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CLERK, U.S. DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND, OREGON

BY \_\_\_\_\_

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

**OREGON NATURAL DESERT ASSOCIATION;**  
**OREGON WILDLIFE FEDERATION;**  
**IDAHO WATERSHEDS PROJECT;** and  
**COMMITTEE FOR IDAHO'S HIGH DESERT,**

Plaintiffs,

v.

**JUAN PALMA**, in his official capacity as Vale  
District Manager, Bureau of Land Management;  
**JERRY L. TAYLOR**, in his official capacity as  
Jordan Resource Area Manager, Bureau of  
Land Management; **U.S. BUREAU OF LAND  
MANAGEMENT**, an agency of the U.S.  
Department of the Interior; and **GALE NORTON**,<sup>1</sup>  
in her official capacity as Secretary of the  
Department of the Interior,

Defendants,

Civil No. 98-97-RE

**DEFENDANTS' ANNUAL  
REPORT – March 1, 2001**

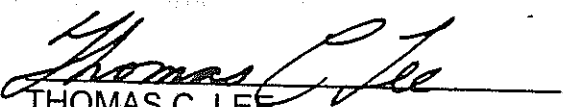
<sup>1</sup> Gale Norton, Secretary of Interior, is substituted for Bruce Babbitt, former Secretary of Interior, as a defendant herein, pursuant to Fed. R. Civ. P. 25(d)(1).

and )  
)  
**OREGON CATTLEMEN'S ASSOCIATION,** )  
a non-profit organization on behalf of its members, )  
)  
Intervenor-Defendant. )  
\_\_\_\_\_ )

Pursuant to paragraph 12 of the Court's Order of Modified Injunction filed April 28, 2000, herein (Dkt. 315), the defendants file their annual report on compliance with the Court's orders, progress on the EIS, and projected work for the coming year. The attached report is supported by Defendants' Exhibits 158 through 163, filed herewith.

DATED this 1<sup>st</sup> day of March, 2001.

Respectfully submitted,  
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**Report to District Court of Oregon**  
**Regarding Compliance with Order of Modified Injunction**  
**ONDA v. Palma (Owyhee Wild and Scenic Rivers)**  
**Civil No. 98-97-RE**  
**March 1, 2001**

The following is the Bureau of Land Management's (BLM) first annual report – pursuant to section 12 of the Order of Modified Injunction of April 28, 2000. We are reporting on: 1) compliance with the Order for the period of March 01, 2000 through February 28, 2001; 2) progress toward completion of the EIS; and 3) projected work for the year to come (fiscal 2001). The format of this report corresponds with the specific sections of the Order, to the extent that there are associated actions to report.

Compliance with the Order:

Sections 1. and 2. Pursuant to the Order, BLM eliminated grazing authorizations for areas of concern (AOCs) and canceled the associated animal unit months (AUMs) of permitted use. This was accomplished by elimination of the appropriate number of AUMs from individual grazing permits, and the addition of terms and conditions which either closed AOCs to grazing or otherwise restricted grazing in accordance with sections 6 or 7 of the Order.

Section 3. BLM made every effort to ensure that this section of the Order was followed. BLM staff spent 106 field days specifically focused on the implementation of projects allowed under the Order, compliance with the Order, and monitoring of resource values. Between 12 and 15 BLM staff resource specialists and technicians were involved with the monumental task of locating (flagging) fences and pipeline routes; coordinating with the permittees, county government, watershed councils and the tribes; conducting required inventories; and developing cooperative agreements, all to clear the way for timely construction. BLM funded helicopter flights to transport fence layout crews (made up of permittees, BLM staff and tribal representatives) to remote locations in order to expedite compliance with the Order and minimize environmental impacts during the layout process.

Once project construction was underway, BLM's time was consumed with ongoing coordination, monitoring of project development, grazing use supervision, and monitoring of resource conditions. These workloads were done in addition to other high priority and unplanned district work (such as: the Southeast Oregon Resource Management Plan, oversight and monitoring of the Wild and Scenic Rivers boating season, assessment of the 500,000 acre Louse Canyon Geographic Management Area, emergency wildfire suppression, post fire rehabilitation, Endangered Species Act consultation, emergency wild horse gathers, etc.).

