

**USDI, Bureau of Land Management  
Andrews Resource Area, Burns District**

**Finding of No Significant Impact for**

**FISH CREEK INHOLDER ACCESS–LIVESTOCK CROSSING  
Environmental Assessment  
OR-08-027-076**

**INTRODUCTION**

The Andrews Resource Area, Burns District, Bureau of Land Management (BLM) is addressing a landowner request for access to conduct livestock grazing on private land inholdings within Steens Mountain Wilderness. The BLM has received verbal indication such access may be used. Steens Mountain Wilderness was designated as part of the Steens Mountain Cooperative Management and Protection Act of 2000 (Steens Act), P.L. 106-399, 114 Stat. 1655, 16 U.S.C. § 460nnn note. The Steens Act states in section 112(e)(1) that "[t]he Secretary shall provide reasonable access to nonfederally owned lands or interests in land within the boundaries of the Cooperative Management and Protection Area and the Wilderness Area to provide the owner of the land or interest the reasonable use thereof." The Steens Mountain Cooperative Management and Protection Area Resource Management Plan (2005) states that reasonable access to private inholdings will be assessed in site-specific National Environmental Policy Act documents. The Steens Mountain Wilderness and Wild and Scenic Rivers Management Plan (2005) states that BLM will provide reasonable access to private inholdings while minimizing impacts to wilderness characteristics.

One parcel of land owned by Natures' Advocate, LLC within Steens Mountain Wilderness may be used for livestock grazing at the discretion of the landowner. These parcels are located in the Fish Creek area (Map 1). Livestock grazing activities have occurred on these parcels historically and at least through 2004. When implementation of the No Livestock Grazing Area within Steens Mountain Wilderness [Sections 113(e)(2), and 201(d) (2)] occurred after 2004, grazing use was discontinued on surrounding public lands by the 2005 grazing season. Harney County designated these private lands for agricultural use. Specific tax advantages exist for private landowners if these lands are used for agricultural purposes (typically livestock grazing in this area of Harney County). Should private landowners desire to make use of their private lands for livestock grazing purposes, BLM must implement the Steens Act provisions concerning reasonable access.

**SUMMARY OF THE PROPOSED ACTION**

The Proposed Action is defined in the Environmental Assessment (EA OR-08-27-076.) Copies of the EA can be obtained from the Web site <http://www.blm.gov/or/districts/burns/plans/burns.php>, or by contacting the Burns District Office at (541) 573-4400.

## **Access Alternative (Route 1), Proposed Action**

**Fish Creek Parcel** – The route from Natures' Advocate, LLC owned private lands in Fish Creek Valley west to the enclosed Fish Creek parcel would be approximately one-half mile across the No Livestock Grazing Area within Steens Mountain Wilderness. If the Fish Creek parcel landowner uses sheep to graze the inholding, the domestic sheep herd would be reviewed and found suitable in terms of herd health and avoidance of weeds. One day travel in each direction would be authorized with flexibility provided for complete removal of livestock from public lands an additional 2 days. In other words, if individual animals stray from the herd, the livestock owner would be provided up to 2 days to locate and retrieve lost animals. This would be for inadvertent stray, and is not intended to authorize the herd to occupy or use public lands except for crossing purposes.

## **FINDING OF NO SIGNIFICANT IMPACT**

Based on the analysis of potential environmental impacts contained in the attached EA, and all other available information, I have determined the Proposed Action and the alternative(s) analyzed do not constitute a major Federal action that would adversely impact the quality of the human environment. Therefore, an Environmental Impact Statement is unnecessary and will not be prepared.

The effects of providing reasonable access into this parcel, along the defined route, and with the proposed band of sheep, would cause only minor impacts to affected resources which are described in detail in the accompanying EA, and summarized below.

**Cultural Resources:** Only temporary, low-level livestock and associated horse trampling effects to archaeological resources would occur as a result of this alternative.

**Migratory Birds:** Temporary displacement of migratory birds would occur when livestock are herded through habitats. This temporary displacement is considered minor.

**Noxious Weeds:** Timing to limit the days used by trailing livestock would limit the effect to rangeland vegetation. Healthy habitats are less susceptible to new weed infestations. Having monitoring personnel in the area would increase the opportunity to observe, and eventually treat noxious weed infestations that may begin in the area related to reasonable access uses, have been spawned by recreational uses, or via native birds and mammals.

