



***Bureau of Land Management
Protest Resolution Report***

**Lakeview Proposed Resource
Management Plan
Amendment and Final
Environmental Impact
Statement**

January 13, 2025

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Acronyms

Term	Definition
ACEC	Area of Critical Environmental Concern
ARMPA	Approved Resource Management Plan Amendment
AUM	animal unit month
BLM	Bureau of Land Management
CFR	Code of Federal Regulations
DEIS	Draft Environmental Impact Statement
DRMP	Lakeview Draft Resource Management Plan Amendment/Draft Environmental Impact Statement
EIS	Environmental Impact Statement
FEIS	Final Environmental Impact Statement
FLPMA	Federal Land Policy and Management Act
FOIA	Freedom of Information Act
FRMP	Lakeview Proposed Resource Management Plan Amendment/Final Environmental Impact Statement
GHMA	General Habitat Management Area
IM	Instruction Memorandum
LPRMPA	Lakeview Proposed Resource Management Plan Amendment
LWC	Land with Wilderness Characteristics
NEPA	National Environmental Policy Act
ODFW	Oregon Department of Fish and Wildlife
OHV	off-highway vehicle
ONDA	Oregon Natural Desert Association
PHMA	Priority Habitat Management Area
PRMPA	Proposed Resource Management Plan Amendment
RMP	Resource Management Plan
RMPA	Resource Management Plan Amendment
ROD	Record of Decision
SEORMPA	Southeastern Oregon Resource Management Plan Amendment
U.S.C.	United States Code
USDI	U.S. Department of the Interior
VRM	Visual Resource Management
WO	Washington Office
WSA	Wilderness Study Area

Introduction

The Bureau of Land Management (BLM) Lakeview Field Office released the Lakeview Proposed Resource Management Plan Amendment (PRMPA) and Final Environmental Impact Statement (FEIS) on November 8, 2024. The BLM received 15 unique protest letter submissions during the subsequent 30-day protest period, which ended on December 9, 2024.

The planning regulations at 43 Code of Federal Regulations (CFR) 1610.5-2 outline the requirements for filing a valid protest. The BLM evaluated all protest letters to determine which protest letters were complete and timely, and which persons have standing to protest. Three letters were complete and timely but were dismissed because the protesting parties who submitted the letters did not have standing to protest. The remaining 12 letters were complete and timely and were from parties who had standing to protest. Of those, five letters contained valid protest issues. The BLM documents the responses to the valid protest issues in this protest resolution report. The protest decision is recorded in writing along with the reasons for the decision in this protest resolution report.

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

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

Protesting Party Index

Letter Number	Protestor	Organization	Determination
PP-OR-LV-EIS-24-01	Andrew Macpherson	—	Dismissed: Comments Only
PP-OR-LV-EIS-24-02	John Thompson	Jeep Long Beach/Gambler 500	Dismissed: Comments Only
PP-OR-LV-EIS-24-03	Christopher Coleman	—	Dismissed: No Standing
PP-OR-LV-EIS-24-04	Alison Cole	—	Dismissed: Comments Only
PP-OR-LV-EIS-24-05	Peter Lacy	Oregon Natural Desert Association	Denied
PP-OR-LV-EIS-24-06	Thomas Mulqueen	—	Dismissed: Comments Only
PP-OR-LV-EIS-24-07	W. Alan Schroeder	Attorney representing JRS Properties III LLLP; Crane Creek Ranch, LLC; and Houret Cattle Company, Inc.	Denied
	Darcy Helmick	JRS Properties III LLLP	
	Greg Amaral	Crane Creek Ranch, LLC	
	Paul Houret	Houret Cattle Company, Inc.	
PP-OR-LV-EIS-24-08	Randall Morris	—	Denied
PP-OR-LV-EIS-24-09	Jesse Laird	—	Dismissed: Comments Only
PP-OR-LV-EIS-24-10	Rocky Wardle	—	Dismissed: No Standing
PP-OR-LV-EIS-24-11	Randy and Mona Drake	Pacific Northwest Fourwheel Drive Association	Dismissed: Comments Only
PP-OR-LV-EIS-24-12	Jim Lebo	—	Dismissed: No Standing
PP-OR-LV-EIS-24-13	Steven Jakubowics	Committee for Idaho's High Desert	Denied
PP-OR-LV-EIS-24-14	Simone Griffin	BlueRibbon Coalition	Denied
	Ben Burr		
PP-OR-LV-EIS-24-15	Jayna Ferrell	—	Dismissed: Comments Only

Areas of Critical Environmental Concern

Oregon Natural Desert Association

Peter Lacy

Issue Excerpt Text: The Bureau has failed to give “priority” to identifying and considering management alternatives for potential new ACECs, as is required during all land use planning under FLPMA. 43 U.S.C. §§ 1711(a), 1712(c)(3) (“In development and revision of land use plans, the Secretary shall . . . give priority to the designation and protection of areas of critical environmental concern.”). The Bureau’s regulations further require that “[i]dentification, evaluation, and priority management of ACECs shall be considered during . . . amendments to resource management plans when such action falls within the scope of the amendment.” 43 C.F.R. § 1610.7-2(b) (emphasis added). The Bureau responds that it “previously addressed ACEC designation and management” more than twenty years ago, in 2003, and that considering management of wilderness and ecological values through ACEC management—a “priority” management option established by Congress in FLPMA—is “outside the scope” of this plan amendment. FEIS A11-4. The agency fails to respond to comments describing the significant new information that has emerged over the course of more than two decades since the Bureau last considered ACEC management and bearing on the Greater Hart-Sheldon area’s relevance, importance, and need for special management. See, e.g., FEIS A14-3 to -4 (responding only to a 2021 public comment, but not to ONDA’s detailed 2024 comment letter alerting agency to significant new information). FLPMA requires that the Bureau “shall” collect and use, in any land use planning (including plan amendment) process, up-to-date information to address whether and where to designate ACECs—not to rely upon stale assessments made a quarter-century ago. 43 U.S.C. § 1711(a) (inventory must “giv[e] priority to areas of critical environmental concern” and “shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values”). To address this shortcoming, the Bureau should consider the new information and analyses brought to its attention during the DEIS comment process and designate an ACEC on the BLM-managed public lands in the critical Greater Hart-Sheldon wildlife corridor.

Summary:

Protestors stated that the BLM violated the Federal Land Policy and Management Act (FLPMA) in the Lakeview PRMPA/FEIS by failing to “give priority” to the designation and protection of Areas of Critical Concern (ACEC) by stating that consideration of ACEC management is outside the scope of this planning effort. Additionally, protestors noted that the BLM violated FLPMA’s mandate to collect and use up-to-date information to decide whether and where to designate ACECs during the land use planning processes.

Response:

Section 202(c)(3) of FLPMA requires that the BLM give priority to the designation and protection of ACECs in the development and revision of land use plans (43 United States Code [U.S.C.] 1712(c)(3)). FLPMA defines ACECs as “areas within the public lands where special management attention is required...to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards” (43 U.S.C. 1702(a)). The BLM’s planning regulations address the identification, evaluation, and designation of ACECs during the development and revision of Resource Management Plans (RMP) and during amendments to RMPs when evaluation and designation of ACECs are within the scope of the amendment (see 43 CFR 1610.7-2(b)). As reflected in the regulations and existing policy, the BLM reviews nominated ACECs to determine whether they have relevant and important values and need special management (43 CFR 1610.7-2(a); BLM

Instruction Memorandum (IM) 2023-013; and BLM Manual 1613 – *Areas of Critical Environmental Concern*).

However, the BLM determines the appropriate time for and may defer the evaluation of ACECs nominated outside of the planning process, including if evaluation and designation of ACECs are not within the scope of a Resource Management Plan Amendment (RMPA) associated with the BLM’s review of a proposed activity (43 CFR 1610.7-2(i); BLM Manual 1613). Under these circumstances, the BLM has discretion in the selection of ACECs for the various alternatives and may defer consideration of a nominated ACEC to a future planning process (43 CFR 1610.7-2(i)(2)).

Although the designation of ACECs is outside the scope of this plan amendment process, the BLM did consider several ACEC alternatives but ultimately elected not to carry these alternatives forward for detailed analysis. The BLM provided rationale as to why these alternatives were not carried forward for detailed analysis in Appendix 14 of the Lakeview PRMPA/FEIS (pp. A14-2–A14-4). As described in this section, the BLM addressed the assertion that the Greater Hart-Sheldon region, as a part of the 1998 Pronghorn ACEC proposal, has developed additional significance since the U.S. Fish and Wildlife Service recognized this region as one of six “sagebrush strongholds” in 2014 (Lakeview PRMPA/FEIS Appendix 14, p. A14-3). An inter-agency team of biologists and other resource specialists from the Oregon Department of Fish and Wildlife (ODFW), the U.S. Fish and Wildlife Service, and four BLM offices evaluated the area and found that the area as a whole did not meet the ACEC criteria though smaller portions of the area did meet the criteria (Lakeview PRMPA/FEIS Appendix 14, pp. A14-3–A14-4). Furthermore, as the Lakeview PRMPA/FEIS states, “the identification of a potential ACEC does not, of itself, change or prevent change of the management of use of the public lands (43 CFR 1601.0-5(a)). The proponent did not demonstrate that additional special management for sage-grouse, which presumably would be provided by ACEC designation, is needed to protect sage-grouse habitat above that which has already been provided by the [Priority Habitat Management Area/Sagebrush Focal Area] designation and management direction in the 2015 [Approved] RMPAs” (Lakeview PRMPA/FEIS Appendix 14, p. A14-4). The Approved RMPAs referenced is the 2015 Nevada and Northeastern California Greater Sage-Grouse Approved RMPAs (BLM 2015c). The majority of the potential threats to sage-grouse have been directly addressed through the Priority Habitat Management Area (PHMA)/Sagebrush Focal Area protective management direction, designations, and restrictions under the 2015 Approved RMPAs (BLM 2015c), which would also protect and promote habitat conservation for other sagebrush obligate species such as pronghorn (Lakeview PRMPA/FEIS Appendix 14, p. A14-4).

Additionally, as outlined in the document’s *Purpose and Need*, the Lakeview PRMPA/FEIS is narrowly focused on addressing the issues identified in the 2010 Settlement Agreement, and new ACEC designations are outside the scope of the planning decision (Lakeview PRMPA/FEIS pp. 21–22). The BLM is only required to address ACECs during land use plan amendments when such action falls within the scope of the amendment (43 CFR 1610.7-2(b)). The designation of ACECs is outside the scope of the Lakeview PRMPA/FEIS; accordingly, the BLM is not required to address ACECs under this plan amendment.

The BLM complied with FLPMA by adequately explaining the rationale for not analyzing ACEC alternatives in detail within the Lakeview PRMPA/FEIS. The BLM further complied with FLPMA by explaining that designating new ACECs is not consistent with the purpose and need of the RMPA and is thus outside the scope of this planning effort. Accordingly, this protest issue is denied.

FLPMA: Multiple Use

JRS Properties III LLLP, Crane Creek Ranch, LLC, and Houret Cattle Co., Inc.

W. Alan Schroeder et al.

Issue Excerpt Text: Third, there was no rational basis for any selection and implementation of Category B and Category C (including new WSA 202 areas) in Alternatives B-F (as well as the No Action Alternative) (in whole or in part). The conditioning / restricting grazing use under these categories within these Alternatives is beyond the current ecological condition and/or beyond the ecological potential of the public lands in question within the Protesters' Allotments. See also 43 U.S.C. § 1702(c) (wherein the multiple-use mandate requires a "harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment"); 43 U.S.C. § 1902(d) ("The term 'range condition' means the quality of the land reflected in its ability in specific vegetative areas to support various levels of productivity in accordance with range management objectives and the land use planning process, and relates to soil quality, forage values (whether seasonal or year round), wildlife habitat, watershed and plant communities, the present state of vegetation of a range site in relation to the potential plant community for that site, and the relative degree to which the kinds, proportions, and amounts of vegetation in a plant community resemble that of the desired community for that site." (emphasis added)). There must be a rational nexus between the choices and the decision made. Here, neither the DRMP nor the FRMP considered, assessed, or determined that rational nexus.

JRS Properties III LLLP, Crane Creek Ranch, LLC, and Houret Cattle Co., Inc.

W. Alan Schroeder et al.

Issue Excerpt Text: Fourth, there was no legal basis for any selection and implementation of Category B and Category C (including new WSA 202 areas) in Alternatives B-F (as well as the No Action Alternative) (in whole or in part). While Protesters will acknowledge the authority of BLM to develop Land Use Plans as per 43 U.S.C. § 1712(a), such authority is not intended to trump or conflict with other, more specific statutes, like the Wilderness Act and FLPMA.

The Wilderness Act and FLPMA explicitly intend to continue to authorize grazing as it existed. The Wilderness Act prescribed that "the grazing of livestock ... shall be permitted to continue subject to such reasonable regulations ..." 16 U.S.C. § 1133(d)(4). FLPMA prescribed "the continuation of existing ... grazing uses ... in the manner and degree in which the same was being conducted on October 21, 1976" as related to any WSAs established under 43 U.S.C. § 1782. Alternatives B-F violate the Wilderness Act and FLMPA as to its intended conditioning or restricting grazing use contrary to the terms of the FLPMA, which explicitly prescribed that grazing would continue in the same "manner and degree in which the same was being conducted on October 21, 1976."

FLPMA prescribed that "[i]n the development and revision of land use plans, the Secretary shall ... use and observe the principles of multiple use and sustained yield set forth in this and other applicable law." 43 U.S.C. § 1712(c)(1) (emphasis added). See also 43 U.S.C. § 1732(a) (BLM "shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 1712 of this title when they are available ..."). While the term "multiple use" is inclusive of "wilderness" values, FLPMA did not intend that any one value, like "wilderness", would be controlling in the development or revision of a Land Use Plan.

JRS Properties III LLLP, Crane Creek Ranch, LLC, and Houret Cattle Co., Inc.

W. Alan Schroeder et al.

Issue Excerpt Text: 43 U.S.C. § 1702(c) (emphasis added). Here, the FRMP Planning Area is inclusive of "approximately 3.2 million acres of Federal surface and mineral estates."⁷ Yet, in Alternatives B-F, BLM is proposing to select and implement up to 2.1 million acres of the 3.2 million acres or 66% of the Planning Area as being subject to conditions / restrictions to ORV [*recte* OHV]

use and grazing due for the benefit of a single value, i.e., wilderness characteristics. FLPMA did not allow or intend a single value, like wilderness”, to have such an extraordinary, controlling impact across any Planning Area during the revision of a Land Use Plan. Alternatives B-F violate FLPMA in its intended conditioning or restricting grazing use, as well as ORV use, for a single value, “wilderness.”.