Section 4. Specific difficulties encountered in regard to cattle management (herding, etc.) will be addressed in later sections.

Section 6. BLM was unable to directly observe any major trailing activity, due to limited access and staffing. Priority went to project layout, inventory, utilization checks, grazing supervision, trespass abatement and coordination (particularly associated with project construction and preclusion of failures to perform). BLM will observe and document any impacts from trailing or unauthorized use when monitoring resumes in March. To the best of BLM's knowledge, based on conversations with affected permittees and limited observations of staff, trailing occurred without incident.

Section 7. The permittees of the Quartz Mt. and Morcum allotments did agree to the addition of conditions in their permits stipulating frequent riding to supervise livestock movements, and to be bound by the "failure to perform" language.

The fence maintenance, required by Section 7 of the Order prior to resumption of grazing, was completed for fences MK-2 and MK-3 to a reasonable standard and on time. The maintenance of fences J-1 and BLM-1, in the Quartz Mt. allotment, was not completely finished to BLM standards before Mr. Johnson returned to the allotment. Mr. Johnson indicated to BLM that he had rebuilt a gate on fence BLM-1 and had spent several hours working on J-1, and he believed that the work was sufficient to protect the Greeley Bar AOC. BLM staff confirmed that work had been done on J-1, but it was not to standards before the cattle returned to the allotment. Nevertheless, upon being notified by the BLM that the fences were not to a reasonable standard, Mr. Johnson immediately completed repairs and brought the fences up to standards. BLM staff inspected the subject AOC at Greeley Bar and found that cattle had not impacted the AOC. As defined, this did not rise to a "failure to perform", as the upland vegetation was only lightly grazed and there were no signs that cattle had accessed the AOC.

Sections 8. and 9. This section reflects the status of projects (refer to new Map Exhibits 158, 159, 160, 161, 162, 163 for as-built drawings and official Project Numbers recorded in Cooperative Agreements). Throughout the process of laying out fences, it became clear that the permittees' original maps were not always precise with regard to estimates of fence location and lengths. Consequently, there are differences in comparing as-built fence drawings to the proposed fences. The Order, however, recognized and allowed that the fence locations and lengths were approximations. The as-built locations and lengths are those that would meet the purpose of the Order by excluding cattle from the AOCs.

A. Fences F-1 and F-2 (Bogus Cr. allotment – Bull Cr. and Ryegrass AOCs): maintenance was completed on time. (Refer to Map Exhibit 151 for locations)

B. Fence FL-1 (Saddle Butte allotment – Bull Cr. AOC) was not completed, but is not required to be complete until Fall 2001.

Fences FL-6 (Saddle Butte allotment – Ryegrass, Sand Springs and Fletcher AOCs – Project Nos. 6336a,b,c,d and e) were constructed, but it may be necessary to extend protection to Fletcher AOC by constructing additional short gap fences in the immediate

vicinity. The permittees have decided to take advantage of the fact that fencing is not required to be complete before the Fall to see if additional fencing is truly needed. If so, BLM would conduct site inventories and aid in flagging the fence to avoid undue impacts.

There is also a need for another short gap fence about one mile north of FL-6 (6336e) at Ryegrass and the permittees are willing to construct it. This additional fence would protect additional wild and scenic values associated with a unique riparian area discovered within the river corridor and would insure protection of Ryegrass AOC.