**Sensitive Species:** Greater sage-grouse, Mountain quail, Swainson's hawk, Preble's shrew, several species of bats, and sage sparrow would only be temporarily displaced by trailing and overnight bedding of livestock on public lands. Only minor and temporary effects would be expected.

**Wilderness:** Effects to naturalness would be temporary in nature and trailing use may not be visible to an average observer, especially to someone removed from the immediate vicinity of livestock trailing activity. Opportunities for primitive and unconfined recreation would remain in most areas of wilderness, but be affected by proximal herding activities in the Fish Creek area.

However, recreational use in the area of the Fish Creek parcel is low, so chances of encounters with visitors during the trailing process would be limited.

**Water Quality, Riparian and Wetland Vegetation:** No stream crossings on public lands would take place for the Proposed Action, and there would be no effects to water quality, riparian or wetland vegetation, beyond that described in the No Action Alternative.

**Recreation:** Opportunities for primitive and unconfined recreation would remain in most areas of wilderness, but be affected by proximal herding activities in the Fish Creek area. However, recreational use in the area of the Fish Creek parcel is low, so chances of encounters with visitors during the trailing process would be limited.

**Visual Resources:** No changes to the appearance of the land/water component of the landscape character are expected as a result of trailing activities.

**Soils, Biological Soil Crusts (BSC) and Upland Vegetation:** A temporary decrease in soil surface stability would be balanced by a temporary increase in soil fertility; damage to shrubs increases vascular plant litter creating opportunities for herbaceous plants; BSCs (particularly mosses) may be detached or scattered, but may actually increase in cover during recovery periods.

**Wildlife:** Wildlife in the immediate trailing area would be temporarily displaced by trailing and overnight bedding of livestock. Trailing to and use of the Fish Creek private parcel (Route 1/Proposed Action) is more remote from the wild bighorn sheep population than the existing domestic sheep use area, and promotes only a slight additional risk of disease transmission when compared with the No Action Alternative.

**Wild Horses:** Measures to assure control of livestock would reduce possibility of intermixing domestic (associated with herding activity) and wild horses. Monitoring of livestock activities would reduce incidence of inadvertent or accidental intermixing.

**Social and Economic Environment:** Livestock use of all or a part of a total of the affected 635 acres is so small as to be an unmeasurable contributor to the Harney County economy. Use of this property is unlikely to contribute a large portion of the annual income to the subject landowners. Enjoyment of Steens Mountain Wilderness by the public would continue to occur in most areas of the wilderness and the No Livestock Grazing Area either temporally or spatially separate from livestock trailing activities. Most visitors to the wilderness area would not notice or know about livestock trailing.

Dana Shuford for Karla Bird; signature on file

Karla Bird

Andrews Resource Area Field Manager

July 30, 2008

Date

**USDI, Bureau of Land Management  
Andrews Resource Area, Burns District**

**DECISION RECORD**

**FISH CREEK INHOLDER ACCESS–LIVESTOCK CROSSING  
Environmental Assessment  
OR-08-027-076**

**Compliance**

The Environmental Assessment (EA), Fish Creek Inholder Access–Livestock Crossing OR-08-027-076, is tiered to the Andrews Management Unit/Steens Mountain Cooperative Management and Protection Area (CMPA) Proposed Resource Management Plan and Final Environmental Impact Statement (PRMP/FEIS) and relevant information contained therein is incorporated by reference. The Proposed Action has been designed to conform to the following documents, which direct and provide the framework for management of Bureau of Land Management (BLM) lands within Burns District:

- National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4347) 1970
- Steens Mountain Cooperative Management and Protection Act, of 2000 (Steens Act), P.L. 106-399, 114 Stat. 1655, 16 U.S.C. § 460nnn note
- Federal Land Policy and Management Act (43 U.S.C. 1701, 1976)
- Local Integrated Noxious Weed Control Plan (2004)
- Steens Mountain CMPA RMP/Record of Decision (August 2005)
- Steens Mountain Wilderness and Wild and Scenic Rivers Plan (2005)

**Decision**

Having considered a range of alternatives and associated impacts and based on analysis in EA OR-08-027-076, it is my decision to implement the Proposed Action which should allow reasonable access objectives to be met. Additionally, a Finding of No Significant Impact found the Proposed Action analyzed in EA OR-08-027-067 did not constitute a major Federal action that would adversely impact the quality of the human environment. Therefore, an EIS was unnecessary and will not be prepared.

