

APPENDIX C

Response to Public Comments

May 2009

DRAFT Stockade Block Area Management Plan

Summary

Public comment was received on the DRAFT Stockade Block Area Management Plan (SB) from late March to April 17, 2009. Comments received via all means (e.g. public hearing, email, letter) were compiled, reviewed and analyzed.

Many commenters expressed concerns about recreation leases and restricted access for hunting; a substantially fewer number indicated concerns for the impacts of energy projects and livestock grazing on wildlife habitat. Still others endorsed the Plan's renewable energy emphasis. Some identified vehicle access control as an acceptable practice to protect habitat. Two commenters proposed an annual recreation permit. One commenter supported recreation leasing but "prefers outright sale of the Stockade Block."

Some mentioned habitat and livestock grazing management concerns. Among these were: (1) recommendation to prohibit the grazing of sheep and goats where they might carry disease to bighorn sheep; (2) control and management of wild horses coming onto the SB from adjacent BLM lands; (3) support for juniper clearing; (4) concern for widespread sagebrush conversions; (5) no "let it burn" areas; (6) treatment of in-holdings and (7) monitoring and control of Off-Highway Vehicle (OHV) use.

In summary, the major concerns of the public and the agencies regarding the SB are:

1. Leasing for recreation uses
2. Care and management of critical habitat for big game (elk, deer, pronghorn and big horn sheep) and upland birds, particularly, sage grouse;
3. Location and status of access roads within and across the SB (who can use them; when and how);
4. Recreation use management in general and as it relates to existing forage lease operations and resource impacts (open gates, camping, horse use, OHV use);
5. Impact of revenue-producing activities (e.g. renewable energy projects, agriculture development, grazing land improvements) on public use and wildlife habitat; and
6. Public and agency notice and coordination with future DSL management actions.

A seventh issue, though not expressed by the public but evident in their statements, is the incomplete understanding of the legal and constitutional

requirements dictating the management of the SB. While many refer to the SB as “public land,” there is a lack of awareness of the unique Trust management responsibilities of the Department and Land Board.

Response to Comments

The following is the Department’s response to the major concerns expressed by the public regarding the *DRAFT Stockade Block Area Management Plan*.

ISSUE 1: Leasing for Recreation Uses.

DSL Response:

This issue generated the most public comment. Commenters feared loss of public access, restrictions on hunting, and control of wildlife resources put in the hands of guides and outfitters who would operate under exclusive hunting leases to the exclusion of the unguided public hunter. A few commenters suggested that a small recreation access permit fee might be acceptable. Most comments focused on opposition to any closure of the SB to general hunter access and use and were opposed to leasing of hunting rights.

The Department polled a number of the school Trust land managers in other western states and found a wide range of approaches to public access, recreation use and leasing for recreation (see Appendix D). Of the states surveyed, several (New Mexico, Arizona, Colorado, Nebraska and Oklahoma) considered their trust lands to be closed to public use unless designated as open and then only by a permit or lease. Annual permits ranged in cost from \$10 to \$75. A number of states issue leases for guides and outfitters. Some have arrangements with their respective Parks or Fish and Wildlife agencies to lease land for general or wildlife-related recreation. Utah and Montana take a portion of statewide fees (Utah about \$300,000 from OHV fees; Montana about \$870,000 from hunting and fishing licenses) for land management.

By and large, the Pacific Northwest states of Washington, Oregon and Idaho represent the exception. None of these states charge the public for general recreation use, although all would charge for commercial recreational use of trust land. Idaho brought in about \$8800 in FY08 from guides and outfitters; neither Oregon nor Washington reported any similar income.

DSL’s current policy is to allow open access and public use of the SB provided the use does not damage the resource, threaten public safety or injure a lessee’s operations. In addition, the current policy on the SB and on all DSL lands does not prohibit leases for non-exclusive commercial recreation. None are in place on the SB; and no applications have been received in the recent past. Currently, the temporary and transient use of the SB for guided hunting or guided tours does not rise to the level of a lease until the activity requires actual physical occupancy of a site with improvements (e.g. base camp).

The Plan has been revised to recognize the strong public opposition that exists from the public hunting community to the concept of exclusive leasing for recreation uses. Action A-4 of the DRAFT Plan (i.e. “*investigate the market potential and feasibility of leasing for guided activities associated with various recreation uses...*”) has been deleted from the Plan. These uses will be monitored (see Action B-5) and, if unauthorized commercial use of the SB becomes evident, the use will be terminated or may be put under lease but only after a thorough public review of the intended use. In any event, any future authorized commercial uses will not be exclusive and will not be allowed to exclude the general public from hunting use areas. The Vision (see section 1 relating to Revenue) has been revised by deleting references to outdoor guiding and recreation services.