***JRS Properties III LLLP, Crane Creek Ranch, LLC, and Houret Cattle Co., Inc.
W. Alan Schroeder et al.***

Issue Excerpt Text: The courts have made clear that if “wilderness values are now present in the planning area outside of existing WSA” based upon an inventory as per 43 U.S.C. § 1711(a), BLM is only obligated to consider such values during the NEPA process; prescribing “no particular methodology for that consideration” and no particular protective management of areas with wilderness character. Oregon Natural Desert Association, 625 F.3d. 1092, 1094 (9th Cir. 2010). FLPMA made clear that any - management decision or action pursuant to a management decision that excludes (that is, totally eliminates) one or more of the principal or major uses for two or more years with respect to a tract of land of one hundred thousand acres or more shall be reported by the Secretary to the House of Representatives and the Senate. If within ninety days from the giving of such notice (exclusive of days on which either House has adjourned for more than three consecutive days), the Congress adopts a concurrent resolution of nonapproval of the management decision or action, then the management decision or action shall be promptly terminated by the Secretary. 43 U.S.C. § 1711(e)(2). Here, while the 2010 Agreement required BLM to consider and assess wilderness character, it did not require the consideration and assessment of all but one (1) Alternative to consider and assess wilderness values. The DRMP and FRMP failed to consider a reasonable range of alternatives unrelated to wilderness character. Relegating grazing to a subordinate use is not consistent with the Wilderness Act or FLPMA.

Summary:

Protestors stated that approval of the Lakeview PRMPA/FEIS would violate FLPMA’s multiple-use mandate and the Wilderness Act by:

- Proposing to manage Lands with Wilderness Characteristics (LWC) as Category B units, Category C units, or as Section 202 Wilderness Study Areas (WSA) under any alternative, which restrict livestock grazing beyond the current ecological condition and/or beyond the ecological potential of the public lands in question. Protestors noted that the intention of both FLPMA and the Wilderness Act is to continue to authorize grazing, however the provisions under Category B and Category C LWC units and Section 202 WSAs restrict or condition grazing uses in contrast to this intention.
- Proposing to subject a large portion of the planning area to off-highway vehicle (OHV) and livestock grazing use restrictions under Alternatives B through F in order to benefit a single value: wilderness.
- Failing to consider a reasonable range of alternatives unrelated to wilderness character, which relegates livestock grazing to a subordinate use.

Response:

FLPMA directs the BLM to manage public lands on the basis of multiple use and sustained yield, unless otherwise provided by law (43 U.S.C. 1732(a)). Section 103(c) of FLPMA defines “multiple use” as the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people.

FLPMA's multiple use policy does not require that all uses be allowed on all areas of the public lands. Rather, the BLM has wide latitude to allocate the public lands to particular uses and to employ the mechanism of land use allocation to protect for certain resource values, or, conversely, develop some resource values to the detriment of others, short of unnecessary or undue degradation. Through the land use planning process, the BLM evaluates and chooses an appropriate balance of resource uses, which involves tradeoffs between competing uses.

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

BLM considered a range of alternatives related to LWCs, OHV use, and livestock grazing as required by the 2010 Settlement Agreement, which is provided throughout Lakeview PRMPA/FEIS Chapter 2 and in Appendix 4 and is summarized in Table ES-1 in the *Executive Summary*. Under the No Action Alternative, which would be a continuation of existing management under the 2010 Settlement Agreement, wilderness character management is provided in Table 2-1-1 (Lakeview PRMPA/FEIS pp. 27–30). Under this alternative, the BLM would continue to comply with the 2010 Settlement Agreement, including applying the management direction described in Provisions 18 and 19 of the Settlement Agreement in all 106 wilderness units (Lakeview PRMPA/FEIS p. 28). Provisions 18 and 19 of the Settlement Agreement state that the BLM shall not implement any projects in the wilderness units where the project would be deemed by BLM to diminish the size or cause the unit to no longer meet the criteria for wilderness character, and that the BLM will analyze the effects on wilderness character through each project's National Environmental Policy Act (NEPA) process (Lakeview PRMPA/FEIS p. 28). OHV designations from the existing land use plan would be retained throughout the planning area under the No Action Alternative as would livestock grazing management (Lakeview PRMPA/FEIS pp. 30–34).

Under Alternative A, which would be continuation of existing management under the 2003 Lakeview RMP, but without the 2010 Settlement Agreement, wilderness character management is provided in Lakeview PRMPA/FEIS Section 2.3.1 (pp. 36–37) and states that all 106 units identified as LWCs would be managed in accordance with the existing, approved administrative designations such as ACECs/Research Natural Areas, WSAs, or other special designations. Under Alternative A, OHV use and travel management would be the same as the No Action Alternative, except there would be no management for, or emphasis on, protecting wilderness characteristics that would limit road maintenance, upgrade, or new road construction activities in the 106 LWCs (Lakeview PRMPA/FEIS p. 37). Similarly, under Alternative A, livestock management would be the same as the No Action Alternative, except there would be no management for, or emphasis on, protecting wilderness characteristics that would limit new range improvements within LWCs (Lakeview PRMPA/FEIS p. 37).

Under Alternatives B, C, D, E, and F, wilderness characteristics management would include a new land use plan management goal that would replace the existing goal and place each of the 106 BLM-identified wilderness characteristics units into one of four possible management categories (A, B, C, or Section 202 WSA) described in BLM Manual 6320 – *Considering Lands with Wilderness Characteristics in the BLM Land Use Planning Process*. The unit categorization process is described in detail in Appendix 4 of the Lakeview PRMPA/FEIS. While the specific units placed into the three management categories would vary by alternative, the management direction for the three categories would be the same under these alternatives. (Lakeview PRMPA/FEIS p. 38). On Category A units, the BLM would allow other multiple uses while not protecting wilderness characteristics in accordance with any approved special designations, land use allocations, management goals, and management direction in the existing land use plan. On Category B units, the BLM would balance the management of wilderness characteristics with other resources and multiple uses. On Category C units, the BLM would prioritize the protection of wilderness characteristics over the management of

other resources and multiple uses (Lakeview PRMPA/FEIS p. ES-4). Management categories proposed for each of the 106 wilderness characteristics units under each alternative is provided in Table 2-5 (Lakeview PRMPA/FEIS pp. 42–50). The new Section 202 WSAs would be managed in the same manner as existing WSAs under the non-impairment standard in BLM Manual 6330 – *Management of Wilderness Study Areas (Public)* (Lakeview PRMPA/FEIS Appendix 4, p. A4-1–A4-2 and A4-7).

Under Alternative B, which emphasizes the protection of wilderness characteristics, the BLM would manage 77 whole LWC units and portions of 2 LWC units as Category C units, and 34 whole units and portions of 2 units as new Section 202 WSAs (Lakeview PRMPA/FEIS pp. 52–53). Under Alternative B, all wilderness characteristics units and WSAs would be closed to OHV use (Lakeview PRMPA/FEIS p. 53). Livestock grazing under Alternative B would be managed the same as the No Action Alternative, except that the BLM would remove grazing when the BLM determines that existing livestock grazing management practices or levels of grazing use are a significant causal factor in failing to achieve land health standards as determined during site-specific NEPA analysis to modify or suspend a grazing permit (Lakeview PRMPA/FEIS p. 54). More information related to land health standards can be found in Lakeview PRMPA/FEIS Appendix 5, Section A.5.2 (pp. A5-4–A5-22). Furthermore, if the BLM receives a properly executed letter of voluntary relinquishment of a grazing permit or lease that overlaps areas with special designations, including LWCs, those areas would then be unavailable for livestock grazing use or have the total permitted use reduced (Lakeview PRMPA/FEIS pp. 54–55).

Under Alternative C, which would emphasize protection of specific LWCs while providing for limited levels of multiple use, the BLM would manage 26 whole units and portions of four units as Category C, 71 whole units and portions of 2 units as Category B, and 5 whole units and portions of 3 units as Category A (Lakeview PRMPA/FEIS p. 57). OHV and mechanical transport use within existing WSAs would be limited to routes that existed at the time of WSA designation (Lakeview PRMPA/FEIS p. 58). Livestock grazing under Alternative C would be managed the same as the No Action Alternative, except that the BLM would temporarily close grazing on allotments when the BLM determines that existing livestock grazing management practices or levels of grazing use are a significant causal factor in failing to achieve land health standards as determined during site-specific NEPA analysis to modify or suspend a grazing permit. Grazing could resume once the BLM documents, through monitoring and a subsequent assessment, that the pasture or allotment is meeting standards, is making significant progress toward meeting standards, or that grazing is no longer a causal factor for failing to meet standards. Furthermore, if the BLM receives a properly executed letter of voluntary relinquishment of a grazing permit for a lease that overlaps National Landscape Conservation System land, those areas would then be unavailable for livestock grazing use or have the total permitted use reduced (Lakeview PRMPA/FEIS pp. 59–60).

Under Alternative D, which would balance management of wilderness characteristics with other multiple uses, the BLM would manage 2 whole units as Category C, 41 whole units and portions of 18 units as Category B, and 45 whole units and portions of 18 units as Category A (Lakeview PRMPA/FEIS p. 61). OHV use and mechanical transport within the two Category C units would be limited to existing routes, and OHV use and mechanical transport within WSAs would be the same as the No Action Alternative (Lakeview PRMPA/FEIS p. 61). Livestock grazing under Alternative D would be managed the same as the No Action Alternative except that the BLM could change livestock grazing management, including not allowing permit increases to animal unit months if a land health assessment is completed that indicates one or more standards are not being met due to factors other than grazing that are subject to BLM control. Furthermore, if the BLM receives a properly executed letter of voluntary relinquishment of a grazing permit, the BLM would follow the permit relinquishment policy in Washington Office (WO) IM 2013-184, which would not necessarily

result in that forage allocation becoming unavailable for livestock use (Lakeview PRMPA/FEIS pp. 62–63).

Under Alternative E, which would emphasize protection of specific LWCs based on external criteria, the BLM would manage 26 whole units as Category C, 68 whole units as Category B, and 12 whole units as Category A (Lakeview PRMPA/FEIS pp. 64–65). Under this alternative, OHV use and mechanical transport within Category C units would be limited to existing routes (Lakeview PRMPA/FEIS p. 65). Under this alternative, the livestock grazing management direction, including how rangeland health issues and permit relinquishments are addressed, would be the same as Alternative A (Lakeview PRMPA/FEIS pp. 65–66).

Under Alternative F (the Proposed Plan), the BLM would manage 8 whole units and portions of 7 units as Category C, 37 whole units and portions of 12 units as Category B, and 30 whole units and portions of 9 units as Category A. A subset of Category C units that were contiguous with existing WSAs, along with 7 existing WSA units (24 whole units and portions of 2 units), would be designated as new Section 202 WSAs and would be managed consistent with the non-impairment standard in BLM Manual 6330 (Lakeview PRMPA/FEIS, pp. 66–67 and ES-10). Under this alternative, OHV use and mechanical transport across the planning area would be managed the same as Alternative D (Lakeview PRMPA/FEIS p. 67). Under this alternative livestock grazing management direction, including how the BLM addresses rangeland health issues and permit relinquishments, would be the same as Alternative D (Lakeview PRMPA/FEIS p. 67).

The BLM analyzed the potential direct, indirect, and cumulative impacts from implementation of each alternative to livestock grazing in Lakeview PRMPA/FEIS Section 3.12.2 (pp. 205–213) and in Appendix 12, *Chapter 3 in Comprehensive Detail*, Section 3.10.2 (pp. A12-196–A12-197) and to OHV use and travel management in Section 3.11.2 (pp. 194–199) and in Appendix 12, Section 3.9.2 (pp. A12-179–A12-191). Under Alternative F (the Proposed Plan), range improvements, vegetation management, and fuels treatments in Category C wilderness units and new Section 202 WSAs would be more restrictive than the No Action Alternative. However, the effects of livestock grazing, OHV, and travel management direction on land health and forage production would be the same as Alternative D, which would provide the highest level of livestock management flexibility to the largest number of acres across the planning area other than Alternative A (Lakeview PRMPA/FEIS pp. 206–207).

As the BLM states in Lakeview PRMPA/FEIS Appendix 11, *Comments and Responses*, areas managed to protect wilderness characteristics are available for many other compatible uses including, in most cases, grazing (Lakeview PRMPA/FEIS Appendix 11 p. A11-28). This approach demonstrates the BLM's commitment to its multiple-use mandate by ensuring that different land uses, including grazing, recreation, and resource extraction, are considered and managed appropriately.

The BLM analyzed a full range of alternatives in the Lakeview PRMPA/FEIS, and all alternatives allow some level of all uses present in the planning area, including livestock grazing and OHV use, in a manner that is consistent with applicable statutes, regulations, and BLM policy. As such, the Lakeview PRMPA/FEIS satisfies FLPMA's multiple-use policy. Accordingly, this protest issue is denied.

Lands with Wilderness Characteristics

Randall Morris

Issue Excerpt Text: The language of the Proposed RMP specifically prohibits the BLM from mitigating impacts on wilderness characteristics on Category A LWC's during future, site-specific NEPA processes. Essentially, the BLM has unilaterally taken the liberty to condemn wildlands (LWCs) and the irreplaceable resources they contain to development over time, with inevitable loss of

those resources... FLPMA requires that the Bureau manage the public lands and resources without permanent impairment and to prevent unnecessary or undue degradation. Nowhere in NEPA or FLPMA do the Acts allow the BLM to escape its explicit responsibility to mitigate impacts. Nowhere in NEPA or FLPMA is the BLM given authority to arbitrarily and permanently demote wilderness below all other multiple uses. Furthermore, wilderness is compatible with many multiple uses. The BLM has proposed to demote wilderness values on Category A LWCs and Category B LWCs. As a result, these Category A and Category B lands face an uncertain future. The Proposed Plan eliminates BLM's future discretion to mitigate potential impacts to wilderness on a site-specific, case-by-case basis.

Committee for Idaho's High Desert

Steven Jakubowics

Issue Excerpt Text: Instead, the proposed management policy for Category 'A' lands as defined in the LPRMPA/ FEIS would violate FLPMA's requirement that BLM manage public lands without permanent impairment of the productivity of the land and the quality of the environment, and prevent unnecessary or undue degradation. In addition, the proposed Category 'A' policy will treat wilderness values below all other public land uses rather than as equals. This in itself is clearly unacceptable especially on a fragile, finite and irreplaceable resource like wilderness. To be consistent with BLM's recent Public Lands Rule, there should be no management category that places wilderness values below every other resource and value on these wilderness worthy lands.

Committee for Idaho's High Desert

Steven Jakubowics

Issue Excerpt Text: The added management direction that no mitigation is required for the loss of wilderness characteristics/values on Category 'A' lands is counter to the purposes and regulations codified under the National Environmental Policy Act and will greatly exacerbate the negative environmental impacts expected throughout the planning area, an area that is one of the last remaining intact sagebrush-steppe ecosystems remaining in the West! Any action that can be taken to reduce or avoid adverse impacts on the environment (as required under NEPA and its regulations) remains paramount to the 'spirit and intent' of the NEPA/RMP amendment process underway.

Blue Ribbon Coalition

Simone Griffin et al.

