

**USDI, Bureau of Land Management
Three Rivers Resource Area, Burns District**

DECISION RECORD

**Slickear/Claw Creek Forest Restoration
Environmental Assessment
OR-025-08-017**

COMPLIANCE

The attached Slickear/Claw Creek Forest Restoration Environmental Assessment (EA) OR-025-08-017 incorporates and conforms to the Three Rivers Record of Decision/Resource Management Plan (RMP) management objectives and also conforms 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.
- **Federal Land Policy and Management Act (FLPMA)** (43 U.S.C. 1701), 1976.
- **Endangered Species Act** (16 U.S.C. 1544), 1973.
- **Public Rangelands Improvement Act** (43 U.S.C. 1901. 1978).
- **Burns District Noxious Weed Management Program EA** (OR-020-98-05) (1998).
- **Local Integrated Noxious Weed Control Plan** (2004).
- **Greater Sage-grouse Conservation Assessment and Strategy for Oregon:** A plan to maintain and enhance populations and habitat (2005).
- **Burns Interagency Fire Zone Fire Management Plan** (2004). The project area lies entirely within the Silver and Silvies Fire Management Units.
- Four of the five key points set forth within the **National Fire Plan**.¹

Additionally, the proposal responds to the goals of [A Collaborative Approach for Reducing Wildfire Risk to Communities and the Environment: 10-year Comprehensive Strategy](#).²

- **Harney County Community Wildfire Protection Plan**

Finally, the Proposed Action is in compliance with State, tribal, and local laws and regulations.

¹ **National Fire Plan:** A collection of policies and documents for actively responding to severe wildland fires and their impacts to communities while ensuring sufficient fire fighting capacity for the future (<http://www.fireplan.gov>).

² http://www.westgov.org/wga/initiatives/fire/final_fire_rpt.pdf

DECISION

Having considered the Proposed Action and No Action Alternative and associated impacts and based on analysis in EA OR-025-08-017, it is my decision to implement the Proposed Action which will use various methods of prescribed fire and mechanical treatments to accomplish specific objectives described in the EA's purpose and need section. Additionally, a Finding of No Significant Impact (FONSI) found the Proposed Action analyzed in OR-025-08-017 did not constitute a major Federal action that would adversely impact the quality of the human environment. Therefore, an Environmental Impact Statement was unnecessary and will not be prepared.

PROPOSED ACTION

The project area treatment proposals are grouped into four dominant vegetative communities: forest areas (ponderosa pine stands), low/stiff sagebrush flats, mountain big sagebrush-bunchgrasses communities, and aspen stands. Mountain mahogany and bitterbrush communities are lumped in as inclusions with the mountain big sagebrush and ponderosa pine plant communities.

In addition to the mechanical and prescribed fire treatments, approximately 0.75-mile of a rough road that meanders through Claw Creek will either be closed or moved to reduce sediment input into the stream channel. Twenty-two Project Design Elements (PDEs), for protection or maintenance of specific resource values, have been incorporated into the Proposed Action, as the result of specialist recommendations and public comments (these can be found in the next section titled *Design Features of the Proposed Action*).

Forested Areas Treatment

The decision is to thin overstocked pine stands and remove encroaching juniper. Several untreated islands will be left to provide quality thermal and hiding cover for wildlife. These islands will be determined during onsite project layout. Approximately 70 to 90 percent or 1,050 to 1,350 acres of these communities will be treated. All juniper trees except those displaying old-growth characteristics or obvious wildlife occupation will be cut and piled. Understory and intermediate and codominant overstory ponderosa pine trees will be thinned using variable tree spacing creating basal areas ranging from 40 to 120 feet²/acre. Thinning will retain the largest and best formed trees for overstory retention. If it is determined to be both economically and environmentally feasible, cut conifers could be sold and removed. All slash will be piled either by hand or machine depending on feasibility and resource concerns. All piles will be burned after the vegetation cured (vegetation should cure within 2 years). A prescribed underburn will be conducted 5 to 7 years after mechanical treatments to further reduce ground fuels (litter, twigs, branches <3 inches) in the same stands.

Low/Stiff Sagebrush Flats Treatment

The proposal is to treat some of the low and stiff sagebrush flats encroached upon by juniper. The recommendation to treat the area will be determined by the relative importance of the area for sage-grouse. Areas considered to be suitable for sage-grouse, but currently unsuitable due to juniper encroachment will be given highest priority for treatment. Other areas, such as suitable habitat or probable habitat for sage-grouse, will be determined by the level of juniper encroachment and relative importance. The objectives in these areas are to improve sage-grouse habitat and protect the integrity of the low/stiff sagebrush flats. The proposal in these plant communities is to remove the competitive influence of encroaching juniper. Encroaching juniper trees will be cut and left. Downed juniper may be jackpot burned³ after the vegetation has cured. This determination will be based upon whether or not downed juniper will create enough fuel buildup to create a potential wildfire hazard. Single-tree burning⁴ may occur on a limited basis as an alternative method to cutting.