ISSUE 2: Care and management of habitat for big game (elk, deer, pronghorn and big horn sheep) and upland birds, particularly, sage grouse.

DSL Response:

Management for conservation of wildlife habitat is addressed in the Plan in a number of ways: by managing the plant communities to maintain a diverse, healthy functioning ecosystem; by completing and maintaining rangeland analysis; by inventorying and conserving wet meadows, riparian areas and aspen stands; by including an action on threatened and endangered species; and by including Map 8 which illustrates the general locations of “at risk” species on the SB.

No domestic sheep or goat use is presently allowed; and it is doubtful that any will occur in the future; this use, should it be proposed, will be addressed through the lease contracts.

The siting of new renewable energy facilities will be directed away from known high quality wildlife habitat or the impacts mitigated and monitored by the lessee.

Of some concern to wildlife managers was the idea of converting rangelands to agriculture use or improving forage on existing rangelands. However, the DRAFT Plan did not identify a high potential to convert *large* areas of healthy functioning rangelands to agriculture or improved grazing. The Vision sets a goal of only a 1.9% (or about 4300 acres) increase in non-native rangeland over the life of the Plan. As with other developments, these “conversion” activities will be directed away from known high quality wildlife habitat, or the impacts mitigated and monitored. The Plan has been revised to recognize the need to closely coordinate the planning and implementation of these efforts, if they prove viable, with ODFW so that impact avoidance and minimization strategies are carefully analyzed prior to executing a project.

Vegetation management (juniper, sagebrush and invasive weed control) as provided in the Vision will contribute to healthier wildlife habitat and promote wildlife diversity along with ecosystem health.

Finally, the clarifications and technical corrections offered by ODFW have been carefully reviewed and most have been incorporated into the Plan.

ISSUE 3: Location and status of access roads within and across the SB.

DSL Response:

Commenters showed concern for the use or control of interior access roads. Uncertainty about the legal status of access can lead to frustrating experiences for the public user. Road use agreements between property owners can be written or verbal; and can be limited to certain uses, time periods or individuals. Such is the case on the SB. The Department's own review of the interior road "inventory" has found that more information is needed about the location and legal status of some of the roads.

The Plan has been revised to clarify Vision Implementation Program Action B-2 regarding an inventory of roads and tracks.

ISSUE 4: Recreation use management, including commercial guide use (if any), as it relates to adverse impacts to existing forage lease operations and natural or cultural resources (e.g. open gates, camping, horse use, Off-Highway Vehicle (OHV) use).

DSL Response:

A great deal of public comment was received that revealed that Oregon's hunters place a high value on maintenance of public access to the SB. In addition, the input confirmed that currently the largest single recreational pursuit on the SB is hunting for big game and upland birds. Many objected to the concept of limiting access by leasing recreation use rights, particularly hunting opportunities, and thereby excluding non-paying hunters. But some advised that restricting access might be acceptable if recreation use and associated vehicle (including OHVs) or horse use were damaging the resource or impacting wildlife. Similarly, the lessees and adjacent landowners showed concern for public users who *may* leave gates open, bother livestock, bring in invasive weeds or ignite wildfires.

The Department's survey of the management of recreation on Trust lands in other western states revealed some interesting results. As previously stated, a number of states consider their lands closed unless designated as open; others charge for access while some allow recreation use without restriction. As it turns out, a number of the states have turned to fees, use restrictions and access permits as tools of resource management and conservation. OHV use on Arizona and Utah Trust lands has caused serious damage to natural resources causing those states to pursue use restrictions.

The Vision Implementation Program has been revised to strengthen recreation use management implementation. A new Action B-5 calls for monitoring recreation uses (particularly OHV use); evaluating the results of monitoring the use along with any impacts/conflicts; and developing a strategy to minimize adverse impacts/conflicts from all types of recreation use on natural resource and lessee activities.

Managing recreation use over the life of the Plan to fulfill the Vision (see section 3 relating to Public Users) will require adherence to the actions in B-5 and a number of other actions.

ISSUE 5: Impact of revenue-producing activities (e.g. renewable energy projects, agriculture development, grazing land improvements) on public use and wildlife habitat.

DSL Response:

Support came from a number of commenters for the emerging revenue opportunities from renewable energy development. Some organizations raised concerns about these developments and others considered in the DRAFT Plan as to their impact on wildlife resources and recreation use.