Issue Excerpt Text: Lands with Wilderness characteristics should not be managed as Wilderness. Wilderness Study Areas should also be released as a result of this plan. The Lakeview RMP should not be using arbitrary wilderness classifications to manage an area as wilderness because wilderness designation is reserved solely for Congress which is made painfully clear in the aforementioned court case. We encourage the BLM to address these concerns and truly comply with FLPMA. It's important to note that wilderness values are already considered under FLPMA. Categories B and C are a violation of FLPMA. According to *Loper Bright Enterprises v. Raimondo*, Case. No. 22-451, 603 U.S. ___ (2024) the agency should not have discretion to act on these categories A, B and C as Congress did not mandate this, and according to FLPMA, wilderness characteristics should not be prioritized over multiple use. Multiple use means that wilderness characteristics will be considered along with the other uses and the land will be managed accordingly. No alternative analyzed completely excluding Categories B and C. NEPA requires the agency to analyze a broad range of alternatives. All the alternatives given are simply varying levels of restrictions and management of wilderness. No alternative analyzes actually expanding recreation and grazing access and areas. If there is no analysis to compare the other restrictive alternatives to then it taints the NEPA process.

Blue Ribbon Coalition

Simone Griffin et al.

Issue Excerpt Text: The BLM studied and considered areas that do not even meet Wilderness requirements because they were less than 5,000 acres or were not untrammelled by man, meaning they had manmade features that disqualified them from wilderness characteristics:

“The BLM also found 26 units that were less than 5,000 acres in size, but still met the size and naturalness criteria and had outstanding opportunities for solitude and/or primitive and unconfined recreation due to being contiguous with an existing WSA.”

“The 106 wilderness characteristics units include a variety of minor, human-made developments that the BLM determined were not substantially noticeable during its inventory update and thus did not remove apparent naturalness from all or part of a unit. These include, but are not limited to, primitive routes, fences, ditches, reservoirs, waterholes, wells, pipelines, water tanks, troughs, and wildlife guzzlers”

There is a history of OHV use within these wilderness characteristic units, the BLM acknowledging many of them as primitive routes. All of these factors disqualify these acres as wilderness study areas or lands with wilderness characteristics. It is not the purpose of the BLM to create Wilderness but identify lands that already meet the very specific criteria. It is clear these areas do not meet the criteria and the BLM and members of the public who have nominated areas have an agenda to “create” Wilderness. As is the case with VRM classifications we see arbitrary boundaries and decisions being made regarding the visual resources to close areas to certain uses. This is a blatant abuse of wilderness characteristic designations and the BLM acting outside of Congress. Nearly 1 million acres, approximately 1/3 of the area is claimed to have the criteria to be designated as Wilderness, yet in the EIS, the BLM repeatedly states reasons that units do not meet the standards and therefore should not be maintained as wilderness especially with an arbitrary A, B and C classification system.

Oregon Natural Desert Association

Peter Lacy

Issue Excerpt Text: Also, BLM, without any real explanation, demoted more than 400,000 acres from Category B to Category A status. See FEIS at A4-7 (merely indicating that any unit that received at least one Category A ranking under either Alternative C or Alternative D in the DEIS, was demoted to Category A under the new Alternative F in the FEIS). Moreover, the Bureau provided no rationale for why the rankings assigned under Alternative E were not also considered in the unit category determinations under Alternative F in the FEIS. Unless resolved, this threatens to leave the Bureau’s wilderness management decisions unsupported and, therefore, arbitrary and capricious.

Oregon Natural Desert Association

Peter Lacy

Issue Excerpt Text: Under the proposed plan amendment, nearly half a million acres of wildlands in Category A units would be not just unprotected but, in fact, sacrificed. As we described in detail in our DEIS comments, this would, among other problems, violate the Federal Land Policy and Management Act’s (“FLPMA”) requirements that the Bureau manage the public lands and resources “without permanent impairment” and “to prevent unnecessary or undue degradation.” 43U.S.C. §§ 1702(c), 1732(b); see also id. § 1712(c)(1) (land use plans must “use and observe the principles of multiple use and sustained yield”). Despite some clarifying language in the PRMPA, see FEIS A11-29, it continues to single out and relegate wilderness beneath all other multiple-use resources and values on Category A units by including language prohibiting BLM from mitigating potential impacts to wilderness characteristics during future, site-specific NEPA processes. See FEIS at 38 (BLM would consider applying Best Management Practices or mitigation measures “for other resources . . . but would not mitigate potential impacts to wilderness characteristics”). This unnecessarily and impermissibly eliminates BLM’s future discretion to mitigate potential impacts to wilderness on a

site-specific, case-by-case basis. BLM must delete this “would not mitigate” and any other such language barring consideration of future mitigation measures in Category A units. The “Management Direction” text for Category A Units in Table 2-4 (FEIS at 38) should, to be consistent with FLPMA and the Southeastern Oregon RMP Amendment (“SEORMPA”).

Summary:

Protestors claim the BLM violated the Wilderness Act in the Lakeview PRMPA/FEIS by attempting to manage LWCs as wilderness areas and by designating WSAs, which only Congress can authorize, and by attempting to designate LWCs that do not meet the definition of “wilderness” because they are less than 5,000 acres or were not untrammeled by humans.

Protestors also claimed the BLM violated the Public Lands Rule and FLPMA in the Lakeview PRMPA/FEIS by proposing to manage Category A units that do not require mitigation of potential future impacts or loss of wilderness characteristics. Protestors stated these management actions, as well as demoting over 400,000 acres from Category B to Category A, do not adequately protect wilderness values and have the potential to result in unnecessary or undue degradation to the environment.

Response:

The BLM’s authority for managing lands to protect or enhance wilderness characteristics is derived directly from Section 202 of FLPMA, which gives the Secretary of the Interior authority to manage public lands for multiple use and sustained yield. Under Sections 201 and 202 of FLPMA, the BLM has authority and discretion to identify and manage wilderness resources consistent with its multiple-use mandate. Wilderness resources are considered to be part of the “resource and other values” the BLM is required to inventory on a continuing basis consistent with Section 201(a) of FLPMA (43 U.S.C. 1711(a)). As part of the land use planning process, FLPMA further provides the BLM with discretion to consider management of inventoried resources, including wilderness resources. Such discretion in analyzing potential management options for wilderness resources is neither prohibited nor constrained by the directives under Section 603 of FLPMA (43 U.S.C. 1782), which expired in 1991, to inventory roadless areas of 5,000 acres or more as having wilderness character as described in the Wilderness Act, recommend to the President the suitability or non-suitability of such areas for preservation as wilderness, and have the President recommend to Congress the designation as wilderness. Under Section 603 of FLPMA, the BLM is required to manage those areas identified as having wilderness character so as not to impair the suitability of such areas for preservation as wilderness until Congress acts.

Utilizing FLPMA’s authority under Section 202, as opposed to the expired authority under Section 603 of FLPMA, the BLM has discretion to manage those areas identified as having wilderness resources for the protection of those resources, including to a non-impairment standard. In choosing such management prescription, nothing in FLPMA prevents the BLM from referring to such areas in the RMPA as a WSA. Additionally, and unlike Section 603 of FLPMA, a land use planning decision to manage for the preservation of an area with wilderness resources as a WSA (or Section 202 WSA) may be modified or changed through a future land use planning decision. Finally, this authority is reflected in the BLM’s recently issued policy clarifying the BLM’s ability to identify wilderness resources and designate such areas for management as Section 202 WSAs (see BLM Information Bulletin 2025-008, *Designation of Lands Inventoried as Having Wilderness Characteristics as Wilderness Study Areas through the Land Use Planning Process Consistent with Section 202 of the Federal Land Policy and Management Act*).

In 1991, the BLM completed a comprehensive wilderness inventory covering the entire State of Oregon, following guidance published in the 1978 BLM Wilderness Inventory Handbook and several

subsequent policy directives. A total of 14 WSAs and 1 instant study area covering approximately 486,873 acres and located completely or partially within the Lakeview Field Office were designated during this process. All WSAs and instant study areas have subsequently been managed over the years under the BLM's WSA interim management policies, pending either designation or release from wilderness study by an act of Congress (Lakeview PRMPA/FEIS Appendix 2, p. A2-1). During the inventory process for the Lakeview PRMPA/FEIS planning effort, the BLM found 106 new wilderness characteristics units totaling approximately 1,654,103 acres located within the Lakeview planning area (Lakeview PRMPA/FEIS Appendix 2, Table A2-1, pp. A2-10–A2-15). Twenty-six of these units were less than 5,000 acres in size; however, these areas still met the size and naturalness criteria and had outstanding opportunities for solitude and/or primitive and unconfined recreation due to being contiguous with an existing WSA (Lakeview PRMPA/FEIS Appendix 2, Table A2-2, A2-16–A2-21).

FLPMA authorizes the Secretary of the Interior to use land use planning as a mechanism for allocating resource use, including wilderness character management, amongst the various resources in a way that provides for current and future generations. Under Lakeview PRMPA/FEIS Alternatives B, C, D, E, and F, wilderness characteristics management would include a new land use plan management goal that would replace the existing goal and place each of the 106 BLM-identified wilderness characteristics units into one of four possible management categories (A, B, C, or Section 202 WSA) described in Manual 6320, *Considering Lands with Wilderness Characteristics*, in the BLM land use planning process. The unit categorization process is described in detail in Appendix 4, including details on how the unit categorization was outlined for the Alternative F, the Proposed Plan (Lakeview PRMPA/FEIS Appendix 4, pp. A4-6–A4-7). While the specific units placed into the three management categories did vary by alternative, the management direction for the three categories would be the same under each alternative, and all alternatives meet the requirements of alternative design specified in Provisions 14 and 26b of the 2010 Settlement Agreement. The potential impacts on LWCs under the provisions outlined for Category A units from management proposed under Alternative F are described in Appendix 12, *Chapter 3 in Comprehensive Detail*, Section 3.2.2.8, which details how Category A units will not be managed with an objective for wilderness characteristics but instead would undertake a mixed approach (Lakeview PRMPA/FEIS Appendix 12, pp. A12-33–A12-36). However, wilderness characteristics would still be maintained or enhanced on about 901,819 acres in the planning area (Lakeview PRMPA/FEIS Appendix 12, p. A12-36), and no additional or incremental cumulative effects to wilderness characteristics would likely occur from any Reasonably Foreseeable Future Actions (Lakeview PRMPA/FEIS Appendix 12, Table 3-1, pp. A12-4–A12-5) under any of the alternatives, with the exception of locatable mineral development.

Section 302(b) of FLPMA requires that “in managing the public lands the Secretary [of the Interior] shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.” The Lakeview PRMPA/FEIS identifies appropriate allowable uses, management actions, and other mitigation measures that prevent the unnecessary or undue degradation of public lands. RMPs do not authorize *any* use of the public lands, including those that would result in unnecessary or undue degradation. Authorization for a use of public lands would occur during implementation of the RMP and would be subject to future, site-specific NEPA analysis. During the Lakeview PRMPA/FEIS planning process, the BLM adhered to BLM Manual 6320 – *Considering Lands with Wilderness Characteristics in the BLM Land Use Planning Process*, in considering the alteration of the LWC management categories (A, B, or C), and analyzes the possible cumulative future impacts on LWC in Section 3.4.3 (Lakeview PRMPA/FEIS pp. 82–83). Through compliance with relevant laws and regulations (Lakeview PRMPA/FEIS pp. 16-20 and 16-24) and the implementation of appropriate reclamation measures (Lakeview PRMPA/FEIS Appendix 7, pp. A7-1–A7-4), the BLM would ensure that no site-specific project that it authorized in Category A units would cause unnecessary or undue degradation (43 CFR 3809.1(a) and 2809.5).

The BLM properly exercised its authority to protect LWCs in the Lakeview PRMPA/FEIS and properly identifies areas where the BLM will manage to protect LWCs. Accordingly, this protest issue is denied.

Lands with Wilderness Characteristics: Inventories

JRS Properties III LLLP, Crane Creek Ranch, LLC, and Houret Cattle Co., Inc.

W. Alan Schroeder et al.

Issue Excerpt Text: BLM conducted a second wilderness inventory before 2020. This inventory determined that a significant portion of the FRMP Planning Area contained wilderness character, well beyond what BLM previously determined in its first wilderness inventory before 1990. This change could have only occurred due to any one of three (3) reasons. First, BLM erred in its first inventory, thus omitting lands with wilderness character during the first inventory, though the FRMP provided no evidence that the first inventory was flawed. Second, the on-the-ground management materially changed between the first inventory and the second inventory, thus elevating lands with wilderness character, though the FRMP provided no evidence of any material change in management between the first inventory and the second inventory. Third, BLM applied a different criteria in the second inventory than that applied in the first inventory, thus enlarging lands with wilderness character during the second inventory. It is this third reason that is the problem, particularly from the perspective of the Protester and their respective Allotments...BLM's LWC determinations were unlawful as part of BLM's second wilderness inventory, given the discussion of the "Problem" in Section IV.A., for any of the following reasons.

JRS Properties III LLLP, Crane Creek Ranch, LLC, and Houret Cattle Co., Inc.

W. Alan Schroeder et al.

Issue Excerpt Text: BLM is required to rely upon the definition of "wilderness" as per the Wilderness Act, 16 U.S.C. § 1131(c), and as carried-forward in FLPMA, 43 U.S.C. § 1702(i), to consider, assess, or determine any wilderness character. Here, BLM relied upon its own interpretation of the definition of "wilderness" to which it had no legal authority to do as per the post-Loper era. See *Loper Bright Enterprises v. Raimondo*, __ U.S. __, 144 S.Ct. 2244 (2024). Specifically, BLM illegally relied upon BLM Manual(s), BLM Handbook(s), and other BLM guidance and policy statements to re-define "wilderness" to provide the criteria for its second inventory. The reliance upon such criteria made the second inventory illegal. Any lawful wilderness inventory must be made and only made based upon the explicit criteria made in the definition of "wilderness" in the Wilderness Act and FLPMA. This was not done.

JRS Properties III LLLP, Crane Creek Ranch, LLC, and Houret Cattle Co., Inc.

W. Alan Schroeder et al.

Issue Excerpt Text: BLM admits reliance upon "BLM Manual 6310--Conducting Wilderness Characteristics Inventory on BLM Lands 'In order for an area to qualify as lands with wilderness characteristics, it must possess sufficient size, naturalness, and outstanding opportunities for either solitude or primitive and unconfined recreation.'" This means that BLM took interpretative liberties with the definition of Wilderness, as stated in such Manual, to complete its second inventory. This BLM Manual is not law. In fact, it is undisputed that BLM took interpretative liberties given the remarkable increase in LWC that was found by BLM between the completion of the first inventory before 1990 and the second inventory before 2020. This change only occurred due to a different / new interpretation of wilderness not previously used during the first inventory or due to an erroneous interpretation of the definition of Wilderness during the second inventory.