***Terms and Conditions***

**Livestock travel across public lands** - The Decision (Proposed Action) is to authorize livestock trailing access across a route from Natures' Advocate, LLC owned private lands in Fish Creek Valley west to the enclosed Fish Creek parcel. The route length will be approximately one-half mile across the No Livestock Grazing Area within Steens Mountain Wilderness.

The landowner will stock sheep. One day travel each direction will be authorized with flexibility provided for complete removal of livestock from public lands an additional 2 days. In other words, if individual animals stray from the herd, the livestock owner would be provided up to 2 days to locate and retrieve lost animals. This would be for inadvertent stray, and is not intended to authorize the herd to occupy or use public lands except for crossing purposes. Multiple crossings of smaller bands of sheep, to assure appropriate herd control, will be authorized.

**Control of livestock when trailing** will be required to prevent extended travel timeframes, excessive incidental grazing, and stray of livestock. It is the responsibility of the landowner to assure livestock traveling to private lands do not remain on public lands, nor stray continually onto public lands for grazing purposes. Only incidental grazing associated with trailing is permitted. All other grazing is unauthorized. Sufficient number of herders or other livestock controls are required. For a band of sheep, at least one herder with stock dogs must accompany the livestock. This decision does not authorize motorized vehicle use as part of any livestock crossing or trailing across public lands.

**Control of livestock when on private lands** is required to prevent unauthorized grazing use of the surrounding No Livestock Grazing Area. Herding will be required as a term and condition of the authorization. The owner of the Fish Creek parcel has surveyed and marked the boundary lines of the private property to assure the sheepherder knows where private lands and public land boundaries are located.

**Notice of Trailing Activity** must be provided to BLM, at least 3 days prior to trailing. Contact between the landowner, livestock operator, and BLM is critical to resolve issues and assure monitoring takes place during initial trailing and during grazing of private lands.

**Monitoring** by BLM, BLM contractors, or BLM volunteers will occur during the initial livestock trailing, and periodically during the grazing period on private lands. This requirement is necessary to assure the integrity of the No Livestock Grazing Area within Steens Mountain Wilderness is protected. The frequency of monitoring would be dependent upon discovery of any issues during the initial trailing activity.

**Notice of unauthorized grazing** will be provided by BLM to the landowner and livestock operator as soon as practical (same day if contact can be made). This notice is to request the operator to retrieve livestock. Removal of unauthorized livestock would be required to occur as soon as practical. If appropriate, livestock trespass proceedings would be initiated as necessary under 43 Code of Federal Regulations (CFR) 4140 subpart (b)(1)(i). It is the landowner's and operator's obligation and not the BLMs to assure that trespass does not occur.

**Guidelines 5, 6, 7 for management of bighorn sheep** will be applied as terms and conditions of the authorization to trail livestock across public lands to the Fish Creek parcel. (Implementation of these guidelines is discussed in the terms and conditions above.)

Guideline 5: Domestic sheep and goats should be closely managed and carefully herded where necessary to prevent them from straying into native wild sheep areas.

Guideline 6: Trailing of domestic sheep or goats near or through occupied native wild sheep ranges may be permitted when safeguards can be implemented to adequately prevent physical contact between native wild sheep and domestic sheep or goats. The BLM must conduct onsite use compliance during trailing to ensure safeguards are observed.

Guideline 7: Cooperative efforts should be undertaken to quickly notify the permittee and appropriate agency to remove any stray domestic sheep or goats or wild sheep in areas that would allow contact between domestic sheep or goats and native wild sheep.

**Assumptions:** Livestock numbers will be established by the landowner, the landowner would successfully keep livestock on private lands, and would timely respond to any issues of inadvertent trespass when notified by BLM monitoring personnel. A maximum of 700 sheep is planned for 2008, however a smaller subherd (300 to 400) will be initially used.

### **Comments Received**

A copy of the original EA was mailed to the landowner and interested publics. In addition, a notice was posted in the *Burns Times-Herald* newspaper. The Burns District BLM received five comments by the July 3, 2008 deadline. A summary of the comments along with responses are as follows.

Comment #1. The existing sheep herd in use in Fish Creek Valley on private lands may not be the best or only source of sheep that could be appropriately used on the Fish Creek wilderness inholding parcel. Other sheep herds should be considered.

**Response:** The landowner has proposed to bring in an alternate sheep herd reviewed for herd health and noxious weed issues and found satisfactory. This is a smaller herd (700) and can be broken into smaller bands to provide for effective trailing in a controlled manner.

Comment #2. No motorized access in the wilderness should occur with livestock trailing.