Such is the dilemma facing Trust land managers across the west including Oregon. Fortunately on the SB, the demands of revenue production for Oregon's schools need not be pursued at the expense of significant natural resources or wildlife habitat. In fact, the Plan Vision embodies this balanced approach. For example, a reversal of the historic trend favoring invasive juniper and sagebrush will be sought by reducing the western juniper woodland/sagebrush complex by over 11,000 acres and only areas deemed "suitable for lease and development of renewable energy..." will be identified and conserved for those uses.

While the Common School Fund is the beneficiary of any new financially viable developments, in some cases (as in siting of renewable energy projects) the Department is not the sole policymaker. ONDA and the Audubon Society of Portland correctly pointed out that the state Energy Facility Siting Council and the Harney and Malheur Counties wield regulatory authority over the siting and operations of renewable energy projects. As a result, in the course of their review, these entities will be scrutinizing (independent of the Department) potential project impacts to cultural, economic and natural resources. And, the Department under Action B-6, will ensure that before any ground disturbing work takes place that surveys of "at-risk" and/or listed species will be conducted. Finally, the Vision (see Section 2 relating to Land and Watershed Stewardship) commits the Department to mitigating the impacts of development on wildlife and aquatic habitat.

ISSUE 6: Public and agency notice and coordination with future DSL management actions.

DSL Response:

This issue stems from public concern that DSL is not open and communicative about its management actions. This observation arose from those interests concerned with Issue 1 (Leasing for recreation uses). As the tone of some of the public comments indicate there was some fear that DSL was attempting to avoid public discussion of this issue in the DRAFT Plan.

The Department has great sensitivity towards the public's right to be heard on issues relating to the management of the SB and to the Department's policies in general. In addition, the Department values public input. Current practice has included: establishment of an individual advisory committee for review and comment on each forage lessee Leasehold Management Plan; public review opportunities for neighbors, tribes, agencies and local governments of new lease and easement applications; and public hearings for area management plans.

The Plan has been revised to change Action D-1. This action now calls for DSL to: *"Maintain communication and notice protocols designed to assure that proposed project plans and management actions are shared with lessee, neighboring landowners, tribes and local, state and federal agencies. (In addition, the Action commits DSL to:) "take actions to assure that resulting comments and input received are addressed, as appropriate."*

ISSUE 7: Public awareness of Common School Fund Trust Land purpose.

DSL Response:

This seventh issue, though not expressed by the public but evident in their statements, is the lack of awareness of the legal and constitutional requirements dictating the management of the SB. Many refer to the SB as "public land" and figure that its management is tax-supported. This is of no fault to the public, as the Department and school beneficiaries have only recently (within the last 10 years or so) been more vocal about the duties and responsibilities of Trust land management that arise from Oregon's admission to the Union in 1859.

In the Oregon Admission Act in Article 4 (School Lands), the U.S. Congress granted public lands (i.e. federal) in sections 16 and 36 of every township of the state or where these sections have been sold or otherwise disposed, equivalent lands "...for the use of schools." These lands are referred to as "School Trust Lands" or "Trust Lands" or "Common School Fund (CSF) Trust Lands." Lands acquired by the state through exchange of Trust lands become Trust lands. This is the case with the lands within the SB acquired through land exchanges with the BLM.

The Oregon Constitution in Article VIII Section 5 (2) states: *“The (Land) board shall manage lands under its jurisdiction with the object of obtaining the greatest benefit for the people of this state, consistent with the conservation of this resource under sound techniques of land management.”*

A 1992 Attorney General’s Opinion (No. 8223) states the following:

- Oregon’s acceptance of the proposition of its Admission act, granting land to the state “for the use of schools,” imposed a binding obligation on the state.
- Oregon must use Admission Act lands for schools and not for any purpose that is inconsistent with such use.
- ... the school lands granted to the State of Oregon are a trust for the benefit of public education. It is the duty of the state to dispose of them for as near full value as may be, and to create thereby a continuing fund for the maintenance of public schools. [Oregon Supreme Court: Grand Prize Hydraulic Mines v. Boswell]
- The words “with the object of obtaining” (*found in the Oregon Constitution*) do refer to purpose and intent. Yet the stated purpose, “obtaining the greatest benefit for the people of this state,” is consistent with the dedication of the Admission Act lands for the use of schools, and that use exclusively. The “greatest benefit” would mean only greatest benefit not otherwise inconsistent with the trust purposes of “use for schools.”
- ...other permissible uses [of Admission Act lands] e.g., public recreation, can be easily explained as an express authorization for such uses where no good economic use of the lands for schools could be presently found...
- “The goal imposed by Section 5(2) ... requires the State Land Board ... to use lands dedicated to the Common School Fund in such a way as to derive the greatest net profit for the people of this state” Johnson v. Dept of Revenue (1982).
- These management responsibilities require the Board to obtain full market value from the sale, rental or use of the Admission Act lands, while conserving the corpus of the trust.
- We (the AG) have previously characterized this obligation as a duty to maximize the value of, and revenue from, these lands over the long term.
- ...the duty to “maximize revenue” does not limit the Board to “mechanical consideration” of economic factors: ...in every case the consideration must be directed to determination of the appropriate action to be taken to achieve ... benefit to the Common School Fund...
- The Board may set lands aside temporarily for the purpose of “banking” an asset while its economic value appreciates, if the Board has a rational, non-speculative basis for concluding that such action will maximize economic return to the Common School Fund over the long term.
- Also the Board may have good trust reasons for conserving resources that have little or no commercial value at the present time. With conservation of productive trust property as its goal, the Board must view the land resource as an interrelated whole. Promoting the long-term health of revenue producing resources may require conservation measure aimed at non-commercial resources such as water or soils.