***JRS Properties III LLLP, Crane Creek Ranch, LLC, and Houret Cattle Co., Inc.
W. Alan Schroeder et al.***

Issue Excerpt Text: BLM’s LWC determinations were factually erroneous as part of BLM’s second wilderness inventory, given the discussion of the “Problem” in Section IV.A., for any of the following reasons. First, the DRMP and FRMP are factually flawed as related to the management baseline and/or resource condition baseline. The “Affected Environment” section of the DRMP and FRMP failed to consider, and the Alternatives in the DRMP and FRMP failed to consider and assess the management baseline and/or the resource condition baseline that occurred --

- between the first inventory and 2010 Agreement,
- between 2010 Agreement and the second inventory, and/or
- between the first inventory and the second inventory,

(assuming any were different) that resulted in the conditions (or change of conditions) now demonstrating wilderness characteristic status during the second inventory. All the DRMP and FRMP considered and assessed were: (a) the (purported) wilderness attributes during the second inventory; and (b) the wilderness characteristic determinations made therefrom during the second inventory. The DRMP and FRMP did not include any consideration or assessment of what happened between the periods of time noted above (assuming any were different) from a management perspective and from a resource condition perspective that elevated such areas to have wilderness character status. The DRMP and FRMP did not consider or assess such management baseline and/or resource condition baseline in making its LWC determinations. This was an irrational omission on the part of BLM because, without such consideration and assessment, BLM had no basis to rationalize the remarkable change, i.e., the remarkable elevation of LWC across the planning area, inclusive of the Protesters’ Allotment. Absent such consideration and assessment, the only rational conclusion is that this change only occurred due to a different / new interpretation of wilderness not previously used during the first inventory or due to an erroneous interpretation of the definition of Wilderness during the second inventory.

***JRS Properties III LLLP, Crane Creek Ranch, LLC, and Houret Cattle Co., Inc.
W. Alan Schroeder et al.***

Issue Excerpt Text: The Coglan Buttes South Unit was previously analyzed for wilderness like characteristics in the U.S. Department of the Interior, Bureau of Land Management, Wilderness Inventory – Oregon and Washington, Final Intensive Inventory Decisions (“1980 Decision”) as one larger unit, i.e., the Coglan Buttes Unit, 1-98. The original inventory provided an adequate inventory of the lands within the Unit. Specifically, the 1980 Decision was to eliminate the Unit from further review. The rationale included:

The unit was deemed to not appear primarily affected by the forces of nature due to a 2,400 acre seeding, cut banks and scaring from the historic Hotchkiss Road, and a gravel pit.

The unit was found to offer limited opportunities for solitude. However, due to little vegetative cover and the flatness of the eastern side of the area, the unit was found to not offer any real degree of solitude.

The area was ultimately found to not offer outstanding recreation opportunities due to its size and shape limiting the degree to which one could pursue activities such as backpacking and hiking.

Supplemental values were expected to be present (archeological), though none were documented.

BLM updated the inventory in 2012, and notes that inventory can be found in the wilderness inventory project record. Simplot has made a FOIA request and Simplot reserves the opportunity to provide additional comment post receipt.

BLM provided an updated inventory in 2018, and BLM removed 18 acres of internal rights-of-ways and disturbances including large water tanks and removed a portion of BLM Road 6154-A0 as a cherry-stemmed road.

The 2018 Inventory notes several man-made developments/disturbances, but it incorrectly claims “almost 4 decades after the original inventory, these developments are weathered and grown over with herbaceous grasses and sagebrush. As a result, developments now fade into the background of the unit and are largely only noticeable at a close distance.” While it may be true that obvious disturbance is no longer visible around these range improvements, regular maintenance has and will continue to occur at these range improvements. As defined by the Wilderness Act and FLPMA, these improvements negate the ability for this area to satisfy the definition of wilderness, or alternatively, to satisfy the roadless and naturalness criteria in the 1978 wilderness handbook.

***JRS Properties III LLLP, Crane Creek Ranch, LLC, and Houret Cattle Co., Inc.
W. Alan Schroeder et al.***

Issue Excerpt Text: While the 1980 Inventory team concluded the Unit offered limited opportunities for solitude due to little vegetative cover and the flatness of the eastern side of the area, the 2018 Inventory claims the Unit provides outstanding opportunities for solitude across the Unit due to being topographically diverse with numerous opportunities for solitude along the Unit’s rims, buttes, tabletops, points and many deeply eroded drainages, particularly in the southern two-thirds of the area. Specifically, as to outstanding opportunity for primitive and unconfined recreation, the 2018 inventory inappropriately rationalizes the unit as providing opportunities for primitive and unconfined recreation, identifying the combination and diversity of hunting, camping, sightseeing, and wildlife viewing as exceptional opportunities. The rationale is insufficient, as the opportunity for those activities are like the rest of the region (as documented within all of the other 2018 Inventories) and do not provide outstanding recreation opportunities. The 2018 Inventory also identifies archaeological values as well as scenic views of Lake Abert and Abert Rim and wildlife habitat including sage grouse, pygmy rabbits, bighorn sheep, burrowing owls, peregrine falcons, mule deer winter habitat, pronghorn antelope, golden eagle, and sage-grouse habitat as justification for supplemental values. However, these are characteristics of all BLM lands and do not meet the definition of supplemental values as provided in the 1978 BLM Wilderness Inventory Handbook, page 14. Specifically, it lacks: the description of the relative quantity and quality of the scientific, educational, scenic and historic values of the following supplemental features should be included: ecological, geological, and other features such as anthropological, rare and endangered species, and heritage Wildlife habitat provided within the inventory is not a supplemental value, as it is a common occurrence across the resource area at question. BLM has not provided any specifics as to anthropological, rare and endangered species or heritage and inappropriately marked “yes” to supplemental values in the 2018 Inventory. As noted above, the rationale for the 2018 inventory for significant change is flawed. The Coglin Buttes South Unit should not move forward as having wilderness like characteristics.

***JRS Properties III LLLP, Crane Creek Ranch, LLC, and Houret Cattle Co., Inc.
W. Alan Schroeder et al.***

Issue Excerpt Text: BLM’s determination of a portion of LWC within the Sagehen Allotment is without foundation, given the definition of “wilderness” in the Wilderness Act. 16 U.S.C. § 1131(a); see also 43 U.S.C. § 1702(i). The far-majority of the Collins Rim-Deep Creek Unit (orange line in maps) as related to the Sagehen Allotment (green line in maps) is separated on the west-central side by the Deep Creek Canyon, as illustrated in the two (2) Maps below with an image date of September 22, 2023. This separation negates any “has outstanding opportunities for solitude or a primitive and unconfined type of recreation” on the westside of Deep Creek Canyon within the Allotment and negates any “at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition” on the westside of Deep Creek Canyon within the Allotment. In fact, it is apparent the west-central boundary of the Unit is not based upon any LWC,

but instead is based upon its public land status, as illustrated in the Map above. Assuming any LWC as related to the Unit, the boundary should have been at the eastern rim of Deep Creek Canyon as to make it a single, geographically separated area of at least 5,000 acres.

JRS Properties III LLLP, Crane Creek Ranch, LLC, and Houret Cattle Co., Inc.

W. Alan Schroeder et al.

Issue Excerpt Text: BLM’s determination of a portion of LWC within the Sagehen Allotment is without foundation, given the definition of “wilderness” in the Wilderness Act. 16 U.S.C. § 1131(a); see also 43 U.S.C. § 1702(i). The northern portion of the west-central side of the Collins Rim-Deep Creek Unit (orange line in map) as related to the Sagehen Allotment (green line in map) is bisected by an existing road, as illustrated in the aerial Map below with an image date of September 22, 2023. This road negates any “area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain”; negates any “area of undeveloped Federal land retaining its primeval character and influence”; negate any area “without permanent improvements or human habitation”; and/or negates any area which “generally appears to have been affected primarily by the forces of nature, with the imprint of man’s work substantially unnoticeable.” Assuming any LWC as related to the Unit, the Category should be entirely a Category A (aka non-management status), not inclusive of any Category C, as illustrated in the Map below as related the Allotment per FRMP, Map W-7, Alternative F – Proposed Action. In fact, BLM seemingly acknowledged the lack of LWC as related to at least the southern portion of the Allotment when BLM assigned a Category A (aka non-management status) to such portion of the Unit, as also illustrated in the Map below as related the Allotment as per FRMP, Map W-7, Alternative F – Proposed Action.

JRS Properties III LLLP, Crane Creek Ranch, LLC, and Houret Cattle Co., Inc.

W. Alan Schroeder et al.

Issue Excerpt Text: BLM’s determination of LWC within the Hickey Individual (west) Allotment is without foundation, given the definition of “wilderness” in the Wilderness Act. 16 U.S.C. § 1131(a); see also 43 U.S.C. § 1702(i). The Collins Rim-Deep Creek Unit (orange line in maps) as related to the Hickey Individual (west) Allotment (green line in maps) is separated on the west-northern side by the Deep Creek Canyon, as illustrated in the two (2) Maps below with an image date of September 22, 2023. This separation negates any “has outstanding opportunities for solitude or a primitive and unconfined type of recreation” on the westside of Deep Creek Canyon within the Allotment (see also a major State Highway which partially serves as boundary of the Unit), and negates any “at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition” on the westside of Deep Creek Canyon within the Allotment. Assuming any LWC as related to the Unit, the boundary should be at the eastern rim of Deep Creek Canyon as to make it a single, geographically separated area of at least 5,000 acres.

JRS Properties III LLLP, Crane Creek Ranch, LLC, and Houret Cattle Co., Inc.

W. Alan Schroeder et al.

Issue Excerpt Text: BLM’s determination of LWC within the Hickey Individual (west) Allotment is without foundation, given the definition of “wilderness” in the Wilderness Act. 16 U.S.C. § 1131(a); see also 43 U.S.C. § 1702(i). The Collins Rim-Deep Creek Unit (orange line in maps) as related to the Hickey Individual (west) Allotment (green line in maps) is bisected by a series of existing roads, and is inclusive of several man-made reservoirs and other range improvements, as illustrated in the aerial Maps below with an image date of August 27, 2023. In fact, the northwestern boundary of the Unit is a State Highway wherein cars, trucks, and even large 18-wheel semi-trucks and trailers are used to transport products and commodities. Most, if not all, of these semi-trucks have a “jake brake” (aka compression release engine brakes) that make a very loud, reverberating sound that travels long distances. Some towns or areas even outlaw the use of jake brakes, yet BLM remarkably finds that “wilderness character” upon lands adjacent to this State Highway can exist even in the face of such sound intrusion.¹ These roads and range improvements negate any “area where the earth and its

community of life are untrammelled by man, where man himself is a visitor who does not remain”; negate any “area of undeveloped Federal land retaining its primeval character and influence”; negate any area “without permanent improvements or human habitation”; and/or negate any area which “generally appears to have been affected primarily by the forces of nature, with the imprint of man’s work substantially unnoticeable.” Assuming any LWC as related to the Unit, the Category should be entirely Category A (aka non-management status), not inclusive of any Category C, as illustrated in the Map below as related the Allotment as related to FRMP, Map W-7, Alternative F – Proposed Action.

JRS Properties III LLLP, Crane Creek Ranch, LLC, and Houret Cattle Co., Inc.

W. Alan Schroeder et al.

Issue Excerpt Text: The FRMP, Appendix 11, at page A11-9, makes a remarkable admission by BLM that “For inventory purposes, BLM used the boundary of the highway right-of-way as the inventory unit boundary (see Appendix 2),” adding that “In addition, under Alternatives C, D, E, and F, the BLM applied a 300-foot management setback from the highway centerline to Category C units (see Table 2-9 of Chapter 2).” In other words, BLM intentionally considered that LWC could exist within 100 yards of a State Highway, like the major State Highway adjacent to a portion of the Collins Rim-Deep Creek Unit. This consideration is contrary, on its face, to the definition of “wilderness” in the Wilderness Act. 16 U.S.C. § 1131(a).

JRS Properties III LLLP, Crane Creek Ranch, LLC, and Houret Cattle Co., Inc.

W. Alan Schroeder et al.

Issue Excerpt Text: BLM’s determination of a portion of LWC within the Hickey Individual (east) Allotment is without foundation, given the definition of “wilderness” in the Wilderness Act. 16 U.S.C. § 1131(a); see also 43 U.S.C. § 1702(i). The Monument Flat Unit (red line in map) as related to the Hickey Individual (east) Allotment (green line in map) is separated on the southeast by an existing fence and an existing road along the northwest boundary of the Allotment, as illustrated in the two (2) Maps below with an image date of September 22, 2023. This separation negates any “has outstanding opportunities for solitude or a primitive and unconfined type of recreation” on the southeast side of such fence and road within the Allotment, and negate any “at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition” on the southeast side of such fence and road within the Allotment.

JRS Properties III LLLP, Crane Creek Ranch, LLC, and Houret Cattle Co., Inc.

W. Alan Schroeder et al.

Issue Excerpt Text: BLM’s determination of a portion of LWC within the Hickey Individual (east) Allotment is without foundation, given the definition of “wilderness” in the Wilderness Act. 16 U.S.C. § 1131(a); see also 43 U.S.C. § 1702(i). The Monument Flat Unit (red line in map) as related to the Allotment (green line in map) is bisected by an existing road, and inclusive of several man-made reservoirs and other range improvements, as illustrated in the aerial Map below with an image date of September 22, 2023. The noted allotment boundary fence, the noted internal bisecting fence, and the noted range improvements negate any “area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain”; negate any “area of undeveloped Federal land retaining its primeval character and influence”; negate any area “without permanent improvements or human habitation”; and/or negate any area which “generally appears to have been affected primarily by the forces of nature, with the imprint of man’s work substantially unnoticeable.” Assuming any LWC as related to the Unit, the FRMP correctly notes the Unit is assigned a Category A (aka non-management status), as illustrated in the Map below as related the Hickey Individual (east) Allotment as related to FRMP, Map W-7, Alternative F – Proposed Action.

***JRS Properties III LLLP, Crane Creek Ranch, LLC, and Houret Cattle Co., Inc.
W. Alan Schroeder et al.***

Issue Excerpt Text: BLM’s determination of a portion of LWC within the Fisher Lake Allotment is without foundation, given the definition of “wilderness” in the Wilderness Act. 16 U.S.C. § 1131(a); see also 43 U.S.C. § 1702(i). The far-majority of the Fisher Canyon Unit (fuchsia line in maps) is outside the Fisher Lake Allotment (green line in maps) and more importantly, is separated on the northeast side by a rim area from Fisher Lake and Crump Lake, as illustrated in the two (2) Maps below with an image date of September 22, 2023. This separation negates any “outstanding opportunities for solitude or a primitive and unconfined type of recreation” on the westside of the rim within the Allotment and negates any “at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition” on the westside of the rim within the Allotment. In fact, the west-central boundary of the Unit is not based upon any LWC, but instead is based upon including the rim area down to the flat adjacent to Fisher Lake, as illustrated in the Maps below. Assuming any LWC as related to the Unit, the boundary should have been at the western rim as to make it a single, geographically separated area of at least 5,000 acres.