Mountain Big Sagebrush/Bunchgrass Communities Treatment

The objective in these areas is to restore and enhance existing mountain big sagebrush-bunchgrass, mountain mahogany, bitterbrush, and pine woodland communities, to improve wildlife habitat. The management objective in all these communities is to remove encroaching juniper and pine trees. Approximately 40 to 60 percent of the land area made up of these plant communities will be targeted for treatment. The recommendation to treat a given area will be determined by the level of encroachment and relative importance of the area for big game. The proposal in these plant communities consists of an array of management actions in order to reduce influence of encroaching juniper and pine. The two principal treatments used to treat the majority of these communities will be 1) cutting encroaching juniper followed by jackpot burning after juniper has cured or 2) cutting and piling. In areas where cutting and piling is the preferred method, piles will be moved away from retained desired vegetation to the extent practical. Piling will be done by hand or mechanized equipment (excavator, feller buncher, etc.). Where ponderosa pine has expanded outside its historical niche, understory thinning, ranging from complete removal to a 22-foot spacing, may occur. All piles will be burned after the vegetation cured.

³ **Jackpot Burning:** Prescribed burning of concentrations of woody fuels during the late fall, winter or spring, preferably when the ground is partially frozen or wet. This method would burn the fine fuels, limit the ability of the fire to spread and prevent soil sterilization from excessive heat. It is conducive to maintaining the herbaceous plant species growing under the downed junipers. (For more detail see Appendix A - Activity Descriptions.)

⁴ **Single-tree Burning:** Prescribed burning of individual trees during the late fall, winter or spring, preferably when the ground is partially wet or frozen. This method would burn the fine fuels, limit the ability of the fire to spread and prevent soil sterilization from excessive heat. It is conducive to maintaining the herbaceous plant species growing under the junipers. (For more detail see Appendix A - Activity Descriptions.)

Lesser amounts of prescribed broadcast burning and juniper/pine cutting and leaving may be employed. The cutting and leaving activity will only be used in sparse fuels where it is determined not to be a hazard. In areas targeted for a broadcast burn, the objective is to burn 40 to 60 percent of the mountain big sagebrush-bunchgrass communities in early or mid-transition toward juniper woodlands and 90 to 100 percent of mountain big sagebrush plant communities in late transition toward juniper woodlands. Any remaining encroached juniper may be cut and jackpot burned within treated areas and within areas left unburned by the broadcast prescribed burn. Mountain mahogany and bitterbrush plant communities greater than an acre may receive some form of pre-treatment prior to any broadcast burning. Pre-treatment will primarily consist of cutting and jackpot burning, blacklining, or cutting and pulling cut vegetation away from mountain mahogany and bitterbrush stands, or piling via hand or mechanized equipment, prior to the broadcast burn. The recommendation to perform pre-treatment and type of pre-treatment will be determined by resource advisors during onsite project layout.

Aspen Treatment

All aspen stands within the project area are being encroached upon by juniper, ponderosa pine, or both. The proposal in these treatment areas is to remove encroaching vegetation. Mechanical cutting will be the primary tactic used in these communities. Broadcast burning may be utilized in addition to mechanical treatments or as a substitute for mechanical treatments in an effort to cut down on juniper and pine seedling establishment.

Ponderosa pine trees less than 10 inches Diameter Breast Height (DBH) will be cut, limbed, and piled. Ponderosa pine trees in the 11 to 19-inches DBH size range may be cut and limbed. Only limbs will be piled on these trees, leaving the bole to serve as downed woody debris. Ponderosa pine trees greater than 19 inches DBH will either be girdled to provide snag habitat, cut, or left onsite. The largest and true old-growth pine trees will be left onsite. If it is determined to be both economically and environmentally feasible, cut conifers could be sold and removed. Junipers, except those showing old-growth characteristics or obvious wildlife occupation, will be cut and piled. Piling in aspens stands will be done by either machine or hand. Piles and downed juniper will be burned after the cut vegetation has cured, and during a time of year that will reduce damage to soils resource and minimize fire spread. Aspen stands could be fenced to protect aspen suckers from browsing animals. The need for fencing will be determined through monitoring. Big game enclosure fences will be built to Burns District BLM standards, which consist of woven wire from ground to at least 7 feet aboveground. If a big game enclosure fence is determined to be needed, it will be removed after new suckers attain a height where the apical bud is 7 feet or higher or above the reach of most grazing animals as determined by monitoring.

Design Features of the Proposed Action

1. Protect cultural resource values throughout the life of the project. Archaeological inventory of the proposed treatment areas will be completed prior to any mechanical treatments. Archaeological sites may be avoided within mechanical treatment units and activity generated fuels will not be piled within the boundaries of sites. Sites with combustible components will be protected during deployment of prescribed fire by blacklining resources and use of appropriate ignition techniques. The District Fuels Archaeologist will review burn plans prior to project implementation.
2. Protect Special Status vegetation species throughout the life of the project. Special Status plant populations will be avoided within mechanical treatment units if necessary. Fire intolerant sensitive plants will be protected during deployment of prescribed fire by blacklining resources and use of appropriate ignition techniques. The District Fuels Botanist will review burn plans prior to project implementation.
3. Protect Special Status wildlife species (fisheries and wildlife) habitat throughout the life of the project. Structures or areas with Special Status Species (SSS) habitat value identified during wildlife surveys will be protected during project implementation. The District Fuels Wildlife Biologist and the Three Rivers Fisheries Biologist will review burn plans prior to project implementation.
4. Sites that lack sufficient understory species, such as fully developed juniper woodlands, or areas burned at a high intensity, may require seeding following a prescribed fire treatment to attain the desired post-fire response. Mixtures of native and nonnative grass, forb, and shrub seed may be applied to designated areas with aerial or ground-based methods. Candidate sites for seeding will be determined on a case-by-case basis as monitoring data are gathered.
5. Livestock grazing would not occur for at least two growing seasons in pastures treated with broadcast burning. An additional season of rest from grazing will be necessary prior to a broadcast burn to allow for development of a fine fuel ignition source. Livestock grazing may not occur in pastures receiving other types of treatments including prescribed underburns, jackpot burns, or other treatments that leave the retained vegetation vulnerable. The decision to rest and how long to rest will be determined by post-treatment monitoring of plant response to the various treatments.
6. No downed ponderosa pine logs greater than 15 inches diameter and no snags greater than 15 inches DBH will be intentionally burned in any unit. Snags may be intentionally created if an area is determined to be snag deficient following mechanical and prescribed fire treatments.