- Revenues for the CSF must remain the Board's overriding objective with respect to Admission Act lands that are retained... However, the management standard in Article VIII Section 5(2) calls on the Board to seek methods for accommodating the broader public interests, if that can be done while still maximizing revenue for the CSF.
- The Board is not required to maximize present income from the Admission Act lands without regard to other considerations. Rather, the Board's duty is to manage the lands for the long-term benefit of the schools. Thus, the Board may sacrifice present income to preserve the property, if it determines this will enhance income for the future. Non-economic factors may be considered only if they do not adversely affect the potential financial contribution to the Common School Fund over the long term.
- ...the Legislature cannot impose regulatory requirements on the Board's management of lands constitutionally dedicated to the CSF if to do so would interfere with the Board's exercise of its management responsibilities under Article VIII section 5(2) of the Oregon Constitution.
- The Board is not required to comply with the State ESA if compliance would unduly burden or restrict the Board's exercise of its constitutional powers to dispose of and manage Admission Act lands.
- The Board has exclusive power and authority to sell and to manage lands under its jurisdiction independent of any legislative action (AG's Opinion 1972).

As the Attorney General's opinion demonstrates, Trust lands are state-owned and are not the same as "public lands" (such as the federal lands or other property of state agencies). Trust lands are managed by the Department of State Lands, based on direction from the State Land Board.

The paramount purpose of the SB is to produce income for the Common School Fund to support of the state's K-12 schools. Management of the SB is not tax-supported. Land management expenses are paid from revenue from the Common School Fund, including lease fees. However, certain individuals and groups tend to either confuse or ignore the fundamental difference in the management objective for Oregon's Common School Fund Trust lands. They contend that these lands, like a state forest or state park, ought to be managed for multiple benefits for a variety of groups and individuals. Clearly, the Attorney General's advice allows for other uses of the SB (e.g. public recreation including hunting) but only so long as those uses do not adversely affect the potential financial contribution of the SB to the CSF over the long term.

The Plan has been revised to include clear statements that offer the legal framework for the fiduciary and trust management responsibilities of the Department and Land Board for the management of the SB. Hopefully, as future Trust land managers, Trust beneficiaries and the public review this Plan, there will be a deeper understanding and appreciation of the purposes of the SB ownership and management.

Other items

Several items drew comment from the lessee and neighbor contributors regarding: (1) control and management of wild horses coming onto the SB from adjacent BLM lands; (2) treatment of in-holdings; and (3) no “let it burn” areas.

Wild horses occupy BLM lands adjacent to the SB and occasionally come onto the SB. They impact forage and fences and therefore the lessees’ operations. Current practice is to contact the BLM and request the removal of the wild horses from the SB. DSL staff report that the BLM has been cooperative.

The DRAFT Plan identifies **in-holdings** owned by 14 owners (12 private; 2 public). The Vision contemplates that some of these in-holdings could be acquired “...to facilitate effective management ...”. Action C-1 calls for a “...review of all in-holdings to determine the benefit to be served of adding any to the Stockade Block.” Also the results to be discussed with each property owner and a high priority given to acquiring identified lands from willing sellers through land exchanges. While there is an assumption that some of the in-holdings would be beneficial to SB management, there is no assurance that: (a) the review would bear out the assumption; or (b) that an in-holder would be willing to proceed with a transaction. The Plan will continue to emphasize the “willing buyer-willing seller” approach to any land exchange efforts.

Wildfire management is a concern of DSL and all neighbors and lessees. One commented that there should be no “let it burn” areas. DSL has a cooperative agreement with the BLM for fire suppression. As a rule, wildfires are suppressed on the SB as soon as resources and conditions permit. There are no “let it burn” areas designated on the SB.