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Issue Excerpt Text: BLM’s determination of a portion of LWC within the Fisher Lake Allotment is without foundation, given the definition of “wilderness” in the Wilderness Act. 16 U.S.C. § 1131(a); see also 43 U.S.C. § 1702(i). The Fisher Canyon Unit (fuchsia line in map) as related to the Allotment (green line in map) is bordered by an existing road, and inclusive of a man-made reservoir, as illustrated in the aerial Map below with an image date of October 3, 2024. The noted allotment boundary fence and the noted range improvement negate any “area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain”; negate any “area of undeveloped Federal land retaining its primeval character and influence”; negate any area “without permanent improvements or human habitation”; and/or negate any area which “generally appears to have been affected primarily by the forces of nature, with the imprint of man’s work substantially unnoticeable.” Assuming any LWC as related to the Unit, the FRMP correctly notes the Unit is assigned a Category A (aka non-management status), as illustrated in the Map below as related the Fisher Canyon Allotment as related to FRMP, Map W-7, Alternative F – Proposed Action.

Summary:

Protestors stated that the BLM violated FLPMA and the Wilderness Act in the Lakeview PRMPA/FEIS by:

- Using the BLM’s own interpretation of the definition of “wilderness” in completing its wilderness inventory and LWC classifications. The BLM must use the definition of “wilderness” as outlined in the Wilderness Act in its assessment, but instead relied on BLM Manual(s), BLM Handbook(s), and other BLM guidance and policy statements to re-define “wilderness” during the 2020 wilderness inventory, and as such, protestors allege that the 2020 inventory is illegal.
- Relying only on the findings of the 2020 inventory, which are different than the findings produced in the 1990 wilderness inventory and took interpretive liberties with the definition of “wilderness.” Protestors alleged that the BLM’s classification of LWCs is unlawful as it used different criteria in the second inventory than that applied in the first inventory.
- Failing to determine an adequate baseline between the 1990 inventory and 2010 Settlement Agreement, between the 2010 Settlement Agreement and the 2020 inventory, and/or between the 1990 inventory and the 2020 inventory. Protestors note that without such a baseline, the BLM cannot adequately rationalize the increase in LWCs within the planning area. Therefore, protestors state that absent such consideration and assessment, the only rational conclusion is that this change occurred due to a different/new interpretation of wilderness not previously used for

the 1990 inventory or due to an erroneous interpretation of the definition of “wilderness” for the 2020 inventory.

Protestors also stated that the BLM further violated the Wilderness Act and FLPMA in the Lakeview PRMPA/FEIS by classifying the Coglan Buttes South Unit as possessing wilderness characteristics. Protestors note that the recent wilderness inventory found that there are several human-made developments/disturbances within the Unit, but incorrectly concludes that “almost 4 decades after the original inventory, these developments are weathered and grown over with herbaceous grasses and sagebrush and as a result, developments now fade into the background of the unit and are largely only noticeable at a close distance.” Protestors stated that the BLM’s recent determination that the Unit possesses outstanding opportunity for primitive and unconfined recreation conflicts with the original wilderness inventory’s findings, and the BLM identified supplemental values of the Unit that are not consistent with the definition of supplemental values in the 1978 BLM Wilderness Inventory Handbook. Protestors also note that existing range improvements will continue to see regular maintenance and, thus, these improvements negate the ability for this area to satisfy the definition of “wilderness” under FLPMA and the Wilderness Act.

Additionally, protestors stated that the BLM violated the Wilderness Act and 43 U.S.C. 1702 in the Lakeview PRMPA/FEIS by determining that a portion of the Hickey Individual (west), Hickey Individual (east), Sagehen, and Fisher Canyon Allotments contains lands with wilderness characteristics. Specifically:

- The Collins Rim-Deep Creek Unit is separated on the west-central and west-northern side by the Deep Creek Canyon, and this separation negates any finding of “has outstanding opportunities for solitude or a primitive and unconfined type of recreation” on the westside of Deep Creek Canyon and negates any finding of “at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition” on the west side of Deep Creek Canyon. Additionally, the Collins Rim-Deep Creek Unit is bisected by a series of existing roads, and is inclusive of several human-made reservoirs and other range improvements, including a large state highway at the northwestern boundary of the unit, which negate any finding of “area where the earth and its community of life are untrammled by man, where man himself is a visitor who does not remain”; “area of undeveloped Federal land retaining its primeval character and influence”; “without permanent improvements or human habitation”; and/or negate any finding of area that “generally appears to have been affected primarily by the forces of nature, with the imprint of man’s work substantially unnoticeable.”
- The Monument Flat Unit is separated on the southeast by an existing fence and an existing road along the northwest boundary of the Hickey Individual (east) Allotment, which negates any finding of “has outstanding opportunities for solitude or a primitive and unconfined type of recreation” and “at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition” on the southeast side of such fence and road within the Unit. Additionally, the Monument Flat Unit is bisected by an existing road, and inclusive of several human-made reservoirs and other range improvements including an internal bisecting fence, which negate any finding of “area where the earth and its community of life are untrammled by man, where man himself is a visitor who does not remain”; “area of undeveloped Federal land retaining its primeval character and influence”; “without permanent improvements or human habitation”; and/or negate any finding of area that “generally appears to have been affected primarily by the forces of nature, with the imprint of man’s work substantially unnoticeable.”
- The Fisher Canyon Unit is separated on the northeast side by a rim area from Fisher Lake and Crump Lake. This separation negates any finding of “outstanding opportunities for solitude or a primitive and unconfined type of recreation” on the westside of the rim and a finding that “at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use

in an unimpaired condition” on the westside of the rim. Additionally, the Fisher Canyon Unit is bordered by an existing road, and inclusive of a human-made reservoir, a boundary fence, and range improvements that negate any finding of “area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain”; “area of undeveloped Federal land retaining its primeval character and influence”; “without permanent improvements or human habitation”; and/or negate any finding of area that “generally appears to have been affected primarily by the forces of nature, with the imprint of man’s work substantially unnoticeable.”

Response:

Section 201(a) of FLPMA requires that the BLM “prepare and maintain on a continuing basis an inventory of all public lands and their resources and other values” and that “this inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values.” Section 202(c)(4) of FLPMA requires that “in the development and revision of land use plans, the Secretary shall...rely, to the extent it is available, on the inventory of the public lands, their resources, and other values.”

The 2010 Settlement Agreement, which provides the purpose and need for the RMPA, further required that the BLM conduct an update of its wilderness characteristics inventory of public lands within the planning area outside of WSAs and use this updated inventory information in the affected environment, alternatives, and analysis sections of the RMPA.

Wilderness Characteristics Inventories

In compliance with the 2010 Settlement Agreement, the BLM conducted wilderness characteristics inventory updates for public lands in the planning area across approximately 2.7 million acres, between 2007 and 2015. The inventory was consistent with all applicable policy guidance, including BLM Manual 6310 – *Conducting Wilderness Characteristics Inventory on BLM Lands*, which outlines general procedures for conducting wilderness characteristics inventories and defines the characteristics of LWCs. The policy contained within BLM Manual 6310 is consistent with both FLPMA (43 U.S.C. 1701 et seq.) and the Wilderness Act of 1964 (16 U.S.C. 1131 et seq.), including the definition of wilderness characteristics as defined in Section 2(c) of the Wilderness Act (BLM 2021).

The Lakeview BLM staff finalized the LWC inventory in 2020 and used the findings of this updated inventory to prepare the Lakeview PRMPA/FEIS, consistent with the 2010 Settlement Agreement. The BLM described the inventory information it used for LWCs in Appendix 2 of the Lakeview PRMPA/FEIS. As a result of this inventory update effort, the BLM identified 106 wilderness characteristics units totaling approximately 1,654,103 acres within the Lakeview planning area (Lakeview PRMPA/FEIS Appendix 2, p. A2-9). As outlined in BLM Manual 6310, “in order for an area to qualify as LWCs, it must possess sufficient size, naturalness, and outstanding opportunities for either solitude or primitive and unconfined recreation” (BLM 2021). This is consistent with the Wilderness Act’s definition of wilderness, which is “an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man’s work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value” (16 U.S.C. 1131(c)). Accordingly, the definition of wilderness characteristics applied by the BLM during the wilderness characteristic

inventory process was consistent in all critical respects with the definition of “wilderness” in the Wilderness Act and the BLM’s authority under Section 201 of FLPMA.

Furthermore, while the findings of the 2020 wilderness inventory differ from those of the 1990 wilderness inventory (conducted 1978–1980), it is not a result of the BLM taking interpretive liberties with the definition of wilderness; rather, it is a result of changing conditions in the landscape that have occurred during the 30 or more years between the two inventories that correspond to said definition of wilderness characteristics. While the BLM implemented the policy guidelines in BLM Manual 6310 during the 2020 inventory, these guidelines have not substantially changed from the criteria used in the 1978 BLM Wilderness Inventory Handbook used to complete the 1990 wilderness inventory. Both policy documents are consistent with both FLPMA and the Wilderness Act and do not differ substantially as they relate to identification of LWCs. Changes in wilderness values that may have taken place since the original inventory was conducted (1978–1980) and the current inventory (published in 2020) are documented within the individual wilderness inventory updates in the Lakeview Wilderness Characteristics Inventory, which were incorporated by reference into the Lakeview PRMPA/FEIS, pursuant to 40 CFR 1502.12.

As mentioned above, information on the landscape conditions during the wilderness inventories conducted between 1978 and 1980 (published in 1990) are outlined in the Lakeview Wilderness Characteristics Inventory and provide an adequate baseline in reference to both the existing management under the 2010 Settlement Agreement (No Action Alternative) and the most recent wilderness inventory findings, published in 2020. Additionally, in both Section 3.4 of the Lakeview PRMPA/FEIS and Section 3.2 of Lakeview PRMPA/FEIS Appendix 12, *Chapter 3 in Comprehensive Detail*, the BLM describes the conditions that existed at the time of the 2020 inventory, as well as the management that has occurred since 2010 under the Settlement Agreement (Lakeview PRMPA/FEIS pp. 75–78 and Appendix 12 pp. A12-7–A12-8). These baseline characteristics are clearly outlined throughout Lakeview PRMPA/FEIS and adequately identify the changes in landscape characteristics that have occurred since the first wilderness inventory (1990) and the 2010 Settlement Agreement, the 2010 Settlement Agreement and the second wilderness inventory (2020), as well as the first wilderness inventory and the second wilderness inventory.

Coglan Buttes South Inventory Unit

Coglan Buttes South Unit is an example of an LWC unit that was not previously recognized as having wilderness characteristics in the 1990 inventory, but due to changes in the landscape and a change in the scope of the inventory unit, the BLM identified the Coglan Buttes South Unit in the updated wilderness inventory as possessing wilderness characteristics as documented in the wilderness characteristics inventory for the Unit (BLM 2018a). (All wilderness characteristics inventories for the Lakeview District can be found on the BLM’s website here:

<https://www.blm.gov/programs/planning-and-nepa/plans-in-development/oregon-washington/lakeview-wci>.)

Specifically, the Coglan Buttes South Unit was found to meet the size criteria for wilderness, to be in natural condition, and to have outstanding opportunities for solitude, outstanding opportunities for primitive and unconfined recreation, and supplemental values. The wilderness characteristics inventory for Coglan Buttes South Unit (BLM 2018a), which is incorporated by reference in the Lakeview PRMPA/FEIS, outlines the characteristics of the Unit that comply with each of the noted wilderness characteristics and describes the conditions that have changed since the previous wilderness inventory. Specifically, the Coglan Buttes South Unit wilderness characteristics inventory notes that human-made disturbances within the Unit have been grown over with herbaceous grasses and sagebrush, allowing these developments to fade into the background, making them largely unnoticeable (BLM 2018a). Additionally, many of the human-made elements that had possessed obvious visual impacts and/or high concentrations of disturbances have been removed from the Unit. The BLM also notes that the topography of the area further helps to screen disturbances from human-made development (BLM 2018a). BLM Handbook 6310 states

that “human works” are acceptable as long as they are considered “substantially unnoticeable,” as is the case in the Coglan Buttes South Unit (BLM 2021). The protestor was concerned that ongoing maintenance of these improvements will detract from the natural condition of the Unit; however, range improvements, such as fences, are not substantially noticeable.

In assessing the 18,223 acres of the Coglan Buttes South Unit, the BLM determined that the Unit’s topographic diversity provides “numerous opportunities for solitude along the unit’s rims, buttes, tabletops, points, and many deeply eroded drainages, particularly in the southern two-thirds of the area,” allowing visitors the opportunity to avoid the sights and sounds of others and experience outstanding opportunities for solitude (BLM 2018a). While this finding conflicts with that of the 1990 inventory, this is primarily because the original inventory unit encompassed 55,268 acres, which contained little vegetative cover and the flatness of the eastern side of the area. Because these areas were eliminated from the Coglan Buttes South Unit, the BLM’s findings were appropriately updated. The BLM also appropriately updated its findings regarding outstanding opportunities for primitive and unconfined recreation, concluding that the Unit possesses a diversity of hunting, camping, sightseeing, and wildlife viewing opportunities.

While protestors may disagree with the supplemental values identified in the Coglan Buttes South Unit inventory, BLM Manual 6310 notes that “supplemental values are not required to be present in order for an area to be identified as LWCs, but their presence should be documented where they exist” (BLM 2021). Accordingly, the BLM determined that the Coglan Buttes South Unit possesses supplemental values including wildlife habitat, archaeological values (as identified in the 1990 inventory), and scenic views of Lake Abert and Abert Rim; however, these values are not required to determine the Unit as having wilderness characteristics.

Collins Rim-Deep Creek Inventory Unit

Collins Rim-Deep Creek Unit is another example of an LWC unit that was not previously recognized as having wilderness characteristics in the 1990 inventory, but due to changes in the landscape and a change in the scope of the inventory unit, the BLM identified the Collins Rim-Deep Creek Inventory Unit in the updated wilderness inventory as possessing wilderness characteristics as documented in the wilderness characteristics inventory for the Unit (BLM 2020a). Due to changes in boundary determinations for the Unit between the original 1990 inventory and the updated 2020 inventory, approximately 994 acres were removed from the Unit. The roads, residential power lines, the Ruby Pipeline, Bonneville Power Administration rights-of-ways buffer corrections, and a gravel pit located on those removed acres are, therefore, no longer located within the Collins Rim-Deep Creek Unit. Based on new Unit boundaries and changes in the landscape, the Collins Rim-Deep Creek Unit was found to meet the size criteria for wilderness, to be in natural condition, and to have outstanding opportunities for solitude, outstanding opportunities for primitive and unconfined recreation, and supplemental values. The wilderness characteristics inventory for Collins Rim-Deep Creek Unit (BLM 2020a), which is incorporated by reference in the Lakeview PRMPA/FEIS, outlines the characteristics of the Unit that comply with each of the noted wilderness characteristics and describes the conditions that have changed since the previous wilderness inventory. Despite opposition from protestors, the Collins Rim-Deep Creek Unit meets the minimum size criteria at approximately 23,095 acres of BLM-administered lands, and the presence of Deep Creek Canyon does not interfere with the continuous nature of the Unit (BLM 2020a).

