

Powder River Sportsmen's Club
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January 30, 2024

**UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS**

IBLA Docket No. _____

)	
)	Notice of Appeal and Petition for Stay
)	of the
Powder River Sportsmen's Club)	Decision Record of Baker District
)	Acting Field Manager Sarah Sherman
Appellant)	pertaining to a R&PP lease held by
)	Powder River Sportsmen's Club:
)	2912/2740 (ORV050)
)	OROR-48525 (Legacy Serial No.)
)	OROR106061993 (MLRS Serial No.)
)	

NOTICE OF APPEAL AND PETITION FOR STAY

NOTICE OF APPEAL

Pursuant to 43 C.F.R. Part 4, the Powder River Sportsmen's Club (PRSC) hereby appeals the December 27, 2023 Decision by Bureau of Land Management (“BLM”) Baker Field Office (ORV050) Acting Field Manager Sarah Sherman to incorporate a reduced lease term and certain restrictive stipulations into PRSC's Recreation and Public Purposes Act (R&PP) Lease MLRS SN OROR106061993, legacy SN OROR-48525, original SN ORORE0015693.

PRSC appeals the reduced lease term, and the proposed lease Stipulations #22, #24, and #25.

A Statement of Reasons with evidence citations and figures will follow this Notice of Appeal within the allotted time.

Timeliness:

BLM Decision Date: December 27, 2023.

Certified Mail #7022 0410 0000 4293 0147

Date of Service of BLM Decision to PRSC: January 3, 2024.

Date of this Notice of Appeal and Petition for Stay: January 30, 2024.

Deadline for Notice of Appeal: February 2, 2024.

PETITION FOR STAY

Background:

Powder River Sportsmen's Club (PRSC, the Club) is a conservation and firearms safety organization chartered in 1953.

PRSC is integral to the Baker County community; providing the only public shooting range in the county, and a training venue for law enforcement agencies, and a variety of training and education events for the safe handling and use of firearms for youth and adults, and first aid training seminars to the community, and conducting Oregon Department of Fish and Wildlife (ODFW) Youth Hunter Education classes and field training days.

PRSC obtained R&PP Lease ORORE0015693 in 1965, superceded by OROR-48525 in 1992, superceded by OROR-106061993 thereafter.

Pursuant to the lease, PRSC constructed the Virtue Flat Shooting Range (VFSR) on the leased land in 1967, and has operated VFSR continually since 1968.

Effective December 27, 2023, and despite objections from PRSC, BLM Baker Field Office (ORV050) Acting Field Manager Sarah Sherman decided to reduce the term of the VFSR lease from twenty to ten years, and also to incorporate three new lease stipulations that threaten to close VFSR at unpredictable intervals for ambiguous reasons:

1 - Stipulation #22: BLM will close VFSR any time five deer or six deer pass within two miles or three miles of VFSR,

- wherein the specific number and distance of deer that would trigger such closure is not defined,

- and no provision is made to determine whom will count or verify counts of deer, or how often,
- thus leaving PRSC susceptible to unpredictable and indefinite closure of VFSR,
- despite the fact that there is no record since 1968 of any party suggesting or complaining that VFSR affects deer; and

2 - Stipulation #24: BLM will close VFSR for the first and last two hours of each day from March through June if any sage grouse lek within four miles of VFSR is classified as "occupied" or "pending,"

- wherein a lek can only be classified "unoccupied" if zero birds have been observed on said lek by ODFW for seven consecutive years,
- and if ODFW fails to take inventory of an occupied or pending lek within four miles of VFSR during any of the requisite seven years, then the BLM "clock" for that lek resets back to seven full years,
- thus leaving PRSC susceptible to daily closures of VFSR indefinitely, regardless of whether sage grouse are actually present within 4 miles of VFSR,
- despite the facts that VFSR is sandwiched between a BLM Interpretive Center that sees 40,000 visitors per year and a BLM Off-Highway Vehicle Area that sees "high-volume" use, and neither of those BLM facilities is subject to the deer or sage grouse closures being proposed for VFSR,
- and despite the facts that VFSR is located on a state highway with an average daily traffic count of 900 vehicles and it is universally recognized that sage grouse actively avoid highway corridors; and

3 - Stipulation #25: BLM will close VFSR for the first and last two hours of each day from March through June if sound from VFSR can be measured at ten or more decibels above ambient sound level at the perimeter of any occupied or pending lek, wherein it was acknowledged during negotiations between PRSC and Baker Field Office staff that:

- the term "lek perimeter" is undefined,
- and ambient sound in "undisturbed nature" is about 40 decibels,
- and gunshots are about 160 decibels,
- and the inverse square law suggests that 160 decibel sound must travel 373 miles before it drops to 50 decibels,
- and sound attenuation is affected by environmental factors other than distance,
- and gunshot sound is not known to consistently constitute a material disturbance to any wildlife at a distance of one mile,
- and BLM has no data on sound attenuation vs. distance in the vicinity of VFSR and no published plans to obtain any such data,
- and no provision is made for whom will measure VFSR sound when or where,
- and VFSR sound observably did not displace sage grouse within 2 to 4 miles of VFSR from 1968 to 2008,
- and if gunshot sound is an actual problem, then shooting all day at VFSR while remaining silent in the morning and evening, on a busy highway, does not seem to constitute an intelligent or viable solution for appeasing wildlife that is universally recognized for avoiding human disturbance.

Standing:

PRSC is the lessee. PRSC materially participated in the decision-making process leading up to this appeal. PRSC is the sole appellant.

PRSC is immediately and adversely affected by the decision being appealed:

PRSC is a nonprofit organization sustained primarily by \$45 annual dues paid irregularly by 500 individual members, such that average annual paid membership hovers at about 300 paid members each year.

PRSC operates at or near a break-even financial basis: annual revenue is typically fully consumed by facility maintenance costs, insurance premiums, and program expenses.

PRSC and VFSR are located in Baker County, Oregon, which is comprised of 51% public land managed by federal agencies.

PRSC members are accustomed to unfettered access to VFSR, and have been for 55 years.

Springtime mornings are the peak time of use of VFSR (winter ended, wind is calm).

Halving the lease term doubles the frequency of lease renewal interactions at which BLM can invent new restrictions for the VFSR lease, which invites more VFSR restrictions and closures.

If PRSC members become unable to access VFSR due to unpredictable closures, or due to scheduled closures during traditional peak-use hours, a probable outcome will be significant declines in paid Club memberships accompanied by significant increases in random use of public land for recreational and practice shooting.

A decline in paid memberships would exhaust PRSC reserve funds, impair ability to maintain facilities and programs, and ultimately result in dissolution of the Club accompanied by surrender of the VFSR lease and loss of Club services to the Baker community.

PRSC members are broadly disinclined to embrace pointless public policy, and broadly inclined to avoid membership in organizations that obey and comply with pointless public policy rather than contesting same.

Because so much public land is available for recreational shooting in Baker County, it makes little sense for sportspersons to pay for the privilege of access to a shooting range that becomes unpredictably and often closed by unprecedented "conservation" restrictions that seem unlikely to PRSC members to achieve any conservation objective. Enforcement of such provisions at VFSR will result in an exodus of members from the Club.

Relative harm to the parties:

1 - If the requested stay is granted, PRSC and VFSR will operate in the same manner as the preceding 55 years. No party has ever documented regular deer or sage grouse use of land within one mile of VFSR. It is well known in Baker County that sage grouse have made occasional use of land within 1.5 to 4 miles of VFSR since 1968, during which time no closures or restrictions at VFSR were enforced by BLM. Granting the requested stay will not create any harm to land or wildlife on or near VFSR, nor will it harm BLM; no party is petitioning or otherwise pressuring BLM to implement any closures or restrictions at VFSR.

2 - If the requested stay is not granted, PRSC will be immediately and irrevocably harmed in the manner described previously in this document.

Likelihood of appellant's success:

VFSR is located in an observable recreation zone on a state highway, sandwiched between two other BLM recreational facilities. The restrictions and closures proposed for VFSR have not been proposed for the neighboring BLM recreational facilities. Ample scientific evidence indicates that sage grouse avoid highway corridors regardless of the presence or absence of developments along the highway. PRSC will provide these and other evidence citations in a forthcoming Statement of Reasons. PRSC is unable to find any wildlife study that supports BLM's proposed new deer or sage grouse stipulations for the VFSR lease. PRSC specifically asked BLM to provide such evidence citations; BLM never responded to that request.

Presuming equity and science guide IBLA decisions, the PRSC appeal is likely to succeed.

Public interest:

As previously described in this document, PRSC and VFSR are integral to, and provide valuable services to the Baker County community, and BLM's proposed new stipulations for the VFSR lease threaten the continuation of the PRSC/VFSR enterprise while failing to invite any measurable conservation achievement. A denial of this petition for stay would similarly threaten the continuation of the PRSC/VFSR enterprise, which in no way serves the best interests of the People of Baker County.

Conclusion:

PRSC requests a stay of the referenced BLM decision, pending resolution of the related appeal.

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2024, the foregoing NOTICE OF APPEAL and PETITION FOR STAY, was served upon the following:

Sarah Sherman
Acting Field Manager
Baker Field Office
Bureau of Land Management
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