**Response:** No motorized access is proposed specific to the livestock trailing activity. Motorized access is authorized separately for landowners within Steens Mountain Wilderness. Currently, limited casual use that mimics historical access on historically-used routes is available, and site-specific NEPA for the Fish Creek portion of the wilderness area is scheduled for Fiscal Year (FY) 2009.

Comment #3. EA improperly assumes that commercial livestock are always a threat to bighorn sheep and fails to take into account that properly inoculated livestock may not be a threat to bighorn sheep.

**Response:** No bacterial pneumonia inoculation medicines for domestic sheep are known to BLM. The Fish Creek area of Steens Mountain Wilderness is not adjacent to wild bighorn sheep populations and should be remote enough to prevent disease transmission.

Comment #4. BLM should not authorize livestock trailing through the No Livestock Grazing Wilderness Area.

**Response:** The Steens Act specifically requires BLM to provide reasonable access to owners of land or interests in land for the reasonable uses thereof. When a landowner desires to continue a historic use of that land, it is incumbent on BLM to analyze alternatives that provide reasonable access for their continued private land uses. Any trailing use by livestock will include the occasional bite of grass by livestock as they move through the one-half mile of wilderness within the No Livestock Grazing Area. This casual bite is not considered livestock grazing as the term is generally used. The allowance for reasonable access as stated in the Steens Act implies that crossing to get to private inholdings will be allowed. In this specific case, BLM finds that it is appropriate to allow the access with livestock. BLM will consider future access requests in light of the specific issues raised by the request such as the routes proposed for crossing and type of livestock.

Comment #5. BLM should continue to allow casual access through Steens Mountain Wilderness Area without completing additional NEPA documents.

**Response:** Casual use of open BLM roads is available in most areas of the country. Casual use is available to the public when appropriate. When Congress established Steens Mountain Wilderness in 2000, many routes or roads previously available to the public were closed and were no longer available to the public under casual use. Private landowners were allowed to continue casual access until time permitted site-specific NEPA review. Landowners requiring motorized access to private inholdings are being provided reasonable access under documentation of decisions through the NEPA process (CMPA RMP 2005, Steens Mountain Wilderness and Wild and Scenic Rivers Plan, 2005.) Not all areas of wilderness have been assessed under NEPA to date as these analyses take time to prepare and review. (The Ankle Creek Inholder Access EA and Decision Record were completed in 2004, and affirmed by the Interior Board of Land Appeals in 2007.) The Fish Creek area of Steens Mountain Wilderness is scheduled for analysis of motorized inholder access in FY 2009. Until then, casual use by private landowners into several private parcels continues on historically-used routes.

Comment #6. The provision in Section 113(e)(2) of the Steens Act makes it mandatory that BLM is required to fence the private lands within the Steens Mountain Wilderness Area. "The Secretary shall be responsible for installing and maintaining any fencing required for resource protection within the designated no livestock grazing area."

Harney County is an Open Range County and landowners are required to build adequate fences if they want to keep livestock off their property.

**Response:** Boundary fences between the designated No Livestock Grazing Area and the private lands that are not included within the designated No Livestock Grazing Area (see EA map 1 that shows a boundary line indicating private lands are excluded from, and not within the No Livestock Grazing Area) may not be subject to this provision of the Steens Act. Federal lands have never been subject to State law that requires private landowners to fence their private lands to protect them from open range livestock. Any livestock present on Federal lands must be under authorization or may be subject to citation or trespass under Federal regulations.

In the case of the Fish Creek parcel, herding should be sufficient to contain livestock without construction of new fences. This will be monitored during 2008 to determine effectiveness.

### **Rationale**

I have selected the Proposed Action as it provides the owner of private land inholdings with reasonable access across public land managed by the BLM. It is the BLM's responsibility under the Steens Act to provide reasonable access to owners of land or interests in land within Steens Mountain Wilderness. Management direction in the CMPA RMP and Steens Mountain Wilderness and Wild and Scenic Rivers Plan states BLM will provide reasonable access to private inholdings while minimizing impacts to wilderness characteristics. The Proposed Action fulfills the Purpose of Need for Action and best meets the decision factors among all alternatives.

### **Decision Factors**

- i. Would the needs of the landowner to make the reasonable use of private lands or interests in lands be met by this action?

Route 1 authorization for sheep will allow the landowner to access his private lands to make reasonable use thereof. It is the shortest and most direct route to bring livestock into the wilderness private land inholding.