Additionally, the Collins Rim-Deep Creek Unit wilderness characteristics inventory notes that human-made disturbances within the Unit have been grown over with herbaceous grasses, sagebrush, and juniper, allowing these developments to fade into the background, making them largely unnoticeable (BLM 2020a). Additionally, many of the human-made elements that had possessed obvious visual impacts and/or high concentrations of disturbances have been removed from the Unit.

The BLM also notes that the topography of the area further helps to screen disturbances from human-made development (BLM 2020a).

As noted by protestors, the Collins Rim-Deep Creek Unit is bound by a state highway at the northwestern boundary, however, the BLM determined that because this disturbance is located near the perimeter of the Unit it has a small area of influence (BLM 2020a). Additionally, BLM Manual 6310 notes that boundaries of wilderness characteristics inventory units are “generally based on an initial [geographic information system] analysis of the presence of wilderness inventory roads,” which consistent with the manner in which the BLM determined the boundaries of the Collins Rim-Deep Creek Unit (BLM 2021). Additionally, protestors stated that the Unit contains existing roads; however, the roads in question do not meet the definition of a “road” as outlined in BLM Manual 6310. “The word ‘roadless’ refers to the absence of roads that have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road” (BLM 2021). As such, the 23,095 acres of the Collins Rim-Deep Creek Unit are considered contiguous and roadless.

In assessing the 23,095 acres of the Collins Rim-Deep Creek Unit, the BLM determined that “there are several outstanding opportunities for solitude across the unit due to both topographic and vegetative screening. Topography across the unit is very diverse, dominated by the broken, steep rims of Deep Creek Canyon” and numerous other smaller canyons, ridges, and areas of varying vegetation (BLM 2020a). The BLM also updated its findings regarding outstanding opportunities for primitive and unconfined recreation, concluding that the Unit possesses a combination of exceptional “diversity of hiking, horseback riding, backpacking, camping, wildlife observation, exploration, scenery, photography, fishing, trapping, hunting, and stargazing” opportunities (BLM 2020a).

The BLM also found that the Collins Rim-Deep Creek Unit possesses supplemental archaeological, geological, and cultural (historic cabin sites) values, as well as the presence of various bat/amphibian/mollusk species, golden eagle, redband trout, pronghorn antelope, warner sucker, mule deer, elk, California bighorn sheep, and sage-grouse habitat. While not required to make a determination of wilderness characteristics, these components serve to supplement the determination that the Unit contains LWCs (BLM 2020a).

Monument Flat Inventory Unit

The Monument Flat Unit was not previously recognized as having wilderness characteristics in the 1990 inventory. However, due to changes in the landscape and a change in the scope of the inventory unit, the BLM identified in the updated wilderness inventory as possessing wilderness characteristics as documented in the wilderness characteristics inventory for the unit (BLM 2018b). Specifically, the Monument Flat Unit was found to meet the size criteria for wilderness, to be in natural condition, and to have outstanding opportunities for solitude, outstanding opportunities for primitive and unconfined recreation, and supplemental values. The wilderness characteristics inventory for Monument Flat Unit (BLM 2018b), which is incorporated by reference in the Lakeview PRMPA/FEIS, outlines the characteristics of the Unit that comply with each of the noted wilderness characteristics and describes the conditions that have changed since the previous wilderness inventory.

In the 1990 inventory, the BLM found that the Monument Flat Unit contained “fence line, 14 miles of ‘ways,’ and 9 reservoirs, which cumulatively detracted considerably from the natural appearance of the area. Additionally, the 500-kilovolt power line, defining the west boundary, was found to have substantial impact on naturalness in that area” (BLM 2018b). However, after nearly four decades of vegetative succession, human-made disturbances within the Unit have been grown over with herbaceous grasses and sagebrush, allowing these developments to fade into the background, making them largely unnoticeable (BLM 2018b). Additionally, many of the human-made elements that had possessed obvious visual impacts and/or high concentrations of disturbances have been removed from the Unit. The BLM also notes that the topography of the area further helps to screen disturbances

from human-made development, such as the 500-kilovolt power line, which is “unnoticeable once you get more than 0.5 miles away due to the contour of the land and screening from trees” (BLM 2018b). BLM Handbook 6310 states that “human works” are acceptable as long as they are considered “substantially unnoticeable,” as is the case in the Monument Flat Unit (BLM 2021). Improvements, such as fences, are not substantially noticeable in the landscape due to revegetation and screening from topographical and vegetative features.

Additionally, protestors stated that the Unit contains existing roads, however, the roads in question do not meet the definition of a “road” as outlined in BLM Manual 6310. “The word ‘roadless’ refers to the absence of roads that have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road” (BLM 2021). As such, the 20,076 acres of the Collins Rim-Deep Creek Unit are considered contiguous and roadless.

While the 1990 inventory found that the Monument Flat Unit’s broad expanse of sage flats offered minimal solitude and lacked outstanding opportunities to avoid the sights and sounds of others in the Unit, vegetative succession within the Unit has significantly altered the landscape in the last 40 years (BLM 2018b). As such, the BLM determined that there are “several outstanding opportunities for solitude across the unit due largely to vegetative screening” and “once marginal western juniper stands have greatly expanded in acreage, height, width, and density” (BLM 2018b). The BLM also appropriately updated its findings regarding outstanding opportunities for primitive and unconfined recreation, concluding that the Unit possesses a diversity of hunting, wildlife observation, hiking, camping, backpacking, horseback riding, scenery, photography, trapping and stargazing opportunities (BLM 2018b).

The BLM also found that the Monument Flat Unit possesses supplemental archaeological and geological values, as well as various bat, elk, pronghorn antelope, mule deer, California bighorn sheep, and sage-grouse habitat. While not required to make a determination of wilderness characteristics, these components serve to supplement the determination that the Unit contains LWCs (BLM 2018b).

Fisher Canyon Inventory Unit

The Fisher Canyon Unit was not previously recognized as having wilderness characteristics in the 1990 inventory. However, due to changes in the landscape and a change in the scope of the inventory unit, the BLM identified in the updated wilderness inventory as possessing wilderness characteristics as documented in the wilderness characteristics inventory for the unit (BLM 2020b). Specifically, the Fisher Canyon Unit was found to meet the size criteria for wilderness, to be in natural condition, and to have outstanding opportunities for solitude, outstanding opportunities for primitive and unconfined recreation, and supplemental values. The wilderness characteristics inventory for Fisher Canyon Unit (BLM 2020b), which is incorporated by reference in the Lakeview PRMPA/FEIS, outlines the characteristics of the Unit that comply with each of the noted wilderness characteristics and describes the conditions that have changed since the previous wilderness inventory. Despite opposition from protestors, the Fisher Canyon Unit meets the minimum size criteria at approximately 16,490 acres of BLM-administered lands, and the presence of rim areas from Fisher Lake and Crump Lake do not interfere with the continuous nature of the Unit (BLM 2020b).

As noted by protestors, the Fisher Canyon Unit is bound by BLM Roads 6152-00 and 6132-00, however, the BLM determined that because this disturbance is near the perimeter of the Unit, it has a small area of influence (BLM 2020b). Additionally, BLM Manual 6310 notes that boundaries of wilderness characteristics inventory units are “generally based on an initial [geographic information system] analysis of the presence of wilderness inventory roads,” which is consistent with the manner in which the BLM determined the boundaries of the Fisher Canyon Unit (BLM 2021).

While the original wilderness inventory found human-made features strongly impact the area due to the Unit's small size, the current inventory unit is much larger and requires evaluation based on its own merits (BLM 2020b). After nearly four decades of vegetative succession, human-made disturbances within the Unit have been grown over with herbaceous grasses and sagebrush, allowing these developments to fade into the background, making them largely unnoticeable (BLM 2020b). The BLM also notes that the topography of the area further helps to screen disturbances from human-made development, such as fences and range improvements. BLM Handbook 6310 states that "human works" are acceptable as long as they are considered "substantially unnoticeable," as is the case in the Monument Flat Unit (BLM 2021). Improvements, such as fences, are not substantially noticeable in the landscape due to revegetation and screening from topographical and vegetative features.

The 1990 inventory found that the Fisher Creek Unit contained a limited amount of topographic and vegetative screening, which offered minimal solitude and lacked outstanding opportunities to avoid the sights and sounds of others in the Unit. However, expansion of the inventory unit and vegetative succession within the Fisher Creek Unit has significantly altered the landscape and scope of the inventory unit (BLM 2020b). As such, the BLM determined that there are "several outstanding opportunities for solitude across the unit due largely to vegetative and topographic screening, in combination with the unit's size" (BLM 2020b). The BLM also appropriately updated its findings regarding outstanding opportunities for primitive and unconfined recreation, concluding that the Unit possesses a diversity of hunting, hiking, backpacking, camping, sightseeing, horseback riding, wildlife observation, photography, and stargazing opportunities (BLM 2020b).

The BLM also found that the Fisher Creek Unit possesses supplemental archaeological and geological values, as well as the presence of golden eagles, pigmy rabbit, pronghorn antelope, mule deer, California bighorn sheep, various bat species, and sage-grouse habitat. While not required to make a determination of wilderness characteristics, these components serve to supplement the determination that the Unit contains LWCs (BLM 2020b).

Conclusion

The BLM relied on its current wilderness inventory of the public lands in developing the Lakeview PRMPA/FEIS and completed said wilderness inventory in compliance with BLM Manual 6310, FLPMA, and the Wilderness Act of 1964. Additionally, the BLM provided adequate baseline information throughout the Lakeview PRMPA/FEIS to compare findings across past and current wilderness inventories. Accordingly, this protest issue is denied.

Livestock Grazing

JRS Properties III LLLP, Crane Creek Ranch, LLC, and Houret Cattle Co., Inc.

W. Alan Schroeder et al.

Issue Excerpt Text: Secretary of the U.S. Department of the Interior duly promulgated grazing regulations in 1995, as part of a rule-making process, to add 43 C.F.R. Subpart 4180 to the grazing regulations. One of these rules in Subpart 4180 is 43 C.F.R § 4180.2(c), which states:

The authorized officer shall take appropriate action as soon as practicable but not later than the start of the next grazing year upon determining that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the standards and conform with the guidelines that are made effective under this section. Appropriate action means implementing actions pursuant to subparts 4110, 4120, 4130, and 4160 of this part that will result in significant progress toward fulfillment of the standards and significant progress toward conformance with the guidelines. Practices and activities subject to standards and guidelines include the development of grazing-related portions of activity plans, establishment of terms and conditions of permits, leases and other grazing

authorizations, and range improvement activities such as vegetation manipulation, fence construction and development of water.

Specifically, Section 4180.2(c) allows BLM to change grazing management “upon determining that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the standards and conform with the guidelines that are made effective under this section.” It does not prescribe any changes in grazing management when the existing grazing management is not the significant factor in failing to achieve an applicable standard.

Notwithstanding this duly promulgated rule, the FRMP changes Section 4180.2(c). Specifically, BLM amends (or defacto amends) Section 4180.2(c) without conformance to any rule-making process or without any other cited legal authority. Specific to Alternative F, which defers/defaults to Alternative D, as to “Rangeland Health Management Changes,” states:

In areas where, based on completion of a land health assessment, the BLM finds that livestock grazing management practices or levels of grazing use in an allotment or pasture are a significant causal factor(s) in failing to achieve land health standards (BLM 1997a; see Appendix 3), the BLM would take appropriate livestock grazing management actions in accordance with 43 CFR 4180.2(c), similar to the No Action and Alternative A.

However, if a land health assessment is completed that indicates one or more standards are not being met due to factors other than grazing that are subject to BLM control, then the authorized officer shall consider taking action to make progress toward land health standards and land use plan objectives, even though livestock grazing is not a significant causal factor for non-attainment of standard(s). Actions available to the authorized officer could include, but would not be limited to, changes in livestock grazing management. Any changes in grazing management could also require the BLM to modify the associated grazing permit (see 43 CFR 4130.3-3) after first completing additional site-specific NEPA analysis and issuing a grazing decision. Adversely affected parties would have the opportunity to protest and appeal the site-specific grazing decision, as outlined in 43 CFR 4160.

If a land health assessment has not been completed for an allotment or pasture, or if the existing assessment no longer represents current resource conditions, then the BLM would not permit increases to AUMs that could increase negative impacts to other resources over the term of the permit until the land health assessment is completed or revised. The resources to be considered are those identified in the Standards for Rangeland Health and Guidelines for Livestock Grazing Management for Public Lands Administered by the Bureau of Land Management in the States of Oregon and Washington (BLM 1997a), Lakeview RMP/ROD¹ (BLM 2003b, as maintained), and Oregon Greater Sage-Grouse ARMPA (BLM 2015a, as maintained).

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Issue Excerpt Text: BLM’s “Voluntary Permit/Lease Relinquishment” prescribed in Alternative F (with its deferral to Alternative D) is unlawful for either one of two (2) reasons. First, the FRMP violates Section 1 of the Taylor Grazing Act, 43 U.S.C. § 315...Here, the Secretary duly established the FRMP Planning Area (including adjacent areas) as a Grazing District wherein he found was “chiefly valuable for grazing and raising forage crops.” Neither such Grazing District nor such findings have been changed by the Secretary, as well as supported by proper findings. BLM cannot circumvent this status and negate grazing use merely by “voluntary relinquishment of a grazing permit or lease.

¹ The 2003 Lakeview Approved RMP/Record of Decision.

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Issue Excerpt Text: Second, BLM must admit its inability to have any “voluntary relinquishment of a grazing permit,” given USDI Solicitor Opinion, M-37008, dated October 4, 2002 (“2002 Solicitor Opinion”). See also USDI Solicitor Opinion, Clarification to M-37008, dated May 13, 2003. This 2002 Solicitor Opinion prohibits any relinquishment of a grazing permit –

- • “[i]f the lands are within an established grazing district” and
- • if BLM has made no determination that the public lands in question “no longer
- • ‘chiefly valuable for grazing and raising forage crops’” and
- • if BLM has not expressed “its rationale in a record of decision.”
- 2002 Solicitor Opinion, M-37008, at page 4; see also 2002 Solicitor Opinion, M-37008, at page 1.10.

***Oregon Natural Desert Association
Peter Lacy***

Issue Excerpt Text: We are dismayed to see that the Bureau has abandoned this common-sense option in the proposed alternative. Instead, the proposed plan amendment indicates that when a permit is voluntarily relinquished to the agency, the permit “would terminate automatically . . . in accordance with [WO IM 2013-184]” but that “these public lands would remain available or (or open to) grazing use and the BLM could receive an application(s) for livestock grazing from another qualified applicant and issue a new permit.” FEIS 34. ONDA questioned whether IM-2013-184, which says it “[e]xpires 9/30/2014,” is still in effect. In the FEIS the Bureau simply comments that IM 2013-184 “is the most current guidance on this topic.” FEIS A11-11. The Bureau continues, “Although the guidance for processing a voluntarily relinquished permit (WO IM 2013-184) expiration date has passed, it provides the most recent guidance the BLM would follow upon receipt of a voluntary relinquished grazing permit.” Id. (emphasis added). This statement does not answer the question whether or not the expired memorandum is actually in effect and binding on the Bureau. Nor does it indicate what happens if the Bureau decides “expired” means “expired,” or if the agency issues a new policy. The Bureau never explains why it does not make more sense to adopt land use plan management consistent with the Vale District—nor how adopting completely different schemes in the two districts could satisfy the 2010 Settlement Agreement’s requirement to ensure “maximum consistency” in the two plan amendments.

