

## SAGEBRUSH SEA CAMPAIGN

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September 26, 2006

Hon. Larry Craig, Chair  
Hon. Ron Wyden, Ranking Member  
Subcommittee on Public Lands and Forests  
Committee on Energy and Natural Resources  
United States Senate  
Washington, DC 20510

Dear Senators Craig and Wyden:

This letter presents our comments on several provisions in the proposed “Owyhee Initiative Implementation Act of 2006” (S. 3794). We respectfully request that this letter be included in the record for the hearing on the proposed legislation scheduled on September 27, 2006.

The Sagebrush Sea Campaign (SSC) is a conservation organization that focuses public attention and conservation resources on protecting and restoring the sagebrush steppe in the American West. The campaign participates in public planning processes, advocates for natural resource protection, and uses education, research, legislation and litigation to conserve and restore the Sagebrush Sea for present and future generations.

The Owyhee canyonlands and uplands in Idaho, Oregon, and Nevada comprise some of the largest and untamed wildlands in the western United States. The SSC supports efforts to conserve the Owyhee country through the designation of Wilderness and Wild and Scenic Rivers; removal of domestic livestock from federal public lands; road closures; and the consolidation of federal public lands via private-public land exchanges and acquisitions from willing sellers. While S. 3794 would accomplish some of these goals, as drafted, some sections of the legislation may effectively undermine conservation of federal public land in the Owyhee country in Idaho.

The SSC has the following concerns about S. 3794:

- *Lack of transparency in the legislation.* S. 3794 makes excessive reference to the Owyhee Initiative Agreement (OIA), a document developed by selected interests, who, while likely knowledgeable about the local area and issues, did not draft their agreement in the form of clear and unambiguous legislative language. There is much that is not clear in the OIA and consequently, S. 3794 where it makes reference to the OIA. Legislation should be clear and unambiguous so Congress, affected interests, and the public can understand what the legislation would accomplish. The appropriate concepts embedded in the OIA (that also promote the public interest) should be written into S. 3794, rather than portions or all of the OIA being referenced in the legislation.

- *Proposed Wilderness and Wild and Scenic Rivers.* To protect this incredible landscape for current and future generations, Wilderness areas proposed in S. 3794 should be significantly larger and there should be more and longer Wild and Scenic Rivers in the bill. The SSC also opposes the “release” of Bureau of Land Management (BLM) Wilderness Study Areas from further consideration as Wilderness as proposed in the bill.
- *Proposed land exchanges.* While private-public land exchanges between the federal government can be in the public interest, the land exchanges contemplated in S. 3794 (and referenced documents) appears to favor private interests at the expense of the public interest and federal taxpayers in the Owyhee country. The SSC favors legislative land exchanges over administrative exchanges, but it is important that land values—both financial and ecological—be fair and clearly understood by the public under either process.
- *Board of Directors of the Owyhee Initiative Project.* S. 3794 would promote the group of interests that developed the OIA to a permanent Board of Directors to advise federal agencies on implementation of the legislation and the OIA. Unfortunately, this group does not fully represent all interests affected by the OIA and as a self-replacing entity, it would continue to exclude important voices.
- *Science review process.* S. 3794 authorizes the creation of a “science review” process that is designed to support continued livestock grazing on federal public land in the Owyhee country. The review process is poorly conceived and redundant with the other public and private research and the public decisionmaking process prescribed by the National Environmental Policy Act (NEPA) and land and resource protection and management standards in the Federal Lands Policy and Management Act (FLPMA).
- *Conservation and Research Center.* While SSC supports conservation and research in the Owyhee country in Idaho, the conservation and research program proposed in the OIA and endorsed by S. 3794 does not appear to be in the public interest or advance scientific research.

The following comments specifically regard Title I of the S. 3794.

### **Analysis of Title I of the Proposed “Owyhee Initiative Implementation Act of 2006”**

Title I of S. 3794 would implement significant portions of the OIA, a proposal developed by an ad hoc group of national and local stakeholders to manage federal public lands in southwest Idaho ([www.owyheeinitiative.org](http://www.owyheeinitiative.org)). The following reviews Title I of S. 3794 and associated text in the OIA that would affect federal management of federal public land contemplated in the proposed legislation, especially as it relates to domestic livestock grazing on public lands.

#### ***Section 101. Implementation (Owyhee Initiative Board of Directors)***

The OIA establishes a Board of Directors (“Board”) to “oversee and monitor administration and implementation of the Owyhee Initiative.” (OIA, sec. II. A.) The OIA notes that the agreement “represents a carefully balanced agreement among the diverse interests” and that “one of the primary functions of the OI Board will be to serve as the ‘institutional memory’ of the precise

understandings that were made in developing the Owyhee Initiative package.” (OIA, sec. III. B.) The proposed Act directs the Secretary of the Interior (through the Bureau of Land Management) to coordinate with the Board (and Owyhee County) and consider recommendations by the Board regarding implementation of the proposed Act and OIA and management of the affected federal lands. (OIA, sec. 101 (a); OIA sec. III. B.)