The Crooked Creek Pipeline (southern portion of the modified proposal) was completed, and grazing was authorized to resume in the Saddle Butte allotment on December 15, 2000, after all troughs were operational. Cattle have been widely scattered thus far and utilization estimates, taken between each trough along the pipeline, have been in the slight to very light category. Utilization checks began on December 19, 2000 and were also conducted on January 3<sup>rd</sup>, 10<sup>th</sup> and 24<sup>th</sup>; and on February 13<sup>th</sup> and 21<sup>st</sup> of 2001. Snow storms and poor road conditions precluded access to the allotment periodically, although it was a fairly open winter with water scattered in depressions and potholes. The last check on February 21<sup>st</sup>, was cut short by muddy roads, but revealed that utilization along the pipeline remained in the slight to light category. Access to the AOCs has been severely limited by snow and mud, but no cows have been observed when BLM has been able to view the AOCs from the rim. AOCs will be monitored this Spring (March and April) by raft and foot to determine if cattle gained access. Mr. Steve Russell (permittee) allowed cattle to access a private source of water on the northeast end of the Saddle Butte allotment to facilitate better distribution of cattle to the north.

The pipeline construction was within the scope of the disturbance anticipated and allowed under the Order. Frozen soils precluded the final smoothing and re-seeding of the disturbed areas. Soon after the pipeline was laid, weather conditions worsened and made rehabilitation efforts impossible. Work will need to be deferred until soils dry out this coming summer. All seeding and rehabilitation efforts must be complete by Fall 2001 in order for seeding efforts to be successful. This includes work to rehabilitate the areas disturbed along the route of the northern Saddle Butte Pipeline, which will be constructed this coming summer.

**C. Fence D-1 (Jackies Butte allotment – Sand Hollow AOC – Project No. 6326) was completed on time utilizing a more efficient and less obtrusive route.**

**D. Fence A-1 (Ambrose-Maher allotment – Three Forks AOC).** Upon site investigation it was determined that maintenance of this fence was not necessary, and alone would not preclude access to the AOC. There are other gap fences in the area which preclude access from the rim above. However, a new fence to the south (Project No. 6333) was constructed to stop cattle access to the AOC. The fence is up and functional, but about

10 more steel fence posts need to be drilled into the rock before it is accepted by BLM as finished.

E. Fence A-3 (maintenance) and new Fences A-4 (Anderson allotment – Five Bar AOC – Project No. 6332a and 6332b). It was found that the original proposal was insufficient, so the location was adjusted to the south and completed. Also, see discussion of trespass fencing and settlement in Sections 10 and 11.

F. Fence W-1, east of Anderson Crossing, and Cattle Guard (Star Valley Community allotment – Anderson Crossing AOC – Project No. 6329) was completed.

G. Fences W-2 and W-3 and associated Cattle Guard (Louse Canyon Community allotment – Anderson Crossing AOC – Project No. 6325m,n,o and p) were constructed. In addition to the fencing, the permittees agreed to block a small rocky side drainage, in the vicinity of 6325m, with a low rock barrier to insure cattle access would be stopped. As of BLM's last inspection this past Fall, the rock work had not been done. Post fencing inspection indicates that additional fencing is needed in the area of Massey Canyon to eliminate access to the AOC. Massey Canyon is a major drainage intersecting the West Little Owyhee from the west, 1-2 miles south of the AOC. This work could not be accomplished until the summer of 2001, but it could be done before cattle return to the allotment.

Also, there exists a complex of three draws about 4 miles downstream of the Anderson Crossing AOC, on the west side of the river, which provide cattle access to the West Little Owyhee. These points of access are not within an AOC, and were unknown to BLM until this past field season. It is not known whether cattle could or would access the Anderson Crossing AOC by walking up the river canyon. However, additional fencing in these three draws would eliminate the possibility.

H. Fences W-5 (Louse Canyon Community Allotment – Louse Canyon Water Gap AOC – Project No. 6325j,k and l) were completed with less fence than planned. However, there remains a concern that access to the AOC still exists from the north side, east of the fencing that was done. The canyon rim in this area is shallow and made up of broken basalt ledges, with many small openings that a cow could possibly negotiate. These are openings that do not currently have visible livestock trails, and it is uncertain whether cows would use the openings, having not done so in the past. However, the possibility exists that they could. BLM has discussed the situation with the permittees and agrees that it will likely take more than one year of observation, under grazing in the adjacent area, to see if the AOC has been fully excluded from grazing. Though the fencing done to date has certainly blocked all known cattle access, additional short gap fences may be required in the future to fully protect the AOC.