Summary:

Protestors claimed that in the Lakeview PRMPA/FEIS, the BLM violated:

- 43 CFR 4180.2(c) by requiring the authorized officer to consider taking action to make progress toward land health standards and land use plan objectives, even though livestock grazing is not a significant causal factor for non-attainment of standard(s) where a land health assessment is completed indicating one or more standards are not being met due to factors other than grazing that are subject to BLM control.
- The 2010 Settlement Agreement by using expired instruction memoranda to guide livestock grazing management related to voluntarily relinquished allotments, and that the BLM failed to ensure maximum consistency with the Vale District RMP.
- The Taylor Grazing Act and U.S. Department of the Interior Solicitor Opinion, M-37008, by proposing voluntary permit/lease relinquishment without publishing the rationale and by trying to circumvent the planning area’s status as a grazing district that is “chiefly valuable for grazing and raising forage crops,” stating the Solicitor Opinion prohibits any relinquishment of a grazing permit if the lands are within an established grazing district.

Response:

The BLM regulations at 43 CFR 4180 outline management regarding Standards for Rangeland Health and Guidelines for Grazing Administration. Under these regulations, the BLM State Directors, in consultation with resource advisory councils, identify and develop standards and guidelines for rangeland health. This guidance outlines the responsibilities and steps to be taken by the authorized officers should rangelands fail to achieve standards or management practices that do not conform to the guidelines (43 CFR 4180.2(c)). If an assessment indicates that the rangeland is failing to meet standards or that management practices do not conform to guidelines, the authorized officer uses monitoring data to identify significant factors contributing to these issues. If existing grazing management practices or levels of grazing use are significant factors, the authorized officer must formulate, propose, and analyze appropriate actions to address these failures, in compliance with applicable laws and consultation requirements. The BLM has discretion to allow the authorized officer to take appropriate action under the circumstances presented even if the appropriate action would not be required by 43 CFR 4180.2(c).

The assumptions the BLM used in analyzing livestock grazing's impact on meeting land health standards are outlined in Lakeview PRMPA/FEIS Table 3-1 (Lakeview PRMPA/FEIS p. 69) and in Section 3.12.1.2, where it should be noted only approximately 4 percent of the lands assessed determined that livestock grazing was a contributing factor to not meeting land health standards (Lakeview PRMPA/FEIS p. 201–202). Through this analysis, the BLM determined that removal or reduction of livestock grazing use would likely result in the expedited attainment of land health standards at the pasture or allotment scale compared to other livestock management options available under 43 CFR 4180. The Lakeview PRMPA/FEIS outlines the BLM's proposed management regarding Rangeland Health Management in Table 2-2 under existing management (Lakeview PRMPA/FEIS p. 34) as well as under each action alternative (Lakeview PRMPA/FEIS p. 54, p. 59 and p. 62, respectively).

The 2010 Settlement Agreement states (Provision No. 14d) the BLM shall “develop grazing management alternative(s) that provide for both voluntary grazing permit/lease relinquishment processes and the identification of areas no longer available for grazing use.” The 2010 Settlement Agreement continues to guide the BLM through Provision Nos. 27-31 on the process of alternatives development for no longer authorizing livestock grazing within an allotment and accepting voluntary relinquishment of existing permits. The Lakeview PRMPA/FEIS planning effort was undertaken to specifically respond to the requirements of the 2010 Settlement Agreement, including Provision No. 28, directing the BLM Oregon State Office to provide consistency between the Lakeview and Vale Districts on livestock grazing authorization and voluntary permit relinquishment. The BLM addressed the requirements within the 2010 Settlement Agreement in the design of Alternatives B and C. Details on the structure of Livestock Grazing Management and Voluntary Grazing Permit Relinquishment under Alternative B can be found in Lakeview PRMPA/FEIS Tables 2-7 and 2-8 (Lakeview PRMPA/FEIS pp. 54–55), and under Alternative C in Table 2-10 (Lakeview PRMPA/FEIS pp. 59–60). Although it is true that the expiration date has passed for the guidance for processing a voluntary relinquished permit (WO IM 2013-184), this IM provides the most recent guidance the BLM would follow upon receipt of a voluntary relinquished grazing permit. The BLM will follow subsequent guidance when or if it is published, however, revising grazing regulations, policies, and national guidance for permit relinquishment is outside the scope of the purpose and need of the RMPA.

43 CFR 4100.0-8 provides that the BLM shall manage livestock grazing on public lands in accordance with applicable land use plans. Furthermore, the BLM may designate lands as “available” or “unavailable” for livestock grazing through the land use planning process (BLM Handbook H-1601-1, Appendix C). Although lands have been identified as “chiefly-valuable-for-grazing” per the Taylor Grazing Act for purposes of establishing grazing districts within the public domain (43 U.S.C. 315), this does not negate the BLM's authority or responsibility to manage those lands to achieve

resource condition goals and objectives under the principals of multiple use and sustained yield as required by FLPMA and its implementing regulations. Actions taken under land use plans such as the Lakeview PRMPA/FEIS may include making some, or all, of the land within grazing districts unavailable for grazing during the life of the plan as well as imposing grazing use restrictions, limitations or other grazing management related actions intended to achieve such goals and objectives. Additionally, the language “not suitable for livestock grazing” as used in the Lakeview PRMPA/FEIS, comes from the existing management direction in the 2003 Lakeview Approved RMP/Record of Decision (BLM 2003). It does not refer to making a determination of whether or not public lands are “chiefly valuable for livestock grazing and raising forage crops,” which was made when livestock grazing districts were established following passage of the Taylor Grazing Act of 1934, 43 U.S.C. 315 et seq. A “chiefly valuable for livestock grazing and raising forage crops” determination can only be modified by the Secretary of the Interior. U.S. Department of the Interior Solicitor Opinion M-37008 further clarifies this management directive, stating the Secretary of the Interior must determine whether the permitted lands remain chiefly valuable for grazing if any such retirement may ultimately result in the modification of the district’s boundaries. None of the alternatives in the Lakeview PRMPA/FEIS proposes changing existing district boundaries or reclassifying public lands, as this is a Secretarial level decision and is outside the limited scope of the purpose and need of the RMPA (Lakeview PRMPA/FEIS pp. 21-22).

The Lakeview PRMPA/FEIS does not propose to modify the grazing district’s boundaries. As such, it complies with the Taylor Grazing Act and U.S. Department of the Interior Solicitor Opinion M-37008, neither of which precludes the BLM from identifying some public lands not available to livestock grazing. The BLM is additionally in compliance with 43 CFR 4180.2(c) by following most recent published practices and policies for an authorized officer to implement management practices should rangelands fail to achieve standards that do not conform to the land health guidelines. Accordingly, this protest issue is denied.

NEPA: Best Available Information

Oregon Natural Desert Association

Peter Lacy

Issue Excerpt Text: Second, it is unclear whether the Bureau has used and incorporated into its analyses the latest Oregon Department of Fish and Wildlife (“ODFW”) sagegrouse habitat mapping. Newly identified core areas overlap areas identified as Open or Open – Controlled Surface Use to salable and leasable minerals throughout the planning area. See Maps E and F attached. Under the 2015 sagegrouse ARMPA, Priority Habitat Management Areas are identified as Open subject to No Surface Occupancy for fluid leasable minerals and Closed to salable minerals. The FEIS (A11-16 to -17) provides new figures on the overlap between sagegrouse priority habitat areas and protected wilderness units for all alternatives except proposed Alternative F, and figures for Alternative F also do not appear anywhere in Appendix 12 in section 3.15. Please provide the missing figures to Alternative F (and for the final adopted plan amendment, if it is different from Alternative F). We note that under the 2015 sage-grouse ARMPA, the Bureau may use a plan maintenance process (rather than plan amendment or revision) to make adjustments based on new ODFW habitat mapping. See also 2015 ARMPA, MD SSS-7 (“Periodically update PHMA and GHMA in cooperation with ODFW using the best available information.”).

Summary:

Protestors stated that the BLM violated NEPA in the Lakeview PRMPA/FEIS by failing to use the latest ODFW sage-grouse habitat mapping data in its analysis and, as such, newly identified core areas overlap with areas identified as Open or Open – Controlled Surface Use to salable and leasable

minerals under the Lakeview PRMPA/FEIS. Protestors noted that the BLM failed to provide updated calculations showing the overlap between sage-grouse priority habitat areas and protected wilderness units for Alternative F and must do so using the best available information.

Response:

NEPA requires the BLM to “ensure the professional integrity, including scientific integrity, of the discussions and analyses in an environmental document” (42 U.S.C. 4332(d)). The Council on Environmental Quality’s regulations implementing NEPA further require that agencies use information that is of “high quality” (40 CFR 1500.1(b)). The BLM NEPA Handbook also directs the BLM to “use the best available science to support NEPA analyses and give greater consideration to peer-reviewed science and methodology over that which is not peer-reviewed” (BLM NEPA Handbook H-1790-1, p. 55). Under the BLM’s guidelines for implementing the Information Quality Act, the BLM applies the principle of using the “best available” data in making its decisions (BLM Information Quality Act Guidelines, February 9, 2012).

The planning area for the Lakeview PRMPA/FEIS falls within the Greater Sage-Grouse Management Zone V: the Western Great Basin (Lakeview PRMPA/FEIS Appendix 12, p. A12-290). Under the Lakeview PRMPA/FEIS, the greater sage-grouse and its habitat would continue to benefit from implementing management actions that conform to the existing management goals, objectives, and decisions adopted in the Oregon Greater Sage-Grouse Approved RMPA (BLM 2015a) (Lakeview PRMPA/FEIS Appendix 12, p. A12-296). These include but are not limited to the application of: lek buffers, seasonal and daily timing restrictions, exclusion and avoidance areas, and Required Design Features and Best Management Practices. Such actions would continue to reduce habitat disturbance, stress, and mortality of greater sage-grouse (BLM 2015b) (Lakeview PRMPA/FEIS Appendix 12, p. A12-296).

The BLM did use current ODFW sage-grouse mapping data in its analysis of the Lakeview PRMPA/FEIS. Based on 2021 lek survey data from ODFW, there are currently 212 leks in the planning area. The status of these leks currently includes 3 historic, 64 unoccupied, 90 pending, and 55 occupied (ODFW 2021) (Lakeview PRMPA/FEIS Appendix 12, p. A12-290). ODFW updated Core and Low-Density habitat areas in late 2023, and this most current data was incorporated into the planning process of the Lakeview PRMPA/FEIS. Using these new habitat delineations, there are now approximately 1.7 million and 1.1 million acres of Core habitat and Low-Density habitat respectively within the planning area (ODFW 2023) (Lakeview PRMPA/FEIS Appendix 12, p. A12-290). The BLM took these data into account when proposing OHV area designations in PHMAs and General Habitat Management Areas (Limited to Existing or Designated Routes) as discussed in Lakeview PRMPA/FEIS Appendix 12, *Chapter 3 in Comprehensive Detail*. These designations would adequately reduce potential harassment impacts on greater sage-grouse from OHV use. Also, the BLM would be able to continue to use these routes for monitoring and habitat management access, which would enable it to complete habitat restoration projects beneficial to the species (Lakeview PRMPA/FEIS Appendix 12, p. A12-296).

Specifically regarding the updates the BLM made between the Lakeview Draft RMPA/Draft Environmental Impact Statement (DEIS) and the Lakeview PRMPA/FEIS related to acreages of ODFW sage-grouse Core and Low-Density habitats and their areas of overlap with limited or closed OHV status, as the protestors notes, the BLM added a sentence specific to this under Alternatives A through E in the Lakeview PRMPA/FEIS (Appendix 12, pp. A12-296, A12-303, A12-306, A12-308, and A12-311). For Alternative F, the analysis states, “Under Alternative F, OHV, travel management, and livestock grazing management across the planning area would be the same as Alternative D (Table 3-3 and Map OHV-4, Appendix 1). For this reason, the potential effects of motorized vehicle/OHV use and livestock grazing on wildlife and its habitat would be the same as those

described for Alternative D.” (Lakeview PRMPA/FEIS Appendix 12, p. A12-313). Therefore, the calculation the protestor is requesting under Alternative F would be the same as that for Alternative D.

The BLM included an analysis of the most recent ODFW sage-grouse habitat mapping data and its overlap between priority habitat areas and protected wilderness units under each alternative, including Alternative F, in Section 3.15.2, *Environmental Effects*, of Appendix 12 of the Lakeview PRMPA/FEIS (Appendix 12, pp. A12-292–A12-319). Lakeview PRMPA/FEIS Appendix 12 Section 3.4 also details the overlap of Federal mineral estate within sage-grouse PHMA and acreages that are currently open to minerals development but are subject to a no surface occupancy stipulation due to existing sage-grouse PHMA or ACEC management direction (Lakeview PRMPA/FEIS Appendix 12, pp. A12-53–A12-54). These existing no surface occupancy stipulations due to overlap of PHMAs would remain as a baseline, regardless of the Lakeview PRMPA/FEIS alternative, and the Lakeview PRMPA/FEIS range of alternatives proposes additional closures depending on the alternative. Table 3-49 provides acreages of overlap of important wildlife habitats, including PHMA and General Habitat Management Areas with LWCs under each alternative. The BLM analyzed a full range of alternatives related to minerals within wilderness units, which can be found throughout Lakeview PRMPA/FEIS Chapter 2. Potential impacts on wildlife and wildlife habitat, including greater sage-grouse, from implementation of each alternative, is analyzed in detail in Lakeview PRMPA/FEIS Appendix 12, Section 3.15.2 (pp. A12-293–A12-319). The Lakeview PRMPA/FEIS states, “the potential additive, incremental negative effects of future locatable mineral exploration and development on wildlife habitats within the planning area, including habitats within wilderness characteristics units, would be similar under all alternatives. ... The BLM would be required to prepare a separate NEPA analysis and approve the reclamation plan and/or plan of operations for locatable mineral development” (Lakeview PRMPA/FEIS Appendix 12, p. A12-3150).

Lakeview PRMPA/FEIS Appendix 7, *Best Management Practices and Other Protective Measures*, Section 7.3 lists the documents containing the required design features, best management practices, and other protective measures that would apply to management of BLM land in the planning area regardless of the alternative selected, including those from Appendix C of the Oregon Greater Sage-Grouse Approved RMPA (BLM 2015a) and a number of other approved RMPs. As stated in this section, these required design features, Best Management Practices, and other protective measures “remain in place and are not changed by the alternatives in this RMP Amendment” (Lakeview PRMPA/FEIS Appendix 7, p. A7-2).