7. The raking of deep duff around old-growth ponderosa pine trees, large snags, large downed woody debris may occur prior to prescribed burning if determined to be necessary to retain them.
8. Maintain suitable big game hiding and thermal cover. Ensure mountain mahogany stands and conifer leave islands continue to function as big game cover following treatments. Retain approximately 10 percent of expansion juniper and young pine stands within the project area to provide cover for mule deer and elk.
9. Avoid manual cutting of pine and juniper with old-growth characteristics or obvious wildlife occupation (cavities or nests). Consider protection of such trees during prescribed fire operations.
10. All ponderosa pine stumps greater than 14 inches diameter created during the project will be treated with Borax to guard against the threat of annosus (*Fomes annosus*) root disease.
11. Two years of goshawk inventory will be performed prior to any implementation of the Proposed Action.
12. Prior to treatment of prescribed fire and mechanical treatment units, noxious weed populations in the area will be inventoried. Weed populations identified in or adjacent to the project area will be treated using the most appropriate methods in accordance with the Noxious Weed Management Program EA/Decision Record (DR), OR-020-98-05.
13. Risk of noxious weed introduction will be minimized by ensuring all equipment (including all machinery, 4-wheelers, and pickup trucks) is cleaned prior to entry to the site, minimizing disturbance activities, and completing follow-up monitoring, for at least 3 years, to ensure no new noxious weed establishment. Should noxious weeds be found, appropriate control treatments will be performed in conformance with the Noxious Weed Management Program EA/DR, OR-020-98-05.
14. Piles and cut juniper will be jackpot burned when soil moisture is high or under frozen soil conditions to reduce threat of soil sterilization and to maintain the existing shrub and herbaceous plant communities to the extent practical.
15. Prescribed burning will follow the Oregon State Smoke Management Plan in order to protect air quality and reduce health and visibility impacts on designated areas.
16. All burns will be planned based on either instructions given by, or in consultation with, the Oregon Department of Forestry and the State Implementation Plan for prescribed fires. Coordination with other prescribed fire projects occurring at the same time may be required.

17. Any road damaged by vehicles or equipment would be restored to its previous standard including maintaining adequate drainage to provide for resource protection.
18. Dispersed campsites identified within the project area will not be intentionally burned during broadcast burn operations. Protection will be considered for leave islands of sufficient size around identified campsites to protect cultural and recreation values.
19. Limit the amount of mechanized equipment in the riparian area. Landings and piles will be kept out of riparian areas.
20. Prior to beginning operations requiring any fuel tanks or fuel handling at the site, the contractor or BLM will develop and submit to the authorized officer a spill contingency plan.
21. The use of heavy equipment will occur under dry or frozen soil conditions to limit impacts.
22. Should post-treatment monitoring indicate that adverse resource impacts are occurring due to use by motorized vehicles, a temporary closure on use of motorized vehicles in areas being affected, may be utilized.

COMMENTS RECEIVED

A scoping letter and a copy of the EA were mailed August 8, 2008, to permittees, adjacent landowners, special interest groups, and other State and Federal agencies. In addition, a notice was posted in the *Burns Times-Herald* newspaper on August 13, 2008. The EA and associated appendices and maps, along with an unsigned FONSI were also made available on the Burns District BLM Web site on August 13, 2008 at (www.blm.gov/or/districts/burns/plans/index.php). The BLM received comments from the Oregon Natural Desert Association (ONDA) and Oregon Wild. The following is a list of these comments and the BLM's response to those comments.

Oregon Natural Desert Association

Comment 1) The EA contains little or no analysis of the impacts of domestic livestock grazing in maintaining the unnatural and undesirable spread of western juniper and invasive weeds and/or the suppression of native grass, forb, and shrub species. Although it points to "historic" grazing as the main reason for encroachment of juniper in the project area, the EA does not adequately study the impact of current grazing on fire regimes and concomitant juniper encroachment. If BLM believes current grazing has no impact in this respect, the EA does not explain the bases, if any, for this supposition. Please include further discussion on this point, including any evidence that may support BLM's suggestion that current grazing practices are not causing or contributing to juniper expansion, the spread of invasive species, and/or the suppression of native grass, forb, and shrub species within the project area.