I. Fence L-1 (Campbell allotment – Campbell Watergap AOC – Project No. 6328) was completed.

J. Fencing along the southern rim of upper West Little Owyhee (Louse Canyon Community allotment – Campbell Water Gap and Louse Canyon Watergap AOCs – Project No. 6325 a,b,c,d,e,h,and i) was completed. In addition, along the southern rim, Mr. George Wilkinson (permittee) took responsibility for and agreed to construct low rock barriers in several narrow side drainages and gaps to insure that cattle could not gain access to the AOCs. To the best of BLM's knowledge this work was not done. Consequently, BLM cannot be sure that cattle access to the AOCs has been eliminated. Similar to the situation described in Section H. above, even if the gaps had been blocked by rock barriers it would likely take more than a year of observation of cattle grazing in the adjacent area to be sure that the AOCs are fully protected.

In conclusion, the permittees and BLM worked diligently, within the time allotted, to identify all access points to the river corridor that could impact AOCs. In spite of this effort, not all of the planned fencing or rock barriers were completed, and there may be additional fencing or barriers needed in the future. This is especially true of the upper West Little Owyhee. It is, in fact, possible that new access points may be found in the future somewhere along the 186 mile length of the Owyhee Rivers. Only observation over time will tell. BLM is following up with permittees in some areas where refuse or fence materials were discarded by their contractor. BLM will invoke the conditions of the Cooperative Agreements and 43 C.F.R. § Part 4100 to withhold grazing authorizations until projects are accepted as being to standards and the fence lines are cleaned of any remaining refuse.

Sections 10. and 11. The following is a synopsis of non-compliance, unauthorized use or activity, failure to perform and the follow up actions that occurred.

**Unauthorized Grazing Use – Jeff Anderson Estate** – Formal trespass action. BLM reported the specifics of this incident and follow-up actions to the Court and all parties on June 9, 2000. The case was settled as a nonwillful trespass. Monetary trespass penalties and administrative costs were recovered.

**Unauthorized fence – Jeff Anderson Estate** – Fence construction occurred without proper authorization by BLM. The permittee's hired man directed fence construction prior to having a Cooperative Agreement and without a prior inventory for cultural resources and sensitive plant species. However, the fencing was subsequently inventoried and accepted by BLM.

During the fence layout phase, BLM staff worked with Mr. Rand Collins, an employee of the Andersons, on the site of fencing at Five Bar (Fence A-4). They looked at two options: the first being a series of gap fences in the rim which would connect A-4 to the existing fence A-3, and the second option was a longer fence that would eliminate the need for gap fences. BLM staff

recommended the longer fence, but Mr. Collins was not willing to commit to the fence without approval of Mrs. Anderson. BLM then inventoried and flagged the gaps fences in the rim. Subsequently, BLM staff inspected the fence construction and found that the longer fence had been constructed where BLM originally recommended it (Fence No. 6332b). The flagged gap fences in the rim were not constructed. In addition, a small gap fence (approximately 40 feet long) was constructed at the direction of Mr. Collins without a Cooperative Agreement, in the bottom of a tributary to Massey Canyon. BLM recognized that the fence was indeed necessary, but as with the re-routing of fence A-4, BLM took issue with the fact that the fence was constructed without proper authorization or prior inventory. The fence lines were inventoried and no cultural or sensitive species were recorded. The gap fence in the tributary to Massey Canyon was ultimately accepted as Project No. 6325o.

As settlement for the two unauthorized fences, the Andersons agreed to remove fence A-3 from the wilderness study area using horses and hand labor. A-3 is roughly equal in length to and rendered useless by the new fence. BLM accepted their offer of settlement, and the two fences. BLM also subsequently, flagged, inventoried and approved an extension of Project No. 6325o on the bench above, to ensure that cattle would be excluded from the AOC.