## Issues

Owyhee County Commissioners (Idaho) chose the original membership of the ad hoc group of stakeholders who developed the OIA ([www.owyheeinitiative.org/history.htm](http://www.owyheeinitiative.org/history.htm)) and the OIA would model the Board on that group and retain Owyhee County in the role of managing membership of the Board. (OIA, sec. III. C.) However, Owyhee County only invited certain stakeholders/organizations to join the OIA development group (that would now become members of the Board), and did not invite other stakeholders/organizations to participate. It is known that some stakeholders/organizations were prohibited from joining the group. Also, since the proposed Act and OIA affect *federal* public lands, it is not appropriate for a county commission to choose membership for an advisory organization that would make recommendations for management of these lands and resources. Membership and operation of such an advisory board should be determined by the Secretary of the Interior, similar to how the Secretary currently appoints BLM Resource Advisory Councils.

### ***Section 102. Science Review Program***

The OIA establishes a “Science Review” process “to provide for science review of certain actions by the Bureau of Land Management” (OIA, sec. II. B.), including “information utilized by the BLM in developing proposed actions / decisions in Owyhee County.” (OIA, sec. IV. A.) The intent of these science reviews is to “assure that the best available science is appropriately applied in a timely manner” to agency decisions. (OIA, sec. IV. A.)

The OI Board would administer the science review process and develop guidelines and procedures to address the composition of the group of scientific reviewers, processing of requests, and conduct of science reviews (OIA, sec. IV. B.; OIA, sec. IV. C.), and annually evaluate the science review under criteria established by the Board. (OIA, sec. IV. 1.)

Science reviewers would be “independent scientists” (OIA, sec. II. B.) with appropriate expertise and who together represent a broad diversity of scientific perspectives (OIA, sec. IV. E. 1.-3.), as chosen by the Board after consultation with the Dean of the College of Natural Resources of the University of Idaho (“Dean”) and considering input from the public and interested organizations. (OIA, sec. IV. E.) The Board will establish a pool of at least eleven (11) scientists for science reviews. (OIA, sec. IV. E.)

Any person “who may be affected” by a BLM grazing management action or decision” may submit a request of scientific review of that action or decision (or of information used to make a decision?) to the Board within ten (10) days of receiving notice of the proposed decision or action. (OIA, sec. IV. 3.) Other requests for scientific review of “non-grazing multiple use”

decisions may be submitted to the Board, which will consider on a case-by-case basis and in accordance with its own rules whether to refer them for scientific review. (OIA, sec. IV. L.)

Scientific review will be limited to one or more of the following issues:

1. Whether the scientific study data and information relied upon by the BLM is directly applicable to its intended purpose in the proposed action/decision.
2. Whether the BLM followed their protocols in the collection of scientific data and information.
3. Whether the BLM's interpretation of and conclusions based on the scientific data and information collected are scientifically supported by their data and information.
4. Whether other available scientific data and information disputing the BLM data are directly applicable, reliable, and rationally dispute information BLM used to support a proposed action / decision.
5. Whether there are additional management options or alternatives that could reasonably be expected to achieve resource objectives.
6. Whether the consequence attributed to the proposed action/decision and/or alternatives is/are supported by widely accepted scientific principles.

(OIA, sec. IV. G.)

Upon receipt of a request for science review, the Board will refer grazing and approved non-grazing related requests to the Dean, who will choose a team of three (3) scientists from the available pool of reviewers to respond to the request. (OIA, sec. IV. H.-I.) The review team will determine whether questions have been properly raised regarding one or more of the six issues listed above (subsection G). (OIA, sec. IV. G.) The review team will respond to approved questions by developing findings and preparing a report that the Dean will then distribute to the requester, OI Board, Owyhee County Commission and the BLM. (OIA, sec. IV. J.-K.)

### Issues

The science review process is available to "any person affected by a BLM grazing management action or decision under 43 C.F.R. part 4100" in Owyhee County, which apparently includes grazing permittees operating on public lands that are not otherwise affected by S. 3974 and the OIA. Also, it is not clear if "any person affected by a BLM grazing management action" includes members of the public or other interests that use and enjoy federal public lands and therefore are also affected by BLM grazing management actions and decisions. Under BLM regulations (43 C.F.R. part 1600, implementing NEPA and FLPMA), any member of the public may request to be an "interested party" on a grazing management decision. May these "affected" persons apply for science review of a BLM grazing management decision under this provision? The OIA also offers the opportunity for other "multiple use" (non-livestock grazing) public land users to submit BLM decisions for science review, but these reviews are at the option of the Board, while the livestock grazing reviews are mandatory. This would elevate livestock grazing over other multiple uses of public land in the Owyhee country in Idaho.