Response: Current livestock grazing management is designed to maintain or move toward improved upland and riparian/wetland watershed functions, ecological processes, water quality, and habitats to support native, Threatened and Endangered and locally important species (Chapter 1, Page 2). Although there are two Standards for Rangeland Health not being achieved at this time, it was determined *historical* grazing practices and juniper encroachment were the causal factors, not current livestock management. This information and brief descriptions of the current grazing system and grazing management can be found in Chapter III, Section B Pages 50-53. A more detailed look at grazing management in these areas can be found in documents that specifically look at grazing management such as the associated Allotment Management Plans (AMPs). Therefore, since current livestock management is not the causal factor and livestock management is analyzed in detail in AMPs, current livestock management was not discussed in detail in this EA.

Comment 2) These lands cannot be fully restored or recovered without substantial changes in livestock grazing management, including significant rest following treatment and, in some places, complete removal.

Response: See Response to Comment 1. In addition, livestock grazing will not occur for *at least* two growing seasons in pastures treated with broadcast burning. Timing for reintroduction of grazing would be determined by rangeland monitoring of the response of native plant communities. An additional season of rest from grazing would be necessary prior to broadcast burning to allow for the development of a fine fuel ignition source. That means livestock would be removed for *at least* three growing seasons when a prescribed broadcast burn is carried out. If post-fire response is not adequate, livestock could be kept off longer (Chapter II, Section C, PDE 5, Page 15). This PDE has also been updated to allow for livestock grazing rest to occur in pastures receiving other types of treatments depending on plant recovery to the treatment. This will be determined by post-treatment monitoring of plant response to the various treatments. A no grazing alternative would not meet the purpose and need and does not address project objectives section outlined in Section B of Chapter I. Therefore, this alternative is outside the scope and intent of this EA.

Comment 3) The BLM should address alternatives that specifically involve reductions and/or exclusions of livestock.

Response: See response to Comment 2 above.

Comment 4) We note here that the limited range of alternatives BLM considers—no action or the proposed action—seems well short of what is required by NEPA in order to ensure an informed decision under which the agency has taken the requisite "hard look" at impacts to the human environment.

Response: NEPA only requires analysis of *reasonable* alternatives. To be given serious consideration as a reasonable alternative, the alternatives to the Proposed Action must: 1) meet the Purpose and Need for Action; 2) be consistent with RMP Objectives; 3) must differ in design; 4) have substantially different effects in which to analyze; 5) be feasible; and 6) its implementation must be realistic. Based on this criterion, no other alternatives were analyzed in detail. This information was inadvertently left out of the EA mailed to the public. It has now been added and can be found in the attached EA (Chapter II, Section D, Page 17).

Comment 5) All alternatives should include pre- and post-treatment monitoring that evaluates the presence and absence of livestock on treated areas in terms of site recovery and maintenance of desired ecological conditions.

Response: There has already been pre-treatment monitoring in the Project Area. This monitoring serves as the basis for the Affected Environment Section of all resources in Chapter III (Pages 17-63). The Proposed Action also includes follow-up and post-treatment monitoring (Proposed Action and Project Design Elements in Chapter II, Pages 10-17). Monitoring under the No Action Alternative would continue under the Three Rivers RMP and all other relevant policy direction.

Comment 6) For all actions "significantly affecting the quality of the human environment," the BLM must provide a detailed statement on the "environmental impact of the proposed action," alternatives to the proposed action, and any "irreversible and irretrievable commitments of resources" that would occur with implementation of the proposed action.
42 U.S.C. § 4332(2)(C).

Response: No actions associated with either alternative "significantly affect the quality of the human environment." Therefore, a FONSI was prepared, signed, and is attached.

Comment 7) The EA states that available forage would increase—but does not indicate whether the same (or increased) permitted numbers of livestock would be allowed to consume this increased forage. How would the increased forage available under the proposed action fit with the land and forage allocations established under the governing land use plan? If the project's main purpose is to restore plant communities and improve wildlife habitat, should not additional "forage" be reserved entirely for sage-grouse and other wildlife? As you know, greater sage-grouse and pygmy rabbit currently are under review by the U.S. Fish and Wildlife Service for listing as endangered species under the Endangered Species Act.

Response: The expected increase in forage will favor wildlife as well as livestock using the project area. Maintaining or increasing the permitted numbers of livestock using the project area is outside the scope and intent of this EA. Any change in permitted livestock use would require rangeland monitoring and a separate NEPA analysis.

Greater sage-grouse are likely to inhabit the project areas, and will be favored by this expected increase in forage (EA, Pages 29-32). There are no known pygmy rabbit sightings within or in the near vicinity of the project area and it is unlikely they occur within the project area.

Comment 8) There is little discussion of the impacts of continued grazing within the planning area on other resources, such as the spread of noxious weeds, water quality, fish and wildlife habitat, or wilderness resources. Aside from stating that areas treated with prescribed fire would be rested from grazing for two growing seasons, there is no real discussion of the impacts of grazing on these and other resources, including under other treatment methods or under rehabilitation measures such as planting, seeding, and fencing. In order to satisfy its obligations under FLPMA and the Fundamentals of Rangeland Health regulations, BLM should expand its discussion on these topics.

Response: Current grazing practices administered by the BLM are managed for compliance with the August 12, 1997 Standards for Rangeland Health and Guidelines for Livestock Management (Standards). These standards ensure grazing management that provides for the ecological health of rangelands. Grazing management issues are addressed in permit renewal or AMP/EAs and are outside the scope of this project.

