLM did not solicit public comment on its amended decision to authorize the Burnt Car Road project. Pursuant to BLM’s regulations, ONDA administratively appealed the decision to the Department of the Interior’s Board of Land Appeals (“the Board” or “IBLA”). ONDA alleged violations of FLPMA, the Steens Act and NEPA. ONDA’s claims centered on impairment of wilderness values and violations of the Steens Act’s new construction prohibition. With its administrative appeal, ONDA also requested that the Board stay implementation of the project pending resolution of the merits of ONDA’s claims.

78. After ONDA filed its appeal and petition for stay, BLM agreed to discuss possible settlement of ONDA’s claims. On June 8, 2009, the parties filed a joint motion informing the Board that they were discussing settlement and asking the Board to stay proceedings for 90 days while that discussion took place. As part of the request, BLM agreed not to begin implementation of the project during the 90-day period. To conduct the spring development and fencing actions it proposed, BLM would have had to improve several of the same vehicle routes at issue in this action. On June 10, 2009, the Board issued an Order granting the parties’ motion.

The Order also recited BLM's representation that the agency would not undertake any implementation of the project during the stay period.

79. On July 22, 2009, ONDA learned that BLM had begun road grading, improvement and other construction activities on the very routes at issue in the Burnt Car project appeal, including routes ONDA had specifically requested that BLM close to motorized activity in order to protect wilderness and sagebrush habitat.

80. Once it learned about these actions, ONDA contacted the Field Manager immediately. According to the Field Manager, the road construction activities are associated with BLM's decision to gather feral horses. According to the blade operator, the blading was being done in preparation for a feral horse gather, for juniper removal purposes, to provide public access to the Donner und Blitzen River for fishing, and to provide access to a private inholding on Burnt Car Road.

81. During the weekend of July 25–26, ONDA conducted a preliminary field inventory of the damage. At this time, ONDA is aware that BLM conducted blading on: (1) the Burnt Car Road to where it ends at the boundary where the Blitzen River WSA meets the Steens Mountain Wilderness Area and Donner und Blitzen Wild and Scenic River corridor; (2) the east-west route connecting Burnt Car Road with the Steens Mountain Loop Road; (3) the Burnt Car Road-Tombstone Canyon Road connector route (8244-0-HA); and (4) Lauserica Road. In places, BLM widened the routes or relocated them, creating new roads, away from existing primitive, two-track routes. In places, BLM ripped out juniper trees—hundreds, or perhaps a thousand or more according to ONDA's preliminary field inventory—including old-growth trees 200 or more years old. Along most of the routes, BLM moved aside large quantities of boulders sometimes taller than cars, to create new or improved roadways. The blading on Burnt Car Road extends to

within 30–40 feet of the canyon rim that looks down into the Donner und Blitzen Wild and Scenic River, and may include blading and other surface-disturbing activity within the protected river corridor and the Steens Mountain Wilderness Area.

82. By blading Burnt Car Road all the way to the Wilderness and Wild and Scenic River boundary, BLM has sliced the Blitzen River WSA in half. This fundamentally impairs the wilderness character of this 31,737 acre area.

83. By widening routes and by relocating portions of routes away from the existing routes, BLM has built new roads within the CMPA and impaired wilderness values within the Blitzen River WSA.

84. By blading a new or reconstructed route to or past the boundary of the Steens Mountain Wilderness Area, BLM has sliced the Blitzen River WSA in half, thereby fundamentally impairing its wilderness character. BLM is under a legal mandate to not impair that wilderness character unless and until Congress acts upon BLM's 1991 recommendation to designate the Blitzen River WSA as Wilderness.

85. By blading a new or reconstructed route within the Steens Mountain Wilderness Area, BLM has impaired the wilderness values Congress sought to preserve when it protected that area in 2000.

86. By not undertaking any environmental analysis under NEPA, BLM has foreclosed the public's opportunity to participate in the agency's decisionmaking process. By acting before complying with NEPA's procedural requirements, BLM has foreclosed reasonable alternatives and taken action without studying the environmental impacts of the project or mitigating measures that might have been taken to reduce those impacts.