How does this legislation avoid the federal Information Quality Act (Data Quality Act) (Public Law 106-554, sec. 515), which instructs federal departments and agency's development and use

of science in decisionmaking? Does FIQA (DQA) (and Office of Management and Budget guidelines (67 Fed. Reg. 8452) and Department of the Interior guidance<sup>1</sup> that implements the DQA) control the science review process described in the OIA?

Does the science review process undermine or prolong the NEPA public participation and decisionmaking process? Does it afford certain members of the public extra (and extra-legal [arbitrary and capricious?]) opportunity to comment and influence agency decisionmaking (particularly after a final decision is rendered)?

How exactly is BLM (and other federal agencies) supposed to consider/incorporate science review findings and reports in agency decisions? The legislation states that BLM, “notwithstanding the review process under this section...shall proceed with management actions in a timely manner in accordance with applicable laws (including regulations).” (OIA, sec. 102(b)) This statement appears to preserve NEPA and FLPMA as the decisionmaking process for managing livestock grazing and other multiple uses on federal public land in Owyhee County, regardless of whatever findings or reports produced by the OIA science review process. If that is the case (and the SSC contends it should be), then what is the purpose of the science review?

### ***Section 103. Conservation and Research Center Program***

S. 3974 and the OIA would establish a “landscape-scale program to review, recommend and coordinate landscape conservation and research projects” that includes creation of a “Owyhee Initiative Conservation and Research Center.” (OIA, sec. V. A.) The Center would coordinate, support and share information with government agencies, universities, citizen groups and individuals working on landscape and natural resource issues in the Owyhee country. (OIA, sec. V. A.-B.) Center projects would include identifying the current state of scientific knowledge; scope and status of ongoing research; information gaps; successful management strategies; and methods to disseminate existing and new information to interested publics. (OIA, sec. V. A.) The Board of Directors would oversee the Center and have “full authority over its operations.” (OIA, sec. V. D.) The Center would be eligible to apply for and receive financial support from both government and non-government organizations to support its work. (OIA, sec. V. C.)

### Issues

The OIA states that the Center will add another “layer of credibility to conservation and research projects” (OIA, V. C.). However, it is unclear that another “layer” of scientific research is needed given the large number of universities, government agencies, non-governmental organizations and independent scientists who research landscape and natural resource issues in Owyhee country and throughout the sagebrush steppe. Also, it is arguable that a science center controlled by a Board of mostly political interests (as originally selected by the Owyhee County Commission) would produce research that is more “credible” than that developed by the aforementioned sources. The Center appears to be a research entity created by and for grazing

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<sup>1</sup> DOI DQA guidelines available at [www.fws.gov/informationquality/topics/515Guides.pdf#search=%22department%20of%20the%20interior%20data%20quality%20act%20guidelines%22](http://www.fws.gov/informationquality/topics/515Guides.pdf#search=%22department%20of%20the%20interior%20data%20quality%20act%20guidelines%22).

interests in Owyhee County to develop pseudo-science to support continued public land livestock grazing in the region.

The Sagebrush Sea Campaign is opposed to many provisions in S. 3974 and the OIA and recommends that the subcommittee re-draft the legislation to clarify its intent and ensure the maximum level of conservation for the Owyhee country in Idaho. Thank you for consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark N. Salvo". The signature is written in a cursive, slightly slanted style.

Mark N. Salvo  
Director

*Title I of the Proposed Owyhee Initiative Implementation Act of 2006 (S. 3794)*

**TITLE I – OWYHEE INITIATIVE AGREEMENT**

**Sec. 101. IMPLEMENTATION.**

(a) IN GENERAL. – The Secretary shall coordinate with the Board and the County in implementing this Act in accordance with applicable laws and regulations.

(b) EFFECT ON PUBLIC PARTICIPATION. – Nothing in this Act diminishes or otherwise affects any applicable law or regulation relating to public participation.

**Sec. 102. SCIENCE REVIEW PROGRAM.**

(a) IN GENERAL. – The Secretary shall coordinate with the Board in the conduct of the science review process as described in the Owyhee Initiative Agreement.

(b) MANAGEMENT ACTIONS. – Notwithstanding the review process under this section, the Secretary shall proceed with management actions in a timely manner in accordance with applicable laws (including regulations).

**Sec. 103. CONSERVATION AND RESEARCH CENTER PROGRAM.**

The Secretary shall coordinate with the Board with respect to the conservation and research center program, as described in the Owyhee Initiative Agreement.

**Sec. 104. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated to the Secretary to carry out this title \$20,000,000.