Comment 9) Grazing Rest Following Treatment. The EA indicates grazing would not occur for two growing seasons in areas treated with broadcast burning. It does not include any similar mandatory rest period for areas treated by other means, even though other treatments also will result in disturbed areas vulnerable to the establishment and spread of weeds, erosion, soil compaction and so forth.

Because of the key role livestock play in the spread of weeds in areas where juniper has been removed such areas should be rested from all livestock grazing until they have fully recovered to native species plant communities.

Response: See response to Comment 2.

Comment 10) *Impacts to sage grouse populations and habitat.* As part of your effort to fully study the direct, indirect, and cumulative effects of the project on sage grouse (and other sage-steppe-dependent species) populations and habitat within the project area, please include detailed maps of sage grouse lek locations and sage grouse habitat, as compared to the various proposed treatment and other actions (including pre- and post-treatment). Sage grouse habitat mapping data is available from the Oregon Department of Fish and Wildlife. Many of the points raised above are salient here: insuring vegetative manipulation benefits the long-term health of sage grouse habitat, avoiding treatments in areas highly susceptible to exotic species invasion, employing restoration that involves reseeding to native vegetation or allowing natural native regeneration in the absence of grazing disturbance, and avoiding prescribed fire in Wyoming big sagebrush and lower-elevation basin big sagebrush unless such treatments are highly likely to improve sage grouse habitat.

Response: The BLM does not usually include detailed maps of known SSS habitats in their public documents for protection of the species. However, the EA addresses sage-grouse leks in the vicinity of the project area and habitat quality within the project area (Pages 27-32). There will be no treatments that occur in Wyoming big sagebrush communities within the project area. In fact, there are no known Wyoming big sagebrush communities occurring in the project area.

In addition, several PDE from the EA (Pages 14-17) deal with the protection of SSS and/or their habitat and noxious/invasive weed issues.

Comment 11) The EA should present and analyze the effects of the proposed action on wilderness values including ONDA's Lonesome Lakes and Silvies River proposed WSAs.

Response: No portion of ONDA's Lonesome Lakes proposed WSA is located within the project area, so it will not be addressed further. The issue of impacts to potential wilderness values was raised by ONDA for the project area. In 2008 an Interdisciplinary Team analyzed both the information ONDA submitted and BLM information on current conditions along with field verification (where needed) as part of updating its original wilderness inventory. Based on that analysis, the BLM determined that its 1980s inventory finding that BLM-administered lands within the project area do not possess wilderness character remains valid. As such, wilderness characteristics were not analyzed further in the EA (Page 10, Section E of EA).

Recently, the Interior Board of Land Appeals [*ONDA, 173 IBLA 348 (2008)*] found that when BLM has completed an inventory of the wilderness resource and reached the conclusion that no lands meeting the necessary wilderness criteria are present in the project area, there is no NEPA requirement that BLM include a wilderness resource discussion in an EA. The Board stated, "There is no NEPA requirement that BLM include a wilderness resource discussion in an EA, unless the proposed action will result in environmental impacts to such a resource. When BLM has compiled the 'hard data' in satisfaction of its FLPMA inventory obligation that support its determination that the requisite wilderness characteristics are not found within the project area outside of existing WSAs, that 'hard data' need not be repeated in the EA concluding that no impact will occur to the wilderness resource." [*ONDA, 173 IBLA 354 (2008)*]

Comment 12) The EA should analyze effects individual wilderness characteristics, including roadlessness.

Response: While BLM agrees that individual characteristics of wilderness may have some aspects in common with other multiple-use values of an area—such as recreation, scenery or habitat—BLM disagrees that an area can qualify as having wilderness value if not all of the required characteristics of wilderness are present. In order for an area to possess wilderness value, or qualify for potential management to protect wilderness value, it must have all of the necessary characteristics of wilderness. Wilderness is defined in the Wilderness Act and this definition is adopted in FLPMA. 43 U.S.C. § 1702(i) (providing that the term "wilderness" as used in section 1782 of FLPMA shall have the same meaning as it does in the Wilderness Act, 16 U.S.C. § 1131(c)). As the Ninth Circuit noted, "'wilderness characteristics' is a carefully-defined statutory concept, originating in the Wilderness Act." Oregon Natural Desert Association v. Bureau of Land Management ("ONDA v. BLM"), 531 F.3d 1114, 1142 (9th Cir. July 14, 2008). In the Wilderness Act, a "wilderness" is defined, "in contrast with those areas where man and his own works dominate the landscape," as:

an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter 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). This definition makes clear that for an area to qualify as having wilderness value, it cannot just possess some of the characteristics of wilderness. For instance, solitude could well be found in the midst of an abandoned mine site, but it would hardly qualify as an area that is "affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable" and would thus not qualify as having wilderness value. Just as a wild and scenic river does not exist wherever there is water, so an area cannot be called wilderness just because it has a characteristic of wilderness. Wilderness is a carefully-defined concept, as Congress has explicitly enumerated the necessary size and set of characteristics that must exist for there to be "wilderness." If one of the required components is not present there can be, by definition, no "wilderness." If an area fails to meet a required criterion, then the individual criteria have no meaning within the context of wilderness.