- ii. Would the effects of this action to wilderness, including the No Livestock Grazing Area wilderness, be minimal?

Route 1 authorization for sheep is the shortest and most direct route to provide access to the private land inholding within the wilderness area. No other route provides as direct and easy path for livestock. No motorized access is authorized in association with livestock passage. This is an infrequently used portion of the 170,000-acre Steens Mountain Wilderness, and wilderness users would not likely know of the presence of livestock across this one-half mile area. Livestock passage and any inadvertent grazing would only occur on public lands over a matter of days, and this limited use would not likely leave long-term visible or ecological impacts.



- iii. Would this action prevent the unauthorized livestock use of public lands?

The Proposed Action would authorize livestock crossing under specific constraints. Monitoring by the landowner/livestock operator and BLM personnel would allow for timely resolution of inadvertent livestock use issues with the landowner and livestock operator.

- iv. Would this action prevent or limit adverse effects to wildlife, wild horses or other natural resources?

The Proposed Action limits adverse effects to wildlife, by only providing passage by domestic sheep in an area further from the existing bighorn sheep herds than the private lands and associated BLM Fenced Federal Range allotment currently occupied by domestic sheep. Oregon Department of Fish and Wildlife has concurred with the BLM's assessment of risk to wild sheep, and found the risk minimal for the trailing use to the Fish Creek parcel (EA, page 33) Wild horses are present in the area of the inholding, but constant presence by a shepherd will likely encourage wild horses to temporarily leave public lands when sheep are crossing. No riparian areas in the wilderness would be affected by the livestock passage. Vegetation, soils and biological soil crusts would have only short-term limited effects from the time- and trail-limited route selection.

- v. What is the cost of this action to the public, e.g., monitoring, or cost to public if bighorn sheep were exposed to disease?

The cost to BLM for monitoring of this activity will be \$10,000 or less during 2008. Time can be made available using existing personnel, who normally patrol in and near the wilderness area. Time will be diverted from lower priority work as necessary. Staff will monitor trailing activities as well as monitor for any inadvertent livestock trespass into the wilderness area during the grazing activities.

- vi. What is the cost of this action to the landowner, e.g., tax bill, construction of fencing, or cost of herders?

Cost to landowner of trailing sheep and using a shepherd is less than the cost of fencing private lands. The ability to qualify for the farm deferral tax rate will be 5 percent of the regular tax rate, saving over \$3,000 for the landowner during the 2008 tax year. In addition, income from the grazing use of the private parcels will accrue to the landowner.

vii. Is the implementation of this action practical?

The selection of the Proposed Action is the most practical resolution of the livestock crossing/reasonable access issue onto the Fish Creek parcel for 2008. Survey and marking of the boundaries is being accomplished by the landowner and was accomplished at the time of this decision. BLM can provide staff to monitor the activity in the Fish Creek portion of the No Livestock Grazing Area without hiring additional personnel in 2008.

viii. Does the timeframe for implementation meet the need of the project?

Yes. Livestock trailing can be accomplished during the summer grazing period. Casual access will continue until the completion of the appeal period and the date this decision becomes implementable.

### **Appeal Procedures**

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with regulations contained in 43 CFR, Part 4 and Form 1842-1. If an appeal is filed, your notice of appeal should be **filed with the Andrews Resource Area Field Manager**, Burns District Office, 28910 Highway 20 West, Hines, Oregon 97738, **within 30 days following receipt of the final decision**. The appellant has the burden of showing the decision appealed is in error. A copy of the appeal, statement of reasons, and all other supporting documents should also be sent to the Regional Solicitor, Pacific Northwest Region, U.S. Department of the Interior, 805 SW Broadway, Suite 600, Portland, Oregon 97205. If the notice of appeal did not include a statement of reasons for the appeal, it must be sent to the Interior Board of Land Appeals, Office of Hearings and Appeals, 801 North Quincy Street, Arlington, Virginia 22203. It is suggested appeals be sent certified mail, return receipt requested.

### ***Request for Stay***

Should you wish to file a motion for stay pending the outcome of an appeal of this decision, you must show sufficient justification based on the following standards under 43 CFR 4.21:

- The relative harm to the parties if the stay is granted or denied.
- The likelihood of the appellant's success on the merits.
- The likelihood of immediate and irreparable harm if the stay is not granted.
- Whether or not the public interest favors granting the stay.

Dana Shuford for Karla Bird; signature on file  
Karla Bird  
Andrews Resource Area Field Manager

July 30, 2008  
Date