87. On information and belief, BLM intends to continue to implement or further implement its decision to conduct route maintenance, improvement or construction activities as described herein. Such actions will adversely and irreparably impact wilderness, ecological, fish and wildlife habitat, and other values on the public lands within the CMPA on Steens Mountain.

**FIRST CLAIM FOR RELIEF**  
**VIOLATIONS OF THE STEENS ACT**

88. Plaintiff realleges and incorporates by reference all preceding paragraphs.

89. The Steens Act prohibits the use of motorized and mechanized vehicles off-road and limits their use to designated existing roads, with certain exceptions. 16 U.S.C. § 460nnn-22(b).

90. The Steens Act prohibits construction of new roads for motorized or mechanized vehicles, unless the Secretary of the Interior determines that the road or trail is necessary for public safety or protection of the environment. *Id.* § 460nnn-22(d)(1).

91. The Steens Act requires BLM to protect the long-term ecological integrity of the public lands within the CMPA. *Id.* § 460nnn-12(a).

92. BLM has violated the Steens Act in multiple respects through its decision to conduct road maintenance, improvement and/or construction or similar activities on several routes in and around the Burnt Car and Tombstone Canyon routes on Steens Mountain. These violations include, but are not limited to:

a. Authorization of, and engagement in, prohibited off-road vehicle use within the Steens Mountain CMPA, including on routes that have fallen into obscurity on the landscape;

b. Authorization of, and engagement in, prohibited construction or establishment of new roads for motorized or mechanized vehicle use within the CMPA, including on routes that have fallen into obscurity on the landscape; and

c. Authorization of, and engagement in, road maintenance, improvement and/or construction activities, including blading, removal of hundreds or thousands of juniper trees, movement of large quantities of boulders and similar actions, within the Steens Mountain CMPA in a manner inconsistent with the Steens Act's mandate that BLM must protect the long-term ecological integrity of the CMPA.

93. BLM's decision and actions therefore are arbitrary, capricious, an abuse of discretion, and not in accordance with the Steens Act, and have caused and threaten serious prejudice and injury to plaintiff's rights and interests.

94. BLM's decision constitutes final agency action judicially reviewable by this Court pursuant to 5 U.S.C. § 706(2), and must be reversed and remanded for the reasons identified above.

**SECOND CLAIM FOR RELIEF**  
**VIOLATIONS OF FLPMA**

95. Plaintiff realleges and incorporates by reference all preceding paragraphs.

96. FLPMA requires BLM to manage Wilderness Study Areas "in a manner so as not to impair the suitability of such areas for preservation as wilderness" and to "take any action required to prevent unnecessary or undue degradation of the lands and their resources or to afford environmental protection." 43 U.S.C. § 1782(c). This is known as the "nonimpairment" mandate for WSAs.

97. To guide its management of WSAs, BLM has issued a handbook titled, *Interim Management Policy and Guidelines for Lands Under Wilderness Review* (the "IMP"), H-8550-1 (July 7, 1995). BLM's management of WSAs within the CMPA is governed by the IMP, which sets our certain nonimpairment standards. These standards are designed to ensure that no activity

will occur that will jeopardize or negatively affect Congress's ability to find that a WSA has the necessary wilderness characteristics to be preserved as designated Wilderness.

98. FLPMA also requires BLM to "manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans" developed under FLPMA § 202. 43 U.S.C. § 1732(a).

99. The CMPA RMP requires, among other things, that BLM grade roads only as necessary, abandon and rehabilitate roads that are no longer needed, leave abandoned roads in a condition that will not cause environmental damage, close abandoned roads, conduct NEPA analysis on anything more than routine operation and maintenance actions that are categorically excluded from NEPA analysis, conserve special status animal species and the ecosystems on which they depend, and manage big sagebrush communities to meet the life history requirements of sagebrush-dependent special status species. The Plan states that big sagebrush habitat will be managed for the benefit of special status species.

100. Consistent with the Wilderness Act, the CMPA RMP also requires that BLM maintain or improve wilderness values and special features within the Steens Mountain Wilderness Area under a principle of nonimpairment. Use of motorized or mechanized vehicles or equipment is prohibited in the Wilderness Area. The Area must be managed to prevent and exclude motorized and mechanized vehicle intrusions into the Wilderness either on closed roads or off of roads.