Outside of the wilderness context, individual characteristics of wilderness have some aspects in common with other values associated with the definition of "multiple use" in FLPMA. This includes values such as recreation, watershed, wildlife and fish, and natural scenic values.

43 U.S.C. § 1702(c). Multiple-use management includes consideration of these values.

Id. §§ 1702(c), 1711(a). For example, BLM may consider the presence or absence of roads in a NEPA document where relevant to values such as recreation, scenery, watersheds, fish, and wildlife. Similarly, BLM may consider naturalness as part of the natural scenic value and may consider opportunities for solitude or primitive/unconfined recreation as part of an area's recreation value. In other words, where an area lacks all of the characteristics necessary for wilderness, individual characteristics may be considered as part of other multiple-use values but they do not amount to a wilderness resource.

However, the EA did address effects to related resources such as visual and recreation resources. Visual resources and the aesthetic character of the project area should be enhanced as regeneration of grasses, forbs, shrubs and trees takes place and overall health and diversity of the project area improves (EA Pages 55-56). The improvement of habitat function and landscape diversity are also expected to enhance recreational activities in the project area, some of which include hunting and wildlife viewing (EA Page 53). The Proposed Action does not propose creation of new roads (not even for implementation of the proposal), or reopening closed roads.

One 0.75-mile section of a two-tracked road may be realigned or permanently closed to promote water quality as described in the EA on Page 11. Therefore roadless characteristics, where present, will be retained and even enhanced if the 0.75-mile road is closed rather than realigned.

Comment 13) Silvies River Road is not a road for wilderness purposes.

Response: As part of its wilderness inventory update, BLM staff conducted a field review of Silvies River Road and found it did meet BLM's road criteria for the purposes of identifying wilderness inventory units. The Silvies River Road has been mechanically constructed and improved. It is in a useable condition and it would be maintained if it became impassable to provide both administrative and private landowner access and it does receive relatively regular use including recent use associated with wildfire suppression efforts in August of 2008. ONDA referenced that a portion of Silvies River Road has a Maintenance Level of 2 and indicated that BLM's definition of this maintenance level is, "low use trail with little or no contact between parties. There is little or no monitoring or management of visitor use. Visitors may encounter obstructions like brush and deadfall." This is a definition for routes in BLM's trail category and does not apply to roads. BLM's definition of a Maintenance Level 2 for roads is, "This level is assigned to roads where management objectives require the road to be opened for limited administrative traffic. Typically, these roads are passable by high clearance vehicles."

Comment 14) ONDA is opposed to mechanical treatment in areas with wilderness values unless those values are being restored (e.g., aspen stands or riparian areas). ONDA supports mechanical treatment in all other areas only if livestock grazing is precluded for at least five years following treatment to allow for full development and maturation of new plant vigor.

Response: The primary purpose of the Proposed Action is to move toward management objectives described in Three Rivers RMP within Slicker Creek and Claw Creek Units by reducing hazardous fuels, restoring plant communities, and improving wildlife habitat diversity. The emphasis on treatments in forested areas would be to reduce densities of small diameter trees and duff and litter accumulations. The emphasis in shrublands, woodlands, and riparian areas would be to move conditions toward historic species composition and structure while reducing fuels in the vicinity of the towns of Burns, Hines, and Riley, as well as numerous ranches, homes, and dwellings (EA Pages 4-6). There are several aspen stands found within the project area. All aspen stands within the project area are being encroached upon by juniper, ponderosa pine, or both. The proposal in these treatment areas is to remove encroaching vegetation (EA Pages 13-14). See response to Comments 1 and 2 related to concerns associated with livestock grazing.

Comment 15) ONDA recommends that a PDE specifying that routes within the treated project areas will be, at least for the duration of treatment and mitigation period, classified under the closed or limited off-road vehicle use categories with respect to recreational use and users. At a minimum BLM should ensure it has PDEs in place that would protect against off-road damage in roadless areas, including two roadless areas BLM has determined to exist in its wilderness evaluations.

Response: It has been BLM's experience that with project of this nature, there have not been problems with resource damage associated motorized vehicle use following treatment. However, PDE 22 has been added as part of this DR in response to this comment (EA Page 17).

Comment 16) ONDA recommends that road maintenance within the project area not be performed on any routes that are designated as maintenance level 2 or lower, or on roads that have no maintenance level so as to negate an area's roadless (and wilderness) character.

Response: Under this DR, PDE 17 has been modified to remove provisions for restoring roads to a higher standard, while still maintaining adequate road drainage to provide for resource protection (EA Page 16).

Oregon Wild

Comment 1) We support the restoration intent of this project, but we encourage BLM to approach projects like this in a more integrated manner by addressing other aspects of its land management program that affect the ecological outcomes that this project is intended to address. The EA (Page 44) says that thinning pine will restore the "functionality" of the forested areas, but since this project leaves in place many of the causes for the observed deterioration (e.g., grazing and fire suppression) the functionality is not really restored. Livestock grazing and fire suppression are both big contributors to the adverse conditions in the project area. BLM should not just try to reestablish ecological structures and patterns at a snap-shot in time, but should instead strive to reestablish the natural processes that allow this landscape to self-maintain. Less grazing and more fire would help move this system in the right direction in terms of process and structure.