**Failure to perform at Anderson Crossing – Louse Canyon Community Allotment** – On September 20, 2000, BLM staff conducted utilization studies from Anderson Crossing up river to the upper end of the West Little Owyhee River. Three utilization checks were run on riparian vegetation at Anderson Crossing. One read 17%, one was recorded as “very slight” and indistinguishable from recreation use and one read 39%, which was well over the 19% standard for failure to perform. The upland utilizations at Anderson Crossing ranged from 10-15%. Upon finding that the failure to perform standard had been exceeded, BLM contacted the affected permittees on September 21, 2000 and directed them to remove cattle from the Louse Canyon Pasture immediately. At that time, BLM was told that men were on site and the gathering was already underway.

**Impoundment of Fort McDermitt Reservation Cattle – Louse Canyon Community Allotment** – Trespass cattle were observed within the river corridor at least once. They had access to the AOCs of the upper West Little Owyhee River but were not observed there. So, after repeated consultations and attempts to stem unauthorized use from horses and cattle straying on to public land from reservation lands, BLM initiated impoundment procedures. After the period for redemption had past, the impounded animals were sold at public auction. Impoundment was the measure of last resort. BLM has met with the Tribal Leadership and representatives from the Bureau of Indian Affairs (BIA) to explore solutions to the fencing problems that exist on the reservation boundary. BLM lead an inspection tour by horseback to assess the needed repairs, and is working with the Tribe and BIA in looking for long term solutions.

**Unauthorized grazing use in general** – The following is a summary of difficulties encountered with unauthorized use and abatement by river section:

Lower Section of Main Owyhee (Rome – North): Staff monitoring of the Owyhee in this area recorded 14 sightings of cows. Sightings ranged in numbers from 3 to as many as 24 head per sighting. The counts averaged 5-6 head per sighting. On 5 of these occasions, livestock were unauthorized but none of those were in AOCs.

Middle Section of Main Owyhee (Three Forks to Rome) including North Fork: There were 4 sightings in the river corridor. All four were unauthorized and all were in the AOC. The AOC sightings were localized at Three Forks and ranged from 3 to 12 head. Three Forks is a trail crossing adjacent to both state and private land. It was not possible for BLM to float the Middle Section in the Spring of 2000, due to low water. The area known as the "Deary Pasture" (AOC) was accessed by foot and no new signs of livestock were encountered. The Sand Hollow area was checked once and the fence precluded access to the AOC at that time.

Upper Section of Main Owyhee (state line to Three Forks): There was 1 sighting of 4 head within the river corridor, apparently on unfenced private land near Five Bar. The sighting was not within the AOC but on a bench above it. There was a trespass action involving cattle in the Anderson Allotment (previously discussed), which had access to Five Bar AOC, but to the best of BLM's knowledge they did not actually get into the AOC. No float trips were possible due to low water.

West Little Owyhee: There were 18 total sightings in the river corridor. They ranged from 2 to 30 head per sighting. Three of the 18 sightings were unauthorized and 1 of those was within the upper most AOC, near Campbell Water Gap.

As a rule, as soon as possible, the information was passed to the responsible Rangeland Management Specialist (RMS), his or her supervisor, and/or the Field Manager. The RMS would confirm whether the use was unauthorized, and follow up on any leads he had as to the identity of the owner. In the vast majority of cases, ownership could not be established, so phone calls were made to the permittees who grazed animals within the allotment, in the vicinity of the AOC. They were told that cattle were in an area they should not be in, or at time that they were not authorized, and BLM asked their help in removing the animals immediately. Although BLM always attempts to identify brands and markings on livestock encountered, it is particularly difficult to accomplish in the Spring when livestock are carrying their winter coats of fur. Also, the terrain is rough, BLM staff normally are either in boats or on foot in the canyon, and cattle are usually "spooky" when they see people. Consequently, if BLM doesn't get timely action from the permittees to remove animals, BLM sends riders back out to try to find the animals and identify ownership. Often, cattle have moved before BLM riders get back to the area, making follow up difficult.