101. BLM has violated FLPMA and the IMP in multiple respects through its decision and actions complained of herein. These violations include, but are not limited to:

a. Authorization of prohibited off-road vehicle use within the Steens Mountain CMPA, including on routes within WSAs that have fallen into obscurity on the landscape;

b. Authorization of, and engagement in, prohibited construction or establishment of new roads for motorized or mechanized vehicle use within the CMPA, including on routes within WSAs that have fallen into obscurity on the landscape;

c. Authorization of, and engagement in, prohibited construction or establishment of new roads for motorized or mechanized vehicle use within the CMPA where BLM has relocated portions of preexisting routes into unroaded areas of the landscape;

d. Authorization of, and engagement in, prohibited construction or establishment of new roads in a manner inconsistent with, and well in excess of, what is required for BLM to meet the land use plan's requirements relating to route maintenance and construction, and management and conservation of big sagebrush habitat for the benefit of special status species, including Greater sage grouse; and

e. Authorization of, and engagement in, prohibited construction or establishment of new roads in the Steens Mountain Wilderness Area, inconsistent with the land use plan's requirements barring such uses or activities in the Wilderness Area.

102. BLM's final decision is arbitrary, capricious, an abuse of discretion, and not in accordance with FLPMA and the IMP, and has caused or threatens serious prejudice and injury to plaintiff's rights and interests.

103. BLM's final decision constitutes final agency action judicially reviewable by this Court pursuant to 5 U.S.C. § 706(2), and must be reversed and remanded for the reasons identified above.

**THIRD CLAIM FOR RELIEF**  
**VIOLATIONS OF THE WILDERNESS ACT**

104. Plaintiff realleges and incorporates by reference all preceding paragraphs.

105. The Wilderness Act requires BLM to manage Wilderness areas “in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas [and] the preservation of their wilderness character.” 16 U.S.C. § 1131(a).

106. Section 5 of the Wilderness Act further provides that BLM “shall be responsible for preserving the wilderness character of the area and shall so administer such area for such other purposes for which it may have been established as also to preserve its wilderness character.” *Id.* § 1133(b).

107. Both the Steens Act and FLPMA require BLM to adhere to the requirements of the Wilderness Act for the Steens Mountain Wilderness Area. 16 U.S.C. § 460nnn-62(a); 43 U.S.C. § 1782(c).

108. The wilderness character of the Steens Mountain Wilderness Area and CMPA is being enhanced by the natural disappearance of motorized routes. In the underlying land use plan, as well as the transportation plan and travel management plan subsequently prepared to implement the land use plan, BLM designated the end of Burnt Car Road (within the Wilderness Area) as closed to motorized vehicles. Allowing user-created routes in this area to continue to disappear via natural reclamation is consistent with the Wilderness Act as well as with the Steens Act’s purpose of conserving and protecting “long-term ecological integrity” within the CMPA. 16 U.S.C. § 460nnn-12(a).

109. BLM has violated the Wilderness Act through its decision to authorize and engage in road maintenance, improvement and/or construction activities within the Steens Mountain Wilderness Area. These violations include, but are not limited to:

a. Authorization of, and engagement in, motorized or mechanized vehicle use, construction, improvement and/or maintenance on routes within the Steens Mountain Wilderness Area, including routes that are obscure, naturally reclaimed, being naturally reclaimed, or virtually nonexistent, thereby allowing or causing them to be re-established on the landscape.

110. BLM's final decision therefore is arbitrary, capricious, an abuse of discretion, and not in accordance with the Wilderness Act, and has caused or threatens serious prejudice and injury to plaintiff's rights and interests.

111. BLM's final decision constitutes final agency action judicially reviewable by this Court pursuant to 5 U.S.C. § 706(2), and must be reversed and remanded for the reasons identified above.