Response: The proposed thinning will help to restore the overall health and functionality of forested areas. The Proposed Action also calls for prescribed underburning in an attempt to mimic the natural fire regime in ponderosa pine communities. This should also help restore the overall health and functionality of these areas. Current livestock grazing occurs under a rotational basis allowing plants to receive growing season rest periodically. These grazing systems are briefly outlined in the EA (Pages 50-51). Livestock management is outside the scope of this EA and is not the intent of this project. Any changes to livestock management would occur in a grazing permit renewal EA or an AMP EA.

Comment 2) Please try to retain roadless characteristics in all inventoried and uninventoried roadless areas.

Response: The Proposed Action does not propose creation of new roads (not even for implementation of the proposal), or reopening closed roads. One 0.75-mile section of a two-tracked road may be realigned or permanently closed to promote water quality as described in the EA on Page 11. Therefore roadless characteristics, where present, will be retained and even enhanced if the 0.75-mile road is closed rather than realigned.

Comment 3) Any roads that are needed to implement this project need to be considered carefully and minimized or avoided, but they were not even mentioned in the FONSI.

Response: See response to Comment 2 above. Only existing roads will be used to carry out the proposal and any damage to existing roads will be restored to at least its previous state (Page 16, PDE 17).

Comment 4) All old growth trees of all species and all sizes should be retained. BLM should take steps to identify old trees by their characteristic bark color and canopy character.

Response: Old growth trees will not be targeted and every effort will be made to retain as many of these trees as possible (Page 11 Forested Areas Treatment and Page 15 PDE 10).

Comment 5) Ponderosa pine thinning should strive to reestablish the gappy, patchy, clumpy character of natural pine stands. Don't thin to a certain spacing. Culture some well-distributed clumps of 2-5 trees.

Response: The proposal calls for thinning that would create a variable spacing ranging from 40 to 120 feet²/acre. This type of thinning does create a gappy, patchy, clumpy character. In addition interior leave islands will be left untreated, further adding to the variable nature of the stand (Page 11 Forested Areas Treatment).

Comment 6) We support the retention of medium and large conifers as snags and down wood. The FONSI repeatedly says that conifer removal might be commercial or noncommercial, but these have very different environmental impacts that were not disclosed and considered. If trees are to be removed it will require more heavy equipment and roads which will cause adverse impacts on soil, water, weeds, and cause collateral damage to other vegetation.

Response: No roads will be created even if some of the conifer removal is commercial. The use of heavy equipment will occur under dry or frozen soil conditions to limit impacts (Page 16, PDE 21). Under these conditions we expect similar effects whether the conifer removal is commercial or not.

Comment 7) The EA also says that material might be removed as biomass. This seems unlikely because biomass is economically not viable, but if biomass is extracted, the EA needs to describe the impacts of road access, heavy equipment, nutrient depletion, weed spread, etc.

Response: In cooperation with the County considering options for biomass removal, the BLM agreed to look at the possible option of making the cut vegetation available for biomass removal. Road condition and access would remain unchanged and heavy equipment would still be limited to the aforementioned conditions of dry or frozen soil conditions. Nutrient depletion would be similar to that of burning the piled biomass, and weed spread is addressed through PDEs (Page 16 PDEs 13 and 14).

Comment 8) In addition, the aspen treatments include a proposal to create snags from medium-large conifer trees. This would have a beneficial impact, but if those trees end up being removed for commercial purposes those benefits are absent and new adverse impacts on soil arise. These differences need to be carefully considered.

Response: The Proposed Action includes the potential to commercially remove cut conifers, by way of a stewardship contract, from aspen stands if it is economically and environmentally feasible. This would not limit the creation or retention of snags. Any trees removed would occur after the desired density of retained or created snags is met.

Comment 9) Retain generous untreated skips to provide big game cover and habitat diversity.

Response: The Proposed Action calls for treatment of 70 to 90 percent of forested areas, 40 to 60 percent of the mountain big sagebrush communities, and the potential to treat a very little percentage (less than or equal to 20 percent) of the low/stiff sagebrush communities (Pages 10-14). This will allow for generous untreated skip islands to provide big game cover and habitat diversity. In addition, during project layout the best big game cover will be identified and not targeted for treatment.

Comment 10) We urge the BLM to retain as much of the junipers on site as possible because they contain a lot of the nutrients present in these sites and those nutrients should not be exported from these sites by fire or other means.

Response: Retaining the cut juniper on site does not meet Fire Management Objectives (Page 6). Juniper left on site would increase fuel loading, which in turn increases the risk of a large-scale, high-intensity wildfire. This threat decreases safety to wildland firefighters and increases threats to life, property, and resource values on public and private lands. Cut juniper may be left on site only where it is not considered a hazard to public and fire fighter safety.

Comment 11) BLM should do everything possible to prevent the establishment and spread of weeds. This means minimizing soil disturbance and minimizing vectors such as heavy equipment and livestock.

Response: Weed issues are clearly addressed in the EA (Page 16, PDEs 13 and 14, and Pages 34-36). The BLM is doing everything practical to prevent the establishment and spread of noxious weeds.

Comment 12) Please try to conserve resources by avoiding sending big EAs printed on only one side of the paper.

Response: Thank you for your suggestion.