Maps showing the proposed, locatable, leasable, and salable mineral restrictions under all alternatives, including Alternative F (the Proposed Plan) are provided in Maps M-1 through M-16. Maps showing proposed wilderness characteristics under each alternative are provided in Maps W-1 through W-7. The maps for the Lakeview PRMPA/FEIS are available on the BLM’s ePlanning page here: <https://eplanning.blm.gov/eplanning-ui/project/114300/580>.

The BLM relied on high quality information and the best available data in preparation of the Lakeview PRMPA/FEIS and included an analysis of the overlap between greater sage-grouse PHMAs and protected wilderness units for all alternatives. Accordingly, this protest issue is denied.

NEPA: Response to Comments

JRS Properties III LLLP, Crane Creek Ranch, LLC, and Houret Cattle Co., Inc.

W. Alan Schroeder et al.

Issue Excerpt Text: As related to Simplot, Simplot factually commented as to the LWC determinations relative to their Allotments both after the determinations were issued and after the DRMP was issued, yet BLM never responded to such comments. Such comments by Simplot were

material and differed materially from what BLM considered – and relying upon the four-corner definition of wilderness.

***JRS Properties III LLLP, Crane Creek Ranch, LLC, and Houret Cattle Co., Inc.
W. Alan Schroeder et al.***

Issue Excerpt Text: Similarly, as related to Crane Creek Ranch, Crane Creek Ranch also factually commented as to the LWC determinations relative to their Allotments both after the determinations were issued and after the DRMP was issued, yet while BLM purported to respond to Crane Creek Ranch’s determination comments, BLM never responded to Crane Creek Ranch’s DRMP comments. Such comments by Crane Creek Ranch were material and differed materially from what BLM considered – and relying on the four-corner definition of wilderness.

***JRS Properties III LLLP, Crane Creek Ranch, LLC, and Houret Cattle Co., Inc.
W. Alan Schroeder et al.***

Issue Excerpt Text: Simplot submitted comments to the record during the planning process on September 5, 2024, with USDI-BLM reference numbers of LRMPA-1-500713663 and LRMPA-1-500713664. These comments specifically noted the many reasons why each of these Units, as related to the Allotment, did not conform to the definition of “wilderness” in the Wilderness Act. 16 U.S.C. § 1131(a); see also 43 U.S.C. § 1702(i), as follows:

- Attachment N to 9-5-2024 Comments as related to Post Lake Unit;
- Attachment I to 9-5-2024 Comments as related to Fandango Unit;
- Attachment S to 9-5-2024 Comments as related to Sheeplick Draw Unit;
- Attachment T to 9-5-2024 Comments as related to Sheep Rock Unit; and
- Attachment Z to 9-5-2024 Comments as related to Whiskey Lake Unit.

The comments also included the previous comments by Simplot as to each of the LWC determinations for each applicable Unit. However, BLM provided no response at all to the latter, and BLM only provided non-substantive response to the former. See FRMP, Appendix 11.2 None of these rebutted Simplot’s comments as to the lack of foundation for any wilderness definitional status of these Units. Simplot stands on its comments.

***JRS Properties III LLLP, Crane Creek Ranch, LLC, and Houret Cattle Co., Inc.
W. Alan Schroeder et al.***

Issue Excerpt Text: Simplot submitted comments to the record during the planning process on September 5, 2024, with USDI-BLM reference numbers of LRMPA-1-500713663 and LRMPA-1-500713664. These comments specifically noted the many reasons why each of these Units, as related to the Allotment, did not conform to the definition of “wilderness” in the

Wilderness Act. 16 U.S.C. § 1131(a); see also 43 U.S.C. § 1702(i), as follows:

- Attachment R to 9-5-2024 Comments as related to Saunders Rim Unit;
- Attachment T to 9-5-2024 Comments as related to Sheep Rock Unit;
- Attachment Z to 9-5-2024 Comments as related to Whiskey Lake Unit;
- Attachment F to 9-5-2024 Comments as related to Diablo South Unit; and
- Attachment E to 9-5-2024 Comments as related to Coglan Buttes North Unit.

The comments also included the previous comments by Simplot as to each of the LWC determinations for each applicable Unit. However, BLM provided no response at all to the latter, and BLM only provided non-substantive response to the former. See FRMP, Appendix 11. None of these rebutted Simplot’s comments as to the lack of foundation for any wilderness definitional status of these Units.

***JRS Properties III LLLP, Crane Creek Ranch, LLC, and Houret Cattle Co., Inc.
W. Alan Schroeder et al.***

Issue Excerpt Text: Simplot submitted comments to the record during the planning process on September 5, 2024, with USDI-BLM reference numbers of LRMPA-1-500713663 and LRMPA-1-500713664. These comments specifically noted the many reasons why each of these Units, as related to the Allotment, did not conform to the definition of “wilderness” in the Wilderness Act. 16 U.S.C. § 1131(a); see also 43 U.S.C. § 1702(i), as follows:

- Attachment U to 9-5-2024 Comments as related to South Sand Dunes Unit.
- Attachment K to 9-5-2024 Comments as related to Juniper Island Unit,
- Attachment M to 9-5-2024 Comments as related to Peters Butte Unit,
- Attachment J to 9-5-2024 Comments as related to Horse Mountain Unit,
- Attachment G to 9-5-2024 Comments as related to Doughnut Mountain Unit,
- Attachment L to 9-5-2024 Comments as related to Kilgore Butte Unit,
- Attachment P to 9-5-2024 Comments as related to Saddle Butte North Unit,
- Attachment Q to 9-5-2024 Comments as related to Saddle Butte South Unit,
- Attachment V to 9-5-2024 Comments as related to Stevens Butte Unit,
- Attachment I to 9-5-2024 Comments as related to Fandango Unit,
- Attachment R to 9-5-2024 Comments as related to Sanders Unit,
- Attachment D to 9-5-2024 Comments as related to Burma Rim Unit,
- Attachment T to 9-5-2024 Comments as related to Sheep Rock Unit,
- Attachment H to 9-5-2024 Comments as related to Elk Mountain Unit,
- Attachment O to 9-5-2024 Comments as related to Rams Butte Unit,
- Attachment C to 9-5-2024 Comments as related to Benjamin Lake-East Butte Unit,
- Attachment Y to 9-5-2024 Comments as related to Waterhole B1 Unit, and
- Attachment W to 9-5-2024 Comments as related to Tired Horse Butte-Pilot Lake Unit.

The comments also included the previous comments by Simplot as to each of the LWC determinations for each applicable Unit. However, BLM provided no response at all to the latter, and BLM only provided non-substantive response to the former. See FRMP, Appendix 11. None of these rebutted Simplot’s comments as to the lack of foundation for any wilderness definitional status of these Units. Simplot stands on its comments.

Summary:

Protestors stated that the BLM violated NEPA in the Lakeview PRMPA/FEIS by failing to respond to comments that:

- Were made by Simplot or Crane Creek Ranch related to the LWC determinations relative to their Allotments. Protestors also noted that their comments included information regarding multiple LWC determinations for each applicable Unit but that the BLM’s response was inadequate.
- Discuss how multiple LWC units do not conform to the definition of “wilderness” in the Wilderness Act (16 U.S.C. 1131(a) and 43 U.S.C. 1702(i)).

Response:

The BLM is required to assess, consider, and respond to all substantive comments received during the public comment periods under NEPA (40 CFR 1503.4, 2022). Substantive comments are those that reveal new information, missing information, or flawed analysis that would substantially change conclusions (BLM NEPA Handbook H-1790-1, pp. 65–66).

In compliance with NEPA, the BLM considered all public comments submitted on the Lakeview Draft RMPA/DEIS. The BLM acted consistently with the Council on Environmental Quality’s NEPA implementing regulations (40 CFR 1503.4, 2022) by performing a detailed comment analysis that assessed and considered all substantive comments received. Lakeview PRMPA/FEIS Appendix 11, *Comments and Responses*, presents the BLM’s responses to all substantive comments received during the comment period. The Draft RMPA/DEIS was made available for 90 days, with the comment period closing on September 5, 2024. BLM considered comments provided outside of the public comment period, but these comments were not able to be included in Appendix 11 as they did not arrive within the public comment period. In Lakeview PRMPA/FEIS Appendix 11, Section 11.3, the BLM summarized the issues raised by topic and provided a meaningful response. The BLM’s response identifies any modifications to the alternatives, improvements to the impact analysis, or factual corrections made in the Lakeview PRMPA/FEIS as a result of public comments. The BLM’s responses also explain why certain public comments did not warrant further agency response (Lakeview PRMPA/FEIS Appendix 11, Section 11.2, pp. A11-2–A11-3). The BLM’s comment response process does not treat public comments that are a vote for a particular action as substantive but does ensure that every comment is considered at some point when preparing the Lakeview PRMPA/FEIS.

Protesters stated that the BLM failed to appropriately apply the definition of “wilderness” in accordance to the Wilderness Act (16 U.S.C. 1131(a)). The BLM’s wilderness characteristics inventory is not interpreting the Wilderness Act. The definition of wilderness characteristics applied by the BLM during the wilderness characteristics inventory process was consistent in all critical respects with the definition of “wilderness” in the Wilderness Act and the agency’s authority under Section 201 of FLPMA. Please review the *Lands with Wilderness Characteristics* and *Lands with Wilderness Characteristics: Inventories* section in this protest resolution report for more information regarding LWCs and the associated inventory, which is detailed in Lakeview PRMPA/FEIS Appendix 2. Appendix 2, Table A2-1 provides information related to the findings of the inventory for all wilderness units larger than 5,000 acres, including those named by the protestors. As stated in the *Lands with Wilderness Characteristics: Inventories* section of this protest resolution report, the LWC inventory was consistent with all applicable policy guidance, including BLM Manual 6310 – *Conducting Wilderness Characteristics Inventory on BLM Lands*, which outlines general procedures for conducting wilderness characteristics inventories and defines the characteristics of LWCs. The policy contained within BLM Manual 6310 is consistent with both FLPMA (43 U.S.C. 1701 et seq.) and the Wilderness Act of 1964 (16 U.S.C. 1131, et seq.), including the definition of wilderness characteristics as defined in Section 2(c) of the Wilderness Act (BLM 2021). Information regarding WSAs can be found in the *Wilderness Study Areas* section of this protest resolution report.

The BLM adequately responded to public comments on the Lakeview Draft RMPA/DEIS in the Lakeview PRMPA/FEIS. Accordingly, this protest issue is denied.

Wilderness Study Areas

JRS Properties III LLLP, Crane Creek Ranch, LLC, and Houret Cattle Co., Inc. W. Alan Schroeder et al.

Issue Excerpt Text: FLPMA does not authorize the application of the non-impairment criteria in 43 U.S.C. § 1782(c) to so-called “Section 202 WSAs” as the FRMP intends to do in Alternative F as related to North Pasture of the Sheeprock Allotment... FLPMA prescribes that the “non-impairment standard” is exclusive to Section 603 of FLPMA, not to Section 202 of FLPMA.

Summary:

Protestors stated that the BLM violated FLPMA by erroneously applying non-impairment criteria to Section 202 WSAs related to the North Pasture of the Sheeprock Allotment. Protestors noted that FLPMA prescribes that the non-impairment standard is exclusive to Section 603 of FLPMA, and thus, does not apply to Section 202 WSAs.

Response:

Under Sections 201 and 202 of FLPMA, the BLM has authority and discretion to identify and manage wilderness resources consistent with its multiple-use mandate. Wilderness resources are considered to be part of the “resource and other values” the BLM is required to inventory on a continuing basis consistent with Section 201(a) of FLPMA (43 U.S.C. 1711(a)).

As a part of the land use planning process, FLPMA further provides the BLM with discretion to consider management of inventoried resources, including wilderness resources. Such discretion in analyzing potential management options for wilderness resources is neither prohibited nor constrained by FLPMA, including the directives under Section 603 of FLPMA (43 U.S.C. 1782), which expired in 1991, to inventory roadless areas of 5,000 acres or more as having wilderness character as described in the Wilderness Act, recommend to the President the suitability or non-suitability of such areas for preservation as wilderness, and have the President recommend to Congress the designation as wilderness. Under Section 603 of FLPMA, the BLM is required to manage those areas identified as having wilderness character so as not to impair the suitability of such areas for preservation as wilderness until Congress acts.

Utilizing FLPMA’s authority under Section 202, as opposed to the expired authority under Section 603 of FLPMA, the BLM has discretion to manage those areas identified as having wilderness resources for the protection of those resources, including to a non-impairment standard. In choosing such management prescription, nothing in FLPMA prevents the BLM from referring to such areas in the management plan as a WSA. Additionally, and unlike Section 603 of FLPMA, a land use planning decision to manage for the preservation of an area with wilderness resources as a WSA (or Section 202 WSA) may be modified or changed through a future land use planning decision.

Finally, this authority is reflected in the BLM’s recently issued policy clarifying the BLM’s authority to identify wilderness resources and designate such areas for management as Section 202 WSAs. The BLM recently issued a policy acknowledging its authority and discretion under FLPMA to utilize the management designation of Section 202 WSAs, which also provided updates to BLM Manuals 6320 – *Considering Lands with Wilderness Characteristics in the BLM Land Use Planning Process* and 6330 – *Management of Wilderness Study Areas (Public)*.

Under the Lakeview PRMPA/FEIS, the BLM would continue to manage the WSAs identified during the review period required by Section 603 of FLPMA “so as to not impair wilderness values until such time as Congress makes a decision regarding wilderness designation or release from wilderness study,” as described in BLM Manual 6330 (Lakeview PRMPA/FEIS Appendix 3, p. A3-37). Under this management action, the BLM would continue to allow resource uses within WSAs in a manner that preserves the area’s “suitability for preservation as wilderness and protects the wilderness characteristics of all WSAs in the same or better condition than they were on October 21, 1976” (Lakeview PRMPA/FEIS Appendix 3, p. A3-37). The BLM would also require that all proposals for use or facilities development, including livestock facilities, within a WSA be reviewed to ensure such actions are consistent with the non-impairment goals.

Regarding range improvements related to livestock grazing, “the BLM determined during its original wilderness inventory that the existing range improvements were not substantially noticeable, and that apparent naturalness existed throughout the WSA despite their presence. For this reason, maintaining

existing range improvements would retain wilderness characteristics in WSAs” and these improvements are not prohibited under the non-impairment standard, including to the North Pasture of the Sheeprock Allotment (Lakeview PRMPA/FEIS p. ES-24). Additionally, new range improvements and changes in grazing practices would be allowed under the Lakeview PRMPA/FEIS should they be consistent with the non-impairment standard.

The Lakeview PRMPA/FEIS’s management of new Section 202 WSAs under the non-impairment standard is consistent with FLPMA and BLM policy. Accordingly, this protest issue is denied.

References

- Bureau of Land Management (BLM). 2003. *Lakeview Resource Management Plan and Record of Decision*. November.
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