BLM did encounter permittee riders in the field, but it is not known exactly how much riding occurred. The overall focus for permittees and BLM over the past year was on facilitating project development in accordance with the Order. The upper West Little Owyhee fencing was

particularly problematic because cattle were in the affected pastures as the fences were being built. Consequently, there were more people and there was more activity in the area than normal. Cattle movements were impacted by all of the activity and in some cases cows were inadvertently fenced in to the river corridor. When permittees were contacted they normally responded quickly and moved cows out of AOCs. However, some times, by the time they got to the area, cattle had moved or were difficult to locate. The grazing season in the Louse Canyon Allotment ended on September 30<sup>th</sup>, yet there were intermittent reports and observations of cattle remaining in the allotment as late as October 18<sup>th</sup>. BLM used an aircraft to fly the upper West Little on December 4<sup>th</sup> to check for cows. The area at that time was free of cattle.

As stated earlier, the fencing along the upper West Little Owyhee was a monumental task for all concerned. Yet there is no guarantee that the fencing done to date will totally exclude cattle in the future. All known access points have been blocked or should have been blocked by now (refer to fencing discussion above). However, the area's rough, broken landscape presents a tremendous challenge. There is a need to observe grazing over the next year or two, before we can say with confidence that cows are excluded. Even then, the right combination of resource conditions, weather, etc. might result in cows finding a new route in. The need for future fencing in order to exclude livestock is a strong possibility.

#### Progress toward completion of EIS (FY 2000):

During the preceding year (FY 2000) the BLM requested \$386,000 to begin resource inventory and additional monitoring of the Owyhee Wild and Scenic River. BLM did not receive any new funding to begin this effort.

Riparian photo points were re-photographed within the uppermost AOC of the West Little Owyhee.

Work was achieved on the uplands and tributaries of the West Little Owyhee River as a result of conducting assessments of rangeland health (general conditions of the uplands) within the Louse Canyon Geographic Management Area (GMA). Additionally, BLM conducted Proper Functioning Condition (PFC) assessment on all riparian tributaries of the West Little Owyhee, within the Louse Canyon GMA. Additional information was gathered as a result of botanical and cultural inventories conducted during the flagging of proposed fences under the Order.

Normal monitoring and use supervision was done on the lower section of the Main Owyhee River. This work consisted primarily of campsite monitoring within areas of concern.

Cultural monitoring was done on 7 sites within the river corridor. Five of the sites were on the lower section of the Main Owyhee and 2 were on the West Little Owyhee. Cultural inventory was done on 80 acres in the lower section of the Main Owyhee and 16 acres in the upper West Little Owyhee. Data recovery/excavation continued at Birch Creek Ranch on the Lower Main Owyhee River in conjunction with Washington State University.

BLM coordinated with the USGS on planned ground and surface water investigations for the Owyhee Rivers.

Projected work in the year to come (FY 2001):

BLM requested \$344,100 to cover monitoring, and inventory/data gathering for water quality, botanical resources, cultural resources, bald eagle survey, etc. In addition, this money would cover aerial photography of the river system for riparian inventory, and miscellaneous equipment and temporary personnel needs. BLM received \$160,000 that will be primarily applied to baseline water quality work through a contract with the United States Geological Survey. The balance will be used to begin new cultural and/or botanical inventory work. BLM also received \$20,000 for low level aerial photography of the Main Owyhee (from the Idaho state line to Owyhee Reservoir).

BLM will continue to conduct use supervision and monitoring of ORVs within areas of concern, campsites and other areas where use occurs within the river corridor.

BLM will continue data recovery/excavation of prehistoric camp site at Birch Creek Ranch in cooperation with Washington State University (utilizing a challenge cost share grant).

BLM continues to look for opportunities to secure and/or shift funding to augment funds received.

BLM will prepare a Pre-Plan in 2001 that will hopefully help us compete more effectively for funding nationally (for FY 2002 and beyond). Scoping for the new Plan and EIS will begin in FY 2002.