RATIONALE

I have selected the Proposed Action based on meeting the following Project Objectives as outlined in the Purpose and Need and Decision Factors listed in the table below:

Project Objectives/Decision Factors	Proposed Action Rationale
<ul style="list-style-type: none"> Reduce surface fuels in forested stands from 7 tons per acre to approximately 3 tons per acre. 	<ul style="list-style-type: none"> The mechanical thinning and prescribed burns are expected to achieve this objective.
<ul style="list-style-type: none"> Reduce density of understory trees acting as ladder fuel in forests or woodlands so they are spaced at an average of 22 feet within treated stands. 	<ul style="list-style-type: none"> The mechanical thinning will achieve this objective in the areas proposed for treatment.
<ul style="list-style-type: none"> Reduce woody fuel loading within western juniper encroached mountain big sagebrush communities in the project area. Reduce 1-hour and 10-hour time lag fuels associated with juniper by a mean total of 90 percent and 100-hour fuels by a mean total of 75 percent in treated areas. 	<ul style="list-style-type: none"> The mechanical treatment followed by prescribed fire and/or the prescribed broadcast fire is expected to achieve this objective.
<ul style="list-style-type: none"> Move mountain big sagebrush/bunchgrass plant communities and hydrological conditions within the project area toward historic conditions by reducing live western juniper density by a mean total of 70 percent within treated areas. 	<ul style="list-style-type: none"> The mechanical and prescribed fire treatments are expected to meet this objective in treated areas. The broadcast burn treatments may have negative effects on mountain big sagebrush/bunchgrass plant communities and hydrological conditions in the short term, but is expected to benefit them in the long term.
<ul style="list-style-type: none"> Move pine forest, pine woodland, and pine savannah stand densities, structure, and composition toward historic conditions within the project area. 	<ul style="list-style-type: none"> The mechanical thinning along with the prescribed underburns would move these ponderosa pine communities toward more historic conditions.
<ul style="list-style-type: none"> Reintroduce fire as a disturbance process in mountain big sagebrush/bunchgrass, and ponderosa pine woodland and forest communities within the project area. 	<ul style="list-style-type: none"> The prescribed burning that will occur under the Proposed Action will reintroduce the fire disturbance process to these plant communities in the project area.
<ul style="list-style-type: none"> Reduce western juniper encroachment into key wildlife habitat dominated by bitterbrush, mountain mahogany, aspen, or riparian hardwoods by 90 percent within the project area while maintaining habitat values. 	<ul style="list-style-type: none"> The mechanical and limited prescribed fire treatments targeting juniper in these communities is expected to meet this objective.
<ul style="list-style-type: none"> Reduce post-settlement⁵ western juniper density by 90 percent on low sagebrush/bunchgrass ecological sites targeted to improve sage-grouse habitat. 	<ul style="list-style-type: none"> The mechanical treatments that will occur on selected sites within the low sagebrush/bunchgrass communities will achieve this objective.
<ul style="list-style-type: none"> Increase forage available to big game and other wildlife on BLM-administered lands in the project area while retaining adequate cover. 	<ul style="list-style-type: none"> The mechanical treatments on both juniper and overstocked pine stands along with the prescribed fires will increase forage available for big-game and other wildlife species. The variable nature of the treatments and areas selected as leave islands will also retain adequate cover.
<ul style="list-style-type: none"> Increase forage available to domestic livestock on lands within Skull Creek and Claw Creek Grazing Allotments. 	<ul style="list-style-type: none"> The same treatments listed above (mechanical treatments and prescribed fire) will increase forage available for domestic livestock as well.

⁵ **Post-settlement:** A period of time occurring after Euro-American settlement in the region.

Project Objectives/Decision Factors	Proposed Action Rationale
<ul style="list-style-type: none"> • Improve water quality by reducing sediment delivery into Claw Creek associated with road use. 	<ul style="list-style-type: none"> • The realignment or closure of the road that runs down Claw Creek will reduce sediment delivery into Claw Creek.
<ul style="list-style-type: none"> • Reduce or slow erosion within Slickear Creek and Claw Creek Units. 	<ul style="list-style-type: none"> • All aspects of the Proposed Action (mechanical treatments, prescribed fire, and the closing or realignment of the road that runs down Claw Creek) will either immediately slow erosion or slow erosion in the long term in these units.
<ul style="list-style-type: none"> • Does the alternative achieve project objectives in a manner that considers the health and safety of the public and fire management personnel? 	<ul style="list-style-type: none"> • The Proposed Action does achieve project objectives while considering the health and safety of the public and fire management personnel. Safety always comes first in regard to implementing these projects. In addition, after implementation the project area should be much safer to both the public and fire management personnel should a wildfire occur.
<ul style="list-style-type: none"> • Does the alternative achieve project objectives in a manner that is cost-effective? 	<ul style="list-style-type: none"> • The Proposed Action does achieve project objectives in a manner that is cost-effective.

The No Action Alternative was not selected because it failed to achieve the Project Objectives as outlined in the Purpose and Need and Decision Factors listed in the table above.

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 Code of Federal Regulations (CFR), Part 4 and Form 1842-1. If an appeal is filed, your notice of appeal should be filed with the Three Rivers Resource Area Field Manager, Burns District Office, 28910 Hwy 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.

/signature on file/
James Buchanan
Three Resource Resource Area Field Manager

10/25/2008
Date