**FOURTH CLAIM FOR RELIEF**  
**VIOLATIONS OF NEPA**

112. Plaintiff realleges and incorporates by reference all preceding paragraphs.

113. NEPA requires agencies to study the environmental impacts of proposed actions and the reasonable alternatives that would avoid or minimize such impacts or enhance the quality of the human environment. 42 U.S.C. § 4332(2)(C); 40 C.F.R. Pt. 1502. To determine whether an agency has violated NEPA, the courts consider the nature of the agency's underlying authority and obligations with respect to the lands and resources at issue.

114. The CMPA RMP requires, among other things, that BLM conduct NEPA analysis on anything more than routine operation and maintenance actions that are categorically excluded from NEPA analysis.

115. An agency may issue a finding of no significant impact, or "FONSI," only where the proposed action will not have a significant effect on the human environment and for which an environmental impact statement ("EIS") is therefore not required. 40 C.F.R. § 1508.13.

116. BLM has violated NEPA and its implementing regulations through its decision to authorize and engage in road maintenance, improvement and/or construction activities within the Steens Mountain Wilderness Area, and by its decision to conduct a feral horse gather with respect to which the road maintenance, improvement, and/or construction activities are a connected action and/or a direct or indirect effect. These violations include, but are not limited to:

a. Failing to conduct any analysis under NEPA or issue any EIS, EA, FONSI, or CE related to its decision to authorize and engage in road maintenance, improvement and/or construction activities within the Steens Mountain CMPA;

b. Failing to conduct any analysis under NEPA or issue any EIS, EA, FONSI or CE related to its decision to gather feral horses and to authorize and engage in road maintenance, improvement and/or construction activities related to that decision;

c. Failing to provide public notice and opportunity to comment on these actions prior to the decisions and/or their implementation;

d. Failing to consider reasonable alternatives to the actions, including but not limited to gathering feral horses without authorizing or engaging in road maintenance, improvement or construction; and

e. Failing to consider connected actions and/or direct, indirect and cumulative effects of the actions.

117. BLM's final decisions are therefore arbitrary, capricious, an abuse of discretion, and not in accordance with NEPA and its implementing regulations, and have caused or threatens serious prejudice and injury to plaintiff's rights and interests.

118. BLM's final decisions constitutes final agency action judicially reviewable by this Court pursuant to 5 U.S.C. § 706(2), and must be reversed and remanded for the reasons identified above.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court grant the following relief:

A. Order, declare, and adjudge that defendants' decision to improve, maintain and/or construct vehicle routes as described in this complaint is unlawful under and in violation of the Steens Act, FLPMA, the Wilderness Act, NEPA, and/or the APA;

B. Order, declare, and adjudge that defendants' decision to conduct a feral horse gather and all related decisions, including improving, maintaining and/or constructing vehicle routes as described in this complaint, are unlawful under and in violation of NEPA, and/or the APA;

C. Issue an order setting aside, reversing and remanding BLM's final decisions;

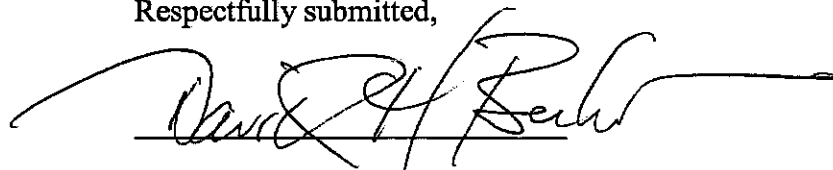
D. Enter immediate injunctive relief barring defendants from implementing or further implementing the final decisions, unless and until such time as defendants have completed lawful environmental analyses that comply with the requirements of the Steens Act, FLPMA, the Wilderness Act and NEPA, as well as any further injunctive or other relief necessary to mitigate for any resource-damaging or -threatening actions taken prior to this Court's issuance of a decision on plaintiff's claims;

E. Award plaintiff its reasonable costs, litigation expenses, and attorney's fees associated with this litigation as provided by the Equal Access to Justice Act, 28 U.S.C. § 2412 *et seq.*, and all other applicable authorities; and

F. Grant such other further relief as the Court deems just and proper.

DATED this 27th day of July, 2009.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David H. Becker", written over a horizontal line. The signature is fluid and cursive.

David H. Becker (OSB # 081507)  
Oregon Natural Desert Association

Of Attorneys for Plaintiff